Arkansas
State Claims Commission

OCT 19 2018

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E.01

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Do Not Write in These Spaces
Claim No.
Date Filed (Month) (Day) (Year)
Amount of Claim $
Fund

☐ Mr.
☐ Mrs.
☒ Ms.
☐ Miss
Lori Braun, As Administratrix of the Estate of Cassandra Braun, deceased, **Claimant**

vs.

State of Arkansas, Respondent

COMPLAINT

Lori Braun (Name) the above named Claimant, of [redacted] (Street or R.F.D. & No.) (City)

[redacted] (State) (Zip Code) (Daytime Phone No.) County of [redacted] represented by James, Carter & Priebe, LLP and Andy Clarke (Legal Counsel, if any, for Claim)

of 500 Broadway, Suite 400 Little Rock, AR 72201; Tel. 501.372.1414 Fax 501.372.1659 (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: Arkansas State Police Amount sought:

Month, day, year and place of incident or service: November 17, 2016 in Garland County, Arkansas

Explanation: The Arkansas Motor Vehicle Accident Report Form is attached as Exhibit "A" and a Claim Narrative and Statement of Facts, attached as Exhibit "B" together with the following supporting documents:

1. Video of Trooper Burke's driving and collision;
2. Arkansas Motor Vehicle Crash Report;
3. Hot Springs Police Department Officer Report;
4. Cremation and urn expenses $1,722.75;
5. 2016 W-2 (January 1, 2016 - October 10, 2016);
6. Automobile Property Damange check paid by Progressive Insurance ($8,091.72 paid to Ally Financial);
7. Check by Progressive under auto policy of $5,000 accidental death benefit;
8. Form 712 Life Insurance Statement showing $50,000 payment from Metropolitan Life Insurance Company to beneficiary Landon Braun (decedent's minor child).

On May 2, 2018, the attorney for the claimant were advised by Greg Downs, attorney for Arkansas State Police, that the Arkansas State Police did not have liability insurance. Any policy maintained by Brian Ray Burke would not apply because the wreck occurred while Burke was driving a state owned vehicle. Progressive Insurance contends no other benefits are payable under its policy.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
Yes (Yes or No); when? 3/13/17 until now (Month) (Day) (Year); to whom? Greg Downs, AR State Police Attorney (Department); and that the following action was taken thereon: No settlement has been reached and no payment has been made as of today's date.

and that $ n/a was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: ; and was acquired on , in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Lori Braun
(Print Claimant/Representative Name)

Lori Braun
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Punta Gorda, Fl. (City) (State)

(SEAL)

CAROL M. TURELLI
MY COMMISSION # FF 997224
EXPIRES: September 30, 2020
Bonded Thru Notary Public Underwriters

this 5 (Date) day of October (Month), 2018 (Year)

Carol M Turelli
(Notary Public)

My Commission Expires: September 30 2020
(Month) (Day) (Year)

SF1- R7/99

EXHIBIT "A"

Arkansas
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ARKANSAS STATE CLAIMS COMMISSION
MOTOR VEHICLE ACCIDENT REPORT FORM

SECTION I
CLAIMANT Lori Braun ADDRESS [redacted]

CITY & STATE [redacted] ZIP CODE [redacted]

DATE OF ACCIDENT: November 17, 2016 TIME: 9:23 pm

MOTOR VEHICLE DAMAGED: TYPE Malibu MAKE Chevrolet YEAR 2011

DRIVEN BY: Tavon Desean Jenkins ADDRESS

Give a brief description of accident, showing how accident happened, exact loss and extent of damage to car.

****

SECTION II
Has this vehicle been repaired? Yes ( ) No (X) If repairs have been made, give the following information: Amount $ _____ . Have you paid for the repairs? Yes ( ) No (X) NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and attach copies of each of them.

	NAME	ADDRESS	AMOUNT
1.	The vehicle was a total loss. Progressive Insurance paid Ally Financial $8,091.72.		$
2.	After the $500.00 deductible was applied.		
3.			

****

SECTION III
Was vehicle covered by Insurance? Yes (X) No ( ) Liability Only ( )

Comprehensive: Yes (X) No ( ) What is your deductible? $ 500.00

Collision: Yes (X) No ( ) What is your deductible? $ 500.00

NAME OF INSURANCE CARRIER ADDRESS

Progressive

****

SECTION IV
Type of State Vehicle involved 2016 Dodge Charger License No. 2017 AR K15

Driver Brian Ray Burke Property of which State Agency Arkansas State Police

If accident was investigated by the State Police, give name of investigating officer: _____ If investigation was made by some other agency, give name and title of officer making the investigation: Hot Springs Police Department, Officer Phillip S. DeFoor

****

SECTION V
The undersigned states, on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

CAROL M. TURELLI
MY COMMISSION # FF 987224
EXPIRES: September 30, 2020
Bonded Thru Notary Public Underwriters

Lori Braun
Signature of Claimant

Sworn to and subscribed before me at Punta Gorda Fl
City, State

(Notary Seal)

on this 5 day of October, 2018.
day month year

Carol M Turelli
Notary Public

My Commission Expires 9/30/2020

EXHIBIT "B"

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. — No. _____

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIM NARRATIVE AND STATEMENT OF FACTS

COMES NOW the Claimant, Lori Braun, individually, and as Administratrix of the Estate of Cassandra Braun, deceased, by and through her Attorneys, James, Carter & Priebe, LLP and Andrew C Clarke Law Office, and submits the following Claim Narrative and Statement of Facts in support of her Complaint setting forth claims against the State of Arkansas, acting through the Arkansas State Police:

1. Lori Braun is now and was a resident of [redacted] at all times relevant to this claim.

2. Lori Braun is the mother of the decedent, Cassandra Braun, and is the duly appointed Personal Representative of the Estate of Cassandra Braun, deceased, having been appointed by the Garland County Court on November 17, 2016.

3. The Claimant brings her Complaint on behalf of the Estate and on behalf of the following heirs and statutory beneficiaries of the Decedent:

Name	Age	Relationship	Address
Lori Braun	48	Mother	[redacted]
Michael Braun	63	Father	[redacted]

[redacted]		Son	[redacted]
Joel Michael Braun	22	Brother	
Raquel Braun	19	Sister	
[redacted]		Sister	

4. The Respondent is the Arkansas State Police, an agency/division of the State of Arkansas, whose Director is Colonel Bill Bryant, 1 State Police Plaza Drive, Little Rock, Arkansas 72209.

5. Brian Ray Burke, was at all times pertinent to this case, a Trooper for the Arkansas State Police and was the driver of the patrol car owned by the Respondent agency, the Arkansas State Police. Burke was driving his Arkansas State Police patrol car within the course and scope of this employment for the Arkansas State Police. As such, Brian Ray Burke's actions are imputed to the Respondent under the doctrine of respondent superior and vicarious liability.

6. Cassandra Braun died in a tragic motor vehicle crash on October 10, 2016 in Hot Springs, Arkansas, when Brian Ray Burke, a Trooper for the Arkansas State Police, at least negligently and recklessly drove his police cruiser into a vehicle driven by Tavon Desean Jenkins, causing Ms. Braun's death.[1]

[1] Claimant has previously filed a federal civil rights cases against Trooper Burke and Colonel Bryant which is pending alleging, in general, that the conduct of Trooper Burke was intentional and conscience shocking and that Colonel Bryant was deliberately indifferent his constitutional duty to have proper policy, training, supervision and discipline with respect to the Arkansas State Police. *Braun v. Burke, et al.*, Case No. 4:18-cv-00334 BRW (E.D. Ark). Pursuant to the 11th Amendment to the U.S. Constitution, the State of Arkansas is not amenable to suit in federal court and under the rules governing state actions against state employees set forth by the Arkansas Claims Commission, these claims could not be asserted in the federal action as all actions for violation of state law rights must be brought in the Arkansas Claims Commission. Accordingly, while Plaintiff has alleged in her federal civil rights action that the conduct of Trooper Burke and Colonel Bryant rose to the level of a constitutional violation, Plaintiff submits that their conduct was at least negligent or reckless under state law and brings this action in the Arkansas Claims Commission for all state law negligent and/or reckless conduct.

7. The events leading to the fatal crash that killed Cassandra Braun started with Defendant Trooper Burke observing a vehicle with its hazard lights flashing activated at a speed allegedly in excess the of the speed limit while proceeding down Highway 70 going toward Hot Springs, all while Trooper Burke was talking to an unknown person in a parking area along Highway 70.

8. After briefly observing this vehicle, Trooper Burke first finished talking to the person in the parking lot and then ***walked*** to his patrol car, entered his patrol car, and left the parking area by entering Highway 70, proceeding in the same direction as the observed vehicle.

9. For the first 20 seconds of his trip, Trooper Burke turned on his blue lights and/or his vehicle emergency siren. After 20 seconds of travel time, Defendant Trooper Burke turned his lights and siren OFF.

10. According to information acquired from the Arkansas State Police and/or Hot Springs Police Department under the Arkansas Freedom of Information Act, the crash data recorder (CDR) or "blackbox" in Burke's police cruiser showed that over the next 5 minutes, covering approximately 8.1 miles, Trooper Burke drove his patrol vehicle, without blue lights and siren, at documented speeds as high as **117 miles per hour** in a 45 mile per hour zone, and at an average speed of over 97 mph.

11. The actions and driving of Trooper Burke were without any legitimate governmental or law enforcement justification at all, for Trooper Burke was engaged in neither a high-speed pursuit nor an emergency response, because Defendant Trooper Burke purportedly was merely trying to "catch up" to an alleged speeder driving with hazard lights flashing.

12. The actions and driving of Trooper Burke were also in violation of state law including Ark. Code Ann. §§ 21-9-303; 27-37-202; 27-49-109; 27-51-202; 27-51-203; 27-51-204;

27-51-901; & 27-51-905, said violations constituting negligence per se and which were a direct and proximate cause of the crash which killed Cassandra Braun.

13. Burke was guilty of fault consisting of negligent and reckless conduct, which was a proximate cause of the injury to and the death of Cassandra Braun, which acts of fault include, but are not limited to the following:

a) Failing to keep a proper lookout;

b) Failing to maintain proper control of his vehicle;

c) Driving the patrol car at a speed greater than that reasonable and prudent under the circumstances then existing;

d) Failing to operate the patrol car's emergency lights and audible signals when other vehicles were present;

e) Failing to exercise ordinary care for his own safety and for the safety of others using the highway;

f) Operating the patrol car in such an unsafe manner as to endanger the lives of other persons when he knew such conduct was unreasonably dangerous;

g) Failing to operate his police cruiser in compliance with Arkansas traffic laws and written policies of the Arkansas State Police;

h) Failing to operate his police cruiser in compliance with Hot Springs city ordinances; and,

i) Failing to otherwise exercise ordinary care.

j) Deciding to engage in dangerous high-speed driving without lights and sirens when there was no legitimate law enforcement justification for such driving.

k) Failing to discontinue his high-speed driving without lights and sirens when the dangers of such actions became obvious when encounter other innocent drivers.

l) Operating his vehicle without due regard to the motoring public.

m) Failing to warn the motoring public of his negligent and reckless driving;

14. The Arkansas State Police was guilty of institutional negligence which was a proximate cause of the crash and the resulting death of Cassandra Braun, which negligence includes, but is not limited to:

a) Failing to properly train and supervise Troopers, including Brian Ray Burke, to assure that they drive in a safe and reasonable manner in accordance with the law;

b) Failing to maintain and enforce safe driving policies and practices, including driving at a safe speed and the use of lights and sirens;

c) Failing to investigate, discipline, or take other appropriate action to prevent Troopers who speed or otherwise drive in a dangerous and reckless manner creating an atmosphere where such wrongful conduct is accepted and tolerated;

d) Failing to properly supervise Troopers, including Brian Ray Burke, during high-speed or emergency driving to ensure compliance with ASP policies, state law and municipal ordinances;

e) Failing to have policies or procedures in place to require properl supervision of all high-speed and emergency driving to ensure compliance with all ASP policies, state law and municipal ordinances;

f) Failing to provide proper and complete dispatch information so Troopers, such as Brian Ray Burke, will know whether the dispatch involves an urgent or emergency situation;

g) Failing to seek support and assistance from local law enforcement, such as the Sheriff's Office, the Hot Springs Police, or the Arkansas Highway Police; and,

h) Failing to otherwise exercise ordinary care.

15. The above-described acts of fault on the part of Burke, and the Arkansas State Police and its supervisors were the proximate cause of the fatal collision described above, the resulting death of Cassandra Braun, and damages as more particularly described herein. These acts of fault are imputed to the Respondent.

16. On October 10, 2016, at the time of Cassandra Braun's death, she was gainfully employed at Spreading Our Wings, Inc. as a manager for Buffalo Wild Wings. She was 26 years of age.

17. Cassandra Braun left surviving her mother, Lori Braun; her father, Michael Braun; and, her son, [redacted]

18. The Claimant, as Special Administratrix of the Estate of Cassandra Braun, deceased, is entitled to recover on behalf of the Estate, the heirs of the decedent, and the statutory beneficiaries, the following elements of damage, all of which were proximately caused by fault chargeable to the Respondent:

a) Pain and suffering of Decedent prior to death;

b) Loss of life of the Decedent;

c) Pecuniary injuries sustained by Michael Braun, Lori Braun, [redacted] Joel Michael Braun, Raquel Braun and [redacted] because of loss of contributions;

d) Mental anguish suffered by Michael Braun, Lori Braun, [redacted] Joel Michael Braun, Raquel Braun and [redacted]

e) Reasonable cremation expenses of the Decedent; and,

f) Property damage, including damages to the 2011 Chevrolet Malibu.

WHEREFORE, the Claimant, Lori Braun, individually, and as Special Administratrix of the Estate of Cassandra Braun, deceased, requests entry of judgment against the Respondent for compensatory damages in the sum of $10,000,000.

RESPECTFULLY SUBMITTED,

Paul J. James, Esq. (Ark. Bar No. 83091)
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(501) 372-1414 (Telephone)
(501) 607-4090 (Facsimile)
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and

ANDREW C. CLARKE (Ark. Bar No. 95070)
6250 Poplar Avenue, Second Floor
Memphis, TN 38119
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aclarke@accfirm.com

VIDEO OF TROOPER BURKE'S DRIVING COLLISION

AR Motor Vehicle Crash Report

Arkansas
State Claims Commission
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Page 1 of 4 **ARKANSAS MOTOR VEHICLE CRASH REPORT** (Rev. 1/07)

Report # 16L032154 Unit Assigned 139 Premises US Hwy Lat/Long District 6

Mo/Day/Yr	Day of Week	Time of Crash	No. Of Vehicle	Time Notified	Time Arrived	Hit & Run	Direction of Travel	Official Use Only
10/10/16	Mon	9:23 ☐ AM ☑ PM	2	9:23 ☐ AM ☑ PM	9:26 ☐ AM ☑ PM	☐ YES ☑ NO	V# 1 E V# 2 W	

County	City	Not In City, But	Distance	Direction	of City Limits	Speed Limit
GARLAND	HOT SPRINGS					45

Road / Street / Highway	Section	Log Mile	At Intersection With	Posted
Airport Road / US70	8	14.2	Kleinshore Road	☑ YES ☐ NO

Not At Intersection, But ____ Distance ☐ N ☐ S ☐ E ☐ W ____ Reference Point

VEHICLE # 1 (PEDESTRIAN #)

Also Complete Truck and Bus Crash Report for each qualifying vehicle. If crash involves fatality, injury, or tow.

Driver's Name (First/MI/Last Name): Brian Ray Burke — Inj. Code: 2

Address: [redacted] — Safety Equip: 0 — Air Bag: 5 — Ejct: 0

City: [redacted] — State: [redacted] — Zip Code: [redacted]

Additional Information:

DOB: [redacted] — Race: W — Sex: M — Driver's License State: AR — Class: D — # [redacted] — End.

Test Req: Blood ☑ — Breath ☐ — Urine ☐ — Toxicology ☐ — None Req. ☐ — Results: negative

Vehicle Owner's Name (First/MI/Last): Arkansas State Police

Address: 1 State Police Plaza Drive

City: Little Rock — State: AR — Zip Code: 72209

Vehicle Description: Year 2016 — Make Dodge — Model Charger — Body Style 4D — Color white

Vehicle Identification Number: [redacted] — Estimated Damage: $15000

Vehicle License Plate: Year 2017 — State AR — ☐ NONE — Number K15

Trailers: ☐ YES ☑ NO — #Of Units — Reg. State — Plate #

Prior Vehicle Damage? ☐ YES ☑ NO — If Yes, Describe Damage & Location

Vehicle Damage As Result Of Crash: ☑ Disabled ☐ Other Damage ☐ Functional ☐ No Damage

Towed? ☑ YES ☐ NO — Name Of Tow Service: HOLCOMB'S 767-9999

Address Vehicle Removed To: 2281 AIRPORT

City: HOT SPRINGS — State: AR — Zip Code: 71913

Additional Information: State Police, self insured

Insurance Company: — Policy #:

EMS Notified 9:24 ☐ AM ☑ PM — EMS Arrived 9:27 ☐ AM ☑ PM — ☐ No Injury / Transport — Transported By: LifeNet

Injured Transported To (Hospital Name /City /State): St Vincent Hospital, 300 Werner Hot Springs, AR 71913

VEHICLE # 2 (PEDESTRIAN #)

Also Complete Truck and Bus Crash Report for each qualifying vehicle. If crash involves fatality, injury, or tow.

Driver's Name (First/MI/Last Name): Tavon Desean Jenkins — Inj. Code: 1

Address: [redacted] — Safety Equip: 0 — Air Bag: 5 — Ejct: 1

City: [redacted] — State: [redacted] — Zip Code: [redacted]

Additional Information:

DOB: [redacted] — Race: B — Sex: M — Driver's License State: FL — Class: E — # [redacted] — End.

Test Req: Blood ☑ — Breath ☐ — Urine ☐ — Toxicology ☐ — None Req. ☐ — Results: 0.1

Vehicle Owner's Name (First/MI/Last): Cassandra Marie Braun

Address: [redacted]

City: [redacted] — State: [redacted] — Zip Code: [redacted]

Vehicle Description: Year 2011 — Make Chevrolet — Model Malibu — Body Style 4D — Color silver

Vehicle Identification Number: [redacted] — Estimated Damage: $15000

Vehicle License Plate: Year 2016 — State FL — ☐ NONE — Number CIRI91

Trailers: ☐ YES ☑ NO — #Of Units — Reg. State — Plate #

Prior Vehicle Damage? ☐ YES ☑ NO — If Yes, Describe Damage & Location

Vehicle Damage As Result Of Crash: ☑ Disabled ☐ Other Damage ☐ Functional ☐ No Damage

Towed? ☑ YES ☐ NO — Name Of Tow Service: ERNIE'S 623-1081

Address Vehicle Removed To: 312 LINCOLN

City: HOT SPRINGS — State: AR — Zip Code: 71901

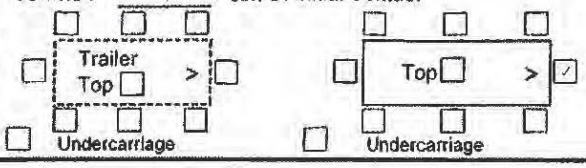
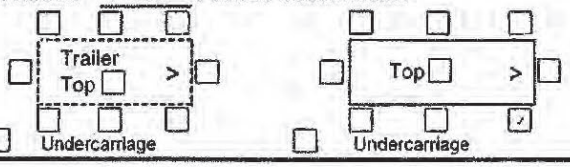
Additional Information: AGENT: 239-398-4931

Insurance Company: Progressive — Policy #: 44384603

EMS Notified 9:24 ☐ AM ☑ PM — EMS Arrived 9:27 ☐ AM ☑ PM — ☐ No Injury / Transport — Transported By: Coroner

Injured Transported To (Hospital Name /City /State):

Report Number 16L032154

Vehicle # 1 Point Of Initial Contact	Vehicle # 2 Point Of Initial Contact
	

Damage To Property Other Than Vehicle	Object Struck	Owner's Name	Damage Estimate
☑ Yes ☐ No	Warning Sign	Arkansas State Highway Department	$ 200.00
		Address (City / State / Zip Code)	Owner Notified
		6300 Albert Pike Road Hot Springs, AR 71901	☑ Yes ☐ No

Witness Name(s) (First / MI / Last)	Address (City / State / Zip Code)
NONE LOCATED	

Citation(s) Issued To (First / MI / Last)	Charge(s) And Statute Number(s)	Citation Number

Narrative

V1 was traveling eastbound on Airport Road/US70 approaching the intersection of Airport and Kleinshore Road.

V2 was in the center turn lane of Airport Road/US70 turning left onto Kleinshore Road.

V2 started it's turn, pulling into the path of V1. V1 and V2 collided in the eastbound lanes of Airport Road/US70. The force of the impact ejected both occupants of V2.

Officer's Name (Rank / First / MI / Last)	Badge No.	Department	Reviewing Officer	Date Filed	Photo
OFC Phillip S De Foor	139	Hot Springs Police		10/10/16	☐ Yes ☑ No

 Report Number 16L032154

ATMOSPHERIC CONDITIONS (0)
0 Clear; 1 Rain; 2 Sleet; 3 Snow; 4 Fog; 5 High Winds; 6 Smoke; 7 Smog; 8 Dust; 9 Mist; 98 Other; 99 Unknown

RELATION TO JUNCTION (1)
0 Non-Junction; 1 Intersection; 2 Intersection Related; 3 Driveway; 4 Alley; 5 Exit Lane; 6 Entrance Lane; 7 R.R. Crossing; 8 Crossover Lane; 98 Other; 99 Unknown

Light Conditions (2)
1 Daylight; 2 Dark; 3 Dawn; 4 Dusk; 5 Dark /But Light; 6 Dark /Light Not Functioning; 98 Other; 99 Unknown

Traffic Controls (11)
0 No Traffic Controls; 1 Flashing Beacon; 2 Traffic Signal; 3 Stop Sign; 4 Yield Sign; 5 R.R. Crossing W/Gate & Signals; 6 R.R. Crossing W/Flashing Signals Only; 7 R.R. Crossing W/Crossbuck Only; 8 School Zone; 9 Pedestrian Signal; 10 Lane Symbols Painted On Roadway; 11 Traffic Lanes Marked; 12 No Passing Signal; 13 Slow Or Warning Sign; 14 Officer Or Flagman; 98 Other; 99 Unknown

Accident Locale (2)
1 Rural; 2 Urban; 99 Unknown

Roadway Surface Conditions (1)
1 Dry; 2 Wet; 3 Ice; 4 Sand; 5 Dirt; 6 Oil; 98 Other; 99 Unknown

Traffic Control Device (2)
0 Device Not Present; 1 Device Not Functioning; 2 Device Functioning Properly; 3 Device Not Functioning Properly

Type Of Collision (3)
0 Single Vehicle / Non Collision With Motor Vehicle In Transport; 1 Head On; 2 Rear End; 3 Angle; 4 Sideswipe Same Direction; 5 Sideswipe Opp. Direction; 6 Backing; 98 Other

Road System (2.5)
1 Interstate; 2 U.S. Highway; 3 State Highway; 4 County Road; 5 City Street; 6 Frontage Road; 7 Ramp; 99 Unknown

Contributing Factors (1 V1 / 26 V2)
0 None; 1 Too Fast For Conditions; 2 Failure To Yield; 3 Driving Without Lights; 4 Failure To Dim Lights; 5 Disregard Stop Sign; 6 Disregard Yield Sign; 7 Disregard Traffic Signal; 8 Wrong Side Of Road; 9 Wrong Way/One Way Traffic; 10 Following Too Close; 11 Improper Right Turn; 12 Improper Left Turn; 13 Improper Lane Change; 14 Improper Passing; 15 Prohibited U Turn; 16 Defective Lights; 17 Defective Brakes; 18 Other Defective Equipment; 19 Improper Backing; 20 Failure Or Improper Signal; 21 Distracted Officer / Flagman; 22 Cutting In; 23 Impeding Traffic; 24 Improperly Parked; 25 Crowded Off Road; 26 Alcohol; 27 Drugs; 28 Careless / Prohibited Driving; 29 Crossing Median; 98 Other; 99 Unknown

Road Surface (2)
1 Concrete; 2 Asphalt; 3 Gravel; 4 Dirt; 98 Other; 99 Unknown

Road Alignment (1)
1 Straight; 2 Curve

Road Profile (1)
1 Level; 2 Grade; 3 Hillcrest; 4 Sag; 98 Other; 99 Unknown

Construction / Maintenance Zone (2)
1 Yes; 2 No

Vehicle Action (1 V1 / 11 V2)
1 Going Straight; 2 Negotiating Curve; 3 Slowing; 4 Stopped In Traffic Lane; 5 Merging; 6 Enter Parked Position; 7 Exiting Parked Position; 8 Parked; 9 Making Right Turn; 10 Making Right Turn On Red; 11 Making Left Turn; 12 Making Left Turn On Red; 13 Making U Turn; 14 Backing; 15 Avoiding Vehicle; 16 Avoiding Pedestrian; 17 Avoiding Animal; 18 Avoiding Other Object; 19 Passing; 20 Changing Lanes; 21 Ran Off Road-Right; 22 Ran Off Road-Left; 23 Crossing Median; 98 Other; 99 Unknown

Traffic Flow (1)
1 Not Divided; 2 Divided By Median-No Barrier; 3 Divided By Perm. Barrier; 4 Divided By Temp. Barrier; 5 One Way Traffic; 98 Other; 99 Unknown

Number Of Traffic Lanes (5)
1 1; 2 2; 3 3; 4 4; 5 5; 6 6; 7 7; 8 8

First Harmful Event Collision With / Non Collision (4 V1 / 4 V2)
1 Pedestrian; 2 Pedacycle; 3 Train; 4 MV In Transport; 5 MV In Other Roadway; 6 Parked Vehicle; 7 Animal; 8 Other Object Not Fixed; 9 Unknown Obj. Not Fixed; 10 Overturned; 11 Fire; 12 Immersion; 13 Fell From Vehicle; 14 Jackknifed; 15 Bank or Ledge; 16 Tree(s); 17 Utility Pole; 18 Fence or Fence Post; 19 Guard Rail or Post; 20 Bridge or Underpass; 21 Sign/Traffic Signal; 22 Impact Cushion Device; 23 House/Building; 24 Light/Luminary Pole; 25 Concrete Barrier; 26 Culvert / Ditch; 27 Bridge Rail; 28 Other Fixed Object; 98 Other; 99 Unknown

Roadway Defects (0)
0 No Defects; 1 Obstruction Warning; 2 Obstruction No Warning; 3 Loose Materials On Surface; 4 Holes; 5 Ruts; 6 Bumps; 7 Defective Shoulder; 8 No Markings; 9 Reduced Width; 98 Other; 99 Unknown

First Harmful Event Location (1 V1 / 1 V2)
1 On Roadway; 2 Shoulder; 3 Median; 4 Roadside; 5 Outside Traffic Way; 99 Unknown

Driver Distraction (99 V1 / 99 V2)
0 Not Distracted; 1 Electronic Communication Device (cell phone, pager, ect.); 2 Other Electronic Device (navigation device, palm pilot, ect); 3 Other Inside the Vehicle; 4 Other Outside the Vehicle; 99 Unknown

Fire Occurrence (1)
0 No Fire Occurrence; 1 Fire Occurrence

Occupancy (1)
0 Non-Motorist; 1-999 Vehicle Number Of Occupant

Position In/On Veh. (10)
1 2 3
4 5 6
7 8 9
10 Riding Or Hanging Outside; 11 Bed Of Pickup; 12 Trailing Unit; 13 Sleeper Section; 98 Other Enclosed; 99 Unknown

Driver Vision Obscured (99 V1 / 99 V2)
0 Not Obscured; 1 Rain/Snow/Sleet On Windshield; 2 Fog; 3 Sunlight; 4 Headlights; 5 Building; 6 Billboard; 7 Trees/Shrub/ Ect.; 8 Parked Vehicle(s); 9 Moving Vehicle(s); 10 Broken Windshield; 11 Dirty Windshield; 12 Obscured By Vehicle Load; 13 Hillcrest; 98 Other; 99 Unknown

Injury Code
1 Fatal Injury; 2 Incapacitating Injury; 3 Non-Incapacitating Injury; 4 Possible Injury; 5 No Injury/Property Damage Only

Vehicle Defects (0 V1 / 0 V2)
0 No Defects; 1 Defective Lights; 2 Defective Brakes; 3 Defective Steering; 4 Worn/Slick Tires; 5 Motor Trouble; 6 Windshield/Mirrors; 98 Other; 99 Unknown

Safety Equipment Used
0 None Used; 1 Shoulder Belt; 2 Lap Belt; 3 Lap & Shoulder Belt; 4 Child Restrain; 7 Helmet; 8 Helmet W/Face Shield; 9 Eye Protection; 96 Other; 99 Unknown

Air Bag
0 Not Applicable; 5 Deployed Air Bag; 6 No Air Bag Deployment

Ejection From Vehicle
0 Not Ejected; 1 Totally Ejected; 2 Partially Ejected; 99 Unknown

Pedestrian Action / Location (99 V1 / 99 V2)
1 Crossing At Intersection With Signal; 2 Crossing At Intersection Against Signal; 3 Crossing At Intersection No Signal; 4 Crossing At Intersection Diagonally; 5 Crossing Not At Intersection/Rural; 6 Crossing Not At Intersection/Urban; 7 Coming From Behind Parked Car; 8 Unloading/Loading On School Bus; 9 Playing In Roadway; 10 Unloading/Loading On Other; 11 Lying In Roadway; 12 Walking On Roadway With Traffic/ Sidewalks Available; 13 Walking On Roadway With Traffic/Sidewalks Not Available; 14 Walked On Roadway Against; 15 Traffic/Sidewalks Available; 15 Walking On Roadway Against; 16 Traffic/Sidewalks Not Available; 16 Working In Roadway; 17 Standing In Roadway; 18 Not In Roadway; 98 Other; 99 Unknown

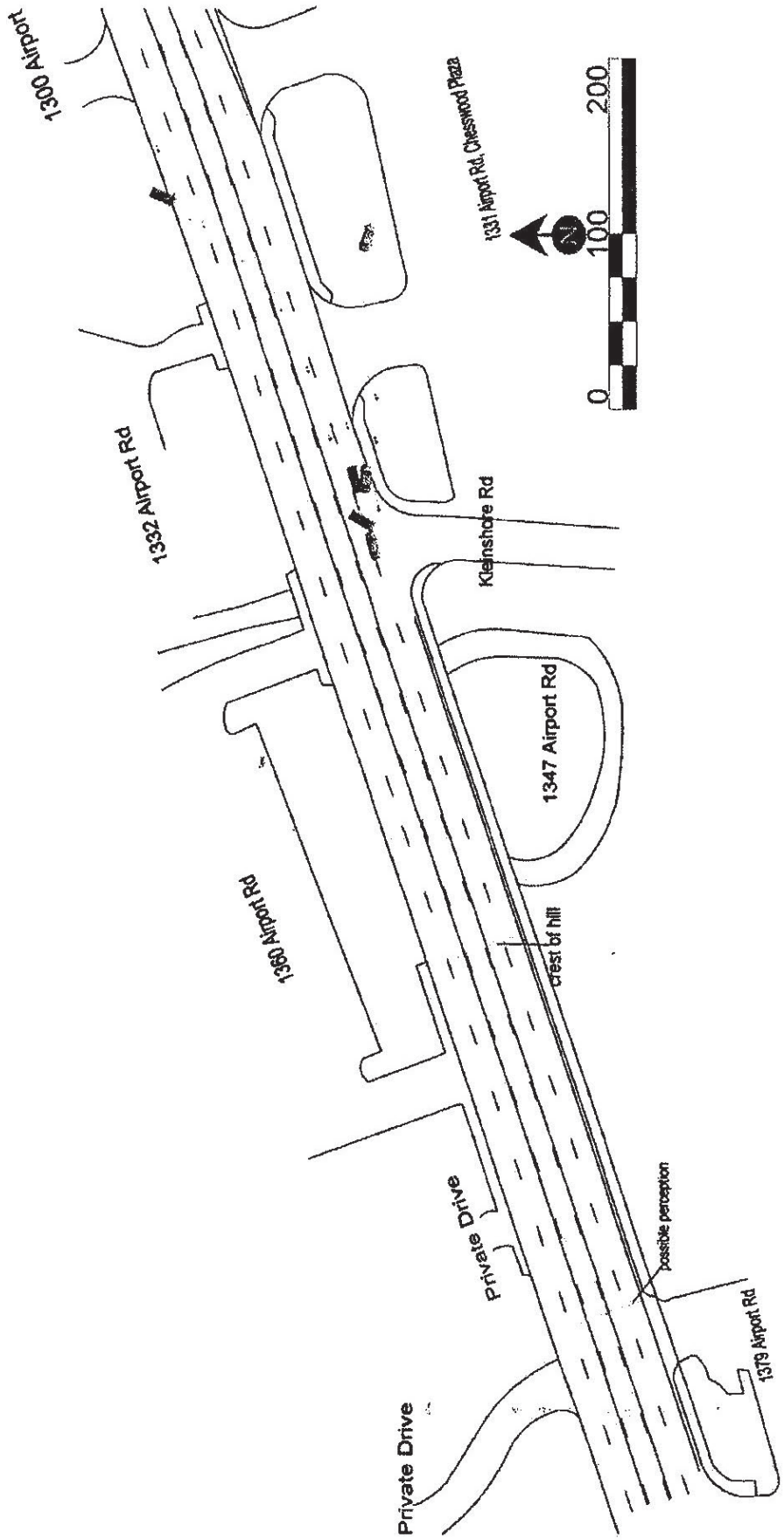
Condition Of Driver And Ped (NA Ped)
1 Appeared Normal; 2 Illness; 3 Fatigue; 4 Fell Asleep; 5 Physical Disability/Disease/Disorder; 6 Mental Disability/Disease/Disorder; 7 Defective Sight; 8 Defective Hearing; 9 Seizure / Blackout; 98 Other; 99 Unknown

Alcohol / Drugs Impairment (1 V1 / 2 V2 / NA Ped)
1 None; 2 Impaired; 3 Not Impaired; 4 Unknown

Passenger/Pedestrian

13	14	15	16	17	18 Race	19 Sex	20 Age	21	22	23 Name Of Passenger(s) Pedestrian(s) Address, City, State, Zip Code
2	3	0	6	1	W	F	26	1		Cassandra Marie Braun [redacted]

1610 32154


1300 Airport
1331 Airport Rd, Chesswood Plaza
200
100
0
1332 Airport Rd
Kleinshore Rd
1347 Airport Rd
1360 Airport Rd
crest of hill
Private Drive
possible perception
1379 Airport Rd
Private Drive

Hot Springs Police Department Officer Report

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Hot Springs Police Department

Officer Report for Incident 16L032154

Nature: Accident Fatal
Address: 1331 AIRPORT RD; Chesswood Plaza Hot Springs AR 71913

Location: 6

Offense Codes: TRAF
Received By: Stearns,W **How Received:** 9 **Agency:** HSPD
Responding Officers: Steed,S, Patrick,L, Nunez,R, Burfeind,J, Langford,J, Dauberger,S, Means,M, Tinney,J, Harkness,R, DeFoor,P, Allen,P, T137, Stillian,S, Allison,P, McDaniel,S, Zaner,L
Responsible Officer: Stillian,S **Disposition:** ECP 01/02/17
When Reported: 21:22:57 10/10/16 **Occurred Between:** 21:22:32 10/10/16 and 21:22:38 10/10/16

Assigned To: Allen,P **Detail:** GEN **Date Assigned:** **/**/**
Status: ECP **Status Date:** 01/02/17 **Due Date:** **/**/**

Complainant:
Last: **First:** **Mid:**
DOB: **/**/** **Dr Lic:** **Address:**
Race: **Sex:** **Phone:** **City:** ,

Offense Codes

Reported: **Observed:**
Additional Offense: TRAF Traffic offenses

Circumstances

LT13 Highway/Road/Alley

Responding Officers:	Unit :
Steed,S	P147
Patrick,L	P14
Nunez,R	P179
Burfeind,J	P24
Langford,J	P102
Dauberger,S	P110
Means,M	P21
Tinney,J	P126
Harkness,R	T18
DeFoor,P	T139
Allen,P	D148

T137	T137
Stillian,S	K137
Allison,P	T10
McDaniel,S	T10
Zaner,L	E116

Responsible Officer: Stillian,S
Received By: Stearns,W
How Received: 9 911 Line
When Reported: 21:22:57 10/10/16
Judicial Status:
Misc Entry:

Agency: HSPD
Last Radio Log: 01:56:35 10/11/16 CMPLT
Clearance: ACC Accident Report
Disposition: ECP **Date:** 01/02/17
Occurred between: 21:22:32 10/10/16
and: 21:22:38 10/10/16

Modus Operandi: **Description :** **Method :**

Involvements

Date	Type	Description	
10/12/16	Name	Haak, Jesse L	witness
10/12/16	Name	Blair, Jason Daniel	witness
10/12/16	Name	Lavalle, Kelly C	witness
10/12/16	Name	Crook, Joel S	witness
10/12/16	Name	Whipkey, Nicole Marie	witness
10/12/16	Name	Burke, Brian R	Suspect
10/12/16	Name	Jenkins, Tavon Desean	victim
10/12/16	Name	Braun, Cassandra Marie	victim
10/10/16	Accident	49965	Related Incident
10/10/16	Cad Call	21:22:57 10/10/16 Accident PI	Initiating Call
10/20/16	Evidence	Driver's side airbag	Evidence Incident
10/20/16	Evidence	2 original search warrants	Evidence Incident
10/20/16	Evidence	event data recorder/Charger	Evidence Incident
10/20/16	Evidence	event data recorder/Malibu	Evidence Incident
10/11/16	Evidence	Watch Guard 4RE DVR2-026917	Evidence Incident
10/11/16	Evidence	DVD of dash cam from K-156 car	Evidence Incident

Narrative
Tow Report Scanned

Responsible LEO:

Approved by:

Date

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---------- ---------- ---------- (lwmain171414101120l6)

On 10/11/16 at approximately 0845 hours I, OFC Shawn Lowrey #133, was present with SGT Scott Joe of the Arkansas State Police when he unlocked and removed the flash drive from the DVR of the wrecked Arkansas State Police unit while it was parked in the back lot of the police department. SGT Joe handed me the flash drive and Officer Billy Perkins #127 and myself took the flash drive to Arkansas State Police Headquarters in Little Rock. Once at ASP Headquarters we met with Major Forest Marks of the Arkansas State Police and he escorted us to the IT department where we met with Allen Fitzgerald and Kerry Tabor They both advised that they needed the whole DVR and not just the flash drive. They looked on the flash drive and advised that there was only one traffic stop on the flash drive. They then advised Major Marks and me that they would come to Hot Springs and retrieve the DVR to download any information that might be on it. I forgot to get the flash drive back from them and we returned to Hot Springs. Later in the day I was advised that I needed to return to ASP Headquarters to retrieve the flash drive. I spoke with Major Marks and he advised that when Mr. Fitzgerald and Mr. Tabor came to Hot Springs they brought the flash drive with them and placed it back into the DVR when they removed it from the unit.

---------- ---------- ---------- (lwmain171414101120l6)--

Supplement

On 10/11/16 at approximately 1030 hours, Allen Fitzgerald and Kerry Tabor of the Arkansas State Police IT Section arrived at the Hot Springs Police Department. I, Lt. Stringer, observed Fitzgerald remove the DVR from State Police unit K-15. A small amount of water was dripping out of the DVR due to water being sprayed on the vehicle the previous evening by the Hot Springs Fire Department in an effort to extinguish a vehicle fire. Fitzgerald shook the water out of the DVR, then handed the DVR to OFC Robert Plyler. Plyler took the DVR to State Police Troop K Headquarters to have it downloaded. After the DVR was downloaded, OFC Plyler returned it to the Hot Springs Police Department and placed it in the Evidence Division.

Supplement

On 10/12/16 at approximately 1305 hours, I, Lt. Stringer, received a phone call from Rosalie Smith [redacted]. Smith stated that she was leaving work from Hawg's Pizza Pub, 1442 Airport Road, on 10/10/16 at approximately 2113 hours. According to Smith, she observed "no lights" and exited left from the Hawg's Pizza Pub driveway into the northbound inside lane. Smith then changed lanes into the northbound outside lane. Smith stated that following her lane change, an Arkansas State Police vehicle traveling at a high rate of speed with no emergency lights or sirens activated, almost side swipped her vehicle. Smith stated that the State Police vehicle had to swerve to keep from hitting her vehicle. Smith further stated that she did not see the crash involving the State Police vehicle, but heard it, then observed the State Police vehicle veer to the right and come to rest in the front of Chesswood Plaza where it caught fire. Smith stated that she was unaware that another vehicle was involved at the time.

Rosalie Smith: [redacted]

Supplement

09:32:17 10/13/2016 · DeFoor,P

On Monday October 10th 2016 at 9:32pm I, OFC Phillip De Foor, received a call from Sgt R. Harkness. I was informed that there was a fatal crash in the 1300 block of US70/Airport Rd involving a State Police vehicle. I responded to the scene and arrived at 9:59pm.

Upon my arrival I noted a State Police unit (2016 Dodge Charger) in the grass in front of Chesswood Plaza, 1331 Airport Rd, facing East. I noted a 2011 Chevrolet Malibu stopped partially in the outside westbound lane facing northeast. There were two covered bodies in the road. The first was lying in the outside eastbound lane of Airport East of Kleinshore RD. The second body was lying in the outside westbound lane East of the Malibu. The driver of the State vehicle had already been transported to St Vincent's Hospital for medical attention.

The State vehicle had significant damage to the front. There also appeared to be a secondary impact on the driver's side rear. The vehicle had caught fire on the passenger's side. There was fire damage in the engine compartment and in the passenger compartment on the passenger's side. Front, side and lower dash air bags had deployed. The driver's seatbelt was fully retracted and locked in position.

The Malibu had significant damage to the passenger's side front fender. There also appeared to be a secondary impact on the passenger's side rear. The driver's air bag had deployed. Both the driver's and Passenger's seatbelts were fully retracted and locked in position.

I noted significant gouging in the inside lane of Airport Rd at its intersection with Kleinshore. There was a clear path of scrapes and gouging traveling East to where the Charger was found at rest. There was a second clear path of scrapes and engine fluids traveling in an arc to the northeast that ended where the Malibu was found at rest. I located a blood trail southwest of the Malibu that traveled to the northeast body.

OFC S. Stillian and I measured the scene and documented the evidence located. CID and Crime Scene were notified and responded to the scene. Both vehicles were removed to the Hot Springs Police back lot. The deceased were taken into the custody of Garland County Coroner Stuart Smedley.

Wednesday morning the two vehicles were moved by Burks and Mahoney, escorted by OFC S. Stillian and myself, to a secure hanger at the Hot Springs Airport. While at the Airport OFC Stillian and I measured the vehicles damage.

Supplement

On 10/13/16 at approximately 1319 hours, I, Lt. Greg Stringer received the State Police vehicle Watchguard DVR from Jessica Ault in Property and Evidence. The sealed box containing the DVR was then placed in the safe located in the Traffic Office. The DVR was removed on this date in order for a Watchguard representative to download data from on 10/14/16, and due to Jessica Ault being at the State Crime Lab that morning, leaving Property and Evidence locked and unaccessible.

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Supplement

---------- (lwmain07395510142016)
On 10/11/2016, at approximately 1150 hours I, Ofc. Plyler, was instructed by my supervisor Lt. Stringer to standby with Sgt. Scott Joe and IT Techs Allen Fitzgerald and Kerry Tabor with the Arkansas State Police in the back lot of the Hot Springs Police Department.

I was advised the IT technicians were to remove the DVR out of Trooper Burke's patrol unit (K15). I stood by and observed IT Tech Kerry Tabor remove the DVR from the front of the patrol unit. After the DVR was removed it was placed into my possession were I transported it to Arkansas State Police Troop K Headquarters

Once at Troop K Headquarters I handed the DVR back to IT Tech Kerry Tabor in the trooper work room. IT Tech Tabor advised the DVR unit was damaged and he was unable to retrieve anything from the hard drive. Tabor took the DVR apart and removed the hard drive from Trooper Burke's DVR. Tabor took the hard drive and placed it into a DVR that was removed from Sgt. Scott Joe's patrol unit (K3) where he was able to retrieve video footage from Burke's hard drive and placed it onto two compact disk. Burke's hard drive was placed back into it's original DVR and put back together and handed back to me along with the two compact disk containing the video footage.

The thumb drive Ofc. Lowery had in his possession earlier in the day was placed back into the DVR by Tabor.

The DVR and one compact disk was placed into the property room as evidence and the second was given to Det. Allen #148 per supervisors. While at Troop K Headquarters I had visual on the DVR and hard drive at all times.
---------- (lwmain07395510142016)--

Supplement

On 10/07/16 at approximately 0850 hours, I, Lt. Stringer, removed the State Police vehicle DVR from the locked safe in the Traffic Division office and presented it to Michael Picou; Hardware Reliability Engineer from Watch Guard Video. Picou was attempting to recover several seconds of video footage from the DVR that lost power due to the vehicle crash. Picou was unable to recover any further video footage, and at approximately 1210 hours, handed the DVR to me. I placed the DVR in the evidence box, resealed it, and handed it to Jessica Ault to be returned to Property and Evidence.

Supplement

On 10/10/2016 at approximately 2130 hours I, Det. Paul Allen #148, responded to a fatality accident near the 1300 block of Airport Road. When I arrived I observed numerous emergency vehicles on scene. There was a very large debris field with damaged car parts and fragments spread over a large area. I could see a light colored passenger car on my right (the North side of the road) with extensive damage. There was what appeared to be a covered body, later identified as Tavon Jenkins, on the ground near the vehicle. On my left (the South side of the road) I could see a state trooper patrol unit with extensive damage. It had what appeared to be fire damage on the passenger side of the car. Near Airport roads intersection with Kleinshore I observed a second covered body on the ground later identified as Cassandra Braun. I was advised the trooper, Brian Burke, had been taken to the hospital by ambulance.

Shortly after my arrival a witness, Nicole Whipkey, came back to the scene and spoke with me about what she had witnessed. Nicole told me she was travelling West on Airport road when she heard the collision. She said she didn't see the collision at all just heard it. She was able to avoid the vehicle that veered to the North side of the road. She saw some people running towards the troopers car and realized he was still inside. She said she could see smoke and some flames. Nicole ran to help and they were able to pull the trooper from the vehicle and drag him a short distance away. She said she was asking him questions trying to keep him awake until the ambulance got there. She said while she was talking to the trooper she looked and saw a heavyset black female in a peach or coral blouse near Tavon praying over him. I attempted to locate the black female but was unsuccessful.

I learned that a video of the trooper being pulled from the car was uploaded to a local news Facebook post about the accident. Arkansas 911 news. I noticed the proprietor of Arkansas 911 news, Paul Maddox, was on scene and spoke with him. I asked to view the video and he told me had already taken it down. I asked if he could still view it and he said no. It was posted in a comment on a Facebook post and could not be retrieved. Roger was able to tell me the name of the man that posted it was Jason Daniel Blair and according to his Facebook page his date of birth is [redacted]

I located another witness, Joel Crook, who told me he was driving East on Airport Road when he heard a loud crash behind him. He looked in his rear view mirror and saw a small cloud of debris. He turned around and pulled into the parking lot of Chesswood Plaza. He said he saw a wrecked State Troopers car that had come to rest near the Chesswood Plaza sign and that it had began to catch on fire. He and another man, identified as Jessie Haak, pulled the Trooper from the patrol unit and dragged him a short distance away. Joel said he didn't witness the accident but he believed the Troopers lights were on when he was pulling him from the car. I asked Joel if the Trooper said anything and he said not really just his name.

I noticed there was a baby seat in the back seat of the wrecked Malibu and what looked like a baby blanket. It was a cool night and I feared there may have been a child in the car that had not been located. I learned that Cassandra had a son that was approximately 4 years old. I looked in the car and saw that the seatbelt that would have been used to restrain the child was not drawn. I looked in the wood line for the child or any evidence that there had been one. I was unable to locate anything else that would indicate the presence of a child. I was finally able to accertain that Cassandra's son was safe and with family in Florida.

01/16/17

I attempted to find out if any of the business's in Chesswood Plaza had surveillance footage that had a view of where the accident occurred. None of them had a surveillance camera that pointed at the road. I was able to make contact with the owner of Chesswood Plaza and discovered that it was a John Gibson property. I spoke with one of the Gibson's by telephone and they told me it was possible they had surveillance video that had a view of Airport Road. They said I could come by tomorrow (10/11/16) and view the video footage.

On 10/11/16 I went to John Gibson's Auto, located at 1425 Airport Road and spoke with one of the employees Kelly Lavalle. Kelly lives at [redacted] which is directly behind John Gibson Auto. He told me at approximately 2117 hours he was standing on his porch when he heard the sound of a vehicle engine as it accelerated on Airport Road. He looked and saw a State Trooper unit travelling East on Airport Road. Kelly said the State Trooper was "flying." Kelly said he didn't see any lights or hear a siren. I looked through the footage that had been recorded by John Gibson Auto surveillance cameras. I reviewed the footage for 10/10/16 starting at 2110 hours. At 2116:54 hours I observed what appeared to be a black SUV travelling East on Airport Road at a high rate of speed. It appeared the vehicle's passenger side blinker was flashing. At 2117:12 hours I observed what appeared to be the white State Trooper vehicle travelling East on Airport Road at a high rate of speed.

I also obtained video from the Exxon, located at 1591 Airport Road, and from Wal Mart located at 1640 Airport Road. I viewed the video for each of these locations. On the Wal Mart video the time stamp on the video varies slightly from the time stamp on the other videos. The Wal-Mart video shows what appears to be the black SUV travelling east on Airport Road at approximately 2121:04 and it appears their driver side blinker was flashing. At approximately 2121:30 it shows what appears to be the white State Trooper vehicle travelling East on Airport Road in front of Wal-Mart. Compared to the other vehicles in the video it appears that both the black SUV and the State Troopers vehicle were travelling at a high rate of speed. There was no stamp available on the Exxon video but it also a shows a dark colored SUV travelling East on Airport at what appears to be a high rate of speed and shortly after shows what appears to be the white State Trooper vehicle also travelling East on Airport Road at a high rate of speed.

When I returned to the Police Department I received a copy of the video from Trooper Burke's dash camera. The first image on the dash cam video was of Airport Road with one lane of traffic for each direction. The GPS on the dash cam reported the speed as 85 mph, the date was 10/10/16, the GPS coordinates were North 34.43733 West 93.25488, and the time was 21:16:54. There is no audio on the video until 21:17:54. The audio throughout the entire video is difficult to understand and I can only pick up on bits and pieces of it. Shortly after the audio starts the GPS reported the speed as 101 mph. At 2118:34 trooper Burke travels through the intersection of Airport Road and Wolf Street at 93 mph. At 2119:40 he passes a car on the left while in the inside lane of traffic travelling 96 mph. At 2119:53 he passes a semi tractor trailer on the left while in the inside lane of traffic travelling 111 mph. At 2119:58 he passes through the intersection of Airport Road and Moore Road at 105 mph. At 2120:16 he passes a passenger car on the right while in the outside lane of traffic travelling 109 mph. At 2120:33 he passes an SUV on the left while travelling in the inside lane of traffic at 107 mph. At 2120:47 he passes a vehicle on the right while travelling in the outside lane of traffic at 95 mph. At 2121:09 he travels through the intersection with Marion Anderson Road travelling 92 mph. At 2121:18 he passes a truck pulling a trailer on the right while travelling in

the outside lane of traffic at 64 mph. At 2121:30 he passes a vehicle on the left while travelling in the inside lane of traffic at 84 mph through Airport Road's intersection with Adcock Road. At 2121:50 he passes a vehicle on the left hand side while travelling in the inside lane of traffic at 117 mph. 2121:52 is the last image that was recorded on the dash camera before the impact. You can just see the victim's vehicle headlights in the turn lane on Airport Road before the video stops. The last reading from the GPS was 115 mph at 2121:52 with the coordinates of North 34.47031 and West 93.13181. The distance between where the Troopers video begins and the where the impact occurred is 8.1 miles. It took Trooper Burke 4 minutes and 58 seconds to go that distance. This made his average speed 1.63 miles per minute or 97.8 miles per hour.

Supplement

08:32:20 10/20/2016 - DeFoor,P

On October 18th 2016 at about 10:00am I, OFC Phillip De Foor, served a search warrant to recover the Airbag Control Module's of the two vehicles. The vehicles, a 2011 Chevrolet Malibu vin:[redacted] and a 2016 Dodge Charger vin:[redacted] were located in a hangar at the Hot Springs Airport.

With the assistance of Officer Ralph Breshears, Little Rock Police Department, the two Airbag Control Modules were collected and taken into my custody. The data was downloaded by Officer Breshears for analysis. I placed the two Airbag control modules and the 2 search warrants into property.

A copy of the search warrant was left with each vehicle. The warrant service was completed at approximately 12:00pm.

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CRIMINAL INVESTIGATION DIVISION

DATE:10-20-16 INVESTIGATOR: Sgt. C. Hays

I spoke to Lauir Braun, mother to Cassandra Braun and Mrs. Perry, mohter to Tavon Jenkins related to this case. Coroner Smeldely delivered personal effects from each of the victims with orders to release the items to the parents. Both victims parents live out of state. Mrs. Braun has been in Hot Springs and I was authroized by Mrs. Perry to release Tavon Jenkins's effects to Mrs. Braun.

I completed a Property Inventory Form and released the listed items to Mrs. Braun on 10-20-16. PIF will be retained in the investigative file.

Contact information for the two are:
Lauri Braun [redacted]
Mrs. Perry [redacted]

Sgt. Chris Hays

Supplement

On 10/24/16 I, Det. Paul Allen #148, received information that there was a witness that had additional information in regards to the victims in this case. Her name is Jessica Kelly and her telephone number is [redacted]. I called and left a message for her to call me back.

On 10/27/16 at approximately 1050 hours I made contact with Jessica by telephone and she said she would call me back later today and set up a time to give me her statement.

On 10/27/16 at approximately 1430 hours I interviewed Jessica Kelly in reference to this accident. Jessica told me she and her husband, Teddy, were inside Boondocks, located at 1331 Airport Road, playing pool. She said the week prior she had met Cassandra and Tavon at the pool hall. She said Cassandra was sitting at the bar and Tavon was walking around. Jessica said she knows they left around 2110 because her husband Teddy asked Tavon if he wanted to play pool and Tavon declined telling him he was about to go. She told me she didn't hear or see any of the accident only the aftermath when all the people started to gather.

Supplement

On 11/04/16 I submitted a request for a prosecutor subpoena to be issued for the medical records for Trooper Burke. We haven't received the test results from the state crime lab for the victims.

Supplement

On 11/10/16 I, Det. Paul Allen #148, placed a copy of the serology report from the driver's side airbag and the two autopsy reports from the State Crime Lab into the case file.

Supplement

On 11/23/16 at approximately 1543 hours I, Det. Paul Allen #148, spoke with Jennifer Baley from the Arkansas State Crime Lab. She told me the case concerning the airbag was currently unassigned but she would get it assigned first thing Monday morning and get the results expedited.

Supplement

On 11/28/16 I received a copy of Trooper Burke's blood and urine test results from St. Vincent's Hospital taken the night of the accident. I placed a copy of the test results into the case file.

Supplement

09:22:48 12/16/2016 - DeFoor,P

The Arkansas State Crime Laboratory has completed the analyses requested in this case. Serology was requested from both occupants of the 2011 Chevrolet Malibu, Tavon Jenkins and Cassandra Braun. DNA analysis was also requested from the driver's side airbag.

The serology report for Jenkins indicated negative on all forms of drugs other than alcohol. A blood alcohol analysis was completed which showed a BA level of .10, over the legal limit to drive of .08.

The serology report for Braun indicated negative on all forms of drugs other than alcohol. A blood alcohol analysis was completed which showed a BA level of .12, over the legal limit to drive of .08.

A DNA analysis was completed for the driver's side airbag. The DNA profile obtained by the Crime Lab from the air bag is consistent with the DNA profile obtained from Tavon's Jenkin's blood sample. This indicated Jenkins was likely the driver of the Malibu.

Supplement

12:07:00 12/20/2016 - DeFoor,P

I performed a momentum analysis for the vehicles involved in this crash.

I used the FARO program used by the HSPD to perform this analysis. Of note in this analysis, I did not have information of the load carried by the vehicles. Because of this I used the manufacturer's gross weight of each vehicle. I was not able to get a definitive drag factor (f value) for each vehicle. This was because the vehicles were partially sliding on tires and various metal parts of the vehicles. The vehicles also traveled on asphalt, grass, concrete, struck curbs and a sign, dug ruts in the grass and roadway, and slid thru oils spilled on the roadway. This rendered the drag factor too varied and unpredictable for me to be able to confidently supply my own Because of this I used the suggested default drag factor provided by the FARO program of .40.

The Chevrolet Malibu had a weight of 3414.96 lbs. I assigned it an approach angle of 0 degrees.

The Dodge Charger had a weight of 4252.72 lbs. Because I assigned an approach angle of 0 degrees to the Malibu, this caused the approach angle of the Charger to be 136.61 degrees.

For the Malibu, my analysis showed an impact speed of 19.19 mph (28.14 fps).

For the Charger, my analysis showed an impact speed of 98.03 mph (143.77 fps).\

Data was recovered by R. Bresheare, LRPD, from the airbag control module regarding this crash.

The Malibu's data is recorded ever 1 second. The data for the Malibu showed a speed of 16 mph, slightly different than my analysis. I did note that the recorded speed was 1 second prior to the recorded event (crash) and the accelerator pedal was depressed in the Malibu, indicating the Malibu was accelerating immediately prior to the crash. This may account in the 3.19 mph discrepancy. The steering input also indicates the Malibu was making a turn. It does not appear that the driver of the Malibu was making any attempt to avoid the crash.

The Charger's data is recorded every .1 second. The data for the Charger indicated it was traveling at 98 mph. This is nearly the same as my analysis of 98.03mph. In the second leading up to the crash the accelerator pedal was in the 0% position with the brake applied The steering input indicated the Charger was making an effort to avoid the crash/change lanes. It appears that the driver of the Charger began to attempt to avoid the crash 1 second prior to impact.

Supplement

I, Det. Paul Allen #148, have placed copies of all the State Crime Lab reports, all the videos, 911 calls from the HSPD and GCSO, HSPD and GCSO radio traffic, the accident report, all the crash data from the control modules, all the FOI requests, the search warrants and returns, the State Police fatal accident report, Trooper Burke's medical records, barrier equivalent velocity report, two measurement log reports, the momentum report, prosecutor subpoena, and all the related vehicle and driver printouts.

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On 12/27/16 at approximately 1340 hours I, Det. Paul Allen #148, discovered a discrepancy between the copy of Trooper Burke's dash camera footage that was recovered by the State Police and the dash camera footage that was recovered by Watchdog hardware reliability engineer Michael Picou. The copy of the dash camera footage he provided has an additional seven minutes at the beginning of the video that the State Police copy didn't have. The additional footage shows Trooper Burke driving West on Airport Road, pull into an empty parking lot, and interact with a woman that was there (during the interview Trooper Burke told me it was a hit and run accident investigation.) At approximately 2115 hours the dash camera catches an image of a dark colored SUV travelling East on Airport at a high rate of speed with it's flashers on. Trooper Burke finishes speaking with the woman, walks back to his unit, and at approximately 2116:08 he activates his overhead emergency lights and turns East onto Airport Road from the parking lot. At approximately 2116:32 he deactivates his overhead emergency lights and continues travelling East.

The video recovered by Watchdog begins at approximately 2109:50. The video recovered by the State Police begins at approximately 2116:50. A copy of the video has been placed into the case file.

On 12/27/16 the HSPD personal involved in this case met with Prosecutor Terri Harris. Mrs. Harris had spent the previous several days reviewing the case file and all related information. After her review Mrs. Harris is declining to pursue criminal charges against Trooper Burke. Her letter of explanation informing the Chief of her decision has been placed into the case file.

Case closed per Terri Harris.

Supplement

On 05/26/16 at approximately 1200 hours, Captain Forrest Marks of the Arkansas State Police contacted me in reference to the wrecked Arkansas State Police 2016 Dodge Charger involved in the fatality accident on 10/10/16 at Airport Road and Kleinshore Road. Captain Marks stated that he had talked with Garland County Prosecuting Attorney Terri Harris, who agreed to release the Arkansas State Police vehicle, along with the 2011 Chevrolet Malibu owned by Cassandra Braun, that had also been involved in the accident. Both vehicles had been stored in a locked airplane hanger at Hot Springs Municipal Airport at 525 Airport Road. I then contacted the Hot Springs Municipal Airport Manager, Glen Barentine, at approximately 1250 hours and explained to him that the holds on the vehicles had been released. The Arkansas State Police will send their own wrecker to effect the removal of the 2016 Dodge Charger. The 2011 Chevrolet Malibu will be removed by a wrecker service to be determined later following notification to Rainwater, Holt, and Sexton attorneys.

Name Involvements:

victim : 192108
Last: Braun First: Cassandra Mid: Marie
DOB: [redacted] Dr Lic: [redacted] Address: [redacted]
Race: W Sex: F Phone: ( ) - City: [redacted]

witness : 48643
Last: Haak First: Jesse Mid: L
DOB [redacted] Dr Lic: [redacted] Address: [redacted]
Race: W Sex: M Phone: [redacted] City: [redacted]

witness : 181598
Last: Whipkey First: Nicole Mid: Marie
DOB: [redacted] Dr Lic: [redacted] Address: [redacted]
Race: Sex: Phone: [redacted] City: [redacted]

witness : 63271
Last: Lavalle First: Kelly Mid: C
DOB: [redacted] Dr Lic: [redacted] Address: [redacted]
Race: W Sex: M Phone: [redacted] City: [redacted]

witness : 53550
Last: Blair First: Jason Mid: Daniel
DOB: [redacted] Dr Lic: [redacted] Address: [redacted]
Race: W Sex: M Phone: [redacted] City: [redacted]

victim : 192107
Last: Jenkins First: Tavon Mid: Desean
DOB: [redacted] Dr Lic: [redacted] Address: [redacted]
Race: B Sex: M Phone: ( ) - City: [redacted]

Suspect : 182294
Last: Burke First: Brian Mid: R
DOB: [redacted] Dr Lic: [redacted] Address: [redacted]
Race: W Sex: M Phone: [redacted] City: [redacted]

witness : 146294
Last: Crook First: Joel Mid: S
DOB [redacted] Dr Lic: [redacted] Address: [redacted]
Race: W Sex: M Phone: [redacted] City: [redacted]

Cremation and Urn Expenses

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Cremation Service For: Cassandra Marie Braun Date of Birth: [redacted] Acct.#: [redacted]

Address: [redacted] Phone:

Responsible Party: Lori Braun Phone: [redacted]

Address: [redacted] Relationship: mother

Charges are only for the items you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below. If you select a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming if you did not approve it or of you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain below.

A. PROFESSIONAL SERVICE SELECTED

Basic Services of Funeral Director and Staff	$ 740.00
Embalming	$
Other Preparation of the Body	$
	$
TOTAL PROFESSIONAL SERVICE	**$ 740.00**

B. ADDITIONAL SERVICES AND FACILITIES

Visitation	$
Funeral Ceremony	$
Graveside Service Only	$
Cemetery Equipment	$
USPS Shipping	$ 65.00
rush cremation	$ 150.00
TOTAL SERVICES AND FACILITIES	**$ 215.00**

C. AUTOMOTIVE EQUIPMENT

Transfer Remains to Funeral Home	$ 200.00
Funeral Coach	$
Family Limousine	$
Pallbearer Limousine	$
Utility Van	$
Other Automotive Equipment	
	$
Mileage Charges	$
Miles @ $ 2.00 per mile	$ 0.00
TOTAL AUTOMOTIVE EQUIPMENT	**$ 200.00**

D. MERCHANDISE

Casket:	
Alternative Container	$ 55.00
Outer Container / Urn	
	$ 420.00
Stationery Package	$
Video	$
Flowers	$
Other	$
	$
	$
	$
	$
Total Merchandise Selected	$ 475.00
Sales Tax 9.00%	$ 42.75
TOTAL MERCHANDISE + SALES TAX	**$ 517.75**

E. CASH ADVANCES

	$
Death Certificate - First Copy	$ 10.00
Death Certificate - Additonal Copies	$ 40.00
TOTAL # of DC's: 6	$
	$
	$
TOTAL CASH ADVANCES	**$ 50.00**
TOTAL SERVICES, MERCHANDISE AND CASH ADVANCES	**$ $ 1,722.75**
Credits CC Pmt	$ -$ 1,199.95
CC Pmt	$ -$ 522.80
	$
	$
BALANCE DUE	**$ $ 0.00**

The Cremation Association of Arkansas agrees to provide the service and merchandise described above in consideration of the payment of the above stated amount.

PAYMENT AGREEMENT: I / We, the undersigned, acknowledge that the foregoing statement has been read to me/ us and I / we hereby acknowledge receipt of completed copy. I / We assume responsibility for payment along with such additional services and / or items ordered by me / us, and agree to terms of payment described above. The liability hereby assumed is in addition to the liability imposed by law upon the estate and others, and shall not constitute a release thereof.

TERMS OF PAYMENT:

If any law, cemetery or crematory requirements have required the purchase of any of the items listed above, the law or requirement is explained below:

DISCLAIMERS OF WARRANTIES: The Cremation Association of Arkansas makes no warranties or representations concerning the products sold herein. The only warranties, expressed or implied, granted in connection with the products sold with this funeral service, are the expressed written warranties, if any, extended by the manufacturers thereof. The Cremation Association of Arkansas hereby expressly disclaims all warranties, expressed or implied, relating to all such products, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

Purchaser Lori Braun [redacted] Signature:

Address mother

[redacted] Phone No.

October 19, 2016 *Joshua Bridges* DOD: 10/10/2016

Date Signature of Funeral Director or Agent

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Cremation Service For: Cassandra Marie Braun Date of Birth: [redacted] Acct #: [redacted]

Address: [redacted] Phone:

Responsible Party: Lori Braun Phone: [redacted]

Address: [redacted] Relationship: mother

Charges are only for the items you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below. If you select a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming if you did not approve it or of you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain below.

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Graveside Service Only	$
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Tish cremation	$ 150.00
TOTAL SERVICES AND FACILITIES	**$ 215.00**

C. AUTOMOTIVE EQUIPMENT

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Funeral Coach	$
Family Limousine	$
Pallbearer Limousine	$
Utility Van	$
Other Automotive Equipment	
	$
Mileage Charges	$
Miles @ $ 2.00 per mile	$ 0.00
TOTAL AUTOMOTIVE EQUIPMENT	**$ 200.00**

D. MERCHANDISE

Casket:	
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Outer Container / Urn	
	$ 420.00
Stationery Package	$
Video	$
Flowers	$
Other	$
	$
	$
	$
	$
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Sales Tax 9.00%	$ 42.75
TOTAL MERCHANDISE + SALES TAX	**$ 517.75**

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Death Certificate - Additional Copies	$ 40.00
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	$
	$
TOTAL CASH ADVANCES	**$ 50.00**
TOTAL SERVICES, MERCHANDISE AND CASH ADVANCES	**$ $ 1,722.75**
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CC Pmt	$ -$ 522.80
	$
	$
BALANCE DUE	**$ 5 0.00**

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TERMS OF PAYMENT

If any law, cemetery or crematory requirements have required the purchase of any of the items listed above, the law or requirement is explained below.

DISCLAIMERS OF WARRANTIES

[redacted]

[redacted]

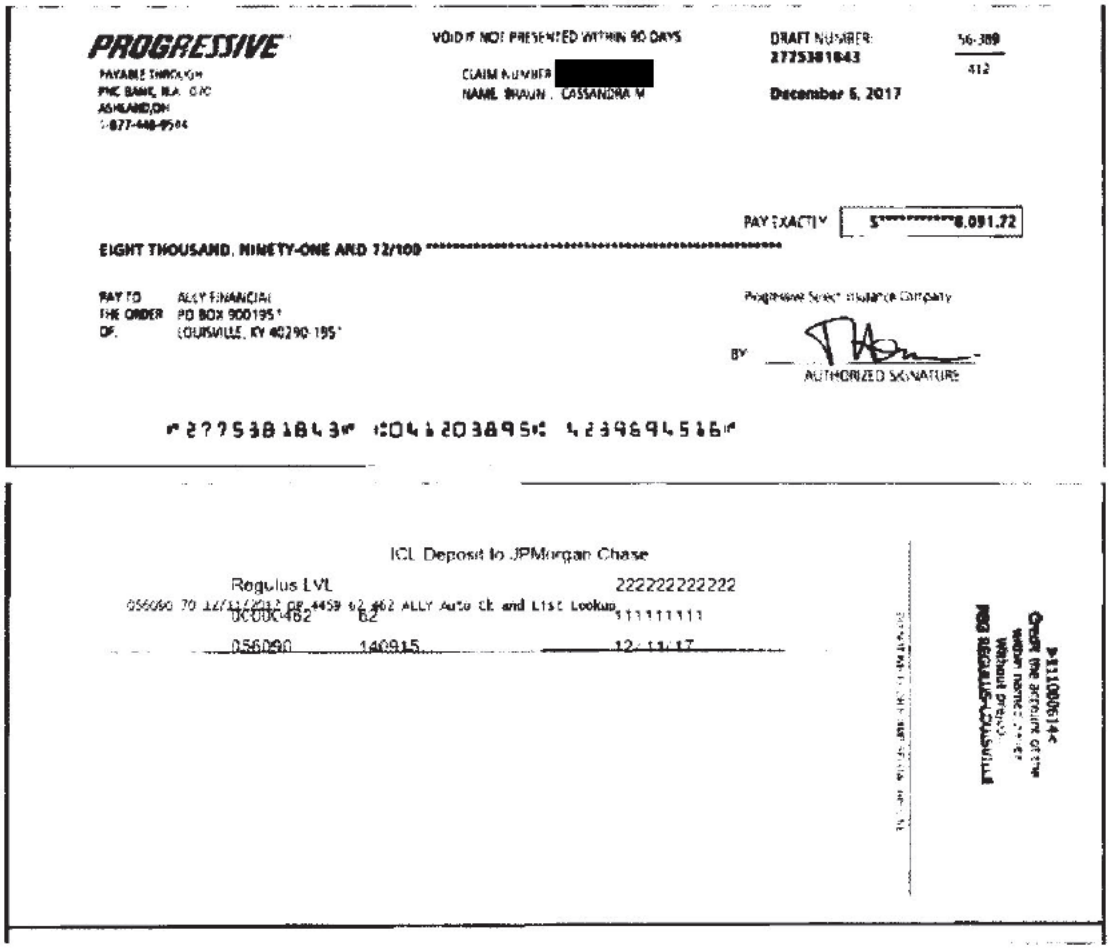
[redacted]

2016 W-2

(January 1, 2016 – October 10, 2016)



Automobile Property Damage Check Paid by Progressive Insurance ($8,091.72 to Ally Financial)



PROGRESSIVE

PAYABLE THROUGH
PNC BANK, N.A. OH
ASHLAND,OH
1-877-648-9564

VOID IF NOT PRESENTED WITHIN 90 DAYS

CLAIM NUMBER [redacted]
NAME BRAUN , CASSANDRA M

DRAFT NUMBER:
2775381843

56-389
412

December 6, 2017

PAY EXACTLY $*********8,091.22

EIGHT THOUSAND, NINETY-ONE AND 72/100 **********

PAY TO THE ORDER OF: ALLY FINANCIAL
PO BOX 900195*
LOUISVILLE, KY 40290-195*

Progressive Select Insurance Company

BY _____
AUTHORIZED SIGNATURE

⑈2775381843⑈ ⑆041203895⑆ 4239694516⑈

ICL Deposit to JPMorgan Chase

Regulus LVL 222222222222

056090 70 12/11/2017 DR 4459 62 462 ALLY Auto Clt and List Lookup 111111111
DC00C462 62

056090 140915 12-11-17

⑈111000614⑈
Credit the account of the
within named payee
without prejudice
PNC REGULUS-LOUISVILLE

Progressive Check $5,000 Auto Policy - Accidental Death Benefit

PROGRESSIVE®

PAYABLE THROUGH
PNC BANK, N.A. 070
ASHLAND,OH
1-877-448-9544

VOID IF NOT PRESENTED WITHIN 90 DAYS

CLAIM NUMBER: [redacted]
NAME: BRAUN , CASSANDRA M

DRAFT NUMBER: **2014180951**

56-389
412

October 28, 2016

PAY EXACTLY **$**********5,000.00**

FIVE THOUSAND AND 00/100 ********

PAY TO THE ORDER OF: ESTATE OF CASSANDRA BRAUN

Progressive Select Insurance Company

BY: _____
AUTHORIZED SIGNATURE

⑈2014180951⑈ ⑆041203895⑆ 4239694516⑈

PROGRESSIVE CLAIMS
600 N WEST SHORE BLVD STE 400
TAMPA, FL 33609

PROGRESSIVE®

THE ESTATE OF CASSANDRA BRAUN
ATTN: RAINWATER HOLT AND SEXTON
801 TECHNOLOGY DR
LITTLE ROCK, AR 72223-5921

DRAFT NUMBER: 2014180951

AMOUNT: $**********5,000.00

ISSUE DATE: October 28, 2016

Arkansas
State Claims Commission
OCT 19 2018
RECEIVED

Form Z721 (06/15)

KEEP THIS TOP PORTION FOR YOUR RECORDS

PROGRESSIVE

VOID IF NOT PRESENTED WITHIN 90 DAYS

DRAFT NUMBER: 2014180951

56-389
412

PAYABLE THROUGH
PNC BANK, N.A. 070
ASHLAND, OH
1-877-448-9544

CLAIM NUMBER: [redacted]
NAME: BRAUN CASSANDRA M

October 28, 2016

PAY EXACTLY $**********5,000.00

FIVE THOUSAND AND 00/100 **********

PAY TO THE ORDER OF: ESTATE OF CASSANDRA BRAUN

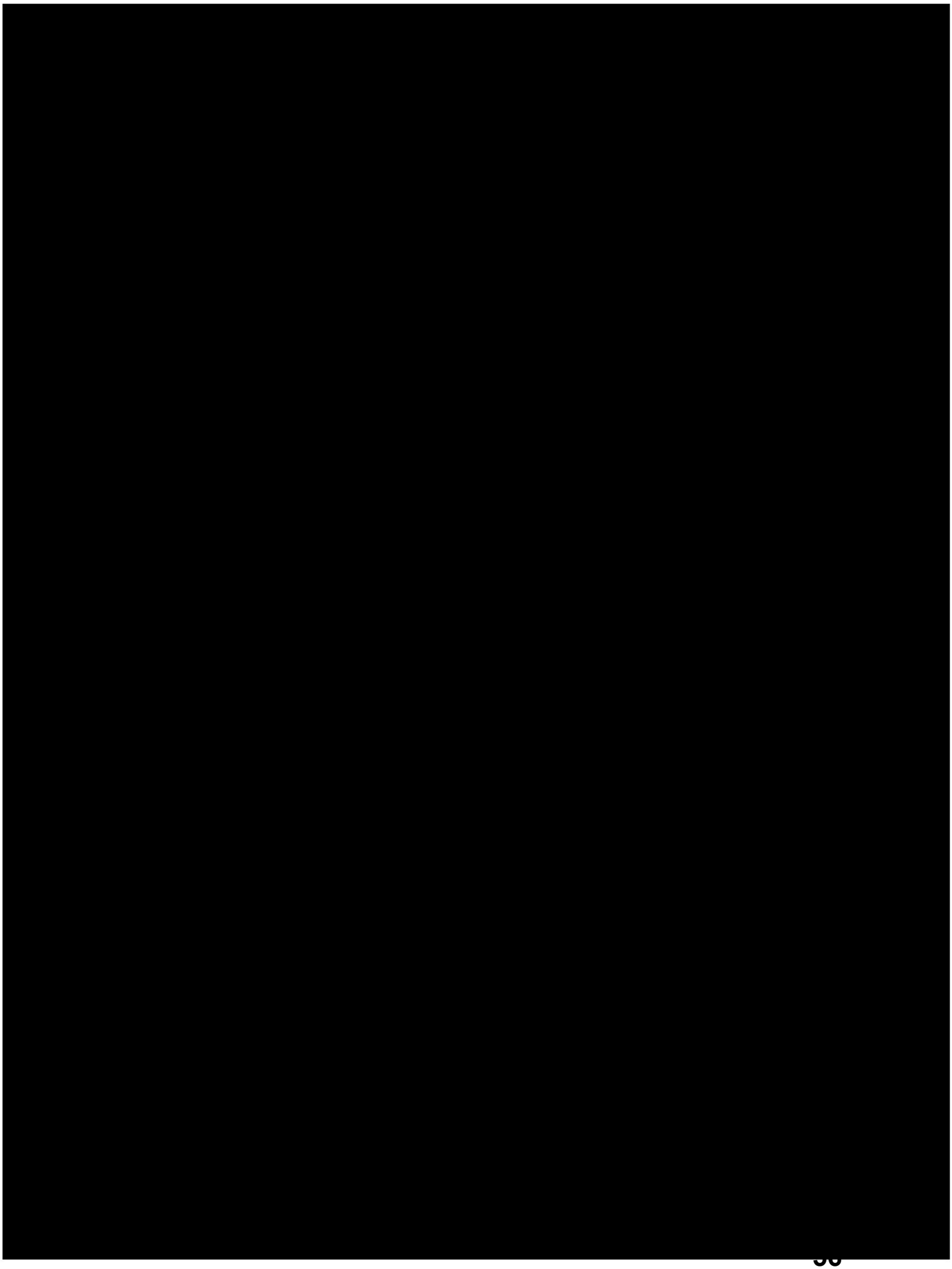
Progressive Select Insurance Company

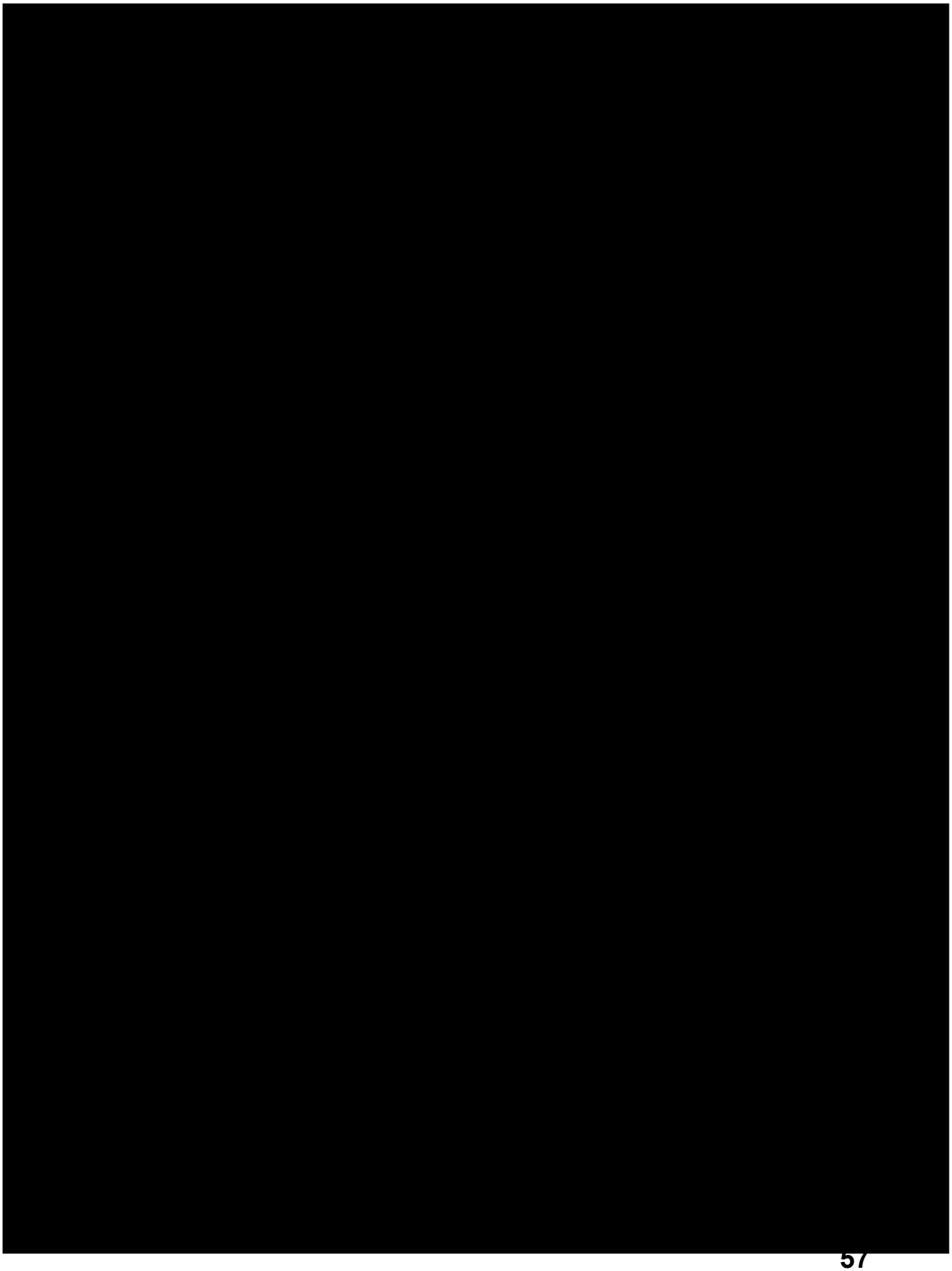
BY

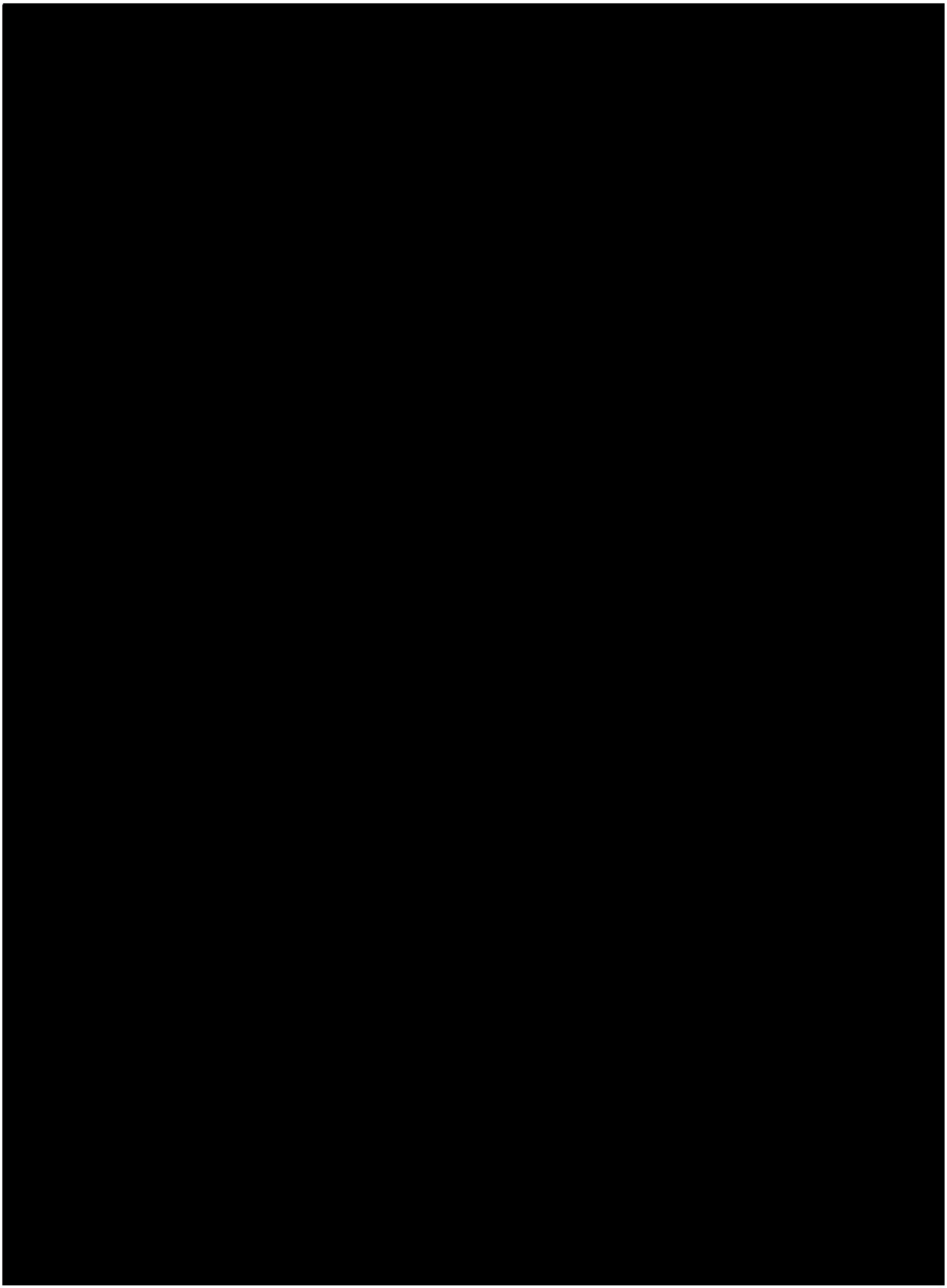
AUTHORIZED SIGNATURE

⑈20141809516⑈ ⑆041203895⑆ 4239694516⑈

Life Insurance Statement showing $50,000 to Beneficiary







ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

October 31, 2018

Lt. Colonel Tim K'Nuckles
Arkansas State Police Department
#1 State Police Plaza
Little Rock, Arkansas 72209

RE: ***Lori Braun, As Administratrix of the Estate of Cassandra Braun v. Arkansas State Police***
Claim No. 190497

Dear Lt. Colonel K'Nuckles,

Enclosed please find a copy of the above-styled claim filed against the Arkansas State Police. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Kathryn Irby

Enclosure
cc: Paul J. James, *counsel for Claimant* (w/o encl.)
Andy Clarke, *counsel for Claimant* (w/o encl.)

Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.

From:	Jennifer Merritt
To:	Kathryn Irby
Cc:	Paul James; "Andrew Clarke"; Gary Sullivan; Greg Downs
Subject:	Braun v. Arkansas State Police, Claim No. 190497
Date:	Friday, November 30, 2018 10:17:01 AM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png 2018-11-30 - Answer.pdf 2018-11-30 - Ltr to Dir. Irby.pdf

---

Director Irby:

Please find attached in the above-referenced matter correspondence of today's date along with an Answer to the Complaint.

If you or the Commission should have any questions, please contact me.

Cordially,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov | ArkansasAG.gov



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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

ANSWER

COMES NOW Respondent, Arkansas State Police, by and through its attorneys, Arkansas Attorney General Leslie Rutledge and Senior Assistant Attorney General Jennifer L. Merritt, and for its Answer to the Complaint states the following:

1. Respondent, Arkansas State Police, denies all allegations of the Complaint not admitted herein and denies that Claimant is entitled to any relief from the Arkansas State Police.

2. Respondent states affirmatively that it has not engaged in any conduct that violated the Claimant's legal rights.

3. Claimant's damage and injuries, if any, were not proximately caused by any acts or omissions of the Arkansas State Police.

4. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in a willfully reckless or negligent manner in violation of Respondent's policies and procedures. Mr. Burke acted outside the scope of his authority as an Arkansas State Police Trooper and his conduct should not be imputed to the Arkansas State Police.

5. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were also proximately caused by the contributory negligence and fault of Cassandra Braun and the driver of her vehicle, Tavon Desean Jenkins, which fault or negligence should bar or significantly reduce the Claimant's recovery in this case.

6. This Claim should be held in abeyance until a related federal lawsuit styled *Braun v. Burke et al.*, U.S. District Court, E.D. Ark., Case No. 4:18-cv-334-BRW, is concluded through the entry of a valid and unappealable final judgment.

7. Respondent reserves the right to amend its Answer herein and to assert additional defenses or affirmative defenses available at law or equity as may be appropriate.

WHEREFORE, Respondent Arkansas State Police prays for dismissal of the Claim with prejudice and for all other relief to which it may be entitled.

Respectfully Submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Jennifer L. Merritt*
JENNIFER L. MERRITT (2002148)
Senior Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Tel: (501) 682-1319
Fax: (501) 682-2591
Jennifer.Merritt@ArkansasAG.gov

Attorneys for Respondent Arkansas State Police

CERTIFICATE OF SERVICE

I, Jennifer L. Merritt, Senior Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 30th day of November, 2018:

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@accfirm.com

/s/ Jennifer L. Merritt
Jennifer L. Merritt

ATTORNEY GENERAL
LESLIE RUTLEDGE
ARKANSASAG.GOV

Jennifer L. Merritt
Senior Assistant Attorney General

Direct Dial: (501) 682-1319
Email: Jennifer.Merritt@ArkansasAG.gov

November 30, 2018

Ms. Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201-3823

Via E-Mail

Re: ***Lori Braun, Administratrix of the Estate of Cassandra Braun v. Arkansas State Police,*** Claim No. 190497

Dear Director Irby:

I represent the Arkansas State Police in the above-referenced claim before Arkansas State Claims Commission. Enclosed is the Respondent's Answer to the Complaint filed herein.

A civil action is pending before the United States District Court for the Eastern District of Arkansas, Little Rock Division, styled ***Lori Braun, Administratrix of the Estate of Cassandra Braun v. Trooper Brian Ray Burke and Col. Bill Bryant***, Case No. 4:18-cv-334-BRW. The federal lawsuit was filed by the Claimant on May 18, 2018, and involves the same facts, circumstances, and damages claims that are issue in the instant claim. The matter is set for jury trial on June 12, 2019. I respectfully request that the claim before the Claims Commission be held in abeyance until the final resolution of the federal court case.

We appreciate your attention to these matters. If you should have any questions, please call me.

Sincerely,

/s/ Jennifer L. Merritt

Jennifer L. Merritt
Senior Assistant Attorney General

Encl.
JLM/th
cc w/encl.: Paul J. James (*via* E-Mail)
Andy Clarke (*via* E-Mail)
Mr. Greg Downs (*via* E-Mail)

From:	Kathryn Irby
To:	"Jennifer Merritt"
Cc:	Paul James; "Andrew Clarke"; Gary Sullivan; Greg Downs
Subject:	RE: Braun v. Arkansas State Police, Claim No. 190497
Date:	Monday, December 3, 2018 8:37:00 AM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png

---

Ms. Merritt, we have received the answer sent on 11/30 and it was filed the same day.

Mr. James and Mr. Clarke, does your client object to placing this claim in abeyance until the underlying federal lawsuit is resolved? If so, please provide the Claims Commission with a concise letter brief explaining why this claim should not be held in abeyance pending resolution of *Braun v. Burke et al.*

Thank you for your time and attention to this matter.

Kathryn Irby

Kathryn M. Irby
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Sent: Friday, November 30, 2018 10:17 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@accfirm.com>; Gary Sullivan <gary.sullivan@arkansasag.gov>; Greg Downs <greg.downs@asp.arkansas.gov>
Subject: Braun v. Arkansas State Police, Claim No. 190497

Director Irby:

Please find attached in the above-referenced matter correspondence of today's date along with an Answer to the Complaint.

If you or the Commission should have any questions, please contact me.

Cordially,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov



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From:	Kathryn Irby
To:	Andrew Clarke
Cc:	Jennifer Merritt; Paul James; Gary Sullivan; Greg Downs; Ashley Sutton
Subject:	Re: Braun v. Arkansas State Police, Claim No. 190497
Date:	Thursday, December 6, 2018 9:54:49 AM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png

---

Mr. Clarke, thank you. This claim has been placed in abeyance. Please notify the Claims Commission when this claim is ready to proceed.

Thanks,
Kathryn Irby

On Dec 6, 2018, at 8:54 AM, Andrew Clarke <aclarke@accfirm.com> wrote:

> Ms. Irby:
>
> Sorry for the late response. We have no objection to placing this claim in abeyance while the underlying federal lawsuit is pending.
>
> Andy Clarke
> Law Office of Andrew C. Clarke
> 6250 Poplar Avenue
> Second Floor
> Memphis, Tennessee 38119
> (o) (901) 590-0761
> (f) (901) 590-0779
> (c) (901) 351-5446
> aclarke@accfirm.com
>
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> - **Nothing contained in this message or in any attachment shall constitute a contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions.**
> - **IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.**

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, December 03, 2018 8:38 AM
To: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@accfirm.com>; Gary Sullivan <gary.sullivan@arkansasag.gov>; Greg Downs <greg.downs@asp.arkansas.gov>
Subject: RE: Braun v. Arkansas State Police, Claim No. 190497

Ms. Merritt, we have received the answer sent on 11/30 and it was filed the same day.

Mr. James and Mr. Clarke, does your client object to placing this claim in abeyance until the underlying federal lawsuit is resolved? If so, please provide the Claims Commission with a concise letter brief explaining why this claim should not be held in abeyance pending resolution of *Braun v. Burke et al.*

Thank you for your time and attention to this matter.

Kathryn Irby

Kathryn M. Irby
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Sent: Friday, November 30, 2018 10:17 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@accfirm.com>; Gary Sullivan <gary.sullivan@arkansasag.gov>; Greg Downs <greg.downs@asp.arkansas.gov>
Subject: Braun v. Arkansas State Police, Claim No. 190497

Director Irby:

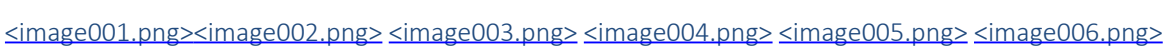
Please find attached in the above-referenced matter correspondence of today's date along with an Answer to the Complaint.

If you or the Commission should have any questions, please contact me.

Cordially,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov



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From: Paul James
To: Kathryn Irby
Cc: Jennifer Merritt; Andrew Clarke
Subject: RE: Braun v. Arkansas State Police, Claim No. 190497
Date: Thursday, June 6, 2019 3:23:05 PM
Attachments: 2019 06 06 Kathryn Irby Letter_Braun.pdf

Ms. Irby,

Attached is the Claimant's reply to your June 3rd correspondence and inquiry regarding the above claim.

If any other information would be helpful, please let us know.

Thank you.

Paul J. James

500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 - Telephone
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-----Original Message-----
From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, December 6, 2018 9:55 AM
To: Andrew Clarke <aclarke@accfirm.com>
Cc: Jennifer Merritt <jennifer merritt@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Gary Sullivan <gary.sullivan@arkansasag.gov>; Greg Downs <greg.downs@asp.arkansas.gov>; Ashley Sutton <ASutton@accfirm.com>
Subject: Re: Braun v. Arkansas State Police, Claim No. 190497

Mr. Clarke, thank you. This claim has been placed in abeyance. Please notify the Claims Commission when this claim is ready to proceed.

Thanks,
Kathryn Irby

On Dec 6, 2018, at 8:54 AM, Andrew Clarke <aclarke@accfirm.com<mailto:aclarke@accfirm.com>> wrote:

Ms. Irby:

Sorry for the late response. We have no objection to placing this claim in abeyance while the underlying federal lawsuit is pending.

Andy Clarke

Law Office of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119
(o) (901) 590-0761
(f) (901) 590-0779
(c) (901) 351-5446
aclarke@accfirm.com<mailto:aclarke@accfirm.com>

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From: Kathryn Irby <Kathryn.Irby@arkansas.gov<mailto:Kathryn.Irby@arkansas.gov>>
Sent: Monday, December 03, 2018 8:38 AM
To: Jennifer Merritt <jennifer merritt@arkansasag.gov<mailto:jennifer merritt@arkansasag.gov>>
Cc: Paul James <pjj@jamescarterlaw.com<mailto:pjj@jamescarterlaw.com>>; Andrew Clarke <aclarke@accfirm.com<mailto:aclarke@accfirm.com>>; Gary Sullivan <gary.sullivan@arkansasag.gov<mailto:gary.sullivan@arkansasag.gov>>; Greg Downs <greg.downs@asp.arkansas.gov<mailto:greg.downs@asp.arkansas.gov>>
Subject: RE: Braun v. Arkansas State Police, Claim No. 190497

Ms. Merritt, we have received the answer sent on 11/30 and it was filed the same day.

Mr. James and Mr. Clarke, does your client object to placing this claim in abeyance until the underlying federal lawsuit is resolved? If so, please provide the Claims Commission with a concise letter brief explaining why this claim should not be held in abeyance pending resolution of Braun v. Burke et al.

Thank you for your time and attention to this matter.

Kathryn Irby

Kathryn M. Irby
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Jennifer Merritt <jennifer merritt@arkansasag.gov<mailto:jennifer.merritt@arkansasag.gov>>
Sent: Friday, November 30, 2018 10:17 AM

To: Kathryn Irby <Kathryn.Irby@arkansas.gov<mailto:Kathryn.Irby@arkansas.gov>>
Cc: Paul James <pjj@jamescarterlaw.com<mailto:pjj@jamescarterlaw.com>>; 'Andrew Clarke' <aclarke@accfirm.com<mailto:aclarke@accfirm.com>>; Gary Sullivan <gary.sullivan@arkansasag.gov<mailto:gary.sullivan@arkansasag.gov>>; Greg Downs <greg.downs@asp.arkansas.gov<mailto:greg.downs@asp.arkansas.gov>>
Subject: Braun v. Arkansas State Police, Claim No. 190497

Director Irby:

Please find attached in the above-referenced matter correspondence of today's date along with an Answer to the Complaint.

If you or the Commission should have any questions, please contact me.

Cordially,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov<mailto:jennifer merritt@arkansasag.gov>
| ArkansasAG.gov<http://www.arkansasag.gov/>

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JAMES, CARTER & PRIEBE, LLP

ATTORNEYS AT LAW

ARVEST BANK BUILDING
500 BROADWAY, SUITE 400
LITTLE ROCK, ARKANSAS 72201
TELEPHONE 501.372.1414
FACSIMILE 501.372.1659

PAUL J. JAMES
pjj@jamescarterlaw.com

U.S. MAIL:
POST OFFICE BOX 907
LITTLE ROCK, AR
72203-0907

WWW.JAMESCARTERPRIEBELAW.COM

June 6, 2019

Via Electronic Mail & Regular Mail
Ms. Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue Suite 410
Little Rock, AR 72201-3823

RE: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun v. Arkansas State Police***
Claim No. 190497

Dear Ms. Irby:

Thank you for your June 3rd correspondence regarding the above claim.

This claim has been held in abeyance because of the 42 U.S.C. § 1983 civil rights lawsuit that was filed May 18, 2018 in United States District Court. That proceeding is styled *Lori Braun for the Estate of Cassandra Braun v. Ray Burke et al.* USDC, Eastern Arkansas District, Case No. 4:18-cv-334-BRW. Discovery in the United States District Court lawsuit is ongoing and a trial is scheduled for the week of October 15, 2019.

While the two proceedings are distinct in regard to the underlying causes of action, they involve similar facts and much of the discovery being conducted in the United States District Court proceeding will also be used in the Arkansas Claims Commission proceeding. The Respondent requested that this matter be held in abeyance until the United States District Court matter was concluded. We did not object. We do not have an objection to the Arkansas Claims Commission continuing to hold this matter in abeyance until resolution of the United States District Court proceeding.

I have copied Deputy Attorney General Jennifer L. Merritt who has entered an appearance in both the United States District Court proceeding and this proceeding.

If we can provide additional information, please do not hesitate to let me know.

Thank you.

Yours truly,

JAMES, CARTER & PRIEBE, LLP

Paul J. James

PJJ/mds

cc: Ms. Jennifer L. Merritt, via electronic mail
Mr. Andy Clarke, via electronic mail

From: Kathryn Irby
To: Paul James
Cc: Jennifer Merritt; Andrew Clarke
Subject: RE: Braun v. Arkansas State Police, Claim No. 190497
Date: Monday, June 10, 2019 1:33:00 PM

Mr. James, thank you for this information. The Claims Commission will keep this claim in abeyance.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

-----Original Message-----
From: Paul James <pjj@jamescarterlaw.com>
Sent: Thursday, June 6, 2019 3:22 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jennifer Merritt <jennifer.merritt@arkansasag.gov>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Subject: RE: Braun v. Arkansas State Police, Claim No. 190497

Ms. Irby,

Attached is the Claimant's reply to your June 3rd correspondence and inquiry regarding the above claim.

If any other information would be helpful, please let us know.

Thank you.

Paul J. James

500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 - Telephone
(501) 492-3870 - Direct
(501) 607-4090 - Cell
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

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Kathryn Irby

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Andy Clarke
Law Office of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119
(o) (901) 590-0761
(f) (901) 590-0779
(c) (901) 351-5446
aclarke@accfirm.com<mailto:aclarke@accfirm.com>

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Subject: RE: Braun v. Arkansas State Police, Claim No. 190497

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Thank you for your time and attention to this matter.

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101 East Capitol Avenue
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Subject: Braun v. Arkansas State Police, Claim No. 190497

Director Irby:

Please find attached in the above-referenced matter correspondence of today's date along with an Answer to the Complaint.

If you or the Commission should have any questions, please contact me.

Cordially,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov<mailto:jennifer.merritt@arkansasag.gov>
|ArkansasAG.gov<http://www.arkansasag.gov/>

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Arkansas
State Claims Commission

SEP 20 2019

RECEIVED

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☐ Mr.
☒ Mrs.
☐ Ms.
☐ Miss

Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces
Claim No.
Date Filed (Month) (Day) (Year)
Amount of Claim $
Fund

COMPLAINT

Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Dec (Name), the above named Claimant, of [redacted] (Street or R.F.D. & No.) (City) [redacted] (State) (Zip Code) (Daytime Phone No.) County of [redacted] represented by Tiffany Mays O'Guinn (Legal Counsel, if any, for Claim) of 212 Center Street, 7th Floor (Street and No.) Little Rock, AR (City) (State) 72201 (Zip Code) 501-372-6303 (Phone No.) 501-399-9280 (Fax No.), says:

State agency involved: Arkansas State Police Amount sought: in excess of $100,000.00

Month, day, year and place of incident or service: October 10, 2016

Explanation: "See the attached Complaint"

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? No (Yes or No); when? N/A (Month) (Day) (Year); to whom? N/A (Department); and that the following action was taken thereon: ____

and that $ ____ was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address ____ (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code) and that the nature thereof is as follows: ____; and was acquired on ____, in the following manner: ____

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

LaVon Perry
(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock, AR (City) (State)

(SEAL) SHIRLEY JEAN FORD NOTARY PUBLIC ARKANSAS PULASKI COUNTY MY COMMISSION EXPIRES 3-19-2023

on this 14th day of June (Date) (Month) 2019 (Year)

(Notary Public)

My Commission Expires: March 19 2023 (Month) (Day) (Year)

SF1-R/99

Arkansas
State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION
NON VEHICLE PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

SEP 20 2019

SECTION 1 Lavon Perry, As Personal Representative
CLAIMANT of the Estate of Tavon Jenkins, Deceased ADDRESS [redacted]
CITY & STATE [redacted] ZIP CODE [redacted] EIVED
DATE OF INCIDENT: October 10, 2016 TIME 9:22 P.M.

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:
Claimant's son and decedent, Tavon Jenkins, died as a result of a motor vehicle accident involved with an Arkansas State Trooper's vehicle in hot pursuit in Hot Springs, AR on October 10, 2016.

(If personal injury claim only, move on to Section IV)

SECTION II
Has this property been repaired? Yes ( ) No ( ) If repairs have been made, give the following information: Amount: $_____ Have you paid for the repairs? Yes ( ) No ( )

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and **attach copies** of each of them.

	NAME	ADDRESS	AMOUNT
1.			$
2.			$
3.			$

SECTION III
Was property covered by insurance? Yes ( ) No ( )
If yes, what is the deductible? $_____

NAME OF INSURANCE CARRIER ADDRESS

SECTION IV

Is injured covered by medical insurance? Yes ( ) No (x)

If yes, what is the deductible? $ N/A

NAME OF INSURANCE CARRIER ADDRESS
N/A

SECTION V
If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: Hot Springs Police Department

SECTION VI
The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Signature of Claimant

Sworn to and subscribed before me at Little Rock, AR (City & State)
on this 14 (day) day of June (month) 2019 (year)

(Notary Seal) SHIRLEY ANN FORD NOTARY PUBLIC ARKANSAS PULASKI COUNTY 12392639 EXPIRES 3-19-2023

My Commission Expires 3/19/23.

Signature of Notary Public

Arkansas
State Claims Commission
SEP 20 2019
RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LAVON TISHETTE PERRY, as the Personal Representative of the Estate OF TAVON JENKINS, deceased,	)	
Claimant,	)	
v.	)	**Case No.:**
	)	**Division No.:**
STATE OF ARKANSAS	)	
Respondent,	)	

COMPLAINT FOR WRONGFUL DEATH and SURVIVAL ACTION

COMES NOW Claimant, LAVON TISHETTE PERRY, as the Administrator of the Estate of TAVON JENKINS, deceased, by and through undersigned attorneys of record, and for his cause of action against Respondent, **STATE OF ARKANSAS**, state and allege as follows:

Venue and Jurisdiction

1. This is an action in excess of $100,000.00, exclusive of post judgment interest and cost.

2. Claimant is entitled to maintain this survival and wrongful death action for the death of TAVON JENKINS, for and on behalf of all persons having claims for damages pursuant to A.C.A. § 16-62-101 and A.C.A. § 16-62-102.

3. Venue and Jurisdiction of this action for survival and wrongful death is proper in the Arkansas Claims Commission since the action was caused by the Arkansas State Police, an entity of the State of Arkansas, the Respondent.

4. Claimant, LAVON PERRY, is the surviving mother of TAVON JENKINS, as resides at [redacted]

5. Claimant's decedent, TAVON JENKINS, was living in Hot Springs, Garland County, Arkansas at the time of the incident described herein and referred to hereinafter.

6. Claimant, LAVON PERRY, has been duly appointed as the Personal Representative of the Estate of TAVON JENKINS and is authorized to bring this cause of action on behalf of the Estate and beneficiaries. Letters of Ancillary Administration were issued on May 9, 2019. A copy of the Ancillary Letters of Administration is attached hereto and made a part hereof as Exhibit "A".

7. The beneficiaries of the recovery for the wrongful death of Tavon Jenkins and their relationship to the Decedent are as follows:

a. LaVon Tishette Perry, mother

b. [redacted] siblings

8. At all times material, the Arkansas State Police, a state entity under the State of Arkansas, located at 1 State Police Plaza Drive, Little Rock, AR 72206 was the entity involved in this action.

9. At all times material, State Trooper 1st Class Brian Ray Burke, the driver of the Arkansas State Police vehicle, 2016 White Dodge Charger, license plate number K15, on or about October 10, 2016, was operating said Arkansas State Police's vehicle "permissively" and any negligent actions on behalf of Trooper Burke were reasonable foreseen by the Arkansas State Police, a state entity.

10. On or about October 10, 2016, TAVON JENKINS was a restrained passenger traveling westbound on Airport Road in Hot Springs, Garland County,

Arkansas. The driver of TAVON JENKINS' vehicle was Cassuandra Braun, who was operating a 2011 Silver Malibu. The vehicle was not owned by Tavon Jenkins.

11. As TAVON JENKINS approached the intersection of Kleinshore Road, his vehicle entered the middle lane and proceeded to make a left turn onto Kleinshore Road. Simultaneously, the Arkansas State Police vehicle, operated by Trooper Burke, was traveling eastbound on Airport Road in "hot pursuit" of another vehicle and as he approached the Kleinshore Road intersection, both vehicles collided in the eastbound lanes of Airport Road/US 70. Trooper Burke impacted TAVON JENKINS' vehicle at a speed of at least 89 mph and as a result, Trooper Burke's vehicle burst into flames. TAVON JENKINS and his driver, Cassaundra Braun, sustained fatal injuries and were pronounced dead at the scene.

12. At the time of the impact with TAVON JENKINS' vehicle, the hot pursuit and/or police chase was being pursued within the city limits of Hot Springs, Arkansas by Arkansas State Police 1st Class Trooper Brian Burke.

13. As a direct and proximate result of all Respondent' negligence, Claimant's decedent suffered traumatic injuries, pain and suffering and died.

14. As a direct and proximate result of TAVON JENKINS's death, his survivors have sustained mental anguish and damages by reason of decedent's tragic death, including pecuniary losses of the value of decedent's services and support.

15. Decedent's parent and siblings have experienced great pain and suffering and grief as a result of TAVON JENKINS's death and such loses will continue in the future.

16. The Estate of TAVON JENKINS has incurred medical and burial expenses, and loss of life damages.

17. Respondent's conduct was willful, wanton, callous, reckless and represented depraved indifference to the decedent and constituted liability for damages under the Arkansas Wrongful Death Statutes, A.C.A. § 16-62-102 and Survival Statutes, A.C.A §16-62-101.

COUNT I

LIABILITY OF THE STATE OF ARKANAS

18. The Claimant sues Respondent, and re-allege and incorporate paragraphs 1 through 17 above as if more fully stated herein.

19. At all times material, Arkansas State Trooper 1st Class Brian Burke, for whose actions, Respondent State of Arkansas and/or the Arkansas State Police are directly liable, owed to TAVON JENKINS, the duty to operate and control their vehicles in a reasonably safe manner.

20. At all times material, Arkansas State Trooper 1st Class Brian Burke, for whose actions, Respondent is directly liable, breached their duty of care to TAVON JENKINS, by negligently, carelessly and recklessly: conducting a police chase within city limits of Hot Springs, Garland County, Arkansas. Said failures caused Arkansas State Trooper Burke to accelerate at excessive speeds and crash into decedent's vehicle thereby causing TAVON JENKINS' pain and suffering and death.

21. As a direct and proximate result of Arkansas State Trooper 1st Class Brian Burke, for whose actions, Respondent is directly liable, negligence, decedent TAVON JENKINS sustained multiple bodily injuries including conscious pain and suffering from

being struck by the aforementioned vehicle and as subsequently his death at the scene of the accident.

22. Arkansas State Trooper 1st Class Brian Burke, for whose actions, Respondent is directly liable, and constituted liability for damages under the Arkansas Wrongful Death Statutes, A.C.A. § 16-62-102 and Survival Statutes, A.C.A. §16-62-101.

WHEREFORE Claimant, LAVON TISHETTE PERRY, as Personal Representative of the Estate of TAVON JENKINS, and on behalf of the estate and survivors, hereby make claim against the Respondent, is directly liable, for all damages allowable under the survival and wrongful death act, including but not limited to the following:

a) For actual damages such as are fair and reasonable for the wrongful death of Claimant's decedent, TAVON JENKINS, including pain and suffering, loss of support and services;

b) Conscious pain and suffering and loss of life of TAVON JENKINS:

c) For Claimants' costs herein expended;

d) For such other and further relief as this Court deems just and proper; and

e) Trial by the Arkansas Claims Commission.

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
501-372-6303-telephone
501-399-9280- facsimile

BY: Tiffany Mays O'Guinn

TIFFANY MAYS-O'GUINN, Bar No. 2006053
Attorney for Claimant

ELECTRONICALLY FILED
Garland County Circuit Court - Probate Division
Sarah Smith, Garland County Court Clerk
2019-May-09 10:20:28
26PR-17-641
C18ED04 : 3 Pages

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF
TAVON DESEAN JENKINS, DECEASED **NO. 26-PR-17-641**

LAVON TISHETTE PERRY **PETITIONER**

ORDER GRANTING AND DIRECTING ISSUANCE OF ANCILLARY LETTERS

On this _____ day of _____, 2019, is presented the Amended petition and application of Lavon Tishette Perry for the issuance to her of ancillary letters in the estate of Tavon Desean Jenkins, deceased, and the Court having considered the same, being fully advised, and having heard the evidence adduced, finds and concludes as follows:

1. Petitioner is the foreign Personal Representative of the Estate of Tavon Desean Jenkins, deceased, in Broward County, State of Florida, by reason of appointment of Broward Circuit Court, Probate Division, Case No. PRC 17-181-61J, and that the decedent owned and possessed the following property, at the time of his death, in this county:

Potential Wrongful Death Claim as a result of a motor-vehicle accident that occurred on October 10, 2016 in Garland County, Arkansas

2. That a need exists, and it is to the best interest of the estate, in order to pursue and investigate a potential wrongful death action on behalf of the estate and the statutory beneficiaries as a result of a motor vehicle accident in which the decedent died of horrific injuries sustained from the said accident. Further, there is a need to protect the above-described property and properly administer the estate, that an ancillary

administration be opened in this Court; and that Lavon Tishette Perry, the Petitioner, should be issued ancillary letters herein.

It is therefore CONSIDERED AND ORDERED that Lavon Tishette Perry be, and hereby is, appointed Personal Representative of the estate of the decedent herein.

_____
CIRCUIT JUDGE

Prepared By:

TIFFANY MAYS O'GUINN #2006053
MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street, 7th Floor
Little Rock, Arkansas 72201
(501) 372-6303
Attorney for Ancillary Estate

Arkansas Judiciary

Case Title: TAVON DESEAN JENKINS

Case Number: 26PR-17-641

Type: ORDER OTHER

So Ordered

Marcia R. Hearnsberger

HON. MARCIA HEARNSBERGER

Electronically signed by MRHEARNSBERGER on 2019-05-09 10:20:38 page 3 of 3

ARKANSAS STATE CLAIMS COMMISSION

(501)682-1619
FAX (501)682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

October 2, 2019

Lt. Colonel Tim K'Nuckles
Arkansas State Police
1 State Police Plaza Drive
Little Rock, Arkansas 72209

RE: ***Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police***
Claim No. 200290

Dear Lt. K'Nuckles,

Enclosed please find a copy of the above-styled claim filed against the Arkansas State Police. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Kathryn Irby

ES: mshaynes

Enclosure
cc: Tiffany Mays O'Guinn, *counsel for Claimant* (w/encl.)

Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

Arkansas
State Claims Commission
OCT 09 2019
RECEIVED

LAVON TISHETTE PERRY, as the Personal Representative of the Estate OF TAVON JENKINS, deceased	)	
Claimant,	)	
v.	)	**Claim No.: 200290**
STATE OF ARKANSAS	)	
Respondent,	)	

CLAIMAINT'S FIRST AMENDED COMPLAINT FOR WRONGFUL DEATH and SURVIVAL ACTION

COMES NOW Claimant, LAVON TISHETTE PERRY, as the Administrator of the Estate of TAVON JENKINS, deceased, by and through undersigned attorneys of record, and for her First Amended Complaint and/or cause of action against Respondent, **STATE OF ARKANSAS**, state and allege as follows:

1. This is an action arising as a result on an automobile accident occurring on October 10, 2016, where State Trooper Brian Ray Burke, (hereinafter referred to as "Trooper Burke") was driving an Arkansas State Police vehicle, 2016 White Dodge Charger, license plate number K15, at excessive speeds, not in emergency pursuit or in response to an emergency, collided with a vehicle in which Tavon Jenkins was an occupant, Specifically, as Tavon Jenkins' vehicle approached the intersection of Kleinshore Road on US Highway 70, Trooper Burke simultaneously, was traveling eastbound on Airport Road at speeds in excess of 100 miles per hour and "not in hot pursuit" of another vehicle. As Trooper Burke approached the Kleinshore Road intersection, Trooper Burke impacted TAVON JENKINS' vehicle at a speed of

at least 89 mph and as a result, Trooper Burke's vehicle burst into flames. Tavon Jenkins and another occupant, Cassaundra Braun, sustained fatal injuries and were pronounced dead at the scene.

2. This is an action in excess of $100,000.00, exclusive of post judgment interest and cost.

VENUE and JURISDICTION

3. Claimant is entitled to maintain this survival and wrongful death action for the death of TAVON JENKINS, for and on behalf of all persons having claims for damages pursuant to A.C.A. § 16-62-101 and A.C.A. § 16-62-102. Further, Plaintiff, as the Personal Representative of the estate seeks to recover any and/or all damages to which the estate may be entitled to pursuant to all applicable laws.

4. Venue and Jurisdiction of this action for survival and wrongful death is proper in the Arkansas State Claims Commission since the action was caused by the Arkansas State Police, an entity of the State of Arkansas, the Respondent. Claimant further hereby relies upon all of rules and regulations set forth by the Arkansas State Claims Commission as the governing body to hear this matter.

5. Claimant, LAVON PERRY, is the surviving mother of TAVON JENKINS, as resides at [redacted]

6. Claimant's decedent, TAVON JENKINS, was living in Hot Springs, Garland County, Arkansas at the time of the incident described herein and referred to hereinafter.

7. Claimant, LAVON PERRY, has been duly appointed as the Personal Representative of the Estate of TAVON JENKINS and is authorized to bring this cause of action on behalf of the Estate and beneficiaries. Letters of Ancillary Administration were issued on

May 9, 2019. A copy of the Ancillary Letters of Administration was provided to this Commission via Claimant's original Complaint for damages.

8. The beneficiaries of the recovery for the wrongful death of Tavon Jenkins and their relationships to the Decedent are as follows:

a. LaVon Tishette Perry, mother

b. [redacted] siblings

9. At all times material, the Respondent, as the State of Arkansas, includes the state entity, the Arkansas State Police (hereinafter referred to as "ASP") and any agents, employees, and/or authorized personnel thereof involved in this matter, including, but not limited to State Trooper Brian Burke and Colonel Bill Bryant. The ASP is a state entity under the State of Arkansas, located at 1 State Police Plaza Drive, Little Rock, AR 72206 and is the entity involved in this action.

10. At all times material herein, Trooper Burke was an agent, servant, employee, officer and/or State Trooper with the ASP, acting within the course and scope of his employment with the ASP, an entity of the Respondent. ASP Colonel Bill Bryant ("Colonel Bryant"), at all times material herein, the chief executive officer of the ASP.

11. At all times material, each and all of the acts/omissions of Trooper Burke and Colonel Bryant was under the statutes of the Respondent and the ordinances regulations, policies, customs and usages of the Respondent and under the authority of his office as a law enforcement officer for ASP.

12. All acts of wrongdoing complained of herein occurred within this jurisdiction and within the prescribed statute of limitation period for the underlying claim.

13. At all times material, Trooper Burke, was operating the said ASP vehicle

"permissively" and any negligent actions on behalf of Trooper Burke were reasonable foreseen by the Respondent and/or ASP, a state entity.

FACTS

14. The Claimant re-alleges and incorporates paragraphs 1-13 above as if more fully stated herein.

15. That TAVON JENKINS, deceased, of Hot Springs, Arkansas, was fatally injured about 9:23 p.m., on October 10, 2016, when struck by an ASP patrol vehicle, namely a 2016 White Dodge Charger, license plate number K15, operated by and within the sole control of Trooper Burke.

16. On the said date of the accident, TAVON JENKINS was a restrained occupant traveling westbound on Airport Road in Hot Springs, Garland County, Arkansas in a 2011 Silver Malibu, along with Cassaundra Braun. Although the Motor Vehicle Accident Report indicates that TAVON JENKINS was a passenger in the vehicle, there is some information that TAVON JENKINS may have been the driver of the said vehicle on the day in question. Nevertheless, and for all purposes herein, Tavon Jenkins was restrained during the accident and whether he was the driver or the passenger does not change the liability alleged against the Respondent.

17. Simultaneously, Trooper Burke was the operator of a 2016 Dodge Charger, owned by the Respondent and the said vehicle was an ASP patrol vehicle equipped with emergency lights, sirens, and a properly dash mounted camera.

18. That immediately prior to the said accident, Trooper Burke was involved in a "non-emergency situation" with an individual in a parking lot near Airport Road in Hot Springs, Arkansas. During this incident, Trooper Burke allegedly observed an "unknown motorist" speeding in an unknown dark-colored SUV, and as a result, Trooper Burke "walked" to his

patrol vehicle and pursued the said unknown motorist without any proper justification. In fact, the brief observation of the unknown vehicle did not present an emergency situation for Trooper Burke. Trooper Burke did not receive information from ASP dispatch or any other authorized personal thereof to pursue the said vehicle and there were no circumstances present which required any emergency actions by the Trooper Burke. Yet, Trooper Burke entered his ASP vehicle and proceeded down the Eastbound lane of Airport Road/U.S. 70 in order to investigate an assumption that an unknown motorist was speeding.

19. That Trooper Burke did not receive any information from ASP dispatch or any other authorized personal regarding this "unknown" speeding vehicle. In fact, the only information that Trooper Burke had was that the unknown vehicle fit the description of a newer model, dark-colored SUV but he did not have any license plate number.

20. That Trooper Burke was not dispatched or requested by ASP to engage in any law enforcement actions with regards to the unknown vehicle.

21. That after observing the said unknown vehicle, Trooper Burke did not take any immediate law enforcement action to apprehend the suspected unknown speeding motorist nor did he notify ASP dispatch of any criminally activity. There were not any circumstances present which reasonable justified an emergency pursuit by Trooper Burke.

22. That upon Trooper Burke entering his vehicle to catch up the unidentified motorist, he was not in the City limits of Hot Springs. Trooper Burke turned off his emergency rotating blue lights and siren on the ASP vehicle approximately 20 seconds after he began pursuing the unidentified motorist. Trooper Burke drove without lights and sirens for over five minutes at speeds in excess of 100 miles per hour in an area which contained dark, unlit, hilly,

two-lane and innocent bystanders. Said conduct was outrageous and with reckless disregard to the public and TAVON JENKINS and/or the Claimant.

23. That as TAVON JENKINS approached the intersection of Kleinshore Road, his vehicle entered the middle lane and proceeded to make a left turn onto Kleinshore Road. Simultaneously, the ASP vehicle, operated by Trooper Burke, was traveling eastbound on Airport Road not in "hot pursuit" of the unknown motorist and as he approached the Kleinshore Road intersection, he collided with TAVON JENKINS in the eastbound lane of Airport Road/US 70. Trooper Burke impacted TAVON JENKINS' vehicle at a high rate of speed and as a result, Trooper Burke's vehicle burst into flames. TAVON JENKINS and his other occupant, Cassaundra Braun, sustained fatal injuries and died at the scene of the accident.

24. That the impact from this said accident caused both TAVON JENKINS and Ms. Braun to become ejected from their vehicle.

25. That the posted speed limit at the intersection of Hwy 70/Airport Rd., and Kleinshore Rd., within the City limits of Hot Springs, Arkansas, was 45 miles per hour.

26. That at the time of the impact with TAVON JENKINS' vehicle, the "non-emergency pursuit" and/or police chase was being pursued within the City limits of Hot Springs, Arkansas by Trooper Burke.

27. That according to the "Black Box" reader from the ASP patrol vehicle, Trooper Burke reached speeds up to 113 miles per hour in his efforts to catch an unidentified motorist at least five (5) seconds before colliding with TAVON JENKINS and his other occupant.

28. That Trooper Burke by turning off his blue lights and siren, prevented the public, and further the Claimant, from being warned that Trooper Burke was engaged in a high speed, outrageous, reckless driving.

29. That Trooper Burke drove in a negligent, reckless, willful and wanton manner that included excessive speeds, failing to maintain his vehicle within the proper lanes of travel, passing bystanders/vehicles at excessive speeds, crossing double yellow lines and traveling in the oncoming traffic lanes.

30. That Trooper Burke's excessive speeds during the time period leading up to the accident with TAVON JENKINS led him to be unable to prevent his vehicle from swerving across double yellow lines at least ten (10) times.

31. That Trooper Burke's actions were in violation of Arkansas state law and/or policies and procedures that every reasonable law enforcement officer is duty bound to know and follow.

32. That Trooper Burke had no legal justification for an emergency pursuit and/or emergency response to the unknown vehicle.

33. That Trooper Burke had no legal justification to disregard Arkansas rules of the road and his operation of the ASP vehicle under the said conditions herein was unlawful, and negligent.

34. As a direct and proximate result of TAVON JENKINS's death, his survivors have sustained mental anguish and damages by reason of decedent's tragic death, including pecuniary losses of the value of decedent's services and support.

35. That Colonel Bryant, at the time of this accident, had the final policymaking authority to decide what action to take in furtherance of his affirmative duty to not be deliberately indifferent to a need for supervision, training and discipline.

36. That since the said accident, Colonel Bryant has failed to properly train, investigate and discipline Trooper Burke and other officers of ASP and such conduct illustrates at the very least negligence on the part of the Respondent, specifically the ASP.

37. That the Decedent's parent and siblings have experienced great pain and suffering and grief as a result of TAVON JENKINS's death and such loses will continue in the future.

38. That the Estate of TAVON JENKINS has incurred medical and burial expenses, and loss of life damages.

39. That Respondent, via Trooper Burke's conduct, was willful, wanton, reckless and represented depraved indifference to the decedent and constituted liability for damages under the Arkansas Wrongful Death Statutes, A.C.A. § 16-62-102 and Survival Statutes, A.C.A §16-62-101. Further, the Respondent, via Colonel Bryant's failure to train, supervise, and discipline Trooper Burke and other ASP officers, constitutes liability for damages under the said relevant statutes.

COUNT I: NEGLIGENCE

LIABILITY OF THE STATE OF ARKANSAS (ARKANSAS STATE POLICE)

40. The Claimant sues Respondent, and re-allege and incorporate paragraphs 1 through 39 above as if more fully stated herein.

41. At all times material, Arkansas State Trooper Brian Burke, for whose actions, Respondent State of Arkansas, namely, the Arkansas State Police, are directly liable, owed to TAVON JENKINS, the duty to operate and control its vehicle in a reasonably safe manner and as a reasonable prudent law enforcement office would under the circumstances.

42. At all times material, Trooper Burke, for whose actions, Respondent is directly liable, breached their duty of care to TAVON JENKINS, by negligently, carelessly and recklessly: conducting a police chase within City limits of Hot Springs, Garland County, Arkansas. Further, said breach included Trooper Burke failing to maintain his vehicle within the proper lanes of travel, passing bystanders/vehicles at excessive speeds, crossing double yellow lines and traveling in the oncoming traffic lanes. Said failures caused Trooper Burke to accelerate at excessive speeds and crash into decedent's vehicle thereby causing TAVON JENKINS' pain and suffering and death.

43. At all times material, Respondent and/or Trooper Burke breached its duty of care to the Claimant and the decedent, by negligently, carelessly and recklessly: failing to drive and maintain control of the ASP patrol vehicle in a careful and prudent manner; by failing to keep a proper look-out; by failing to yield the right of way; by failing to act reasonably and prudently as a law enforcement officer should under the circumstances; by failing to drive with due care; by failing to take evasive actions; by failing to follow the policies and/or procedures set forth to initiate a hot pursuit or an emergency pursuit; and by violating the State of Arkansas Motor Carrier Safety Regulations and rules of the road. Said failures caused Claimant's decedent to collide with Trooper Burke's patrol vehicle and caused decedent to die and suffer all other damages resulting therefrom.

44. A reasonably prudent law enforcement officer and agency under the same or similar conditions, would have reasonably foreseen or known that such conduct would result in injury to others, specifically, TAVON JENKINS. The Respondent knew or should have known, in light of the surrounding circumstances, that its conduct would naturally and probably result in injury, yet it continued its conduct in reckless disregard for the rights and safety of TAVON

JENKINS. Each of the foregoing acts of negligence on the part of the Respondent was a proximate cause of the Claimant's decedent's injuries and death that were foreseeable to the Respondent.

45. As a direct and proximate result of Trooper Burke, for whose actions, Respondent is directly liable in negligence, decedent TAVON JENKINS sustained multiple bodily injuries including conscious pain and suffering from being struck by the aforementioned vehicle and as subsequently his death at the scene of the accident.

46. That Colonel Bryant, as the Director of the ASP, is responsible for supervising and control over the law enforcement officers for the purposes of discipline and management. Colonel Bryant owed an affirmative duty to the Claimant herein to acknowledge the need for additional training, supervision and management of officers employed with ASP. Further, Colonel Bryant had a duty to ensure that Troopers employed with the ASP received the proper training with respect to their operation of patrol vehicles in excess of the speed limits authorized by the State of Arkansas.

47. That Colonel Bryant, as well as other high-ranking employees of the ASP, were put on notice of the need to provide training and/or supervision for Troopers with the ASP and the Respondent failed to adhere to that need to properly investigate, supervise, and discipline the Troopers, including Trooper Burke for matters similar to the one before this Commission.

48. That on information and belief, Trooper Burke was allowed to retire from the ASP without any disciplinary measures despite his reckless and outrageous conduct as plead herein. Thus, the Respondent ratified, condoned, or approved Trooper Burke's conduct.

49. That as a direct and proximate result of Colonel Bryant's failure to provide proper training, supervision, policies and/or practices for Troopers' operation of patrol vehicles in excess of the speed limits authorized by the State of Arkansas, for whose actions, Respondent is directly liable in negligence, decedent TAVON JENKINS sustained multiple bodily injuries including conscious pain and suffering from being struck by the aforementioned vehicle and as subsequently his death at the scene of the accident.

WRONGFUL DEATH

50. That Trooper Burke, Colonel Bryant, and any other agent/employees involved int his matter, for whose actions, Respondent is directly liable, and constituted liability for damages under the Arkansas Wrongful Death Statutes, A.C.A. § 16-62-102 and Survival Statutes, A.C.A. §16-62-101.

51. As a direct and proximate result of the previously alleged conduct, all of which was grossly negligent, willful and wanton, outrageous, reckless, and malicious caused the death of Claimant's decedent, TAVON JENKINS.

52. Claimant's decent suffered horrific injuries including excruciating pain and suffering, mental anguish, fright emotional distress, loss of life and death, all of which caused his family and statutory wrongful death beneficiates to suffer extreme grief and mental anguish.

DAMAGES

53. WHEREFORE Claimant, LAVON TISHETTE PERRY, as Personal Representative of the Estate of TAVON JENKINS, and on behalf of the estate and survivors, hereby makes a claim against the Respondent, for all damages allowable under the survival and wrongful death act, and pursuant to the laws of the State of Arkansas, including but not limited to the following:

a) For actual damages such as are fair and reasonable for the wrongful death of Claimant's decedent, TAVON JENKINS, including pain and suffering, loss of support and services;

b) Conscious pain and suffering and loss of life of TAVON JENKINS:

c) Loss of Enjoyment of Life;

d) Loss of Earning Capacity;

e) Punitive Damages;

f) Funeral and/or Burial Expenses;

g) For Claimants' attorney's fees and costs herein expended;

h) For such other and further relief pursuant to the rules and regulations set for the by the Arkansas Claims Commission that said Commission deems just and proper; and

i) Trial/Hearing on the merits by the Arkansas Claims Commission.

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
501-372-6303-telephone
501-399-9280- facsimile

BY: Tiffany Mays O'Guinn

TIFFANY MAYS-O'GUINN, AR. Bar No. 2006053
Attorney for Claimant

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

Arkansas
State Claims Commission
OCT 09 2019
RECEIVED

LAVON TISHETTE PERRY, as the Personal Representative of the Estate OF TAVON JENKINS, deceased	)	
Claimant,	)	
v.	)	**Claim No.: 200290**
STATE OF ARKANSAS	)	
Respondent,	)	

CLAIMAINT'S FIRST AMENDED COMPLAINT FOR WRONGFUL DEATH and SURVIVAL ACTION

COMES NOW Claimant, LAVON TISHETTE PERRY, as the Administrator of the Estate of TAVON JENKINS, deceased, by and through undersigned attorneys of record, and for her First Amended Complaint and/or cause of action against Respondent, **STATE OF ARKANSAS**, state and allege as follows:

1. This is an action arising as a result on an automobile accident occurring on October 10, 2016, where State Trooper Brian Ray Burke, (hereinafter referred to as "Trooper Burke") was driving an Arkansas State Police vehicle, 2016 White Dodge Charger, license plate number K15, at excessive speeds, not in emergency pursuit or in response to an emergency, collided with a vehicle in which Tavon Jenkins was an occupant, Specifically, as Tavon Jenkins' vehicle approached the intersection of Kleinshore Road on US Highway 70, Trooper Burke simultaneously, was traveling eastbound on Airport Road at speeds in excess of 100 miles per hour and "not in hot pursuit" of another vehicle. As Trooper Burke approached the Kleinshore Road intersection, Trooper Burke impacted TAVON JENKINS' vehicle at a speed of

at least 89 mph and as a result, Trooper Burke's vehicle burst into flames. Tavon Jenkins and another occupant, Cassaundra Braun, sustained fatal injuries and were pronounced dead at the scene.

2. This is an action in excess of $100,000.00, exclusive of post judgment interest and cost.

VENUE and JURISDICTION

3. Claimant is entitled to maintain this survival and wrongful death action for the death of TAVON JENKINS, for and on behalf of all persons having claims for damages pursuant to A.C.A. § 16-62-101 and A.C.A. § 16-62-102. Further, Plaintiff, as the Personal Representative of the estate seeks to recover any and/or all damages to which the estate may be entitled to pursuant to all applicable laws.

4. Venue and Jurisdiction of this action for survival and wrongful death is proper in the Arkansas State Claims Commission since the action was caused by the Arkansas State Police, an entity of the State of Arkansas, the Respondent. Claimant further hereby relies upon all of rules and regulations set forth by the Arkansas State Claims Commission as the governing body to hear this matter.

5. Claimant, LAVON PERRY, is the surviving mother of TAVON JENKINS, as resides at [redacted]

6. Claimant's decedent, TAVON JENKINS, was living in Hot Springs, Garland County, Arkansas at the time of the incident described herein and referred to hereinafter.

7. Claimant, LAVON PERRY, has been duly appointed as the Personal Representative of the Estate of TAVON JENKINS and is authorized to bring this cause of action on behalf of the Estate and beneficiaries. Letters of Ancillary Administration were issued on

May 9, 2019. A copy of the Ancillary Letters of Administration was provided to this Commission via Claimant's original Complaint for damages.

8. The beneficiaries of the recovery for the wrongful death of Tavon Jenkins and their relationships to the Decedent are as follows:

a. LaVon Tishette Perry, mother

b. [redacted] siblings

9. At all times material, the Respondent, as the State of Arkansas, includes the state entity, the Arkansas State Police (hereinafter referred to as "ASP") and any agents, employees, and/or authorized personnel thereof involved in this matter, including, but not limited to State Trooper Brian Burke and Colonel Bill Bryant. The ASP is a state entity under the State of Arkansas, located at 1 State Police Plaza Drive, Little Rock, AR 72206 and is the entity involved in this action.

10. At all times material herein, Trooper Burke was an agent, servant, employee, officer and/or State Trooper with the ASP, acting within the course and scope of his employment with the ASP, an entity of the Respondent. ASP Colonel Bill Bryant ("Colonel Bryant"), at all times material herein, the chief executive officer of the ASP.

11. At all times material, each and all of the acts/omissions of Trooper Burke and Colonel Bryant was under the statutes of the Respondent and the ordinances regulations, policies, customs and usages of the Respondent and under the authority of his office as a law enforcement officer for ASP.

12. All acts of wrongdoing complained of herein occurred within this jurisdiction and within the prescribed statute of limitation period for the underlying claim.

13. At all times material, Trooper Burke, was operating the said ASP vehicle

"permissively" and any negligent actions on behalf of Trooper Burke were reasonable foreseen by the Respondent and/or ASP, a state entity.

FACTS

14. The Claimant re-alleges and incorporates paragraphs 1-13 above as if more fully stated herein.

15. That TAVON JENKINS, deceased, of Hot Springs, Arkansas, was fatally injured about 9:23 p.m., on October 10, 2016, when struck by an ASP patrol vehicle, namely a 2016 White Dodge Charger, license plate number K15, operated by and within the sole control of Trooper Burke.

16. On the said date of the accident, TAVON JENKINS was a restrained occupant traveling westbound on Airport Road in Hot Springs, Garland County, Arkansas in a 2011 Silver Malibu, along with Cassaundra Braun. Although the Motor Vehicle Accident Report indicates that TAVON JENKINS was a passenger in the vehicle, there is some information that TAVON JENKINS may have been the driver of the said vehicle on the day in question. Nevertheless, and for all purposes herein, Tavon Jenkins was restrained during the accident and whether he was the driver or the passenger does not change the liability alleged against the Respondent.

17. Simultaneously, Trooper Burke was the operator of a 2016 Dodge Charger, owned by the Respondent and the said vehicle was an ASP patrol vehicle equipped with emergency lights, sirens, and a properly dash mounted camera.

18. That immediately prior to the said accident, Trooper Burke was involved in a "non-emergency situation" with an individual in a parking lot near Airport Road in Hot Springs, Arkansas. During this incident, Trooper Burke allegedly observed an "unknown motorist" speeding in an unknown dark-colored SUV, and as a result, Trooper Burke "walked" to his

patrol vehicle and pursued the said unknown motorist without any proper justification. In fact, the brief observation of the unknown vehicle did not present an emergency situation for Trooper Burke. Trooper Burke did not receive information from ASP dispatch or any other authorized personal thereof to pursue the said vehicle and there were no circumstances present which required any emergency actions by the Trooper Burke. Yet, Trooper Burke entered his ASP vehicle and proceeded down the Eastbound lane of Airport Road/U.S. 70 in order to investigate an assumption that an unknown motorist was speeding.

19. That Trooper Burke did not receive any information from ASP dispatch or any other authorized personal regarding this "unknown" speeding vehicle. In fact, the only information that Trooper Burke had was that the unknown vehicle fit the description of a newer model, dark-colored SUV but he did not have any license plate number.

20. That Trooper Burke was not dispatched or requested by ASP to engage in any law enforcement actions with regards to the unknown vehicle.

21. That after observing the said unknown vehicle, Trooper Burke did not take any immediate law enforcement action to apprehend the suspected unknown speeding motorist nor did he notify ASP dispatch of any criminally activity. There were not any circumstances present which reasonable justified an emergency pursuit by Trooper Burke.

22. That upon Trooper Burke entering his vehicle to catch up the unidentified motorist, he was not in the City limits of Hot Springs. Trooper Burke turned off his emergency rotating blue lights and siren on the ASP vehicle approximately 20 seconds after he began pursuing the unidentified motorist. Trooper Burke drove without lights and sirens for over five minutes at speeds in excess of 100 miles per hour in an area which contained dark, unlit, hilly,

two-lane and innocent bystanders. Said conduct was outrageous and with reckless disregard to the public and TAVON JENKINS and/or the Claimant.

23. That as TAVON JENKINS approached the intersection of Kleinshore Road, his vehicle entered the middle lane and proceeded to make a left turn onto Kleinshore Road. Simultaneously, the ASP vehicle, operated by Trooper Burke, was traveling eastbound on Airport Road not in "hot pursuit" of the unknown motorist and as he approached the Kleinshore Road intersection, he collided with TAVON JENKINS in the eastbound lane of Airport Road/US 70. Trooper Burke impacted TAVON JENKINS' vehicle at a high rate of speed and as a result, Trooper Burke's vehicle burst into flames. TAVON JENKINS and his other occupant, Cassaundra Braun, sustained fatal injuries and died at the scene of the accident.

24. That the impact from this said accident caused both TAVON JENKINS and Ms. Braun to become ejected from their vehicle.

25. That the posted speed limit at the intersection of Hwy 70/Airport Rd., and Kleinshore Rd., within the City limits of Hot Springs, Arkansas, was 45 miles per hour.

26. That at the time of the impact with TAVON JENKINS' vehicle, the "non-emergency pursuit" and/or police chase was being pursued within the City limits of Hot Springs, Arkansas by Trooper Burke.

27. That according to the "Black Box" reader from the ASP patrol vehicle, Trooper Burke reached speeds up to 113 miles per hour in his efforts to catch an unidentified motorist at least five (5) seconds before colliding with TAVON JENKINS and his other occupant.

28. That Trooper Burke by turning off his blue lights and siren, prevented the public, and further the Claimant, from being warned that Trooper Burke was engaged in a high speed, outrageous, reckless driving.

29. That Trooper Burke drove in a negligent, reckless, willful and wanton manner that included excessive speeds, failing to maintain his vehicle within the proper lanes of travel, passing bystanders/vehicles at excessive speeds, crossing double yellow lines and traveling in the oncoming traffic lanes.

30. That Trooper Burke's excessive speeds during the time period leading up to the accident with TAVON JENKINS led him to be unable to prevent his vehicle from swerving across double yellow lines at least ten (10) times.

31. That Trooper Burke's actions were in violation of Arkansas state law and/or policies and procedures that every reasonable law enforcement officer is duty bound to know and follow.

32. That Trooper Burke had no legal justification for an emergency pursuit and/or emergency response to the unknown vehicle.

33. That Trooper Burke had no legal justification to disregard Arkansas rules of the road and his operation of the ASP vehicle under the said conditions herein was unlawful, and negligent.

34. As a direct and proximate result of TAVON JENKINS's death, his survivors have sustained mental anguish and damages by reason of decedent's tragic death, including pecuniary losses of the value of decedent's services and support.

35. That Colonel Bryant, at the time of this accident, had the final policymaking authority to decide what action to take in furtherance of his affirmative duty to not be deliberately indifferent to a need for supervision, training and discipline.

36. That since the said accident, Colonel Bryant has failed to properly train, investigate and discipline Trooper Burke and other officers of ASP and such conduct illustrates at the very least negligence on the part of the Respondent, specifically the ASP.

37. That the Decedent's parent and siblings have experienced great pain and suffering and grief as a result of TAVON JENKINS's death and such loses will continue in the future.

38. That the Estate of TAVON JENKINS has incurred medical and burial expenses, and loss of life damages.

39. That Respondent, via Trooper Burke's conduct, was willful, wanton, reckless and represented depraved indifference to the decedent and constituted liability for damages under the Arkansas Wrongful Death Statutes, A.C.A. § 16-62-102 and Survival Statutes, A.C.A §16-62-101. Further, the Respondent, via Colonel Bryant's failure to train, supervise, and discipline Trooper Burke and other ASP officers, constitutes liability for damages under the said relevant statutes.

COUNT I: NEGLIGENCE

LIABILITY OF THE STATE OF ARKANSAS (ARKANSAS STATE POLICE)

40. The Claimant sues Respondent, and re-allege and incorporate paragraphs 1 through 39 above as if more fully stated herein.

41. At all times material, Arkansas State Trooper Brian Burke, for whose actions, Respondent State of Arkansas, namely, the Arkansas State Police, are directly liable, owed to TAVON JENKINS, the duty to operate and control its vehicle in a reasonably safe manner and as a reasonable prudent law enforcement office would under the circumstances.

42. At all times material, Trooper Burke, for whose actions, Respondent is directly liable, breached their duty of care to TAVON JENKINS, by negligently, carelessly and recklessly: conducting a police chase within City limits of Hot Springs, Garland County, Arkansas. Further, said breach included Trooper Burke failing to maintain his vehicle within the proper lanes of travel, passing bystanders/vehicles at excessive speeds, crossing double yellow lines and traveling in the oncoming traffic lanes. Said failures caused Trooper Burke to accelerate at excessive speeds and crash into decedent's vehicle thereby causing TAVON JENKINS' pain and suffering and death.

43. At all times material, Respondent and/or Trooper Burke breached its duty of care to the Claimant and the decedent, by negligently, carelessly and recklessly: failing to drive and maintain control of the ASP patrol vehicle in a careful and prudent manner; by failing to keep a proper look-out; by failing to yield the right of way; by failing to act reasonably and prudently as a law enforcement officer should under the circumstances; by failing to drive with due care; by failing to take evasive actions; by failing to follow the policies and/or procedures set forth to initiate a hot pursuit or an emergency pursuit; and by violating the State of Arkansas Motor Carrier Safety Regulations and rules of the road. Said failures caused Claimant's decedent to collide with Trooper Burke's patrol vehicle and caused decedent to die and suffer all other damages resulting therefrom.

44. A reasonably prudent law enforcement officer and agency under the same or similar conditions, would have reasonably foreseen or known that such conduct would result in injury to others, specifically, TAVON JENKINS. The Respondent knew or should have known, in light of the surrounding circumstances, that its conduct would naturally and probably result in injury, yet it continued its conduct in reckless disregard for the rights and safety of TAVON

JENKINS. Each of the foregoing acts of negligence on the part of the Respondent was a proximate cause of the Claimant's decedent's injuries and death that were foreseeable to the Respondent.

45. As a direct and proximate result of Trooper Burke, for whose actions, Respondent is directly liable in negligence, decedent TAVON JENKINS sustained multiple bodily injuries including conscious pain and suffering from being struck by the aforementioned vehicle and as subsequently his death at the scene of the accident.

46. That Colonel Bryant, as the Director of the ASP, is responsible for supervising and control over the law enforcement officers for the purposes of discipline and management. Colonel Bryant owed an affirmative duty to the Claimant herein to acknowledge the need for additional training, supervision and management of officers employed with ASP. Further, Colonel Bryant had a duty to ensure that Troopers employed with the ASP received the proper training with respect to their operation of patrol vehicles in excess of the speed limits authorized by the State of Arkansas.

47. That Colonel Bryant, as well as other high-ranking employees of the ASP, were put on notice of the need to provide training and/or supervision for Troopers with the ASP and the Respondent failed to adhere to that need to properly investigate, supervise, and discipline the Troopers, including Trooper Burke for matters similar to the one before this Commission.

48. That on information and belief, Trooper Burke was allowed to retire from the ASP without any disciplinary measures despite his reckless and outrageous conduct as plead herein. Thus, the Respondent ratified, condoned, or approved Trooper Burke's conduct.

49. That as a direct and proximate result of Colonel Bryant's failure to provide proper training, supervision, policies and/or practices for Troopers' operation of patrol vehicles in excess of the speed limits authorized by the State of Arkansas, for whose actions, Respondent is directly liable in negligence, decedent TAVON JENKINS sustained multiple bodily injuries including conscious pain and suffering from being struck by the aforementioned vehicle and as subsequently his death at the scene of the accident.

WRONGFUL DEATH

50. That Trooper Burke, Colonel Bryant, and any other agent/employees involved int his matter, for whose actions, Respondent is directly liable, and constituted liability for damages under the Arkansas Wrongful Death Statutes, A.C.A. § 16-62-102 and Survival Statutes, A.C.A. §16-62-101.

51. As a direct and proximate result of the previously alleged conduct, all of which was grossly negligent, willful and wanton, outrageous, reckless, and malicious caused the death of Claimant's decedent, TAVON JENKINS.

52. Claimant's decent suffered horrific injuries including excruciating pain and suffering, mental anguish, fright emotional distress, loss of life and death, all of which caused his family and statutory wrongful death beneficiates to suffer extreme grief and mental anguish.

DAMAGES

53. WHEREFORE Claimant, LAVON TISHETTE PERRY, as Personal Representative of the Estate of TAVON JENKINS, and on behalf of the estate and survivors, hereby makes a claim against the Respondent, for all damages allowable under the survival and wrongful death act, and pursuant to the laws of the State of Arkansas, including but not limited to the following:

a) For actual damages such as are fair and reasonable for the wrongful death of Claimant's decedent, TAVON JENKINS, including pain and suffering, loss of support and services;

b) Conscious pain and suffering and loss of life of TAVON JENKINS:

c) Loss of Enjoyment of Life;

d) Loss of Earning Capacity;

e) Punitive Damages;

f) Funeral and/or Burial Expenses;

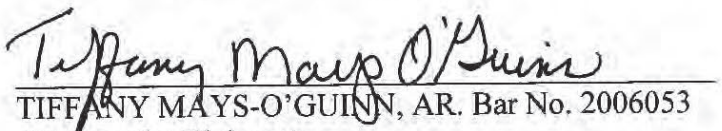
g) For Claimants' attorney's fees and costs herein expended;

h) For such other and further relief pursuant to the rules and regulations set for the by the Arkansas Claims Commission that said Commission deems just and proper; and

i) Trial/Hearing on the merits by the Arkansas Claims Commission.

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
501-372-6303-telephone
501-399-9280- facsimile

BY: 
TIFFANY MAYS-O'GUINN, AR. Bar No. 2006053
Attorney for Claimant

From:	Jennifer Merritt
To:	Kathryn Irby
Cc:	Greg Downs; "tmays@maysbyrdlaw.com"; Paul James; "Andrew Clarke"
Subject:	Perry v. Arkansas State Police, Claim No. 200290
Date:	Monday, October 28, 2019 10:34:24 AM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png 2019-10-28 - Answer to Complaint.pdf

Director Irby:

I represent the Arkansas State Police in the above-referenced claim. Please find attached an Answer to the Complaint. In the ASP's answer, we request that this claim be consolidated with the related *Braun* claim—both claims arise out of the same car accident and involve many of the same facts, witnesses, and issues—and held in abeyance pending the resolution of the federal litigation in *Braun.* I have conferred with the claimant's counsel, Ms. Mays-O'Guinn, and she did not raise any objection to this request. I have also copied the Claimant's attorneys in the *Braun* matter so that they are aware of this request.

Thank you for your attention to this matter. If you or the Commission should have any questions, please contact me.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON JENKINS, DECEASED **CLAIMANT**

v. **CLAIM NO. 200290**

ARKANSAS STATE POLICE **RESPONDENT**

ANSWER

COMES NOW Respondent, Arkansas State Police, by and through its attorneys, Arkansas Attorney General Leslie Rutledge and Senior Assistant Attorney General Jennifer L. Merritt, and for its Answer to the Complaint states the following:

1. Respondent, Arkansas State Police, denies all allegations of the Complaint not admitted herein and denies that Claimant is entitled to any relief from the Arkansas State Police.

2. Respondent states affirmatively that it has not engaged in any conduct that violated the Claimant's legal rights.

3. Claimant's damages and injuries, if any, were not proximately caused by any acts or omissions of the Arkansas State Police.

4. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in a willfully reckless or negligent manner in violation of Respondent's policies and procedures and in contravention of his training. Mr. Burke acted outside the scope of his authority as an Arkansas

State Police Trooper and his conduct should not be imputed to the Arkansas State Police.

5. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were also proximately caused by the contributory negligence and fault of Tavon Desean Jenkins, who was the driver of the Braun vehicle and whose fault or negligence should bar or significantly reduce the Claimant's recovery in this case.

6. This Claim should be consolidated with a related claim arising out of the same car accident styled *Lori Braun, as Administratrix of the Estate of Cassandra Braun v. State of Arkansas*, Claim No. 190497, and held in abeyance until a related federal lawsuit styled *Braun v. Burke et al.*, U.S. District Court, E.D. Ark., Case No. 4:18-cv-334-BRW, is concluded through the entry of a valid and unappealable final judgment.

7. Per the request of the Commission, Respondent provides the following information in the event the claim is approved for payment: Agency Code: 0960; Fund Code: SMP8800; Cost Center: 456607; Appropriation Code: 519; and Internal Order: I0960248.

8. Respondent reserves the right to amend its Answer herein and to assert additional defenses or affirmative defenses available at law or equity as may be appropriate.

WHEREFORE, Respondent Arkansas State Police prays for dismissal of the Claim with prejudice and for all other relief to which it may be entitled.

Respectfully Submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Jennifer L. Merritt*
JENNIFER L. MERRITT (2002148)
Senior Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Tel: (501) 682-1319
Fax: (501) 682-2591
Jennifer.Merritt@ArkansasAG.gov

Attorneys for Respondent Arkansas State Police

CERTIFICATE OF SERVICE

I, Jennifer L. Merritt, Senior Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 28th day of October, 2019:

Tiffany Mays-O'Guinn, Esq.
tmays@maysbyrdlaw.com

/s/ Jennifer L. Merritt
Jennifer L. Merritt

From:	Kathryn Irby
To:	Jennifer Merritt
Cc:	Greg Downs; "tmays@maysbyrdlaw.com"; Paul James; "Andrew Clarke"
Subject:	RE: Perry v. Arkansas State Police, Claim No. 200290
Date:	Monday, October 28, 2019 1:05:00 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png

---

Mr. James and Mr. Clarke, please advise whether you will be filing an objection to consolidation.

Ms. Merritt and Ms. Mays-O'Guinn, barring any objection, these claims will be consolidated, and the *Perry* claim will also be placed in abeyance.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Sent: Monday, October 28, 2019 10:34 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Greg Downs <greg.downs@asp.arkansas.gov>; 'tmays@maysbyrdlaw.com' <tmays@maysbyrdlaw.com>; Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>
Subject: Perry v. Arkansas State Police, Claim No. 200290

Director Irby:

I represent the Arkansas State Police in the above-referenced claim. Please find attached an Answer to the Complaint. In the ASP's answer, we request that this claim be consolidated with the related *Braun* claim—both claims arise out of the same car accident and involve many of the same facts, witnesses, and issues—and held in abeyance pending the resolution of the federal litigation in *Braun.* I have conferred with the claimant's counsel, Ms. Mays-O'Guinn, and she did not raise any objection to this request. I have also copied the Claimant's attorneys in the *Braun* matter so that they are aware of this request.

Thank you for your attention to this matter. If you or the Commission should have any questions, please contact me.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov



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From:	Paul James
To:	Kathryn Irby; Jennifer Merritt
Cc:	Greg Downs; "tmays@maysbyrdlaw.com"; "Andrew Clarke"
Subject:	RE: Perry v. Arkansas State Police, Claim No. 200290
Date:	Monday, November 4, 2019 4:12:33 PM
Attachments:	image007.jpg image008.png image009.png image010.png image011.png image012.png image013.png

Ms. Irby,

This afternoon, I left a message at your office. Mr. Clarke and I will not file an objection to consolidation.

Thank you.

PAUL J. JAMES

500 BROADWAY, SUITE 400
LITTLE ROCK, AR 72201
(501) 372-1414 – TELEPHONE
(501) 492-3870 – DIRECT
(501) 607-4090 – CELL
(501) 372-1659 - FACSIMILE
WWW.JAMESCARTERLAW.COM

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From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, October 28, 2019 1:06 PM
To: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Greg Downs <greg.downs@asp.arkansas.gov>; 'tmays@maysbyrdlaw.com' <tmays@maysbyrdlaw.com>; Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>
Subject: RE: Perry v. Arkansas State Police, Claim No. 200290

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Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
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Thank you for your attention to this matter. If you or the Commission should have any questions, please contact me.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED	**CLAIMANTS**
CLAIM NO. 190497	
LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON JENKINS, DECEASED	
CLAIM NO. 200290	
V.	
ARKANSAS STATE POLICE	**RESPONDENT**

ORDER

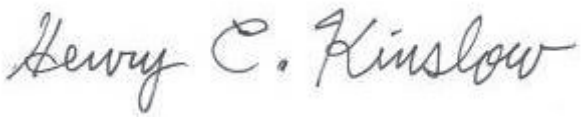
Now before the Arkansas State Claims Commission (the "Claims Commission") is the request of the Arkansas State Police (the "Respondent") to consolidate the claims of *Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased v. Arkansas State Police*, Claim No. 190497, and *Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased v. Arkansas State Police*, Claim No. 200290, given that both claims arose out of the same car accident. Respondent also requested that the *Perry* claim be held in abeyance until the related federal lawsuit (*Braun v. Burke, et al*., U.S. District Court for the Eastern District of Arkansas, Case No. 4:18-cv-334-BRW) is concluded through the entry of a valid and unappealable final judgment. The *Braun* claim is currently in abeyance.

The claimant's counsel in *Braun* does not object to consolidation of the claims.

The claimant's counsel in *Perry* does not object to consolidation of the claims.

As such, pursuant to Ark. R. Civ. Proc. 42, the Claims Commission hereby consolidates the *Braun* and *Perry* claims. Both claims will be held in abeyance pending resolution of the related federal lawsuit.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: November 5, 2019

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Paul James; Jennifer Merritt
Cc:	Greg Downs; "tmays@maysbyrdlaw.com"; "Andrew Clarke"
Subject:	ORDER: Braun v. ASP, Perry v. ASP
Date:	Tuesday, November 5, 2019 12:41:00 PM
Attachments:	Braun v. ASP, Perry v. ASP -- order re consolidation and abeyance.pdf image001.jpg image002.png image003.png image004.png image005.png image006.png image007.png

Counselors,

Attached please find an order entered by the Claims Commission today consolidating the *Braun* and *Perry* claims and placing both in abeyance pending resolution of the underlying federal case.

Thanks,
Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Paul James <pjj@jamescarterlaw.com>
Sent: Monday, November 4, 2019 4:12 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Greg Downs <greg.downs@asp.arkansas.gov>; 'tmays@maysbyrdlaw.com' <tmays@maysbyrdlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>
Subject: RE: Perry v. Arkansas State Police, Claim No. 200290

Ms. Irby,

This afternoon, I left a message at your office. Mr. Clarke and I will not file an objection to consolidation.

Thank you.

PAUL J. JAMES

500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
(501) 607-4090 – Cell
(501) 372-1659 - Facsimile
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From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, October 28, 2019 1:06 PM
To: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Greg Downs <greg.downs@asp.arkansas.gov>; 'tmays@maysbyrdlaw.com' <tmays@maysbyrdlaw.com>; Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>
Subject: RE: Perry v. Arkansas State Police, Claim No. 200290

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Ms. Merritt and Ms. Mays-O'Guinn, barring any objection, these claims will be consolidated, and the *Perry* claim will also be placed in abeyance.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
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Cc: Greg Downs <greg.downs@asp.arkansas.gov>; 'tmays@maysbyrdlaw.com' <tmays@maysbyrdlaw.com>; Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>

Subject: Perry v. Arkansas State Police, Claim No. 200290

Director Irby:

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Thank you for your attention to this matter. If you or the Commission should have any questions, please contact me.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
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jennifer.merritt@arkansasag.gov |ArkansasAG.gov



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From: Tiffany Mays O"Guinn
To: Jennifer Merritt
Cc: Kathryn Irby; Greg Downs; Paul James; Andrew Clarke
Subject: Re: Perry v. Arkansas State Police, Claim No. 200290
Date: Friday, May 22, 2020 11:44:48 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png

Thanks so much.

Tiffany Mays O'Guinn, Esq.

MAYS, BYRD & ASSOCIATES, P.A.

CENTRE PLACE

212 Center Street, 7th Floor

Little Rock, Arkansas 72201-3801

tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529

www.maysbyrdlaw.com

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On Fri, May 22, 2020 at 11:43 AM Jennifer Merritt <jennifer.merritt@arkansasag.gov> wrote:

> Ms. O'Guinn,
>
> The appeal was fully briefed in early February and has been screened for oral argument at Ms. Braun's request. No oral argument has been scheduled yet.
>
> Thanks,
> Jennifer
>
> **Jennifer L. Merritt**

Senior Assistant Attorney General

Office of Arkansas Attorney General Leslie Rutledge

From: Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>
Sent: Friday, May 22, 2020 11:35 AM
To: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Greg Downs <greg.downs@asp.arkansas.gov>; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Subject: Re: Perry v. Arkansas State Police, Claim No. 200290

Counsel

Can you provide us with a status of the Federal Court appeal for the Braun estate?

Tiffany Mays O'Guinn, Esq.

MAYS, BYRD & ASSOCIATES, P.A.

CENTRE PLACE

212 Center Street, 7th Floor

Little Rock, Arkansas 72201-3801

tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529

www.maysbyrdlaw.com

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On Mon, Oct 28, 2019 at 10:34 AM Jennifer Merritt <jennifer.merritt@arkansasag.gov> wrote:

> Director Irby:

I represent the Arkansas State Police in the above-referenced claim. Please find attached an Answer to the Complaint. In the ASP's answer, we request that this claim be consolidated with the related *Braun* claim—both claims arise out of the same car accident and involve many of the same facts, witnesses, and issues—and held in abeyance pending the resolution of the federal litigation in *Braun.* I have conferred with the claimant's counsel, Ms. Mays-O'Guinn, and she did not raise any objection to this request. I have also copied the Claimant's attorneys in the *Braun* matter so that they are aware of this request.

Thank you for your attention to this matter. If you or the Commission should have any questions, please contact me.

Kind regards,

Jennifer L. Merritt

Senior Assistant Attorney General

Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200

Little Rock, Arkansas 72201

Office: 501.682.1319 | Fax: 501.682.2591

jennifer.merritt@arkansasag.gov | ArkansasAG.gov



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From: Andrew Clarke
To: Tiffany Mays O"Guinn
Cc: Jennifer Merritt; Kathryn Irby; Greg Downs; Paul James
Subject: Re: Perry v. Arkansas State Police, Claim No. 200290
Date: Friday, May 22, 2020 12:50:50 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png

Ms O'Guinn:

The case has been briefed and we are waiting for the setting of Oral Argument. So case is still pending.

Andy Clarke

Sent from my iPad

On May 22, 2020, at 11:34 AM, Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com> wrote:

> Counsel
>
> Can you provide us with a status of the Federal Court appeal for the Braun estate?
>
> Tiffany Mays O'Guinn, Esq.
>
> **MAYS, BYRD & ASSOCIATES, P.A.**
>
> CENTRE PLACE
>
> 212 Center Street, 7th Floor
>
> Little Rock, Arkansas 72201-3801
>
> tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529
>
> www.maysbyrdlaw.com
>
> ---
>
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On Mon, Oct 28, 2019 at 10:34 AM Jennifer Merritt <jennifer.merritt@arkansasag.gov> wrote:

> Director Irby:
>
> I represent the Arkansas State Police in the above-referenced claim. Please find attached an Answer to the Complaint. In the ASP's answer, we request that this claim be consolidated with the related *Braun* claim—both claims arise out of the same car accident and involve many of the same facts, witnesses, and issues—and held in abeyance pending the resolution of the federal litigation in *Braun.* I have conferred with the claimant's counsel, Ms. Mays-O'Guinn, and she did not raise any objection to this request. I have also copied the Claimant's attorneys in the *Braun* matter so that they are aware of this request.

Thank you for your attention to this matter. If you or the Commission should have any questions, please contact me.

Kind regards,

Jennifer L. Merritt

Senior Assistant Attorney General

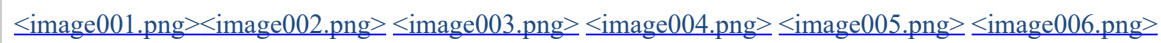
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200

Little Rock, Arkansas 72201

Office: 501.682.1319 | Fax: 501.682.2591

jennifer.merritt@arkansasag.gov | ArkansasAG.gov



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ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

August 31, 2020

Mr. Paul J. James (*via email only*)
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

Mr. Andy Clarke (*via email only*)
Law Offices of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119

Ms. Tiffany Mays-O'Guinn (*via email only*)
Mays, Byrd & Associates, P.A.
212 Center Street
Little Rock, Arkansas 72201

Re: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police***
Claim No. 190497

Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police
Claim No. 200290

Dear Counselors,

The above-styled claims have been held in abeyance for an extended period of time. Please notify this office in writing by Thursday, October 1, 2020, whether the underlying lawsuit has been resolved, such that these claims may proceed. If the Claims Commission does not receive a timely response, these claims will be dismissed by the Claims Commission for failure to prosecute.

Sincerely,

Kathryn Irby

ES: msscott

cc: Jennifer Merritt, *counsel for Respondent*

From: Cydni Arterbury
To: Kathryn Irby
Cc: Paul James; Andrew Clarke; jennifer.merritt@arkansasag.gov; tmays@maysbyrdlaw.com
Subject: Braun v. Arkansas State Police - Claim No. 190497
Date: Monday, August 31, 2020 3:04:40 PM
Attachments: image001.gif
image002.jpg
2020 08 31 Ltr.Kathryn Irby.pdf

Ms. Irby:

Please see attached correspondence of today's date from Paul James.

Thank you.

Cydni Arterbury



Legal Assistant to Paul J. James
JAMes & CAr Ter , PLC
500 Broadway, s uite 400
Little r ock, Ar 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

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JAMES & CARTER P.L.C.
Attorneys at Law

PAUL J. JAMES
pjj@jamescarterlaw.com
Direct Dial: 501.492.3870

Arvest Bank Building
500 Broadway, Suite 400, Little Rock, Arkansas 72201
Telephone 501.372.1414 Facsimile 501.372.1659
www.jamescarterlaw.com

U.S. Mail:
Post Office Box 907
Little Rock, AR 72203-0907

August 31, 2020

Via Electronic Mail

Ms. Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue Suite 410
Little Rock, AR 72201-3823

RE: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun v. Arkansas State Police*** - Claim No. 190497

Dear Ms. Irby:

Thank you for your correspondence today regarding the above claim.

This claim has been held in abeyance because of the 42 U.S.C. § 1983 civil rights lawsuit that was filed May 18, 2018 in United States District Court. That proceeding is styled *Lori Braun for the Estate of Cassandra Braun v. Ray Burke et al.* USDC, Eastern Arkansas District, Case No. 4:18-cv-334-BRW. The case is presently on appeal to the Eighth Circuit Court of Appeals, *Lori Braun v. Brian Burke, et al,* Case No. 19-2961. The Oral Arguments are scheduled for September 22, 2020.

While the U.S. District Court and Arkansas Claims Commission proceedings are distinct in regard to the underlying causes of action, they involve similar facts and much of the discovery being conducted in the United States District Court proceeding will also be used in the Arkansas Claims Commission proceeding. The Respondent requested that this matter be held in abeyance until the United States District Court matter was concluded. We did not object. We do not have an objection to the Arkansas Claims Commission continuing to hold this matter in abeyance until resolution of the United States District Court proceeding.

I have copied Deputy Attorney General Jennifer L. Merritt who has entered an appearance in both the United States District Court proceeding and this proceeding. In addition, I am including Tiffany Mays-O'Guinn, who is representing the Estate of Tavon Jenkins.

If we can provide additional information, please do not hesitate to let me know.

Thank you.

Sincerely,
JAMES & CARTER, PLC

Paul J. James

PJJ/ca
cc: Ms. Jennifer L. Merritt, via electronic mail
Mr. Andy Clarke, via electronic mail
Ms. Tiffany Mays-O'Guinn, via electronic mail

From:	Jennifer Merritt
To:	Cydni Arterbury; Kathryn Irby
Cc:	Paul James; Andrew Clarke; tmays@maysbyrdlaw.com
Subject:	RE: Braun v. Arkansas State Police - Claim No. 190497
Date:	Monday, August 31, 2020 5:00:27 PM
Attachments:	image003.gif image001.jpg

Ms. Irby:

The Arkansas State Police agrees that the Commission should continue to hold these claims in abeyance during the pendency of the elated federal civil rights lawsuit filed by these Claimants against Colonel Bill Bryant, in his official capacity as Director of the Arkansas State Police. The federal civil rights lawsuit is, in effect, a claim against the Arkansas State Police, and it arises out of the same facts and circumstances as these claims. One of the Claimants here has appealed the district court's grant of summary judgment in favor of the defendants in the federal case, and the matter is set for oral argument before the United States Court of Appeals for the Eighth Circuit on September 22, 2020. Respondent respectfully requests that these claims remain in abeyance until the judgment in the federal case is final.

Would it be possible for the Commission to enter an order formally staying these matters during the pendency of the federal lawsuit? Perhaps it could direct the Claimants to file a copy of the final judgment in the federal case as a means to alert the Commission as to when the stay can be lifted? Just a thought.

We appreciate your assistance with regard to this matter. If you or the Commission should have any questions, we will be very happy to respond.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

From: Cydni Arterbury <CA@jamescarterlaw.com>
Sent: Monday, August 31, 2020 3:04 PM
To: Kathryn.Irby@arkansas.gov
Cc: Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Jennifer Merritt <jennifer.merritt@arkansasag.gov>; tmays@maysbyrdlaw.com
Subject: Braun v. Arkansas State Police - Claim No. 190497

Ms. Irby:

Please see attached correspondence of today's date from Paul James.

Thank you.

Cydni Arterbury



Legal Assistant to Paul J. James
JAMes & CAr Ter , PLC
500 Broadway, s uite 400
Little r ock, Ar 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

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From:	Kathryn Irby
To:	Jennifer Merritt; Cydni Arterbury
Cc:	Paul James; Andrew Clarke; tmays@maysbyrdlaw.com
Subject:	RE: Braun v. Arkansas State Police - Claim No. 190497
Date:	Thursday, September 3, 2020 12:54:00 PM
Attachments:	image002.gif image004.jpg

Counselors, thank you for this information. The Claims Commission will keep this matter in abeyance. It is the Claims Commission's practice to do a status check on claims in abeyance once per year to make sure the abeyance should be continued. You'd be amazed at how many underlying lawsuits are resolved with the Claims Commission claim left out there until the abeyance letter goes out!

Assuming that the federal lawsuit is still pending next fall, you'll all probably get a similar letter then. Appreciate your quick responses. Let me know if there are any questions.

Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Sent: Monday, August 31, 2020 5:00 PM
To: Cydni Arterbury <ca@jamescarterlaw.com>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; tmays@maysbyrdlaw.com
Subject: RE: Braun v. Arkansas State Police - Claim No. 190497

Ms. Irby:

The Arkansas State Police agrees that the Commission should continue to hold these claims in abeyance during the pendency of the elated federal civil rights lawsuit filed by these Claimants against Colonel Bill Bryant, in his official capacity as Director of the Arkansas State Police. The federal civil rights lawsuit is, in effect, a claim against the Arkansas State Police, and it arises out of the same facts and circumstances as these claims. One of the Claimants here has appealed the district court's grant of summary judgment in favor of the defendants in the federal case, and the matter is set for oral argument before the United States Court of Appeals for the Eighth Circuit on September 22, 2020. Respondent respectfully requests that these claims remain in abeyance until the judgment in the federal case is final.

Would it be possible for the Commission to enter an order formally staying these matters during the

pendency of the federal lawsuit? Perhaps it could direct the Claimants to file a copy of the final judgment in the federal case as a means to alert the Commission as to when the stay can be lifted? Just a thought.

We appreciate your assistance with regard to this matter. If you or the Commission should have any questions, we will be very happy to respond.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

From: Cydni Arterbury <CA@jamescarterlaw.com>
Sent: Monday, August 31, 2020 3:04 PM
To: Kathryn.Irby@arkansas.gov
Cc: Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Jennifer Merritt <jennifer.merritt@arkansasag.gov>; tmays@maysbyrdlaw.com
Subject: Braun v. Arkansas State Police - Claim No. 190497

Ms. Irby:

Please see attached correspondence of today's date from Paul James.

Thank you.

Cydni Arterbury

Legal Assistant to Paul J. James
JAMES & CARTER, PLC
500 Broadway, suite 400
Little rock, AR 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

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From:	Tiffany Mays O"Guinn
To:	ASCC Pleadings; Kathryn Irby
Cc:	Jennifer Merritt; Shirley Williams; Lorenzo Williams; Tina Peraino
Subject:	Claim No. 200290 Lavon Perry, Administrator for Tavon Jenkins, Deceased
Date:	Thursday, October 1, 2020 9:58:35 PM
Attachments:	Perry.Lavon.ltr to ASC re Stay.pdf

Mrs. Irby

I just wanted to confirm that the Arkansas Claims Commission received our request for the matter referenced above to remain in abeyance. I did receive a confirmation for the similar action Claim No, 190497 but I did not see our claim number 200290 refencered in the confirmation email. Thus, please see attached our request in writing. Should you have any questions or concerns, please do not hesitate to contact me.

Thanks in advance. Please confirm your receipt of this email and correspondence.

Tiffany Mays O'Guinn, Esq.

MAYS, BYRD & ASSOCIATES, P.A.

CENTRE PLACE

212 Center Street, 7th Floor

Little Rock, Arkansas 72201-3801

tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529

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MAYS BYRD & ASSOCIATES, P.A.

September 30, 2020

Via Facsimile to (501) 682-2823 &
Via Email to ASCCPleadings@arkansas.gov and
Kathryn.Irby@arkansas.gov

Mrs. Kathryn Irby
Director
Arkansas Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201-3823

RE: Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 200290

Dear Mrs. Irby:

Pursuant to your correspondence dated August 31, 2020, please accept this as our response to your October 1, 2020, deadline. As the other parties have requested, we are also requesting that these claims remain in abeyance during the pendency of the federal civil rights lawsuit presently before the United States Court of Appeals for the Eight Circuit. Our client, Mrs. Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased, also has an interest in this appeal and the decision in the said matter Is relevant to our ability to move forward in this matter presently before the Arkansas Claims Commission. With that being said, we would again request that the above-referenced matter stay in abeyance until said the federal appeal may be heard and decided. Should you have any further questions or concerns, please do not hesitate to contact our office.

Thank you for your time and cooperation.

Sincerely,

MAYS, BYRD & ASSOCIATES, P.A.

Tiffany Mays O'Guinn

Cc: Attorney Lorenzo Williams (via email only)

CENTRE PLACE
212 CENTER ST • 7TH FLOOR
LITTLE ROCK, AR 72201

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501.399.9280

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RICHARD L. MAYS, SR.* RMAYS@MAYSBYRDLAW.COM
ARKIE BYRD ABYRD@MAYSBYRDLAW.COM
TIFFANY MAYS O'GUINN** TMAYS@MAYSBYRDLAW.COM
RICHARD L. MAYS, JR. (OF COUNSEL) RMAYSJRPLLC@GMAIL.COM

ALSO LICENSED IN WASHINGTON, D.C. ALSO LICENSED IN TEXAS

From:	Kathryn Irby
To:	"Tiffany Mays O"Guinn"; ASCC Pleadings
Cc:	Jennifer Merritt; Shirley Williams; Lorenzo Williams; Tina Peraino
Subject:	RE: Claim No. 200290 Lavon Perry, Administrator for Tavon Jenkins, Deceased
Date:	Friday, October 2, 2020 9:54:00 AM

Ms. O'Guinn, we will continue to hold this claim in abeyance. Thank you for your email.

Kathryn Irby

From: Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>
Sent: Thursday, October 1, 2020 9:58 PM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Jennifer Merritt <jennifer.merritt@arkansasag.gov>; Shirley Williams <swilliams@maysbyrdlaw.com>; Lorenzo Williams <lw@williegary.com>; Tina Peraino <tcp@williegary.com>
Subject: Claim No. 200290 Lavon Perry, Administrator for Tavon Jenkins, Deceased

Mrs. Irby

I just wanted to confirm that the Arkansas Claims Commission received our request for the matter referenced above to remain in abeyance. I did receive a confirmation for the similar action Claim No, 190497 but I did not see our claim number 200290 refencered in the confirmation email. Thus, please see attached our request in writing. Should you have any questions or concerns, please do not hesitate to contact me.

Thanks in advance. Please confirm your receipt of this email and correspondence.

Tiffany Mays O'Guinn, Esq.

MAYS, BYRD & ASSOCIATES, P.A.

CENTRE PLACE

212 Center Street, 7th Floor

Little Rock, Arkansas 72201-3801

tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529

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From:	Misty Scott on behalf of ASCC Pleadings
To:	pjames@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com; tmays@maysbyrdlaw.com; Jennifer Merritt
Cc:	Cydni Arterbury; ASCC Pleadings; Kathryn Irby
Subject:	CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290
Date:	Tuesday, September 21, 2021 3:08:01 PM
Attachments:	Lori Braun and Lavon Perry v. ASP .pdf

Dear Counselors:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

September 21, 2021

Mr. Paul J. James (*via email*)
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

Mr. Andy Clarke (*via email*)
Law Offices of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119

Ms. Tiffany Mays-O'Guinn (*via email*)
Mays, Byrd & Associates, P.A.
212 Center Street
Little Rock, Arkansas 72201

Re: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police***
Claim No. 190497

Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police
Claim No. 200290

Dear Counselors,

The above-styled claims have been held in abeyance for an extended period of time. Please notify this office in writing by Friday, October 21, 2021, whether the underlying lawsuit has been resolved, such that these claims may proceed. If the Claims Commission does not receive a timely response, these claims will be dismissed by the Claims Commission for failure to prosecute.

Sincerely,

Kathryn Irby

ES: msscott

cc: Jennifer L. Merritt, *counsel for Respondent* (via email)

From:	Andrew Clarke
To:	ASCC Pleadings; pjames@jamescarterlaw.com; tmays@maysbyrdlaw.com; Jennifer Merritt
Cc:	Cydni Arterbury; Kathryn Irby
Subject:	RE: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290
Date:	Tuesday, September 21, 2021 3:14:49 PM

Ms. Scott:

I represent the Plaintiffs in the Braun case. This case is presently on appeal before the United States Supreme Court. Therefore, the underlying federal lawsuit has not been resolved and is still pending. Please advise is there is anything that needs to be done in response to Ms. Irby's request. Thank you.

Andrew C. Clarke
The Cochran Firm - Midsouth
One Commerce Square
Suite 1700
Memphis, Tennessee 38103
(o)(901) 523-1222
(f) (901) 523-1999
(d)(901) 415-1142
(c) (901) 351-5446
aclarke@cochranfirmmidsouth.com

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- **Nothing contained in this message or in any attachment shall constitute a contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions.**
- **IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.**

From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Tuesday, September 21, 2021 3:08 PM
To: pjames@jamescarterlaw.com; Andrew Clarke <aclarke@cochranfirmmidsouth.com>;

tmays@maysbyrdlaw.com; Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Cydni Arterbury <ca@jamescarterlaw.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Subject: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290

Dear Counselors:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

From:	Kathryn Irby
To:	Andrew Clarke; ASCC Pleadings; pjames@jamescarterlaw.com; tmays@maysbyrdlaw.com; Jennifer Merritt
Cc:	Cydni Arterbury
Subject:	RE: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290
Date:	Friday, September 24, 2021 11:03:00 AM

Mr. Clarke, thank you for this information. This claim will continue to be held in abeyance.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Sent: Tuesday, September 21, 2021 3:15 PM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>; pjames@jamescarterlaw.com; tmays@maysbyrdlaw.com; Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Cc: Cydni Arterbury <ca@jamescarterlaw.com>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Subject: RE: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290

Ms. Scott:

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aclarke@cochranfirmmidsouth.com

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Cc: Cydni Arterbury <ca@jamescarterlaw.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
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Dear Counselors:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

From:	Paul James
To:	Kathryn Irby; Andrew Clarke; ASCC Pleadings; tmays@maysbyrdlaw.com; Jennifer Merritt
Cc:	Cydni Arterbury
Subject:	RE: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290
Date:	Friday, October 22, 2021 9:43:19 AM
Attachments:	image001.jpg

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Thank you, again, for your patience in allowing us to pursue that aspect of the Braun claim.

Paul J. James

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Little Rock, AR 72201
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(501) 607-4090 – Cell
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www.jamescarterlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Friday, September 24, 2021 11:04 AM
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Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission

101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Andrew Clarke <aclarke@cochranfirmmidsouth.com>
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Dear Counselors:

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Misty Scott
Arkansas State Claims Commission

From:	tmays@maysbyrdlaw.com
To:	Paul James
Cc:	Kathryn Irby; Andrew Clarke; ASCC Pleadings; Jennifer Merritt; Cydni Arterbury
Subject:	Re: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. ASP, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. ASP, Claim No. 200290
Date:	Friday, October 22, 2021 10:15:34 AM

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On behalf of the estate of Tavon Jenkins we are in agreement with Attorney James that our case no longer needs to stay in abeyance. With that being said, there may be some discovery from our side that needs to be conducted so we would ask that we reserve the opportunity to conduct that discovery although there may be quite a bit already completed by the Braun estate. Please confirm receipt of this email and we will proceed accordingly.

Thanks for your time and cooperation.

Sent from my iPhone

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Date:	Friday, October 22, 2021 10:30:00 AM

I confirm receipt of Mr. James' and Ms. Mays' emails. Barring any objection, I will place these claims into a discovery status to allow the parties to complete any remaining discovery.

Kathryn Irby

From: tmays@maysbyrdlaw.com <tmays@maysbyrdlaw.com>
Sent: Friday, October 22, 2021 10:15 AM
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Cc: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Jennifer Merritt <jennifer.merritt@arkansasag.gov>; Cydni Arterbury <ca@jamescarterlaw.com>
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Dear Counselors:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

Arkansas
State Claims Commission
DEC 17 2021
RECEIVED

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Claimant, Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased, pursuant to Rule 56 of the Arkansas Rules of Civil Procedure, for her Motion for Partial Summary Judgment Regarding Causation, states as follows:

1. This is a negligence claim arising out of an October 10, 2016 collision between a 2016 State Police Dodge Charger being driven by Arkansas State Trooper Brian Burke and a 2011 Chevrolet Malibu in which Cassandra Braun was a passenger.

2. The collision occurred on U.S. Highway 70/Airport Road at the Klienshore Road intersection in Hot Springs, Garland County, Arkansas.

3. The driver of the Chevrolet Malibu was westbound in the center turn lane of U.S. Highway 70/Airport Road and in the process of making a left-hand turn onto Klienshore Road.

4. Trooper Burke was traveling east on U.S. Highway 70/Airport Road at a speed of 113 miles per hour five (5) seconds before the impact and 98 miles per hour at the time of impact.

5. Respondent admits that Trooper Burke was driving in a negligent and reckless manner.

6. Trooper Burke was an employee of Respondent and driving its vehicle. The facts are uncontested that Trooper Burke was acting within the course and scope of his employment. Trooper Burke's actions are attributable to the Respondent, as a matter of law.

7. Respondent cannot rebut Claimant's case on negligence and causation because Matthew Jackson of Jackson Reconstruction, Inc. has provided unrebutted opinions that the Malibu would have cleared the intersection had Trooper Burke been traveling the 45 miles per hour speed limit or 15 miles per hour over the 45 miles per hour speed limit.

8. Respondent has asserted the defense of comparative fault and contributory negligence in its responsive answers. However, the facts are uncontested that Cassandra Braun's nonuse of her seatbelt did not contribute to her fatal injury.

9. It is undisputed that Trooper Burke was not responding to an emergency and, therefore, was not performing a discretionary law enforcement function by driving at excessive speeds in violation of the speed limits without utilizing his lights and sirens.

10. Further, Trooper Burke was negligent because he was not responding to an emergency and not performing a discretionary law enforcement function when he was driving at excessive speeds without his emergency rotational blue lights or siren engaged.

11. Respondent Arkansas State Police's policy allowing officers to exceed the speed limit in non-emergency situations without activating emergency rotating blue lights and siren constitutes direct negligence as a matter of law.

12. Claimant is entitled to partial summary judgment because there are no genuine issues of material fact in regards to the issues of negligence, agency, and proximate causation.

13. In support of this Motion, attached are Exhibits as follows:

Exhibit A – Trooper Brian Burke's dash cam video;
Exhibit B – Matthew Jackson's Rule 26 Report;
Exhibit C – Trooper Brian Burke's Responses to Plaintiff's Requests for Admission;
Exhibit D – Dr. Kris Sperry's Report;
Exhibit E – Colonel Bill Bryant's Responses to Plaintiff's Requests for Admission;
Exhibit F – Report of Dr. Geoffrey P. Alpert ; and
Exhibit G – Deposition of Greg Downs.

WHEREFORE, PREMISES CONSIDERED, Claimant prays her Motion for Partial Summary Judgment be granted and for all such relief to which she may be entitled.

RESPECTFULLY SUBMITTED,

Paul J. James (Ark. Bar 83091)
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, Arkansas, 72201
(501) 372-1414 (Telephone)
(501) 372-1659 (Facsimile)
pjj@jamescarterlaw.com

ANDREW C. CLARKE (Ark. Bar 95070)
THE COCHRAN FIRM - MIDSOUTH
One Commerce Square, Suite 1700
Memphis, TN 38103
(901) 523-1222 (Telephone)
(901) 523-1999 (Facsimile)
aclarke@cochranfirmmidsouth.com

CERTIFICATE OF SERVICE

I, Paul J. James, on this 17th day of December 2021, hereby certify that a true and correct copy of the foregoing was served via electronic mail and/or hand delivery to the following:

Arkansas Claims Commission
101 E. Capitol Ave., #410
Little Rock, AR 72201
Via Hand Delivery

Jennifer Merritt
Senior Assistant Attorney General
Catlett-Prien Tower Building
323 Center Street, Suite 200
Little Rock, AR 72201-2610
jennifer.merritt@arkansasag.gov
Via Electronic Mail

Attorney for Arkansas State Police

Tiffany Mays O'Guinn
MAYS, BYRD & ASSOCIATES, P.A.
Centre Place
212 Center Street, 7th Floor
Little Rock, AR 72201-3801
tmays@maysbyrdlaw.com
Via Electronic Mail

Attorney for Tavon Jenkins

Paul J. James

IN THE ARKANSAS CLAIMS COMMISSION

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State Claims Commission
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vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

BRIEF IN SUPPORT OF PARTIAL SUMMARY JUDGMENT

Introduction

On October 10, 2016, Cassandra Braun was a passenger in a Chevrolet Malibu driven by her friend, Tavon Jenkins. Ms. Braun was recently transferred from Florida by Buffalo Wild Wings to supervise and manage its newly constructed restaurant in Hot Springs, Arkansas. She was fatally injured when Respondent's employee collided with the Malibu. In this proceeding, Respondent admits that Trooper Burke driving in a negligent or reckless manner.

Immediately prior to the collision, Mr. Jenkins was westbound in the center turn lane on Highway 70 in Hot Springs, Arkansas. While making a left-hand turn onto Klienshore Road, the Malibu was struck by an Arkansas State Police Dodge Charger driven by Trooper Brian Ray Burke. Ms. Cassandra Braun died as a result of the crush of the passenger compartment of the Malibu. Trooper Burke was driving the Charger at a speed of 113 miles per hour five (5) seconds before impact and was traveling 98 miles per hour at the time of impact in the intersection. The speed limit for eastbound traffic at the intersection was 45 miles per hour. At the time of the crash, Trooper Burke claimed to be attempting to locate another unidentified driver in an unidentified vehicle. The unidentified vehicle had passed Burke's vehicle as he was on the side of the road involved in another unrelated traffic stop. The basis for his attempt to locate the unidentified driver was the vehicle may have been speeding and its hazard flashers were engaged. Trooper Burke did not start looking for this unidentified vehicle until Trooper Burke walked to his Charger (1 minute and 12 seconds had lapsed). By that time the unidentified vehicle was not in sight, there was no emergency situation. This was neither an emergency pursuit nor emergency response. However, pursuant to the Arkansas State Police's policy, Trooper Burke got in the Charger and was speeding in an effort to catch up to the unidentified vehicle. While driving at extremely high rates of speed reaching 117 miles per hour, Trooper Burke was not utilizing his siren or emergency rotating blue lights.

This matter was also the subject of a federal civil rights lawsuit styled *Estate of Braun v. Burke and Bryant, United States District Court, Eastern District of*

Arkansas, Western Division, Case No. 4:18-cv-00334-BRW. The Court ruled that, i order to prevail in that lawsuit, the Estate's legal burden was to prove Trooper Burke "intended to kill" Ms. Braun. Her Estate did not meet this burden in that proceeding. In this proceeding, the legal standard is a significantly less—Claimant only has the burden to prove that Respondent or its employee was negligent, reckless or in willful disregard to injuries to Claimants Lori Braun and Lavon Perry.

The Respondent has already admitted that its employee was negligent while driving its vehicle. (Ans. ¶4). Lori Braun agrees that the Respondent's employee was negligent and reckless and also contends that there are no contested issues of fact in regard to proximate cause and comparative fault and that the Commission should enter a partial summary judgment in regard to liability and set this matter for a hearing on damages.

Summary Judgment Standard

Arkansas courts no longer view summary judgment as a drastic remedy, instead viewing it as one of many tools available to efficiently decide claims. *Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc.*, 365 Ark. 573, 576, 231 S.W.3d 720, 723 (2006). Summary judgment is granted when there "are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law." *Id.* The purpose of a summary judgment motion is to decide whether any factual issues exist warranting a full trial. *City of Barling v. Ft. Chaffee Redevelopment Auth.*, 347 Ark. 105, 112, 60 S.W.3d 443, 446 (2001). Once a moving

party has established a *prima facie* entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Stokes v. Stokes*, 2016 Ark. 182, 8, 491 S.W.3d 113, 120.

Finally, while proximate causation is usually a question of fact for the jury, where reasonable minds cannot differ a question of law is presented for determination by the Court. *Cragar v. Jones,* 280 Ark. 549, 660 S.W. 2d. 168 (1983).

Relevant Facts and Testimony

As set forth above, in its response to this claim, the Respondent admits that its employee was driving in a negligent, reckless and willful manner. It specifically alleges an affirmative defense as follows:

> "Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in a willfully reckless or negligent manner in violation of Respondent's policies and procedures. Mr. Burke acted outside the scope of his authority as an Arkansas State Police Trooper and his conduct should not be imputed to the Arkansas State Police."

(Answer ¶4)

A copy of the video footage of Trooper Burke's driving leading up to the collision is designated as **Exhibit A.** The video footage clearly supports the Respondent's admission that Trooper Burke drove in a negligent and reckless manner.

It is also uncontested that Trooper Burke was an employee driving the vehicle of his employer during the time of the collision. Burke was employed to make traffic stops in the State of Arkansas on February 18, 2018. He attempted to locate and apprehend a motorist on behalf of the Respondent, the Arkansas State Police. The

driving actions taken by Trooper Burke were not unexpected by the Respondent, the Arkansas State Police.

The Claimant has provided proof in the discovery process that the collision between the two vehicles would not have occurred if Trooper Burke had been driving the 45 miles per hour speed limit or within 15 miles per hour of the speed limit. The Claimant has designated accident reconstructionist Matthew Jackson as an expert in this matter. Mr. Jackson's opinions were provided to the Respondent on February 18, 2019. Respondent has not provided any factual proof or expert testimony that disputes Mr. Jackson's findings in his report.

In formulating his opinions, Mr. Jackson reviewed and evaluated photographs; physical measurements; vehicles; Arkansas Motor Vehicle Crash Report; Arkansas State Police Fatal Accident Report; Fatal Crash Summary; Hot Springs Police Department Officer DeFoor's crush measurements; barrier equivalent velocity and momentum calculations; Little Rock Police Department Officer Breshear's report; data recovered from the Charger's airbag control module; data recovered from the Malibu's airbag control module; Garland County Sheriff's radio log; total station log of Hot Springs Police Department Officer DeFoor and drawing; Hot Springs Police Department Officer report for incident 16L032154; Arkansas Crime Lab reports; video from the Charger, and police investigator scene and vehicle photographs. He also recreated the accident based upon three-dimensional computer modeling. **(Exhibit B, p. 2)**

Based upon accepted principles in the field of accident reconstruction, Mr.

Jackson arrived at several opinions in the report provided to Respondent. The opinions in pertinent part are as follows:

> ...
>
> **8. Had Trooper Burke's State police Charger been traveling the speed limit (45 mph) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.**
>
> The moment in time and the position on the highway that Trooper Burke's Charger became visible to Mr. Jenkins' position was considered and identified within the previously referred to and explained 3D analysis environment. Leaving all other aspects of the recreation the same, a similar Charger was modeled and positioned accordingly and at the same moment in animation time. This Charger, however, was assigned a speed of 45 mph, instead of 109 mph, and allowed to continue at this speed, maintaining the inside travel lane. This scenario found the Malibu, during its course of making a left turn onto Klienshore Road, clearing the Charger's travel lane with the Charger approx. 180 feet away from the would-be impact. Additionally, in this same scenario, the Malibu was able to fully complete its turn onto Klienshore Road with the Charger still approx. 135 feet from the would-be impact.
>
> **9. Had Trooper Burke's State Police Charger been traveling 60 mph (15 mph over the speed limit) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.**
>
> Following the same process set forth in the previous explanation, a similar Charger was modeled and positioned accordingly with a fixed speed set to 60 mph, 15 mph above the posted speed limit. This scenario found the Malibu, during its course of making a left turn onto Klienshore Road, clearing the Charger's travel lane with the Charger approx. 120 feet away from the would-be impact. Additionally, in this same scenario, the Malibu was able to fully complete its turn onto Klienshore Road with the Charger still approx. 70 feet from the would-be impact.
>
> ...
> **(Exhibit B, pp. 7-8)**

Trooper Burke has admitted that the event data recorder in the Charger recorded his

driving reached a speed of 117 miles per hour. 113 miles per hour five seconds prior to impact and 98 miles per hour at impact. **(Exhibit C, pp. 3 and 6, Res. 14, 27 and 29)** The Respondent has not provided evidence to contradict the fact regarding the speed of the Arkansas State Police vehicle or the fact the accident would not have occurred if Trooper Burke was driving within 15 miles per hour of the speed limit.

In addition, the Respondent raises the issue that Ms. Braun was not wearing a seatbelt. However, the fact that Ms. Braun may not have been wearing a seatbelt did not contribute to her death. The Claimant has provided expert opinions from a forensic pathologist with over 36 years' experience in investigating the cause of death including 18 years as the Chief Medical Examiner for the State of Georgia. In reviewing the Arkansas State Crime Laboratory file including the serology report and autopsy of Tavon Jenkins, the crime scene photographs, accident report, the "black box" reports, analytical reports, FOIA data, the Hot Springs Police Department report and video footage, Dr. Kris Sperry came to the conclusions as follows:

- Cassandra Braun died of crushing injuries of the head and neck with extensive skull, cervical spine and mandible fractures.
- The massive crushing skull and spine injuries occurred when the right front of the vehicle in which she was a passenger (the Malibu) massively intruded into the passenger compartment, after which she was ejected from the vehicle.
- There is no evidence of severe, confluent, "brush-burn" abrasions on Ms. Braun's body surfaces, nor of abrasive damage to her clothes.
- Cassandra Braun's fatal head and neck injuries occurred as the direct result of the impact between the two vehicles and subsequent intrusion into the passenger compartment, and did not occur as the consequence of her body being subsequently

ejected from the Malibu after the impact.

- The analytical evidence indicates that Ms. Braun was not wearing her seatbelt at the moment of impact between the two vehicles. However, the lethal crushing head and neck injuries were sustained from the passenger compartment intrusion by the right front portion of the Malibu, which were massively displaced from the impact. Therefore, Cassandra Braun would have died of these injuries even if the seatbelt had been deployed and she had been belted within the passenger seat.

The Respondent has not produced any factual evidence to dispute Dr. Sperry's findings. **(Exhibit D, p. 3)**

Finally, the Arkansas State Police and Trooper Burke admit that Trooper Burke was not responding to an emergency. **(Exhibit C, p. 12, Res. 64) (Exhibit E, p. 13, Res. 64)** He was driving at an excessive rate of speed without his emergency rotating blue lights or siren engaged.

Also, the facts are uncontested that Trooper Burke was acting in accordance with the Arkansas State Police's policy. Dr. Geoffrey P. Alpert, Ph.D. is a professor of Criminology and Criminal Justice at the University of South Caroline with 30 years of experience in evaluating, formulating and advising agencies in regard to training, practice and policy. This experience includes an award of a grant to study emergency vehicles and police pursuits by the National Institute for Justice (the research arm for the U.S. Department of Justice). Dr. Alpert studied the testimony of witnesses and documents provided in the federal proceeding. His testimony includes opinions regarding the deficiencies of the Respondent's practice and policies. **(Exhibit F, pp. 37-43).** His opinions have not been rebutted and include the conclusion that Trooper Burke's actions were authorized and caused by Respondent's

policies, practices and customs with respect to emergency vehicle operations.

Finally, it is not factually disputed that the Respondent's policy exempted its troopers from posted speed limits when "on duty" **(Exhibit G, Downs Deposition 30:24)** and "on duty" means when the officer "checks 10-8". **(Exhibit G, Downs Deposition 31:1)**

Applicable Law and Argument

The Claimant contends in this proceeding that Trooper Burke's and the Respondent's conduct was negligent and resulted in the October 10, 2016 automobile collision. Claimant contends in this motion for partial summary judgment that the agency, negligence, and causation of the collision are not factual issues but are matters of law for the Commission to decide.

I. EMPLOYEE BURKE WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WITH RESPONDENT AND IT IS VICARIOUSCLY LIABLE FOR HIS ACTIONS AS A MATTER OF LAW.

Under the master-servant rule, the employer is responsible for the negligent acts of the employee who is acting within the scope of his employment. Respondent admits that Trooper Burke was an employee of Respondent. However, the Respondent alleges that it is not responsible for Trooper Burke's actions because he was acting outside the scope of this employment. The Respondent misunderstands Arkansas's long settled law regarding agency and scope of employment in its argument that it is not responsible for Trooper Burke's negligent, reckless, and willful misconduct. The determination of scope of employment depends on whether the employee is carrying out the object and purpose of the employment undertaking or whether he is acting

exclusively in his own interest. *J.B. Hunt Transport, Inc. v. Doss, 320 Ark. 660, 899 S.W. 2d 464 (1995).* See Arkansas Model Jury Instructions—Civil AMI 702, 703 (2022).

Trooper Burke was within the scope of his authority when the collision occurred and was performing an act in furtherance of the Respondent's business. Therefore, the Respondent is legally responsible for Trooper Burke's conduct. *Davis v. Kukar, 235 Ark. 139, 357 S.W. 2d 275 (1962).* It is not disputed that Trooper Burke's duties included pursuing traffic violators. It also uncontested that he was on duty, driving the Respondent's vehicle and in the process of chasing a potential violator when he collided with the car in which Ms. Braun was a passenger.

In Arkansas, the master may even be responsible for the willful and intentional acts of its employee that occurred within the scope of his employment. *Gordon v. Planters & Merchants Bancshares, Inc., 326 Ark. 1046, 935 S.W.2d. 544 (1996)* The master-servant rule has been applied when an employee was operating a motor vehicle under the influence of alcohol. *J.B. Hunt Transport, Inc. v. Doss, 320 Ark. 660, 899 S.W. 2d 464 (1995).* If the employee's conduct is not unexpectable, the conduct is imputed to the employer. See, *§ 228 General Statement, Restatement (Second) of Agency § 228 (1958)* which provides the forgoing general rule as follows:

(1) Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform,
(b) it occurs substantially within the authorized time and space limits,
(c) it is actuated, at least in part, by a purpose to serve the master, and
(d) if force is intentionally used by the servant against

another, the use of force is not unexpectable by the master.

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.

It is not unexpected that Arkansas State Troopers will drive at high rates of speed in pursuing traffic violators. It is uncontested that there are numerous incidents of wrecks involving Trooper driving at high rates of speed while pursuing traffic violators. Coincidentally, in the Arkansas Claims Commission matter *Estate of Freemyer v. Arkansas State Police,* this commission awarded $2.97 million dollars in compensation to an estate claiming damages when Arkansas State Trooper Andrew Rhew similarly on duty, driving at high rates of speed in an Arkansas State Police vehicle. Likewise, Trooper Rhew was pursuing a traffic violator without engaging the siren or flashing lights when he caused the collision with another vehicle resulting in fatal injuries to its driver. Trooper Rhew ultimately was criminally charged and found guilty of negligent homicide. Despite the forgoing, this Commission found the Respondent liable for Trooper Rhew's conduct. Therefore, the Respondent cannot now argue that the manner of Trooper Burke's driving in this case was unexpected. The Commission should grant summary judgment as a matter of law that Trooper Burke was within the scope of his authority when the fatal collision occurred.

II. IT IS UNCONTESTED THAT IF OFFICER BRYANT HAD BEEN DRIVING THE SPEED LIMIT (OR 15 MILES OVER THE SPEED LIMIT), THE MALIBU WOULD HAVE CLEARED THE INTERSECTION AND THERE WOULD NOT HAVE BEEN IN A CRASH.

In Arkansas, proximate cause is "defined as 'that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury, and without which the result would not have occurred.' " *City of Caddo Valley v. George*, 340 Ark. 203, 9 S.W.3d 481, 487 (2000) (quoting *Union Pac. R.R. v. Sharp*, 330 Ark. 174, 952 S.W.2d 658, 662 (1997)). Proximate cause encompasses two distinct aspects: cause in fact and legal cause. *See Chambers v. Stern,* 347 Ark. 395, 64 S.W.3d 737, 744 (2002) ("[A] plaintiff must show causation in fact and legal causation."), cert. *denied, 536 U.S. 940, 122 S.Ct. 2621, 153 L.Ed.2d 804 (2002).* Cause in fact addresses whether, as a matter of fact, an injury followed from a particular action. Legal cause addresses the separate issue of how far legal responsibility should extend for a party's actions. *See W. Keeton, Prosser & Keeton on Torts* § 41, at 264 (5th ed. 1984) ("As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability."). While proximate cause is generally a fact issue to be decided by a jury, it becomes a question of law for the court when reasonable minds could not differ. *Wilson v. Evans,* 284 Ark. 101, 679 S.W.2d 205, 206 (1984) (reversing jury verdict where there was no causal connection between two accidents occurring five months apart); *cf. Young v. Bryco Arms*, 213 Ill.2d 433, 290 Ill. Dec. 504, 821 N.E.2d 1078, 1086 (2004) ("[T]he lack of proximate cause may

be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause."). *Ashley County, Ark v. Pfizer Inc.*, 552 F. 3d 659 (2009)

While admittedly Trooper Burke's excessive speed is not causal merely because it placed his vehicle at the intersection at the same time as the Malibu, it is causal if the accident would not have occurred. *Blashfield Automobile Law and Practice, Fourth Edition* § 89:6, 89:7. Reasonable minds cannot differ regarding the uncontested fact that if Burke had been driving 60 miles per hour or less, the collision would not have occurred. Accident reconstructionist Wayne Jackson's analysis and opinion is that if Trooper Burke had been driving within 15 mph over the speed limit, the Claimants' vehicle would have cleared the intersection and no collision would have occurred. **(Exhibit B)** In other words, Trooper Burke's driving was the sole and proximate cause of the fatal collision.

Because there are no facts or evidence to contradict this conclusion, summary judgment should be granted on this issue of causation.

III. THE CLAIMANTS' CONDUCT DID NOT CONTIRBUTE TO THEIR FATAL INJURIES.

It is anticipated that Respondent will attempt to confuse this Commission on the issue of comparative fault in this proceeding. The Respondent has asserted the defense of comparative fault and contributory negligence in its responsive answers. **[Answer ¶5].** Cassandra Braun was a passenger in the vehicle and this defense is not applicable to her. Regardless, as set forth in Section II. above, this collision and the Claimants' deaths were the solely and proximately caused by Trooper Burke's

driving. While, admittedly, Ms. Braun was not wearing a seat belt, this fact is immaterial because it did not contribute to her death. Dr. Kris Sperry's opinions (**Exhibit D. p. 3**) are unrebutted regarding this issue.

Therefore, assuming that the Claimant's nonuse of her seat belt constituted a failure to exercise ordinary care for purposes of comparative fault, such nonuse is not "fault" for purposes of comparative negligence unless it proximately caused her damage. Under Arkansas law, "proximate cause" is "a cause which, in a natural and continuous sequence, produces damage and without which the damage would not have occurred." AMI 501, Arkansas Model Jury Instructions (Civil) (3d ed. 1989); *see also Collier v. Citizens Coach Co.*, 231 Ark. 489, 330 S.W.2d 74, 76 (1959). Thus, while the nonuse of a seat belt may constitute a proximate cause of injury if some or all of the damage sustained by the nonuser would not have occurred had the seat belt been worn, *Potts v. Benjamin 882 F.2d. 1320 (8th Cir 1989),* in this case it is uncontested that the non-use of seat belts did not contribute to Claimant Braun's injury. Dr. Sperry's unrebutted opinion is that that her fatal injury was a result of the intrusion of passenger compartment of the car and that she would have been killed regardless of whether she was belted in the passenger seat. (**Exhibit D, p. 3**) Because there are no material facts to contradict Dr. Sperry's opinions, summary judgment should also be granted on the issue of comparative fault.

IV. THE RESPONDENT'S TRAINING POLICY AND PROCEDURE OF ALLOWING ITS OFFICERS DISCRETION TO EXCEED THE SPEED LIMIT WITHOUT ENGAGING ITS SIREN AND ROTATING EMERGENCY LIGHTS CONSTITUTES DIRECT NEGLIGENCE AS A MATTER OF LAW.

At the time of the October 10, 2016 collision, the Respondent had a policy that allowed officers the discretion to operate in emergency status when there was no underlying emergency. At the time of the crash there was no Arkansas statutory authority for this policy.

Trooper Burke admits in his Response to Requests for Admissions as follows:

> **Request No 68:** On October 10, 2016, any ASP Trooper driving in excess of the speed limit while not on an "emergency call" or in "the immediate pursuit of an actual or suspected violator of the law" would be violating Arkansas state law.
>
> **Response:** Admit. At the time of the crash, Trooper Burke was in immediate pursuit of a speeding vehicle and was attempting to catch up to it and stop it.
>
> **Request No. 69:** Prior to October 10, 2016, any ASP Trooper driving in excess of the posted speed limits while not on an "emergency call" or "the immediate pursuit of an actual or suspected violator of the law" would be violating Arkansas state law.
>
> **Response:** Admit. At the time of the crash, Trooper Burke was in immediate pursuit of a speeding vehicle and was attempting to catch up to it and stop it.
>
> **Request No. 70:** Trooper Burke was trained by the ASP that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a person suspected of speeding before pulling the suspected speeder over for a traffic violation.
>
> **Response:** Admit.
>
> **(Exhibit C, pp. 13-14, Res. 68, 69 and 70)**

Trooper Burke further admits that his decision to drive without lights and

siren while driving at speeds in excess of the speed limit was the result of Respondent's established custom and practice. **(Exhibit B, p. 18, Res. 95)** and that his decision was intentional based on Officer Bryant's policy. **(Exhibit C, p. 19, Res. 97)**

Gregory Downs, the Arkansas State Police General Counsel, testified that the official Arkansas State Police policy is (both before and after the Braun collision) that: 1) the officer has the discretion 2) any time on duty 3) to run in an emergency status 4) without lights and siren 5) *even when there is no underlying legitimate emergency* and 6) with lack of "ordinary care" as the only criteria for finding fault with the officer.

Under the Arkansas law at the time of the crash, if there is no legitimate emergency, no emergency response driving was allowed. Ark. Code Ann. § 27-51-202, entitled "Restrictions not applicable to emergency vehicles," states:

> (a) The prima facie speed limitations set forth in this subchapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights and is also operating an audible signal by bell, siren, or exhaust whistle if other vehicles are present.
>
> (b) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any emergency vehicle from the consequence of a reckless disregard of the safety of others.
>
> (c) For purposes of this section, "emergency calls" means legitimate emergency situations which call for the operation of an emergency vehicle, including a police vehicle.

An authorized driver of an emergency response vehicle responding to an actual

emergency is exempt from rules of the road set forth in Ark. Code Ann. § 27-51-202 (a) & (b), such as the prima facie speed limits, but is still not exempt from the duty to drive with due regard for the safety of all persons using the street. The state standard is that there must be a legitimate emergency, plus lights, plus siren, plus due regard for the safety of others. In Arkansas, an emergency vehicle must have both lights and sirens engaged. Ark. Code Ann. § 27-37-202 & Ark. Code Ann. § 12-75-113 and Arkansas Model Jury Instructions AMI 913. AMI 913 provides as follows:

(1) [The *(ambulance)(fire truck)(police car)* driven by was an authorized emergency vehicle at the time and place of the occurrence,]

...

(2) [One issue you must decide is whether the *(ambulance)(fire truck)(police car)* was an authorized emergency vehicle at the time and place of the occurrence. If you find that was *(responding to an emergency call)(in the immediate pursuit of an actual or suspected law violator)* and was operating the *(siren) (bell) (whistle)* and *(red) (blue)* rotating or flashing emergency lights on the *(ambulance) (fire truck) (police car)* which *[he] [she]* was driving, then the *(ambulance) (fire truck) (police car)* was an authorized emergency vehicle,] and the driver was entitled to operate the vehicle in accordance with the following traffic law*(s)* applicable only to emergency vehicles:

(a) [The driver of an emergency vehicle is relieved of the obligation to obey a speed limit.]

(b) [The driver of an emergency vehicle is not required to stop at a stop *(light)(sign)* but must slow down as necessary for safety and may then proceed cautiously past the signal.]

(c) [The driver of an emergency vehicle is not required to stop at the type of railroad crossing involved in this case.]

(d) [An emergency vehicle has the right of way over other

> vehicles.] The existence of [*this*] [*these*] privilege(s) does not relieve the driver of an emergency vehicle of the duty to exercise ordinary care for the safety of others using the [*street] [highway].*

The driver of an emergency vehicle, when responding to an emergency with both lights and sirens engaged, may run red lights, stop signs, etc. Ark. Code Ann. § 27-49-109. Speed limits do not apply to emergency vehicles operating with both lights and sirens engaged. Ark. Code Ann. § 27-51-204. However, the driver of an authorized emergency response vehicle is nevertheless liable for damages caused if found to have acted in "reckless disregard." A driver of any emergency vehicle is not protected from the consequence of a reckless disregard of the safety of others. Ark. Code Ann. § 27-51-202 (a) & (b). The Arkansas Model Jury Instructions define "reckless disregard" as: "continuing such conduct that one knew or ought to have known, in the light of the surrounding circumstances, would naturally and probably result in injury or damages. Arkansas Model Jury Instructions AMI 2218.

Moreover, it is contested that training, policy and procedure caused this accident. Claimant's alleged negligence claims are based on the fact that the Arkansas State Police training policy practices & procedures were the proximate cause of the Claimant's alleged damages. *See Saine v. Comcast Cablevision of Ark., Inc.*, 354 Ark. 492, 497, 126 S.W.3d 339, 342 (2003). Proximate cause is defined as "that which in a natural and continuous sequence, unbroken by any efficient intervening cause produced injury, and without which the result would not have occurred." *See Union Pac. R.R. Co. v. Sharp*, 330 Ark. 174, 181, 952 S.W.2d 658, 662 (1997). The Arkansas State Police's acts and omissions were the proximate cause of

Claimant's damages, because some other course of conduct would have prevented this accident. *See Dodson v. Charter Behavior Health Sys. Of Nw. Ark., Inc.*, 335 Ark. 96, 107-08, 983 S.W.2d 98, 104 (1998). Claimant's evidence is uncontested and rises above mere speculation and conjecture. *Id.* at 108, 983 S.W.2d at 104. Claimant is entitled to judgement as a matter of law on Respondent's direct-negligence claims based on Spirit's purported lack of adequate policies and procedures.

There were some law changes in 2017 to Ark. Code Ann. § 27-51-204 but those changes did not change the law's requirement of an underlying emergency before an emergency vehicle can operate in emergency status. Other Arkansas law imposes the additional duty to engage emergency blue lights and siren when operating in emergency status.

In 2017, Ark. Code Ann. § 27-51-204 (2017) was modified to read:

> (a) The maximum speed limits posted under § 27-51-201 shall apply to all vehicles using the facility except authorized emergency vehicles on emergency trips, such as police vehicles on duty ...
>
> (b) This exemption shall not relieve any driver of an authorized emergency vehicle from his or her lawful responsibility to drive with due regard for the safety of all persons upon or using the highway facility, nor shall it protect the operator of any such vehicle from the consequence of a reckless disregard for the safety of others.

At the time of the Braun collision, Ark. Code Ann. § 27-51-204 read as follows:

> (a)(1) The State Highway Commission shall determine, based upon studies of the engineering and traffic characteristics thereof, the maximum and minimum desirable speeds for all traffic facilities in the state highway system.
>
> (1) These regulatory speeds shall be effective when appropriate signs giving notice thereof are erected.

> (b)(1) The maximum and minimum speed limits posted shall apply to all vehicles using the facility except authorized emergency vehicles on emergency trips, such as police vehicles on duty ...
>
> (2) This exemption shall not relieve any driver of an authorized emergency vehicle from his lawful responsibility to drive with due regard for the safety of all persons upon or using the highway facility, nor shall it protect the operator of any such vehicle from the consequence of a reckless disregard for the safety of others.

The law requires an underlying "on emergency trip" as a prerequisite to any emergency driving or any continuing emergency driving and the law still requires "due regard for the safety of all persons upon or using the highway facility" and specifically disallows "reckless disregard for the safety of others" ... but the Arkansas State Police did, and still does, allow officers the discretion to run in emergency status when there is no underlying emergency. This official policy decision and the corresponding official conduct by the individual Respondent is what caused the death of Cassandra Braun. It is negligent to allow the use of emergency driving in a non-emergency situation and this is true even if emergency blue lights and siren are engaged. In this case, no emergency blue lights and siren were engaged notwithstanding 117 mile per hour high speed driving. Even if the emergency blue lights and siren were engaged, the conduct would have still been unconstitutional due to the lack of an underlying emergency to justify the high-speed driving.

The Respondent's policy did not require an underlying emergency. This does not square up with Arkansas law. Arkansas Model Jury Instruction AMI 913 sets forth the state law that requires there to be both an emergency and the engagement of lights and sirens in order for its troopers to be afforded deference to the traffic laws

of the traveling public.

In this case, the Respondent, by official policy, allows officers to engage in high-speed driving without an underlying emergency. Emergency driving must stop when the emergency stops. Law enforcement officers may engage in the risky conduct of high-speed driving "only when: 1) "responding to a true emergency" or 2) "pursuing an actively fleeing suspect who is endangering the public welfare." When the underlying emergency justification is no longer a continuing emergency, the high-speed driving must be stopped immediately; else, the high-speed driving becomes negligent.

The Respondent had plenty of time and prior opportunity to act to change its policy allowing emergency status driving without an underlying emergency. Trooper Burke had plenty of time to reflect as he was driving. There were no competing obligations. This is a case of Respondent officially allowing its troopers to engage in negligence and recklessness without any underlying emergency justification.

Dr. Alpert studied the policies, arguments and documents provided by Respondent. He also studied the sworn testimony of the Respondent's witnesses and Trooper Burke. Dr. Alpert provided a 43-page report outlining the negligence of Respondent in regard to its customs, policies, practice and training. The Respondent has not rebutted these opinions. The federal court did not address the customs, policies, practice and training because the Claimants did not meet the higher "intent to kill" standard. In this proceeding, the standard is merely negligence. Dr. Alpert's unrebutted opinions meet this standard. **(Exhibit F, p. 43)**

Based on the foregoing, the evidence is uncontradicted that the Respondent was negligent in its established policy, practice and procedure of allowing its employees to respond to pursue traffic violators at high rates of speed in non-emergent situations without the engaging the siren and flashing lights.

The Claimants contend that summary judgment should also be entered on this issue.

Conclusion

Based on the foregoing, the Claimant is entitled to Partial Summary Judgment on the forgoing issues of liability.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, Paul J. James, on this 17th day of December 2021, hereby certify that a true and correct copy of the foregoing was served via electronic mail and/or hand delivery to the following:

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Arkansas
State Claims Commission
DEC 17 2021
RECEIVED

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT B

Matthew Jackson's Rule 26 Report

Arkansas
State Claims Commission
DEC 17 2021
RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

LORI BRAUN, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun,

PLAINTIFF

vs. No. 4:18-CV-334-BRW

TROOPER BRIAN RAY BURKE, Individually as an officer of the Arkansas State Police
COLONEL BILL BRYANT, Individually as the chief executive officer of the Arkansas State Police,

DEFENDANTS

DECLARATION OF MATTHEW JACKSON

I, MATTHEW JACKSON, hereby declare:

1. I am an Accident Reconstruction Consultant with Jackson Reconstruction, Inc. I have been engaged to review records and render expert opinions concerning the death of Cassandra Braun in a motor vehicle collision on US Highway 70/Airport Road at the intersection of Klienshore Road, in Hot Springs, Garland County, Arkansas on October 10, 2016.

2. Attached to this Declaration is a true, correct and complete copy of the Report that I prepared regarding the death of Cassandra Braun, that is dated February 18, 2019 and was signed by me. Also attached to this Declaration is a true, correct and complete copy of my curriculum vitae, which sets forth my education, training, experience and other qualifications to conduct the review and render the observations, findings and opinions set forth in the attached Report.

Pursuant to 28 U.S.C. §1746, I declare under penalties of perjury that the foregoing is true and correct.

Executed this 29 day of July 2019 in Hot Springs, Arkansas

Matthew Jackson

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Arkansas
State Claims Commission
DEC 17 2021
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February 18, 2019

RE:

LORI BRAUN, Administratrix of the
Estate of Cassandra Braun, Deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Braun,

vs. **Case no.: 4:18-cv-334 BRW**

TROOPER BRIAN RAY BURKE, individually,
And in his official capacity as an officer of the
Arkansas State Police
COLONEL BILL BRYANT, individually,
And in his official capacity at the chief executive officer
Of the Arkansas State Police

Rule 26 U.S. District Court Disclosure

The following information regarding the above captioned case is a disclosure of the opinions anticipated to be tendered at the trial of this matter in the United States District Court for the Western District of Arkansas.

Matthew Jackson, ACTAR

Matthew is employed by Jackson Reconstruction, Inc. of Hot Springs, AR as a Traffic Accident Reconstruction Consultant. His training, education, and experience in this

field span 10 years. His Curriculum Vitae accompanies this document by attachment as well as a case list for those cases in which he has given sworn testimony over the past four (4) years.

Also provided with this report are copies of the fee schedule from Jackson Reconstruction in effect during the course of this investigation as well as documentation of the total invoices sent to date for services rendered.

All opinions are within a reasonable degree of scientific certainty and are based on the review, evaluation, analysis, and application of the following information obtained and/or considered during the course of the investigation:

1. Examination and documentation via photographs and physical measurements of the Arkansas State Police Charger by Jackson Reconstruction.
2. Examination and documentation via photographs and physical measurements of the Braun Chevrolet Malibu by Jackson Reconstruction.
3. Examination and documentation via total station laser survey and photographs of the collision site by Jackson Reconstruction.
4. Arkansas Motor Vehicle Crash Report, Hot Springs Police Department
5. Arkansas State Police Fatal Accident Report Form and Fatal Crash Summary.
6. HSPD Officer DeFoor's crush measurements and barrier equivalent velocity and momentum calculations.
7. LRPD Officer Breshear's report regarding the event data recovered from both vehicles.
8. Data recovered from the Charger's airbag control module.
9. Data recovered from the Malibu's airbag control module.
10. Garland County Sheriff's radio log from the collision.
11. Total station log of HSPD Officer DeFoor and resultant drawing.
12. HSPD Officer Report for Incident, 16L032154.
13. Arkansas Crime Lab reports, including autopsies of Ms. Braun and Mr. Jenkins, and lab tests from the airbag fabric.
14. Video from Trooper Burke's State Police Charger.
15. Police investigator scene and vehicle photographs, 243 images.
16. Accepted principles within the field of accident reconstruction.

Collision Synopsis:

At approximately 9:23 PM on October 10, 2016, a two-vehicle collision occurred on US Highway 70/Airport Road at the intersection of Klienshore Road, in Hot Springs, Garland County, AR. Approximately 5 seconds prior to this collision, Arkansas State Trooper Brian Burke was operating a 2016 State Police Dodge Charger and was traveling east, without emergency lights or siren, on US Highway 70/Airport Road at an unusually high rate of speed (approx. 113 MPH). At this same time, Mr. Tavon Jenkins was operating a 2011 Chevrolet Malibu owned by his passenger, Ms. Cassandra Braun, and was traveling

westbound in the center turn lane of US Highway 70/Airport Road approaching the intersection with Klienshore Road. A collision occurred as Mr. Jenkins attempted to turn left onto Klienshore Road from the center turn lane. The collision resulted in the deaths of Mr. Jenkins and Ms. Braun and serious, but non-fatal, injuries to Trooper Burke.

Summary of anticipated opinions to be offered:

1. US Highway 70/Airport Road contains a significant hillcrest approximately 240 feet west of Klienshore Road sufficient to completely obscure approaching eastbound vehicles on its western side.
2. Due to the number of intersecting roads and business drives in this area of US Highway 70/Airport Road and the geographic line-of-sight limitation, an appropriate speed limit and its observance are necessary to limit dangerous situations and protect drivers from harm.
3. Trooper Burke was traveling 113 mph without emergency/pursuit lights or siren 5 seconds before impacting the Chevy Malibu driven by Mr. Jenkins and occupied by Ms. Braun.
4. The headlights of Trooper Burke's State Police Charger would have first become visible to a driver in Mr. Jenkin's position approximately 330 feet west of the center of Klienshore Road or 345 feet west of the area of impact.
5. Trooper Burke's State Police Charger covered that 345 feet in approximately 2.2 seconds at an average speed of 107 MPH.
6. Prior to Trooper Burke's headlights becoming visible, Mr. Jenkins had already initiated a left turn toward Klienshore Road from the center turn lane.
7. Mr. Jenkins did not have sufficient time to perceive and react to Trooper Burke's extreme closing speed to avoid the collision, nor did his passenger, Ms. Braun, have sufficient time to perceive the hazard and give warning.
8. Had Trooper Burke's State police Charger been traveling the speed limit (45 mph) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.
9. Had Trooper Burke's State Police Charger been traveling 60 mph (15 mph over the speed limit) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.
10. Had Trooper Burke been operating his emergency/pursuit "blue lights", Mr. Jenkins and Ms. Braun could have appreciated the approach of an emergency vehicle despite the hillcrest and been afforded the opportunity to adjust their expectations of making a safe left turn.

Opinion Support – Matthew Jackson:

1. **US Highway 70/Airport Road contains a significant hillcrest approximately 240 feet west of Klienshore Road sufficient to completely obscure approaching eastbound vehicles on its western side.**

   An examination of the scene revealed a dip in the highway just west of Klienshore Road where east bound vehicles would disappear for a significant amount of time before

reappearing just before the hill crest. As part of the scene examination, a total station survey was done of US Highway 70/Airport Road in and west of the area of the collision, including measurements intended to model this line of sight problem.

Using the measurements obtained via total station, a virtual 3D model of the relevant section of highway was created for the purpose of analyzing sight distance and serving as the analysis environment for the reconstruction and subsequent animations. Elevation measurements of the highway revealed the eastern crest of the hill to be approximately 240 feet west of the center of Klienshore Road.

2. **Due to the number of intersecting roads and business drives in this area of US Highway 70/Airport Road and the geographic line-of-sight limitation, an appropriate speed limit and its observance are necessary to limit dangerous situations and protect drivers from harm.**

Drivers must have time to perceive and react to their environment during the driving task. The distance drivers continue to cover during that process is, in part, a function of their speed. Consider a usual speed limit for an interstate of 70 mph; typically, in that driving environment, drivers have only to contend with traffic traveling the same direction, with no on-coming or cross-traffic situations. For that reason, the speed limit in such environments can be higher. When the driving environment becomes inclusive of a wider array of situations, however, such as cross-traffic, on-coming vehicles, the frequent slowing of fellow motorists facilitating turns onto side streets, or slow-moving vehicles that have just entered the road from residential or business drives, the speed limit must be set lower to accommodate those situations and allow enough time for drivers to respond.

Consider a 2.0 second perception/reaction process and a 0.7 emergency braking factor. At 45 mph, a driver would cover 132 feet between visual acquisition of a hazard and initiating their response to it, requiring an additional 96 to stop. At 70 mph, that same driver would cover 205 feet before they could respond and would then require an additional 233 feet to stop. Between the two speeds, the driver traveling 45 mph could come to a stop in about half the distance needed by the 70 mph driver, which could certainly mean the difference between a severe or fatal collision and no collision at all.

Now, at 110 mph, around the speed of Trooper Burke, a driver would continue traveling 110 mph for an additional 322 feet before even being able to initiate their braking response. To illustrate the extreme danger created by such speeds, that would be like driving a car onto a football field and going so fast that, despite being alert and seeing a kid standing in the opposite endzone the moment you drove onto the field from the other end, you'd cross the entire field and hit him before you could even reach your brake to slow down. When you finally did hit your brakes, you'd need an additional 2 football fields to stop.

In the 600-foot section of highway where this collision occurred, considering 300 feet east and 300 feet west of the area of impact, US Highway 70/Airport Road has no fewer than 10 connecting drives or side streets and contains a significant geographic line-of-sight limitation, all of which inform the 45 mph speed limit. Traveling 113 mph on such a road, at night, no less, in the presence of normal evening traffic, is extremely dangerous, and would continually create numerous situations where a severe or fatal collision is almost a certainty.

3. **Trooper Burke was traveling 113 mph at night without emergency/pursuit lights or siren 5 seconds before impacting the Chevy Malibu driven by Mr. Jenkins and occupied by Ms. Braun.**

   The electronic data recovered from the airbag control module of Trooper Burke's State Police Charger shows his vehicle speed to be 113 mph 5 seconds prior to the deployment event that corresponded to the first impact and is consistent with the totality of the evidence. The video recovered from Trooper Burke's State Police Charger shows that, at the time of this event and for a significant amount of time prior to this event, Trooper Burke had been traveling at extreme speeds for conditions and without emergency/pursuit lights or siren.

4. **The headlights of Trooper Burke's State Police Charger would have first become visible to a driver in Mr. Jenkin's position approximately 330 feet west of the center of Klienshore Road or 345 feet west of the area of impact.**

   Electronic data was recovered from the airbag modules of both Trooper Burke's State Police Charger and Ms. Braun's Malibu. Both sources of data contained approximately 5 seconds of pre-crash data, such as, among other things, vehicle speed and braking. The data contained in both modules was locked, complete, internally consistent, and externally consistent with the nature of this collision and the resultant physical evidence.

   Based on this electronic data, in conjunction with the physical evidence and the dashcam video from Trooper Burke's Charger, each vehicle can be backed up in time from impact to recreate their approximate positions with respect to time, the area of impact, each other, and the highway. An analysis animation can then be constructed to show the relative movements of each vehicle 5 seconds prior to the collision, observable in real time.

   Each vehicle was 3D modeled based on measurements obtained during examination and database measurements for each year/make/model, then placed within the virtual 3D scene. Starting with the Malibu, an animation path was constructed that was consistent with the speeds, times, and turning information contained within its airbag control module as well as its angular position relative to the highway and the Charger at the time of impact. The Charger was done the same way, with an animation path constructed that was consistent with the speeds and times contained within its airbag control module as well as its angular approach and impact position relative to the highway and the Malibu.

The Trooper's dashcam video was also used to determine the Charger's approach path and pre-impact travel up to the video cut-out. The resultant analysis animation creates a visual representation of the 5 seconds immediately prior to the collision that is consistent with the totality of the evidence.

Animation cameras were placed inside the Charger and Malibu models in order to examine the location on the highway and the pre-collision time where and when each vehicle's headlights would have become clearly visible to the opposing driver. Doing so revealed that the Charger's headlights would have become visible to a driver in the same position as Mr. Jenkins when the Charger was approximately 345 feet west of the area of impact or 330 feet west of the center of Kliensbore Road.

5. **Trooper Burke's State Police Charger covered the 345 feet from visibility to impact in approximately 2.2 seconds at an average speed of 107 MPH.**

Considering the distance from impact of 345 feet and the time remaining from that point to reach impact of 2.2 seconds, an average travel speed over that short distance comes to approximately 157 ft/sec or, converted to miles per hour, 107 MPH, which, again, is consistent with the totality of the evidence.

6. **Prior to Trooper Burke's headlights becoming visible, Mr. Jenkins had already initiated a left turn toward Kliensbore Road from the center turn lane.**

An analysis of the data from the Malibu's airbag control module, which contains steering information, suggests that, by 2.2 seconds from impact, when the Charger's headlights first became visible, the Malibu had already initiated its left turn maneuver. This is based on the reported yaw rate and steering wheel angle data, their associated pre-impact times, the resultant analysis animation, and is supported by the Trooper's dash cam video showing the angle of the Malibu's headlights when they first come into view.

7. **Mr. Jenkins did not have sufficient time to perceive and react to Trooper Burke's extreme closing speed in order to avoid or mitigate the collision, nor did his passenger, Ms. Braun, have sufficient time to perceive the hazard to give warning.**

The appearance of Trooper Burke's headlights would not have been sufficient to communicate the extreme speed of those headlights to a reasonable driver the moment they appeared. At night, especially for zero-angle closing situations, like head-on meetings or one vehicle overtaking or passing another, the normal amount of visual cues a driver relies upon to inform things like their following distance to other vehicles, their passing opportunities, or their opportunities to turn safely across traffic, are not visually available. What drivers do have in these situations are headlights and taillights, the perceived distance those objects are away, a looming threshold that must be met before a driver appreciates that a closing speed is unacceptable for certain actions, and general experience and expectations of how traffic moves and the time it takes for distances to close under reasonable circumstances.

In nighttime, left-turn situations like this one, drivers make go-ahead decisions based not on how fast the approaching vehicle is traveling, since that can't be accurately assessed, but on how far away the other driver is when the decision to turn is considered under the working assumption that the approaching vehicle is traveling within a normally-experienced range of speeds.

It is unknown at what point in time Mr. Jenkins, or a driver in a similar situation, or Ms. Braun, as an observer, could have appreciated the extreme closing speed of the Charger based upon on-coming headlight movement alone, but it is certain that it could not have been upon their appearance. Even if a driver in this situation could have managed to perceive the extreme closing speed of the headlights within a second or even half a second of observing their movement after they first became visible (highly improbable), there would be no time prior to impact to effectuate a response. It is not unexpected, then, that the electronic evidence from the Malibu's airbag control module appears to show no emergency braking response; there simply would not have been enough time to perceive the hazard and respond.

Even taken to the absurd, had Mr. Jenkins recognized, at the exact moment the headlights appeared over the hill crest, that the vehicle to which those headlights belonged would reach him before he completed his turn, he could not have avoided the collision. Every driver must have time to detect, identify, make some decision, then react to their environment, which includes other drivers. The amount of time that process takes is variable, but research suggests most drivers will respond within 1.5 to 2.0 seconds for straight forward, emergency situations. Assuming the impossible for a moment, that Mr. Jenkins could have recognized the headlights as a hazard for his left turn the moment those headlights became visible, of the 2.2 seconds with which he had to work before impact occurred, 1.5 to 2.0 seconds of that time would have been eaten up before he could have gotten his foot to the brake. That would leave him with 0.2 to 0.7 seconds of brake application, which would have been insufficient to keep out of the path of the Charger.

8. **Had Trooper Burke's State police Charger been traveling the speed limit (45 mph) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.**

The moment in time and the position on the highway that Trooper Burke's Charger became visible to Mr. Jenkins' position was considered and identified within the previously referred to and explained 3D analysis environment. Leaving all other aspects of the recreation the same, a similar Charger was modeled and positioned accordingly and at the same moment in animation time. This Charger, however, was assigned a speed of 45 mph, instead of 109 mph, and allowed to continue at this speed, maintaining the inside travel lane. This scenario found the Malibu, during its course of making a left turn onto Klienshore Road, clearing the Charger's travel lane with the Charger approx. 180 feet away from the would-be impact. Additionally, in this same scenario, the Malibu

was able to fully complete its turn onto Klienshore Road with the Charger still approx. 145 feet from the would-be impact.

9. **Had Trooper Burke's State Police Charger been traveling 60 mph (15 mph over the speed limit) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.**

   Following the same process set forth in the previous explanation, a similar Charger was modeled and positioned accordingly with a fixed speed set to 60 mph, 15 mph above the posted speed limit. This scenario found the Malibu, during its course of making a left turn onto Klienshore Road, clearing the Charger's travel lane with the Charger approx. 129 feet away from the would-be impact. Additionally, in this same scenario, the Malibu was able to fully complete its turn onto Klienshore Road with the Charger still approx. 80 feet from the would-be impact.

10. **Had Trooper Burke been operating his emergency/pursuit blue lights, Mr. Jenkins and Ms. Braun could have appreciated the approach of an emergency vehicle despite the hillcrest and been afforded the opportunity to adjust their expectations of making a safe left turn.**

    Certain situations may call on emergency vehicles to, within reason, exceed posted speed limits and violate other traffic safety rules that are in place to protect the motoring public; however, emergency vehicles, such as Trooper Burke's Charger, are equipped with emergency lights and sirens designed to offset the danger such actions create by not only conspicuously alerting other drivers to their presence but also communicating the likelihood that the emergency vehicle will not be behaving as other vehicles in terms of following traffic laws, allowing other drivers to adjust their expectations, thereby protecting them from harm.

    The pervasive characteristics and brightness, especially during night-time operation, of state police pursuit lights or emergency lights would have been available for a driver in Mr. Jenkins' position to appreciate, even if the Charger's headlights were not visible due to the geography of the highway. A driver in Mr. Jenkins' position or a passenger in Ms. Braun's position, then, could have been put on notice as to the approaching emergency vehicle and taken that information into account before making the decision to initiate a left turn maneuver. As it was, however, Mr. Jenkins and Ms. Braun were never afforded the opportunity.

All illustrations, graphics, animations, 3D environments (ARAS HD) and/or stills provided with this report are offered as visual demonstratives of the opinions expressed herein and as opinions in and of themselves and will be of assistance in explaining opinions to the jury; they are attached to this report.

All of the preceding opinions are based on the information evaluated to date. Should new information or questions arise at some future time through disclosures, testimony, deposition, or otherwise, these opinions may be supplemented in consideration of such.

Respectfully,

/s/ Matthew S. Jackson

Matthew S. Jackson

Arkansas
State Claims Commission
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IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the Estate of Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased, Individually and on behalf of all wrongful death Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT C

Trooper Brian Burke's Responses to Plaintiff's Requests for Admission

Arkansas
State Claims Commission
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

LORI BRAUN, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun — **PLAINTIFF**

V. **CASE NO. 4:18-CV-00334-BRW**

TROOPER BRIAN RAY BURKE, Individually and in his Official Capacity as an officer of the Arkansas State Police (Official Capacity claim dismissed); and COLONEL BILL BRYANT, Individually and in his Official Capacity as the chief executive officer of the Arkansas State Police — **DEFENDANTS**

SEPARATE DEFENDANT BURKE'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

COMES NOW, Separate Defendant Brian Ray Burke, by and through his attorneys, COLLINS, COLLINS, & RAY, P.A., and pursuant to F.R.C.P. 36 and in response to the Requests for Admission propounded by Plaintiff Cassandra Braun, respectfully states as follows:

REQUESTS FOR ADMISSION

REQUEST NO 1: At all times during Burke's driving, he was acting under color of state law.

RESPONSE: Admit.

REQUEST NO 2: At all times during Burke's driving, he was acting pursuant to the training that he was provided by the Arkansas State Police Department.

RESPONSE: Admit.

REQUEST NO 3: The initiation of Burke's driving until the crash was captured on Trooper Burke's patrol car's video camera system.

RESPONSE: Admit.

REQUEST NO 4: Trooper Burke's patrol car's video camera system during Burke's driving recorded speeds.

RESPONSE: Admit.

REQUEST NO 5: Trooper Burke's patrol car's video camera system during Burke's driving recorded GPS coordinates.

RESPONSE: Denied. Defendant Burke has no personal knowledge as to whether his former patrol car's video system recorded GPS coordinates; therefore, it is denied.

REQUEST NO 6: Trooper Burke's patrol car's video system was working properly at all times during Burke's driving.

RESPONSE: Admit.

REQUEST NO 7: The Defendants do not have any facts or evidence to indicate that Trooper Burke's patrol camera system was not working properly.

RESPONSE: Admit.

REQUEST NO 8: Trooper Burke's patrol car's video system was examined and found to be working properly.

RESPONSE: Admit.

REQUEST NO 9: Trooper Burke's patrol car's video system was never examined and found to be working improperly.

RESPONSE: Denied. Defendant Burke has no knowledge as to whether the video system was ever examined, however, he cannot find any evidence of such an examination within the documents provided in discovery.

REQUEST NO 10: Trooper Burke's patrol car's video system accurately recorded Trooper Burke's speeds during Burke's driving.

RESPONSE: Admit.

REQUEST NO 11: The Defendants do not have any facts or evidence to indicate that Trooper Burke's patrol car's video system improperly recorded Trooper Burke's speed during Burke's driving.

RESPONSE: Admit.

REQUEST NO 12: Trooper Burke's patrol car's video system accurately recorded Trooper Burke's speeds during Burke's driving.

RESPONSE: Admit.

REQUEST NO 13: Trooper Burke's average speed during Burke's driving was 97.8 miles per hour.

RESPONSE: Denied. The average speed of 97.8 miles per hour in this request was taken from the Hot Springs Police Department investigation report, which did not include the entire driving area. As stated in the report, when the video first comes on the initial speed is 85 miles per hour. This shows that that the entire distance was not included in the average because one cannot start driving at a speed of 85 miles per hour. The total driving time was approximately 5 minutes and 40 seconds. The total distance driven was approximately 8.7 miles. That would be 8.7 miles in 5.667 minutes. That is an average speed of 1.53 miles per minute or 92.11 miles per hour.

REQUEST NO 14: During the course of Burke's driving, Trooper Burke reached speeds as high as 117 miles per hour.

RESPONSE: Admit.

REQUEST NO 15: During the course of Burke's driving, Trooper Burke reached speeds as high as 117 miles per hour in a 45 miles per hour zone.

RESPONSE: Admit.

REQUEST NO 16: Attached as Exhibit A is a true and correct copy of the HSPD OFFICER REPORT FOR INCIDENT 16L032154 regarding its investigation of the crash.

RESPONSE: Admit.

REQUEST NO 17: The last paragraph of page 12 through page 13 of Exhibit A reflects a review of Trooper Burke's patrol car video system by the Hot Springs Police Department.

RESPONSE: Admit.

REQUEST NO 18: The facts and statements set forth in the last paragraph of 12 though page 13 of Exhibit A are true and accurate.

RESPONSE: Denied. These paragraphs are true and accurate to Defendant Burke's knowledge with the exception of the last three sentences on page 13. The time and distance were taken from a video that did not include the entire driving time and distance. A second portion of the video was later recovered that showed the entire time and distance. The distance was approximately 8.7 miles. The timespan of driving was approximately 5 minutes and 40 seconds. This would give an average speed of 92.11 miles per hour. The figures that were given in the last three sentences of page 13 do not provide a complete picture of the entire drive; thus, are not accurate.

REQUEST NO 19: The Defendants do not have any facts or evidence to indicate that the facts and statements set forth in the last paragraph of 12 though page 13 of Exhibit A are not true and accurate.

RESPONSE: Denied. As explained in the response to Request No. 19, the figures stated in the last three sentences of Page 13 are not from the complete drive and only a portion; therefore, the figures are not accurate.

REQUEST NO 20: Excluding the first 20 seconds of Burke's driving, Trooper Burke did not have his lights or sirens on during Burke's driving through the crash.

RESPONSE: Admit.

REQUEST NO 21: Excluding approximately the first 20 seconds of Burke's driving, Trooper Burke did not have his lights and sirens on during Burke's driving to the crash.

RESPONSE: Admit.

REQUEST NO 22: Burke's driving from initiation until crash was 4 minutes and 58 seconds.

RESPONSE: Denied. The time and distance referenced was taken from a video that did not include the entire driving time and distance. A second portion of the video was later recovered that showed the entire time and distance. The timespan of driving was approximately 5 minutes and 40 seconds.

REQUEST NO 23: Burke's driving from initiation to crash was approximately 5 minutes.

RESPONSE: Denied. The time and distance referenced was taken from a video that did not include the entire driving time and distance. A second portion of the video was later recovered that showed the entire time and distance. The timespan of driving was approximately 5 minutes and 40 seconds.

REQUEST NO 24: Burke's driving from initiation to crash covered 8.1 miles.

RESPONSE: Denied. According to Google Maps, the distance from the driveway of the Pearcy, Arkansas Post Office to Kleinshore Road is approximately 8.7 miles.

REQUEST NO 25: Burke's driving from initiation to crash covered approximately 8 miles.

RESPONSE: Denied. According to Google Maps, the distance from the driveway of the Pearcy, Arkansas Post Office to Kleinshore Road is approximately 8.7 miles.

REQUEST NO 26: Trooper Burke's vehicle was equipped with technology that records crash data which was retrieved from his vehicle after the crash.

RESPONSE: Admit.

REQUEST NO 27: The crash data retrieval from Trooper Burke's patrol car indicated that Trooper Burke's speed 5 seconds before impact was 113 miles per hour.

RESPONSE: Admit.

REQUEST NO 28: Five seconds before the crash Trooper Burke was driving on a road with a 45 mile per hour speed limit.

RESPONSE: Admit.

REQUEST NO 29: The crash data retrieval from Trooper Burke's patrol car indicated that Trooper Burke's speed at the time of impact was 98 miles per hour.

RESPONSE: Admit.

REQUEST NO 30: The crash occurred on a road with a 45 mile per speed limit.

RESPONSE: Admit.

REQUEST NO 31: The speeds set forth in the crash data retrieval from Trooper Burke's patrol car are true and accurate.

RESPONSE: Admit.

REQUEST NO 32: The Defendants have no facts or evidence to refute the speeds pulled from Trooper Burke's crash date retrieval.

RESPONSE: Admit.

REQUEST NO 33: The vehicle which Cassandra Braun was riding in was equipped with technology that records crash data which was retrieved from his vehicle after the crash.

RESPONSE: Admit.

REQUEST NO 34: The crash data retrieval from the vehicle Cassandra Braun was riding in indicated that the vehicle was traveling 40 miles per hour, 5 seconds before impact.

RESPONSE: Admit.

REQUEST NO 35: The crash data retrieval from the vehicle that Cassandra Braun was riding in indicated that the vehicle was traveling at 16 miles per hour at the time of impact.

RESPONSE: Admit.

REQUEST NO 36: The speeds set forth in the crash date retrieval from the vehicle Cassandra Braun was riding in are true and accurate.

RESPONSE: Denied. Defendant Burke has way of knowing whether the readings from the crash data retrieval device from the vehicle carrying Cassandra Braun are true and accurate.

REQUEST NO 37: The Defendants have no facts or evidence to refute the speeds recorded on event data recorder retrieved from the vehicle Cassandra Braun was riding.

RESPONSE: Admit.

REQUEST NO 38: The Defendants have no evidence that the driver of the vehicle that Cassandra Braun was riding was speeding.

RESPONSE: Admit.

REQUEST NO 39: The Defendants have no evidence that the driver of the vehicle that Cassandra Braun was riding made an improper turn.

RESPONSE: Denied. When the video ends, it is clear that the vehicle Cassandra Braun was riding in was still in the center turn lane. The vehicle then attempted to make a left hand turn in front of an oncoming vehicle. Pursuant to Ark. Code Ann. § 27-51-502, "[t]he driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard."

REQUEST NO 40: The Defendants have no evidence that Cassandra Braun was negligent.

RESPONSE: Denied. Cassandra Braun, a front seat passenger, failed to wear her seatbelt as required by Ark. Code Ann. § 27-37-702. According to one of the investigators on this case, Ms. Braun's failure to wear her seatbelt resulted in her being ejected from her vehicle at the time of the collision, and resulting in her death.

REQUEST NO 41: The Arkansas State Police opened an investigation into the crash and Burke's driving on January 10, 2017, Control Number A017-001, the Burke Investigation.

RESPONSE: Admit.

REQUEST NO 42: The Burke Investigation contained the HSPD OFFICER REPORT FOR INCIDENT 16L032154 attached as Exhibit A.

RESPONSE: Admit.

REQUEST NO 43: The Burke Investigation contained the crash data retrieval data on Trooper Burke's patrol car and the crash data retrieval data from the vehicle Cassandra Braun was riding as a passenger.

RESPONSE: Admit.

REQUEST NO 44: The Burke Investigation did not contain any independent analysis by the ASP of the speeds and distances set forth in Trooper Burke's patrol car video system.

RESPONSE: Denied. Defendant Burke has no knowledge as to whether the Arkansas State Police performed an independent analysis of the speeds and distances in the patrol car video recording.

REQUEST NO 45: In the Burke Investigation, the Arkansas State Police relied on the analysis performed by the HSPD of the speeds and distances set forth in Trooper Burke's patrol car video system in its investigation.

RESPONSE: Denied. Defendant Burke has no knowledge as to what exact information the Arkansas State Police relied on in its investigation.

REQUEST NO 46: In the Burke Investigation, Colonel Bryant relied on the analysis performed by the HSPD of the speeds and distances set forth in Trooper Burke's patrol car video system in its investigation.

RESPONSE: Denied. Defendant Burke has no knowledge as to what exact information was relied on by Colonel Bryant in the investigation.

REQUEST NO 47: The Burke Investigation did not contain any independent analysis by the ASP of the crash data recovery data.

RESPONSE: Denied. Defendant Burke has no knowledge as to whether the Arkansas State Police performed an independent analysis of the crash data recovery data.

REQUEST NO 48: In the Burke Investigation, the Arkansas State Police relied on the analysis performed by the HSPD with respect to the analysis of the crash data retrieval data.

RESPONSE: Denied. Defendant Burke has no knowledge as to what information the Arkansas State Police relied on in its investigation.

REQUEST NO 49: In the Burke Investigation, Colonel Bryant relied on the analysis performed by the HSPD with respect to the analysis of the crash data retrieval data.

RESPONSE: Denied. Defendant Burke has no knowledge as to what information Colonel Bryant may have relied on in the investigation.

REQUEST NO 50: The Burke Investigation did not reach a final disposition or finding that Trooper Buke violated policy.

RESPONSE: Admit.

REQUEST NO 51: The Burke Investigation did not reach a final disposition or finding that Trooper Buke violated his training at the ASP.

RESPONSE: Admit.

REQUEST NO 52: The Burke Investigation did not result in any discipline to Trooper Burke.

RESPONSE: Admit.

REQUEST NO 53: On March 1, 2017, Trooper Burke submitted his medical retirement to Colonel Bryant, effective April 1, 2017.

RESPONSE: Admit.

REQUEST NO 54: Colonel Bryant accepted Trooper Burke's medical retirement without making any final disposition or findings of the Burke Investigation.

RESPONSE: Admit.

REQUEST NO 55: Colonel Bryant congratulated Trooper Burke on his medical retirement on March 3, 2017.

RESPONSE: Admit.

REQUEST NO 56: The ASP terminated the Burke Investigation on March 7, 2017.

RESPONSE: Admit.

REQUEST NO 57: Colonel Bryant terminated the Burke Investigation on March 7, 2017.

RESPONSE: Admit.

REQUEST NO 58: The ASP was authorized to complete the Burke Investigation, despite Trooper Burke's retirement.

RESPONSE: Denied. Defendant Burke has no knowledge as to what the Arkansas State Police was authorized to do regarding the Burke Investigation.

REQUEST NO 59: Colonel Bryant was authorized to complete the Burke Investigation, despite Trooper Burke's retirement.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant was authorized to do regarding the Burke Investigation.

REQUEST NO 60: Prior to Trooper Burke's medical retirement, ASP had in its possession all of the documents contained in the Burke Investigation attached as Exhibit 38 to Arkansas State Police's Corporate Representative Greg Down's November 9, 2018 deposition.

RESPONSE: Denied. Defendant Burke has no knowledge what documents the Arkansas State Police had in its possession regarding the Burke Investigation at the time of Defendant Burke's medical retirement.

REQUEST NO 61: Prior to Trooper Burke's medical retirement, ASP had in its possession the video tape from Trooper Bryant's patrol car.

RESPONSE: Admit.

REQUEST NO 62: Prior to Trooper Burke's medical retirement, Colonel Bryant reviewed the video tape from Trooper Bryant patrol car.

RESPONSE: Admit.

REQUEST NO 63: Prior to Trooper Burke's medical retirement, the ASP reviewed the video tape from Trooper Bryant patrol car.

RESPONSE: Admit.

REQUEST NO 64: Trooper Burke was not responding to an "emergency call" during Burke's driving.

RESPONSE: Admit.

REQUEST NO 65: Trooper Burke was not in the "immediate pursuit of an actual or suspected violator of the law" during Burke's driving.

RESPONSE: Denied. Arkansas Statute does not define the term "immediate pursuit." However, Arkansas State Police policy defines immediate pursuit as "the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary." Defendant Burke was attempting to catch up to and stop speeding vehicle driving with hazard lights activated in order to initiate a traffic stop. At the time of the accident, Defendant Burke had the speeding vehicle in sight and was in immediate pursuit to try and catch up to and stop it.

REQUEST NO 66: Burke's driving without lights and sirens violated Arkansas state law.

RESPONSE: Denied. Pursuant to Ark. Code Ann. § 27-51-204, "[t]he maximum and minimum speed limits posted shall apply to all vehicles . . . except authorized emergency vehicles on emergency trips, such as police vehicles on duty . . . ." Pursuant to Ark. Code Ann. § 27-49-

109, "[n]o driver of any authorized emergency vehicle shall assume any special privilege under this act *except* when the vehicle is operated in response to an *emergency call* or in *the immediate pursuit* of an actual or suspected violator of the law." (emphasis added). No part of either of these sections requires the officer to use lights and sirens. At the time of the accident, Defendant Burke had the speeding vehicle in sight and was in immediate pursuit to try and catch up to and stop it.

REQUEST NO 67: Burke's driving without lights and sirens in excess of the posted speed limit violated Arkansas state law.

RESPONSE: Denied. Pursuant to Ark. Code Ann. § 27-51-204, "[t]he maximum and minimum speed limits posted shall apply to all vehicles . . . except authorized emergency vehicles on emergency trips, such as police vehicles on duty . . . ." Pursuant to Ark. Code Ann. § 27-49-109, "[n]o driver of any authorized emergency vehicle shall assume any special privilege under this act *except* when the vehicle is operated in response to an *emergency call* or in *the immediate pursuit* of an actual or suspected violator of the law." (emphasis added). No part of either of these sections requires the officer to use lights and sirens. At the time of the accident, Defendant Burke had the speeding vehicle in sight and was in immediate pursuit to try and catch up to and stop it.

REQUEST NO 68: On October 10, 2016, any ASP Trooper driving in excess of the speed limit while not on an "emergency call" or in "the immediate pursuit of an actual or suspected violator of the law" would be violating Arkansas state law.

RESPONSE: Admit. At the time of the crash, Defendant Burke was in immediate pursuit of a speeding vehicle and was attempting to catch up to it and stop it.

REQUEST NO 69: Prior to October 10, 2016, any ASP Trooper driving in excess of the posted speed limits while not on an "emergency call" or "the immediate pursuit of an actual or suspected violator of the law" would be violating Arkansas state law.

RESPONSE: Admit. At the time of the crash, Defendant Burke was in immediate pursuit of a speeding vehicle and was attempting to catch up to it and stop it.

REQUEST NO 70: Trooper Burke was trained by the ASP that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a person suspected of speeding before pulling the suspected speeder over for a traffic violation.

RESPONSE: Admit.

REQUEST NO 71: Prior to the crash, all ASP Troopers were trained that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a person suspected of speeding before pulling the suspected speeder over for a traffic violation.

RESPONSE: Denied. Defendant Burke has no knowledge as to how all Arkansas State Troopers were trained prior to the crash.

REQUEST NO 72: Prior to the crash, the ASP had a known established custom and practice of allowing ASP Troopers to exceed the speed limit without lights and sirens in an effort to catch up to suspected speeders.

RESPONSE: Admit.

REQUEST NO 73: Prior to the crash, Colonel Bryant had knowledge that ASP Troopers were exceeded the speed limit without lights and sirens in an effort to catch up to a suspected speeder.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant knew.

REQUEST NO 74: Prior to the crash, Colonel Bryant approved of the conduct of ASP Troopers exceeding the speed limit without lights and sirens in an effort to catch up to a suspected speeder.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant knew or whether he approved of such conduct by Arkansas State Police Troopers.

REQUEST NO 75: Prior to the crash, Colonel Bryant had knowledge that ASP Troopers were trained that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a suspected speeder.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant knew.

REQUEST NO 76: Prior to the crash, Colonel Bryant was aware of the litigation and judgment in claims commission in Stewart v. State of Arkansas, Claim No. 12-0512-CC.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant knew.

REQUEST NO 77: Prior to the crash, Colonel Bryant reviewed the July 14, 2011 transcript of the Appeal Hearing of Trooper Rhew.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant has reviewed.

REQUEST NO 78: Prior to the crash, Colonel Bryant had access to the July 14, 2011 transcript of the Appeal Hearing of Trooper Rhew.

RESPONSE: Denied. Defendant Burke has no knowledge as to what Colonel Bryant had access to.

REQUEST NO 79: The termination of Trooper Rhew was reversed by the Arkansas State Police Commission because Trooper Rhew complied with the customs of the ASP.

RESPONSE: Denied. Defendant Burke has no knowledge as to the reason for Trooper Rhew's termination being reversed.

REQUEST NO 80: The termination of Trooper Rhew was reversed by the Arkansas State Police Commission because he complied with the training provided to the ASP.

RESPONSE: Denied. Defendant Burke has no knowledge as to the reason for Trooper Rhew's termination being reversed.

REQUEST NO 81: The termination of Trooper Rhew was reversed by the Arkansas State Police Commission because he complied with the practices of the ASP.

RESPONSE: Denied. Defendant Burke has no knowledge as to the reason for Trooper Rhew's termination being reversed.

REQUEST NO 82: Prior to Burke's driving, Trooper Burke was dispatched to a call of a hit and run accident with no injuries.

RESPONSE: Admit.

REQUEST NO 83: Prior to Burke's driving, Trooper Burke went to the scene of the hit and run call accident and spoke with the driver.

RESPONSE: Admit.

REQUEST NO 84: Prior to Burke's driving, Trooper Burke met the person who called about the hit and run accident at the Pearcy Post Office on Highway 70.

RESPONSE: Admit.

REQUEST NO 85: Prior to Burke's driving, Trooper Burke remained on the scene of the hit and run call for approximately 4 minutes.

RESPONSE: Admit.

REQUEST NO 86: Prior to Burke's driving, Trooper Burke observed a car traveling on Highway 70 with its hazard lights on.

RESPONSE: Admit.

REQUEST NO 87: Prior to Burke's driving, and when Trooper Burke observed the car traveling on Highway 70 with its hazard lights on, he was still working the hit and run call.

RESPONSE: Admit.

REQUEST NO 88: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke completed his work on the hit and run call.

RESPONSE: Admit.

REQUEST NO 89: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke completed his work on the hit and run call and walked to his patrol car.

RESPONSE: Admit.

REQUEST NO 90: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke did not pull out onto Highway 70 for one minute and twelve seconds.

RESPONSE: Admit.

REQUEST NO 91: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke did not pull out onto Highway 70 for approximately one minute.

RESPONSE: Admit.

REQUEST NO 92: When Trooper Burke pulled out onto Highway 70, Trooper Burke did not have the vehicle driving with its hazard lights in sight.

RESPONSE: Admit.

REQUEST NO 93: The Defendants have no facts or evidence that Cassandra Braun's BAC in any way caused or contributed to the crash.

RESPONSE: Admit.

REQUEST NO 94: The Defendants have no facts or evidence that the driver of the vehicle that Cassandra Braun was ridings BAC in any way caused or contributed to the crash.

RESPONSE: Denied. According to the Arkansas State Crime Lab Report, Tavon Jenkins, the driver of the car Cassandra Braun was riding in, had a BAC of 0.10. This is 0.02 over the legal limit to a vehicle in the State of Arkansas. Anyone who operates a vehicle in Arkansas with a BAC of 0.08 or more is presumed to be intoxicated, which indicates the person's reactions, motor skills, and judgment are substantially impaired so that the person represents a clear and substantial danger to himself or other motorists or pedestrians. It is well known that alcohol impairs judgment, motor skills, reaction time, and vision. Therefore, by being presumably intoxicated one cannot rule out any actions that have to do with poor decisions, reaction time, decreased motor skill, or impaired vision. At the same time Defendant Burke was reacting and trying to avoid an accident, Tavon Jenkins was accelerating and turning the steering wheel a considerable amount in an attempt to make a left-hand turn in front of an oncoming vehicle. It does not appear that Mr. Jenkins made any effort to try and avoid the accident. Additionally, the independent investigator with the Hot Springs Police Department concluded in the accident report that alcohol was a contributing factor.

REQUEST NO 95: Defendant Bryant's established custom and policy resulted in Burke's decision to refrain from engaging his lights and siren while driving at speeds in excess of the posted speed limits.

RESPONSE: Admit.

REQUEST NO 96: Defendant's Burke's driving was in disregard to the safety of the motoring public.

RESPONSE: Denied. Defendant Burke, though driving above the posted speed limit, was doing so with the safety of the motoring public in mind. Even though his speed was above the posted speed limit, Defendant Burke had no close calls with any vehicles, did not run any stop signs or red lights, nor lose control of his vehicle as evidenced by review of his patrol car video recording. At that time of night, traffic was light in that area. Defendant Burke waited for oncoming traffic prior to leaving the post office parking lot. Defendant Burke only collided with another vehicle when Tavon Jenkins, a presumed impaired driver, made a left hand turn and crossed into Defendant Burke's path.

REQUEST NO 97: Defendant Burke driving without lights and sirens was the result of an intentional decision to follow Bryant's catchup policy, practice or custom without engaging lights and sirens custom and policy.

RESPONSE: Admit.

Respectfully submitted,

TROOPER BRIAN RAY BURKE,
Separate Defendant

By: Matthew G. French

Brian W. Ray, ABN 2000084
Matthew G. French, ABN 2018112
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912 West 4th Street
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Attorneys for Trooper Brian Ray Burke

CERTIFICATE OF SERVICE

I, Matthew G. French, hereby certify that on January 17, 2019, I served a copy of the above discovery requests via electronic mail and U.S. mail, postage prepaid, to the following counsel of record:

Andrew C. Clarke
ATTORNEY-AT-LAW
6250 Poplar Avenue, Second Floor
Memphis, Tennessee 38119
Attorney for Lori Braun

Paul J. James
JAMES, CARTER & PRIEBE, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201
Attorney for Lori Braun

Jennifer L. Merritt
OFFICE OF THE ATTORNEY GENERAL
STATE OF ARKANSAS
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Attorneys for Colonel Bill Bryant

Matthew G. French

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IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the Estate of Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased, Individually and on behalf of all wrongful death Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT D

Dr. Kris Sperry's Report

Kris Sperry, M.D.
Forensic Pathologist
Certified by the American Board of Pathology in:
Anatomic Pathology
Clinical Pathology
Forensic Pathology

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February 10, 2019

Re: Cassandra Marie Braun

I have reviewed materials, records, investigative reports and photographs concerning the death of Cassandra Marie Braun. These materials include the following:

A. Arkansas State Crime Laboratory file (including autopsy report, DNA report, serology report, and autopsy report of Tavon Jenkins)

B. Crime Scene Photographs, extensive, including numerous photographs of the decedents, the involved vehicles, and the crash scene

C. Accident Report

D. Reports relating to analyses of "Black Box" recovered from both vehicles

E. Analytical reports based upon data recovered from vehicles, the crash scene, and other sources that were part of the investigation

F. Correspondence and FOI request

G. Hot Springs Police Department report for Incident 16L032154

H. Videos relating to the incident

On October 10, 2016, at or around 9:23 pm, a 2011 Chevrolet Malibu, within which were Cassandra Braun and Tavon Jenkins, was struck by a 2016 Dodge Charger that was being driven by Brian Ray Burke. According to data derived from the vehicle, the Charger had been traveling at 113 mph shortly before the crash, and was traveling 98 mph at the impact moment.

Both Mr. Jenkins and Ms. Braun were ejected from their vehicle following the impact. Subsequent DNA testing of the Malibu driver's side airbag (which had deployed) revealed DNA transfer from Mr. Jenkins, but no evidence of DNA from Ms. Braun, and

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this established Mr. Jenkins as the driver and Ms. Braun as the passenger at the time of the impact.

Both Mr. Jenkins and Ms. Braun were dead at the scene. Numerous photographs were taken at the scene of Ms. Braun, and I have reviewed those photographs. Ms. Braun's body appears to have come to rest on the roadway asphalt, adjacent to the curb, and her body is lying predominantly supine, with the right arm across the upper body (thus turning the shoulders slightly to her right), and with her right leg folded beneath her body in an abnormal position (the right femur was subsequently found to be fractured). The contours of the face and jaw are distorted, indicative of fractures involving the facial and cranial bones. A small abrasion is on the right elbow; otherwise, there are no visible abrasions on other body surfaces, nor is there evidence of abrasive, friction-related damage to her clothing.

An external examination of Cassandra Braun was performed, with x-ray evaluation of her head, neck, torso and extremities. These revealed multiple skull fractures (which corresponded to obvious deformities of the skull noted externally), and fractures of the cervical spine and mandible. The complex skull, jaw and cervical spine fractures are the result of crushing forces being applied broadly to the head and neck, and are not the more localized injuries that may be sustained from impact against a roadway and/or curb. Additionally, such roadway/curb injuries are accompanied by extensive, usually deep abrasions of broad surfaces on the head and face. Externally, although a few small abrasions and lacerations were identified on scattered regions of Ms. Braun's face, there was no evidence of the confluent, "brush-burn" type abrasions that are typical and characteristic of high speed and/or great force tangential impact with a very abrasive surface, such as the roadway, nor of the abrasive tearing and "shredding" of clothing that accompanies such injuries. .

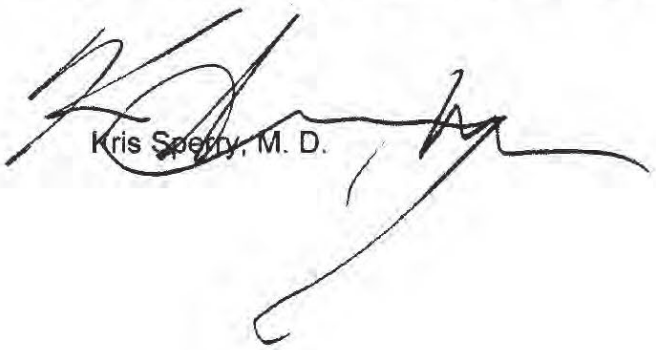
Photographs of the Chevrolet Malibu reveal very massive, extensive damage of the front and passenger side of the vehicle, with severe intrusion into the passenger compartment by the front vehicle components that were posteriorly displaced by the force of the impact. Evaluation of the vehicle disclosed no evidence that either Mr. Jenkins or Ms. Braun were wearing their seatbelts at the time of the crash. Although the airbag deployed on the driver's side, it does not appear that the airbag deployed on the passenger side of the Malibu, most probably do to the massive intrusion into the passenger compartment that occurred.

My opinions concerning the death of Cassandra Braun are the following:

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- Cassandra Braun died of crushing injuries of the head and neck. with extensive skull, cervical spine and mandible fractures.
- The massive crushing skull and spine injuries occurred when the right front of the vehicle in which she was a passenger (the Malibu) massively intruded into the passenger compartment, after which she was ejected from the vehicle.
- There is no evidence of severe, confluent, "brush-burn" abrasions on Ms. Braun's body surfaces, nor of abrasive damage to her clothes.
- Cassandra Braun's fatal head and neck injuries occurred as the direct result of the impact between the two vehicles and subsequent intrusion into the passenger compartment, and did not occur4 as the consequence of her body being subsequently ejected from the Malibu after the impact.
- The analytical evidence indicates that Ms. Braun was not wearing her seatbelt at the moment of impact between the two vehicles. However, the lethal crushing head and neck injuries were sustained from the passenger compartment intrusion by the right front portions of the Malibu, which were massively displaced backwards from the impact. Therefore, Cassandra Braun would have died of these injuries even if the seat belt had been deployed and she had been belted within the passenger seat.

All of the above opinions are rendered to a reasonable degree of medical and scientific certainty.



Kris Sperry, M. D.

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KRIS SPERRY, M.D.

CURRICULUM VITAE

DATE OF BIRTH: [redacted]

BIRTHPLACE: [redacted]

CITIZENSHIP: United States

CURRENT POSITION:

Chief Medical Examiner for the State of Georgia (retired November 1, 2015)

Consultant in Forensic Medicine and Pathology

CURRENT ADDRESS:

Home/Office:

[redacted]
Phone: (770) 486-5380
Fax: (770) 486-5105
Cell Phone: [redacted]
Email: [redacted]

EDUCATION:

High School: Lawrence High School, Lawrence, Kansas: 1971.

College: Kansas State College of Pittsburg, Pittsburg, Kansas: B. S. Degree (Major in Biology, Minor in Chemistry): 1975.

Medical School: University of Kansas School of Medicine, Kansas City, Kansas: M. D. Degree awarded June, 1978.

POSTGRADUATE TRAINING:

Flexible Internship: Allentown Hospital, Allentown, Pennsylvania: July, 1978 through June, 1979.

Resident in Pathology: University of New Mexico School of Medicine, Albuquerque, New Mexico: July, 1981 through June, 1985.

Fellow in Forensic Pathology: Office of the Medical Investigator for the State of New Mexico, University of New Mexico School of Medicine, Albuquerque, New Mexico: July, 1985 through December, 1985.

HONORS AND AWARDS:

Arnold W. Matera Award for Excellence in Radiologic Diagnosis, University of Kansas School of Medicine Graduating Class of 1978; Awarded at Commencement Ceremonies, June, 1978.

Lawrence Lions Alumni Association Election to Lawrence High School Alumni Hall of Honor, Lawrence, Kansas, October 12, 2003.

MILITARY SERVICE:

Commissioned Officer in the United States Public Health Service, Indian Health Service Branch, stationed at the USPHS Hospital on the reservation of the Red Lake Band of Chippewa (Ojibway) Indians, Red Lake, Minnesota, as a General Medical Officer: July, 1979 through June, 1981. Honorably Discharged June, 1981.

EMPLOYMENT:

Associate Medical Investigator for the Office of the Medical Investigator for the State of New Mexico: January 1, 1986, through June 30, 1986.

Medical Investigator for the Office of the Medical Investigator for the State of New Mexico: July 1, 1986, through December 31, 1989.

Associate Medical Examiner, Fulton County Medical Examiner's Office, Atlanta, Georgia: December 23, 1989, through July 12, 1991.

Deputy Chief Medical Examiner, Fulton County Medical Examiner's Office, Atlanta, Georgia: July 12, 1991, through June 13, 1997.

Chief Medical Examiner for the State of Georgia, Georgia Bureau of Investigation Division of Forensic Sciences, June 13, 1997 through November 1, 2015; Retired from State Service.

ACADEMIC APPOINTMENTS:

Instructor, Department of Pathology, University of New Mexico School of Medicine, Albuquerque, New Mexico: January 1, 1986, through June 30, 1986.

Assistant Professor, Department of Pathology, University of New Mexico School of Medicine, Albuquerque, New Mexico: July 1, 1986, through December 31, 1989.

Clinical Assistant Professor, Department of Pathology, Emory University School of Medicine, Atlanta, Georgia: August 1, 1990, through December, 2000.

Clinical Assistant Professor, Department of Pathology, Medical College of Georgia, Augusta, Georgia: August 1, 2001, through July 1, 2008

Clinical Associate Professor, Department of Pathology, Medical College of Georgia, Augusta, Georgia, July 1, 2008—November 1, 2015.

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MEDICAL LICENSURE:

Current Medical Licensures: New Mexico [redacted] obtained 1981
Georgia [redacted] obtained 1990
Kansas [redacted] obtained 1995
Wisconsin ([redacted]; obtained 2011

Previous Medical License (inactive): Minnesota [redacted]

National Provider Identifier: [redacted]

BOARD CERTIFICATIONS:

Certification of the National Board of Medical Examiners, Parts I, II, and III (completely certified for Parts I and II upon finishing medical school in 1978, and for Part III in 1979, during Internship).

Certification by the American Board of Pathology in Anatomic Pathology and Clinical Pathology, May, 1985.

Certification by the American Board of Pathology in Forensic Pathology, May, 1986.

CURRENT MEMBERSHIPS IN PROFESSIONAL ASSOCIATIONS:

American Society of Clinical Pathologists (Fellow)
National Association of Medical Examiners (Fellow)
American Academy of Forensic Sciences (Fellow)
College of American Pathologists (Fellow)

COMMUNITY SERVICE:

Member, Board of Directors, Tourette Syndrome Association of Georgia: January 1, 1993 to January 31, 1995.

Member, Board of Directors, The Keeley Foundation, Cherokee County, Canton, Georgia. January 5, 2016—Present.

PROFESSIONAL APPOINTMENTS:

Appointed Member, Georgia Coroner's Training Council, 1998---2015 (Appointment by Roy Barnes, Governor of the State of Georgia, with Appointment Continued by Sonny Perdue, Governor of the State of Georgia, and Nathan Deal, Governor of the State of Georgia).

Program Director, Pathology/Biology Section of the American Academy of Forensic Sciences 41st Annual Meeting, February, 1989, Las Vegas, Nevada.

Faculty Member, Forensic Pathology Dinner Seminar, American Society of Clinical Pathologists Spring and Fall Meetings: Kansas City, Missouri, April 15-21, 1988; Las Vegas, Nevada, October 23-28, 1988; Washington, D. C., October 28-November 3, 1989; Dallas, Texas, October 20-25, 1990; New Orleans, Louisiana, September 21-27, 1991; Las Vegas, Nevada, October 10-16, 1992; Chicago, Illinois, March 27-April 1, 1993; Seattle, Washington, April 10-13, 1994; Orlando, Florida, April 9-12, 1995; New Orleans, Louisiana, September 16-22; Boston, Massachusetts, April 18-23, 1996; San Diego, California, September 29-October 3, 1996; and Washington, D. C., October 17-22, 1998.

Laboratory Supervisor and Lecturer, University of New Mexico Hospital Trauma Nurse Specialist Program, 1987-1989.

Forensic Pathology Council Member, Council on Continuing Education of the American Society of Clinical Pathologists: July, 1988, to October 31, 1996 (Chairman of the Forensic Pathology Council on October 25, 1994, through October 31, 1996).

Panel Member, Diagnostic and Therapeutic Technology Assessment (DATTA) Program of the American Medical Association: July 27, 1988, to the present.

Member, Advisory Board of the New Mexico Donor Program: December, 1988 through December, 1989.

Member, Board of Editors of The American Journal of Forensic Medicine and Pathology: December, 1988 through December, 1996.

Chairman, Pathology/Biology Assessment Task Force, Strategic Planning Committee, American Academy of Forensic Sciences: August, 1989, through February, 1992.

Director, Forensic Pathology Fellowship Training Program, Fulton County Medical Examiner's Office (accredited through Emory University School of Medicine, Department of Pathology): July, 1991 through July 1, 1997.

Certification as an Instructor for Police and Law Enforcement Continuing Education in the State of Georgia: December, 1992 through the present.

Director, Child Abuse Investigative and Support Center, Georgia Bureau of Investigation Division of Forensic Sciences (funded through the Criminal Justice Coordinating Council, under the administration of Roy Barnes, the Governor of the State of Georgia), July 1, 2000---November 1, 2015.

Member, Ad Hoc Committee on Membership Criteria, Pathology-Biology Section of the American Academy of Forensic Sciences, December 28, 2001---present.

Member, Georgia Child Fatality Review Panel (Appointed by Executive Order of the Governor of the State of Georgia, Honorable Roy Barnes; Appointment Continued by Honorable Sonny Perdue, Governor of the State of Georgia; Appointment Continued by Honorable Nathan Deal, Governor of the State of Georgia), March 21, 2002---November 1, 2015.

Member, Board of Editors of The American Journal of Forensic Medicine and Pathology: February, 2003 through May, 2016.

Member, Board of Directors, National Association of Medical Examiners, Elected 2006. Terms: 2006—2009, and 2009-2012.

Appointed Member, New Mexico Public Regulation Commission, Physician External Review Panel: August 24, 2007---Present.

Co-Chairman, Georgia Office of Disability Services Medical Review Group (Appointed by Executive Order of the Governor of the State of Georgia, Honorable Sonny Purdue, and continued by Honorable Nathan Deal, Governor of the State of Georgia), December 2, 2009---November 1, 2015.

Member, College of American Pathologists 2009-2010 Member Market Research Panels.

Invited Consultant, Ministry of Justice for the Government of Kazakhstan (Central Asia); Forensic Medical Consultant for the Kazakhstan Strengthening Forensic Capacity Project Involving the Kazakhstan Ministry of Justice, KAZGUU University (Astana, Kazakhstan), and Affiliated Consulting Entities Within Kazakhstan and the United Kingdom. Phase I: March 8-17, 2017, in Almaty and Astana, Kazakhstan.

WORKSHOPS AND SEMINARS:

Workshop (Mini-Seminar) Director: Present Your Case: Interesting, Challenging, and Problematic Forensic Pathology Cases. American Society of Clinical Pathologists Fall Meeting, New Orleans, Louisiana, September 16-22, 1995.

Workshop Director (with Marcella Fierro, M.D., and Mary Case, M.D., Co-Directors): Pediatric Autopsy and Pathology. American Society of Clinical Pathologists Fall Meeting, New Orleans, Louisiana, September 16-22, 1995, and Washington, D. C., October 17-22, 1998.

Workshop Director (with Roger Mittleman, M.D., Co-Director): Sudden Death of the Inpatient: Medicolegal Challenges for the Hospital-Based Pathologist (Series 2). American Society of Clinical Pathologists Spring Meeting, Seattle Washington, April 10-14, 1994, and Orlando, Florida, April 9-12, 1995.

Workshop Director (with Roger Mittleman, M.D., Co-Director): Problem Solving and Contemporary Issues in Child Abuse. American Society of Clinical Pathologists Fall Meeting, New Orleans, Louisiana, September 21-27, 1991, and Las Vegas, Nevada, October 10-16, 1992.

Workshop Director: Sudden Death of the Inpatient: Medicolegal Challenges for the Hospital-Based Pathologist. American Society of Clinical Pathologists Meeting (Fall and Spring): Las Vegas, Nevada, October 22-28, 1988; Washington, D. C., October 28-November 3, 1989; Dallas, Texas, October 20-25, 1990; New Orleans, Louisiana, September 20-27, 1991; and Chicago, Illinois, March 27-April 1, 1993.

Workshop (Mini-Seminar) Director: Maternal Deaths: Investigation, Analysis, and Pathology. American Society of Clinical Pathologists Fall Meeting, Las Vegas, Nevada, October 10-16, 1992.

Faculty Member, American Society of Clinical Pathologists Regional Educational Course: Current Concepts in Forensic Pathology. Santa Fe, New Mexico, May 18-21, 1993. Lecture Topics: Child Abuse and Childhood Injuries, and Therapeutic Misadventures.

Faculty Member, American Society of Clinical Pathologists Regional Educational Course: Current Topics in Forensic Pathology. Williamsburg, Virginia, June 21-24, 1995. Lecture Topics: Child Abuse and Therapeutic Misadventures.

Faculty Member, American Society of Clinical Pathologists Regional Educational Course: Current Topics in Forensic Pathology. Las Vegas, Nevada, June 9-12, 1997. Lecture Topics: Child Abuse and Therapeutic Misadventures.

Faculty Member, American Society of Clinical Pathologists Regional Educational Course: Current Topics in Forensic Pathology, New Orleans, Louisiana, May 12-15, 1999. Lecture Topics: Child Abuse and Therapeutic Misadventures.

Faculty Member, American Society of Clinical Pathologists Regional Educations Course: Current Topics in Forensic Pathology, Vancouver, British Columbia, Canada, April 18-21, 2001. Lecture Topics: Child Abuse and Therapeutic Misadventures.

Invited Speaker, American Society for Clinical Pathology/College of American Pathologists Annual Meeting, Washington, D. C., October 14, 2002. Lecture Topic: Therapeutic Misadventures: An Issue of Patient Safety.

Invited Speaker, American Society for Clinical Pathology/College of American Pathologists Annual Meeting, Washington, D. C., October 14, 2002. Lecture Topic (Roundtable Discussion): The Georgia/Tri-State Crematorium Incident.

Invited Speaker, United States and Canadian Academy of Pathology 95th Annual Meeting, February 11-17, 2006, Atlanta, Georgia; Specialty Conference on Forensic Pathology, February 15. Lecture Topic: Forensic Identification on a Massive Scale: The Georgia Crematorium Experience.

American Academy of Forensic Sciences 58th Annual Meeting, Seattle, Washington, February 20, 2006; Workshop #1, Kris Sperry, M. D. and Frederick Snow, Ph. D.: The Tri-State Crematorium Incident: A Mass Disaster Over Seven Years.

American Academy of Forensic Sciences 64th Annual Meeting, Atlanta, Georgia, February 21, 2012; Workshop #15, Kris Sperry, M. D. and J. C. Upshaw Downs, M. D.: Hell On Earth---Just Another Day at Work: An Overview of the Tri-State Crematory Catastrophe.

Co-Director (with Judy Melinek, M. D.), Medicolegal/Private Practice Forensic Pathology Workshop (October 14, 2018; Abstract Entry 5.3), National Association of Medical Examiners 2018 Annual Meeting, West Palm Beach, Florida, October 12-15, 2018.

TELECONFERENCES:

Sperry, K.: The Investigation, Analysis, and Pathology of Maternal Deaths. American Society of Clinical Pathologists Teleconference for Continuing Medical Education, June 5, 1992.

Sperry, K.: The Investigation and Autopsy Examination of Deaths Related to Anesthesia and Therapeutic Misadventures. American Society of Clinical Pathologists Teleconference for Continuing Medical Education, May 6, 1994.

HOSPITAL APPOINTMENTS:

Associate Medical Staff appointment in Pathology, University of New Mexico Hospital: August 22, 1986, through December 31, 1989

TEACHING RESPONSIBILITIES (UNDERGRADUATE AND POSTGRADUATE MEDICAL EDUCATION):

Lecturer, University of New Mexico School of Medicine Sophomore Pathology Course: Thrombosis (1986, 1987, 1988, 1989); Embolism and Infarction (1986, 1987, 1988, 1989); Physical Injury (1988); Living Child Abuse Examination (1989).

Lecturer, Topics in Anthropology 230: Forensics and Crime. Department of Anthropology, University of New Mexico (1986, 1987, 1988, 1989). Lecture topics included Gunshot Wounds and Ballistics, and Examination of the Living Child Abuse Victim.

Lecturer, Georgia State University, Forensic Anthropology (Course #437 [undergraduate]--#637 [graduate]), 1994. Lecture topic: Forensic Aspects of Asphyxial Deaths.

Lecturer, Georgia State University Forensic Anthropology (Course #6370), November 5, 2003. Lecture Topic: Gunshot Wounds and Ballistics.

COMMITTEES AND PANELS:

New Mexico Maternal and Perinatal Morbidity and Mortality Committee: 1983-1989.

National Association of Medical Examiners Committee to Study Contractual Arrangements in Forensic Pathology: December 3, 1986 through October, 1992.

Ad Hoc Trauma Evaluation Committee, University of New Mexico School of Medicine: January, 1987, through December, 1989.

National Association of Medical Examiners Journal Subscription Subcommittee and Medical Device Malfunction Committee: September, 1987 through October, 1992.

Member, Quality Management Clinical Pathology Expert Review Panel, American Society of Clinical Pathologists, July 1, 1994-June 30, 1995.

Member, Georgia Chiefs of Police Association Ad Hoc Committee on Electronic Weapons, January through June, 2005 (Report Issued June 20, 2005).

PUBLICATIONS:

1. Sperry, K.: Troubles in Forensic Pathology (letter). New England Journal of Medicine 1978;298:748.

2. Sperry, K., and Wali, J.: Adenocarcinoma of the Stomach with Eruptive Seborrheic Keratoses: The Sign of Leser-Trelat. Cancer 1980;45:2434-2437.

3. Sperry, K.: A Footnote to Diagnosing Visceral Larval Migrans. Patient Care 1981 (September 30);15(16):144.

4. Sperry, K.: Blessed are the Children. Journal of the American Medical Association 1983;249:702.

5. Sperry, K., and Smialek, J.: Sudden Death Due to a Paraganglioma of the Organs of Zuckerkandl, American Journal of Forensic Medicine and Pathology 1986;7:23-29.

6. Sperry, K., and Smialek, J.: An Unusual Asphyxial Death in a Hospital. Journal of the American Medical Association 1986;255:2472-2474.

7. Sperry, K.: Amniotic Fluid Embolism: To Understand an Enigma. Journal of the American Medical Association 1986;255:2183-2186.

8. Sperry, K., and McFeeley, P.: Medicolegal Aspects of Necrotizing Fasciitis of the Neck. Journal of Forensic Sciences 1987;32:273-284.

9. Sperry, K., and Sweeney, E. S.: Ultrastructural and Immunofluorescent Detection of Herpes Simplex Virus after Embalming and Burial. American Journal of Forensic Medicine and Pathology 1987;8:239-244.

10. Sperry, K., and Sweeney, E. S.: Of Brown Spiders and Red Herrings (Waterhouse-Friderichsen Meningococcemia). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 87-3 (FP 152), July 1987.

11. Sperry, K.: Aspiration Asphyxia (Mendelson's Syndrome). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 87-3 (FP 153), August 1987.

12. Sperry, K., Wohlenberg, N., and Standefer, J. C.: Fatal Intoxication by Tocainide. Journal of Forensic Sciences 1987;32:1440-1446.

13. Sperry, K.: Myocardial Infarction in Pregnancy. Journal of Forensic Sciences 1987;32:1464-1470.

14. Sperry, K.: A Shot in the Dark (The Glaser Safety Slug). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 88-1 (FP 156), April 1988.

15. Jones, A. M., Reyna, M., Sperry, K., and Hock, D.: Suicidal Contact Gunshot Wounds to the Head with .38 Caliber Glaser Safety Slug Ammunition. Journal of Forensic Sciences 1987;32:1604-1621.

16. Sperry, K., and Sweeney, E. S.: Terminal Ballistic Characteristics of Hydra-Shok Ammunition: A Description of Three Cases. Journal of Forensic Sciences 1988;33:42-48.

17. Sperry, K., and McFeeley, P.: A Question of Manners (Pulmonary Thromboembolism). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 88-3 (FP 158), June 1988.

18. Sperry, K.: An Unusual Deep Lingual Hemorrhage as a Consequence of Ligature Strangulation. Journal of Forensic Sciences 1988;33:806-811.

19. Sperry, K.: The Not-So-Pink Lady (Carbon Monoxide Intoxication). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 89-1 (FP 162), January 1989.

20. Sperry, K.: An Epidemic of Intravenous Narcoticism Deaths Associated with the Resurgence of Black Tar Heroin. Journal of Forensic Sciences 1988;33:1156-1162.

21. Sperry, K.: A Situation of Grave Gravidity (Amniotic Fluid Embolism). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 89-4 (FP 165), September 1989.

22. Sperry, K.: Fatal Intraoperative Hemorrhage During Spinal Fusion Surgery for Osteogenesis Imperfecta. American Journal of Forensic Medicine and Pathology 1989;10:54-59.

23. Zumwalt, R. E., Lantz, P., and Sperry, K.: Earlobe Creases and Coronary Atherosclerosis. American Journal of Forensic Medicine and Pathology 1988;9:90.

24. Sperry, K.: Suicide With, and Because of, Cocaine. Journal of the American Medical Association 1988;259:2995-2996.

25. Sperry, K.: Review of Pathology Annual 1987, Volume 22, Part 2. Journal of Forensic Sciences 1988;33:1295-1296.

26. Sperry, K., and Sweeney, E. S.: Suicide by Intravenous Injection of Cocaine. Journal of Forensic Sciences 1989;34:244-248.

27. Sperry, K., and Lantz, P.: Autoimmune Adrenocortical Necrosis with Hashimoto's Thyroiditis (Schmidt's Syndrome). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 90-4 (FP 171), November, 1990.

28. Sperry, K.: Belinda, Asleep Without Dreams. Journal of the American Medical Association 1989;261:753. (Reprinted in the Japanese edition of JAMA, May 5, 1989, and the Schweizer Ausgabe edition of JAMA, Volume 8, Number 6, June 1989; Also Reprinted in A Piece Of My Mind: A New Collection of Essays From JAMA, edited by Roxanne K. Young, M. D., AMA Press, 2000).

29. Cohle, S. D., Sperry, K. L., Graham, M. A., and Dowling, G.: Infective Endocarditis. Journal of Forensic Sciences 1989;34:1374-1386.

30. Sperry, K.: Anterior Thoracic Wall Trauma in Elderly Homicide Victims: The "CPR" Defense. American Journal of Forensic Medicine and Pathology 1990;11:50-55.

31. Sperry, K.: Review of Pathology Annual 1988, Volume 23, Part 2. Journal of Forensic Sciences 1990;35:503-504.

32. Sperry, K., and Campbell, H. R.: An Elliptical Incised Wound of the Breast Misinterpreted as a Bite Injury. Journal of Forensic Sciences 1990;35:1226-1235.

33. Sperry, K., and Pfalzgraf, R.: Inadvertent Clavicular Fractures Caused by "Chiropractic" Manipulations in an Infant: An Unusual Form of Pseudoabuse. Journal of Forensic Sciences 1990;35:1211-1216.

34. Sperry, K., and Pfalzgraf, R.: Fatal Ethanol Intoxication from Household Products Unintended for Ingestion. Journal of Forensic Sciences 1990;35:1138-1142.

35. Sperry, K.: Review of Pulmonary Pathology, edited by D. Dail and S. Hammar. Journal of Forensic Sciences 1990;35:1004.

36. Sperry, K., Key, C., and Anderson, R. E.: Toward a Population-Based Assessment of Death Due to Pulmonary Embolism in New Mexico. Human Pathology 1990;21:159-165.

37. Rhine, S., and Sperry, K.: Radiographic Identification by Mastoid Sinus and Arterial Pattern: A Case Report. Journal of Forensic Sciences 1991;36:272-279.

38. Sperry, K.: Ethylene Glycol Poisoning. American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 91-1 (FP 174), February 1991.

39. Hanzlick, R., and Sperry, K.: Maternal Deaths in Fulton County: 1988-1989. Atlanta Medicine 1990;64(3):19-23.

40. Sperry, K.: Tattoos and Tattooing, Part I: History and Methodology. American Journal of Forensic Medicine and Pathology 1991;12:313-319.

41. Sperry, K.: No Laughing Matter (Fatal Nitrous Oxide Abuse). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology FP 92-2 (FP 181), April 1992.

42. Sperry, K.: Tattoos and Tattooing, Part II. Gross Pathology, Histopathology, Medical Complications and Applications. American Journal of Forensic Medicine and Pathology 1992;13:7-17.

43. Clark, E. G. I., and Sperry, K.: Distinctive Blunt Force Injuries Caused by a Crescent Wrench. Journal of Forensic Sciences 1992;37:1172-1178.

44. Haglund, W. D., and Sperry, K.: The Use of Hydrogen Peroxide to Visualize Tattoos Obscured by Decomposition and Mummification. Journal of Forensic Sciences 1993;38:147-150.

45. Sperry, K.: Scleral and Conjunctival Hemorrhages Arising from a Gunshot Wound of the Chest: A Case Report. Journal of Forensic Sciences 1993;38:203-209.

46. Sperry, K.: It'll Put Your Eye Out (Death From an Air-Powered Rifle). American Society of Clinical Pathologists Check Sample Program in Forensic Pathology, 1994.

47. Sperry, K.: The Bones of Maria S. Annals of Clinical Practice (In press; accepted for publication April, 1993).

48. Sperry, K.: Achalasia, the Valsalva, Maneuver, and Sudden Death: A Case Report. Journal of Forensic Sciences 1994;39:547-551.

49. Sperry, K.: Lethal Asphyxiating Juvenile Laryngeal Papillomatosis: A Case Report with Human Papilloma Virus In-Situ Hybridization Analysis. American Journal of Forensic Medicine and Pathology 1994;15:146-150.

50. Sperry, K.: Medicolegal Investigation of Anesthesia-Related Deaths. American Society of Clinical Pathologists Check Sample Program in Forensic Pathology, 1994.

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ABSTRACTS AND NATIONAL SCIENTIFIC ORGANIZATION PRESENTATIONS:

Maternal Deaths in New Mexico, 1976-1982. Sperry, K., McFeeley, P., and Smialek, J.: Presented at the 36th Annual Meeting of the American Academy of Forensic Sciences, February 1984, in Anaheim, California (Abstract listing G63).

Civil Litigation in Maternal Deaths: Current Experience in New Mexico. Sperry, K., and Smialek, J.: Presented at the 37th Annual Meeting of the American Academy of Forensic Sciences, February 1985, in Las Vegas, Nevada (Abstract listing J08).

Myocardial Infarction During Pregnancy: A Rare Occurrence. Sperry, K., Adams, S. P., and Smialek, J.: Presented at the 37th Annual Meeting of the American Academy of Forensic Sciences, February 1985, in Las Vegas, Nevada (Abstract listing G058).

Necrotizing Fasciitis of the Neck and Sudden Death. Sperry, K., McFeeley, P., and Smialek, J.: Presented at the 38th Annual Meeting of the American Academy of Forensic Sciences, February 1986, in New Orleans, Louisiana (Abstract listing G34).

"Black Tar" Heroin and Narcotic Deaths in New Mexico. Sperry, K.: Presented at the 39th Annual Meeting of the American Academy of Forensic Sciences, February 1987, in San Diego, California (Abstract listing G64).

Homicide Profiles in a Tri-Ethnic Population. Longacre, T., Hildebrandt, R., Starr, M., Sperry, K., and McFeeley, P.: Presented at the 39th Annual Meeting of the American Academy of Forensic Sciences, February 1987, in San Diego, California (Abstract listing G8).

Peridural Spinal Hemorrhage in Sudden Infant Death Syndrome and Child Abuse. Griest, K., and Sperry, K.: Presented at the 11th Meeting of the International Association of Forensic Sciences, August 2-7, in Vancouver, British Columbia, Canada.

Unexpected Death Due to Infective Endocarditis. Cohle, S., Graham, M., Sperry, K., and Dowling, G.: Presented at the 41st Annual Meeting of the American Academy of Forensic Sciences, February 1989, in Las Vegas, Nevada (Abstract listing G50).

Postmortem Incidence vs. Clinical Diagnostic Accuracy of Pulmonary Thromboembolism in a Large Population: The Autopsy as a Quality Control Tool. Sperry, K., Key, C., and Anderson, R. E.: Presented at the International Symposium on the Role of Autopsy in Epidemiology, Medical Research, and Clinical Practice, June 1-3, 1989, in Trieste, Italy.

Ingestion of Ethanol Containing Household Products. Pfalzgraf, R., and Sperry, K.: Presented at the 42nd Annual Meeting of the American Academy of Forensic Sciences, February 1990, in Cincinnati, Ohio (Abstract listing G52).

Tattoos and Tattooing: The History, Psychology, and Pathology of the Art that Art Forgot. Presented at the 24th Annual Meeting of the National Association of Medical Examiners, September 1990, in Denver, Colorado.

Clinically Misdiagnosed Mesenteric Malrotation with Subsequent Fatal Massive Ischemic Bowel Necrosis in Children. Sperry, K.: Presented at the 44th Annual Meeting of the American Academy of Forensic Sciences, February 1992, in New Orleans, Louisiana (Abstract listing G60).

The Ancient and Contemporary History of Tattooing: Identifying Marks Through the Ages. Sperry, K.: Presented at the 44th Annual Meeting of the American Academy of Forensic Sciences, February 1992, in New Orleans, Louisiana (Abstract listing LW5).

Lethal Environmental Factors Complicating Attempted Suicidal Diphenhydramine Overdose: The "Accidental Suicide." Sperry, K., and Koponen, M.: Presented at the 45th Annual Meeting of the American Academy of Forensic Sciences, February 1993, in Boston, Massachusetts (Abstract listing G78).

Cases That Won't Go Away. Sperry, K. Presented at the 2002 Interim Meeting of the National Association of Medical Examiners, February 12, 2002, in Atlanta, Georgia.

Multidisciplinary Session: Criminalistics/Jurisprudence Panel--Prosecuting Drug Facilitated Sexual Assault Cases: Problems Encountered/Technical Fallibilities---A Mock Trial. Sperry, K., and other panel members. Presented at the 54th Annual Meeting of the American Academy of Forensic Sciences, February 15, 2002, in Atlanta, Georgia (Abstract Listing B83).

Pediatric Injury Evaluation: A Clinical Forensic Pathology Program in Georgia. Darrisaw, L., Gardiner, J. P., Smith, G. P., and Sperry, K. Presented at the 55th Annual Meeting of the American Academy of Forensic Sciences, February 22, 2003, in Chicago, Illinois (Abstract Listing G89).

Tattoos And Mummies: From the Ancient to the Modern. Sperry, K. Presented at the Vth World Congress on Mummy Studies, Universita Di Biologia Animale Dell'Uomo, Via Accademia Albertina, 13, Torino, Italy, September 4, 2004.

The Tri-State Crematory Incident: Dealing With a Media Onslaught. Sperry, K. Presented at the 2005 Meeting of the National Association of Medical Examiners, October 17, 2005, in Los Angeles, California.

Diphenhydramine (DPH)-Related Deaths: Two Case Reports. (Poster Presentation). Brown, D., and Sperry, K. Presented at the 2005 Meeting of the National Association of Medical Examiners, October 17, 2005, in Los Angeles, California.

OTHER PUBLICATIONS:

Sperry, K.: Section E3 (Medical Investigation) of Chapter Two (Investigation of Vehicular Homicide), pp. 2-29 through 2-35, of Prosecutor's Manual for Vehicular Homicide. Judith A. Olean (editor), published by the Institute for Public Law, Albuquerque, New Mexico, November 1986.

Sperry, K.: Life and Death Tattoos: A Pathologist's Perspective. In Tattootime, Vol. 4, No. 1, 1987, D. E. Hardy (editor), Honolulu, Hawaii.

Sperry, K.: AIDS and Tattoos: The Medical Facts. Tattoo 9:67-69, October 1987.

Sperry, K.: Invited Editorial, Albuquerque Tribune, December 29, 1988: "Link Between Drinking, Death in N. M. is Clear, Ugly on Autopsy Table."

Sperry, K.: Tattoos, Identification, and Forensic Pathology: The Unique and Indelible Mark. Tattoo Advocate: The Journal of International Tattoo Arts, Vol. 1, No. 2, pp. 56-59, 1989.

INVITED PRESENTATIONS AND OTHER:

Faculty Member, Office of the Medical Investigator for the State of New Mexico Annual Death Investigation Seminar, September 16-19, 1986. Lecture topics: Penetrating Wounds and Associated Weapons.

Invited Consultant in Forensic Pathology, William Beaumont Army Medical Center, Department of Pathology, El Paso, Texas, September 25-26, 1986, June 12-13, 1987, and April 13-14, 1989.

Invited Consultant and Lecturer in Forensic Pathology, La Plata County Sheriff's Office, Durango, Colorado, December 12, 1986.

Communicable Diseases and Tattooing. Presented at the National Tattoo Association Annual Conventions: San Diego, California (March 28, 1987); Orlando, Florida (April 9, 1988); Arlington, Texas (April 9, 1989); Philadelphia, Pennsylvania (April 7, 1990); Anaheim, California (April 4, 1991); Meadowlands, New Jersey (April 11, 1992); San Francisco, California (March 12, 1994); Nashville, Tennessee (March 18, 1995), Tucson, Arizona (April 18-21, 1996), Philadelphia, Pennsylvania (March 11-14, 1997), and Los Angeles, California (March 12-15, 1998).

Faculty Member, Office of the Medical Investigator for the State of New Mexico Annual Death Investigation Seminar, September 15-18, 1987. Lecture topics: Teenage Deaths: When Drugs are a Factor; Infectious Disease; and Gunshot Injury, Including New and Unusual Ammunition.

Faculty Member, Office of the Medical Investigator for the State of New Mexico Annual Death Investigation Seminar, September 13-16, 1988. Lecture topics: Infectious Diseases (Workshop), and The Investigation of Hospital Deaths.

Faculty Member, New Mexico Trial Lawyers Association Symposium on Looking Into Vehicular Accidents, November 4, 1988: Looking at the Driver--Alcohol, Drugs and Illness.

Faculty Member, New Mexico Trial Lawyers Association Symposium on Forensic Testing in Criminal and Civil Cases, December 9, 1988: The Collection, Preservation, and Utilization of Evidentiary Material During the Forensic Autopsy.

Invited Speaker, Sandia National Laboratories Community Focus Lecture Series, January 11, 1989. Topic: "Whodunit? The Challenge of Contemporary Forensic Medicine."

Faculty Member, Office of the Medical Investigator for the State of New Mexico Annual Death Investigation Seminar, September 26-29, 1989. Lecture topics: Child Abuse: The Role of the Pathologist in Fatal and Non-Fatal Episodes, and The Fire Death, Part I.

Faculty Member, the Masters "4" Advanced Death Investigation Conference, St. Louis University School of Medicine, Division of Forensic and Environmental Pathology, St. Louis, Missouri, July 22-25, 1991. Lecture topic: Tattoos and You! All You Have Ever Wanted to Know about Skin Pictures.

Faculty Member, Second Annual Advanced Police/Medical Death Investigation Seminar, Cobb County, Georgia, Police Department, May 22, 1992. Lecture topic: Child Abuse: Detection and Investigation.

Faculty Member, Seminar on Specific Issues in Litigating Police Misconduct, for the National Lawyers Guild (Southern Region), and the National Conference of Black Lawyers, June 6, 1992, in New Orleans, Louisiana. Lecture topic: Medico-Forensic Investigation in Police Misconduct Cases.

Faculty Member, Georgia Bureau of Investigation Agent Training Class, Forsyth Law Enforcement Training Center, Forsyth, Georgia, August 6, 1992, and November 18, 1992. Lecture topics: Gunshot Wounds, Blunt Force Injuries, Child Abuse, and Sharp Force Injuries.

Faculty Member, United States Department of Justice LECC Violent and Serial Crimes Conference, Savannah, Georgia, August 7, 1992. Lecture topics: Gunshot Wounds, Blunt Force Injuries, and Asphyxial Deaths.

Continuing Medical Education Seminar for the University of Kansas School of Medicine Department of Pathology, Kansas City, Kansas, on December 2, 1992. Lecture topic: The Investigation and Pathology of Maternal Deaths.

Faculty Member, North Central Georgia Law Enforcement Academy Seminar on Death Investigation, January 13, 1993. Lecture Topics: Suicide, Head Injury, and Sharp Force Injury.

Faculty Member, National Society of Histotechnologists Region III Meeting, March 25-27, 1993, in Atlanta, Georgia. Lecture topic: The Role of Histotechnology in the Medical Examiner's Office.

Faculty Member, Third Annual Advanced Police/Medical Death Investigation Seminar, Cobb County, Georgia, Police Department, May 20, 1993. Lecture topic: Child Abuse: Detection and Investigation.

Invited Speaker, Annual Meeting of the Georgia Coroner's Association, September 17, 1993, in Macon, Georgia. Lecture topic: The Detection, Identification, and Analysis of Childhood Abusive Injuries.

Faculty Member, Forensic Medicine for Primary Care Physicians, October 22, 1993, at the University of Kansas School of Medicine-Wichita, Wichita, Kansas. Lecture topics: Evaluation of Childhood Deaths: Investigation of Childhood Injuries; Medical Misadventures & Therapy Related Deaths; Deaths Due to Drug Abuse; and Motor Vehicle Deaths: Investigation & Autopsy Findings.

Faculty Member, Georgia Department of Public Safety Training Center Seminar on Criminal Profiling, Forsyth, Georgia, November 17, 1993 and March 23, 1994. Lecture topics: Child Abuse Injuries, Pattern Injury Interpretation, Gunshot Wounds and Terminal Ballistics, and Selected Forensic Case Presentation.

Instructor, Georgia Department of Public Safety Training Center Seminar and Workshop on Pattern Injury Interpretation and the Use of Ultraviolet and Alternative Light Source Imaging Techniques, Forsyth, Georgia, November 15, 1993, February 21, 1994, and March 25, 1994. Lecture topics: Child Abuse Injuries, and Pattern Injury Recognition and Interpretation.

Faculty Member, Fulton County Police Training Center Course on Homicide Investigation, November 30, 1993. Lecture topics: Child Abuse Injuries, Pattern Injury Recognition and Interpretation, and Selected Case Presentations in Death Scene Investigation.

Invited Speaker, Idaho Attorneys for Criminal Justice, Sun Valley, Idaho, April 7, 1994. Seminar topic: The Medical and Pathologic Evaluation of Child Abuse and Suspected Abusive Injuries.

Keynote speaker, Southern Association of Forensic Scientists and Southwestern Association of Forensic Scientists combined Annual Meeting, Little Rock, Arkansas, April 15, 1994. Lecture topic: Tattooing and Body Modification: History, Methodology, Psychology, and Current Trends.

Invited Lecturer, Emory University School of Medicine, Department of Dermatology Friday Resident's Conference, April 22, 1994. Lecture topic: Pathologic, Sociologic, Behavioral and Medical Aspects of Tattoos and Tattooing.

Instructor, Georgia Police Academy Course on Child Abuse, Georgia Public Safety Training Center, Forsyth, Georgia, May 11, 1994. Lecture topic: The Identification and Associated Pathology of Childhood Injuries, Including Child Abuse.

Special Invited Lecturer, 40th Annual Montana Coroner's Association Meeting and 7th Annual Attorney General's Office Coroner Training Session, Butte, Montana, May 15-18, 1994. Lecture topics: The Investigation and Interpretation of Childhood Accidental and Inflicted Trauma; The History, Methodology, Pathology, and Medicolegal and Forensic Significance of Tattoos and Tattooing; Pattern Injury Interpretation; and The Correlation of Death Scene Investigation with Autopsy Findings in Forensic Analysis: Selected Case Studies.

Faculty Member, Atlanta Police Department Training Course on Death Investigation, Atlanta Police Academy, June 20-24, 1994. Lecture topics: Pattern Injury Identification and Interpretation, and The Investigation of Suicidal Deaths.

Faculty Member (with Mark Koponen, M.D.), Indigent Defense Resource Center and Georgia Indigent Defense Council seminar on Forensic Pathology for Defense Attorneys, September 9, 1994, in Decatur, Georgia. Lecture topic: The Interpretation and Forensic Aspects of Childhood Injuries and Child Abuse.

Invited Speaker, 24th Annual Educational Training Seminar of the International Association for Identification, Georgia State Division, September 20-23, 1994, in Columbus, Georgia. Seminar Topic: Collection and Handling of Infectious Material.

Invited Speaker, 4th Annual Georgia Center for Children Conference: Child Abuse: Investigation and Prosecution. October 12-13, 1994, Georgia Mental Health Institute, Atlanta, Georgia. Lecture Topic: Medical and Pathologic Evaluation of Child Abuse Injuries: Pattern Injury Recognition, Identification and Investigation.

Invited Speaker, Alabama Criminal Defense Lawyers Association 1995 Winter Seminar, February 24-25, 1995, Birmingham, Alabama. Lecture topics: Evidence Collection Procedures in Forensic Pathology; Forensic Autopsy Methodology; Pathologic Identification of Childhood Homicidal Suffocation and the Shaken Infant Syndrome.

Special Invited Lecturer, 41st Annual Montana Coroner's Association Meeting and Advanced Coroner's Training, Kalispell, Montana, May 21-24. Lecture Topics: Asphyxial Deaths; Exhumation Autopsy Procedures and Case Examples.

Invited Speaker, Alabama Criminal Defense Lawyers Association 1995 Summer Seminar and Annual Meeting ("Justice Must Be Won III: Skills for Trial Fights), July 7-8, 1995, Pensacola Beach, Florida. Lecture Topics: Utilization of the Forensic Pathologist in Courtroom Presentations; Evidence Collection and Handling Procedures; Smothering, Suffocation, and the Shaken Baby Syndrome; Relevance of Infant Rib Fractures in Forensic Autopsies.

Invited Speaker, Georgia County Welfare Association Symposium on Abuse and Reform ("Looking Through Panes of Abuse"), Academy of Medicine, Atlanta, Georgia, July 20, 1995.

Special Invited Luncheon Speaker, Kansas City Southwest Clinical Society 73rd Annual Fall Clinical Conference, Kansas City, Kansas, October 19-21, 1995.

Invited Speaker, Medicolegal Death Investigation Seminar in Forensic Medicine, December 2nd and 3rd, 1995, Columbia, South Carolina. Lecture Topics: Forensic Aspects of Deaths in Police Custody; Drug Related Deaths; Sudden Unexpected and Natural Deaths; Forensic Aspects of Traffic Fatalities; DNA, Trace and Physical Evidence, and the Coroner.

Invited Speaker, National Legal Aid and Defender Association 73rd Annual Conference ("Equal Justice Under Siege: Partnerships for the Future"), New Orleans, Louisiana, December 13-16, 1995. Seminar Topic: The Admissibility of Scientific Evidence and Its Use in Criminal Case Investigations.

Invited Speaker, Safepath Seminar on Child Abuse Detection and Prevention, Cobb County Department of Public Safety Training Center, Marietta, Georgia, May 10, 1996.

Invited Speaker, Georgia Trial Lawyers Association Seminar, Health Care Litigation: Secrets to Winning. Swissotel, Atlanta, Georgia, February 14, 1997. Lecture Topic: Forensic Pathology: What it Can and Cannot do for You.

Invited Speaker, Medicolegal Death Investigation Seminar in Forensic Medicine, February 15th and 16th, 1997, Murfreesboro, Tennessee. Lecture Topics: Forensic Aspects of Deaths in Police Custody, Drug Related Deaths, Sudden Unexpected and Natural Deaths, Gunshot Wounds and Terminal Ballistics, Asphyxial Deaths, Forensic Aspects of Traffic Fatalities, and DNA, Trace and Physical Evidence, and the Coroner.

Invited Speaker, Georgia Indigent Defense Council and Georgia Association of Criminal Defense Lawyers Seminar, How to Try a Child Molestation Case. Timberridge Conference Center, Mableton, Georgia, March 14, 1997. Lecture Topic: Physical Evidence of Molestation.

Faculty Member, Fulton County Law Enforcement Training Center Seminar on Death Investigation, College Park Georgia; Lecture Topic: Gunshot Wounds and Terminal Ballistics. March 18, 1997.

Invited Faculty Member, Medicolegal Death Investigation Seminar in Forensic Medicine, March 19th through 21st, 1997, Macon, Georgia. Lecture Topics: Forensic Aspects of Asphyxial Deaths, Forensic Aspects of Traffic Fatalities, and Forensic Aspects of Drug-Related Deaths.

Invited Faculty Member, Cobb County Coalition for Child Abuse and Prevention Seminar, "Working Together--Because Children Deserve a Safer World," April 4th, 1997, Ridgeview Institute, Marietta, Georgia. Lecture Topic: Hidden Treasures--Forensic Evidence Collection in Abuse and Neglect Cases.

Invited Speaker, Safepath Seminar on Child Abuse and Neglect, Cobb County Public Safety Training Center, Marietta, Georgia, May 9, 1997.

Invited Speaker, First Annual South Carolina Coroners' Association Training Seminar, sponsored by the South Carolina Coroners' Association, South Carolina Law Enforcement Division, and South Carolina Department of Health and Environmental Control, Myrtle Beach, South Carolina, August 21-23, 1997. Seminar topic: Child Fatalities Training.

Keynote Speaker, Southern Association of Forensic Scientists Fall 1997 Meeting, Longboat Key, Florida, September 2-6, 1997.

Invited Speaker, Idaho Attorneys for Criminal Justice Annual Continuing Education Seminar, Sun Valley, Idaho, March 5-7, 1998. Seminar Topic: Current Issues in Shaken Baby Cases.

Invited Speaker, Hall County District Attorneys, Law Enforcement, and Department of Family and Children's Services Seminar on Child Maltreatment and Injury (Sponsored by the Georgia Bureau of Investigation), Gainesville, Georgia, March 10 and 25, 1998.

Invited Speaker, Criminal Profiling Seminar, GSPTC in Forsyth, Georgia, March 19, 1998. Topic: Injury Analysis and Profiling Death Scenes and Homicide Victims.

Invited Speaker, Georgia Indigent Defense Council and Georgia Criminal Defense Lawyers' Association, Defending A Child Molestation Case, Timber Ridge Conference Center, Mableton, Georgia, May 15, 1998. Lecture Topic: Physical Evidence of Molestation.

Invited Speaker, International Association of Coroners and Medical Examiners 1998 Annual Meeting, June 14-18, 1998, Charleston, South Carolina. Lecture Topic: Current Issues in Child Abuse.

Invited Speaker, Child Abuse Seminar, Douglas County Sheriff's Office Regional Seminar on Child Abuse, Douglasville, Georgia, October 26, 1998.

Invited Speaker, Alabama Criminal Defense Lawyers Association Fall Meeting, Defending Allegations of Child Molestation, Huntsville, Alabama, November 7, 1998. Lecture Topic: Forensic Evidence in Child Molestation Cases.

Invited Speaker, Georgia Indigent Defense Council Seminar on Defending a Battered Partner, Atlanta, Georgia, February 19, 1999. Lecture topic: Forensic Detection and Examination of Defense Wounds.

Invited Speaker, Hall County District Attorneys, Law Enforcement, and Department of Family and Children's Services Seminar on Child Maltreatment and Injury (Sponsored by the Georgia Bureau of Investigation), April 14, 1999, Gainesville, Georgia.

Invited Speaker, Georgia Children's Trust Fund Commission and Office of Child Fatality Review Training Seminar, April 20, 1999, Gainesville College, Gainesville, Georgia. Lecture Topic: Examining Medical Evidence in Suspected Child Abuse Cases.

Invited Speaker, Georgia Children's Trust Fund Commission and Office of Child Fatality Review Training Seminar, April 29, 1999, St. Simon's Island, Georgia. Lecure Topic: Examining Medical Evidence in Suspected Child Abuse Cases.

Invited Speaker, Georgia Children's Trust Fund Commission and Office of Child Fatality Review Training Seminar, May 5, 1999, Rome, Georgia. Lecture Topic: Examining Medical Evidence in Suspected Child Abuse Cases.

Invited Speaker, Georgia Children's Trust Fund Commission and Office of Child Fatality Review Training Seminar, May 11, 1999, Macon, Georgia. Lecture Topic: Examining Medical Evidence in Suspected Child Abuse Cases.

Invited Speaker, Alabama Criminal Defense Lawyers' Association Annual Meeting and Seminar, Gulf Shores, Alabama, August 12-14, 1999. Lecture Topic: The Shaken Baby Syndrome: A Medical Update.

Invited Speaker, Georgia Indigent Defense Council Seminar: **Homicide I: Forensic Evidence.** Atlanta, Georgia, August 20, 1999.

Instructor, Georgia Bureau of Investigation Advanced Homicide Investigation School, Georgia Public Safety Training Center, Forsyth, Georgia, September 30, 1999. Lecture Topics: Gunshot Wounds, Blunt Trauma, Asphyxia, and Sharp Force Injuries.
Invited Speaker, Georgia Association of Criminal Defense Lawyers Fall Seminar and 25th Anniversary, Unicoi State Park Lodge and Conference Center, Helen, Georgia, November 5-6, 1999. Lecture Topic: Forensics for the New Millenium.

Invited Speaker, Savannah Society of Radiologic Technologists Annual Seminar, Armstrong Atlantic State University, Savannah, Georgia, November 6, 1999. Lecture Topic: Forensic Pathology As It Relates to Radiology.

Invited Speaker, Alabama Criminal Defense Lawyers Association Seminar, "Loosening the Death Belt IV: Tightening the Defense, One Life at a Time," Birmingham, Alabama, January 21-22, 2000. Lecture Topic: Medical Evidence and the Cruel and Heinous Aggravator.

Invited Speaker, Defense Research Institute Seminar, "Medical Liability in the 21st Century," Atlanta, Georgia, February 17-18, 2000. Lecture Topic: Proof of Causation: A Physician's Viewpoint.

Invited Speaker, Child Advocacy Committee of the Young Lawyers Division, State Bar of Georgia, and Georgia Indigent Defense Council, "Child Abuse: Issues and Evidence," Atlanta, Georgia, April 7, 2000. Lecture Topic: Medical Evidence in Child Abuse Cases.

Invited Speaker, Tennessee Association of Criminal Defense Lawyers, "Earning the Deal: Preparing for the Capital Case Settlement," May 12-13, 2000, Nashville, Tennessee. Panel Participant, with Paul Morrow and Jim Simmons: Panel Discussion on HAC [Heinous, Atrocious, and Cruel Aggravators.

Invited Speaker, Georgia Indigent Defense Council, "How to Try a Child Molestation Case," May 19, 2000, Atlanta, Georgia. Panel Participant, with Carolyn Tyrell and Doug Peters: Physical Evidence in the Child Molestation Case: Investigation, Preparation, and Presentation of Expert Testimony.

Invited Speaker, Georgia Indigent Defense Council, "Crime Scene Evidence Seminar," June 16, 2000, Atlanta, Georgia. Lecture Topic: Forensic Evidence: The Medical Examiner.

Invited Speaker, Prosecuting Attorney's Council of Georgia Annual Meeting, August 2, 2000, Jekyll Island, Georgia. Lecture Topic: Understanding Medical Evidence: Forensic Sciences for the New Millenium.

Designated Speaker, Georgia Bureau of Investigation Seminar on The Investigation of Deaths in Custody, for Special Agents in Charge, Investigative Division, Georgia Public Safety Training Center, Forsyth, Georgia, August 21, 2000. Lecture Topic: Medical Evidence in Custody Deaths.

Invited Speaker, The National Child Abuse Defense and Resource Center's Ninth International Conference: **Child Abuse Allegations: 2000 and Beyond**, Kansas City, Missouri, September 14-16, 2000. Lecture Topic: Medical Sexual Abuse.

Instructor, **Child Abuse: Education, Recognition, Intervention, and Prevention,** Presented by the Child Abuse Investigative Support Center, State of Georgia Medical Examiner's Office, Holiday Inn of Gainesville, Gainesville, Georgia, October 16, 2000.

Invited Speaker, SafePath Children's Advocacy Center Seminar on Childhood Injury Detection and Investigation, Cobb County Law Enforcement Instruction Facility, Marietta, Georgia, October 27, 2000. Lecture Topic: Physical Identification of Childhood Injuries: Accidental vs. Inflicted.

Designated Speaker, Georgia Bureau of Investigation Seminar on The Investigation of Deaths in Custody for Assistant Special Agents In Charge, Investigative Division, Georgia Public Safety Training Center, Forsyth, Georgia, October 30, 2000. Lecture Topic: Medical Evidence in Custody Deaths.

Instructor, **Child Abuse: Education, Recognition, Intervention, and Prevention,** Presented by the Child Abuse Investigative Support Center, State of Georgia Medical Examiner's Office, Southeast Georgia State University, Statesboro, Georgia, November 20, 2000.

Invited Speaker, Georgia Department of Human Resources and Georgia Bureau of Investigation Seminar, "Building Successful Teams: Investigation and Prosecution of Fatal Child Abuse," Macon Crowne Plaza Hotel, Macon, Georgia, November 30, 2000. Lecture Topic: Evaluation of Childhood Injuries.

Invited Speaker, Child Abuse/Death Seminar, Spalding County Sheriff's Office, Griffin, Georgia, February 9, 2000. Lecture Topic: Forensic Evidence: Pattern Injury Recognition.

Invited Speaker, United States and Canadian Academy of Pathology 2001 Specialty Conference on Forensic Pathology, Tuesday, March 6, 2001. Seminar Topic: Hidden Homicide.

Instructor, **Child Abuse: Education, Recognition, Intervention, and Prevention,** Presented by the Child Abuse Investigative Support Center, State of Georgia Medical Examiner's Office, Gordon County Community Center, GBI Region I, March 15, 2001.

Instructor, **Child Abuse: Education, Recognition, Intervention, and Prevention,** Presented by the Child Abuse Investigative Support Center, State of Georgia Medical Examiner's Office, Augusta Technical College, GBI Region 7, Thomson, Georgia March 16, 2001.

Invited Speaker, Georgia Department of Human Resources Workshop, "Advanced Investigative Skills Workshop, Georgia Public Safety Training Center, Forsyth, Georgia, April 4, 2001. Lecture Topic: Forensic Evidence in Child Abuse Investigations.

Invited Speaker, Georgia Department of Human Resources Workshop, "Advanced Investigative Skills Workshop, Georgia Public Safety Training Center, Forsyth, Georgia, May 2, 2001. Lecture Topic: Forensic Evidence in Child Abuse Investigations.

Invited Speaker, SafePath Children's Advocacy Center 6th Annual Seminar on Childhood Injury and Investigation, Cobb County Law Enforcement Instruction Facility, Marietta, Georgia, May 9, 2001. Lecture Topic: Physical Identification of Childhood Injuries.

Invited Speaker, State of Georgia Criminal Justice Coordinating Council Eighth Annual Victims Conference, Ravinia Hotel, Atlanta, Georgia, May 29, 2001. Lecture Topic: Forensic Evidence: Pattern Injury Recognition in Child Death Cases.

Invited Speaker, Georgia Chiefs of Police Association Annual Meeting, Savannah, Georgia, August 30 and 31, 2001. Lecture Topics: Investigation of Deaths in Law Enforcement Custody and Physical Identification of Inflicted Childhood Injuries.

Invited Speaker, Emergency Medical Services Directors Association of Georgia and Georgia Association of Emergency Medical Technicians 15th Annual Meeting, Jekyll Island, Georgia, August 16, 2001. Lecture Topic: Evaluation of Child Abuse.

Invited Speaker, Georgia Indigent Defense Council Crime Scene Evidence Seminar, September 29, 2001, Atlanta, Georgia. Lecture Topic: Forensic Evidence: What the Medical Examiner Can Tell You.

Invited Speaker, Cobb County District Attorney's Office Annual Domestic and Family Violence Seminar, Smyrna, Georgia, October 4, 2001. Lecture Topic: Forensic Injury in Family Violence Cases.

Invited Speaker, National Child Abuse Defense and Resource Center Tenth International Conference, Reno, Nevada, October 17-19, 2001. Lecture Topic: Understanding Autopsy Reports, Protocols, and Forensic Testing Available in Suspected Child Abuse Fatalities.

Seminar Director and Speaker, Child Abuse: Investigation and Injury Analysis Seminar, Lawrence Police Department and Douglas County District Attorney's Office, Lawrence, Kansas, November 8, 2001.

Invited Speaker, Georgia Department of Human Resources Office of Consumer Affairs Seminar on Elder Abuse and Investigation of Sudden and Unexpected Deaths In Special Needs Clients, Atlanta, Georgia, November 21, 2001.

Invited Speaker, "*Building Successful Teams*": Investigation and Prosecution of Serious Injury and Fatal Child Abuse, Sponsored by Georgia Department of Human Resources Division of Family and Children Services, Georgia Bureau of Investigation, Georgia Child Fatality Review Panel, and Office of the Advocate for the Protection of Children, Macon Crowne Plaza, Macon, Georgia, March 26-28, 2002. Lecture Topic: Forensic Interpretation of Child Abuse Injuries.

Invited Speaker, East Central Georgia EMS--South Carolina Midlands EMS--Region VI EMS Directors CHANGES 2002 Conference, Augusta, Georgia, April 3-4, 2002. Lecture Topic: Medical Mishaps and Therapy Related Deaths.

Invited Speaker, Association of Criminal Investigative Agencies Annual Meeting, Savannah, Georgia, April 16, 2002. Lecture Topic: The Walker County, Georgia, Crematorium Incident.

Invited Speaker, National Defender Investigator Association, Portland, Oregon, April 17-20, 2002. Lecture Topic: Understanding Autopsy Reports, Protocols, and Forensic Testing.

Invited Speaker, 2002 Governor's Emergency Management Conference, "The Changing Faces of Disaster," Georgia Emergency Management Agency, Jekyll Island, Georgia, April 29-May 1, 2002. Lecture Topic: The Walker County, Georgia, Crematorium Incident.

Keynote Speaker, Georgia Funeral Service Practitioners Association, Inc., 77th Annual Convention, Radisson Riverfront Hotel, Augusta, Georgia, May 21, 2002.

Invited Speaker, Southeast Regional Conference on Child Fatalities, Birmingham, Alabama, June 4, 2002. Lecture Topic: Things That Mimic Shaken Baby Syndrome.

Invited Speaker, Georgia Emergency Management Agency 2002 Airline Crash Forum, Savannah, Georgia, June 6-7, 2002.

Invited Speaker, Independent Funeral Directors Association of Georgia, Savannah, Georgia, August 2, 2002. Topic: Update Information on Policies and Procedures, Georgia Bureau of Investigation.

Invited Speaker, Federal Defenders of Eastern Washington and Idaho and Idaho Association of Criminal Defense Attorneys, Boise, Idaho, August 16-17, 2002. Lecture Topic: Blunt Trauma.

Invited Speaker, Florida Association of Medical Examiners 30th Annual Meeting, University of Florida, Gainesville, Florida, August 21-24, 2002. Lecture Topic: Tri-State Crematorium Incident.

Invited Speaker, Elon University Criminal Justice Studies Program, Elon, North Carolina, November 18-10, 2002. Lecture Topics: Identifying the Dead; Case Studies in Forensic Scene Analysis; Careers in Forensic Investigation.

Invited Speaker, Southeast Cybercrime Summit 2003, Kennesaw State University, Georgia, February 25-26, 2002. Lecture Topic: Common Courtroom Problems For The Expert.

Invited Speaker, "Workshop On The Medicolegal Death Investigation System," The Institute of Medicine, The National Academies Building, Washington, D. C., March 24-25, 2003. Topic: Terrorism and Mass Disaster.

Invited Speaker, National Defender Investigator Association Annual Meeting, Fort Lauderdale, Florida, April 22-25, 2003. Lecture Topic: Understanding Forensic Laboratory Testing.

Invited Speaker, International Association of Coroners and Medical Examiners Annual Conference, June 8, 2003, Atlanta, Georgia. Lecture Topic: The Evaluation of Child Abuse and Childhood Injuries.

Invited Speaker, Georgia Indigent Defense Council, Criminal Defense Investigator Training Series: Physical Evidence in Homicide Cases, Atlanta, Georgia, August 21, 2003. Lecture Topic: Medical Evidence: Autopsy Reports for Dummies.

Invited Speaker, 2nd Annual International Sudden Arrhythmia Death Syndromes Foundation Conference: Preventing Unexpected Death in the Young. October 24-25, 2003, Atlanta, Georgia. Lecture Topic: The Medical Examiner's Role.

Invited Speaker, Georgia Society for Clinical Laboratory Science and Southeast Section of the American Association for Clinical Chemistry, February 24-25, 2004, Atlanta, Georgia. Lecture Topic: Introduction to Forensic Sciences.

Invited Speaker, Southeast Cybercrime Summit, Kennesaw State University, March 2-5, 2004, Marietta, Georgia. Lecture Topic: Common Defense Tactics.

Course Organizer and Lecturer: When Children Die: Preparing for Prosecution of Child Homicides. Georgia Bureau of Investigation Child Abuse Investigative Resource Center, Atlanta, Georgia, May 13-14, 2004.

Invited Speaker, Trial of The Child Molestation Case in Georgia Seminar. Institute of Continuing Legal Education in Georgia and The Criminal Law Section, State Bar of Georgia. September 23, 2004, Atlanta, Georgia. Lecture Topic: Physical Evidence in the Child Molestation Case.

Invited Speaker, State of Georgia Department of Family and Children's Services, Athens-Clarke County Regional Office, November 10, 2004. Lecture Topic: Pattern Injury Recognition in Child Abuse Injuries.

Invited Speaker, Georgia Sheriff's Association 2005 Winter Training Conference, January 26, 2005, Atlanta, Georgia. Lecture Topic: Legal and Medical Aspects of Taser Use.

Invited Speaker, Tri-State Police Accreditation Council Annual Meeting, Rome, Georgia, February 10, 2005. Lecture Topic: The Tri-State Crematorium Incident.

Invited Speaker and Panelist, Health Concerns and Casualty Management Panel, "**Are You Ready For The Challenge Conference**," Greater Nashville Homeland Security District 5 2005 Emergency Preparedness Challenge, Nashville, Tennessee, February 22-24, 2005.

Invited Speaker, Georgia Department of Human Resources, Division of Family and Children Services: "Building Successful Teams---Child Abuse, Injury & Fatality: Investigation, Prosecution & Prevention Conference." Atlanta, Georgia, March 23-25, 2005. Lecture Topic: Child Autopsies.

Invited Speaker, Georgia Sheriffs' Association Headquarters Continuing Education Seminar, Stockbridge, Georgia, May 11, 2005. Lecture Topic: Legal and Medical Aspects of Taser Use.

Invited Speaker, Georgia Association of Criminal Defense Lawyers Seminar, "Defense of the Child Molestation Case in Georgia: Annual Child Molestation Defense Seminar," May 20, 2005, Georgia Bar Association, Atlanta, Georgia. Lecture Topic: Physical Evidence in the Child Molestation Case.

Faculty Member, the Masters "11" Advanced Death Investigation Conference, St. Louis University School of Medicine, Division of Forensic and Environmental Pathology, St. Louis, Missouri, July 25-28, 2005. Lecture Topic: Crematory Fiasco: The Tristate Crematory Incident.

Invited Speaker, Department of Law (Attorney General's Office) 2005 Training for Special Assistant Attorneys General Representing The Department of Family and Childrens' Services, St. Simon's Island, Georgia, August 25-26, 2005. Lecture Topic: Physical and Sexual Abuse of Children.

Invited Speaker, Indiana Division of The International Association For Identification 12th Annual Forensic Educational Conference, Indianapolis, Indiana, October 19, 2005. Lecture Topic: The Tri-State Crematorium Incident.

Invited Speaker, Department of Law (Attorney General's Office) 2006 Training for Special Assistant Attorneys General Representing the Department of Family and Childrens' Services, St. Simon's Island, Georgia, September 6-8, 2006. Lecture Topic: Physical and Sexual Abuse of Children.

Invited Speaker, Peace Officers' Association of Georgia Annual Conference, September 17-20, 2006, Tybee Island, Georgia. Lecture Topic: Legal, Medical, and Policy Considerations in Use of TASER.

Invited Speaker, National Child Abuse Defense & Resource Center 13th International Conference: Child Abuse Allegations: Science vs. Junk Science in the Courtroom. September 28-30, 2006, Las Vegas, Nevada. Lecture Topic: What Medical Examiners Can & Cannot Do in Suspected Child Abuse Cases.

Invited Speaker, Georgia Association of Criminal Defense Lawyers Seminar, "Defense of the Child Molestation Case in Georgia: Annual Child Molestation Defense Seminar," October 11, 2006, Georgia Bar Association, Atlanta, Georgia. Lecture Topic: Physical Evidence in the Child Molestation Case.

Invited Speaker, Third Judicial District of New Mexico Annual Prosecutors' Fall Conference, Inn of The Mountain Gods, Mescalero, New Mexico, October 18-19, 2006. Lecture Topics: Medicolegal Analysis of Gunshot Wounds, and The Interpretation of Childhood Abusive Trauma.

Invited Speaker, Institute of Continuing Legal Education in Georgia, State Bar of Georgia, October 25, 2007, Atlanta, Georgia. Seminar Topic: Admissibility of Expert Testimony.

Keynote Speaker, Awards Banquet, American Intercontinental University School of Criminal Justice, American Criminal Justice Association Region V Conference, Atlanta, Georgia, October 26, 2007.

Invited Speaker, Academy of Graduate Embalmers of Georgia Annual Meeting and Clinic, Forsyth, Georgia, March 12, 2008.

Invited Speaker, Commission on Accreditation of Law Enforcement Agencies 2008 Spring Conference, Atlanta, Georgia, March 13, 2008. Presentation Topic: Medical Effects of TASER.

Invited Speaker, Georgia Association of Criminal Defense Lawyers Seminar, "Defense of the Child Molestation Case in Georgia: Annual Child Molestation Defense Seminar," March 14, 2008, Atlanta, Georgia. Lecture Topic: Physical Evidence in the Child Molestation Case.

Invited Speaker, 38th Annual Florida Medical Examiners Educational Conference, Ponte Vedra Beach, Florida, August 13-15, 2008. Lecture Topic: Factitious Burials and Cremations—The Georgia Crematory.

Invited Speaker, 27th Insurance Law Institute, St. Simon's Island, Georgia, September 18-20, 2008. Lecture Topic: The Top 10 Things That Every Lawyer Needs to Know About Proving Cause of Death.

Invited Speaker, Institute of Continuing Legal Education in Georgia, State Bar of Georgia, October 2, 2008, Atlanta, Georgia. Seminar Topic: Admissibility of Expert Testimony In Georgia.

Invited Speaker, 2008 Crisis Intervention Team National Conference (4th Annual Conference), Atlanta, Georgia, November 4-6, 2008. Lecture Topic (With Dawn Diedrich, J. D., Georgia Bureau of Investigation Department of Legal Services): Legal, Medical, and Policy Implications in the Use of the Taser (Parts 1 and 2).

Invited Speaker, Second Annual Meeting on Drugs and Their Impact on the Community, U. S. Department of Justice, Drug Enforcement Administration, Athens, Georgia, May 14, 2010. Lecture Topic: Prescription Medicine Abuse and Morbidity Trends.

Invited Speaker, Drug Enforcement Administration Seminar on Tactical Drug Diversion, Georgia Public Safety Training Center, Forsyth, Georgia, August 5, 2010. Lecture Topic: Prescription Drug Abuse and Mortality Trends in Georgia.

Invited Speaker, 2010 Georgia Crisis Intervention Team Conference, Smyrna, Georgia, September 30, 2010. Lecture Topic: Tasers and Excited Delirium.

Invited Speaker, Emory University Department of Dermatology "Traditional Grand Rounds," Emory University School of Medicine, Decatur, Georgia, November 4, 2010. Lecture Topic: "Forensic Dermatology."

Invited Speaker, "Prescribing Our Future: A Summit on Prescription Drug Abuse in Georgia," U. S. Attorney's Office for the Northern District of Georgia, DEA, ONDCP, CDC, GBI, and GDNA, Atlanta, Georgia, March 2, 2011. Lecture Topic: Mortality Trends in Georgia Related to Prescription Drug Abuse.

Invited Speaker, Prosecuting Attorneys' Council of Georgia Capital Litigation Summer Conference 2011, Jekyll Island, Georgia, July 25-27, 2011. Lecture Topics: Forensic Pathology and Death Penalty Litigation; Lethal Injection Drug Protocols in Georgia.

Invited Speaker, "Defense of the Child Molestation Case in Georgia," Georgia Criminal Defense Attorneys' Association, Georgia Bar Association, Atlanta, Georgia, March 8, 2013. Lecture Topic: Medical Evidence: Second Opinions and Proof of Innocence.

Invited Consultant, United States Department of State, United States Embassy to the Republic of Georgia in Tbilisi, International Narcotics and Law Enforcement Section: Assessment of the National Forensics Bureau Pathology Facility and Operations, June 1-7, 2013, Tbilisi, Republic of Georgia.

Invited Speaker, Emory University Medical School Department of Dermatology Grand Rounds, Atlanta, Georgia, November 7, 2013. Lecture Topic: The Dermatology and Pathology of Tattoos and Tattooing.

Invited Speaker, Third Annual Women In Policing Conference, United States Embassy in Tbilisi, Republic of Georgia, Bureau of International Narcotics and Law Enforcement Affairs, Tbilisi, Republic of Georgia, March 4-6, 2014, Tbilisi, Republic of Georgia. Lecture Topic: Medicolegal Death Investigation in Domestic Violence Deaths.

Invited Keynote Speaker, 2014 Midwest Bioarchaeology and Forensic Anthropology Meeting, Grand Valley State University, Grand Rapids, Michigan, October 18, 2014. Lecture Topic: Forensic Anthropology at Work in the Medical Examiner's Office.

Invited Speaker and Consultant, United States State Department and Embassy of the United States in Tbilisi, Republic of Georgia, Bureau of International Narcotics and Law Enforcement Affairs and the National Forensic Bureau of the Republic of Georgia, November 19, 2014, Tbilisi, Republic of Georgia. Lecture Topic: Contusions: Appearance, Age Determination, Clinical and Forensic Significance.

Invited Speaker, Fourth Annual Women In Policing Conference, United States Embassy in Tbilisi, Republic of Georgia, Bureau of Narcotics and Law Enforcement Affairs, Tbilisi, Republic of Georgia, March 3-6, 2015, Tbilisi, Republic of Georgia. Lecture Topic: Death Investigation.

Invited Speaker: Heroin and Opioids: A Community Crisis. Atlanta Heroin Summit. United States Department of Justice and United States Attorney's Office, June 10, 2015, Atlanta, Georgia. Lecture Topic: Heroin Deaths in Georgia.

Invited Speaker: The Heroin Epidemic. Presentation on Behalf of The Keeley Foundation, Canton, Georgia, January 12, 2016.

Invited Speaker: Prosecuting Sexual Assault and Related Crimes. National District Attorneys' Association, September 12-16, 2016, Savannah, Georgia. Lecture Topics: Causes of Death: Sexual Assault Homicides and Sexual Serial Killers.

Invited Speaker: Georgia Association of Criminal Defense Lawyers 2018 Winter Seminar: True Crime In Real Time. January 25-26, 2019, State Bar of Georgia Headquarters, Atlanta, Georgia. Lecture Topic: What If The Medical Examiner is Wrong?

January 26, 2019

Sperry Forensic Pathology Consultants, Inc.
Kris L. Sperry, M.D.
Forensic Pathologist

Certified by the American Board of Pathology in:
Anatomic Pathology
Clinical Pathology
Forensic Pathology

Fee Schedule For the Year 2019

Retainer	$2,500.00
Review of Materials and Consultation	$500.00 Per Hour
Deposition Testimony • Payable in advance. Payment must be received 24 hours prior to scheduled deposition. • Two hours minimum ($1,500.00). • An additional $750.00 per hour for each additional hour or any portion thereof. • Any time exceeding two hours must be paid within ten days of deposition.	$750.00 Per Hour $1,500.00 Minimum
Live Courtroom Testimony	$7,500.00 + Expenses

e-mail Dr. Sperry: [redacted]

COURTROOM AND DEPOSITION TESTIMONY

KRIS SPERRY, M. D.

Date	Case Name, Number and Location	Attorney	Testimony Type
1/13/15	McGlone vs. Kaiser, et al Montgomery Co., MD., Circuit Court Civil Action No. 384520-V	Scott Perry Arlington, Virginia	Deposition Plaintiff
1/15/15	Linn vs. Patel, et al Kanawha County Circuit Court Civil Action No. 12-C-634 KAN	Scott Segal Charleston, WV	Deposition Plaintiff
2/4/15 (706)	Machin vs. Carus Corp., et al U. S. Dist. Court, South Carolina Columbia Div.; Civil Action No. 3:12-CV-02675-JFA	Arthur Davidson Augusta, Ga.	Trial Defense
2/6/15	Mondelli (Sekerka) vs. Ung, et al Dupage Co., Ill., 18th Jud. Circuit No. 2010 L 1414	Mark Meyer Warrenville, Ill.	Deposition Defense
2/9/15 (707)	State of Kansas vs. Daniel Perez 18th Jud. Dist., Sedgwick Co., KS Case No. 2011CR002619	Kim Parker ADA, Sedgwick Co.	Trial State of Kansas
2/13/15	Trujillo (Thompson) vs. Presbyterian Hosp., et al; 1st Jud. Dist. Court, Rio Arriba Co., NM; No. D-117-CV-2013-00306	Brenda Saiz Santa Fe, NM	Deposition Defense
2/19/15 (708)	State of Georgia vs. Thanquarius Calhoun Franklin Co. Superior Court Case No. 14FR134M (2013-1010585)	Brian Atkinson ADA, Northern Jud. Cir.	State of Georgia Trial
3/26/15	Vilchis vs. El Noa Noa, Inc. Dekalb Co. State Court, Georgia No. 13A-48502-3	W. Calvin Smith Atlanta, Ga.	Deposition Plaintiff
3/31/15	Ruiz vs. Riverside Med. Ctr., et al 21st Jud. Circuit Court, Kankakee Co. No. 09 L 83	Mark Munninghoff Chicago, Ill.	Deposition Plaintiff
4/7/15 (709)	State of Kansas vs. Martin Miller Douglas Co., Kansas, Superior Court 04CR1246	Mark Simpson ADA, Douglas County	Trial State of Kansas
4/22/15	Pointer (Scott) vs. Heart Ass., et al Baltimore City Circuit Court Case No. 24-C-14-003228	David Ellin Reistertown, MD	Deposition Plaintiff
4/29/15	Whaley (Krier) vs. Sharp 16th Jud. Dist Court, Clark Co., KS Case No. 10 CV 8/10 CV 9	Lynn Johnson Kansas City, MO	Deposition Plaintiff

5/6/15	Chandler vs. Palker, et al 17th Jud. Dist., Broward Co., FL Case No.: 12-23460 (21)	Brian Russell North Palm Beach, FL	Deposition Defense
5/12/15 (710)	Bunner vs USA U. S. Dist. Ct., South. Dist. of W.V. at Charleston; Civil Action No.: 6:13-20655	John Horn AUSA, Charleston, WV	Trial Defense
6/30/15	Lockett vs Abernathy Fun. Home, et al Marengo Co., AL., Circuit Court Civil Action No. CV2014-900042 (GBI case)	Keith Belt Birmingham, AL	Deposition State of Georgia
7/22/15	Espinosa (Saenz) vs. M. Sinai Med Ctr., etc 11th Jud. Ct., Miami-Dade County, Fl. Case No. 14-25597 CA 02	Sean Cleary Miami, Fl.	Deposition Plaintiff
7/24/15	Madsen vs. Cabe, et al Toombs Co., Ga., Superior Court Civil Action No. 12-CV-837	J. D. Daniel, III Macon, Ga.	Deposition Defense
7/31/15	Ayyad vs Mehta, et al Cook Co., IL, Circuit Court No. 12 L 7906	Christopher Sofia Warrenville, IL.	Deposition Defense
8/5/15 (711)	Trujillo (Thompson) vs. Ryan, et al Rio Arriba Co., 1st Judicial Court, N.M. Cause No. D-117-CV-2013-00306	Jeffrey Croasdell Albuquerque, N. M.	Trial Defense
8/7/15 (712)	Wright vs. Ashcomb 18th Judicial Dist., Sedgewick Co., KS Case No. 11 CV 2978	David Morantz Kansas City, Mo.	Trial Plaintiff
8/14/15	Truesdale vs. Presbyterian Health, et al 2nd Jud. Dist., Bernalillo Co., N.M. Cause No. D-202-CV-2013-08761	Charles Purcell Albuquerque, N. M.	Deposition Defense
8/31/15 (713)	Soumahoro vs. Ashbridge, et al Philadelphia Co., Court of Common Pleas Case No. 131203702	Francis Curran Media, Pa.	Trial Video Plaintiff
9/3/15 (714)	Mosely (Mayfield) vs. Childrey, et al Lowndes Co., MS., Circuit Court Civil Action No. 2013-0116-CV1	Gordon Flowers Columbus, Ms.	Trial Defense
9/10/15 (715)	Hensley vs. Methodist Healthcare, et al U. S. Dist. Court, West. Dist. Tenn. 2:13-CV-02436-STA-cgc	Darrell Baker Memphis, Tn.	Trial Defense
10/7/15 (716)	State vs. Brown, Evans, Kenny Chatham Co. Superior Court, Savannah, Ga. CR15-1397, 96, and 95 (2014-6006596)	Christy Barker ADA, Savannah, Ga.	Trial State of Georgia
10/28/15 (717)	McGlone vs. Kaiser, et al Montgomery Co., MD, Circuit Court Civil Action No. 384520-V	Scott Perry Arlington, VA.	Trial Plaintiff

11/5/15	Corbett vs. Juvvadi, et al 5th Jud. Cir. Court, Hernando Co., Fl Case No. CA-2013-311	Brendan Rowe Tampa, Fl.	Deposition Defense
11/9/15	Call/Crawford vs. Dawson, et al Kanawha Co., W.V., Circuit Court Civil Action No: 11-C-533	Scott Segal Charleston, W.V.	Deposition Plaintiff
12/2/15 (718)	State of Ga. vs. Shubert Franklin Co., Ga., Superior Court Case No. 13FR025M (2013-1003301)	Parkes White DA. Franklin Jud. Circt.	Trial State of Georgia
12/10/15	Mitchell (Buchanan) vs McKethen, et al U. S. Dist. Ct., Northern Dist FL, Panama City, Fl. Case No. 5:14-CV-157	James Cook Tallahassee, FL	Deposition Plaintiff
12/16/15 (719)	Corbett vs. Hernando HMA, et al 5th Jud. Dist., Hernando Co., Fl. Case No. CA-2013-311	Ron Josepher Tampa, Fl.	Trial Defense
12/17/15	Cole vs. Adventist Rehab of MD Montgomery Co., MD., Circuit Court Case No. 397702-V	Tom Mitchell Washington, D.C.	Deposition Plaintiff

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1/18/16	Collins vs. Jefferson Co. Board of Ed. Jefferson Co., TN., Circuit Court No. 22,782	Jonathan Taylor Knoxville, TN.	Deposition Defense
2/2/16	Johnston (Barnette) vs. Springhill Hospitals Mobile Co., Ala, Circuit Court Civil Action No.: CV-2014-901780	Bryan Smith Mobile, AL	Deposition Defense
4/12/16	Maldonado (Martinez) vs. Dennis, et al 17th Jud. Dist., Broward Co., FL. Case No. 12-031136 (02)	Trisha Widowfield Fort Lauderdale, Fl.	Deposition Defense
4/13/16	Collins vs. Pratt RMC, et al 30th Jud. Dist., Pratt Co., Kansas Case No. 2013 CV 10	Lisa McPherson Wichita, Kansas	Deposition Defense
4/15/16 (720)	State of Georgia vs. Justin Lee Morgan County Superior Court Case No. 2014CC143 (GBI 2014-1006774)	Robert Rubin Decatur, Ga.	Trial (Criminal) Defense
4/21/16	Rodgers (Proffit) vs. Smith, Weisner, et al 18th Jud. Dist., Sedgewick Co., KS Case No. 15 CV 0273	Steve Gorney Kansas City, MO.	Deposition Plaintiff
4/22/16	Graham vs. Ridley, et al Richland Co., SC., Court of Common Pleas Civil Action No.: 14-CP-40-7930	Benson Griggers Columbia, SC	Deposition Defense

5/20/16	Bullington vs. Prebyterian Healthcare, et al Bernalillo Co., NM, 2nd Jud. Dist. Court No. D-202-CV-2015-02590	Mary Boehm Albuquerque, N. M.	Deposition Defense
6/8/16 (721)	U. S. A. vs. Charles Wilson, III File No. 24561122022103 Houston Co., Ga., Courthouse (in lieu of WRAFB)	USAF Defense Warner Robins USAF	Court Martial Defense
6/13/16	Neal vs. USA U. S. Dist. Court of Maryland Civil Action No. 8:15-cv-01385-TDC	David Mitchell Washington, D.C.	Deposition Plaintiff
6/14/16	Higgins vs Las Cruces Med. Ctr., et al Bernalillo Co., NM., 2nd Jud. Dist. Court No: D-202-CV-2014-04438	Hari Amrit-Khalsa Albuquerque, N.M.	Deposition Defense
6/28/16	Colon vs. Adventist H.S., et al 9th Jud. Circuit Court, Osceola Co., FL Case No: 2014-CA-650	Alan Landerman Ft. Lauderdale, FL.	Deposition Plaintiff
8/18/16	Chestnut (Carroll) vs. CHC, Inc., et al U. S. Dist. Court, Middle Dist. of Ga., Columbus Division (Civil Action No. 4:15-CV-166-CDL; 2013-1023221)	Craig Jones Decatur, Ga.	Deposition Plaintiff
8/24/16	Wallbro vs. Nolte, et al 1st. Jud. Dist., Santa Fe County, N.M. No. D-101-CV-2015-01783	Rosario Vega Lynn Albuquerque, N.M.	Deposition Plaintiff
8/29/16 (722)	Bullington vs. Pres. H.C., et al 2nd Jud. Dist., Bernallillo Co., N.M. No. D-202-CV-2015-02590	Harit Amrit-Khalsa Albuquerque, N.M.	Trial Defense
9/9/16 (723)	Wright, et al, vs. Connell, et al Warren Co., Miss., Circuit Court Civil Action No. 14,0084-CI	Whit Johnson Jackson, MS	Trial Defense
9/16/16	McLean vs. Salamon, et al 11th Jud. Circuit, Miami-Dade Co., FL Case No. 12-42792 CA 09	H. K. "Skip" Pita Miami, FL	Deposition Plaintiff
9/19/16	Hesser (McGreevy) vs. ACMC, et al Cook Co., IL, Circuit Court Court No.: 2010 L 007148	Mark Munninghoff Chicago, IL	Deposition Plaintiff
9/20/16	Neal vs. Floyd, et al 3rd Div., Fayette Circuit Court, KY Civil Action No. 13-CI-221	Kris Mullins Lexington, KY	Deposition Plaintiff
9/26/16 (724)	State of Ga. vs. Huffman Forsyth Co., Ga., Superior Court Case No. 15-CR-314 (Criminal)	John Rife Marietta, Ga.	Trial Defense
10/6/16 (725)	Lyas vs Forrest General, et al Forrest Co., Mississippi Civil Action No. CL-11-0205	J. Robert Ramsey Hattiesburg. MS	Trial Defense

11/7/16 (726)	State of Texas vs. Daniel Politte Ft. Bend County Dist. Court, Div. 400 Case No. 14-DCR-066326	Stephen Doggett Richmond, TX	Trial Defense
11/7/16 (727)	State of Ga. vs. Joshua Mormant Richmond Co. Superior Court #2015R01221 (2015-1009810)	Rex Myers ADA, Augusta, Ga.	Trial State of Georgia
11/11/16 (728)	State of Ga. vs. Vince Harris, Sr. Muscogee Co. Superior Court SU-16-CR-1048 (2012-1004437)	George Lipscomb ADA, Muscogee County	Trial State of Georgia
11/16/16 (729)	Neal vs. Floyd, et al Fayette Cir. Ct., 3rd Div., Lexintgon, Ky; Civil Action No. 13-CI-221	Kris Mullins Lexington, KY.	Trial Plaintiff
12/2/16	Hernandez vs. IMC Group, et al 11th Jud. Circtuit, Miami-Dade, FL Case No.: 2015-026199-CA-01	H. K. "Skip" Pita Miami, FL	Deposition Plaintiff
12/15/16	Hancock vs. Minn. Life Ins. Co. U.S. Dist. Court, Western Dist. of Louisiana; Alexandria Division No.1:16-CV-00361	Richard Conrad Jackson, MS	Deposition Defense
1/19/17 (730)	State of Alabama vs Stevi and Circuit Court of Tuscaloosa, AL. Tuscaloosa, Alabama; Case No. CC-2015-1159 MBA	John Brasfield Defense	Trial
1/24/17 (731)	Wallbro vs. Nolte 1st Jud. Dist., State of N.M., Santa Fe County; No. D-101-CV-2015-01783	Rosario Vega Lynn Albuquerque, N.M.	Trial Plaintiff
1/25/17 (732)	Call vs. Subaru of America Circuit Court, Kanawha Co., WV Civil Action No. 11-C-533	Scott Segal Charleston, W.V.	Trial Plaintiff
1/26/17 (733)	State of Texas vs. Jekaris Bryant Brown Co., Tx, 35th Jud. Dist. Court Cause Number CR24265 (murder)	Judson Woodley Comanche, TX.	Trial Defense
2/7/17 (734)	State of New Mexico vs Romero 2nd Jud. Dist. Court, Bernalillo Co., NM Case No. CR 16-1-1724 (Evidentiary Hearing)	Sophie Cooper N.M. Public Defender	Hearing Defense
2/9/17 (735)	State of Georgia vs Michael Bowman Spalding County Superior Court Case Number 15R-457 (2014-1012265)	Spalding Circuit DA Griffin, Ga.	Trial State of Georgia
4/19/17 (736)	American Samoan Government vs. Galen Leasiolagi DCCR No. 176-14	Michael White Public Defender American Samoa	Trial Defense

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5/1/17 (737)	State of Ga. vs. Arico Andrews Oconee Co. Superior Court Case No. 2016-CR-0200	John Donnelly Public Defender Athens, Ga.	Trial Defense
5/12/17	Poole (estate of) vs Macon-Bibb Co, et al U. S. Dist. Ct. Northern Dist. Ga. Case No. 1:14-CV-00892-AT	Craig Jones Decatur, Ga.	Deposition Plaintiff
6/12/17	Bravo vs. Conner, et al Hall County Superior Court Civil Action No. 2014CV2560C	Edward Long, Jr. Macon, Ga.	Deposition Plaintiff
7/24/17	Phounsy/Nguyen vs San Diego Co., et al U. S. Dist. Court, Southetn Dist. of CA No. 15cv2692H(MDD)	Brody McBride SolanaBeach, Ca.	Deposition Plaintiff
8/15/17 (738)	United States vs. EM2 Jimmy Barlow U. S. Military Courts, Seattle, WA.	Colby Vokey Dallas, Texas	Motion Hearing Defense
8/17/17 (739)	State of Alabama vs. Eric Blackerby Columbiana, AL, Superior Court CC15-917	Erskine Mathis Birmingham, AL	Trial Defense
8/31/17 (740)	State of Georgia vs. Victoria Rickman Dekalb Co. Superior Court, Decatur, Ga. Case No. 13-CR-5228-6	Amada Clark-Palmer Atlanta, Georgia	Trial Defense
9/6/17	Estate of Smart vs. Wichita, KS, et al U. S. Dist. Court, District of Kansas Case No. CV-02111-EFM-JPO	J. Steven Pigg Topeka, Kansas	Deposition Defense
9/8/17	Adams (Barton) vs. Riboni, et al San Miguel Co., N.M., 4th Dist. Court No. D-412-CV-2016-00268	Ray Vargas II Albuquerque, N.M.	Deposition Plaintiff
10/9/17	Pandolfo (Cubbage) vs. Kime, et al Rockingham Co., Va., Circuit Court Civil Case No. CL15-421	James Mayson Staunton, Va.	Deposition Defense
10/11/17	Carter (Erickson) vs. Suri, et al Johnson Co., KS, District Court Case No. 17CV01068	Lynn Johnson Kansas City, Mo.	Deposition Plaintiff
10/17/17	Galbo vs. St. Thomas Rutherford Hosp. Rutherford Co., Tenn, Circuit Court No. 69762	David Randolph Smith Nashville, TN.	Deposition Plaintiff
11/2/17 (741)	State of Texas vs. Chiron Francis Fort Bend, Tx., Dist. Court; 268th Judicial District; No. 14-DCR-066778	L. T. Bradt Sugar Land, Tx.	Trial Defense
11/16/17 (742)	Buelow vs. Clarkson University of Mississippi Title IX Administrative Hearing	James Pettis III Jackson, MS.	Hearing Respondent

11/29/17	Curry vs. City of Los Angeles, et al U. S. Dist. Court, Central District of California; No. 2:16 CV 04125	Chris Morris San Diego, Ca.	Deposition Plaintiff
11/20/17	Dyksma vs. Pierson, et al U. S. Dist. Court, Middle Dist. of Georgia, Columbus Div.; Civil Action File No. 4:17-CV-00041-CDL	Craig Jones Decatur, Ga.	Deposition Plaintiff
12/13/17 (743)	United States vs. EM2 Jimmy Barlow USCG General Court Martial, Coast Guard Island, Alameda, California	Colby Vokey Dallas, TX.	Court Martial Defense
1/5/18	Waldron (Ybarra) vs. Marion Co. Sheriff U. S. Dist. Court, Middle Div. Florida, Ocala Division; Case No. 5:16-CV-658-OC-32-prl	John Green Ocala, FL	Deposition Defense
1/19/18	Ricks-Ngwayah vs. Advocate Health, et al Cook County Circuit Court No. 14 L 12504	Becker Law Firm Cleveland, OH	Deposition Plaintiff
1/24/17 (744)	State of Georgia vs Adam Reeves Dawson County Superior Court Case No. 2017 CR 0067	Jerry Carter, Jr. Gainesville, Ga.	Trial Defense
2/1/18 (745)	State of Georgia vs Frank Selkirk Henry County Superior Court Case No. CR 15-004694	Richard Schrade McDonough, Ga.	Trial Defense
2/21/18	Roark (Lakin) vs. Cooper, Faudere, et al 13th Jud. Dist, Dist. Court, Butler Co., KS Case No. 15-CV-288	Lisa McPherson Wichita, KS	Deposition Defense
3/2/18	Stone (Cox) vs Henry, Feipel, et al U. S. Dist. Court, Southern Dist. Florida Case No. 2:17-CV-14177/ROSENBERG	James Cook Tallahassee, FL.	Deposition Plaintiff
3/7/18	Wilson vs Douglasville, et al U. S. Dist. Court, Northern Dist. of Ga., Atlanta Div.; Civil Action File No. 1:17-CV-00634-ELR	Brian Spears Atlanta, Ga.	Deposition Plaintiff
3/21/18 (746)	State of Georgia vs. Gaillard Dougherty County Superior Court Case No. SUCR-2007-397	Jason Sheffield Decatur, GA.	State of Georgia Defense
4/6/18 (747)	Ruiz vs. Anand 21st. Jud. Circuit, Kankakee Co., State of Illinois; No. 09 L 83 (video for testimony presentation at trial)	Mark Munninghof Chicago, IL	Trial Plaintiff
4/12-13/18 (748)	State of Georgia vs. Leslie Nichols Forsyth County Superior Court Case No.:14CR-0064-3 (Motion for New Trial)	Jason Sheffield Decatur, GA	Hearing Defense

4/19/18 (749)	State of Georgia vs. Jones Chatham Co. Superior Court SPCR17-02698J1 (2004-1014680)	Isabel Pauley ADA. Savannah, Ga.	State of Georgia Trial
4/24/18 (750)	Curry vs. City of Los Angeles, et al U.S. Dist. Court, Central Dist. of California Case No. 2:16-CV-04125-DSF	Christopher Morris San Diego, CA.	Trial Plaintiff
5/16/18 (751)	State of Kansas vs. Andrew Gibson Riley County District Court, Manhattan, KS. 2016-CR-000260	Sarah Ikena Public Defender	Trial Defense
6/21/18 (752)	State of Georgia vs. Billy Jones Monroe County Superior Court Forsyth, Ga. Case No. 2018-CR-18	Allen Knox Towaliga Ct. PD Office	Trial Defense
6/27/18 (753)	State of Georgia vs. Jesus Guerrero Toombs Co., Superior Court, Lyons, Ga. Case No. 16-CR-103	David Pittman Lyons, Ga.	Trial Defense
6/29/18 (754)	State of Georgia vs. Sean Evans Spalding Co. Superior Court, Griffin, Ga. Case No. 16-006186 (2016-1024089)	Jordan Van Matre McDonough, Ga.	Trial Defense
7/12/18 (755)	State of Ohio vs Angie Walker Lucas Co. Superior Court, Toledo, OH Case No. CR 17-1781	Lorin Zaner Toledo, OH	Trial Defense
7/27/18	Pittman vs. Cohen, et al Cook Co., Ill, Circuit Court No. 16 L 5869	Mark Munninghof Chicago, IL.	Deposition Plaintiff
8/2/18 (756)	State of New Mexico vs. Tony Gonzalez Chavez County Magistrate Ct. No. M7FR201700532	Richard Pugh Albuquerque, N. M.	Trial Defense
8/9/18 (757)	State of Georgia vs. Amy Auve Lowndes County Superior Court, Valdosta, Ga. Case No. 2018CR20	Rex Wisenbacker PD, Valdosta, Ga.	Trial Defense
8/28/18	Wheeler/Konrad vs. U. S. A. U. S. Dist. Court, Dist. of Kansas Case No. 2:17-CV-02249-JTM-JPO	David Morantz Kansas City, Mo.	Deposition Plaintiff
8/29/18	Meeks vs. Newcomb, et al U. S. Dist. Court, Northern Dist. of Ga. Civil Action File No. 3:16-CV-0193-TCB	Joseph White Atlanta, Ga.	Deposition Defense
12/18/18	Dillon vs. Maxus Properties, et al U. S. District Court, Eastern District of Arkansas, Western Div. No. 4:17CV00813-JLH	Paul James Little Rock, AR	Deposition Plaintiff
1/31/2019	Simms (Baker) vs. Corizon, et al U. S. Dist. Ct. Northern Dist. of Fl. Pensacola Div., Case No. 3:17-cv-743-MCR-CJK	James Cook Tallahassee, FL	Deposition Plaintiff

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IN THE ARKANSAS CLAIMS COMMISSION

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LORI BRAUN, as Administratrix of the Estate of Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased, Individually and on behalf of all wrongful death Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT E

Colonel Bill Bryant's Responses to Plaintiff's Requests for Admission

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

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LORI BRAUN, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun — PLAINTIFF

v. CASE NO. 4:18-CV-0334-BRW

TROOPER BRIAN RAY BURKE, Individually and in his Official Capacity as an officer of the Arkansas State Police; and COLONEL BILL BRYANT, Individually and in his Official Capacity as the chief executive officer of the Arkansas State Police — DEFENDANTS

SEPARATE DEFENDANT COLONEL BILL BRYANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS

Separate Defendant Colonel Bill Bryant, individually and in his official capacity as Director of the Arkansas State Police, for his Responses to Plaintiff's First Set of Requests for Admissions, states as follows:

REQUEST NO 1: At all times during Burke's driving, he was acting under color of state law.

RESPONSE: Admit Burke was on duty as an Arkansas State Police trooper but I deny he was acting within the course and scope of his employment by his failure to exercise due regard for the safety of others.

REQUEST NO 2: At all times during Burke's driving, he was acting pursuant to the training that he was provided by the Arkansas State Police Department.

RESPONSE: Denied.

REQUEST NO 3: The initiation of Burke's driving until the crash was captured on Trooper Burke's patrol car's video camera system.

RESPONSE: Denied. There appear to be several seconds prior to the crash not recorded on video.

REQUEST NO 4: Trooper Burke's patrol car's video camera system during Burke's driving recorded speeds.

RESPONSE: Admit speed is indicated on the video, although I lack sufficient information to admit the speeds indicated are accurate.

REQUEST NO 5: Trooper Burke's patrol car's video camera system during Burke's driving recorded GPS coordinates.

RESPONSE: Admit GPS coordinates are indicated on the video although I cannot admit the GPS coordinates indicated are accurate.

REQUEST NO 6: Trooper Burke's patrol car's video system was working properly at all times during Burke's driving.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 7: The Defendants do not have any facts or evidence to indicate that Trooper Burke's patrol camera system was not working properly.

RESPONSE: Denied.

REQUEST NO 8: Trooper Burke's patrol car's video system was examined and found to be working properly.

RESPONSE: Denied.

REQUEST NO 9: Trooper Burke's patrol car's video system was never examined and found to be working improperly.

RESPONSE: Denied.

REQUEST NO 10: Trooper Burke's patrol car's video system accurately recorded Trooper Burke's speeds during Burke's driving.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 11: The Defendants do not have any facts or evidence to indicate that Trooper Burke's patrol car's video system improperly recorded Trooper Burke's speed during Burke's driving.

RESPONSE: Admitted.

REQUEST NO 12: Trooper Burke's patrol car's video system accurately recorded Trooper Burke's speeds during Burke's driving.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 13: Trooper Burke's average speed during Burke's driving was 97.8 miles per hour.

RESPONSE: Admit the average speed of 97.8 miles per hour is recited in the Hot Springs Police Department report, although I lack sufficient information to admit the average speed reported therein is accurate.

REQUEST NO 14: During the course of Burke's driving, Trooper Burke reached speeds as high as 117 miles per hour.

RESPONSE: Admit speed as high as 117 miles per hour is indicated on the video, although I lack sufficient information to admit the speed indicated is accurate.

REQUEST NO 15: During the course of Burke's driving, Trooper Burke reached speeds as high as 117 miles per hour in a 45 miles per hour zone.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 16: Attached as Exhibit A is a true and correct copy of the HSPD OFFICER REPORT FOR INCIDENT [redacted] regarding its investigation of the crash.

RESPONSE: I am without sufficient information or knowledge to admit because the original report is in the custody of the Hot Springs Police Department and prepared by the Hot Springs Police Department, therefore denied.

REQUEST NO 17: The last paragraph of page 12 through page 13 of Exhibit A reflects a review of Trooper Burke's patrol car video system by the Hot Springs Police Department.

RESPONSE: Admit that the paragraph referenced is a "review."

REQUEST NO 18: The facts and statements set forth in the last paragraph of 12 though page 13 of Exhibit A are true and accurate.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 19: The Defendants do not have any facts or evidence to indicate that the facts and statements set forth in the last paragraph of 12 though page 13 of Exhibit A are not true and accurate.

RESPONSE: Admitted.

REQUEST NO 20: Excluding the first 20 seconds of Burke's driving, Trooper Burke did not have his lights or sirens on during Burke's driving through the crash.

RESPONSE: Denied.

REQUEST NO 21: Excluding approximately the first 20 seconds of Burke's driving, Trooper Burke did not have his lights and sirens on during Burke's driving to the crash.

RESPONSE: Denied.

REQUEST NO 22: Burke's driving from initiation until crash was 4 minutes and 58 seconds.

RESPONSE: Denied. See Response to Request No. 3.

REQUEST NO 23: Burke's driving from initiation to crash was approximately 5 minutes.

RESPONSE: Admitted.

REQUEST NO 24: Burke's driving from initiation to crash covered 8.1 miles

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 25: Burke's driving from initiation to crash covered approximately 8 miles.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 26: Trooper Burke's vehicle was equipped with technology that records crash data which was retrieved from his vehicle after the crash.

RESPONSE: Admit that his Dodge Charger was equipped with the manufacturer's Electronic Data Recorder (EDR) or Crash Data Recorder (CDR).

REQUEST NO 27: The crash data retrieval from Trooper Burke's patrol car indicated that Trooper Burke's speed 5 seconds before impact was 113 miles per hour.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 28: Five seconds before the crash Trooper Burke was driving on a road with a 45 mile per hour speed limit.

RESPONSE: Admitted.

REQUEST NO 29: The crash data retrieval from Trooper Burke's patrol car indicated that Trooper Burke's speed at the time of impact was 98 miles per hour.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 30: The crash occurred on a road with a 45 mile per speed limit.

RESPONSE: Admitted.

REQUEST NO 31: The speeds set forth in the crash data retrieval from Trooper Burke's patrol car are true and accurate.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 32: The Defendants have no facts or evidence to refute the speeds pulled from Trooper Burke's crash date [sic] retrieval.

RESPONSE: Admitted.

REQUEST NO 33: The vehicle which Cassandra Braun was riding in was equipped with technology that records crash data which was retrieved from his vehicle after the crash.

RESPONSE: Admit that the investigation file received from Hot Springs Police Department included data from an Electronic Data Recorder.

REQUEST NO 34: The crash data retrieval from the vehicle Cassandra Braun was riding in indicated that the vehicle was traveling 40 miles per hour, 5 seconds before impact.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 35: The crash data retrieval from the vehicle that Cassandra Braun was riding in indicated that the vehicle was traveling at 16 miles per hour at the time of impact.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 36: The speeds set forth in the crash date retrieval from the vehicle Cassandra Braun was riding in are true and accurate.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 37: The Defendants have no facts or evidence to refute the speeds recorded on event data recorder retrieved from the vehicle Cassandra Braun was riding.

RESPONSE: Admitted.

REQUEST NO 38: The Defendants have no evidence that the driver of the vehicle that Cassandra Braun was riding was speeding.

RESPONSE: Admitted.

REQUEST NO 39: The Defendants have no evidence that the driver of the vehicle that Cassandra Braun was riding made an improper turn.

RESPONSE: Denied.

REQUEST NO 40: The Defendants have no evidence that Cassandra Braun was negligent.

RESPONSE: Denied.

REQUEST NO 41: The Arkansas State Police opened an investigation into the crash and Burke's driving on January 10, 2017, Control Number [redacted] the Burke Investigation.

RESPONSE: Admitted.

REQUEST NO 42: The Burke Investigation contained the HSPD OFFICER REPORT FOR INCIDENT [redacted] attached as Exhibit A.

RESPONSE: Admitted.

REQUEST NO 43: The Burke Investigation contained the crash data retrieval data on Trooper Burke's patrol car and the crash data retrieval data from the vehicle Cassandra Braun was riding as a passenger.

RESPONSE: Admitted that the Arkansas State Police Office of Professional Standards investigation file includes a copy of the Hot Spring Police Department accident investigation report, which includes vehicle crash data.

REQUEST NO 44: The Burke Investigation did not contain any independent analysis by the ASP of the speeds and distances set forth in Trooper Burke's patrol car video system.

RESPONSE: Admitted.

REQUEST NO 45: In the Burke Investigation, the Arkansas State Police relied on the analysis performed by the HSPD of the speeds and distances set forth in Trooper Burke's patrol car video system in its investigation.

RESPONSE: Denied.

REQUEST NO 46: In the Burke Investigation, Colonel Bryant relied on the analysis performed by the HSPD of the speeds and distances set forth in Trooper Burke's patrol car video system in its investigation.

RESPONSE: Denied.

REQUEST NO 47: The Burke Investigation did not contain any independent analysis by the ASP of the crash data recovery data.

RESPONSE: Admitted.

REQUEST NO 48: In the Burke Investigation, the Arkansas State Police relied on the analysis performed by the HSPD with respect to the analysis of the crash data retrieval data.

RESPONSE: Denied.

REQUEST NO 49: In the Burke Investigation, Colonel Bryant relied on the analysis performed by the HSPD with respect to the analysis of the crash data retrieval data.

RESPONSE: Denied.

REQUEST NO 50: The Burke Investigation did not reach a final disposition or finding that Trooper Burke violated policy.

RESPONSE: Denied.

REQUEST NO 51: The Burke Investigation did not reach a final disposition or finding that Trooper Buke violated his training at the ASP.

RESPONSE: Denied.

REQUEST NO 52: The Burke Investigation did not result in any discipline to Trooper Burke.

RESPONSE: Denied.

REQUEST NO 53: On March 1, 2017, Trooper Burke submitted his medical retirement to Colonel Bryant, effective April 1, 2017.

RESPONSE: Admitted.

REQUEST NO 54: Colonel Bryant accepted Trooper Burke's medical retirement without making any final disposition or findings of the Burke Investigation.

RESPONSE: Denied.

REQUEST NO 55: Colonel Bryant congratulated Trooper Burke on his medical retirement on March 3, 2017.

RESPONSE: Admit that I responded to notification of his medical retirement with a form letter used for all ASP employees granted retirement/medical retirement.

REQUEST NO 56: The ASP terminated the Burke Investigation on March 7, 2017.

RESPONSE: Denied.

REQUEST NO 57: Colonel Bryant terminated the Burke Investigation on March 7, 2017.

RESPONSE: Denied.

REQUEST NO 58: The ASP was authorized to complete the Burke Investigation, despite Trooper Burke's retirement.

RESPONSE: Denied.

REQUEST NO 59: Colonel Bryant was authorized to complete the Burke Investigation, despite Trooper Burke's retirement.

RESPONSE: Denied.

REQUEST NO 60: Prior to Trooper Burke's medical retirement, ASP had in its possession all of the documents contained in the Burke Investigation attached as Exhibit 38 to Arkansas State Police's Corporate Representative Greg Down's November 9, 2018 deposition.

RESPONSE: I was not present at Arkansas State Police General Counsel Greg Downs's deposition as corporate representative and have no knowledge of the materials attached as exhibits to the deposition, therefore denied.

REQUEST NO 61: Prior to Trooper Burke's medical retirement, ASP had in its possession the video tape from Trooper Bryant's patrol car.

RESPONSE: Denied.

REQUEST NO 62: Prior to Trooper Burke's medical retirement, Colonel Bryant reviewed the video tape from Trooper Bryant patrol car.

RESPONSE: Denied.

REQUEST NO 63: Prior to Trooper Burke's medical retirement, the ASP reviewed the video tape from Trooper Bryant patrol car.

RESPONSE: Denied.

REQUEST NO 64: Trooper Burke was not responding to an "emergency call" during Burke's driving.

RESPONSE: Admitted.

REQUEST NO 65: Trooper Burke was not in the "immediate pursuit of an actual or suspected violator of the law" during Burke's driving.

RESPONSE: Admitted.

REQUEST NO 66: Burke's driving without lights and sirens violated Arkansas state law.

RESPONSE: Denied, however he violated ASP policy by failing to demonstrate due regard for the safety of others/ordinary care.

REQUEST NO 67: Burke's driving without lights and sirens in excess of the posted speed limit violated Arkansas state law.

RESPONSE: Denied.

REQUEST NO 68: On October 10, 2016, any ASP Trooper driving in excess of the speed limit while not on an "emergency call" or in "the immediate pursuit of an actual of suspected violator of the law" would be violating Arkansas state law.

RESPONSE: Denied.

REQUEST NO 69: Prior to October 10, 2016, any ASP Trooper driving in excess of the posted speed limits while not on an "emergency call" or "the immediate pursuit of an actual suspected violator of the law" would be violating Arkansas state law.

RESPONSE: Denied.

REQUEST NO 70: Trooper Burke was trained by the ASP that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a person suspected of speeding before pulling the suspected speeder over for a traffic violation.

RESPONSE: Denied.

REQUEST NO 71: Prior to the crash, all ASP Troopers were trained that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a person suspected of speeding before pulling the suspected speeder over for a traffic violation.

RESPONSE: Denied.

REQUEST NO 72: Prior to the crash, the ASP had a known established custom and practice of allowing ASP Troopers to exceed the speed limit without lights and sirens in an effort to catch up to suspected speeders.

RESPONSE: Denied.

REQUEST NO 73: Prior to the crash, Colonel Bryant had knowledge that ASP Troopers were exceeded the speed limit without lights and sirens in an effort to catch up to a suspected speeder.

RESPONSE: Admit that I have imposed discipline on troopers for violating policy for failure to activate lights and siren when required to by ordinary care, otherwise denied.

REQUEST NO 74: Prior to the crash, Colonel Bryant approved of the conduct of ASP Troopers exceeding the speed limit without lights and sirens in an effort to catch up to a suspected speeder.

RESPONSE: Denied.

REQUEST NO 75: Prior to the crash, Colonel Bryant had knowledge that ASP Troopers were trained that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a suspected speeder.

RESPONSE: Denied.

REQUEST NO 76: Prior to the crash, Colonel Bryant was aware of the litigation and judgment in claims commission in Stewart v. State of Arkansas, Claim No. 12-0512-CC.

RESPONSE: I was not Director or employed by the Arkansas State Police until January 2015. However, I admit I am generally aware of the Claims Commission claim and the preceding disciplinary process involving the former trooper involved in that crash.

REQUEST NO 77: Prior to the crash, Colonel Bryant reviewed the July 14, 2011 transcript of the Appeal Hearing of Trooper Rhew.

RESPONSE: Denied.

REQUEST NO 78: Prior to the crash, Colonel Bryant had access to the July 14, 2011 transcript of the Appeal Hearing of Trooper Rhew.

RESPONSE: Denied.

REQUEST NO 79: The termination of Trooper Rhew was reversed by the Arkansas State Police Commission because Trooper Rhew complied with the customs of the ASP.

RESPONSE: Denied.

REQUEST NO 80: The termination of Trooper Rhew was reversed by the Arkansas State Police Commission because he complied with the training provided to the ASP.

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RESPONSE: Denied.

REQUEST NO 81: The termination of Trooper Rhew was reversed by the Arkansas State Police Commission because he complied with the practices of the ASP.

RESPONSE: Denied.

REQUEST NO 82: Prior to Burke's driving, Trooper Burke was dispatched to a call of a hit and run accident with no injuries.

RESPONSE: Admitted.

REQUEST NO 83: Prior to Burke's driving, Trooper Burke went to the scene of the hit and run call accident and spoke with the driver.

RESPONSE: Admitted.

REQUEST NO 84: Prior to Burke's driving, Trooper Burke met the person who called about the hit and run accident at the Pearcy Post Office on Highway 70.

RESPONSE: Admitted.

REQUEST NO 85: Prior to Burke's driving, Trooper Burke remained on the scene of the hit and run call for approximately 4 minutes.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 86: Prior to Burke's driving, Trooper Burke observed a car traveling on Highway 70 with its hazard lights on.

RESPONSE: Admit that video appears to show that he observed a dark vehicle pass his location with hazard lights on.

REQUEST NO 87: Prior to Burke's driving, and when Trooper Burke observed the car traveling on Highway 70 with its hazard lights on, he was still working the hit and run call.

RESPONSE: Admitted.

REQUEST NO 88: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke completed his work on the hit and run call.

RESPONSE: Admit that video shows that Burke appeared to have completed his contact with the driver.

REQUEST NO 89: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke completed his work on the hit and run call and walked to his patrol car.

RESPONSE: Admit that video shows that Burke appeared to have completed his contact with the driver and walked to his car.

REQUEST NO 90: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke did not pull out onto Highway 70 for one minute and twelve seconds.

RESPONSE: Denied.

REQUEST NO 91: Prior to Burke's driving, and after Trooper Burke observed the car travelling on Highway 70 with its hazard lights on, Trooper Burke did not pull out onto Highway 70 for approximately one minute.

RESPONSE: Denied.

REQUEST NO 92: When Trooper Burke pulled out onto Highway 70, Trooper Burke did not have the vehicle driving with its hazard lights in sight.

RESPONSE: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore denied.

REQUEST NO 93: The Defendants have no facts or evidence that Cassandra Braun's BAC in any way caused or contributed to the crash.

RESPONSE: Denied.

REQUEST NO 94: The Defendants have no facts or evidence that the driver of the vehicle that Cassandra Braun was ridings BAC in any way caused or contributed to the crash.

RESPONSE: Denied.

REQUEST NO 95: Defendant Bryant's established custom and policy resulted in Burke's decision to refrain from engaging his lights and siren while driving at speeds in excess of the posted speed limits.

RESPONSE: Denied.

REQUEST NO 96: Defendant's Burke's driving was in disregard to the safety of the motoring public.

RESPONSE: Admitted.

REQUEST NO 97: Defendant Burke driving without lights and sirens was the result of an intentional decision to follow Bryant's catchup policy, practice or custom without engaging lights and sirens custom and policy.

RESPONSE: Denied.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

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CERTIFICATE OF SERVICE

I, Jennifer L. Merritt, hereby certify that on this 17th day of January, 2019, I mailed the foregoing document by U.S. Postal Service, postage prepaid, to the following:

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State Claims Commission
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IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the Estate of Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased, Individually and on behalf of all wrongful death Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT F

Report of Dr. Geoffrey P. Alpert

PRELIMINARY EXPERT REPORT OF DR. GEOFFREY P. ALPERT
BRAUN V. BURKE AND BRYANT
Docket No. 4:18-cv0334 BRW (W.D. Arkansas)

QUALIFICATIONS

I have been retained by Mr. Andrew C. Clarke and Paul James to review an incident which occurred on October 10, 2016, during which Cassandra Braun and Tavon Jenkins were killed in a crash with an Arkansas State Police patrol car being operated by Trooper Brian Burke at a high rate of speed without its lights and sirens.

I am a Professor of Criminology and Criminal Justice at the University of South Carolina. I have a Ph.D. in Sociology from Washington State University, and have conducted research on police policies and customs for the past thirty years. I have served as the Director of the Center for Study of Law and Society and Criminal Justice Program at the University of Miami. I have also served as the Director of Research for the College of Criminal Justice at the University of South Carolina, and the Chair of the Department of Criminology and Criminal Justice at the University of South Carolina. In addition to my academic experience, I have been awarded federal, state and local grants to investigate various aspects of police work. Specifically, I was awarded a grant to study emergency vehicles and police pursuit driving from the National Institute of Justice, the research arm of the U.S. Department of Justice. I have been awarded several fellowships to investigate police activities and I have been asked by numerous police agencies to write policies for them, conduct training and to consult with them on various issues and critical incidents. I have written more than 100 peer-reviewed publications on Criminal Justice, many of which deal with police policies, practices, training and customs of police departments. I have written articles dealing specifically with emergency vehicle operations, pursuit driving and the use of force and deadly force. I have published extensively in the area of Criminal Justice, including scholarly articles concerning internal affairs, early warning systems, EVOC, high speed pursuits and use of force.

I base the statements contained herein on the totality of my specialized knowledge in the field of police policies, practices and customs. My knowledge and experience of police policies, practices and customs has developed during my 30 years of involvement in law enforcement in various capacities as a criminologist, researcher, consultant, auditor, evaluator and trainer. My examination of the issues in this case embodies the basic fundamental methodology that I employ in my professional evaluations of police agencies as a consultant and when performing research work with the National Institute of Justice. My opinions herein are provided with a reasonable degree of professional certainty within the fields of law enforcement policies, practices, training and supervision. A copy of my CV setting forth my qualifications and experience is attached as Exhibit A. My standard fee schedule is attached as Exhibit B. A listing of my trial and deposition testimony over the last 4 years is attached as Exhibit C. A listing of the documents and things produced to formulate my opinions is attached as Exhibit D.

The terminology I use in this Expert Report is not meant to invade the purview of the Court with respect to legal terms or the final jury determinations. I use these terms in my research and training of police officers when instructing on policies, training, critical incidents and risk management. These terms are produced as a result of my continuous review of case law and critical incidents which should guide a reasonable police agency in providing proper policies, training and supervision of officers just as terms such as "probable cause," "reasonable suspicion" and the prima facie elements of crimes have become common terminology for patrol officers.

I declare that the following statements reflect objective truths as extracted from records provided to me by Mr. Andrew Clarke and Mr. Paul James and represent my expert opinions, to the highest degree of professional certainty. If called to testify in this matter, I will express the opinions contained in this report, unless provided with materials that change my opinions.

BASIC FACTS OF CRASH

On October 10, 2016, Trooper Burke responded to the scene of a call for a non-injury accident at the Pearcy Post Office on Highway 70. While working the call, a vehicle with its hazard lights on passed by the location of the stop which Trooper Burke testified he believed was speeding. Trooper Burke obtained a vague description of the vehicle as a dark, newer model SUV. After briefly observing this vehicle, Trooper Burke finished the call he was working for approximately another minute. After he completed working the call, Trooper Burke then walked to his patrol car, entered his patrol car, and left the parking area by entering Highway 70, proceeding in the same direction as the observed vehicle. Trooper Burke no longer had any visual observation of this vehicle.

After entering Highway 70, Trooper Burke turned on his blue lights and possibly his siren for about 20 seconds while encountering two motorists. Trooper Buke then turned all his emergency equipment off. Over the next 5 minutes, covering approximately 8 miles, Trooper Burke drove his patrol vehicle, without blue lights and siren, at documented speeds as high as **117 miles per hour** in a 45 mile per hour zone and at an average speed of nearly 100 mph. Trooper Burke's continued his reckless driving until his patrol car crashed into the vehicle being driven by Tavon Jenkins and which Cassandra Braun was riding as a passenger.

Trooper Burke's actions were captured by his in-car camera. After review of the video tape, I have broken down Trooper Burke's driving actions into two portions: 1) his driving on Highway 70 outside the City of Hot Springs which was primarily a dark, unlit, winding road which had a maximum speed limit of 55 mph; 2) the portion of US 70 which runs through the City of Hot Springs which was primarily city streets of two to four lanes where the speed limit was between 40 and 50 mph.

When Trooper Burke initially entered the highway with his lights and sirens activated, he encountered two vehicles that pulled to the side of the road in response to his patrol car's blue lights and siren. During this portion of the route, Defendant Trooper Burke encountered over 20 vehicles before approaching the City of Hot Springs, including passing at least 5 cars into

oncoming traffic and crossing the double yellow line. Trooper Burke's excessive speeds led him to be unable to maintain his patrol car in his lane of traffic, swerving across the double yellow lines approximately 15 times. His conduct during this portion of his route was performed without a legitimate law enforcement purpose as his only actions were designed to catch up to a suspected speeder. Trooper Burke's conduct, in accordance with the established protocol of the ASP, was shocking and placed the motoring public at extreme danger.

As Trooper Burke's approached the City of Hot Springs, the danger grew exponentially as the number of motorists exposed to his reckless driving significantly increased. During this section of the route, the speed limits decreased from 55 mph to 40-50 miles per hour. Trooper Burke encountered approximately 40 vehicles travelling on the road, including passing approximately 10 vehicles travelling in his same direction. Trooper Burke's excessive speeds during this portion of the route led him to be unable to maintain his patrol car in his lane of traffic approximately 20 times. This danger excludes the people who were in town patronizing business, all of whom could have been exposed to immediate danger from his driving. During this portion of his route, Trooper Burke's in-camera system indicates that he reached speeds as high a 117 mph in a 45-mph zone. Data documented by his patrol car's CDR system indicated that Trooper Burke was traveling 113 mph just five second before the crash and 98 mph at the time of impact. As a result of the crash, both Tavon Jenkins and Cassandra Braun were killed. After the crash, Trooper Burke was allowed to take a medical retirement by Colonel Bryant despite the fact that all the facts necessary to evaluate the case had been obtained by the ASP. Therefore, Trooper Burke was never disciplined by Colonel Bryant for his conduct during these events.

The evaluation of this incident requires a review of the available videos, evidence, documentation, policies, training, OPS files, the testimony of Trooper Burke, Colonel Bryant and the ASP other corporate representatives to determine the propriety of the underlying conduct of Trooper Burke and the policies, practices and customs of Colonel Bryant and the ASP. A summary of the relevant deposition testimony is as follows:

TROOPER BRIAN BURKE

Trooper Burke's first law enforcement position was with the ASP and he had no law enforcement training prior to joining the ASP. (Tr. 14,16-17). Trooper Burke testified that he started trooper school at the academy in January of 2011 and the academy was 20 weeks. (Tr. 16). Trooper Burke was asked about the topics covered during his trooper school training, but was unable to recall the specifics of many of the courses. (Tr. 16-20). With respect to the training block on EVOC, Trooper Burke testified that the majority of the training involved the physical operation of a vehicle and driving on a course without hitting cones. (Tr. 23-24, 31). Trooper Burke recalls that Captain Eremea and Sergeant Speers were involved in the EVOC training. (Tr. 24). Trooper Burke did not recall whether he was trained on the pursuit policy or vehicle use policy, but would assume that he did. (Tr. 25-26). Trooper Burke was questioned about the EVOC lesson plan. (Tr. 29-30). After going through the EVOC lesson plan, Trooper Burke acknowledged that there did not appear topic or objective covering pursuits. (Tr. 31). Trooper Burke noted that he had two assignments during trooper school on the Vehicle Use Policy and

Pursuit Policy. (Tr. 48-49, ASP Bates # 15-16). Trooper Burke reviewed the Traffic Stop lesson plan and agreed that this did not cover EVOC or pursuits. (Tr. 49).

Trooper Burke acknowledged that he received substantial training on the use of the firearms and deadly force which consisted of training on: 1) proficiency with use of firearm; and 2) when it is appropriate to use a firearm and deadly force. (Tr. 33-34). Trooper Burke agreed that the lesson plan for EVOC indicated that the majority of the training involved the physical operation of a vehicle and not when it was appropriate to engage in emergency responses or pursuits. (Tr. 35). Trooper Burke testified that he was trained quarterly on the use of a firearm but not with respect to EVOC or pursuits. (Tr. 45). Trooper Burke was not trained on what an "emergency call" was or the appropriate way to respond to an "emergency call." (Tr. 46). Trooper Burke testified during traffic stops, troopers were not supposed to activate their blue lights and sirens until the trooper has caught up to the vehicle and selected a location to perform the traffic stop. (Tr. 50). Trooper Burke was trained that it was acceptable to exceed the speed limit without lights and sirens when performing a traffic stop. (Tr. 50-51, 66-68, 194). Trooper Burke testified that he performed the majority of his traffic stops pursuant to this training. (Tr. 51). Trooper Burke also observed other troopers performing stops in this manner. (Tr. 51). Trooper Burke's understanding was also that his sergeant and supervisors handled traffic stops in this same manner in which he was trained. (Tr. 84).

According to Trooper Burke's training and observations of other troopers, it was acceptable to exceed the speed limits without lights and sirens during traffic stops. (Tr. 51-52). Further, he testified that the policy on Vehicle Use authorized exceeding the speed limit without lights and sirens during traffic stops. (Tr. 65). He testified that he exceeded the speed limit, without lights and sirens while catching up to suspect during traffic almost every day. (Tr. 68-69). He also testified that most of his pursuits started with a traffic stop. (Tr. 70). He further testified that officers have discretion to use lights and sirens when responding to an emergency call depending on the facts and whether the officer believes a silent approach is necessary. (Tr. 80). Trooper Burke did not receive any training or instructions from his supervisors with the respect to what type of call require emergency response other than just use your common sense. (Tr. 84).

Trooper Burke was questioned extensively about his actions on the date of the fatality crash and reviewed the videotape. His vehicle was equipped to receive dispatches from the ASP and Garland County Sheriff's Department. (Tr. 78). Trooper Burke was dispatched by the ASP to a non-injury accident. (Tr. 85). The traffic stop lasted a total of about 4 minutes. During this traffic stop, a vehicle passed by his location with its hazard lights on which Trooper Burke believed was speeding. (Tr. 89). Trooper Burke observed this vehicle for only 2-4 seconds. (Tr. 90). Trooper Burke finished the call he was working for approximately another minute. Trooper Burke then walked to his patrol car, entered his patrol car, and left the parking area entered Highway 70, and proceeded in the same direction as the observed vehicle. However, Trooper Burke no longer had any visual observation of this vehicle.

After pulling out on the highway, Trooper Burke dispatched a general description of the vehicle to the Garland County Sheriff's Department but not the ASP. (Tr. 91). After entering Highway 70, Trooper Burke turned on his blue lights and possibly his siren for about 20 seconds when he encountered two vehicles and then turned off all of his emergency equipment. Over the next 5 minutes, Trooper Burke drove his patrol vehicle approximately 8 miles, without blue lights and siren, at documented speeds as high as **117 miles per hour** in a 45 mile per hour zone and at an average speed approaching 100 mph. Trooper Burke's continued his driving until his patrol car crashed into the vehicle being driven by Tavon Jenkins and which Cassandra Braun was riding as a passenger.

Trooper Burke testified that he was following his training by attempting to catch up to the suspected speeder before making a traffic stop which is why he was not using his lights and sirens. (Tr. 96). Trooper Burke testified:

> Q. Do you understand that state law requires you to either be in pursuit of a vehicle or on an actual emergency call before you can violate any rules of the road?
>
> A. Here's the thing. I realize we exceed the posted speed limits or I exceeded the posted speed limit. I did that and I realize that violates the statute. But in the course of my training and the way the policy is written, I was exempt from that. (Page 98:1 to 98:9).

Trooper Burke testified that his actions were in compliance with his policy and training and did not create a danger to the public. (Tr. 149, 205-206). Further, Trooper Burke testified that while he gave statements to the HSPD and ASP, he was never told that he did anything wrong. (Tr. 154).

While Trooper Burke testified that he followed his training and was not a danger to the public, it is my opinion that his conduct as depicted on tape was shocking and displayed a callous indifference to public safety. While a review of the tape reflects each and every aspect of his conscience shocking driving, Trooper Burke passed vehicles driving on both sides of the roads, failed to maintain his vehicle in the proper lane of traffic due to speeds and travelled at excessive rates of speed including travelling 117 mph in a 45 mph zone moments before the crash – all without utilizing his lights and sirens in an attempt to warn the public. Each time Trooper Burke encounter a motorist while he was travelling at an excessive speed without his lights and sirens represented and opportunity and obligation to evaluate the necessity of his actions. However, Trooper Burke, consistent with his training and policy, intentionally continued his dangerous and reckless driving until he crashed into the vehicle carrying Cassandra Braun, all in attempt to catch up to a potential speeder.

COLONEL WILLIAM BRYANT

Colonel Bryant began his law enforcement career with the Sam Houston State Police Department in 1976, reaching the rank of Lieutenant. (Tr. 11). From 1978 through 1984, Colonel Bryant worked as a police officer for the City of Huntsville, Texas Police Department. (Tr. 11).

In 1984, Colonel Bryant began working for the DEA and worked for the DEA for 30 years, reaching the title of Assistant Special Agent in Charge. (Tr. 11).

After retirement from the DEA, Colonel Bryant worked as the State Director for HIDTA (High Intensity Drug Trafficking Area). (Tr. 12). On January 12, 2015, Colonel Bryant was appointed and sworn in as the Director of the ASP. (Tr. 13). Colonel Bryant has never been through the ASP Training Academy. (Tr. 94).

Colonel Bryant was certified as a law enforcement agent with Sam Houston State and went through a 12-week academy in 1976-77. (Tr. 13). Colonel Bryant had engaged in a high-speed pursuit while employed by Sam Houston State Police Department or the City of Huntsville Police Department. (Tr. 18). Colonel Bryant received some driving training at the DEA but the DEA does not engage in pursuits. (Tr. 15). While working with the DEA, Colonel Bryant assisted local police department, including the ASP, on investigations and other police matters. (Tr. 19-20). Colonel Bryant is a member of the International Association of Chiefs of Police (IACP) and the Arkansas Association of Chiefs of Police (AACP). (Tr. 20). Colonel Bryant is aware that both the IACP and AACP have model policies but he was never reviewed them. (Tr. 21).

After Colonel Bryant was appointed as the Director of the ASP, he took steps to familiarize himself with the operations of the ASP by having briefing with the command staff, including a review of the ASP policies and procedures manual. (Tr. 21-22, 71). Colonel Bryant agreed with the contents of the ASP policies and procedures manual and adopted them for ASP. (Tr. 22, 71). Colonel Bryant also reviewed the training provided to ASP troopers and he instituted in-service training "because in the past it didn't appear that they had in-service training yearly." (Tr. 22, 71). This is inconsistent with the Arkansas Commission on Law Enforcement Standards & Training Regulation 1002 which requires a minimum of 16 hours of CLEST approved training annually. Colonel Bryant testified that he not even aware of these requirements of the Arkansas Commission on Law Enforcement Standards and Training. (Tr. 23).

Colonel Bryant testified that to properly operate a police department, a Chief/Director is required to: 1) have a proper understanding of the laws that apply to regulate law enforcement conduct; 2) have appropriate written policies to regulate officer conduct; 3) train officers on the law, policies and the expectations of their conduct while on-duty; 4) provide sufficient supervision to ensure that officers are acting according to their policy and training; 5) have a mechanism to discipline officers if they violated their policies, training and expectations. (Tr. 24-25).

In reviewing the applicable law pertinent to this case, Colonel Bryant testified that Arkansas state laws allow for officers to exceed the speed limits without lights and sirens in certain circumstances in 2016. (Tr. 25-26).[1]

[1] In 2017, Arkansas state statutes relating to emergency vehicles were changed to specifically authorize exceeding the speed limit in certain circumstances. Ark. Code. Ann. § 27-51-905. Prior to this amendment, Colonel Bryant met with certain members of the legislature concerning the proposed changes to the law. (Tr. 26). Colonel Bryant said he met with these people to seek these changes to provide some clarity to the law. (Tr. 27).

In reviewing the applicable statutes, Colonel Bryant acknowledged that Ark. Code Ann. § 27-51-202 clearly states that the speed limits are not applicable to authorized emergency vehicles when responding to emergency calls if they are utilizing their lights and sirens. (Tr. 26). Colonel Bryant stated that emergency calls are situations involving life and death or serious bodily injury. (Tr. 27). Colonel Bryant testified that catching a speeder is not an emergency call or an emergency trip. (Tr. 28.32). Colonel Bryant testified that he believed that this statute conflicted with other statutes. Specifically, Colonel Bryant referenced Ark. Code. Ann. § 27-49-109, noting that it states "no driver of any authorized emergency vehicle shall assume any privilege under this act except when the vehicle is operated in respond to an emergency call or the immediate pursuit of an actual or suspect violator of the law." (Tr. 30). However, this statute only provides immunity for travelling through intersections. Colonel Bryant testified that he was unaware that this statute only provided officers with exemptions from compliance with statutes concerning red lights or stop signals and did not provide any exemptions from the speed limits.[2] (Tr. 30-31). As such, there is no conflict between these laws as they address different exemptions from different traffic laws. Colonel Bryant then testified that Ark. Code Ann. § 27-57-204 creates a conflict with respect to the use of lights and sirens while exceeding the speed limit when it states "the maximum and minimum speed limits posted shall apply to all vehicles using the facility except authorized emergency vehicles on emergency trips, such as police vehicles on duty." (Tr. 31). However, the provisions of Ark. Code Ann. § 27-57-204 do not conflict with Ark. Code Ann. § 27-57-202 because they both only apply to emergency calls or trips which specifically require the use of lights and sirens to exceed the speed limits.

During Colonel Bryant's testimony it was clear that he did not have any real understanding of the legal requirements for emergency driving and was attempting to conflate certain provisions of one statute giving exemptions from red lights and stop signs with other statutes that specific apply to exemptions from speed restrictions which actually require lights and sirens. Unfortunately for Cassandra Braun, this misunderstanding was reflected in the ASP policy and training of officers which allowed troopers to travel at excessive speeds without using lights and sirens to warn the public during routine traffic stops. Colonel Bryant was provided with the Arkansas Model Jury Instructions regarding emergency vehicles which set forth the specific language to be provided to juries in Arkansas based on the proper legal interpretation of the applicable statutes which analyzes all applicable statutes and specifically requires the use of lights and sirens. (Tr. 36-38).

Colonel Bryant did not require his officers to comply with the speed limitations set forth in the statutes which would be simple. Colonel Bryant could have simply amended the policies to specifically state that when officers exceed the speed limits, lights and sirens must be activated. The position of every single reputable law enforcement organization, and common sense, require the use of lights and sirens when exceeding the speed limit. Instead, Colonel Bryant testified he

[2] Colonel Bryant's testimony that he was unaware of this fact is completely contradicted by the fact that he actually attended in-service training on emergency vehicles in 2015 where the actual language of the statute was presented as its own training slide. (Tr. 79).

decided to go the legislature to seek authority to violate the speed limitations without using lights and sirens under the guise of "clarity." Significantly, the use of lights and sirens is designed to protect the motoring public by warning them of the approach of emergency vehicles at high-speeds so that they can clear the roadway and move to the left as required by law. This testimony and these actions reflect Colonel Bryant's complete indifference to the public with respect to emergency driving. There is simply no legitimate law enforcement purpose for allowing high-speed emergency driving without a simple warning to the public through the use of lights and sirens. After reviewing the statutes in conjunction with the policy, Colonel Bryant testified that the policy could be clearer. (Tr. 45).

Colonel Bryant testified that there is no requirement that officers call into dispatch when they are exceeding the speed limit, unless there engaged in a pursuit. (Tr. 48). Therefore, there is no accurate way for the ASP to be advised of high-speed driving, other than a pursuit. However, other policies provide a manner to actually track potentially improper driving but were ignored by Colonel Bryant. The in-car camera policy requires that patrol video cameras are automatically activated when an officer exceeds 99 mph. (Tr. 48).[3] Despite having an express policy to automatically activate video cameras when a trooper exceeds 99 mph without lights and sirens, Colonel Bryant did not review these videos and did not even have a mechanism in place for the review of these videos. (Tr. 49). Instead of reviewing the actual tapes from vehicles were the camera was automatically activated when triggered by excessive speeds, a random audit of three tapes per month is required.[4] (Tr. 49-50). However, if the policy requires automatic activation of a camera at speed in excess of 99 mph, the failure to actually review these tapes reflects a complete indifference to this high-speed driving.

The failure to review these tapes also prevents Colonel Bryant and the ASP from actually tracking and monitoring officers who travel in excess of 100 mph without lights and sirens because they are not reviewed. This is especially egregious given: 1) cameras are set to automatically activate when an officer exceeds 100 mph without lights and sirens; 2) there is no 10 code to alert dispatch of high-speed driving or travelling in excess of 100 mph, unless engaged in a pursuit which requires lights and sirens; 3) travelling at 100 mph is dangerous; and, 4) the video tape would only be review if there was an accident or complaint. (Tr. 51-52). Accordingly, Colonel Bryant had policies designed to automatically records troopers travelling in excess of 99 mph without lights and sirens but failed to require a review of these tapes unless there was an accident. This bad-results based analysis reflects deliberate indifference to the rights of the public as the conduct should be evaluated and corrected, regardless of whether there has been a crash or fatality.

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[3] According to the testimony of Trooper Burke, the in-car cameras are activated by: 1) turning the camera on manually; 2) when lights and sirens are activated; and 3) when reaching speeds of 100 mph the camera automatically activates. (Burke, p. 85).

[4] A review camera audits of Trooper Burke and the forms used to complete these random audits, these audits primarily deal the manner in which traffic stops are conducted after being pulled over as the pre-printed form covers topics such as "wore hat," "fingerprint vehicle," "advised of reason for stop," etc. (Ex 42). These audits do not involve driving actions whatsoever

Prior to and upon his ascension to Director of the ASP, Colonel Bryant was advised of the Andrew Rhew litigation stemming from a traffic fatality crash which occurred when a trooper responded to an emergency call without lights and sirens. (Tr. 52). Colonel Bryant was aware that a multi-million-dollar award was entered against the ASP for this conduct and acknowledges that this was a serious incident and a big deal. (Tr. 52-54). However, Colonel Bryant never read the transcript of the proceedings concerning Trooper Rhew termination and reinstatement by the Arkansas State Police Commission (ASPC) either before or after this litigation. (Tr. 55).

Colonel Bryant was questioned about the testimony of numerous high-ranking officers of the ASP at this hearing which reflected that these officers, including training officers, testified that officers were not required to use lights and sirens when exceeding the speed limits and that if troopers were disciplined for this conduct, there would no troopers left to serve. (Tr. 55-68). Colonel Bryant acknowledged that the testimony from the Rhew cases reflected that the ASP had custom or practice of allowing officers to routinely drive above the speed limits without lights and sirens without discipline unless they were involved in a crash. (Tr. 68, 70).

Colonel Bryant testified that he was told that changes were made after the Rhew incident and that he also took actions to address this improper culture which consisted of a portion of a one-hour in-service training sessions entitled, "Meet the Colonel." Colonel Bryant testified that during one-hour presentation he advised officers to use lights and sirens when exceeding the speed limit. (Tr. 72). However, during this one-hour presentation, Colonel Bryant addressed no fewer than 8 topics, including Active Shooter Training, Legislative Session, Promotional Testing, Trooper School, Fentanyl, Accountability, Residency Requirement, CRSB, Building Operation, CACD, deadly force, seat belts, and emergency driving/lights/sirens. (Ex. 83 – Notes). Significantly, Colonel Bryant's notes reflect the topic of blue lights and sirens is covered under "Green Folders" which is the nomenclature for OPS investigations. (Ex.83). Despite mentioning the requirement to use of lights and sirens when exceeding the speed limit, Colonel Bryant did not change any policies or require different training. So, rather than curing the problem by mandating additional training and revising the policies to provide that officers must utilize their lights and sirens when exceeding the speed limits, Colonel Bryant's one-hour presentation reflects his actual knowledge of the problem and failure to properly address it. A portion of a 1-hour presentation covering numerous topics by telling officers to use blue lights and sirens when exceeding the speed limits without retraining or policy updates does not constitute training.

Colonel Bryant testified that there is an obvious need to provide training on emergency vehicle operations and pursuits. (Tr. 69). Colonel Bryant acknowledged that troopers are trained with respect to firearms 4 times per year. (Tr. 69). Colonel Bryant acknowledged that there is no quarterly or yearly training with respect to emergency vehicle operations or pursuits. (Tr. 99). Colonel Bryant was questioned about the in-service training materials from 2012 and the requirement to change training to 75% decision making and 25% decision making and agreed that this was proper. (Tr. 109-110). However, he has not instituted this training even to this date.

Colonel Bryant was questioned about the policies. When working with the DEA, the DEA did not have a pursuit policy. (Tr. 83). When Colonel Bryant reviewed the ASP policies and adopted them for the ASP, he did not refer to any other policies to educate himself of the requirements of proper policy, including the model policies of the IACP and AAC of which he was a member. (Tr. 83-86).

Colonel Bryant testified that he investigates officer misconduct and policy violations and that the majority of the complaints or investigations he performs involve motor vehicle crashes. (Tr. 47).

OVERVIEW OF RELEVANT LAW ENFORCEMENT PRINCIPLES

The following contains my general opinions concerning the law enforcement issues involved in this matter. In this report, I will provide opinions concerning the nature, extent and dynamics of emergency driving and pursuit driving. Specifically, my opinions cover the standard of care and best practice for policies, training, supervision and accountability, and potential responses and solutions to emergency driving and pursuit driving. In addition, I will address the customary problems created for both the police officer who is involved in a pursuit or emergency vehicle operation attempting to "catch-up" to a suspected violator of the law or get to a particular location and the public who has expectations about how other vehicles are being driven.

An emergency response usually begins when a police officer turns on his lights and siren and goes toward a call that is a real or perceived emergency or attempts to catch up with a suspected violator. The key element here is the use of emergency lights and siren to warn the public of an impending danger, which is the high-speed driving and other possible violations of the traffic laws. The goal of an emergency driving is to perform some action or arrive at a specific location as quickly and as safely as possible. A police officer must always drive with the due regard for the safety for all motorists. That is, regardless of the warning devices utilized by the officer, he or she is not permitted to drive recklessly, run through stop signs or red lights or drive too fast for the conditions or environment. If the officer becomes involved in a crash, he or she does not make it to the call and assets are re-routed to him rather than to the original call.

During emergency runs and pursuit driving, law enforcement research has determined that officers are most likely to undergo some physiological changes when they realize their driving is fast and creating risks. There may be an adrenalin "dump," and the driver may focus almost solely on the need to get to a specific location quickly or "catch-up" to a suspected violator and may experience myopia and auditory lockout. As a result, officer's decision-making skills will be impacted and often impaired. Because of the potential problems created by emergency responses and pursuits, certain common rules and regulations have been established to guide all emergency vehicles, including ambulances, fire trucks, and police cars. First, emergency vehicles must utilize all available equipment to warn the public, including lights and sirens. Second, emergency vehicles, while permitted to violate certain traffic laws, must drive with due regard for the motoring public. Driving with due regard for the public is defined by taking care to protect the public from unforeseen dangers. For example, some emergency vehicle policies require officers to stop or

slow to a speed that allows them to stop when entering an intersection against a red light or a stop sign should a civilian vehicle not see or hear them. Civilian drivers are required by law to yield the right of way and pull to the right side of the road upon the approach an emergency vehicle running its lights and sirens. However, civilian drivers do not respond to emergency vehicles in a uniform manner. Many civilian drivers do comply with this statute and yield the right of way to an emergency vehicle when observed. However, others may panic when confronted by an emergency vehicle or simply do not observe the emergency vehicles. Drivers will sometimes stop, pull to the left, or pull to the right when an emergency vehicle is behind, in front or approaching from the side. Drivers of emergency vehicles must be taught that their lights and sirens are warning devices only and do not create an invincible shield around their vehicle. These drivers are also taught that other drivers on the roadway may not see or hear their warning devise and to drive accordingly and defensively. Therefore, it is important that drivers of emergency vehicles maintain a controllable speed that allows them to react to unpredictable and predictable drivers.

Most, if not all, properly functioning law enforcement departments preclude officers from driving faster than the speed limit or to violate other traffic regulations without warning the public by utilizing their emergency lights and siren. This rule is legislated by state statute and should be continually emphasized by police policies, training and supervision. Even without a specific state statute, most reputable police organization require the use of lights and sirens when exceeding the speed limits due to the obvious dangers associated with high-speed driving. The dangers created by police officers speeding without utilizing their emergency equipment to warn the public is no different than a civilian recklessly driving at speeds above the limit, regardless of the driver's motive. One excuse often used to explain police driving at high speeds without the use of emergency equipment is to "catch up" or "overtake" a speeding motorist in order to initiate a traffic stop. While it is appropriate police behavior to attempt a traffic stop in close proximity to the suspect vehicle, it is never appropriate or justified to violate the traffic laws without the use of emergency equipment to warn the public. Clearly, warning the public is more important than an attempted apprehension of a traffic violator. If a police officer is successful in catching up to the speeding suspect and initiates a traffic stop and the suspect refuses to pull over, the officer must decide whether or not to engage in a pursuit. A pursuit is set of behaviors that begin when a police officer initiates a stop by turning on his lights and siren and suspect does not pull over and accelerates, continues without showing a sign of stopping, or takes off away from the police officer. If the officer decides that a pursuit is appropriate, he must continue to determine the need to immediately apprehend the suspect and how that is to be accomplished, and balance that need with the risk created by the pursuit.

Emergency driving and pursuits create an enormous problem for society in general and police specifically. Unfortunately, in the United States, there are no national data on the number of emergency responses or pursuits that occur every year, and only a few states maintain statistics on their agencies. Similarly, there are no national figures on crashes, injuries or pursuit-related costs. The United States Federal Government maintains a database on pursuit-relate deaths that are reported to the Fatality Analysis Reporting System (National Highway Traffic Safety Administration). Unfortunately, these data are underreported as admitted by NHTSA. Even though underreported, FARS still reports more than 1 death a day as being pursuit related. Others

have estimated that there could be 3-4 times as many deaths. Beyond deaths and injuries, pursuits involve property damage and other costs including Worker's Compensation Claims that are not normally included in a police report. Although comprehensive national and state-wide data are not always available, the costs of emergency driving and pursuit related crashes are enormous in terms of life and property.

Because of the high costs associated with emergency driving and pursuit crashes, best practices and standards of care for policies, training, supervision and accountability have been developed. The International Association for Chiefs of Police, the Police Executive Research Forum and The Northwestern University Center for Public Safety have all published materials that deal with model policies, training, supervision and accountability regarding emergency and pursuit driving.

A police department is required to have policies and training which address obviously dangerous situations (and recurring situations) to provide officers with guidance and limit their discretion to act in these dangerous situations. Emergency vehicle driving (EVOC) and pursuits are obviously dangerous situations which require proper policy guidance and training by a police department. Statistically, EVOC and pursuits are probably the most dangerous activity that a law enforcement officer can engage in as more people are killed most years as a result of driving than any other law enforcement activity, including firearms. Since these subjects both involve the use of a patrol car at high-speed, most departments cover both EVOC and pursuits in the same policy. Accordingly, a police department must: 1) develop a proper policy that covers both emergency vehicle operations and pursuits; 2) ensure that its officers understand the requirements for and dangers of emergency vehicle operations and pursuits through proper training; 3) properly supervise its officers during the course of emergency vehicle driving and pursuits; and 4) hold officers accountable for complying with the policies regarding emergency operations and pursuits.

Emergency vehicle operations and pursuit policies and training must explain the balance between the need to for emergency driving versus the risks that emergency driving poses to the officers and public. Utilizing this balancing test, if there is no real, legitimate emergency, high-speed driving is not justified and serves no legitimate law enforcement function. Under no circumstances should this be undertaken without lights and sirens which are designed to warn the motoring public of impending danger. All EVOC and pursuit policies and training must stress: 1) that the primary police mission is to protect lives; 2) that the protection of lives is more important than the apprehension of offenders or high-speed driving; and 3) that all activities during the course of emergency driving must be performed with due regard to safety of the public.

While there are a variety of topics or areas that must be covered by emergency driving and pursuit policies, none are as important as the use of lights and sirens to warn the motoring public of impending danger. While all information cannot be conveyed in a policy, the guidelines established by policy should be explained and defined by training. Training in emergency and pursuit driving has standards and includes two types: 1) Emergency vehicle operations courses (EVOC) train officers how to drive, to understand the dynamics of the vehicle and how to accelerate and steer through curves in emergency situations; and 2) when to drive in an emergency

or pursuit mode which focuses on decision making, and explains when to engage in emergency driving or pursuits. The former takes place on a track and the latter takes place in a classroom. Officers should be certified in both EVOC and decision-making training before they are allowed to engage in emergency driving and pursuits. Proper training should place more emphasis on the decision making as most crashes are the result of bad decisions and not the inability to properly drive a patrol car. Like firearms, police vehicles can be deadly weapons and actually kill more people per year than firearms. Almost all responsible departments provide extensive training on the use of firearms which includes requiring an officer to show proficiency in the handling and firing of his firearm but more substantial training on when it is proper to use deadly force. EVOC and emergency driving training should be provided in this same manner.

Another important standard in emergency vehicle operations and pursuit driving is the nature and type of accountability. Police departments must hold their officers accountable for their actions in all types of activities including emergency and pursuit driving. While most departments require pursuit reports to be completed after pursuits, few require reports or review when officers are involved in emergency driving unless the result is some sort of crash resulting in death, injury or property damage. Therefore, the number of potentially improper emergency driving responses is greatly underreported.

It is important to recognize that the review should be on the conduct of the officer engaged in emergency driving or pursuit and not the result. For example, an officer driving at over 100 mph without lights and sirens has exposed the public to the same danger regardless of whether he is ultimately involved in a crash. Regardless of the outcome of the pursuit or emergency driving response, supervisors must determine whether the emergency driving or pursuit violated any policies and was necessary or justified. Police standards also require agencies to evaluate emergency driving and pursuits to determine if any trends exist and whether officers or agencies are involved in patterns or practices of improper or unreasonable behavior. Once trends are identified, it is important that they are communicated to the training division to determine whether officers need additional or different training, or the policy needs modification. In many agencies, driving habits of officers have become part of their Early Warning Systems to make sure that individual officers are not becoming involved in too many or questionable driving practices. Other agencies hold review boards for officer-involved collisions similar to use-of-force or critical incident review boards.

The primary police mission is to protect lives. Accordingly, an officer engaging in emergency driving responses or pursuit must balance the need for immediate response or apprehension versus the risks the high-speed driving creates to the motoring public.

APPLICABLE STATUTES

Ark. Code Ann. § 27-49-109. Drivers of Authorized Emergency Vehicles.

(a) The driver of any authorized emergency vehicle when responding to an emergency call upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety but may proceed cautiously past the red or stop sign or signal. At other times, drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal.
(b) No driver of any authorized emergency vehicle shall assume any special privilege under this act except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

Ark. Code Ann. § 27-51-202. Restrictions not Applicable to Emergency Vehicles.

(a) The prima facie speed limitations set forth in this subchapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights and is also operating an audible signal by bell, siren, or exhaust whistle if other vehicles are present.
(b) The section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard to the safety of all persons using the street, nor shall it protect the driver of any emergency vehicle from the consequences of a reckless disregard of the safety of others.
(c) For the purposes of this subsection, "emergency calls" means legitimate emergency situations which call for the operation of an emergency vehicle, including a police vehicle.

Ark. Code Ann. § 27-51-204. Restrictions not Applicable to Emergency Vehicles.

(a)(1) The State Highway Commission shall determine, based upon studies of the engineering and traffic characteristics thereof, the maximum and minimum desirable speeds for all traffic fatalities in the state highway system.
(a)(2) These regulatory speeds shall be effective when appropriate signs giving notice thereof are erected.
(b)(1) The maximum and minimum speed limits posted shall apply to all vehicles using the facility except authorized emergency vehicles on emergency trips, such as police vehicles on duty, fire vehicles on calls, and ambulances; oversize/overweight vehicles moving under special permit issued by the Arkansas State Highway and Transportation Department or its lawfully delegated agents; and other specific vehicles for which special limits may be posted in particular situations or under particular conditions.
(b)(2) This exemption shall not relieve any driver of an authorized emergency vehicle from his lawful responsibility to drive with due regard for the safety of all persons upon or using the highway facility, nor shall it protect the operator of any such vehicle from the consequence of if reckless disregard for the safety of other.

Ark. Code Ann. § 27-51-901. Operation of Vehicles and Streetcars on Approach of Authorized Emergency Vehicle.

(a)(1) Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, unless when otherwise directed by a police officer....

(c) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using he highway.

AMI 913 Emergency Vehicles—Special Privileges

(1) [The *(ambulance)(fire truck)(police car)* driven by __ was an authorized emergency vehicle at the time and place of the occurrence.]

...

(2) [One issue you must decide is whether the *(ambulance)(fire truck)(police car)* was an authorized emergency vehicle at the time and place of the occurrence. If you find that __ was *(responding to an emergency call)(in the immediate pursuit of an actual or suspected law violator)* and was operating the *(siren)(bell)(whistle)* and *(red)(blue)* rotating or flashing emergency lights on the *(ambulance)(fire truck)(police car)* which *[he][she]* was driving, then the *(ambulance)(fire truck)(police car)* was an authorized emergency vehicle,] and the driver was entitled to operate the vehicle in accordance with the following traffic law*(s)* applicable only to emergency vehicles:

(a) [The driver of an emergency vehicle is relieved of the obligation to obey a speed limit.]

(b) [The driver of an emergency vehicle is not required to stop at a stop *(light)(sign)* but must slow down as necessary for safety and may then proceed cautiously past the signal.]

(c) [The driver of an emergency vehicle is not required to stop at the type of railroad crossing involved in this case.]

(d) [An emergency vehicle has the right of way over other vehicles.]

The existence of */this][these/* privilege*(s)* does not relieve the driver of an emergency vehicle of the duty to exercise ordinary care for the safety of others using the */street][highway/*.

These particular statutes are similar to statutes of many states which address emergency vehicle operations and the requirements necessary to allow police officers violate the rules of the road when responding to emergency calls. Ark. Code Ann. § 27-51-202 allows officers to exceed the speed limit when on an "emergency call" when utilizing lights and sirens. Further, Ark. Code Ann. § 27-49-109 allows police officers the ability to proceed through a stop sign or red light after slowing down when necessary when in "response to an emergency calls or in the immediate pursuit of actual or suspected violated of the law." There are no exceptions to these statutes which allow officers discretion to use lights and sirens when violating the speed limits and this can only occur when on an actual "emergency call" which is defined as a "legitimate emergency situation which call for the operation of an emergency vehicle, including a police vehicle." Further, Ark. Code Ann. § 27-51-901 required the motoring public to yield the right of way to officers on emergency calls utilizing their lights and sirens and to pull to the right side of the roadway. This interpretation of these statutes is confirmed by reference to the Arkansas model jury instruction on emergency vehicles referenced above. Policies and training must comply with applicable state law and specifically limit officer discretion during emergency driver. According, state law does not permit a policy of allowing officers the discretion to violate the speed limits to "catch up" to suspected violators and any policy or custom to the contrary reflects a reckless disregard to the motoring public.

Ark. Code Ann. Section 12-8-104. Director.

> (a)(1)(A) After conferring with the members of the Arkansas State Police Commission, the Governor shall appoint a Director of the Department of Arkansas State Police who shall be the executive and administrative head of the Department of Arkansas State Police and shall receive a salary as fixed by law....
>
> (c) The Director of the Department of Arkansas State Police shall promulgate such rules as are necessary for the efficient operation of the Department of Arkansas State Police and for the enforcement of such duties as are prescribed in this chapter.
>
> (d) The Director of the Department of Arkansas State Police shall keep the books and records of the Department of Arkansas State Police, which shall be audited as the books and accounts of other state departments.
>
> (e) An annual report to the Governor and a biannual report to the General Assembly showing the activities, number of arrests, amounts collected by the Department of Arkansas State Police, and disposition of all cases shall be made by the Director of the Department of Arkansas State Police.
>
> (f)(1) The Director of the Department of Arkansas State Police shall have supervision and control for the purpose of discipline and proper management of all the members and employees of the Department of Arkansas State Police...

This statute specifically identifies the Director of the ASP as the final policymaker for the ASP who is statutorily designated to both make and enforce the rules of the ASP. In this case, Colonel Bryant was the Direct of the ASP and was responsible for the creation and maintenance the policies and procedures of the ASP and was responsible for ensuring compliance with these policies and procedures through training and the disciplinary process.

ARKANSAS COMMISSION ON LAW ENFORCEMENT STANDARDS & TRAINING REGULATIONS

1002. Minimum Standards for Employment or Appointment of Continued Employment.

(3)(L) For continued employment, must successfully complete a minimum of sixteen (16) hours of CLEST certified training annually, to include firearms qualification and racial profiling.

(4) It is emphasized that these are minimum standards for employment or appointment. Higher standards are recommended whenever the availability of qualified applicants meets the demand.

The regulations of ALETA require 16 hours of CLEST approved training annually for all officers. In this case, there is not evidence that Trooper Burke had the statutory required annual training in the records produced.

ARKANSAS STATE POLICE WRITTEN POLICIES

Given the obvious dangers associated with emergency driving and pursuits, there is an obvious need to provide proper policy guidance on emergency driving and/or pursuits which is consistent with the authority granted to officers under state law. I have been provided with the policies of the ASP. The relevant policies are as follows:

LE SEC 19 – In-Car Cameras:

For purposes of this policy, "in-car cameras" include both video and digital recording cameras...

The in-car camera unit, including its sound recording capabilities, should be wired so that the unit is activated automatically when the emergency lights are turned on or when the speed of the unit exceeds 99 miles per hour.

The ASP used in-car cameras to record officers driving and interactions with the public. Significantly, the policy requires these cameras to be set up to automatically activated once blue lights and sirens are activated OR when the speed of the police car exceeds 99 mph. This policy illustrates the importance of cameras to review actions of officers for compliance with policy, especially when travelling in excess of 99 mph. This

policy is in compliance with national standards and best practices as any proper department, or director, would want to be advised when an officer is in an emergency response or travelling in excess of 99 mph without lights and sirens. Therefore, a review of the conduct of the officer should be conducted any time the in-car camera is automatically activated when officer exceeding 99 mph. However, based on the testimony of Director Bryant no such review is actually conducted which illustrates his indifference to such conduct of officers as there is no justification for requiring cameras to automatically record officer's driving in excess of 99 mph without a review for the justification for driving at such a high speed.

GEN SEC 23: VEHICLE USE

Use and Operation of Arkansas State Police Vehicles: Arkansas State Police vehicles should be used for official state business only. While operating or occupying an Arkansas State Police vehicle, all commissioned officers and civilian employees shall wear safety belts and employees shall not disconnect any passenger restraint system. All commissioned officers and civilian employees shall exercise ordinary care. "Ordinary care" is defined as the care a reasonably prudent person would exercise for the safety of others on the road.

Arkansas State Police vehicles should be operated in compliance with all Arkansas traffic laws. The officer driving an authorized emergency vehicle is only exempt from traffic laws when (1) responding "to an emergency call"; or (2) "in the immediate pursuit of an actual or suspected violator of the law." (Arkansas Code Annotated§ 27-49-109).

If an officer deems it necessary to operate outside any traffic law while operating an ASP vehicle, the officer must activate both lights and siren. However, the driver must always drive with ordinary care for the safety of all persons (Arkansas Code Annotated § 27-51-202).

The officer driving an authorized emergency vehicle in immediate pursuit is exempt from posted speed limits. Immediate pursuit means the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary. The driver must determine whether the emergency equipment should be activated based on the totality of the circumstances, while always exercising ordinary care for the safety of all persons (A.C.A. § 27-51-204).

The Arkansas State Police has two separate policies governing emergency vehicle operations and pursuits in two separate sections of their policies and procedures manual. Given the dangers associated with emergency driving and pursuit and the fact that these EVOC and pursuits activities have substantial overlap, most responsible departments cover these topics in conjunction with each other and normally in the same policy. The ASP does not have a Law Enforcement policy on EVOC. Instead, the ASP has a Vehicle Use policy that is contained in the

General Policies of the department which is applicable to all employees of the ASP, not simply troopers. The fact that the ASP does not have a separate Law Enforcement policy on emergency vehicle operations falls below national minimum standards and best practices concerning EVOC and illustrates its lack of concern with respect to the dangers associated with emergency driving.

The only policy covering emergency driving, without pursuit, is set forth in Gen. Sec. 23 – Vehicle Use. This policy is 7 pages long and only the first page actually touches on emergency vehicle operations. The remainder of the policy deals with vehicle maintenance and reporting crashes. Further, the portion of this policy which actually deals with emergency vehicle operation is both internally inconsistent and in direct violation of applicable state law.

First, the second paragraph of this policy states that an officer driving an emergency vehicle is exempt from traffic laws when responding to an emergency call or in the immediate pursuit of an actual or suspected violator of the law without reference to the requirement to utilize lights and sirens. However, this section references Ark. Code Ann. § 27-49-109 which only provides exemptions for running through a stop sign or traffic signal after slowing down. The third paragraph of this policy indicates that officers must utilize lights and sirens when operating outside of the traffic law which is inconsistent with the first section. The fourth paragraph of this policy indicates an officer in the immediate pursuit of a violator is exempt from the posted speed limits and cites Ark. Code Ann. § 27-51-204 which does not even address or mentioned "immediate pursuit." Further, the fourth paragraph does not even reference lights and sirens despite the fact that Ark. Code Ann. § 27-51-202 specifically requires lights and sirens to be activated to be exempt from the posted speed limits. The fourth paragraph further provides numerous exemptions from utilizing lights and sirens when travelling in excess of the speed limits based on circumstances which are contrary to the actual statutes and include: 1) immediate pursuit (the initial approach to a violator for the purpose of initiating a traffic stop); 2) situations where a silent response is appropriate or necessary; and 3) officers have the discretion to determine whether to use lights and sirens based on the totality of the circumstances.

As noted with respect to the discussion of the statutes above, Ark. Code Ann. § 27-51-202 requires the use of lights and sirens when exceeding the speed limit. There are no exceptions contained in this statute. Further, the only time that the use of "immediate pursuit" is used in the statutes is in Ark. Code Ann. § 27-49-109 which only allows a police officer to disregard a stop sign or red light after slowing for safety. There are no provisions in the state statutes which allow officers the discretion to determine whether to use lights and sirens when exceeding the speed limit. National standards and best practices also reflect that officers exceeding the speed limits should always use their lights and sirens. Accordingly, the ASP EVOC policy contained in Gen. Sec. 23 – Vehicle Use is deficient as it: 1) fails to properly set forth the requirements of state law with respect to compliance with traffic law; 2) incorrectly indicates exemptions from compliance with speed limitations based on "immediate pursuits" which is not authorized by statute and only provides exemptions from disregarding stop sign or traffic signals; and 3) creates an entirely new set of exemptions based on officer discretion and the totality of the circumstances which are not authorized by statute. This improper policy appears to be the genesis of the repeated and improper emergency vehicle driving by ASP troopers as will be discussed more fully herein.

LE SEC 13: PURSUITS

Definitions: For purposes of this policy, the following definitions apply:

"Vehicle Pursuit" and "Pursuit" means an attempt by an ASP officer in an official vehicle to stop a moving vehicle when the driver of such vehicle is aware the officer is signaling the vehicle to stop and disregards the officer's attempt to stop the vehicle....

Pursuit Guidelines: The following guidelines are intended to assist officers in making sound decisions regarding pursuits:

When involved in a pursuit the officer has the duty to drive his/her emergency vehicle with due regard for the safety of all persons using the highway....

Only official vehicles shall engage in pursuits. Emergency lighting equipment and siren shall be in operation throughout the pursuit....

Officers transporting persons other than commissioned officers shall not engage in pursuits.

Initiation and Termination of a Pursuit: Officers should exercise discretion in deciding whether to initiate a pursuit. The decision to terminate a pursuit can be made by the primary unit or ordered by a supervisor at any time during the pursuit. Those making decisions to initiate or terminate a pursuit should consider the totality of the circumstances, such as: the nature of the offense; the time of day; an evaluation of hazardous conditions; geography; familiarity with the area; types of official vehicles involved; and the actions of the fleeing driver.

Factors to consider in determining whether to terminate a pursuit should be terminated when include the following:

- The officer or supervisor believes that the risk to the public outweighs the need for immediate apprehension of the suspect;
- A supervisor orders the pursuit terminated; or
- The officer loses visual contact with the fleeing vehicle for an extended period of time.

Whenever an official vehicle experiences mechanical breakdown or equipment failure, the unit should terminate its involvement in the pursuit....

Officers who have terminated a pursuit shall deactivate emergency equipment and drive at routine patrol speeds. Upon termination, officers may follow the suspect vehicle's predicted route of travel.

> **Investigation Of Pursuits/Intentional Intervention/Precision Immobilization Technique (PIT):** After all pursuits, all involved officer(s), excluding back up unit(s), shall complete a Pursuit Report Form (ASP 21) and an Incident Report, which should be reviewed by the officer's immediate supervisor. The Pursuit Report and Incident Report should be forwarded through the chain of command to the officer's Division Commander, and then filed in the Office of Professional Standards....
>
> The Highway Patrol Division Commander shall immediately be notified of any pursuit that results in death, personal injury, or damage to property.
>
> If the Commander believes that a specific policy was violated, the Commander shall commence an investigation in accordance with Disciplinary Matters.

The high-speed pursuit policy contained in the Law Enforcement Policy is a discretionary policy which allows for pursuit in all circumstances, regardless of the underlying crime. While discretionary policies are not per se improper, the modern trend is to restrict pursuits to certain crimes such as violent felonies given the obvious dangers associated with pursuit driving. Further, discretionary policies require much more significant training on decision making than restrictive policies which was not provided by Colonel Bryant and the ASP as will be discussed below.

TRAINING

Given the obvious dangers associated with emergency driving and pursuits, there is an obvious need to provide proper training on emergency driving and/or pursuits. I have reviewed the deposition of Sgt. Hoyt who was the ASP corporate representative with respect to training and the various training documents which were provided in discovery. As will be discussed, the training provided by the ASP involved primarily training with respect to the physical operation of police vehicles at high-speed and failed to appropriately address the justification for high-speed driving and the requirements of state law to utilize lights and sirens.

The ASP identified Sgt. Hoyt as its corporate representative on the issue of training. Sgt. Hoyt was deposed on November 8, 2018. Sgt. Hoyt started with the ASP in 2009 and was assigned to the training division in 2015. (Tr. 9-10). Sgt. Hoyt is currently an EVOC instructor for the ASP. Sgt. Hoyt did not provide any training to Trooper Burke. However, he reviewed the power points and training documentation pertaining to Trooper Burke. Sgt. Hoyt testified that training with respect to high-stress events is required for officers to properly perform their duties and that use of firearms, emergency driving and pursuits were high-stress incidents. (Tr. 14-17). Sgt. Hoyt testified that there is an obvious need for training on emergency vehicle operations and pursuits. (Tr. 18). He acknowledged that officers suffered physiological responses during emergency and pursuit driving which includes tunnel vision, auditory occlusion, laser focus on the suspect to the detriment of other things which need to be addressed in training. (Tr. 54-57). Sgt. Hoyt testified that troopers receive quarterly training on the use of firearms but not on emergency driving. (Tr.

15, 37). Sgt. Hoyt testified that the training department does not work in conjunction with the Office of Professional Standards and that findings of improper conduct during an OPS investigation in not normally shared with the training division. (Tr. 18-20).

The Arkansas State Police has its own training academy. Sgt. Hoyt was questioned about the training that Trooper Burke received at the training academy in 2011. A syllabus of Trooper Burke academy training was produced. (Ex. 7, p 10-14). An evaluation of this syllabus indicates there is no specific training section at the ASP dealing specifically with pursuits. However, there is a section of training on EVOC which is 40 hours. During the 40 hours of EVOC training, both emergency vehicle operations and pursuits are covered. (Tr. 33-33). The lesson plan pertaining to the EVOC training at the ASP academy sets forth the topics covered during the training and reflects:

> 1) 10 minutes of classroom training introducing students to the topic;
> 2) Objective # 1: 1 hour of classroom training on the importance of daily vehicle maintenance
> 3) Objective # 2 - 30 minutes of classroom instruction on the laws of physics and vehicle dynamics;
> 4) Objective # 3 - 30 minutes of classroom instruction on proper techniques of performance driving;
> 5) Objective # 4 - 30 minutes of classroom instruction on proper techniques to avoid skis and recover from skids;
> 6) Objective # 5 - 30 minutes of classroom instruction on Precision Immobilization Technique (PIT).
> 7) Objective # 6 - 30 minutes of classroom instruction on proper use of spike strips;
> 8) Objective # 7 - 30 hours on the driving track demonstrating the proper techniques associated with driving a police vehicle.
> 9) Objective # 8 – 1 hour on driving track demonstrating proper performance of PIT maneuver;
> 10) Objective # 9 – 30 minutes on driving track demonstrating proper deployment of spike strips.
> 11) Objective # 10 – 1 hour of classroom instruction summarizing the consequences of civil liability in the operation of police vehicle.
> 12) 1 hour of classroom training debriefing, reviewing purposes and objectives and final test. (Ex 7, 10-15).

Sgt. Hoyt reviewed these objectives and agreed that this training primarily dealt with the physical operation of a vehicle during emergency driving as opposed to decision making i.e. when engaging in emergency driving is appropriate and the requirements needed to engaged in emergency driving. (Tr. 50-52).

While the syllabus for EVOC training does not indicate that the ASP policies with respect to emergency driving and pursuits are covered during the training, Sgt. Hoyt testified that troopers are required to review the policy and sign an acknowledgement that they understood it and they

are actually trained on the policy. (Tr. 43). In reviewing the Vehicle Use policy, Sgt. Hoyt testified that troopers are trained that they do not have to utilize their lights and sirens when exceeding the speed limit when they are in immediate pursuit which he testified is the initial approach to a violator for the purpose of initiating a traffic stop or in situations when a silent response is appropriate or necessary. (Tr. 43-47). In particular, Sgt. Hoyt testified:

Q. All right. So, they're trained that for officer and public safety, if they're going to initiate a traffic stop, that they can exceed the speed limits without their lights and sirens on until they catch up to them to pull them over in the appropriate spot, correct?
A. Still under ordinary care and due regard, yes. (Pages 46:24 to 47:5)
Q. But as a general rule they are given the discretion to exceed the speed limit without their lights and sirens while they're catching up to a traffic --
A. Violator.
Q. -- traffic violator and select the appropriate spot to pull them over?
A. That would be safe to say, yes. (Page 47:15 to 47:22)...
Q. So I'm not taking that out. I'm not trying to trick you and not have that in a question. I'm saying once they're going to pull over a traffic offender and in utilizing ordinary care and due regard, they try to catch up to them, they're allowed to do that under the policy without lights and sirens, so that they can get to a place to activate the lights and sirens to pull them over safely, correct?
A. Yes, sir. (Page 49:2 to 49:10)

Sgt. Hoyt testified that troopers are not trained on with respect to any limitations with respect to the amount of time or distance that a trooper can travel while attempting to catch up to a suspected violator without lights and sirens. (Tr. 48-49).

Sgt. Hoyt testified that other training on pursuits and emergency vehicle operations may have also been provided during training on traffic stops. The traffic stops lesson plan does not appear to involve emergency vehicle operations or pursuit driving but the proper manner to complete a traffic stop. (Ex. 7. 19-30). Sgt. Hoyt could not identify the particular topics covered in the traffic stops lesson plans applicable to EVOC of pursuits other than Objective # 3 which requires officers to demonstrate their ability to properly utilize emergency lights, sirens, flashlight, spot light, baton, OC spray, radio, radar, PA system, vehicle, weapons. Significantly, the traffic stops lesson plan does indicate that troopers should make a decision as to where to stop a violator in a location for officer safety and that once this decision is made, then the trooper should signal the violator to pull over with lights and sirens. (Ex. 7, p. 23).

After training at the academy, Sgt. Hoyt testified that troopers received in-service training on emergency vehicle operations and pursuits in 2012 and 2015 and was questioned about the training materials and power points discussed during these in-service training. While troopers train quarterly with respect to firearms, EVOC and pursuit driving is trained once every three years. Sgt. Hoyt acknowledged that more people are injured and killed during emergency vehicle operations and pursuits than with firearms for the ASP. (Tr. 61-62).

The in-service training on emergency vehicles in 2012 was a two-hour class. (Tr. 69). The power point for this training contains 68 slides, the majority of which use of seatbelts, spike strips, PIT maneuver and no real discussion on decision making with respect to emergency vehicle driving, including the use of lights and sirens. (Ex. 8, Bates # 971-982). Significantly, the in-service training provided in 2012 set forth the requirements for proper EVOC and pursuit training in the following training slides:

EVOC v. Firearms
- When is the last time you fired your weapon in the line of duty?
- When is the last time you had firearms training?

EVOC v. Firearms
- When is the last time you have driven you ASP unit in the line of duty?
- When is the last time you have attended EVOC training?

(Ex. 8, Bates 971)

Captain Travis Yates
- Tulsa Police Department
- Researched the results of the way we train.
- 75% skill set
- 25% decision making

NOT WORKING!!!!

EVOC Training
- The Accident/Incidents within the Arkansas State Police Reinforce this Theory!
- We are not Crashing ASP units because of how we drive, rather, We are Crashing because of the Decisions that are made to put us in that situation to begin with!

(Ex. 8, Bates 973)

EVOC Training
- We Need to Reverse the Priorities, especially as it relates to In-Service Training for our incumbents. The Accident/Incidents within the Arkansas State Police Reinforce this Theory!
- 75% decision making
- 25% skill sets

(Ex. 8, Bates 974)

Despite this acknowledgement in training, Colonel Bryant and the ASP failed to reverse these priorities and did not hold any additional in-service training on EVOC or pursuits until 2015. The 2015 in-service training consisted of 3 hours of classroom training and 8 hours on the driving track. (76). There are two separate power points that were produced concerning this training session: 1) Ex. 8, Bates 985-1006 which was produced in discovery; and 2) Ex. 37 which was produced by Sgt. Hoyt. Regardless of which materials were actually used in training, these

PowerPoint slides do not cover much concerning the decision making involved in emergency driving, but cover topics such as civil liability, vehicle dynamics, performance driving, PIT maneuver. These training slides again acknowledge that there are many more deaths per year from emergency driving and pursuit versus firearms. (Tr. 89). Further, these training slides confirm that the ASP failed to even follow in own guidance with respect to training from the 2012 in-service training which noted that spending 75% of training on driving skill sets and 25% on decision making "WAS NOT WORKING!!!!" In fact, it confirms that Colonel Bryant and the ASP simply continued a training regimen that they provided to troopers that they specifically acknowledged was not working. This reflects a conscience indifference to the deadly consequences of emergency driving and pursuits.

There were other documents and power points that were produced on defensive driving and other topics that touched on emergency vehicle operations and pursuits. However, these documents failed to properly address the requirements of state law and the confusion created by the improperly and poorly written policies. Based on my review of the entirety of the training documents, it is my opinion that ALL troopers with the ASP were actually improperly trained with respect to emergency driving. In fact, ALL troopers with the ASP were intentionally trained to violate state laws designed to protect the public. The fact that troopers were trained that it was acceptable to drive at excessive speeds without lights and sirens to warn the public illustrates deliberate indifference to the rights of the public. Colonel Bryant's continued adherence to this improper training and policy in the face of the past conduct or ASP officers and his review of numerous OPS investigation illustrates his reckless disregard for the safety of the public.

ANDREW RHEW INCIDENT

Trooper Andrew Rhew was involved in a fatality crash which occurred on November 3, 2009, when he was responding to a call for assistance at a driver's license facility at high speeds and without his lights and sirens. As a result of this crash, Vikie Freemyer was killed and various incidental investigations and litigation was commenced, including civil litigation against the Arkansas State Police in the Claims Commission and employment related litigation governing the disciplinary actions taken by the Arkansas State Police. After this incident, Trooper Rhew was terminated by the Arkansas State Police. However, Trooper Rhew appealed this decision to the Arkansas State Police Commission. A transcript of the hearings of the proceedings before the Claim Commission of July 11, 2011, revealed that Trooper Rhew conduct was in compliance with the policies, practices and customs of the Arkansas State Police and provides insights into the de facto policies of the Arkansas State Police based on the testimony of numerous high-ranking officers of the ASP which will be discussed below.

Lt. Wesley Smithee testified that he performed the investigation of the Rhew crash. (Tr. 63). During his investigation, Lt. Smithee only asked Trooper Rhew two questions: 1) if he knew how fast he was going to which Trooper Rhew responded that he did not know; and 2) if he had his lights and sirens on to which Trooper Rhew testified that he did not. (Tr. 73).

Lt. Charles Westerman testified that he assisted the investigation by performing crash reconstruction analysis. Lt. Westerman was asked how many times he had responded to calls in excess of the speed limits without his lights and sirens, "Quite a bit. I don't know the exact number, but it's the nature of the beast. It's part of the things that we have to do. It's something that – you can't do your job and not do it." (Tr. 111). Lt. Westerman testified that he engaged in driving in excess of the speed limit without lights and sirens in normal police work and not only when on emergency calls or in pursuits. (Tr. 113).

Corporal Doug Cash was part of the ASP reconstruction team. Corporal Cash testified that he exceeded the speed limits without lights and sirens "several times without an accident" during his career. (Tr. 128).

Colonel J.R. Howard was the Director of the Arkansas State Police at the time of the Rhew crash fatality and recommended that Trooper Rhew be terminated. (Tr. 144-145). Director Howard testified that he Trooper Rhew had been found to have been travelling at 100 mph without lights and sirens but was not involved in a crash. Trooper Rhew would not have been terminated. (Tr. 148-149). Colonel Howard also testified that if he had 50 officers who said that they responded to emergency dispatch calls and exceeded the speed limits without lights and sirens, he would not fire them all. (Tr. 150). During Colonel Howard's testimony, Commissioner Fowler made the astute observation concerning the regularity of troopers driving without lights and sirens, noting, "Now that I hear that quite a lot of trips are made or emergency calls are made without blue lights on, with the siren on; and was that a typical thing for him to be doing or – whether it was against the rules or not, I don't know, because it happened every day." (Tr. 154).

Agent Ron Hitt was employed by the Arkansas State Police and assigned to CID. During his testimony, Agent Hitt testified that he has responded to emergency calls in excess of the speed limit without lights and sirens occasionally.

Captain Tommy Wicker was a Captain and Troop Commander with the Arkansas State Police. Captain Wicker served 37 years with the ASP and was Trooper Rhew Trooper Commander at the time of the wreck. (Tr. 179-180). Captain Wicker testified that he found out that Trooper Rhew was not using his lights and sirens but was not concerned because it was not "unusual" and "officers do it every day." (Tr. 181-182). Captain Wicker testified that he has driven without lights and sirens in excess of the speed limit. (Tr. 182). When asked why lights and sirens would not be activated while exceeding the speed limit, Captain Wicker testified. "... [W]e just didn't. You know, if it wasn't any reason to run blue lights and siren and cause more problems with traffic, we just didn't do it. We just – troopers are trained to drive – respond safely to calls. And they normally do that whether they are running blue lights and siren or not." (Tr. 182). Captain Wicker testified that he did not recommend any discipline against Trooper Rhew because he did not believe that Trooper Rhew violated policy. (Tr. 183-184). Even after he learned of information noting that Trooper Rhew was travelling at an excessive speed, he still did not believe that Trooper Rhew should have been disciplined. (Tr. 184). Further, he testified that every trooper that he had known had driven in excess of the speed limits without blue lights and sirens. (Tr. 186).

Significantly, Captain Wicker testified that if every trooper who drove at excessive speeds without lights and sirens, there "probably wouldn't be anyone left." (Tr. 186-187).

Sergeant Benny Cox was employed by the ASP for 30 years. (Tr. 187). Sgt. Cox supervised Trooper Rhew and testified that while riding with Trooper Rhew, they responded to emergency calls and that lights and sirens were not always activated. (Tr. 188). Sgt. Cox testified that lights and sirens are not always required especially in rural areas and because using blue lights and sirens can cause problems. (Tr. 189). He did not instruct Trooper Rhew to use blue lights and sirens all the time. He testified that he has seen other troopers travelling above the speed limit without lights and sirens, and testified that if troopers were fired for driving in excess of the speed limits without lights and sirens, there "would be a lot of openings." (Tr. 190).

Captain Keith Eremea[5] testified that he had been a trooper for 34 years. (Tr. 192). Captain Eremea testified that he had driven in excess of the posted speed limits without lights and sirens. (Tr. 192). He testified that he has reached speeds of 145-150 mph without using his lights and sirens. (Tr. 192). He was asked how many troopers he had observed travelling 20-25 mph in excess of the speed limits and responded, "Most of them." (Tr. 192). Captain Eremea testified that he used his lights and sirens "sometimes" when responding to an emergency all. (Tr. 193). Captain Eremea testified that he did not always put on lights and sirens for emergency driving and, if trying to arrest felon, would not put on lights and sirens until had back up to make stop. (Tr. 193). Captain Eremea testified that he has never been in an accident while responding to a call without lights and sirens. (Tr. 196).

Captain Rick Dickinson was employed by the ASP as the CID Commander at time of accident. He testified that he was aware of troopers exceeding the speed limits without lights and sirens and testified that "that goes on everywhere" and that is "not unusual." (Tr. 203). Captain Dickinson testified that if he had to fire every officer driving twice the speed limit without their lights and sirens, he would "have to fire himself first; and then someone else would have to take care of the rest of them, because we probably wouldn't have anybody." (Tr. 203). He testified that troopers are trained not use lights and sirens in certain situations like responding to a silent alarm which would be a violation of the law but justified by exigent circumstances. (Tr. 204).

Lt. Robert Speer was an Assistant Troop Commander. He testified that the use of lights and sirens is discretionary, even if in violation of state law, because troopers cannot perform their jobs complying with the letter of the law. (Tr. 217). Lt. Speer testified that it is very common for troopers to exceed the speed limit by double without lights and sirens. (Tr. 217). He also testified that if all trooper who exceeded the speed limit without lights and sirens were fired there would be no troopers left and that he has driven in excess of the speed limit without lights and sirens. (Tr. 218-219).

[5] Unbelievably, Captain Eremea was actual an emergency vehicle driving instructor for the ASP and was one of Trooper Burke's training officers. (Ex. 7, 38).

Sgt. Lance Huey testified that he had exceeded the speed limit without lights and sirens while employed as a trooper. (Tr. 229). He testified that whether to use lights and sirens when exceeding the speed limit was discretionary. (Tr. 229). Sgt. Huey testified that it was also common practice for troopers to exceed the speed limit without lights and sirens when he was at the ASP. (Tr. 230).

Trooper Phillip Hydron was a criminal investigator for the ASP and also served as a training officer for the ASP and taught traffic stops. (Tr. 232-233). He testified that he trained troopers with respect to use of lights and siren during stops. Troopers were trained not to activate their lights and sirens until troopers "catch up" to the violator, call in the tags, find a safe location to stop and then put on your lights and sirens for safety reasons. (Tr. 233-234). Trooper Hydron testified that he understood what law and policy says, but states that he trains officers that they have discretion on using lights and sirens based on officer safety and believes putting lights and sirens on can make it more dangerous. (Tr. 235). Trooper Hydron also testified he was one of Trooper Rhew's FTO officers and observed him respond to emergency calls without lights and sirens. (Tr. 237).

After the disciplinary hearing was concluded, the Arkansas State Police Commission reversed the decision to terminate Trooper Rhew. The only potential basis for this reversal based on the testimony presented to the ASPC is that Trooper Rhew's failure to use lights and sirens while driving at an excessive speed was that this was the custom and practice of the ASP and Trooper Rhew was trained that it was acceptable.

On January 26, 2012, a claim was filed against the Arkansas State Police in the Arkansas Claims Commission by Melissa A. Stewart, Administrator of the Estate of V.L. Freemyer. On November 15, 2012, the Claims Commission issued Findings of Fact which found in favor of the Estate of V.L. Freemyer and found the total damages to be $3,300,000 which was reduced to $2,970,000 based on a finding of 10% fault assigned to V.L. Freemyer.

The Rhew crash, investigations, disciplinary process and litigation provides the most complete glimpse into the actual customs and practices of the ASP with respect to emergency driving and use of lights and sirens. Based on these documents, it is clear that as of 2011, ASP troopers were trained that it was acceptable to exceed the speed limits without lights and sirens and this was an ingrained custom and practice within the ASP which was known and authorized by the highest members of the ASP, including the Director of the ASP. Based on a review of post-Rhew documentation, it is clear that this training, custom and practice exists to this date and that troopers are still trained that they do not have to comply with state law pertaining to lights and sirens when exceeding the speed limit. Allowing this custom and practice to continue reflects a conscious disregard to the rights of the motoring public for no legitimate law enforcement need or purpose.

OPS INVESTIGATIONS

The Office of Professional Standards (OPS) investigates complaints or misconduct involving ASP troopers. Therefore, OPS only investigate issues involving emergency vehicle operations and pursuits when there is a complaint made by a citizen/other officer or the action results in a bad outcome such as a wreck. I have generally reviewed the 34 OPS files provided and videotapes from 18 files from both before this incident.

While the previous review of the policies and training provided by Colonel Bryant and the ASP reflect that Trooper Burke's outrageous conduct was specifically authorized by the written policies and training, a review of the Office of Professional Standards (OPS) investigations further serves to confirm this fact and illustrates the wanton disregard of Colonel Bryant and the ASP to the consequences of improper emergency vehicle operations and pursuit driving. Further, a review of the video illustrates the dangerousness of troopers driving actions and reflects outrageous conduct included travelling at speeds of as high as 155 mph, passing civilians on the shoulders of highways and other reckless and dangerous activities.

During the course of OPS investigations, it became clear that both OPS and Colonel Bryant were specifically made aware of officer misconduct during emergency operations and pursuits and failed to adequately address these issues and allowed the improper customs and practices to continue. An overview of the some of the more relevant and egregious actions are set for below:

1. OPS – [redacted] Trooper Brandon Porter – DOI – 3/17-18. According to Colonel Bryant's notes concerning this incident, Trooper Porter was travelling at speeds greater that 90 mph while attempting to attempt to catch a speeder and ultimately engaged in a pursuit and crashed his patrol car. During the course of his actions, Trooper Porter reached speeds of 113 mph in a 35-mph zone. Trooper Porter was suspended for two days. (Ex. 75/85 & Video)
2. OPS – [redacted] Trooper Daniel Riley – DOI – 5/518. According to Colonel Bryant's notes, Trooper Riley observed a speeder and attempted a U-turn without lights and sirens, causing a crash. Trooper Riley noted that he got tunnel vision which should be addressed in proper training with lights and sirens. Trooper Riley was issued a Letter of Reprimand. (Ex 76/86 & Video)
3. OPS [redacted] Trooper Ben Ibarra – DOI – 2/1 18. According to Colonel Bryant's notes, Trooper Ibarra was involved in a pursuit which reached speeds of over 140 mph which ended when Trooper Ibarra crashed in the fleeing suspect. Trooper Ibarra was previously issued a letter of warning and counseling as a result of two previous pursuits in 2016 and 2017. Trooper Ibarra was issued a Letter of Reprimand. (Ex 74/87 & Video)
4. OPS [redacted] Trooper Lonnie Moore – DOI 7/1/17. According to Colonel Bryant's notes, Trooper Moore observed a speeder and attempted to perform a U-turn without lights and sirens activated causing a wreck with another trooper

travelling behind him. During the investigation. Trooper Moore denied that he violated policy. Trooper Moore received a Letter of Reprimand. (Ex 72/89 & Video).

5. OPS [redacted] Trooper Paul Meeks DOI 6/22/17. Trooper Meeks initiated a traffic stop which resulted in a pursuit. During the pursuit, Trooper Meeks reached speeds of 115 mph. The pursuit ended when Trooper Meeks lost control of his vehicle during a turn and struck the suspect vehicle. Trooper Meeks received a Letter of Reprimand. (Ex 71/90 & Video)
6. [redacted] – Trooper Kyle Bost DOI 10/11/16. According to Colonel Bryant's notes, Trooper Bost attempted to initiate a traffic stop and reached speed of 136 mph without utilizing lights and sirens and struck the rear of the violator's vehicle. Trooper Bost noted that the "reason I did not use my blue lights and siren was so the driver would not hear or see me approaching. If the driver saw me, it would have given him the ability to take an exit ramp before I reached him." Trooper Bost said he turned on his blue lights immediately before the crash as he was attempting to complete his traffic stop pursuant to previous training and policy. Trooper Bost acknowledged receiving an email from Lt. Austin dated 10/12/16 which requested that officers use blue lights and sirens when exceeding the speed limit.[9] Trooper Bost received a Letter of Reprimand. (Ex 69/91)
7. OPS [redacted] Trooper Brian Burke DOI 10/10/16. An investigation was commenced on 1/10/17 concerning the incident which is the subject matter of this action. Trooper Burke was interviewed. However, Trooper Burke was permitted to medically retire on March 1, 2017, without the completion of the investigation or conclusions despite the fact that all information was received prior to the submission of his medical retirement. (Ex. 38/Video)
8. OPS [redacted] – Trooper Alan Aiken - DOI 9/23/16. Trooper Aiken was attempting to stop a motorcycle for a traffic violation and then ended up in a pursuit which concluded when he crashed into a fire hydrant which he initially failed to report. According to Colonel Bryant's notes, Trooper Aiken drove at excessive speeds in high-volume traffic, travelling in excess of 100 mph in a 45-mph zone. A review of the video indicates that Trooper Aiken was travelling 75 mph in a 35-mph zone; 77 mph in a 35-mph zone; and 105 mph in a 45-mph zone. Trooper Aiken received a 2-day suspension. (Ex. 68/92 &Video)
9. OPS [redacted] – Trooper Jason Dooley – DOI 3/25/16. Trooper Dooley was attempting to initiate a traffic stop of a motorcycle. According to Colonel Bryant's notes, Trooper Dooley pursued the motorcycle without lights and sirens, reaching speeds of 123 mph, running stops signs at 67 mph and driving into oncoming traffic at 119 mph. Colonel Bryant's notes also indicate that Trooper Dooley justified his actions based on hearing Major Whitt speaking in the Commission Room and telling him that once who attempt to turn around on

[9] Significantly, at no time did Colonel Bryant ever send out an email or policy updates to troopers after any of his investigations involving emergency vehicle operations or pursuits.

a speeder and were in immediate pursuit, you did not have to have your blue lights or sirens activated which is consistent with the practices set forth above. If Colonel Bryant did not agree with this practice, he was placed on specific notice from Trooper Dooley that Major Witt was instructing officers that this practice was acceptable and should have immediately corrected this misconception through policy revisions. However, Colonel Bryant did none of this. Instead, Colonel Bryant's notes indicate that he requested his legal counsel to institute some sort of progressive discipline, writing: "In regards to travelling over the posted speed limits without emergency equipment (lights & siren), my thoughts would be to initiate progressive discipline and be consistent across the board (depending on the individual circumstances) - Ex. 1st – Written Warning; 2nd Written Reprimand; 3rd Suspension; 4th Suspension to Termination." A sticky note on Colonel Bryant's notes the following comments. "Violation of State Law – Massive potential liability." Colonel Bryant testified that this sticky note was written by the ASP general counsel, Mr. Greg Downs. (Tr. 186). Trooper Dooley received a Letter of Reprimand. (Ex 67/94 & Video).

10. OPS [redacted] – Sgt. Lori Ring – DOI – 3/17/16. Sgt. Ring was responding to a call for assistance when she was involved in a wreck. According to Colonel Bryant's notes, Sgt. Ring was initially responding to a call for assistance but was informed that the suspect was in custody and back-up units on the scene but she continued to the call travelling at 114 mph and striking a civilian car at 83 mph. Colonel Bryant recommended a Letter of Reprimand but Sgt. Ring was ultimately given a 1-day suspension. (Ex 66/95 & Video did not play).
11. OPS [redacted] – Trooper Josh Porter – DOI – 1/16/16. Trooper Porter was involved in a 15 minutes pursuit which ended when he ran a stop sign and hit a van. During the pursuit, Trooper Porter was travelling over 90 mph in a 35-mph zone. According to Colonel Bryant notes, 5 minutes into the chase, the suspect was positively identified and the further pursuit was unjustified. Trooper Porter received a 2-day suspension. (Ex. 65/96 & Video).
12. OPS [redacted] – Trooper Josh Berry – DOI – 9/27/15. This investigation revealed that Trooper Berry initiated a traffic stop of a motorcycle for speeding which resulted in a pursuit. During the pursuit, Trooper Berry reached speeds of up to 150 mph in moderate to heavy traffic, passing on the shoulder of the highway 12 separate times and travelling on the shoulder for at least a quarter of a mile on two occasions. After being instructed to terminate the pursuit, Trooper Berry continued traveling in the direction of the pursuit at speeds over 85 mph without lights and sirens. During the investigation, Trooper Berry indicated he did not violate policy. According to Colonel Bryant's notes, this pursuit covered 31 miles before instructed to terminate; Trooper Berry had been involved in 9 accidents since 2009; Trooper Berry was suspected for 15 days for a wreck that occurred while travelling at a high rate of speed without lights and sirens and striking another vehicle in 2011; Trooper Berry was a dedicated officer but shows that he is focused on trying to catch the suspects at all costs and unable to discern the dangers posed to the public which is documented and he has not

learned from his prior disciplinary actions. Trooper Berry received a Letter of Reprimand and Disciplinary Transfer to Regulatory and Building Services. (Ex. 62/99 & Video produced but could not be played).

13. OPS [redacted] Trooper Aaron Middleton – DOI – 7/23/15. Trooper Middleton attempted to initiate a traffic stop of a suspected speeder and performed a U-turn without lights and sirens, causing a wreck. Trooper Middleton was issued a Letter of Reprimand. (Ex 60/100 & Video)
14. OPS [redacted] – Trooper Lonnie Moore – DOI – 7/12/15. Trooper Moore was dispatched to a call regarding an intoxicated subject. Trooper Moore arrested the suspect and his juvenile son. Trooper Moore dropped the juvenile off a location close to his grandmother's home but not the home. Trooper Moore then drove the suspect to jail at 111 mph without lights and sirens. Trooper Moore received a one-day suspension. (Ex. 59/101 & Video).
15. OPS [redacted] – Trooper Josh Berry – DOI – 5/23/14. Trooper Berry initiated a traffic stop at speeds of up to 81 mph in downtown Little Rock which included streets and parking lots adjacent to Arkansas Children's Hospital without the use of lights and sirens. Trooper Berry rammed the vehicle (not a PIT maneuver) in a parking lot and when the suspect fled on foot, Trooper Berry struck the suspect with his vehicle. Trooper Berry indicated that his conduct was not in violation of policy. As a result of this incident, Trooper Berry was terminated but reinstated by the ASPC. (Ex. 57/103 & Video produced but does not work).
16. OPS [redacted] – Trooper Zachary Varnell – DOI – 3/19/14. Trooper Varnell initiated a traffic stop of a speeding motorcycle which resulted in a pursuit and crash. During the course of this pursuit, Trooper Varnell reached speeds of 145 mph. Trooper Varnell crashed his vehicle while trying to negotiate a curve. Trooper Varnell received a Letter of Reprimand and required to attend remedial driver training. (Ex 55/105 & Video)
17. OPS [redacted] – Trooper Jed Bolyard – DOI – 1/11/14. Trooper Bolyard initiated a traffic stop of a motorcycle which ultimately resulted in pursuit and a crash. Trooper Bolyard failed to activate his lights and sirens. Trooper Bolyard was given a five-day suspension. (Ex 54 & Video)
18. OPS [redacted] – Trooper Keenan Wallace – DOI – 1/8/14. Trooper Wallace was responding to an accident call without his lights and sirens and was involved in a collision. Trooper Wallace received a Letter of Reprimand. (Ex. 58)
19. OPS [redacted] – Trooper Thomas Lopez – DOI – 10/26/13. Investigation for improper use of force after citizen complaint. During the course of the investigation, his patrol car video was reviewed and its was determined that he was travelling without his lights and sirens in response to the call at speeds over 100 mph. (Ex. 52).
20. OPS [redacted] – Captain Keith Eremea – DOI – 4/15/13. Captain Eremea had an unauthorized female passenger in his patrol car and engaged in a pursuit which reached speeds of over 150 mph. Significantly, Captain Eremea was an EVOC driving instructor and was one of Trooper Burke's training officers. Captain Eremea signed a disciplinary agreement which transferred him from

Troop A Commander to Highway Patrol Administration. (Ex. 50/106 & Video)

21. OPS [redacted] – Trooper Eric Wold - DOI - 11/20/12. Trooper Wold was looking for a traffic violator on city street when he encountered a vehicle and began following it which began to attempt to elude him. Trooper Wold followed the vehicle without lights and sirens and ran through an intersection causing a wreck. Trooper Wold did not put on his lights and sirens until immediately prior to the intersection. Trooper Wold received a 3-day suspension. (Ex. 49/107 &Video).
22. OPS [redacted] - Trooper Josh Berry - DOI - 8/15/11. Trooper Berry was responding to a theft call at an Ace Hardware store. In response to the call, Trooper Berry reached speeds of 105 mph without utilizing his lights and sirens and was involved in a crash with an impact speed of 97 mph. Trooper Berry noted that he did not utilize his lights and sirens because he believed a silent response would give him the element of surprise and best chance of apprehending the suspect Trooper Berry received a 15-day suspension. (Ex 108)
23. OPS [redacted] - Trooper Sean Riegle – DOI 10/5/10. Trooper Riegle initiated a traffic stop of a speeder without lights and sirens and was involved in a crash. Trooper Riegle reach speeds of 116 mph during this incident and crashed when he was unable to maintain control of his vehicle. Trooper Riegle noted that he was told by his FTO that he did not have to use lights and sirens "because you could get into an accident going to an accident." Trooper Riegle was given and Written Reprimand and one-day suspension. (Ex. 48/109)
24. OPS [redacted] – Trooper Rustin Hitchcock – DOI – 4/9/10. Trooper Hitchcock initiated a traffic stop of a speeding motorcycle which resulted in a pursuit that reached speeds of 143 mph. The pursuit ended when the motorcycle crashed. The investigation noted that "lack of training for the officer and lack of supervision by Troop Supervisory Staff led to the problematic conclusion of the event." Significantly, Trooper Hitchcock's supervisor was Captain Eremea. Trooper Hitchcock was issued a Letter of Reprimand and was suspended without pay for 24 hours. (Ex 46/100 & Video)
25. OPS [redacted] – Trooper Ander Rhew - DOI – 11/3/09. Trooper Rhew responded to a call at excessive speeds without using his lights and sirens and was involved in a crash that killed a civilian. Trooper Rhew was terminated but reinstated by the ASPC. Civil litigation was commenced which resulted in a multi-million-dollar judgment against the ASP. (Ex 39).

A review of these OPS investigation confirms the ingrained custom of improper driving by ASP troopers and the custom and practice of dangerous and reckless driving both before and after the incident which is the subject matter of this litigation. Further, a cursory review of these OPS files illustrates the need for better training and policy guidance with respect to emergency vehicle operations and pursuits. Finally, it is clear that Colonel Bryant was actually aware of the improper practices based on the OPS files he reviewed but failed to correct them.

PURSUITS

Pursuant to ASP policy, a pursuit report is required to be completed and reviewed after every pursuit. I have been provided with copies of pursuits reports for several years prior to this accident and after this accident to obtain a general understanding of the manner in which pursuits are conducted by the ASP. I have generally reviewed these reports and have concentrated on the basis and justification for pursuits during 2014-2016 and pursuits where the speeds reached exceeded 99 mph or were conducted without lights and sirens and submit the following:[7]

2014

a.	Number of Pursuit Reports Completed	207
b.	Number of Pursuits Conducted without Lights & Sirens	1
c.	Number of Pursuits that reached speeds between 99 – 115 mph	54
d.	Number of Pursuits that reached speeds between 116 - 130 mph	23
e.	Number of Pursuits that reached speeds between 131-149 mph	20
f.	Number of Pursuits that reached speeds of 150+ mph	2
g.	Initial Justification for Pursuits which reached speeds of 99+ mph Traffic Violation	77
h.	Initial Justification for Pursuit which reached speeds of 99+ mph Other	22
i.	Initial Justification for Pursuits conducted without lights & sirens Traffic Violation	0
j.	Initial Justification for Pursuits conducted without lights & sirens Other	1

2015

a.	Number of Pursuit Reports Completed	240
b.	Number of Pursuits Conducted without Lights & Sirens	1
c.	Number of Pursuits that reached speeds between 99 – 115 mph	60
d.	Number of Pursuits that reached speeds between 116 - 130 mph	33
e.	Number of Pursuits that reached speeds between 131-149 mph	24
f.	Number of Pursuits that reached speeds of 150+ mph	6
g.	Initial Justification for Pursuits which reached speeds of 99+ mph Traffic Violation	74
h.	Initial Justification for Pursuit which reached speeds of 99+ mph Other	49

7 The entire pursuit file packages were not reviewed and the information set forth herein is pulled from the directly from actual pursuit reports and may not contain all relevant information but provides a general understanding of the reasons and manner of pursuit.

i.	Initial Justification for Pursuits conducted without lights & sirens Traffic Violation	N/A
j.	Initial Justification for Pursuits conducted without lights & sirens Other	1

2016

a.	Number of Pursuit Reports Completed	293
b.	Number of Pursuits Conducted without Lights & Sirens	2
c.	Number of Pursuits that reached speeds between 99 – 115 mph	92
d.	Number of Pursuits that reached speeds between 116 – 130 mph	55
e.	Number of Pursuits that reached speeds between 131-149 mph	28
f.	Number of Pursuits that reached speeds of 150+ mph	11
g.	Initial Justification for Pursuits which reached speeds of 99+ mph Traffic Violation	122
h.	Initial Justification for Pursuit which reached speeds of 99+ mph Other	68
i.	Initial Justification for Pursuits conducted without lights & sirens Traffic Violation	1
j.	Initial Justification for Pursuits conducted without lights & sirens Other	1

The sheer number of pursuits, especially pursuits initiated for traffic violations, provides further evidence that Colonel Bryant should be providing on-going review of patrol vehicle operations.

CRASHES

While the circumstances of each crash have not been reviewed, the ASP has been involved in 139 crashes since 2013. This provides further evidence that Colonel Bryant should be reviewing patrol vehicle operations.

REQUEST FOR ADMISSIONS

I have been provided with the Trooper Burke's and Colonel Bryant's Responses to Requests for Admissions. I have been advised that the admission of a request for admission represents a stipulation that the proposed requests is established. Some of the pertinent responses to the requests for admissions which further support my evidence of the evidence and are set forth below:

REQUEST NO 2: At all times during Burke's driving, he was acting pursuant to the training that he was provided by the Arkansas State Police Department.
Bryant: **Denied.**
Burke: **Admit.**

REQUEST NO 4: Trooper Burke's patrol car's video camera system during Burke's driving recorded speeds.
Bryant: **Admit** speed is indicated on the video, although I lack sufficient information to admit the speeds indicated are accurate.
Burke: **Admit.**

REQUEST NO 10: Trooper Burke's patrol car's video system accurately recorded Trooper Burke's speeds during Burke's driving.
Bryant: The information known or readily obtainable is insufficient to enable me to admit or deny the matter, therefore **denied**.
Burke: **Admit.**

REQUEST NO 14: During the course of Burke's driving, Trooper Burke reached speeds as high as 117 miles per hour.
Bryant: **Admit** speed as high as 117 miles per hour is indicated on the video, although I lack sufficient information to admit the speed indicated is accurate.
Burke: **Admit.**

REQUEST NO 30: The crash occurred on a road with a 45 mile per speed limit
Bryant: **Admitted.**
Burke: **Admit.**

REQUEST NO 32: The Defendants have no facts or evidence to refute the speeds pulled from Trooper Burke's crash date retrieval.
Bryant: **Admitted.**
Burke: **Admit.**

REQUEST NO 64: Trooper Burke was not responding to an "emergency call" during Burke's driving.
Bryant: **Admitted.**
Burke: **Admit.**

REQUEST NO 65: Trooper Burke was not in the "immediate pursuit of an actual or suspected violator of the law" during Burke's driving.
Bryant: **Admitted.**
Burke: **Denied.** Arkansas Statute does not define the term "immediate pursuit." However, Arkansas State Police policy defines immediate pursuit as "the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary." Defendant Burke was attempting to catch up to and stop speeding vehicle driving with hazard lights activated in order to initiate a traffic stop. At the time of the accident. Defendant Burke had the speeding vehicle in sight and was in immediate pursuit to try and catch up to and stop it.

REQUEST NO 70: Trooper Burke was trained by the ASP that it was acceptable to exceed the speed limit without lights and sirens in an effort to catch up to a person suspected of speeding before pulling the suspected speeder over for a traffic violation.
Bryant: **Denied.**
Burke: **Admit**

REQUEST NO 72: Prior to the crash, the ASP had a known established custom and practice of allowing ASP Troopers to exceed the speed limit without lights and sirens in an effort to catch up to suspected speeders.
Bryant: **Denied.**
Burke: **Admit.**

REQUEST NO 73: Prior to the crash, Colonel Bryant had knowledge that ASP Troopers were exceeded the speed limit without lights and sirens in an effort to catch up to a suspected speeder.
Bryant: **Admit** that I have imposed discipline on troopers for violating policy for failure to activate lights and siren when required to by ordinary care, otherwise denied.
Burke: **Denied.** Defendant Burke has no knowledge as to what Colonel Bryant knew.

REQUEST NO 95: Defendant Bryant's established custom and policy resulted in Burke's decision to refrain from engaging his lights and siren while driving at speeds in excess of the posted speed limits.
Bryant: **Denied.**
Burke: **Admit.**

Based on these responses, it is clear that Trooper Burke has stipulated that he acted according to his training; that he was not an on an emergency call; that the custom and practice of the ASP allowed officers to exceed the speed limit without lights and sirens during traffic stops; and Trooper Burke was acting according to the practices and customs of Colonel Bryant. These admissions are further supported by the evidence reviewed herein.

PRELIMINARY OPINIONS

Based on the above referenced and my evaluation, I have formulated the following opinions:

1. Trooper Burke was involved in a non-emergency traffic call on October 10, 2016, which lasted a total of approximately 4 minutes. During this traffic stop, he observed for 2-4 seconds a vehicle with its hazard lights flashing which he believed was speeding. After observing this vehicle, he completed the stop for approximately another minute and walked to his car. The only potential violation observed by Trooper Burke was speeding. By his completing the call and walking back to his car, it is clear he did not respond as if this speeder were an emergency.

2. Trooper Burke entered his patrol car and proceeded in the direction of the vehicle he observed. Trooper Burke called in a general description of the vehicle to the Garland County Sheriff's Department but not the ASP. When he entered the highway, he activated his lights (and possibly his siren) for approximately 20 seconds as he passed the first cars he encountered on his route. Trooper Burke then deactivated all of his emergency equipment and continued in the direction of the vehicle he observed. Trooper Burke drove approximately 5 minutes and approximately 8 miles at an average speed of 98 mph without lights and sirens until he crashed his vehicle into the vehicle in which Cassandra Braun was riding, killing her and Tavon Jenkins.

3. There was no legitimate law enforcement basis to engage in an emergency response or pursuit. In fact, there was no actual emergency and Trooper Burke had the time, as well as the obligation and duty, to evaluate the situation and determine the proper course of action. The decision to attempt to catch up to the suspected speeder was not made under any pressure or uncertainty such as in a pursuit or when dispatched to an emergency call requiring a fast response in matters of life and death. This was an intentional decision, made under no undue haste or pressure, to attempt to locate a suspected speeder.

4. During the course of Trooper Burke's driving which was captured on tape, he travelled at excessive speeds (reaching 117 mph in a 45-mph zone) without lights and sirens passing numerous motorists in both directions. The conduct of Trooper Burke as captured on the video tape was outrageous and conscience shocking and displayed a complete and total disregard to the safety of the public and human life. Each time Trooper Burke encountered a motorist or intersection required an evaluation of the necessity of unjustified and outrageous driving. In complete and utter disregard of the dangers of his actions, Trooper Burke intentionally continued his conduct until he crashed his vehicle into the car carrying Cassandra Braun, killing both Cassandra Braun and Tavon Jenkins.

5. Trooper Burke's conduct violated his discretionary authority under state law when he drove in excess of the speed limits without utilizing his lights and sirens which amount to arbitrary governmental activity. Further, Trooper Burke's conduct violate the best practices and national standards with respect to emergency driving. Trooper Burke's travelling at excessive speeds (over 2.5 times the posted speed limit) without lights and sirens specifically created a special danger to Cassandra Braun and the motoring public and deprived both Cassandra Braun and the driver of her vehicle of any warning of his impending dangerous recklessness and was the proximate cause of their death.

6. While Trooper Burke's conduct was arbitrary and served no legitimate law enforcement purpose, Trooper Burke testified, which was confirmed by Sgt. Hoyt and the testimony of numerous officers at the Rhew disciplinary hearing, that he acted in compliance with the policies, practice and training of the ASP.

7. Colonel Bryant was appointed the Director of the ASP in January of 2015. Colonel Bryant was certified as a police officer in 1976-1977 and has no real training with respect to emergency vehicle or pursuit operations. During the majority of his law enforcement career, Colonel Bryant worked for the DEA which did not engage in emergency driving or pursuits. Further, it does not even appear that Colonel Bryant has been through either the ASP training academy or any other academy approved by the State of Arkansas. Colonel Bryant is a member of many national organizations, including the IACP and ACCP, which have numerous model policies and training tools on emergency operations and pursuits. Despite this fact, Colonel Bryant

did not review any of these model policies either at the time he was appointed or even since this litigation.

8. After Colonel Bryant was appointed as the Director of the ASP, he took steps to familiarize himself with the operations of the ASP by having briefing with the command staff. Colonel Bryant all reviewed the ASP policies and procedures manual and adopted them. Colonel Bryant was made aware of the previous litigation involving Trooper Rhew where a civilian was killed during a wreck with the trooper responding to an emergency call without lights and sirens which resulted in a multi-million-dollar judgment against the ASP. Colonel Bryant also reviewed the training provided to ASP troopers. In reviewing the training provided, he acknowledged that it was inadequate and instituted yearly in-service training "because in the past it didn't appear that they had in-service training yearly."

9. Colonel Bryant is responsible for the development and maintenance of the policies, practices and customs of the ASP. Further, Colonel Bryant is directly responsible for providing appropriate training and discipline to ensure the policies, practices and customs of the ASP are followed. Colonel Bryant testified that to properly operate a police department, a Chief/Director is required to: 1) have a proper understanding of the laws that apply to regulate law enforcement conduct; 2) have appropriate written policies to regulate officer conduct; 3) have to train officers on the policies and the expectations of their conduct while on-duty; 4) have to provide sufficient supervision to ensure that officers are acting according to their policy and training; 5) have a mechanism to discipline officers if they violated their policies, training and expectations. (Tr. 24-25). However, Colonel Bryant failed to have a proper understanding of the applicable laws and, as a result, adopted and maintained inappropriate policies and failed to provide proper training to troopers under his command.

10. Despite attending in-service training in 2015 which specifically included slides on the pertinent statutes, Colonel Bryant displayed a complete disregard of the particular laws that regulate the conduct of troopers during emergency driving. In reviewing the applicable law pertinent to this case, Colonel Bryant testified that Arkansas State laws allow for officers to exceed the speed limits without lights and sirens in certain circumstances in 2016. However, in reviewing the applicable statutes, Colonel Bryant acknowledged that Ark. Code Ann. § 27-51-202 clearly states that the speed limits are not applicable to authorized emergency vehicles when responding to emergency calls when utilizing lights and sirens. Colonel Bryant stated that emergency calls are situation involving life and death or serious bodily injury. Colonel Bryant testified that catching a speeder is not an emergency call or an emergency trip. Colonel Bryant testified that he believed that this statute conflicted with other statutes. Specifically, Colonel Bryant referenced Ark. Code. Ann. § 27-49-109, noting that it states "no driver of any authorized emergency vehicle shall assume any privilege under this act except when the vehicle is operated in respond to an emergency call or the immediate pursuit of an actual or suspect violator of the law." However, this law only provides exemptions from compliance with laws concerning red lights or stop signals and did not provide any exemptions from the speed limits. As such, there is no conflict between these laws. Colonel Bryant then testified that Ark. Code Ann. § 27-57-204 creates a conflict with respect to the use of lights and sirens while exceeding the speed limit when it states the maximum and minimum speed limits posted shall apply to all vehicles using the facility except authorized emergency vehicles on emergency trips, such as police vehicles on duty." However, the provision of Ark. Code Ann. § 27-57-204 do not conflict with Ark. Code Ann. § 27-57-202 because they

both only apply to emergency calls or trips which specifically require the use of lights and sirens to exceed the speed limits. This interpretation of the applicable statutes is set forth specifically in the Arkansas Model Jury Instructions on emergency vehicles.

11. During Colonel Bryant's testimony, it was clear that he did not appreciate the legal requirements for emergency driving and was attempting to conflate certain provision of one statute giving exemptions from red lights and stop signs with other statutes that specific apply to exemptions from speed restrictions which actually require lights and sirens in an effort to justify the improper actions of his troopers during emergency vehicle operations and pursuits. Unfortunately for Cassandra Braun, this misunderstanding was reflected in the ASP policy and training of officers which allowed troopers to travel at excessive speeds without using lights and sirens to warn the public during routine traffic stops.

12. Further, the policies adopted by Colonel Bryant on emergency vehicles and pursuits are woefully inadequate and fail to comply with applicable state law and national standards and bests practices and illustrate his conscience disregard of the tragic results of emergency driving and pursuits. The applicable policies include: A) the in-car camera policy; B) vehicle use policy; and C) pursuit policy.

13. Colonel Bryant adopted the policies of the ASP with respect to in-car cameras. Significantly, the policy requires these cameras to be set up to automatically activated once blue lights and sirens are activated OR when the speed of the police car exceeds 99 mph. This policy illustrates the importance of cameras to review actions of officers for compliance with policy, especially when travelling in excess of 99 mph, without lights and sirens. This policy is in compliance with national standards and best practices as any proper department, or director, would want to be advised when an officer is in an emergency response or travelling in excess of 99 mph without lights and sirens. Therefore, a review of the conduct of the officer should be conducted any time the in-car camera is automatically activated when officer exceeds 99 mph. However, based on the testimony of Colonel Bryant no such review is actually conducted which illustrates his indifference to such conduct of officers as there is no justification for requiring cameras to automatically record officer's driving in excess of 99 mph without a review of them to determine if there was justification for travelling at such a high speed.

14. Colonel Bryant adopted and ratified the ASP policies with respect to Vehicle Use and Pursuits. These policies governing emergency vehicle operations and pursuits are contained in two separate sections of their policies and procedures manual. Given the dangers associated with emergency driving and pursuit and the fact that these EVOC and pursuits activities have substantial overlap, most responsible departments cover these topics in conjunction with each other and normally in the same policy. However, the ASP does not even have a Law Enforcement policy on EVOC. Instead, the ASP has a Vehicle Use policy that is contained in the General Policies of the department which is applicable to all employees of the ASP, not simply troopers. The fact that the ASP does not even have a separate Law Enforcement policy on emergency vehicle operations falls below national standards and best practices concerning EVOC and illustrates its lack of concern with respect to the dangers associated with emergency driving.

15. The only policy covering EVOC is set forth in Gen. Sec. 23 – Vehicle Use. This policy is 7 pages long and only the first page actually touches on emergency vehicle operations. The remainder of the policy deals with vehicle maintenance and reporting crashes. The portion of

this policy which actually deals with emergency vehicle operation is both internally inconsistent and in direct violation of applicable state law. First, the Vehicle Use policy states that an officer driving an emergency vehicle is exempt from traffic laws when responding to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. In this section, there is no reference to the requirement to utilize lights and sirens. Further, this section references Ark. Code Ann. § 27-49-109 which only provides exemptions for running through a stop sign or traffic signal after slowing down. The next section of this policy indicates that officers must utilize lights and sirens when operating outside of the traffic law which is inconsistent with the first section. Finally, the next section of this policy indicates an officer in the immediate pursuit of a violator is exempt from the posted speed limits without reference to lights and sirens despite the fact that Ark. Code Ann. § 27-51-202 specifically requires lights and sirens to be activated to be exempt from the posted speed limits. The next section of this policy then provides numerous exemptions from utilizing lights and sirens when travelling in excess of the speed limits based on circumstances which are contrary to the actual statutes and include: 1) immediate pursuit (the initial approach to a violator for the purpose of initiating a traffic stop); 2) situations where a silent response is appropriate or necessary; and 3) officers have the discretion to determine whether to use lights and sirens based on the totality of the circumstances.

16. Ark. Code Ann. § 27-51-202 requires the use of lights and sirens when exceeding the speed limit. There are no exceptions contained in this statute. Further, the only time that the use of "immediate pursuit" is used in the statutes is in Ark. Code Ann. § 27-49-109 which only allows a police officer to disregard a stop sign or red light after slowing for safety. There are no provisions in the state statutes which allow officers the discretion to determine whether to use lights and sirens when exceeding the speed limit. National standards and best practices also reflect that officers exceeding the speed limits should always use their lights and sirens. Accordingly, the ASP EVOC policy contained in Gen. Sec. 23 - Vehicle Use is deficient as it: 1) fails to properly set forth the requirements of state law with respect to compliance with traffic law; 2) incorrectly indicates exemptions from compliance with speed limitations based on "immediate pursuits" which is not authorized by statute and only provides exemptions from disregarding stop sign or traffic signals; and 3) creates an entirely new set of exemptions based on officer discretion and the totality of the circumstances which are not authorized by statute. This improper policy appears to be the genesis of the repeated and improper emergency vehicle driving by ASP troopers.

17. According to the testimony of the ASP's corporate representative on training, Sgt. Hoyt, the training provided to troopers was improper and allowed officers to exceed their authority pursuant to state law and allowed troopers the discretion to utilize lights and sirens when exceeding the speed limits. As previously discussed, this is contrary to both state law and national standards and best practices. Further, the training provided to troopers was woefully deficient as it primarily concentrated on the physical operation of police vehicles and not the decision-making aspects of emergency driving or pursuits and the determination of whether they are necessary and the actual requirements required during emergency driving or pursuits. As acknowledged by the ASP's own in-service training in 2012, providing training which is broken down 75% to driving skills and only 25% to decision making does not work and is not working at the ASP.

18. The in-service training actually authorized by Colonel Bryant in 2015 only served to reinforce the improper training provided in the past and was both improper and disregarded applicable state law concerning emergency driving and use of lights and sirens. Therefore, the

training that he actually authorized and provided only served to reinforce the improper conduct of his troopers.

19. While Colonel Bryant attempts to argue that he specifically provided training to officers requiring them to use lights and sirens when exceeding the speed limit during a one-hour presentation during in-service in 2015, this is simply not the case and actually serves to illustrate his knowledge of the improper practices of ASP during emergency vehicle operations and failure to address it. Colonel Bryant's alleged statements to use lights and sirens when exceeded this speed limits came pursuant to his discussion of "Green Folders" which are prior OPS investigations of officer misconduct. Further, despite this alleged statement, no changes to the policies were made which would simply state that lights and sirens must be used when exceeding the speed limit. Further, Sgt. Hoyt testified that the actual training provided to troopers during this in-service training indicates that troopers had the discretion to violated the speed limits without lights and sirens when attempting to catch up to speeders. Despite Colonel Bryant arguments to the contrary, he both adopted, enforced and trained troopers that they had the authority to violate state law without warning the public which simply illustrates his knowledge of the issue and failure to correct them. In fact, to this date, Colonel Bryant still attempts to argue that officers were entitled to violate the speed limits without lights and sirens based on the statutes in effect at the time of this incident despite being shown he was incorrect.

20. Further, Colonel Bryant was made specifically aware of the improper emergency vehicle operations and pursuits tactics of his officers through OPS investigations. A review of these investigation reveals that Colonel Bryant was made specifically aware of the previous customs and training of officers regarding exceeding the speed limit without lights and sirens. Further, it is significant most of these cases came to Colonel Bryant's attention as a result of a bad outcome, such as a crash, of this conduct. As previously noted, Colonel Bryant has failed to evaluate reckless emergency driving of his officers despite the fact that the cameras in vehicle are set to automatically set to record when exceeding 99 mph without lights and sirens. This requirement without review serves no purpose. As such, it is apparent that Colonel Bryant and the ASP are only concerned with improper emergency driving when the results are bad instead of venturing to root out this bad conduct through proper discipline. Finally, the discipline meted out by Colonel Bryant during these evaluations is both insignificant and not sufficient to change officer behavior and it continues to this date.

21. Based on the inadequacies of the policies, practice, customs, training, supervision and discipline concerning emergency vehicle operations and pursuits adopted and maintained by Colonel Bryant, the traveling public in Arkansas continues to be subjected to an ongoing special danger, without warning, of dangerous and reckless driving from Arkansas troopers. Colonel Bryant displayed a total concern for dangers of emergency vehicle operations and pursuits by failing to devote the appropriate resources and efforts towards the proper development of clear policies and training applicable to emergency and pursuit driving. Instead, Colonel Bryant and the ASP provided with discretion to violate state law with respect to speed limits and use of lights and sirens. This action serves no legitimate law enforcement purpose and specifically exposes the public to an ongoing special danger from ASP troopers' dangerous driving actions and deprives the public of the statutorily required warning by the use of lights and sirens. Colonel Bryant and the ASP do not have authority to allow officers to violate state law in their policies or training and to disregard laws designed to protect the public. This illustrates a total disregard to the safety of

the motoring public. The direct execution of this department-wide policy, training and customs of Colonel Bryant and the ASP was the direct and specific cause of this crash and the deaths of Cassandra Braun and Tavon Jenkins.

22. Based on my review of the facts of this case, it is my opinion that the conduct of Trooper Burke was outrageous and displayed a complete and total disregard to the public and was a proximate cause of the crash and death of Cassandra Braun.

23. Based on my review and evaluation of this case, it is my opinion that Colonel Bryant and the ASP failed to provide proper policy, training, supervision and discipline for emergency vehicle operations.

24. Based on my review and evaluation of this case, Trooper Burkes dangerous recklessness was both authorized and approved by the policies, practice, customs and training provided by Colonel Bryant and the ASP and simply amounted to the execution of his training and policies.

25. Based on my review of the evidence, the failures Colonel Bryant and the ASP to provide adequate policies, supported by proper training, supervision and discipline to its officers, were the underlying cause and proximate cause of the crash and death of Cassandra Braun.

CONCLUSION

Based on the totality of the evidence reviewed in this case, it is my opinion that the actions of Trooper Burke were outrageous and served no legitimate law enforcement function. Secondly, it is my opinion that the unreasonable actions of Trooper Burke were specifically authorized and caused by Colonel Bryant's and the ASP's policies, practices and customs with respect to emergency vehicle operations.

Pursuant to 28 U.S.C. Section 1746, I declare under the penalty of perjury that the foregoing is true and correct and affix my electronic signature hereto.

Dr. Geoffrey P. Alpert

Arkansas
State Claims Commission
DEC 17 2021
RECEIVED

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT G

Deposition of Greg Downs

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF CASSANDRA BRAUN
Plaintiff,

vs. CASE NO. 4:18-CV-334 BRW

TROOPER BRIAN RAY BURKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE ARKANSAS STATE POLICE; COLONEL BILL BRYANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE CHIEF EXECUTIVE OFFICER OF THE ARKANSAS STATE POLICE
Defendants.

ORAL DEPOSITION OF GREGORY C. DOWNS, 30(b)(6)

APPEARANCES:

MR. ANDREW C. CLARKE, ESQ.
6250 Poplar Avenue, Second Floor
Memphis, Tennessee 38119; and

MR. PAUL J. JAMES, ESQ.
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

*** For the Plaintiff ***

MR. BRIAN W. RAY, ESQ.
MR. MATTHEW G. FRENCH, ESQ.
Collins, Collins & Ray, P.A.
912 West 4th Street
Little Rock, Arkansas 72201

*** For the Trooper Brian Ray Burke ***

APPEARANCES (CONTINUED):

MS. JENNIFER MERRIT, ESQ.
MR. GARY SULLIVAN, ESQ.
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

*** For the Arkansas State Police ***

ALSO PRESENT:
Brian Ray Burke

TAKEN BEFORE Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, Bushman Court Reporting, 620 West Third Street, Suite 302, Little Rock, Arkansas 72201 on November 9, 2018 at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas commencing at 11:36 a.m.

I N D E X

WITNESS SWORN: GREGORY C. DOWNS 30(b)(6)

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ANSWERS AND DEPOSITION OF GREGORY C. DOWNS, 30(b)(6), a witness produced at the request of Plaintiff, taken in the above styled and numbered cause on the 9th day of November, 2018, before Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, a Notary Public in and for Saline County, Arkansas, taken at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas at 11:36 a.m.

S T I P U L A T I O N S

IT IS STIPULATED and AGREED by and between the parties through their respective counsel that the deposition of GREGORY C. DOWNS, 30(b)(6) may be taken at the time and place designated pursuant to the Federal Rules of Civil Procedure.

GREGORY C. DOWNS, 30(b)(6)

The witness hereinbefore named, having been duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CLARKE:

Q. Would you please state your name?

A. My name is Greg Downs.

Q. Mr. Downs, where are you employed?

A. State Police.

Q. Arkansas State Police?

A. Yes.

Q. And tell me a little bit just about your -- give me your background, education and work?

A. Okay. I've been at the State Police about eight years. Before that I was a law clerk for two Supreme Court justices; Elana Wills and Tom Glaze, and before that Judge John Forester, a little bit of Court of Appeals. Before I became a lawyer, I was an Army infantry officer for 10 years.

Q. All right. Thank you for your service.

A. You're welcome.

Q. So you have never served as a law enforcement officer; is that right?

A. No.

Q. Okay. And what is your current title?

A. General counsel.

Q. And you've been identified here, and I'm not going to go through all of the formalities. You know what is

deposition is?
A. I've been here before.
Q. You sat through the previous depositions, correct?
A. Yes.
Q. We have a bunch of exhibits here if you need to refer to something or whatever, just let me know.
A. Okay.
Q. The notice is Exhibit 26. What I want to try to do is try to get through the topics that may not take a lot of time. Let me just first ask you does the Arkansas State Police have any type of law enforcement certifications?
A. The individual officers have to meet certifications, but we don't have any -- we're not certified by IACP.
Q. All right.
A. We may use those as models, but we're not certified.
Q. Right. And that's why I'm trying to get them out quick. Obviously if you were certified by CALEA or stuff there's certain requirements, reporting requirements that come with those. There's no outside agency that you guys are a member of that require certain things, correct?
A. No.

Q. Okay. Obviously any department can use materials from that, but CALEA has particular reporting requirements.
A. Sure.
Q. All right. You weren't involved and you have no personal knowledge of the Burke incident, correct?
A. You mean being at the location of the site?
Q. Did you have -- did you have any involvement in the actual Burke incident in any capacity?
A. I'm very familiar with it as general counsel.
Q. Okay. I understand you've been notified. Did you perform an investigation yourself, did you have any -- did you do anything particular to the Burke law enforcement functions, not with respect to the litigation and the open record?
A. I had to make a decision and a recommendation whether or not he was acting in the course and scope of his employment.
Q. Okay. And did you do that, is it in writing?
A. No.
Q. Okay.
A. I have done it, but it's not in writing. It's not formally.
Q. Let's just mark this as the next exhibit.
(Deposition Exhibit 38 was marked.)

Q. It was produced in discovery which was identified as the OPS investigation of Trooper Burke.

And just in general as part of your job functions with the Arkansas State Police as general counsel, are you involved or consulted with during the disciplinary process?

A. Throughout the process I'm involved. And then when it comes to a decision by the Colonel, who makes the final decision, then I counsel with him. I make a recommendation. I generally write the decision letter or the disciplinary agreements, whatever the case is. And of course, if a trooper appeals, I'm the prosecutor or if I delegate it to one of my attorneys.

So we represent the Colonel's decision before the commission, which has, as you know, limited authority, but they can review a termination, for example.

Q. Okay. I don't know all the particulars and I don't want to know. When you make your decision there's a packet of information that might come to you that was done by officers in an investigation?

A. Yes. OPS conducts an investigation of the facts. They don't make any recommendation or findings. Then it goes through a deputy director for review for completeness. And then it gets scheduled for a Command Staff Review Board, which you've got three generally

majors who review it and make findings.

Now, when it then comes to the Colonel after they make their findings, he has ability to overturn it, to add punishment. And he's the only one that can look at past disciplinary actions, for example, and take that into account.

Q. All right. And that will be helpful in going through some of these documents. Let me see if I understand kind of the way it goes. If there is an OPS investigation there are officers who gather the facts who work in OPS and compile all that information, correct, that's step one?

A. Yes. It's a very formal process and policy. Of course, this one was an exception because it wasn't performed by OPS primarily. It was basically the bulk of this file, 99.9 percent is done by Hot Springs PD and by Little Rock PD. Yes, typically that's exactly how it works.

Q. Okay. In this particular case the reason why it was HSPD or Little Rock is because they were involved in the underlying investigation of the actual accident, correct?

A. Yes. We could have worked the accident. Like in the Rhew situation we worked the accident and then performed the criminal investigation. But in this case

Hot Springs responded and they maintained control of the accident.

Q. Okay. And that's the reason why this one was different because there was another investigating agency, correct?

A. Yes.

Q. You could have still performed your own investigation at the same time, but in this particular case OPS compiled the information that they gathered from Hot Springs Police Department in part of the OPS file?

A. Well, if another agency is conducting a parallel criminal and even administrative investigation or accident investigation, we would prefer to wait.

Q. Okay.

A. And then piggy-back or use that material to base our -- to initiate our investigation.

Q. You don't need to do the same work over again?

A. Correct.

Q. All right. You have the right or the option to perform whatever investigation you want at the same time that another agency is doing it but --

A. Yes, sir. Or any other time or despite what their findings may be, yes.

Q. Right. But as a general rule, OPS either does the

investigation, the crash investigation or they gather the underlying facts of the case, correct?
A. Generally speaking, yes.
Q. All right. And then when it gets to the cover page of these, I've seen on a lot of cases like Major Forrest in this particular case, was he like the head of OPS?
A. No. Major Forrest was Brian's commander at one time in Troop K. At this time he was Highway Patrol division commander west.
Q. Okay.
A. So this complaint form is used both internally, if we see something and we file a complaint or if you as a citizen you would still use this same format, this form to file a complaint against an officer.
Q. Okay.
A. To initiate an investigation.
Q. Right. And basically once that information is provided, OPS itself does not provide any type of conclusion or just a fact gathering, and it goes to another level of review, correct?
A. Right. They provide a summary, investigative summary, but no conclusion, no findings of fact.
Q. And that goes to, what do you call it, the CCRB or something?

A. It's CSRB, it's the Command Staff Review Board. It's generally going to be three high ranking officers, majors with a lot of experience.
Q. Okay. And then they review the file and they complete a form with what their kind of recommendations are, correct?
A. No, they make no recommendations. They make findings.
Q. I'm sorry.
A. The allegations here, it was including, but not limited to General Section 23, vehicle use. So they look at that. But they can go outside that limited General Section 23, but they make no recommendation as far as punishment.
Q. Okay.
A. They just determine whether or not they believe that that policy or other policies were violated.
Q. Okay. So they make a -- and I may have misspoke. They make a recommendation or a finding with respect to whether a policy was violated?
A. A finding, yes.
Q. Okay.
A. As in a lot of things, we have very specific terminology like for the personnel file. A recommendation is something that no one makes. I just

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want to clarify that.

Q. Right. And if I'm misspeaking --

A. I understand.

Q. So they make a finding of a policy violation?

A. Or not, yes.

Q. Right. And when they're reviewing it they're not limited by what the original complaint was, correct?

A. Correct.

Q. For example, if they were reviewing a deadly force case and they saw a violation of a different policy, they have the right to make a factual finding that a different policy was violated?

A. Yeah, they do. And typically what may happen is they see that a supervisor should have done something, and they can refer that as far as a separate complaint to initiate another investigation.

But in the normal practice of the State Police, the additional findings are made by the Colonel and me. We look at it and we determine whether or not something else, like conduct unbecoming is pretty common.

Q. Right.

A. There may be different violations of specific policies. But the Colonel will look and it and say not only was that a violation of General Section 3 or whatever, it was also conduct unbecoming because it

impaired a relationship with another department or whatever.

Q. Right.

A. So that's frequently where you see the increase in a finding.

Q. Okay. And then once that finding is presented to the Colonel for his review, and you are involved with the Colonel in coming up with what the appropriate disciplinary action would be or not?

A. Yes, that's correct. I'm familiar with what's going on throughout the process obviously. But that's when it formally happens.

Q. Right. And I'm not saying that other people can talk to people at different times. I just want to make sure I understand those steps.

Okay. And then the Colonel can decide. Do you give him a written recommendation?

A. No.

Q. Just orally?

A. Right.

Q. Does he ever write you notes about what he wants to find for you to prepare the letter?

A. He does. Sometimes he will make his -- because he does an independent review, of course. He'll go through the file and make different notes to himself mostly.

And then sometimes it will be things that he'll have questions for me or whatnot. And those remain with the file. We consider them part of the file when he does that. He occasionally does make notes. And then I look at it and say that's not really a policy violation. And I disagree and we can hash it out. But yes, he does make notes for me to look at and that kind of begins a discussion about a particular case.

Q. And then what he says goes?

A. Well, of course. Now, again, there is limited but significant authority under statute of the commission, which is a separate body entirely. I don't answer to the commission, neither does the Colonel.

Q. All right.

A. We both answer to the governor.

Q. All right.

A. But they do have that ability to overrule any director as far as a suspension or termination.

Q. All right. What I'm trying to get at is as between you, it's just an open communication?

A. I work for the Colonel. If he says this is what I want to do, then I do it.

Q. Okay. And in this case was there ever a CSRB finding?

A. No. Brian never came back on-duty. He was I

think either sick leave or Workers' Comp leave and out of service for the entire period until he was medically retired.

Q. Right.

A. So we initiated it. If he came back on-duty then we would have probably, the only thing left would be a CSRB, because the investigation, as we discussed, was pretty much done by Hot Springs. Whatever the Colonel and the CSRB needed was in the file.

Q. So in this particular case what we marked as Exhibit 38, this is kind of the OPS file with the documents that were recovered from Hot Springs with no CSRB finding or any notes or anything by the director or formal punishment, correct?

A. It was an incomplete investigation because of that. And, of course, it's lacking the videos that went with it.

Q. Right. All the documents I have. We've seen the video.

Okay. So that's the process. All right. Let me go through this. Let me ask you about this. So you were involved as they were going through the OPS process, but we didn't get to the point where you had any -- you reviewed any CSRB findings or any discussions with the Colonel about discipline; is that correct?

A. I saw the video as soon as it came to headquarters and we reviewed it. At that point we had discussions about these things.
Q. Okay.
A. But nothing formal. It never went through that policy process that it would have to to make a formal decision.
Q. And what discussions did the -- I don't know if it get into attorney/client.
A. Well, I am an attorney. I do represent the Colonel.
Q. I'm not trying to invade that. That's why I'm saying --

MS. MERRIT: Ask your question.

MR. CLARKE: All right.

BY MR. CLARKE:
Q. Did you have any discussions about this particular event with the Colonel, and did you express any opinions or did the Colonel express any opinions?
A. Yes.
Q. And what were they?

MS. MERRIT: I'm going to object to the form to the extent it may be privileged. But if the State Police wants to waive the privilege they can.

A. I have no problem.

MR. CLARKE: I'm not trying to get into something.

MS. MERRIT: It's up to Greg what he wants to disclose to you, if it was a privileged conversation.

A. Probably the Colonel will say the same thing. Based on his review, based on the file, he would have determined -- you don't prejudge anything, but there doesn't seem like that there would be much to change his mind, that he was not following policy as far as using ordinary care in this circumstance.

BY MR. CLARKE:

Q. Okay. And in this case we have a tape. And that's why you said it's pretty -- the tape shows what the tape shows, right?

A. We have reconstruction of other accidents and things like that that we can look at and make the same kind of conclusion.

Q. All right. When you discussed it with the Colonel, did you have any -- did you believe the times and the distance and everything that were contained on the video were accurate?

A. Watching the WatchGuard?

Q. Yeah.

A. I had no reason to dispute that. And I did review the EDR data and everything else in the file. And I saw nothing that was inconsistent with any of that.
Q. All right. Now, is there any type of disciplinary matrix that the commander or the Colonel follows?
A. No, it's case by case. And like I said, when the Colonel gets the file he does look at past, if it's a driving accident, he looks at past accidents, at fault accidents or any disciplinary history, and that will increase the punishment typically.
Q. Okay. But everybody else up to that point, so they're not -- they're not bias by any kind of prior conduct, is not privy to that information while they're doing their findings and their investigation?
A. Correct, only the director.
Q. All right. I thought I saw somewhere that he proposed, the Colonel proposed some type of disciplinary regimen of the first offense, second offense, third offense?
A. This director, he's only been there three years, which is usually the lifespan of a director, because it's a stressful job, I don't think we've carved anything in stone on this, but what he has done is an at fault, your first at fault accident, that's not significant involving bodily injury or significant

damage, like you back into a pole, you cause $500 damage to that car. You're going to get a letter of warning. If you back into that pole again, and again it's insignificant or fairly insignificant, it's $500 worth of damage. But it's your second at fault accident. You're going to get a letter of reprimand. And a letter of reprimand means that it stays in your file. That you don't get merit pay that year, which is thousands of dollars potentially. And then you're always going to be behind in your pay. So it has a punitive effect, and then, of course, you get into suspensions and termination.

Q. What's the next step after reprimand, is that suspension?

A. It's typically suspension, but it could also be a disciplinary transfer. There's currently a file on my desk that's going to be a combination of a letter of reprimand, which the commission can't reverse, and then also a disciplinary transfer, which they could theoretically review.

Q. Okay. Captain Eremea, was he a disciplinary transfer?

A. He was removed from command.

Q. All right.

A. Technically that would be a disciplinary transfer.

I think he was transferred from Troop A and assigned to Highway Patrol headquarters.

Q. Okay. We'll get to that. So the commission can only review what?

A. They can review appeals of trooper suspensions, disciplinary transfer and terminations.

Q. All right.

A. And demotions.

Q. Okay. And when it goes to a commission, so if we've gone through the whole process; OPS has done its investigation, CSRB does its findings, you and the Colonel get together and you discipline somebody, and let's just say it's a termination. The next step in that process, it either ends there or the employee has a right to appeal to the commission?

A. Yes. What I do is I draft a pretty detailed disciplinary letter, and then I also -- unless it's a termination. And I draft what's called a disciplinary agreement. And that is more, I wouldn't say it's cursory, but it's more of a summary and doesn't go into all the details.

Obviously if you're going to appeal, then the commission is going to see the details and that's going to be subject to FOI at some point too.

So anyway, that's kind of the process. And then

you have, I think it's 10 calendar days per policy to decide whether or not you want to appeal the Colonel's decision.

Q. Okay. When the Arkansas Police Commission is reviewing something, you know, when it goes up there is a particular finding of a particular policy violation, correct?

A. No. I don't control, of course, the commission. Their attorney is actually the Attorney General's Office. They're represented by the Attorney General. And in a case, I can give you an example, in the Rhew case there is no finding. They made an oral decision, and I'm not aware, I can't remember any specific order. The opposing attorney was Robert Newcomb. I refused to do an order. I didn't write an order for that as far as making any findings. He was just put back to work and that was it. They will not make specific findings. They will vote on the Colonel's decision. And then they have to go on the record with that vote out of executive session.

Q. Okay. But if you're talking about Rhew, he was terminated for an alleged policy violation, correct?

A. He was terminated twice, but yes.

Q. The first one, the accident one is what I'm talking about?

A. He was actually for that one he was terminated twice. And then the commission wanted to have an appeal. That's about the time I came to the State Police. He had a pending criminal investigation. And I suspected let's just say if the commission did not uphold the Colonel's decision, and he was found guilty of felony negligent homicide, which he was charged with, we'd have a problem. The commission would have put back to work somebody that would be de-certified.

Q. And you delayed that?

A. Well, they did not want to grant a continuance. So what we did is rehire Rhew and put him on admin leave pending the criminal investigation's conclusion.

Q. All right. But at the finding, at the end of the OPS investigation, other than this hiccup that you had because of the pending criminal charges, he was then ultimately terminated for a policy violation?

A. Yes. I'm sure I wrote the letter. There was another attorney before me at that time who was really -- I think he may have written the Rhew letter. I just can't remember. It's 2011, so it was probably me. But there would have been findings of determinations by the Colonel in that termination letter. I just don't remember how the specifics were in that case.

Q. All right. Here's what was produced as the Rhew OPS file.

A. Minus a bunch of videos and stuff.

Q. Right. Just the paper file. That's Exhibit 39.

(Deposition Exhibit 39 was marked.)

Q. So just on the first page he was investigated for what, for violation of?

A. General Section 23, vehicle use, 27-51-202. Then just general conformance to state law. Conformance to law, which would be federal or state or whatever.

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Q. Okay. And was there a CSRB finding?

A. Yes, October 28, 2010.

Q. And what was the finding?

A. The Command Staff Review Board did find that based on the information provided by the following accident reconstruction, that Trooper Rhew did violate General Section 3, conformance of the law, should be conformance to the law and General Section 23 regarding the use of vehicles emergency lights and siren.

Q. And then after it went to the Colonel, and you talked about the hiccup in between, he recommended termination, correct?

A. No, the Colonel did terminate.

Q. Right. He recommended and he was terminated, correct?

A. No, there was no recommendation made.
Q. I'm using the wrong terms.
A. He decided to terminate him.
Q. Right.
A. And that's his call.
Q. And he was terminated and Rhew appealed that, correct?
A. Yes.
Q. And when it's appealed is there a standard that applies, do they have to -- does the state have to justify the charges that were brought against him and only those charges?
A. Well, I'm the prosecutor for those. And there are commission rules they have. They've promulgated their own rules I think dating back to 2004. The standard review is that it's de-novo, but it's preponderance of the evidence to support the Colonel's decision.
Q. But it's a decision to terminate on the basis of a policy violation?
A. Yes. Specifically the appeal is from the Colonel's specific decision.
Q. Right. But the decision is termination based on a policy violation?
A. The Colonel's finding, yeah.
Q. Okay. So if they reverse it they're finding that

the Colonel's decision to terminate, based on a policy violation, was either too severe or was not a policy violation, correct?

A. I do not agree with that.

Q. Okay. Well --

A. That may be the effect. But they may have their own capricious reasons to make that determination. I can't -- we're not in executive session. They come out. The Colonel's not in executive session. And they come out and vote yes or no.

Q. All right. And in Trooper Rhew's case there was a hearing, correct?

A. Yes.

Q. And in that hearing there was a transcript that I'm going to mark as the next exhibit.

(Deposition Exhibit 40 was marked.)

Q. This will be Exhibit 40. There were a number of people who testified. And you actually handled this, correct?

A. Yeah. It was a joy.

Q. Okay. And in this case there were a number of people who testified in Trooper Rhew's defense, correct?

A. Correct.

Q. Who was ASP Colonel J.R. Howard who testified?

A. That was the Colonel, the director of the State

Police that did the second termination of Rhew that he appealed from.

Q. Okay. Was he the Colonel at the time of Rhew?

A. He was not the Colonel when the incident happened in 2009, but he was on the decision in 2010 or '11 whenever we terminated him the second time. He was the Colonel, yes.

Q. Okay.

A. He was the director.

Q. Who was the Colonel before Bryant?

A. Stan Witt.

Q. And who was the -- what time period did Stan Witt cover?

A. The Colonel came on board in January of 2015. Stan was there probably two years, so about 2013 to '15 or somewhere in there. Before that it was J.R. Howard and then it was Winford Phillips.

Q. And how long was J.R. Howard the Colonel?

A. A couple of years.

Q. And he testified, he was called as a witness to testify in the Rhew hearing, correct?

A. To defend his decision, yes.

Q. Well, let's go to his -- let's go to page 149.

A. I don't have 149.

Q. The numbers are in between the pages. There's

more than one page on a page. Do you see them?
A. Yeah. You said 149?
Q. Yeah. Do you recall Colonel Howard testifying that if there was an accident -- if there wasn't an accident in that case and he was just traveling at 100 miles an hour without his lights and siren Rhew would not be terminated?
A. He stated, Would I have fired him if he had just been clocked at 100. And he answered, No.
Q. All right.
A. So the question was, If he was clocked driving at 100, and other troopers have cited other troopers, believe it or not, but that would not have resulted in a termination.
Q. Okay.
A. That's what he said.
Q. All right. And he talked about -- do you agree with the testimony of Trooper Burke and the training sergeant, that troopers are allowed to exceed the speed limit while trying to catch up to do a traffic stop?
A. You mentioned Burke. I don't know what you're referring to.
Q. I'm saying you sat through Burke's deposition, correct?
A. Oh, yeah.

Q. You sat through, I forget the sergeant's last name.
A. Hoyt.
Q. Sergeant Hoyt's deposition --
A. Right.
Q. -- correct?
A. Right.
Q. I'm going to summarize and you correct me if I'm wrong. They both testified that when you're making a traffic stop you're allowed to try to catch up without putting your lights and siren on while you're in immediate, they use the terms of the policy, while you're in immediate pursuit or when a silent response is necessary, to exceed the speed limit to get up to them before you put on your blue lights and siren?
A. Yes. And that policy specifically refers to 27-51-204. But yes, I do recall that testimony.
Q. Okay. And is that your understanding of how the policies are interpreted to apply when you're looking at officer's conduct for discipline?
A. Well, again, that policy specifically references 27-51-204, which exempts law enforcement and a variety of emergency vehicles from the posted minimums and maximums. And it says, Emergency vehicles on emergency trips, such as police vehicles on-duty.

Our vehicles are on-duty when they check 10-8. They go in service. That is extremely broad. It doesn't say that under 204 for fire engines, it says responding to calls or something.

But for police vehicles it's very broad. And there is no mention of lights and siren under 27-51-204. And you know that in the 2017 session the General Assembly passed Act 793 to clarify when lights and sirens are used.

And you've already mentioned it earlier today that there were a lot of amendments to Title 27 to clarify that. So I would say that that policy jived with that interpretation of 27-51-204 for those cases.

Q. But the statute was amended to specifically set it out because it wasn't specifically set out, correct?

A. Well, the act was titled to clarify it. So I think there were questions, yes.

Q. Okay. All right. Do you recall Colonel Howard testifying that he drives -- he has driven without lights and siren and exceeded the speed limit?

A. I believe so.

Q. Do you recall that he testified that if he had 50 officers who responded to emergency calls without lights and siren he wouldn't fire them all? Page 150. I'm not trying to trick you, I'm trying to --

A. Where he says, for example, Initiation of a pursuit? I'm looking at page 150 right before I said, I have no other questions. I think that was my redirect.
Q. All right. So according to the Colonel, he wouldn't fire people who were just accused of driving without lights and siren, he would only if there's an accident?
A. Well, he was asked, If it was just driving 100 miles per hour without lights and siren would he fire them just for that. And the answer is I think he said, No.
Q. Okay. Is that consistent with how the discipline is going to apply or how the Review Board is going to apply it?
A. I don't know of any officer that just because they didn't drive without lights and siren has been terminated at any point. There's always been an accident or something else involved.
Now, we've got troopers who get terminated for a variety of things. But as far as if you're asking a stand-alone just not driving with lights and siren?
Q. Right.
A. That would be caught either during a pursuit review, which would be referred to OPS. It could be caught during the sergeant's review of three videos, I

guess, in another context. The equipment is automatically activated at certain speeds and in certain conditions. I can't recall that if someone just for some reason did not activate lights and siren, and there was no other event, and they were terminated.

Q. Okay. Do you recall -- you know Trooper Berry was terminated a number of times for not using his lights and siren and reinstated?

A. No. Berry was suspended. And right after the Rhew hearing, I think it was 2011, he was driving in a 45, no lights and siren, responding to a county shoplifting call, and struck a vehicle. And he was given a 15 or 30 day suspension. He did not appeal that. He was then terminated when he had another violation. I think Stan Witt was the Colonel then. Where he used his vehicle to -- he didn't run over the guy, but the guy was fleeing on foot and he hit him. And the Colonel terminated him because that was an unauthorized use of deadly force, plus his previous disciplinary history. The commission put him back to work.

Q. All right. I'm getting ahead of myself. And I've got all these files and we'll go over them. Do you recall -- let's go back to the Rhew hearing. Do you recall Captain Tommy Wicker testifying?

A. Yeah, I do remember him.
Q. If you go to page 181. His driving, Rhew's driving without lights and siren was a big issue, correct, because of the speeds?
A. That was the key issue. Now, there were differences of opinion probably that even if he had his lights and siren on, was he still using ordinary care. But there was no question that because he did not have his lights and siren on in a 45 in those conditions, there was no ordinary care. So that sealed his fate basically.
Q. Right. Because lights and siren show ordinary care?
A. Well, they help. You know, Brian testified and he's right, that you can outrun your siren and you can really -- you're moving fast enough sometimes where the lights will not provide enough warning.
Q. Are you suggesting that that is a reason why they would not put them on, because they have some type of understanding or belief that these are not going to warn people, so I'm not even going to try it?
A. No. I'm saying they're not magical.
Q. Right. But they are required under the policy?
A. Under different circumstances, yes.
Q. All right. And they're required why?

A. Because that's part of the ordinary care in those conditions --
Q. Right.
A. -- that you would factor into under the totality of the circumstances.
Q. Right. To try to warn people --
A. Sure.
Q. -- of an impending police car?
A. Right. Because if you have a wreck, then you don't get to what you're trying to respond to, like Rhew didn't.
Q. Right. Trooper Wicker testified starting on -- Commander Wicker testified starting at 178. Do you recall that he was not concerned, page 181, he was not concerned that Rhew was driving without his lights and siren at the speeds he was?
A. I recall something to that effect.
Q. And that he testified that troopers exceed the speed limit without lights and siren every day?
A. He testified to a lot of things like that. He had the luxury to since he was no longer in the department, but yes.
Q. I understand. But he was with the department for a long time, right?
A. He was.

Q. So he knew the customs of the department?
A. I wouldn't agree to that. That was his opinion.
Q. That was his opinion as the commander, as the retired commander of the Arkansas State Police, correct?
A. He was speaking, and I'm not sure about his record, whether it was blemished or not, but as commander of Troop C and those with his command. He didn't speak for the department.
Q. Well, he was a supervisory official within the department who has more hands-on experience with troopers then a colonel, right?
A. No, he doesn't. The colonels, it depends on which colonel you're talking about, and it definitely depends on your lieutenant colonels, they have been there before. That's typically what happens. Just because a colonel is there two years, they were usually a troop commander and then a major and then a lieutenant colonel before that.
Q. Okay. Officers, according to the law, are required to put on blue lights and siren in certain circumstances, correct?
A. Are you quoting from the case or are you asking me --
Q. From the law?
A. Sure.

Q. All right. When officers have lights and siren on people are required then when they see them to move to the right, correct?
A. Correct.
Q. Throughout the Rhew hearing there would seem to be a lot of testimony from officers that say turning on lights and sirens can cause more problems. Do you agree that that is a justification for not turning on your lights and siren?
A. No. I think if you read my questioning and cross examination, I made it clear that the law is the law.
Q. Right.
A. I agree with that.
Q. You understand. You're a lawyer and you understand that there's written policy and you understand what a custom is, correct?
A. The policies trump any customs. And if we find out that somebody is following a custom that is contrary to policy, then they are punished and dealt with.
Q. Right. And that is what's supposed to happen -- a custom is not something -- when officers do something that is not pursuant to a written policy?
A. If it violates policy then it's wrong.
Q. I understand. And you can have a wrong custom, you can have a wrong policy, you can have a right

custom, and you can have a right policy, right?
A. Correct.
Q. Okay. So we have a captain who is basically saying driving without lights and siren didn't concern him, that turning lights and sirens on can cause problems, which isn't a justification for not doing it, correct?
A. Not in my opinion.
Q. Okay. His commander, Rhew's commander didn't recommend any disciplinary action. Do you remember that?
A. It sounds right.
Q. Do you recall him testifying that every trooper has driven at excessive speeds without lights and sirens?
A. I don't remember the word excessive but I remember --
Q. Page 186. In your career how many troopers have you known that have driven at excessive speed limits? He said, Everybody I've known.
A. Yes, I see that.
Q. All right. And then he said he was asked, If he had to fire everybody in your troop, do you know how many people would be left if they were fired for excessive speeds without blue lights and sirens? And he

said, There would be nobody left.
A. That what's he said.
Q. All right.
A. In Rhew's defense, yes.
Q. All right. Sergeant Keith Eremea testified or Captain, it's page 192. Do you recall his testimony?
A. I recall it.
Q. Do you recall him testifying that he has driven without lights and sirens at 145 to 150 miles an hour?
A. I believe so.
Q. All right. And he was a captain. What was his position at this time, do you remember?
A. I think he was commander of Troop A. I don't know if he was referring to that happening when he was a captain or not. But at the time of his testimony he was commander of Troop A.
Q. Okay. So under his command, he doesn't care if officers drive without lights and siren at 145 to 150 miles an hour, correct?
A. I would not agree to that. That's not what he said. He said that he had.
Q. All right. He noted that he doesn't put on lights and siren for an emergency. Again, that's contrary to law, correct?
A. And policy.

Q. All right. Do you remember Captain Dickinson testifying?
A. Yes.
Q. And he testified that he's aware of troopers in his command respond to emergency calls without lights and siren. It goes on everywhere. That's not unusual, correct?
A. I remember that.
Q. And he testified that if he had to fire every officer driving twice the speed limit without their lights and siren, he would have to fire himself first, and then someone else would have to fire all the troopers under his command, correct?
A. Yes. If he had the ability to fire anyone, I guess. Yes, I remember that.
Q. All right. And then Assistant Troop Commander Robert Speer testified again that, Troopers cannot perform their duties in always using lights and sirens. And that's contrary to law and policy, correct?
A. Yes.
Q. He also agreed that if he had to fire everyone who drove in excess of the speed limit without lights and sirens, he wouldn't have any officers in his troop. Do you remember that?
A. I'm sure he said it.

Q. All right. And then he has testified that he's driven over the speed limit without his lights and siren, correct?
A. Yes.
Q. All right. And ASP CID Officer Philip Hydron testified in that trial. He was a training officer. Do you remember him?
A. Yes.
Q. And he testified that you're allowed to catch up to people and exceed the speed limit prior to engaging your lights and siren. And that's the training we heard today, correct?
A. And the policy reference, yes.
Q. All right. And after this was all done the board didn't issue any kind of written ruling, correct?
A. Not that I'm aware of. They made a -- they came out and voted and didn't do anything else. There was no reduction. Like I said, I refused, I did not reduce it to a written order. I don't believe that one exists.
Q. Do you have a copy of that transcript where they ruled?
A. I do not.
Q. Do you know if it exists?
A. No. Everything I think that we had pretty much went to the Attorney General, because I sent that to

them when the Claims Commission case was not settled.
Q. All right. I'm going to identify it as oral ruling in Rhew hearing, if it exists.
(Deposition Exhibit 41 was marked.)
A. The only place it could exist is in the minutes. I'm just not sure about that. There could be ASP commission minutes that would reflect that.
Q. Okay.
A. I don't know though.
Q. Okay. I appreciate that. We're just trying to figure it out.
In other cases do they issue written opinions?
A. Generally, no.
Q. Okay. Do they issue any type of oral pronouncements if they find that a policy violation didn't occur?
A. No.
Q. Or that the policy wasn't violated?
A. No. They'll say things like the punishment doesn't fit the crime or they'll say different things like that, but they don't reduce that to an order.
Q. They have the authority, if somebody was terminated or suspended, to either reduce the termination to a suspension or reduce the amount of the suspension?

A. Yes. They have the power also to increase a suspension to a termination.
Q. Okay. So in Rhew's case they completely rejected the Colonel's actions?
A. Yes.
Q. And is that not a conclusion that he didn't violate policy?
A. No.
Q. We had all this testimony about that what he did is what other officers do all the time, correct?
A. You have some in support of Rhew. They were testifying in his defense.
Q. All right. But we had a colonel, two commanders, a captain, correct?
A. You had several people, yeah.
Q. Do you understand that when something is so engrained that captains and commanders do it, that it becomes a custom?
A. I'll tell you one of those commanders is one who lost his command eventually because of poor judgment and lack of following policy. You have one lieutenant who was never promoted again. So there were consequences that came out of that.
Q. All right. Are you saying retaliation?
A. No, I'm not saying that. I'm just saying you look

for people who follow policy and enforce it. And they tend to get promoted.

Q. All right. But the people who have to review whether or not it's a proper action, listened to this testimony and didn't reduce the termination to a suspension, they just put him back to work?

A. Well, as I pointed out, under statute the commission is separate and has that authority. We have no control over what the commission does.

Q. I understand. But when a commission gives you finding, you can take that and you can rewrite your policies in a particular manner such that certain things are completely prohibited, correct?

A. They have never provided any finding that would provide any sort of guidance or anything like that.

Q. I understand.

A. And despite whatever they found, we did not change any policy to say, okay, apparently it's okay to do that. To the contrary, we took all sorts of actions after that. And once again, no matter what the department does, meaning the Colonel, it can be overruled for whatever reason. It's never announced by the commission.

Q. We can take all the commissioners' depositions, I guess, but --

A. I could care less on that.
Q. I'm not threatening you. We can find out what they said. I understand you were a participant in this, and you disagreed with what happened. And you have no power then to overturn --
A. I can't even appeal.
Q. Right -- to appeal the decision, that's a finding that Arkansas State Police has to live with, correct?
A. Again, I would not say it's a finding. It's a decision.
Q. A decision. And I apologize if I'm using wrong words. I'm getting tired.
But the department upon that finding or upon that decision can utilize what they learned in the whole process to give more training or to clarify policies or to strengthen policies or write policies, correct?
A. Yes, that does happen. It's usually a reaction to do our best to make that more difficult the next time it would be appealed, yes.
Q. Right. That's what they have. So in Rhew we had testimony from a number of high ranking people that their officers engage in the same conduct and it's not out of the ordinary, correct?
A. Well, they stated that. Again that was a limited amount of officers. But the whole thing caused us to

relook at everything from training, to crash review, take some authority out of different places that used to exist, so we could scrutinize the actions of officers and command decisions out in the field, yes.

Q. And we've gone through the training. Since Rhew there's only been two in-service trainings three years apart for a total of five hours of classroom training and eight hours of driving track, correct?

A. I think so.

Q. Okay. What other actions did they take; did they rewrite the policy?

A. The policy has been rewritten several times, most recently November the 1st where I added some more language into the vehicle use policy and several others. The disciplinary policy has just changed November the 1st.

There are a variety of things that happened, for example, at some point after Rhew we looked at the process for the Crash Review Board, because we looked at it and Rhew had several accidents that were at fault. But at that time the Crash Review Board, I think it was run by the CID commander, the criminal investigation division commander, and there was no consistency in punishment or corrective action retraining across the board. So what we did is we formalized all at fault

accidents to where they become like a misconduct investigation, where OPS reviews. It does the same investigation, which may be a reconstruction, it may be a report, it's going to have memos or whatever. And then it goes through a CSRB, so you have those same majors reviewing this. And then the Colonel has that chance to look at it and then pull all the previous at fault accidents, and try to have a consistent approach to repeated accidents and violations.

Q. Right. And that's what we talked about. He gets that last look before he decides whether or not there will be any discipline to review that?

A. And he always has. But again, the scrutiny of -- one of your questions about early intervention system. We don't have a formal computerized, but that was part of the process that we tried to put in place fairly immediately after Rhew, which was take a look at these repeated at fault accidents.

You were talking earlier today, which he really doesn't know, but in the process of any OPS investigation, when it comes to the Colonel, frequently he will have a disciplinary decision. It could be a letter of reprimand or suspension. He can also direct that that trooper sit down with EVOC trainers and review that specific video. And we would have sent people back

through remedial training. And that's not disciplinary, that is additional training.

Q. Right.

A. That came out of the disciplinary process. So my point is that we try to do various things like that to get a scrutiny of driving. And yes, some of it was in reaction to the testimony.

Q. Okay.

A. There was a variety of reactions to that testimony and the outcome really.

Q. All right.

A. Because it was frustrating.

Q. But there's been continued people still talking about that going through the OPS files, correct, continuing -- let me just move on.

Let's get rid of early intervention. You brought it up, so let's kind of cross this out. You understand that there are formal early intervention systems that departments can have in place that notify their department about when certain criteria are met that are selected by an early warning system?

A. I'm aware there's various systems.

Q. Right.

A. And we look constantly at things like apparently we're looking at technology that would alert a sergeant,

a supervisor, when certain things are happening.

Now, clearly when you exceed a certain speed limit automatically the videos come on. But the same thing would happen at a much lower speed really where a supervisor could monitor that trooper very closely.

But yes, I understand we don't have that currently.

Q. Right.

A. As far as a specific computerized early intervention system.

Q. Right. What you do and whether it's formalized or not, you do something akin to it; is that fair?

A. Slightly more primitive, but yes.

Q. And what are the criteria, what are the certain things that you review; like an early warning system may have three uses of force in a year, three pursuits in a year, if that happens a computer automatically spits it out. What are the things that you look at like early intervention?

A. Well, you brought up Josh Berry. An example is he had the 2011 no lights and siren and accident, 15 or 30 day suspension. He had the termination that included some driving vehicle use. There was an intentional intervention. It wasn't a PIT. And some other issues including running over the guy or hitting the guy, use

of deadly force. And then he had another incident that was caught I believe by sergeant's review. And we looked at that pattern. So that's a pattern of poor judgment that he's exhibited.

Q. Right.

A. And then final one, the most recent one is the one where he was disciplinary transferred out of Highway Patrol and put in basically our reception area. And this Colonel, I think, will testify that that particular trooper will never go back to Highway Patrol as long as he's there, probably as long as I'm there.

Q. I understand. What I'm saying is, is it just when you have a complaint you go back and review these things, or is there some kind of way where supervisors or command level people routinely look over all accidents, all at fault accidents, and then do some type of more in-depth review outside of an OPS investigation?

A. Well, all accidents are reviewed.

Q. Okay.

A. And then if they're at fault or they smell like they're at fault, then they're formally investigated like a misconduct investigation. You've seen the volume of pursuit packets. You can watch those pursuit packets. Those are reviewed up the chain of command. They ultimately are housed with the Office of

Professional Standards. Each person within that chain is reviewing that pursuit. If they see something in the report or in the video, then that can trigger either remedial action or a formal referral as a complaint.

Q. When there's a pursuit an officer is supposed to fill out a pursuit report, correct?

A. Yes.

Q. And then there's a commander's critique of the pursuit report, correct?

A. Yes.

Q. Do either one of those forms identify whether or not the officer's lights and sirens were on?

A. You have to watch the video to see that. I don't know if those forms have -- I don't think there is a place for speed, the current form, and there's some other details. But sometimes within the report itself you could have a variety. You've seen different things attached. And there could be a reference to no lights and siren. If there's no lights and siren then that's going to be addressed. But probably you're going to see it in most cases by watching the video.

Q. You don't have always videos, correct, they're supposed to?

A. They malfunction. We've been through a lot of systems and none of them are perfect.

Q. I understand. Would you agree, do you also get complaints from citizens in any way where they call in and say an officer was driving fast without lights and siren?
A. I can't recall, but I'm sure. If there's a complaint to that effect, and they were going to lunch and not on-duty and performing some law enforcement function, of course, that would be scrutinized. I can't remember one, but I would imagine there's been some.
Q. Okay. What I'm trying to get at is how do you supervise whether or not or how do you investigate whether or not an officer is using lights and siren appropriately in the field other than a review after an accident or pursuit?
A. Sergeants are required to randomly review three videos. It may not be pursuits. But that's the best you can really do with a department that drives 13,000,000 miles a year.
Q. Right. I understand it's not an easy task. I'm trying to find out what they try to do with that.
Are there actual -- when a sergeant does these three audits a month is there something generated?
A. I --
Q. How do we know that they're done?
A. Are you referring to what you called an audit

report today?
Q. Well --
A. I don't know. I have to look at that. I've just seen policy. And I'm aware that those reviews -- and then there is another review within the Highway Patrol done by a corporal that's on top of that. And how those are selected I can't remember. As far as a record of a sergeant's review of those in his post, I can't remember. I'd have to look at them.
Q. Okay.
A. I'd have to look at policy.
Q. And what I'm trying to get at is we got a bunch of files that you guys produced about OPS investigations involving pursuits or emergency vehicle operations, right?
A. Yes.
Q. And those pursuits are automatically reviewed, correct?
A. Yes.
Q. Accidents are automatically reviewed, correct?
A. Yes.
Q. A lot of these things, and we'll try to go through them as quick as we can, involved emergency vehicle operations and/or pursuits, correct?
A. Yes.

Q. Another way that they can identify whether or not officers are driving correctly is based on some type of policy that I'm unfamiliar with, and I'm going to ask you about, is where a sergeant is required to audit three videos of each trooper under his command a month?
A. Yes.
Q. Okay. And those are the ones you don't know if there are records of, correct?
A. I'm not sure. An example would be those like you mentioned, you've got a lot of different things that are going to be subject to all levels of review up to division command. If a trooper is driving at a certain rate of speed without lights and siren to go to lunch, then of course that video is going to be activated. And that would be something that would in theory be caught by that hopefully, if it's a pattern, by those three video reviews a month.
Q. And that's what I'm trying to figure out. I'm trying to figure out, because I know when something bad happens we have an investigation. I'm trying to figure out whether or not, and we had some testimony from these people at the Rhew hearing that people do this all the time, which you don't agree with or you don't appreciate. I'm trying to figure out a different way to try to look at that same information to see it. That

could come up in a sergeant's review, correct?
A. Yes.
Q. All right. So what I'll mark or identify as Exhibit Number 42, if you can find out the process whether or not there's any documentation and talk to Ms. Merrit. And when we get the depositions back, that's why I'm doing this here, we'll get that with the deposition.
(Deposition Exhibit 42 was marked.)
Q. And I want to know the process of the audit reports and then if there are any on Burke.
A. The policy hasn't changed on that. And you've been provided a copy of the policy manual. So it should have a reference to that review.
Q. Okay.
A. As far as the ASP if it's recorded and audited, as you refer to it, on that form by the sergeant. And we'll have to check on that. It usually is going to be referenced in policy that three reviews were conducted and recorded at ASP 2000 or whatever. But the policy, I believe you got a complete copy of the policy manual.
Q. I do. And I don't recall ever seeing one. Do you know what policy it is?
A. I don't know if it's in cameras or in-car cameras or what the policy is.

Q. Okay.
A. Or if it's in the procedures even. I'm not sure.
Q. It's not under the general policies, correct?
A. Correct. It's going to be in law enforcement policies or Highway Patrol procedures. I'm not sure.
Q. Okay. Let's mark this as the next exhibit, Exhibit 43.

(Deposition Exhibit 43 was marked.)

Q. I'll mark as Exhibit 43 the in-car camera policy. I think on the last page is this paragraph. A minimum of three events shall be reviewed. What I'm asking in Exhibit 42 is whether or not there's any documentation of that. Apparently if there's some kind of infraction something is supposed to be produced to the commander. If you can look at that and get back to Jennifer I'd appreciate it.

Is that the policy you were referring to?
A. Yes.
Q. Okay.

MR. CLARKE: Let's take a break.

(A recess was had.)

BY MR. CLARKE:
Q. Mr. Downs, we just took a break and we're back. Before I get into some of these OPS files, let's finish up on Trooper Rhew's case. At some point there was a

claim filed with the Claims Commission, correct?
A. Correct.
Q. Do you represent people in the Claims Commission or did you in this case?
A. In this case I did not.
Q. Is that part of your abilities?
A. Yes.
Q. Okay. I'm going to show you what I'll mark as Exhibit Number 44.
(Deposition Exhibit 44 was marked.)
Q. You're aware that there was a -- I don't know if I'm using the correct term, a hearing or trial in front of the Claims Commission where there was a verdict of $2.97 million, correct?
A. That's correct.
Q. And are you aware of the findings of fact where they noted that the investigation of Rhew only involved asking two questions?
A. Yes.
Q. All right. And then I guess at some point the case was settled, correct?
A. No, it was not settled.
Q. If you look at Exhibit 44, I'm looking at a settlement agreement and release.
A. That's a different case. That's [redacted]

Q. Oh, okay. What is the [redacted] case? Let's pull that part off. I'm sorry.

A. [redacted] was driving to work.

Q. Let's take that off of 44, the [redacted]. And let's mark that 45.

(Deposition Exhibit 45 was marked.)

Q. Exhibit 44 is the Rhew findings of fact in the Claims Commission case. What is [redacted] what is this case about?

A. That was a case involving just a minor traffic accident. I can't remember where it actually occurred. I think the plaintiff resides in Saline County. He filed it in Circuit Court instead of the Claims Commission. And the case went to the AG because they alleged that he was outside the course and scope of his employment. We argued that he was. The Judge determined that he was not within the course and scope of his employment. And it was -- I can't remember if he had -- it was not pursuit or anything. He was driving an unmarked vehicle. Did have emergency equipment. He was assigned to what we call the hill on Roosevelt where we keep the inmates overnight. So there was some sort of minor traffic accident. And it was a typical accident lawsuit filed in Circuit Court.

Q. So it was just a car wreck case?

A. Car wreck case, yeah.
Q. Okay. So there wasn't anything about excessive speeds above the limit without lights and siren?
A. No.
Q. Okay. All right. I'm going to try to go through these somewhat quickly. Do you recall last week or something we went and we got some copies of the OPS files that the Arkansas State Police have that were investigated for pursuits and emergency driving, correct?
A. For 10 years I believe, yes.
Q. All right. I don't know if I'm going to make them all exhibits, but I'm going to give you access to them. I'm going to go in reverse order. We already discussed Rhew. I'm going to show you what is A10-015. It's a OPS investigation of [redacted] We probably need to mark them. Let's just mark them.
(Deposition Exhibit 46 was marked.)
Q. This will be 46. Do you recall anything about this one or have you reviewed this one?
A. This occurred before I arrived at the department. There's obviously a lot of OPS files. I can't remember it.
Q. All right. And this one if you look at page 5. They're not marked. I'm sorry.

A. 5th page of the CSRB findings?
Q. No, of just the packet.
A. Summary of events?
Q. Yes. The summary of events, is that contained -- the summary of events, is that part of the CSRB's findings?
A. It is on this one, yes.
Q. All right. And in this particular case the trooper was chasing a motorcycle at speeds of up to 140 miles an hour darting in and out of traffic. Do you see that?
A. Yes.
Q. Okay. Captain Eremea reviewed this file and had some concerns about the officer getting tunnel vision. Do you see that?
A. I see the paragraph you're talking about. I don't see exactly where he says that.
Q. Concerns around trooper's anger and cussing of vehicles in front of him, his tunnel vision on his determination to get the speeder, excessive speed. It's about halfway.
A. I see it, yeah. Okay.
Q. All right. Does the issue of tunnel vision come up, to your knowledge, a number of times with respect to the investigation of these EVOC and pursuit cases?

A. No. It doesn't matter what kind of -- what the issue is with tunnel vision or anything else. If they violate policy or law then they're disciplined.
Q. I understand that.
A. Whether it's a part of these cases or not, you'd have to go through each one and watch the videos probably.
Q. We'll go through them. What I'm trying to get at is when OPS goes through things and finds conduct that they don't agree with or in violation of policy, do they give any of this information to other portions like training or policy writing to make sure that these things are addressed?
A. As I testified previously, OPS has no authority to make any findings or make any recommendations or do that. The person who would do that would be the Colonel. When he ultimately reviews this file, if he sees additional events like I've talked about where here's your disciplinary action, here's your letter of reprimand, in addition, you are going to go through the next EVOC class offered to troopers or whatever. That's kind of what you're talking about when that happens, yes.
Q. That's not what I'm talking about. Let me rephrase my question.

So, for example, go through these OPS files and let's say you identify a bunch of officers are doing A in this particular circumstance. You have an investigation and you find out whether it's a policy violation and whether there's remedial training. That's part of the OPS process, right, that could happen at the conclusion of it?

A. You're talking about the disciplinary process that OPS is a part of. They cannot make recommendations. They have a limited chain of command and authority. And it's to investigate disciplinary infractions --

Q. All right.

A. -- or accidents, which they really prepare for the CSRB. So in the disciplinary process, yes, at some point you could review the discreet violations of policy or law, and then see what you're talking about and make recommendations for training.

Q. Okay. And I'm not communicating myself well, so I apologize. Here's kind of what I'm -- let me kind of give a bigger picture here first. It's my belief and understanding that police departments in order to effectively run need to have written policies, they need to have proper training, they need to have proper supervision of their officers, and then they have to have some mechanism by which to investigate and

discipline if there's problems. Do you have any disagreement with that?

A. No.

Q. Now, they're each separate processes. You have policy writing, you have training, you have supervision, you have discipline. A lot of departments have ways that these different arms communicate so that information that is gathered by one can be addressed by the other functions.

For example, if we see a number of things in a particular area of law enforcement that are going on, and we want to address it in training, is it your understanding that the Colonel himself is the one who can make that recommendation to do something more agency-wide?

A. He would have to impose it through the chain of command. I may see this. I see things at different times and say, we need to clarify this in policy. And like we discussed previously, it may be the outcome of a commission decision that we change policy to make things more difficult or make things easier, whatever the case may be. But it has to be at that highest level, which would be the director's office level.

Q. Okay. All right. And that's what I'm saying. So OPS does not have an open line of communication to give

their findings to the training department?
A. It would be reviewed higher up and then go that way.
Q. I gotcha. Different departments have different things, and certain things they give them automatically to training. This is just disciplinary?
A. Yes. We have a rigid hierarchy and chain of command and authority.
Q. Okay.
A. You can't step out of that but you can inform.
Q. Right. And you've answered my question. I didn't ask it well. It's a higher level at the Colonel level if he identifies some type of pattern?
A. I'd say it's command staff. If it's imposed agency-wide then it would be the Colonel's authority that would make it happen.
Q. It would finally go to him to do that?
A. Yes.
Q. Okay. Do you know of anything that the Arkansas State Police does to kind of track the type of events to see if they can spot any trends with respect to officers' conduct during the course of pursuits or emergency vehicle operations?
A. Well, I know there are examples of -- I can't say no lights and siren, but I think I remember some fairly

frequently or recently where the Colonel did exactly what I've previously said, where he looked at it and said here's your punishment for whatever the driving issue was. And then I also want you to sit down with training, and they would review that. And if they see it as an individual officer issue, they can do remedial training or counseling or whatever. Does that kind of answer your question?

Q. Kind of. And what I'm trying to focus on is do you use the disciplinary process in the findings that are ultimately achieved through the disciplinary process to then spot trends or problem issues that are then sent to training to be addressed or to the policy writing department to be addressed?

A. Yes. That's frequently. A lot of times it's made by me. I have that authority.

Q. Have you done any of that with respect to pursuits or emergency vehicles?

A. No change of policy. This director has tried to instill the new in-service type policies and training. We are in the process of trying to find field simulators. You mentioned the FATS simulator in the previous deposition. We have one of those, but it's rare to find that technology that's geared to law enforcement decision-making and that kind of

environment. They do exist apparently and we're looking at doing that, both one that would be stationary, for example, and one we could take to troops for training, in-service training kind of thing. So those are the kind of things that we're always looking to try to develop and correct. And a lot of it is because of the frustration with some of these issues.

Q. All right. I understand. They have that where you can drive a car, get out and draw your gun and things like that. Have you seen that type of system?

A. The scenarios, the training scenarios. But yeah, you're always looking for new training and new techniques.

Q. The City of Memphis and Shelby County have had a driving simulator with traffic pullover for the last probably 15 years. Are you aware that this technology has been around for a long time?

A. I don't know if it's as good as it's gotten now as far as the different scenarios as far as driving at high speeds like we do, like the Highway Patrol does versus Memphis PD. I'm not sure.

Q. I'm not going to get into it. The police let me bring my kids out there to drive the cars and pursuits on the simulator.

But in this case he noted that there was -- and

I'll make an aside I'll give you. Did you understand that there's an inordinate amount of a high speed chases or emergency responses involving motorcycles?

A. I don't know if there's an inordinate. I think that there's some high performance motorcycles that they enjoy speeding and they're pretty difficult to catch and they create a hazard to the public and themselves obviously.

Q. All right. In this case what was the outcome in the [redacted] case?

A. You mean the disciplinary outcome?

Q. Yeah.

A. He was given a letter of reprimand and he was suspended without pay for 24 hours.

Q. And with that comes certain things that he's prohibited from, correct, like promotions and things of that nature?

A. Yes.

Q. Is that standard with a letter of reprimand?

A. Well, yes, in policy if you get certain levels. And that's changed over the years where it's actually gotten lower where less severe punishment has created a one year bar from promotion, for example. A letter of reprimand has always barred you from any sort of merit pay authorized by the governor and awarded to employees.

Q. All right. And let's go to the next one.

(Deposition Exhibit 47 was marked.)

Q. Do you recall an investigation regarding [redacted]?

A. Yes.

Q. And according to this, he was looked at for violation of the pursuit and the vehicle use policy, correct?

A. Correct.

Q. And he was driving without lights and siren, correct?

A. Correct.

Q. He was speeding, correct?

A. I believe so.

Q. Speeds up to 116 miles an hour? Look at the CSRB memo.

A. I don't see 116 miles an hour.

Q. It's eight pages in.

A. I see it.

Q. All right. And he has been cold-trailing the vehicle, which is kind of trying to catch up to it. Is that your understanding?

A. Yes.

Q. Okay. And what was he given?

A. He was given a one day suspension.

Q. All right. If you back to the CSRB meeting memo on page 3.
A. Excuse me. And a letter of reprimand.
Q. Okay.
A. Go ahead.
Q. Go to page 3 of the CSRB meeting at the top. When he was questioned they talked about if he had any training not to activate his emergency equipment. And he advised that his FTO told him that you could cause an accident trying to get to an accident if you have your lights and siren on.
A. I see that.
Q. Okay. Do you know if anything was done in training or in policy to address the issue of this philosophy, this incorrect philosophy that not turning your lights and siren is justified because you might get in an accident?
A. Well, what he said was that his particular FTO told him that. So I would hope that somebody did. I can't remember. There's been a lot of these things. I'm not aware if there was an OPS investigation or if he was counseled. I'm not sure on that.
Q. He should have been counseled, correct?
A. In my opinion, yes.
Q. All right. You don't know if he was counseled?

A. I don't have any knowledge of that.
Q. Okay. All right. Go to everybody's favorite trooper, [redacted]. This was an accident that occurred on 8/15/11, correct?
A. Yes.
(Deposition Exhibit 48 was marked.)
Q. In this case [redacted] was traveling above the speed limit while responding to a call without his emergency, use of his emergency equipment, and he was involved in an accident, correct?
A. Yes.
Q. All right. And what was his discipline?
A. He signed a disciplinary agreement that resulted in a 15 day suspension without pay and a letter of reprimand.
Q. If you go to page 3 of that packet. It notes there that these are the CSRB findings, correct, on page 3?
A. On page 3 is the disciplinary agreement.
Q. I'm sorry. And in that he admitted that he violated the law, and understood that this type of conduct can expose the Arkansas State Police to significant liability as a consequence. Do you see that in number 3?
A. Yes.

Q. All right. What type of -- was there a lawsuit brought or a claim made as a result of this accident?
A. There was a claim filed with the Claims Commission.
Q. Do you know if it was resolved or settled?
A. I got it dismissed.
Q. How did you get it dismissed?
A. Well, she didn't proceed against her insurance company under the uninsured motorist coverage. And there is Eastern District at least case law that that provision was void. And they did that after I gave them the case law and State Farm paid up or whatever.
Q. Okay. So it was based on their not following the correct procedure within --
A. The Claims Commission, right.
Q. Believe me, we tried to figure that out when we filed ours.
All right. In this document Disposition of OPS investigations is there a running total of this kept on a computer where you can print it out with respect to just pursuits or EVOC?
A. No. I'm sure they searched for this and provided it. I've never really seen this in a different case. Sometimes OPS provide kind of a summary or note basically of past disciplinary actions involving a

trooper with whatever it is, whatever policy violation. And that looks like what they did in this case.

Q. Okay.

A. And State Police commanders and directors will often ask for that so they can sort of be consistent apples to apples as far as punishment.

Q. Try to be consistent along disciplinary actions?

A. Yes.

Q. All right. And then at page 7 there's like a -- I don't know what this document is called, but it's somewhat kind of -- what do you call this document that has a listing of all OPS cases, use of force, pursuits, crash histories?

A. This again is not an ASP form. It looks like it was compiled for this investigation for Colonel Howard.

Q. Okay. So this isn't something that is regularly available?

A. No. And I think they probably -- Colonel Howard was looking very closely at this one because of the Rhew issue.

Q. And because he had a whole bunch of prior accidents, correct?

A. Well, he has one, two, three, four. One was avoidable. He had three avoidable accidents, yes.

Q. All right. There is no -- so this has to be

created? Can you tell what kind of software this was created on?

A. This was back in -- we've changed all kinds of things since 2011 or whatever.

Q. With every trooper could somebody go in and --

A. No. You cannot FOI this. We would not be required under state law --

Q. I'm not talking about FOI. Would this have to be done like if I wanted this on Burke, there wouldn't be a way where you could go print it out, you'd have to create it?

A. No, that's what I'm saying. We'd have to create it.

Q. Okay. And in [redacted]'s issue here he was going to a call about a theft and was traveling up to 105 miles an hour, correct?

A. Correct.

Q. Without lights and siren?

A. Yes.

Q. And did [redacted] indicate that he didn't have to put on his lights and siren when responding to an emergency call?

A. Well, if you look at paragraph 3 in his disciplinary agreement, he says that he acknowledges his conduct violated ASP policy and state law regarding the

activation of emergency equipment. So I think he recognized that he failed to follow policy and law.

Q. All right. Let's go to the next one.

(Deposition Exhibit 49 was marked.)

Q. Exhibit 49 is [redacted]. Do you recall this one?

A. Vaguely.

Q. In this case he had his -- he was catching up and then he activated his lights right prior to the pursuit, but not his siren, correct?

A. I'd have to look through this and see. I don't remember that part.

Q. Let me see if I can find that. It's not a big file. If you look to the CSRB findings on the second page he notes that he was trying to make a traffic stop, and he was catching up to them without his lights and siren, and right before the crash he activated his blue lights, correct?

A. Correct.

Q. And not his siren, correct?

A. The siren was not activated.

Q. And you don't get any immunities with just lights, correct?

A. Well, you're an emergency vehicle requiring other cars to yield to you if you have both activated.

Q. You don't get any exemptions from the speed limits if you don't have both your lights and siren on?
A. I quoted you earlier 27-51-204 references the fact that the maximum speed limits are not applicable to emergency vehicles, a police vehicle on-duty, that doesn't reference lights and siren in that context, which would be the immediate pursuit silent response activities that you talked about.
Q. Okay. We're just going to disagree on the law there.
And what was -- is it your interpretation of this law that cops never have to comply with the speed limit?
A. Did I say that, no.
Q. Okay. All right. In order to exceed the speed limit do they have to have their lights and siren on?
A. Not in every case.
Q. All right. And what are the cases where they're allowed under the law allowed to exceed the speed limit?
A. Well, there's a variety. 27-51-202, which you've discussed today, talks about emergency calls. And then that is defined as a response to a legitimate emergency situation. That's not defined anywhere.
There is 27-51-204, which again does not reference lights and siren, and talks about exceeding the posted speed limit for a police vehicle on-duty.

Q. Well, you're the legal counsel. You give them an understanding of what the laws are, correct?
A. If there is an interpretation to be made, then I make it for the department.
Q. The Statute 202 in effect at the time says, For the purpose of this call emergency calls means a legitimate emergency situation which calls for the operation of an emergency vehicle, including a police vehicle.
Is catching a speeder an emergency call?
A. It's not defined.
Q. You're the legal counsel.
A. It depends. If you have a call that someone is driving like a maniac on the interstate, then sure, yeah, it could be.
Q. I'm saying I'm on the side. I'm enforcing the speed limits. I go to get a speeder. That's not an emergency call, that's a traffic stop, correct?
A. Read the definition of emergency call.
Q. There is no definition. Well, I'm sorry. It says, Means of legitimate emergency situation which calls for the operation of an emergency vehicle. What does that mean? You're the lawyer.
A. I'm telling you that is a definition without a definition. So you'd have to look at it on a case by

case basis.
Q. Well, a call is when you actually get up over the radio and call somebody.
A. You would think that, but that definition is a little bit broader than that.
Q. All right. And 202 says, The prima facie speed limitations set forth in this subchapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights and is also operating an audible signal by bell, siren, or exhaust whistle, correct?
A. I believe you're reading it correctly.
Q. Did I read that correctly?
A. I believe so, sure.
Q. So you have to have your lights and siren on?
A. In responding to an emergency call as defined by that Statute 202.
Q. Okay. The prima facie speed limitations set forth in this subchapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights.
So the speed limitations do not apply when you're on an emergency call if you're operating your lights and

siren, right? You have to have your lights and siren on to exceed the speed limit, according to this law, correct?
A. That is a specific law regarding emergency call responses.
Q. What's the name of the statute there?
A. Restrictions not applicable to emergency vehicles.
Q. All right. And the restrictions that they're talking about are speed restrictions in that statute, correct?
A. In that particular statute just like 204, yes.
Q. And in that particular statute it says, In order to exceed the speed limit on an emergency call you have to have your lights and siren on?
A. That's what it says.
Q. Okay. In 204, what do you think 204 -- and you have maximum and minimum speed limits here again. And do you think that 204 allows them to drive in excess of the speed limit without lights and siren?
A. In certain conditions, and as long as it doesn't violate ordinary care.
Q. And what conditions?
A. Well, it says here a police vehicle on-duty is exempt. So what is a police vehicle on-duty. As I previously testified, our vehicles are on-duty when he

checks 10-8. So that's pretty broad.

Now, I would say this would not apply if you're going to lunch and need to meet a friend at lunch, then that probably wouldn't apply.

Q. Okay.

A. There's no reference in this statute to a lights and siren requirement here.

Q. Okay.

A. This is a general statute. The other one is specific. A specific does control over a general when it is applicable.

Q. Okay. And the applicable scenario in both of these is going over the speed limits?

A. No, that's not the application.

Q. One says maximum and minimum speed limits exceptions, the other one says in 202, what's the name of it?

A. It says, Restrictions not applicable to emergency vehicles.

Q. Okay. And it gives the requirements. I just want to know from you, you're the legal adviser, you're looking at discipline, is it your interpretation of state law and when you're looking at these cases, that officers are allowed to exceed the speed limit without their lights and siren?

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A. In certain conditions. And I would say that is backed up by the fact that the General Assembly in 2017 passed an act to clarify that.
Q. That doesn't -- that means it wasn't in effect at the time.
A. Well, it does mirror our policy.
Q. Okay. My question is, I don't care about 2017, I don't care anything about that. This happened in 2016.
At that time --
A. You're asking legal opinions.
Q. I'm asking the advice you give when you interpret the OPS stuff and you go through the disciplinary process with the Colonel. Is it your position in 2016, that they could exceed the speed limit without their lights and siren?
A. In certain situations, yes.
Q. Tell me the certain situations?
A. That's provided in our policy in vehicle use to get the evidence of the speeder to catch up to a suspected violator.
Q. All right.
A. As long as it did not violate ordinary care.
Q. All right. But that's not in 202 and 204?
A. No, it is in 204. Yes, it is in 204. And that is the statute that is specifically cited for that policy

provision.
Q. Okay. So 204 says you can drive any way you want as long as you're on-duty, correct?
A. No, it says ordinary care, doesn't it?
Q. It doesn't say anything about speed limits.
Okay. That's your interpretation. Your interpretation is we have a specific statute that says you can't exceed the speed limits unless you have your blue lights and siren on. And you're saying that that doesn't really apply because they're police vehicles based on 202, correct?
A. I'm saying --
MS. MERRIT: Object to the form.
A. I'm saying 27-51-204 is entitled, Maximum and minimum speed limits - exceptions.
Q. Right.
A. And then the exceptions for various emergency vehicles doing various things.
Q. Okay.
A. Police vehicles on-duty versus fire vehicles responding to a call.
Q. Can you violate -- can you comply -- is there a circumstance where a police officer driving 100 miles an hour without lights and sirens on, where they would be in compliance with Section 204, but not in compliance

with Section 202?
A. I don't track your question.
Q. Okay. 202 requires lights and siren to exceed the speed limit, correct?
A. Responding to an emergency call.
Q. All right. 204 I believe your interpretation is that none of the speed limit -- none of the speed restrictions apply other than -- none of the speed restrictions, and I understand the ordinary care, none of the speed restrictions apply as long as it's a police officer on-duty?
A. And they exercise ordinary care.
Q. But --
A. If a specific response to an ax murder at somebody's house beating down the door, then that would, to me, I think whatever the definition is of a legitimate emergency situation or response to one, that would probably be a situation where, yes, lights and siren would be activated when you exceed the posted speed limit.
Q. Okay. All right. Let's go to the next one.
(Deposition Exhibit 50 was marked.)
Q. [redacted]. And when did this happen?
A. At the time of the incident was April of 2013.
Q. And he was traveling up to 140 miles an hour

trying to catch up to a motorcycle without his lights on with a civilian in his car, correct?
A. Correct.
Q. And what was the recommendations with respect to him?
A. There wasn't a recommendation.
Q. I'm sorry. What was the disposition?
A. He was removed from command.
Q. He was taken out of -- and why was he removed from command, was it because of his conduct or because of having an unauthorized person, an unauthorized female in his car driving 140 miles an hour?
A. It was as a result of his total disciplinary history and recent disciplinary history.
Q. What other disciplinary history did [redacted] have?
A. [redacted] had I think at least a year earlier a violation of general policy. I can't remember what it was. It was General Section 3, as I recall, which he displayed poor judgment expected of a troop commander, and so he had a pattern.
Q. What was the reported conduct?
A. It wasn't driving.
Q. What was it?
A. I don't remember. I'm telling you it wasn't

driving.
Q. Do it have to do with sexual misconduct?
A. No, did not.
Q. Okay. Let's go to the next one.
(Deposition Exhibit 51 was marked.)
Q. The next one is Exhibit 51. This is the investigation of [redacted]. Tell me the date of the incident?
A. Looks like 7 or 8, 2013.
Q. Do you remember this incident?
A. No.
Q. Do you know whether -- well, in this case he had just his blue lights on but no siren?
A. The CSRB Board summary of findings says that he failed to activate his siren at any time during the pursuit.
Q. And reached speeds up to 130 miles an hour?
A. The way it's written I'm not sure. Attempted to catch up to the vehicle reaching speeds of 130 miles per hour. I would assume that was him or both vehicles, yes.
Q. All right. And I think it was about 5 miles?
A. I don't know.
Q. Look at the investigative summary about 10 pages in.

A. Stated he pursued the vehicle for approximately 5 miles, yes.
Q. All right. And if you look about 22 pages in at the interview. There's an Arkansas pursuit report form.
A. Okay.
Q. Does that pursuit report form have any indication where you have to check out whether or not the lights and siren were on?
A. No.
Q. If you go a couple of pages further there's a Commander pursuit critique form. Does that give you any indication as to whether or not the commander is supposed to determine whether the lights and siren were on in the form itself?
A. His lieutenant caught it, didn't he?
Q. I understand. I'm talking about --
A. As far as a box that says that, no, I don't see it.
Q. I mean, it's very easy to put a number of different things in there if that was -- would you agree that lights and siren in EVOCs and pursuit cases are important to review?
A. To my knowledge, they are reviewed.
Q. Okay. But they're not set forth in that actual form that both the trooper is supposed to complete and

the commander is supposed to complete, correct?
A. There's not a discreet box for that, no.
Q. Okay. [redacted].
(Deposition Exhibit 52 was marked.)
Q. This is Exhibit 52. What's the date on the -- do you know the date of the incident?
A. It was filled out by a civilian. It says, Saturday, 3:30 p.m.
Q. Okay. In this case there was a complaint pertaining to how he interacted with a civilian, correct?
A. Multiple violations, yes, of policy.
Q. Right. And while they went through that investigation they also reviewed the videotape, correct?
A. Yes.
Q. And when they reviewed the videotape they found that he violated the vehicle use policy by traveling 100 miles an hour without traveling -- while traveling to a call without activating his lights and siren, correct?
A. You're referring to the Command Staff Review Board findings?
Q. I don't know what they are.
A. I need to see what you're talking about.
Q. Did they find that he violated the vehicle use policy by traveling at 100 miles an hour while failing

to activate his lights and siren?
A. Under number 3, General Section 23, specifically, use and operation of Arkansas State Police vehicles: if an officer deems it necessary to operate vehicles.
Yes, they did find that.
Q. All right. And what was his suspension for -- what was his discipline for just the vehicle use?
A. There's no -- it's not --
Q. Separated?
A. It's not separated.
Q. Okay. So he was found guilty of improper talking or conduct, improper use of force, and improperly responding to a call, correct?
A. No. General Section 3, Rules of conduct, Coarse language and gestures, number 2, General Section 31, Reports, number 3, General Section 23, Vehicle use.
Q. So use of force was unfounded?
A. Yes, sir.
Q. Okay. And he got three days suspension, a letter of reprimand and was sent to anger management, correct?
A. Correct.
Q. Go to [redacted], 1/8/14.
(Deposition Exhibit 53 was marked.)
Q. And this was for violation of vehicle use policy, correct?

A. Yes, General Section 23.
Q. And he was involved in an accident when he was responding to a call without his lights and siren on, correct?
A. Struck a vehicle in icy conditions. I remember that. I don't see that. I see it was an avoidable accident.
Q. Did he have his lights and siren on?
A. He responded to vehicle collision. Stated he approached a vehicle in icy conditions. Traveling approximately 20 miles per hour at the time of the crash.
Q. What did he do wrong to violate the vehicle use policy?
A. First of all, he admitted he violated it. But as I remember -- I can't speak definitively on this. It seems like -- let's look at these memos. He had one previous at fault accident. As far as this accident, even though he was only going 20 miles per hour, I believe it was because that was still too fast for him to control the vehicle in the icy conditions.
Q. Let's go back to Mr. [redacted] for a second. If you go to the CSRB findings under [redacted].
A. What part?
Q. [redacted]

A. Okay.
Q. In this case Mr. [redacted] had an interview with [redacted] and noted he doesn't always activate his lights and siren when responding for fear of causing an accident.
Again, that's not a proper justification for not using your lights and siren, correct?
A. Say that again?
Q. The first line there it says, He doesn't always activate his lights and siren when responding to injury and accident call for fear of causing an accident.
I think we talked about that before. That justification -- that's not a justification for not using your lights and siren, correct?
A. No. That's one reason it's there is because --
Q. All right.
A. -- he did that.
Q. All right.
(Deposition Exhibit 54 was marked.)
Q. Exhibit 54 is against [redacted]?
A. Yes.
Q. And this case happened on 1/11/14. He was chasing -- he was involved in the pursuit of a motorcycle, activated his blue lights but not his siren, correct?

A. Correct.
Q. And there's a memo from [redacted]
A. [redacted]
Q. [redacted] I'm sorry. Do you see that?
A. I'm reading the [redacted] memo, [redacted]
to --
Q. He had two concerns, correct?
A. Yes.
Q. The first concern was he did not activate his siren when he was engaged in the pursuit of a motorcycle, correct?
A. Yes.
Q. And the second concern was he appeared to have tunnel vision while chasing the bike and passing on the inside shoulder?
A. Yes.
Q. What was his disciplinary action?
A. He was suspended for five days without pay.
Q. Okay. Do you know if anything was done after this by the Colonel to address tunnel vision with officers?
A. Officers?
Q. Yeah.
A. Not that I know of.
Q. Okay.

(Deposition Exhibit 55 was marked.)

Q. Exhibit 55, [redacted]. Date of incident March 19, 2014. This was a pursuit of a motorcycle again, correct?
A. Yes.
Q. Go to page 10. That's just an incorporation of the other memo. He said he experienced tunnel vision during this event as well, correct?
A. That's what this says, yes.
Q. And in the commander's pursuit critique. It's about 23 pages in.
A. Okay.
Q. Under Corrective discipline, action recommended, down towards the bottom, it says, [redacted] has been instructed to not pursue a fleeing motorist for traffic violations. He needs to contact a supervisor for approval of simple fleeing. If he is involved in a felonous act (other than felony fleeing) he's supposed to take appropriate actions. Recommended remedial pursuit driving class. Appears to have tunnel vision on the end of his pursuits.

Why was he told not to pursue fleeing motorists for traffic violations?
A. His commander made that decision, right or wrong. That's apparently because of this incident.
Q. Okay. Are other officers told that they shouldn't

pursue for traffic violations?
A. No, not as a general rule.
Q. Okay. Does this major have or whoever signed this, this commander, have the right to restrict somebody to pursuing just fleeing motorists who are involved in felonies?
A. I'm trying to figure out who this was. [redacted] I would say that is inappropriate. And if I had known about it, then it would have been -- we would have looked closely at that. And I don't know what the real outcome was and whether that stood or what happened with that. But generally, no.
Q. Okay. Well, you are here and one of your topics was to discuss policies and stuff. Are you aware of other departments that have violent felony only pursuit policies?
A. There's some that change back and forth. I think LRPD for a while had something like that.
Q. All right. Do you know if that is --
A. It's not our policy.
Q. Okay. Do you know whether or not that policy results in less injuries to the motoring public?
A. I have no idea. I think I'd quote Justice Scalia. There's a duty to pursue certain fleeing criminal suspects.

Q. A constitutional duty. And that's my case that I lost.

With respect to actual traffic violations, do you know of any other department that has a policy that allows you to pursue for traffic violations?

A. I can't say either way.

Q. All right. On writing your policies, when policies are written, are other departments' policies looked at or the IACP?

A. Sometimes, like I said before, we do look at model policies of IACP. But usually there's not an apples to apples as far as municipal police departments versus a statewide law enforcement agency.

Q. Because of geography?

A. Yes.

Q. Okay. All right. The next one is [redacted].

(Deposition Exhibit 56 was marked.)

Q. The date of this incident was 5/5/14. Do you know if his lights and siren were activated?

A. The report talks about him initiating his patrol lights. My version doesn't have disposition and any letter of disciplinary action.

Q. It doesn't have the result?

A. No. I don't see it here.

Q. Okay. I must have copied it wrong. It looks like

he got a letter of reprimand. We'll double check that.

Let's go to the next one.

(Deposition Exhibit 57 was marked.)

Q. This is [redacted]. And what's the date of this incident?

A. This is May 23, 2014.

Q. All right. And in this one this is where he was terminated, correct?

A. Correct.

Q. This is one where he's engaged in a pursuit, and at the end of the pursuit he used his vehicle and he hit the suspect as he was fleeing, correct?

A. Correct.

Q. And he was involved in a pursuit and did not have lights and siren on, correct?

A. Did not have his siren on, yes.

Q. Okay. And during the course of this one he was asked, if you go to page 12, where he violated policy. Part of the investigative summary said, He does not feel like he violated policy because he was trying to stop the pursuit in the parking lot.

I'm sorry. Let's go to page 14. His sergeant was Sergeant Eric Agee. If you look at his report on the second page.

A. Okay.

Q. According to his sergeant, he did not feel that he violated policy during the course of the pursuit and used the correct amount of force, correct?
A. Yes. As I recall, his entire chain of command that had that same opinion was counseled by the Colonel at the time. I do remember that was an issue.
Q. Well, he's allowed under the policy to catch up to people without using his lights and siren and exceed the speed limit, correct?
A. Use ordinary care in those certain limited situations.
Q. Okay.
A. He was terminated for use of force and a pattern though.
Q. And he was put back to -- that was reversed by the commission, correct?
A. Yes.
Q. And did you handle that commission case?
A. I was there. I control it. I can't remember if I had one of my attorneys handle the case, but yes, I was there.
Q. Was part of the issue, was there testimony similar to Officer Rhew's hearing, that not using your lights and siren while you're doing this is appropriate?
A. No.

Q. All right. You didn't have the heavy weights.
All right. Do you know if the Arkansas Police Commission presented a written ruling?
A. No.
Q. Do you have an understanding, based on any oral ruling, why they reversed the termination?
A. No.
Q. Let's go to the next one.
(Deposition Exhibit 58 was marked.)
Q. [redacted] again. That's going to be Exhibit 58. The incident was 1/2/15?
A. Yes.
Q. And he was charged or investigated for improper vehicle use when responding to a call; is that correct?
A. There's several issues it looks like here. Driving speeds of approximately 80 to 90 miles per hour in rainy conditions prior to the accident. Struck an embankment and caused $4,000 worth of damage.
Q. Okay.
A. Page two of the Colonel's decision the first paragraph states that, This was your 4th at fault accident in the past three years, one of which resulted in a letter of reprimand. I took that poor history of driving and judgment into account in making my decision of this investigation. It says, Although I do note you

activated your emergency equipment in this incident, I caution you that you are still required to use ordinary care under Arkansas law when responding to emergency calls.

Q. So in that case they felt even though he had authority by use of lights and siren he still failed to use ordinary care?

A. Yes.

Q. And if you look about seven pages into that there's some handwritten notes.

A. Yes.

Q. Is those the Colonel's?

A. Yes.

Q. Okay. And this is where he goes through his previous thing and he writes a note, Greg. I guess that's to you?

A. Yes.

Q. Write up the particular disciplinary actions, right?

A. Right. He decided three day suspension was appropriate. He has requested some type of driving training. And I can't remember if I put that in the letter too. Yes. The ASP training section will contact your chain of command and provide dates for you to report to EVOC training.

Q. So that was a request from him to get additional training or was that a recommendation based on his conduct?
A. It was a recommendation based on his conduct is the way I read it. I don't remember where he ever said, hey, I need some help.
Q. In the notice it requested some type of driving training? Do you know what --
A. I don't know who requested that.
Q. All right. Go to the next one. [redacted] July 12, 2015.

(Deposition Exhibit 59 was marked.)

Q. Do you recall this one?
A. I do not.
Q. In this case it's my understanding that [redacted] was called out to a scene of a drunk guy. He made an arrest. Transported him to jail at 100 miles an hour, not seat-belted, without lights and siren. Do you see that?
A. Where do you see the lights and siren reference?
Q. I'm in the investigative summary on page 4 at the top. [redacted] violated state policies, including failure to use seatbelt and not activating emergency equipment. In the additional information it says, His highest speed reached during the transportation of an

unrestrained person in the back of his car was 111 miles an hour. Do you see that?
A. That's the investigative summary, yes.
Q. All right. What was his discipline?
A. He was suspended for one day.
Q. The next one is Exhibit 60.
(Deposition Exhibit 60 was marked.)
Q. July 23, 2015, [redacted] In this one it appears that he was getting ready to initiate a traffic stop and made a U-turn in front of somebody without his lights and siren. Do you agree to that?
A. I remember he made a U-turn.
Q. Do any of the rules of the road allow officers to make U-turns whether or not authorized without lights and siren?
A. Well, I'd say state law, they're not an emergency vehicle requiring other vehicles to yield to them if they don't have all emergency equipment activated, lights and siren.
Q. Okay.
A. I can't find where --
Q. If he had his lights and siren on it would be the other person's fault, correct?
A. No.
Q. Okay.

A. Attempted to make a U-turn. I don't see any reference to lights and siren.
Q. What was the conduct that was --
A. Failure to keep a proper lookout, make a proper turn, that kind of thing. Obviously we can hold troopers to a higher standard than state law does.
Q. Right. Go to the next one, [redacted]

(Deposition Exhibit 61 was marked.)

Q. What was the date of the incident?
A. This is 8/15/2015.
Q. All right. And in this one he had his emergency vehicle activated, but he made contact with a vehicle a couple of times, correct?
A. Well, the disciplinary letter says he failed to maintain proper speed and distance regardless of lights and siren.
Q. Okay. I think he had them on?
A. As I recall, he did.
Q. And it was improper for him to make contact with the person during the course of that?
A. That would be use of force to terminate a pursuit. That was not reviewed. That wasn't the issue. It was just the speed and distance.
Q. Again if you go to the investigative summary under

[redacted] it notes on the second paragraph he got tunnel vision during the pursuit, and realizes now that he should be more aware of his surroundings.

Do you see that?

A. Yes.

Q. Do you know if anything was done to address tunnel vision experienced by troopers on a broad scale?

A. On a broad scale based on this incident?

Q. Based on --

A. It's covered in the training. I think the testimony this morning, I may not have been paying attention, but as far as as a result of this incident, I don't know either way.

Q. Okay. [redacted]. And this will be Exhibit 62.

(Deposition Exhibit 62 was marked.)

Q. What's the date of the incident?

A. This is 9/27/15.

Q. Again he was in pursuit of a motorcycle. Did not have his lights and siren on, correct?

A. Incorrect.

Q. He did have his lights and siren on?

A. Yes.

Q. You are correct. I was looking at the wrong page. Again his sergeant testified he reviewed the video and

found it to be appropriate, correct?
A. This is one where Colonel Bryant -- yes. Colonel Bryant specifically brought into his office, and for lack of a better word, chewed and disciplined orally the chain of command in that case because they failed to recognize the violations.
Q. Was that a problem when you have a supervisor who doesn't see what the Colonel feels is a clear violation?
A. If I was the Colonel it would be.
Q. All right.
A. It was for this one.
Q. So there was nothing documented about the discipline to the chain of command?
A. I think it was unpleasant, but I don't know if it was documented or not.
Q. And [redacted] chased the motorcycle at speeds up to 150 miles an hour in moderate traffic, correct?
A. Correct.
Q. And that is the lack of due regard even though he had his lights and siren on?
A. He had his lights and siren on. But he was traveling at various times on the right-hand shoulder. And some of that moderate traffic included 18-wheelers. And if they had complied with state law then he'd probably be no longer with us.

Q. All right. The next exhibit is Exhibit 63, [redacted].

(Deposition Exhibit 63 was marked.)

Q. And this is 9/28/15?

A. Yes.

Q. And this is another U-turn wreck. Do you know if he had his lights and siren on?

A. He was terminated, not for this investigation.

Q. Just because he was a probationary officer and there was a certain period of time?

A. Well, no, it was not in connection with this ongoing accident. I don't know why this is in the file. There were two separate issues. That investigation was never completed. This was for other things including failure to comply with remedial training, specifically crash investigations, directions north and south and things like that.

Q. Well, according to this, the first page he's being investigated for colliding with another vehicle as he attempted a U-turn. Do you see that?

A. Yes. There was an open investigation, but there was no -- that is not part of why he was fired.

Q. Let's look at the termination letter. The termination letter on page 5 says, I'm not required to give you a reason for your termination. It says not

preparing accident reports. So he was let go just as a probation officer because the Colonel didn't think he was going to be a good trooper?

A. He had been given repeated remedial training and actually gone through troop school training once again on some of his basic law enforcement functions, and could not correct his mistakes.

Q. Okay.

(Deposition Exhibit 64 was marked.)

Q. This is Exhibit 64. This is [redacted] 1/1/16. This is an officer who just got in a one vehicle accident when he was in a pursuit, correct?

A. Did not properly control your speed or maintain a proper lookout.

Q. Right. He didn't get in an accident with anybody else, it was just a one car accident, correct?

A. I believe so.

Q. And he got a letter of reprimand, correct?

A. Yes.

Q. Do you know if he had his lights and siren on and what the speeds were?

A. I don't know. He was assisting in that pursuit. I remember that.

Q. It looks like video camera failure to properly record his speed, use of siren and other items.

Do you know if that was looked into or determined?
A. Say that again?
Q. Do you know if -- apparently his video didn't work in this case, correct?
A. I still don't see it.
Q. Okay.
A. I don't recall the lights and siren. I think it was the sec avoidable accident, as I recall.
Q. Okay. Go to the next one. [redacted] Exhibit 65.

(Deposition Exhibit 65 was marked.)

Q. And what's the date?
A. 1/26/16.
Q. All right. In this case he was investigated for violation of General Vehicle Policy 23, correct?
A. Yes.
Q. And he got a two day suspension?
A. Yes.
Q. And do you know whether or not he had his lights and siren activated or what the basis of the violation of General Rule 23 was?
A. The Colonel said that if you look at his notes, This pursuit lasted 15 minutes through cities and neighborhoods. 5 minutes into the chase driver was positively identified.

One of the factors in our pursuit policy on termination is if you positively ID the driver, which is fairly rare since they're stolen vehicles a lot of times. And that's one of them. And he said speeds were 90 plus in a 35. I don't see any indication of no lights and siren. But the Colonel's opinion was this pursuit should be terminated at this point.

Q. Okay.

A. The risk to the public outweighed the need for immediate apprehension of the suspect.

Q. And that's based on the totality of the circumstances, one being we know who he is?

A. Yes.

Q. Okay. If you know who he is you can go pick them up at a later time, right?

A. Correct.

Q. All right.

(Deposition Exhibit 66 was marked.)

Q. This is Exhibit 66. This is [redacted]. The date of incident 2/18/16. Do you recall this one?

A. Yeah. She was responding and had her emergency equipment activated. Apparently was going too fast. She couldn't control it and struck a vehicle in the rear.

Q. All right. But according to this, she continued

to respond to it even though the scene was secure, correct?
A. Correct.
Q. And the speeds reached up to 120 miles an hour, correct? The notes on page 7.
A. I see 114. The Colonel's notes. Traveling up to 120 miles per hour. Yeah, going by the Colonel's notes, up to 120.
Q. All right. And the basis of that was the totality of the circumstances, the scene was already secured, correct.
A. Yes. The Colonel's opinion was [redacted] used poor judgment responding to the scene after suspect was in custody and backup units were on the scene.
Q. It was not necessary?
A. Yeah, was not necessary.
Q. All right. The next one is [redacted].
(Deposition Exhibit 67 was marked.)
Q. What is the date of the incident?
A. 3/25/16.
Q. And what's the Exhibit Number?
A. 67.
Q. In this case lights and siren were not activated when he engaged in a pursuit, correct?
A. The Colonel's letter, which I wrote, was, My

review of the investigation shows that you did not activate your lights and siren when you performed a U-turn to initiate a traffic stop continuing at up to speeds of 123 miles per hour on a two lane road at night with oncoming traffic, et cetera, et cetera.

Q. Was he in pursuit?

A. Yes.

Q. He was in pursuit of a motorcycle, right?

A. Yes. And the Colonel determined that he did not use ordinary care.

Q. All right. Let's go to the Colonel's notes. In this case, this is what I was referring to before in some of his notes, when he did this one he wanted to initiate progressive discipline to be consistent across the board. Do you see that?

A. Where he says Greg or is it -- yes. Okay.

Q. Was that implemented?

A. He controls discipline and I help him on that, so yes. That's kind of what we were talking about is first time a letter of warning at least. First time accidents didn't always in the past get a letter of warning even. Without any injury or anything else letter of warning, letter of reprimand, suspension, et cetera. So that's what he's done since then and actually before, I believe.

Q. This is where he was following this pattern, but then kind of asked it to be -- he wrote down his notes about what he's going to do on it?
A. Yes.
Q. His actions previous to that were consistent with that note, correct?
A. Yes.
Q. All right. And if you look at the investigative summary in this case. If you go to his statement about 18 pages in, Mr. [redacted] statement. On the first page of his interview he was asked if he deemed it necessary to operate his vehicle without his lights and emergency equipment to catch up to it. He said, I knew if I turned on my blue lights he was either going to speed up or turn off on me. And traffic was pretty light so I didn't believe I needed to have my blue lights and siren activated until he caught up with the vehicle.

Is that your understanding of the policy what they're allowed to do?
A. Show me where?
Q. I'm looking at the bottom of the first page and the top of the second page of his interview. I'm sorry. You're looking at his -- look at his actual interview.
A. Okay. I'd have to look at the video and look at everything and see whether or not -- he was clearly

punished. I don't -- this is pretty general here.
Q. All right.
A. Like I said before, even if you have your lights and siren activated, and you don't maintain a proper lookout and conduct a U-turn, you still could be responsible for that.
Q. Well, according to this OPS investigator he says, You realize, further down on that page, that you're not an emergency vehicle when traveling at that speed, which was documented at 123, without your lights and siren on.
A. [redacted] is sort of mixing different statutes and principles. But he is not an emergency vehicle requiring vehicles to yield if he doesn't have both lights and siren activated.
Q. And he says, if you look at the policy, the investigator says, If an officer deems it necessary to operate outside any traffic law while operating an ASP vehicle, the officer must have both lights and siren. And she asked, Did you know that? And Dooley says, No, ma'am. Is that required?
A. That is in policy in vehicle use, one of those paragraphs. And he is required to know that and understand it.
Q. All right. And she also says that that's required under state law that he said he evidently wasn't aware

of, correct?
A. He said, I wasn't. I evidently wasn't aware of it.
Q. All right. And then to support his theory he says, he remembers sitting in a commission room and Major Witt said that once you turn around on a violator if you're in immediate pursuit you don't have to have your blue lights or siren activated. Do you see that?
A. I see that.
Q. Is that true, he doesn't have to have his lights and siren on?
A. That's not true. I don't believe it's true that that happened that [redacted] who could not speak for the department at that time, he could when he was Colonel, said that. But again, it would be -- if you're referring to the 27-51-204 reference in policy, I don't know if that's what the alleged conversation was about or not.
Q. Is his analysis correct without the use of lights and siren?
A. What are you talking about?
Q. That he doesn't have to have them on when he's turning around to make a stop and going 123 miles an hour?
A. At what point along that? He doesn't just

magically start going 123 miles an hour.
Q. If the speed limit is 55, at the point that he goes 56?
A. Again, in policy and the law under 27-51-204 the ability to exceed the posted speed limit, as long as you use ordinary care, with no reference to lights and siren.
Q. Okay. I'm going to skip [redacted] He just had a car wreck and I'm tired. I know you're tired.
Let's do [redacted]
(Deposition Exhibit 68 was marked.)
Q. And this happened 9/23/16, correct?
A. Yes.
Q. He was in a pursuit of a motorcycle, and he lost control and hit a fire hydrant, and describing where he almost came in contact with a number of vehicles during the pursuit, correct?
A. I believe so, yes.
Q. And he was going up to 107 miles an hour, but he did have his lights and siren on, correct?
A. Yes.
Q. But even though he had his lights and siren on, the Colonel felt like he didn't exhibit due regard, correct?

A. Yes. Too high speeds for the situation. Didn't report traffic conditions. Initially didn't report sticking the hydrant. So he was suspended for two days.
Q. Based on the totality of all those things, correct?
A. Correct.
Q. The next exhibit is going to be 69.
(Deposition Exhibit 69 was marked.)
Q. [redacted] The date of incident 10/11/16. And in this case [redacted] received a letter of reprimand when he got involved in a pursuit without running his blue lights and siren, correct?
A. Yeah. That's one of the things that the Colonel cited.
Q. Okay. And in this case there was a discussion of an email that was sent out by Lieutenant Austin on pursuits. Do you remember that?
A. No.
Q. What was the reason why he was found in violation, no lights and siren and going 136 miles an hour?
A. Well, it seems like he did do that and that was part of it. Then I don't think his vehicle -- the accident, which was not severe, was not related to no lights and siren, it was just a failure to control his vehicle. But I can't recall this one specifically.

Q. All right. Let's find this email. I've got it. This happened October 12th, this email went out October 12, 2016 from Darran Austin. And he was a lieutenant, correct, in Troop A?
A. Yes.
Q. And this is two days after the accident, correct?
A. Yeah.
Q. Is this something that just goes to his troop?
A. Yes.
Q. All right. He notes in this thing, he mentioned in the past about speeds when operating an ASP vehicle using your emergency equipment and driving the appropriate speeds for situations you are responding to. He notes, Unfortunately this is coming to the forefront again.

Do you see that at the beginning of the email?
A. Yes.
Q. All right. Is this based on a bunch of these officers misunderstanding of when they're required to use their lights and siren when responding to a call or getting engaged in a pursuit?
A. No. I think it's just a good assistant troop commander putting out some information in a reminder to the troopers in that troop.
Q. Did the Colonel put out any type of reminder after

the Braun incident?
A. Two days after?
Q. Any time.
A. Specific to that I'm not sure.
Q. And he notes in here that just because you're troopers you're not allowed to drive as fast as you want, correct?
A. Yes.
Q. It says, If you must exceed the speed limit use your lights and siren, under section 1?
A. Section 1, yes.
Q. All right.
A. Use your lights and siren, drive with ordinary care and due regard and several other things, yes, stay off your cell phone.
Q. All right. But again, the policy doesn't require you to use your lights and siren when you exceed the posted speed limit when you're trying to catch up or when you're engaging in a silent response, correct?
A. Based on the totality of the circumstances in those limited situations, yeah.
Q. All right. What are the circumstances? You always throw in the --
A. I don't know how many times I've got to make this clear. But the policy talks about immediate pursuit or

initiation of pursuit. Under the totality of the circumstances, you still have to use ordinary care. But when a silent response or catching up to that violator or that suspected criminal 27-51-204 would allow you to drive in excess of the posted speed limit, not without ordinary care, without lights and siren, for that limited purpose.

Q. That's your interpretation of the law, correct? Do you know the case that says that?

A. Again, I know you don't like to mention it, but the General Assembly cleared that up in 2017, that that is the correct interpretation.

Q. It's not. That's a different statute, correct?

A. The act amended all the statutes.

Q. All right. But if it was allowed before you wouldn't have to amend it to put it in, correct?

A. That's why it needed to be clarified.

Q. All right. But you don't agree that, at least at this time when you exceed the posted speed limit, you must use your lights and siren under either state law or the Arkansas State Police policy, correct?

A. Say that again?

Q. Under either state law in October of 2010, under state law and Arkansas State Police policy you didn't have to use your lights and siren every time you

exceeded the speed limit?

MS. MERRIT: Objection to the form of the question. Asked and answered.

A. In every single possible execution of police duty in a police vehicle?

Q. Right. Do you know if there's any policies or training with respect to what the purpose of lights and sirens are?

A. Purpose and training. Throughout the training I think that Sergeant Hoyt went over and there's discussions, for example, the citation of City of Little Rock versus Weber, that was a case that talked about the motorcycle cops, I think he failed to activate his siren, therefore he was not an emergency vehicle, and whoever he struck or struck him, there were other issues obviously, he was not an emergency vehicle without both pieces of equipment activated.

Q. Do you know whether there's any policy, training or any other type of instruction given to troopers about why lights and sirens are required to be used, not when, why, what the purpose of them are?

A. Like I said, I believe in policy in one of the sections it talks about the specific reference to the statute that talks about yielding to emergency vehicles when both lights and siren are activated. So I know in

training there's citations, City of Little Rock v. Weber, for example, where that was the issue. The officer did not have both pieces of equipment activated. The siren was not activated, therefore he was not an emergency vehicle.

Q. Okay.

A. That is trained. And I think it's in policy.

Q. I'm getting more at obviously there's a statute that requires citizens to do something upon encountering an officer deploying lights and siren, correct?

A. Correct.

Q. Is it your understanding that lights and siren, when they're used by an officer, are to provide the public with notice of an impending emergency vehicle approaching?

A. Sure. That's the purpose of lights and siren.

Q. All right. The next one is Exhibit 70. This is [redacted].

(Deposition Exhibit 70 was marked.)

Q. What's the date of this incident?

A. 12/5/2016.

Q. And was investigated for violation of the vehicle use policy, correct?

A. Among others, yes.

Q. What other ones was he in violation of, [redacted]

[redacted]

A. This one looks like we just found violations of General Section 23, vehicle use.

Q. And this is just a car wreck case where he was distracted, right?

A. Yes. But it was his third avoidable accident since 2013.

Q. And that's why he got a one day suspension, correct?

A. Yes.

Q. All right. The next one is [redacted] Date of incident 6/22/17.

(Deposition Exhibit 71 was marked.)

Q. In this case he only had his lights on at first, but then activated his emergency vehicle when he was involved in the pursuit, correct?

A. He was driving too fast in an unfamiliar area which resulted in a failure to maintain control of his vehicle. Crashed into the suspect's disabled vehicle. The second avoidable accident in three years.

Q. What was he given?

A. A letter of reprimand.

Q. All right. And that one it wasn't a lights and siren issue, it was too fast for conditions?

A. I believe it was too fast for the conditions and

being in the area that he didn't know the lay of the land driving that fast. And the fact it was the second avoidable accident.

Q. All right. [redacted] The date of incident 7/1/17.

(Deposition Exhibit 72 was marked.)

Q. This is going to be Exhibit 72. This says he was driving, he was initiating a traffic stop. He didn't have his blue lights on. Do you agree?

A. He made a U-turn without signaling in that case. The investigation shows that you did fail to ensure you could safely execute a U-turn and striking another ASP vehicle in the process.

Q. Did he need to have his lights and siren on to do a U-turn?

A. You need to safely maintain he could make a turn and activate his signal.

Q. On page 8 it says he had no blue lights, correct?

A. Are you talking about the Colonel's notes?

Q. Yes.

A. Yes.

Q. Can you make a U-turn? Are U-turns generally prohibited under the rules of the road?

A. There's some areas where they are specifically prohibited, yeah.

Q. If there's not a sign up can you do a U-turn?
A. You stumped me there because it depends. You see where they're specifically prohibited. You can't make a U-turn on the official access points otherwise. I make them every now and then.
Q. We all do. The next one is [redacted]
(Deposition Exhibit 73 was marked.)
Q. The date of the incident is 12/11/17. It's Exhibit Number 73. In this one he was responding to a call. He received a letter of reprimand. What did he do wrong?
A. Failed to negotiate a left-hand curve driving into a creek and striking a concrete bridge support. It was an avoidable accident is what it was. And it was his second one. So as we talked about that progressive discipline, regardless of any other facts, he got a letter of reprimand.
Q. Okay. And is there any indication whether he had his lights and siren on?
A. I don't think it was critical.
Q. That wasn't critical to the findings?
A. No. It wasn't a pursuit or anything. It was just he failed to negotiate a left-hand turn.
Q. He was responding to a call?
A. Could have been. I don't know if speed was an

issue. It was for him in that case.
Q. The next one is Exhibit 74.
(Deposition Exhibit 74 was marked.)
Q. This is [redacted] The date of incident 1/11/18. Do you know what this one is about?
A. It was based on a review of his prior avoidable accidents.
Q. He was in a pursuit, correct?
A. He attempted a PIT at 123 miles an hour.
Q. His highest speed was 140?
A. Yes.
Q. Do you know if his lights and siren were on?
A. I think the issue was he's not trained to do a PIT at that high rate of speed.
Q. And he got a letter of reprimand and some remedial training?
A. Yes.
(Deposition Exhibit 75 was marked.)
Q. The next one is Exhibit 75. [redacted] What's the date of incident?
A. 3/17/18.
Q. And again, this one was an attempted traffic stop where he didn't have his lights on while trying to catch up to a speeder. And he went at speeds of 113 miles an hour, correct?

A. Yes.
Q. And he ended up driving that fast 113 in the city limits of Pine Bluff, correct?
A. Yes.
Q. Did he end up crashing into anybody?
A. After he saw the suspect crash he sure did.
Q. Did he crash into the suspect?
A. No. He saw the suspect crash, proceeded and crashed himself.
Q. But he didn't crash into the suspect?
A. No.
Q. Okay. So there was a crash?
A. He struck a fire hydrant and some other stuff.
Q. Okay. And was it improper for him to be driving that fast without lights and siren?
A. In that situation, yes. Not only did he get a suspension, he was instructed to meet with ASP driving instructors.
Q. For remedial training?
A. Yes.
Q. And the next one is Number 76. [redacted]
[redacted]

(Deposition Exhibit 76 was marked.)

Q. The date of incident 5/5/18?
A. Yes.

Q. And he's attempting to catch a speeder, correct?
A. Yes.
Q. And he was making a U-turn, correct?
A. Correct, improper U-turn.
Q. Did he have his lights and siren on?
A. I don't know. At that point it was not an issue. He made his U-turn. That's the second U-turn accident he had.
Q. It says in here in the Colonel's notes he got tunnel vision waiting for speeding vehicle to pass. Do you see that?
A. Yes.
Q. Do you know if anything was -- we've had a number of these files that dealt with tunnel vision. Do you know if anything was done department-wide about dealing with tunnel vision?
A. No. And I don't think the Colonel technically, even though he's my boss, that's a correct application of tunnel vision. He was overly focused, which is sort of the same thing, on the speeder, but it wasn't a pursuit where you're engaged in high rates of speed and you got true tunnel vision. He does say that, but this was not at that point a pursuit. He failed to keep a proper lookout when he made his turn.
Q. Tunnel vision is something that occurs in all law

enforcement activities where there's an adrenaline dump, correct?

A. Yes, it can be. But sometimes it's over used in situations where it just means you're not paying attention to the right things.

Q. Okay.

MR. CLARKE: That's all I have.

MR. RAY: We'll reserve our questions.

MS. MERRIT: No questions for this witness.

(WHEREUPON, the deposition was concluded at 3:45 p.m.)

C E R T I F I C A T E

STATE OF ARKANSAS*
ss *
COUNTY OF SALINE *

I, JEFF BENNETT, Certified Court Reporter, a Notary Public in and for the aforesaid county and state, do hereby certify that the witness, GREGORY C. DOWNS, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me in machine shorthand notes and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

In accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was requested by the deponent or a party thereto.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

GIVEN UNDER MY HAND and SEAL OF OFFICE on this 27th day of November, 2018.

Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

ERRATA SHEET OF GREGORY C. DOWNS

PAGE #	LINE #	ERROR	CORRECTION & REASON

WITNESS SIGNATURE PAGE

I, GREGORY C. DOWNS, the witness, hereby certify that I have thoroughly read the transcript of my deposition taken on the 9th day of November, 2018, and have made any necessary changes or corrections to make the transcript a true and accurate accounting of my testimony given on that day.

Signature

Date

****

STATE OF *
* ss.
COUNTY OF *

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for County, .
Given under my hand and seal of office on this day of , 2018.

My commission expires .

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, JEFF BENNETT, LS No. 19, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 125 constitute a true and correct copy of the original deposition of GREGORY C. DOWNS taken on November 9, 2018.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 27th day of November, 2018.

_____
Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

From:	Kathryn Irby
To:	Jennifer Merritt; ASCC Pleadings
Cc:	"Andrew Clarke"; Paul James; Tiffany Mays O"Guinn; Cydni Arterbury; Johanna Hinkle
Subject:	Re: Braun v. Arkansas State Police, CC No. 190497 - motion for extension of time for filing
Date:	Monday, December 20, 2021 10:57:17 AM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png

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The Claims Commission will enter a formal order next week, but there is no problem with this unopposed extension. Thanks.

Kathryn Irby

Get Outlook for iOS

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Sent: Monday, December 20, 2021 10:37:16 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: Braun v. Arkansas State Police, CC No. 190497 - motion for extension of time for filing

Good morning,

Attached is an unopposed motion for extension of time for filing in the above-referenced matter.

Thank you for your assistance with regard to this matter. If the Commission should have any questions, please contact me or my paralegal, Johanna Hinkle.

Thank you and Happy Holidays,
Jennifer

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

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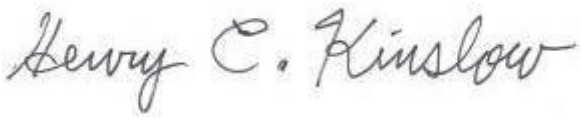
BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN	**CLAIM NO. 190497**
LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY	**CLAIM NO. 200290**
	CLAIMANTS
V.	
ARKANSAS STATE POLICE	**RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the unopposed motion filed by the Arkansas State Police seeking additional time (up to and including February 11, 2022) to respond to the pending motion for summary judgment. The Claims Commission GRANTS this unopposed motion and extends Respondent's response deadline to February 11, 2022.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: December 27, 2021

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Jennifer Merritt
Cc:	"Andrew Clarke"; Paul James; Tiffany Mays O"Guinn; Cydni Arterbury; Johanna Hinkle
Subject:	ORDER: Braun v. Arkansas State Police, CC No. 190497 - motion for extension of time for filing
Date:	Monday, December 27, 2021 10:53:00 AM
Attachments:	Braun and Perry -- order granting extension.pdf image001.png image002.png image003.png image004.png image005.png image006.png

---

See attached order entered today by the Claims Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, December 20, 2021 10:57 AM
To: Jennifer Merritt <jennifer.merritt@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: Re: Braun v. Arkansas State Police, CC No. 190497 - motion for extension of time for filing

The Claims Commission will enter a formal order next week, but there is no problem with this unopposed extension. Thanks.

Kathryn Irby

Get Outlook for iOS

From: Jennifer Merritt <jennifer.merritt@arkansasag.gov>
Sent: Monday, December 20, 2021 10:37:16 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: Braun v. Arkansas State Police, CC No. 190497 - motion for extension of time for filing

Good morning,

Attached is an unopposed motion for extension of time for filing in the above-referenced matter.

Thank you for your assistance with regard to this matter. If the Commission should have any questions, please contact me or my paralegal, Johanna Hinkle.

Thank you and Happy Holidays,
Jennifer

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov



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From: Donna Johnson
To: ASCC Pleadings
Cc: Tiffany Mays
Subject: Claim No. 200290 and Claim No. 190497
Date: Wednesday, February 9, 2022 4:55:20 PM
Attachments: Perry, Lavon Joinder.pdf

Please find attached for filing a Joinder of Claimant, Lavon Tishette Perry, In Previously Filed Claimant, Lori Braun's Motion for Partial Summary Judgment.

Should you have any questions, please do not hesitate to call.

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LAVON TISHETTE PERRY, as the Personal Representative of the Estate OF TAVON JENKINS, deceased	)	**CLAIM NO. 200290**	
LORI BRAUN, As the Administratrix of the Estate of CASSANDRA BRAUN	)	**CLAIM NO. 190497**	**CLAIMANTS**
V.	)		
STATE OF ARKANSAS, ARKANSAS STATE POLICE	)		**RESPONDENT**

JOINDER OF CLAIMANT, LAVON TISHETTE PERRY, IN PREVIOUSLY FILED CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGEMENT

COMES NOW, the Claimant, Lavon Tishette Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased, by and through her counsel of record, and joins in and adopts, pursuant to Arkansas Rule of Civil Procedure 10, Claimant Lori Braun's Motion for Summary Judgment and Brief in Support of Partial Summary Judgment filed on or about December 21, 2021 and states as follows:

1. The facts, authorities, affidavits and/or an attached Exhibits upon which the said Motion are based are cited therein (or in the accompanying brief, where applicable). Therefore, no additional authorities are necessary at this time.

2. Claimant Lavon Tishette Perry reserves the right to supplement these filings as necessary and waives no individual positron or argument by joining in these motions.

Date: 02/09/2022

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
(501) 372-6303-telephone
(501) 399-9280- facsimile

BY: /s/ Tiffany Mays O'Guinn
TIFFANY MAYS-O'GUINN, AR. Bar# 2006053
Attorney for Claimant, Lavon Tishette Perry

CERTIFICATE OF SERVICE

I, Tiffany Mays O'Guinn, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on the 9th day of February 2022.

Jennifer L. Merritt, Attorneys for Respondent Arkansas State Police
(Via email to Jennifer.Merritt@ArkansasAG.gov

Andrew C. Clarke, Esq.
(Via email to aclarke@accfirm.com)

Paul J. James, Esq.
(Via email to pjj@jamescarterlaw.com)

/s/ Tiffany Mays O'Guinn
Tiffany Mays O'Guinn

From:	Jennifer Merritt
To:	ASCC Pleadings; "Paul James"; "Andrew Clarke"; "Tiffany Mays O"Guinn"
Cc:	Kathryn Irby; Johanna Hinkle
Subject:	RE: Braun/Jenkins, Claim Nos. 190497-CC & 200290-CC - email 3 of 3
Date:	Friday, February 11, 2022 3:48:24 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png 2022-02-11 - ASP"s Resp to Perry MSJ.pdf

Good afternoon,
After sending the below emails, I was served with a joinder in the Braun motion for summary judgment by counsel for Ms. Perry that was apparently filed a couple of days ago. ASP's response in opposition is attached for filing. Thank you.

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

From: Jennifer Merritt
Sent: Friday, February 11, 2022 3:08 PM
To: 'ASCC Pleadings' <ASCCPleadings@arkansas.gov>; 'Paul James' <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: 'Kathryn Irby' <Kathryn.Irby@arkansas.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: RE: Braun/Jenkins, Claim Nos. 190497-CC & 200290-CC - email 2 of 2

Good afternoon,

Exhibits 7-12 are attached along with the brief in support.

Thanks,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

From: Jennifer Merritt
Sent: Friday, February 11, 2022 3:06 PM
To: 'ASCC Pleadings' <ASCCPleadings@arkansas.gov>; Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>
Cc: 'Kathryn Irby' <Kathryn.Irby@arkansas.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: Braun/Jenkins, Claim Nos. 190497-CC & 200290-CC - email 1 of 2

Good afternoon,

Please find attached Respondent's response in opposition to Claimant Lori Braun's motion for partial summary judgment and cross-motion for summary judgment on both the Braun and Perry claims, along with 6 supporting exhibits. I will send the other 6 exhibits and a brief in support in a second email due to file-size limitations. Please let me know if you have any questions or concerns. If you would kindly confirm receipt of both emails, I would greatly appreciate it.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov



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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

RESPONDENT'S RESPONSE IN OPPOSITION TO CLAIMANT LAVON PERRY'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Respondent Arkansas State Police, for its response in opposition to Claimant Lavon Perry's motion for partial summary judgment, states:

1. Claimant Lori Braun filed a motion for partial summary judgment on December 17, 2021.

2. Respondent filed a response in opposition to that motion on February 11, 2022.

3. After Respondent filed its response to the Braun motion, counsel for separate Claimant Lavon Perry emailed counsel for Respondent a copy of a pleading joining in Braun's motion for partial summary judgment, which counsel represented was emailed to the Claims Commission on February 9, 2022.

4. Respondent was not served with the joinder motion until the afternoon of February 11, 2022, after submitting its summary judgment response and cross-motion for summary judgment on all Claims for filing.

5. Ms. Perry's motion for partial summary judgment should be denied for the same reasons as Ms. Braun's motion, and Respondent therefore adopts and incorporates by reference its response to the Braun motion as its response to the Perry motion pursuant to Ark. R. Civ. P. 10(c).

WHEREFORE, Respondent Arkansas State Police prays that the Commission deny Claimant Lavon Perry's motion for partial summary judgment, grant the ASP's motion for summary judgment on both Claim No. 190497 and Claim No. 200290, enter an order dismissing those Claims with prejudice, and for all other relief to which it may be entitled.

Respectfully Submitted,

LESLIE RUTLEDGE
Attorney General

By: JENNIFER L. MERRITT (2002148)
Senior Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Tel: (501) 682-1319
Fax: (501) 682-2591
Email: Jennifer.Merritt@ArkansasAG.gov

Attorneys for Respondent Arkansas State Police

CERTIFICATE OF SERVICE

I, Jennifer L. Merritt, hereby certify that on this 11th day of February, 2022, I served a true and correct copy of the foregoing by electronic mail upon the following:

Arkansas State Claims Commission
ASCCPleadings@Arkansas.gov

Paul J. James
pjj@jamescarterlaw.com

Andrew C. Clarke
aclarke@cochranfirmmidsouth.com

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

/s/ Jennifer L. Merritt
Jennifer L. Merritt

From:	Jennifer Merritt
To:	ASCC Pleadings; "Paul James"; "Andrew Clarke"; "Tiffany Mays O"Guinn"
Cc:	Kathryn Irby; Johanna Hinkle
Subject:	RE: Braun/Jenkins, Claim Nos. 190497-CC & 200290-CC - email 2 of 2
Date:	Friday, February 11, 2022 3:09:40 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png 2022-02-11 - BIS ASP Resp to Pl MSJ & Cross-MSJ.pdf Exhibit 7 - Breshears Report.pdf Exhibit 8 - Accident Report.pdf Exhibit 9 - HSPD Report.pdf Exhibit 10 - Letter from Prosecuting Attorney.pdf Exhibit 11 - Bryant Depo Transcript.pdf Exhibit 12 - Kokes Memo.pdf

---

Good afternoon,

Exhibits 7-12 are attached along with the brief in support.

Thanks,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

From: Jennifer Merritt
Sent: Friday, February 11, 2022 3:06 PM
To: 'ASCC Pleadings' <ASCCPleadings@arkansas.gov>; Paul James <pjj@jamescarterlaw.com>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>
Cc: 'Kathryn Irby' <Kathryn.Irby@arkansas.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: Braun/Jenkins, Claim Nos. 190497-CC & 200290-CC - email 1 of 2

Good afternoon,

Please find attached Respondent's response in opposition to Claimant Lori Braun's motion for partial summary judgment and cross-motion for summary judgment on both the Braun and Perry claims, along with 6 supporting exhibits. I will send the other 6 exhibits and a brief in support in a second email due to file-size limitations. Please let me know if you have any questions or concerns. If you would kindly confirm receipt of both emails, I would greatly appreciate it.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

BRIEF IN SUPPORT OF RESPONDENT'S RESPONSE IN OPPOSITION TO CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Respondent Arkansas State Police ("ASP") respectfully submits this brief in support of its response in opposition to Claimant Lori Braun's motion for partial summary judgment and Respondent's cross-motion for summary judgment on both Braun's Claim as well as the Claim asserted by Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins. The Commission should enter summary judgment in favor of the ASP on both Claims because, on the undisputed facts, they are barred by the applicable law of contributory and comparative fault and for lack of proximate cause. It is undisputed that the Braun vehicle, driven by Mr. Jenkins, failed to yield the right of way to an emergency vehicle – an Arkansas State Trooper in high-speed pursuit of a suspected offender – and turned left into the path of the oncoming Trooper, causing the accident. It is undisputed that

the Trooper tried but failed to avoid the accident, while the driver of the Malibu was oblivious: he failed to yield, to apply his brakes, swerve, or to otherwise do anything to attempt to avoid the crash. Instead, he drove directly into the path of the fast-approaching Trooper. It is also undisputed that both of the occupants of the Malibu were legally intoxicated and were not wearing their seatbelts and that, as a result, they were ejected from the vehicle and died instantly upon impact. On the undisputed facts of this case, and as already determined by two federal courts, the accident would not have happened but for the negligence of the driver of the Braun vehicle in failing to yield the right of way to the approaching Trooper. Furthermore, according to Chief Medical Examiner Dr. Charles Kokes, Ms. Braun's life-threatening injuries would not have occurred if she had been wearing her seatbelt, and Mr. Jenkins's judgment and driving skills were impaired due to his intoxication. Because any alleged negligence of the Trooper and/or the ASP did not proximately cause Ms. Braun's injuries as a matter of law, the Commission should deny her motion for partial summary judgment and should instead grant the ASP's motion for summary judgment and dismiss both of these Claims with prejudice.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Trooper Brian Ray Burke. Brian Ray Burke began his employment with the ASP in January 2011. *See* Tr. of the Deposition of Brian Burke ("Burke Dep."), Ex. 1, at 14:18-20. During his 20-week troop school, Trooper Burke received extensive classroom training on safe driving practices as well as constitutional law and liabilities. *Id.* at 16:1-2, 18-21-24; Burke EVOC File, Ex. 2, at ASP-985 – 995. Burke's training file demonstrates that he

was trained on the risks of civil liability in pursuits, U.S. Supreme Court decisions, and decision-making skills during high-intensity situations. Ex. 2 at ASP-985 – 995. There is no evidence that Burke ever had any disciplinary issues while employed by the ASP. To the contrary, Burke received two letters of commendation for his job performance. Ex. 5.

Burke's 2011 Training on Emergency Vehicle Operations. As specifically relates to this claim, ASP trained Burke that, while speed limits do "not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights and is also operating an audible signal by bell," the driver of an emergency vehicle would still be responsible for "the consequence of a ***reckless disregard*** of the safety of others." Ex. 2 at ASP-985. Burke was informed that, "[u]nder 27-51-901, you must activate *both lights and siren* to be considered an emergency vehicle, requiring drivers to yield the right-of-way." *Id.* Burke was also trained that he was only permitted to operate as an emergency vehicle when in response to an "emergency call" or when "in the immediate pursuit of an actual or suspected violator of the law." *Id.* Moreover, ASP trained Burke that "[n]ot having *both* lights and siren activated and being involved in an accident while violating the traffic laws or exceeding the posted speed limit could subject you and the ASP to liability." *Id.* Numerous Supreme Court cases were discussed informing Burke of the important factors affecting an officer's civil liability. *Id.* at ASP-986 – 988. ASP also trained Burke on decision-making. *Id.* at ASP-989. ASP also provided Burke with a written EVOC Manual reiterating the information provided during training. Ex. 4.

In addition to classroom training, Burke also received field instruction on emergency vehicle operations. Trooper Burke was described as "a natural driver!" by his ASP instructor on precision maneuvering. Ex. 2 at ASP-966. Another driving instructor gave Burke high marks and praise for doing a "good job!" on other driving performance evaluations. *Id.* at ASP-967 - 968. Burke also "did well" on the Precision Immobilization Technique and was complimented for a "very good performance!" on performance driving. *Id.* at ASP-969 - 970.

Burke's 2012 & 2015 EVOC Training. In 2012, Burke completed ASP EVOC (Emergency Vehicle Operator Course) In-Service Training. *Id.* at ASP-971 – 982, 984. That training emphasized the need for good decision-making in emergency vehicle operations. *See, e.g.*, Ex. 2 at ASP-973 ("We are not Crashing ASP Units because of how we drive, rather, We are Crashing because of the Decisions that are made to put us in that situation to begin with!"). ASP recognized that it needed to focus its in-service training for incumbent Troopers on decision-making skills. *Id.* at ASP-973 – 974. ASP showed the attendees, including Burke, a video of a trooper who made poor decisions that led to tragic consequences and urged them to consider the consequences of their actions and whether their driving was legally defensible, morally defensible, and whether it was worth it as it relates to the Troopers' careers, families, and their own psychological well-being. *Id.* at ASP-974. ASP instructed Burke to reduce unnecessary risks, including specifically the increased risks inherent in driving at excessive speeds. *Id.* at ASP-975. The training also discussed a video of an incident involving an Illinois state trooper as an example of how

speeds in excess of 120 MPG affected the trooper's reaction time and led to catastrophic consequences. *Id.* at ASP-975 – 976.

During the 2012 in-service training, ASP informed Burke of recent ASP policy changes regarding pursuits. *Id.* at ASP-979.[1] ASP reiterated that, "[w]hen involved in a pursuit the officer has the duty to drive his/her emergency vehicle with due regard for the safety of all persons using the highway." *Id.* Importantly, ASP trained Burke once again that "[e]mergency lighting equipment and siren ***shall be in operation throughout the pursuit***." *Id.* (emphasis added). In addition, Burke was instructed that, although he should exercise discretion in deciding whether to initiate or terminate a pursuit, he should consider the totality of the circumstances, including the nature of the offense, the time of day, an evaluation of hazardous conditions, geography, and the actions of the fleeing driver. *Id.* at ASP-981. Factors ASP trained Burke to consider when determining whether to terminate a pursuit include: (1) whether the risk to the public outweighs the need for immediate apprehension of the suspect, and (2) whether the officer loses visual contact with the fleeing vehicle for an extended period of time. *Id.*

ASP closely monitored its Troopers' pursuit and use-of-force practices. The in-service training confirmed that all officers must complete a Pursuit Report Form after "all pursuits," which would then be reviewed by the officer's immediate supervisor and forwarded through the chain of command to the officer's Division Commander and then filed in Internal Affairs. *Id.* at ASP-982. Moreover, when a pursuit involves the use of

[1] The font on the PowerPoint slides relating to ASP policy changes on page ASP-979 is very small, but the text is clearly legible if the image size is increased to 200% or 300% within Adobe Acrobat.

force, the involved officers and their immediate supervisors were informed that they must also complete the necessary investigation and documentation required by ASP's Use of Force policy. *Id.* The Highway Patrol Division Commander was to be immediately notified of any pursuit that results in death, personal injury, or damage to property. *Id.* And, if the Commander believed that a specific policy was violated, the Commander was required to commence an investigation. *Id.*

In 2015, Burke received additional EVOC training that was "very similar" to the 2012 in-service, as well. *Id.* at ASP-1010; Tr. of the Deposition of Ben Hoyt, Ex. 3, at 73:9-76:24.

The Suspect. On the evening of October 10, 2016, Trooper Burke was working a reported hit-and-run accident when an SUV passed him heading towards the City of Hot Springs, Arkansas, traveling at what appeared to be a high rate of speed with flashing hazard lights. Affidavit of Brian Ray Burke ("Burke Aff."), Ex. 6, ¶ 4. Based on his training and experience, Trooper Burke believed that the SUV was traveling approximately 90 to 95 MPH and presented a serious risk to the motoring public. *Id.* ¶¶ 5, 7. Trooper Burke decided to try and stop the SUV and pursued it through the City of Hot Springs, sometimes traveling up to 113 MPH. *Id.* ¶ 8; Breshears Report, Ex. 7, at 2. Burke believed he was responding to a dangerous situation and that he needed to drive fast to catch up to the SUV. Ex. 6 ¶ 9.

The Accident. During his pursuit of the speeding SUV, Burke was traveling eastbound on Airport Road/US 70 approaching the intersection of Airport and Kleinshore Road at a speed of approximately 113 MPH. Ex. 7 at 2; Accident Report, Ex. 8, at 2. The

Braun vehicle was traveling westbound in the center turn lane of Airport Road/US 70 turning left onto Kleinshore Road. Ex. 8 at 2. **The accident occurred when the Braun vehicle started its left turn and drove directly into Burke's lane of travel.** Ex. 6 ¶ 10; Ex. 8 at 2; *see also* Trooper DashCam Video, which is attached to Braun's motion for partial summary judgment as Ex. 1. Burke's patrol car crashed into the Braun vehicle. Ex. 6 ¶ 10. Black box data proves that Burke perceived the Braun vehicle .8 seconds before impact and applied the brakes, but the vehicle could not stop before the impact. Ex. 7 at 2. "Failure to wear the seatbelts resulted in both subjects being ejected from the [Braun] vehicle, and ultimately resulted in their deaths." Ex. 7 at 2. Trooper Burke was seriously injured in the crash and never came back to work. Burke Dep., Ex. 1, at 61:16-62.25. By March of 2017, it became clear to Burke that he was never going to be able to return to work due to his injuries, and he applied for medical retirement. *Id.* at 63:1-64:4. That request was granted by the Arkansas State Police Retirement Board, which is a separate entity from ASP over which ASP has no control. Tr. of Deposition of Colonel Bill Bryant ("Bryant Dep."), Ex. 11, at 139:15-21.

Accident Investigations. The Hot Springs Police Department ("HSPD") investigated the crash. According to blood alcohol tests performed by the Arkansas State Crime Lab, both occupants of the Braun vehicle were legally intoxicated at the time of the accident. Ex. 9 at 21. Cassandra Braun had a blood alcohol level of .12, and Tavon Jenkins had a blood alcohol level of .10. *Id.* DNA analysis established that Mr. Jenkins was the driver of the Braun vehicle, and Ms. Braun was the passenger. *Id.* The HSPD investigation also revealed that Trooper Burke made an effort to change lanes to avoid the

crash. *Id.* at 22. **Tavon Jenkins, the driver of the Braun vehicle, however, made no attempt to avoid the crash.** *Id.* HSPD personnel met with Prosecutor Terri Harris, who spent several days reviewing the case file and all relevant information. *Id.* at 24. After her review, Prosecutor Harris declined to pursue criminal charges against Trooper Burke. *Id.* Prosecutor Harris described this as a "tragic accident" that was best resolved in the civil courts. Ex. 10.

Investigation by Chief Medical Examiner. On June 6, 2019, Chief Medical Examiner Dr. Charles P. Kokes, MD issued a memorandum regarding this accident. Ex. 12. Dr. Kokes reviewed the Medical Examiner case files, photographs of the deceased taken at the Arkansas State Crime Lab, pictures from the accident scene, additional photographs of the Malibu taken at an impound lot, investigative reports from the ASP and HSPD, and a report prepared by Claimant's forensic pathology consultant, Dr. Kris Sperry. Ex. 12 at 1. While Dr. Kokes agrees with Dr. Sperry that Cassandra Braun died of severe crushing injuries involving her head and neck as a result of the Malibu colliding with the ASP Charger, he disagrees that Ms. Braun's fatal injuries were necessarily sustained solely from intrusion of the passenger's compartment during the collision. *Id.* Dr. Kokes also disagrees with Dr. Sperry's ultimate conclusion that Ms. Braun's death would have been inevitable even if she had been wearing her shoulder and lap harness. *Id.* at 1-2.

As Dr. Kokes explains in his memo, the ASP vehicle was traveling eastbound on Airport Road at 98 miles/hour when the collision took place. *Id.* at 2. Mr. Jenkins had the Malibu in the center turn lane pointed westbound when he attempted to make a left-hand turn across the eastbound lanes. *Id.* The ASP vehicle then impacted the front passenger

side of the Malibu at about a 136 degree angle. *Id.* Following the collision, the ASP vehicle deviated slightly to the right, jumped the roadside curb, and traveled more or less in a straight line until it came to rest. *Id.* The force of the impact propelled the Malibu north and east across the center turn lane and both westbound lanes, coming to rest over the curb on the outside lane of Airport Road. *Id.* Mr. Jenkins was ejected from the vehicle just before it came to rest. *Id.* Ms. Braun, however, was ejected from the vehicle just after the collision. *Id.*

According to Dr. Kokes, given the speed of the ASP cruiser and the angle of impact, the collision would have accelerated both occupants of the Malibu forward and to the right. *Id.* Dr. Sperry attributed all of Ms. Braun's severe head and neck trauma to her unrestrained body striking the intruding parts of the vehicle. *Id.* Dr. Kokes agrees that some of her injuries are consistent with having been sustained in this manner, but he observes, consistent with common sense, that if a shoulder lap/belt had been in use, her head and neck area would not have struck the intrusion with as much force. *Id.* This, in turn, would have resulted in less injury to the head and neck area, with an increased likelihood of survival. *Id.*

Dr. Kokes also explains that the forensic evidence shows that Ms. Braun's head was crushed between the Malibu and the ASP Charger upon a secondary impact of the two vehicles. He explains that photos of the Malibu show the front passenger side door was sprung open as a result of the primary collision. *Id.* When Ms. Braun was propelled forward and to the right upon impact, "the process of being ejected had started and her head would have been in the area of the doorway." *Id.* This is troubling because, as Dr.

Kokes explains in his memo, the primary collision caused the front end of the Malibu to violently rotate toward the east. *Id.* at 3. The rotation and proximity of the Malibu to the Trooper cruiser caused a secondary impact of the two vehicles involving the rear passenger end of the Malibu and the rear driver's side of the cruiser. *Id.* As the Malibu rotated from the initial collision, the cruiser likely struck the sprung front passenger door. *Id.* Dr. Kokes explains that "the massive head trauma demonstrated by x-ray could have been produced by crushing forces between the door and the car frame" if Ms. Braun's head was in the vehicle's doorway when the vehicular rotation took place, which is consistent with her injuries. *Id.* Dr. Kokes explains that "[t]he fact that her body was found close to the point where the secondary impact took place does indicate she was being ejected in the moments between the initial impact and the secondary collision." *Id.* Dr. Kokes concludes, "Had she been using her shoulder and lap harness, it is not likely she would have sustained the type and severity of injuries that were documented at her examination." *Id.* In other words, in his opinion, her fatal injuries were likely caused by her failure to wear a seat belt.

Dr. Kokes also confirms that both Ms. Braun and Mr. Jenkins had been consuming ethanol (alcohol) prior to death. Mr. Jenkins's blood ethanol concentration was .105g%. *Id.* Dr. Kokes explains that, "[a]t this level, there is impairment of judgment, slowing of reaction time, and some loss of coordination, all of which can impair safe operation of a motor vehicle." *Id.* "These factors could have affected his decision to operate the motor vehicle and initiate the left hand turn; they also could have impaired his ability to observe the oncoming police vehicle, estimate its speed, and take proper evasive actions." *Id.*

Colonel Bill Bryant. Colonel Bill Bryant is the Director of the Arkansas State Police and has served in that capacity since January 12, 2015. Bryant Dep., Ex. 11, at 12:22-23. With over 40 years of law enforcement experience, Colonel Bryant understands how important it is for ASP to properly train its officers. *Id.* at 23:16-24:2. As Director, Colonel Bryant instituted annual in-service training, which was not done yearly in the past. *Id.* at 22:19-21. At the time of his deposition, Colonel Bryant explained that ASP has had driver training during three of the four years that Colonel Bryant has been director of ASP. *Id.* at 99:14-24. Colonel Bryant has personally addressed every commissioned officer in the ASP on several occasions about the need to use blue lights and sirens whenever they exceed the speed limit. *Id.* at 72:14-16. Colonel Bryant told every ASP officer that if they exceed the speed limit, they must use their lights and siren. *Id.* at 72:18-19. He "made it clear coming from the colonel of the State Police that you are going to use your lights and siren." *Id.* at 73:4-8. Colonel Bryant also emphasized that all Troopers must use ordinary care when driving. *Id.* at 72:19-24. It is undisputed that Burke attended these in-service trainings and was aware of the Colonel's statements. *Id.* at 130:16-19. Colonel Bryant also enforces these driving rules whenever ASP is aware of a violation. *Id.* at 89:17-22. Supervisors also review three events per month for each trooper and address any issues that the review uncovers. *Id.* at 90:5-7.

Colonel Bryant reviewed the video of the Braun accident and concluded that Burke failed to use ordinary care and drove in a reckless, negligent manner. *Id.* at 142:25-143:14. Colonel Bryant testified he would have terminated Trooper Burke if he had ever come back to work. *Id.* at 142:14-143:22. But Burke was on workman's compensation leave after the

accident and never returned to participate in the disciplinary process. *Id.* at 139:4-143:33. Burke had due process rights under ASP's administrative procedures and could not be terminated under these circumstances. *Id.* Colonel Bryant had no jurisdiction over Burke's medical retirement. *Id.* at 139:17-18.

PROCEDURAL BACKGROUND

The Complaints. Claimant Lori Braun, as Administratrix of the Estate of Cassandra Braun, filed a federal lawsuit on May 18, 2018, seeking to recover compensatory and punitive damages purportedly caused when former Arkansas State Police Trooper Brian Ray Burke allegedly drove his patrol car at excessive speeds, without his blue lights or siren activated, and crashed into a car in which Cassandra Braun was a passenger, killing her. *See Lori Braun, Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun v. Trooper Brian Ray Burke and Colonel Bill Bryant*, U.S. District Court, E.D. of Ark., No. 4:18-cv-334-BRW (Doc. 1). Braun filed an Amended Complaint on June 5, 2018. (*Id.* Doc. 2). In her Amended Complaint, Braun alleged that Trooper Burke violated Cassandra Braun's Fourth Amendment and substantive due process rights and that Colonel Bryant violated Cassandra Braun's substantive due process rights "by using his position as a final policymaker with authority to allow troopers to drive patrol vehicles at a high rate of speed when there was no underlying emergency, failing to train, and failing to impose necessary discipline (all of which illustrate his unconstitutional customs which both ratified and approved of the plainly unconstitutional conduct of Defendant Trooper Burke)." Am.

Compl. ¶ 3. Braun maintained that Colonel Bryant "has been deliberately indifferent to his affirmative duty to not be deliberately indifferent to [] necessary training and supervisory obligations." Am. Compl. ¶ 126. Plaintiff sued Colonel Bryant in his individual capacity under 42 U.S.C. § 1983 "and applicable state law per 42 U.S.C. Section 1988." Am. Compl. ¶¶ 8, 27, 144. Plaintiff also alleged that Colonel Bryant was personally liable for the alleged Fourth Amendment violation committed by Trooper Burke. Am. Compl. ¶ 134. The Amended Complaint appeared to include official capacity claims against Colonel Bryant, as well. *See* Caption, Am. Compl. Braun sought to recover compensatory damages, punitive damages, a declaratory judgment, injunctive relief, attorneys' fees, and costs. Am. Compl. ¶ 147.

Colonel Bryant filed a motion to dismiss on June 12, 2018. (Doc. 8-1). Colonel Bryant argued that the official-capacity claims asserted against him were barred by the Eleventh Amendment and that qualified and/or statutory immunity barred the individual-capacity claims. *Id.* On July 25, 2018, the Court entered an order denying the motion without prejudice. (Doc. 24). The Court determined that "there are material facts in dispute that prevent dismissal" and that "Plaintiff has a right to develop the record." *Id.* The parties engaged in exhaustive discovery after the denial of the defendants' motions to dismiss. ASP produced approximately 20 boxes of documents pertaining to Trooper pursuits and uses of force and related internal affairs investigations. The parties took numerous depositions and exchanged expert reports.

The summary-judgment motions. On August 1, 2019, Colonel Bryant and Trooper Burke filed motions for summary judgment in the federal case, arguing that, on the

undisputed facts, they were entitled to sovereign, qualified, and statutory immunity from suit on Braun's federal claims, and that any state-law claims alluded to in Braun's federal complaint were barred by statutory immunity. (Docs. 54, 58). Braun also filed a motion for partial summary judgment regarding causation in the federal lawsuit arguing, as she does here, that "the Malibu would have cleared the intersection had Trooper Burke been traveling the 45 miles per hour speed limit or 15 miles per hour over the 45 miles per hour speed limit" according to plaintiff's expert. (Doc. 51 at 1-2). Braun also moved for partial summary judgment "with respect to the fact that it is undisputed that Defendant Burke was not responding to an emergency and, therefore, was not performing a discretionary law enforcement function by driving at excessive speeds in violation of the speed limits without utilizing his lights and sirens." (*Id.* at 2). Finally, as relevant here, Braun argued that "Defendant Bryant's policy of allowing officers to exceed the speed limit in non-emergency situations without activating emergency rotating blue lights and siren is unconstitutional as a matter of law." (*Id.*) Voluminous evidence was submitted by the parties in support of their respective positions.

The summary-judgment order. On August 30, 2019, the district court entered an order granting the defendants' motions for summary judgment and denying Braun's motion. (Doc. 90). In its order, the district court found that Burke "pursued the speeding SUV in his patrol car" after observing it during the hit-and-run stop and that the crash occurred when the Malibu attempted to make a left-hand turn in front of Trooper Burke. *Id.* The district court rejected Braun's argument that Burke's "driving in violation of the law in a non-emergency situation without lights and sirens" warranted a stricter standard of

review because, according to the Eighth Circuit Court of Appeals, "'the intent-to-harm standard . . . applies to all § 1983 substantive due process claims based upon the conduct of public officials engaged in a high-speed automobile chase aimed at apprehending a suspected offender,' regardless of whether the chase conditions arguably afforded pursuing officers time to deliberate." Doc. 90 at 3-4 (quoting *Terrell v. Larson*, 396 F.3d 975, 977 (8th Cir. 2001) (emphasis in original)).

The district court further reasoned that the Eighth Circuit had already rejected an argument nearly identical to Braun's that the objective nature of the emergency controls the level of scrutiny to be applied. The court explained that, because "substantive due process liability turns on the intent of the government actor," "the fact that the situation at [issue] was not as serious as those presented in [other cases], or that it might not qualify as an 'emergency' under the WMPD Policy and Procedure manual, is not determinative of the appropriate level of scrutiny." *Id.* at 4 (quoting *Sitzes v. City of W. Memphis, Ark.*, 606 F.3d 461, 468 (8th Cir. 2010)). Because the only evidence Braun presented to question Burke's subjective characterization of the situation as an emergency was the fact that he spent nearly a minute wrapping up with the hit-and-run before he walked, rather than ran, to his patrol car to pursue the SUV, the federal district court found that Braun was "unable to establish that Trooper Burke's subjective belief '[was] so preposterous as to reflect bad faith.'" *Id.* at 4-5 (quoting *Sitzes*, 606 F.3d at 469). The district court thus held that the intent-to-harm standard applies and that, because there was no evidence that Trooper Burke intended to harm the occupants of the Braun vehicle, he was entitled to summary judgment on Braun's Fourth Amendment claim. *Id.* at 5. And because Braun could not establish an

underlying constitutional violation as to Burke, the district court found that the claims asserted against Colonel Bryant in his official and individual capacities must also be dismissed. *Id.* (citing *White v. Jackson*, 865 F.3d 1064, 1076 (8th Cir. 2017)). The court therefore entered judgment against Braun and in favor of Bryant and Burke. (Doc. 91).

The appeals. Braun appealed the order and judgment against her to the U.S. Court of Appeals for the Eighth Circuit, which affirmed in a unanimous decision by a three-judge panel. *Braun v. Burke*, 983 F.3d 999 (8th Cir. 2020). In its order, the Eighth Circuit confirmed that Burke was in "high speed police pursuit of a speeding vehicle" when "Cassandra Braun's car turned left, entering Burke's lane." *Id.* at 1001. "Although Trooper Burke tried to stop his car, he was unable." *Id.* at 1001-02. Because the Trooper "was pursuing an SUV traveling at night at a high speed with its hazard lights flashing" at nearly 100 miles per hour, which the Trooper believed presented an "emergently dangerous" situation that "posed a serious risk to the motoring public," the Eighth Circuit credited his testimony that he believed he was responding to an emergency and applied the intent-to-harm standard of substantive due process liability. *Id.* at 1002-03. And because Braun did not even argue, much less present any evidence that Trooper Burke intended to harm anyone, the Eighth Circuit found that the district court correctly granted summary judgment in favor of Trooper Burke on Braun's substantive due process claim because she failed to establish a constitutional violation. *Id.* at 1003. Similarly, because Braun's failure-to-train-or-supervise claim against Colonel Bryant required an underlying constitutional violation by his subordinate, the appellate court affirmed the district court's grant of summary judgment to Colonel Bryant, concluding that "[b]ecause Braun's claim

against Trooper Burke fails, so does her claim against Director Bryant." *Id.* Braun asked the U.S. Supreme Court to hear the case, but her petition for a writ of certiorari was denied. *Braun v. Burke*, 142 S. Ct. 215 (2021).

The Claims Commission Claims. On October 19, 2018, Lori Braun of Fort Myers, Florida, filed a claim before the State Claims Commission seeking $10 million in damages for Trooper Burkes's alleged negligence in driving his Trooper unit in the manner he did during his high-speed pursuit. *See* Claim Ex. B. Braun alleges that Burke was driving his patrol car in a negligent and reckless manner within the course and scope of his employment for the ASP and that, as such, his actions are imputed to Respondent under the doctrine of respondeat superior and vicarious liability. *Id.* Braun also alleges that the ASP is guilty of institutional negligence for failing to properly train and supervise troopers like Burke and to maintain and enforce safe driving practices. *Id.* On September 20, 2019, Lavon Perry of Sunrise, Florida, filed a similar Claim against Respondent seeking in excess of $100,000 in damages as the Personal Representative of the Estate of Tavon Jenkins, Deceased. The Claims were held in abeyance pending the final resolution of Braun's federal lawsuit. Upon the Supreme Court's denial of her writ petition, the federal lawsuit was finally resolved in ASP's favor. On or about December 17, 2021, Braun filed a motion for partial summary judgment on the issue of causation before this Commission. This response and cross-motion for summary judgment on both Claims follows.

STANDARD OF REVIEW

Pursuant to Claims Commission Rule 8.1, the Arkansas Rules of Civil Procedure govern summary judgment proceedings before the Commission. Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion." Ark. R. Civ. P. 56 (c)(2). Summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to summary judgment as a matter of law. *Wilcox v. Wooley*, 2015 Ark. App. 56, 454 S.W. 3d 792 (quoting *Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc.*, 365 Ark. 573, 575—76, 231 S.W. 3d 720 (2006)). The purpose of summary judgment is not to try the issues, but to determine whether there are any issues to be tried. *Id*. Once the moving party has established a *prima facie* entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id*.

As the federal courts, which have a similar summary-judgment rule, have explained, a genuine dispute of material fact exists only if the evidence is sufficient to allow a reasonable jury to return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Dulany v. Carnahan*, 132 F.3d 1234, 1237 (8th Cir. 1997) (quoting *Anderson,* 477 U.S. at 248). "A mere scintilla of evidence is insufficient to defeat

summary judgment, and if a nonmoving party who has the burden of persuasion at trial does not present sufficient evidence as to any element of the cause of action, then summary judgment is appropriate." *Brunsting v. Lusten Mountains Corp.*, 601 F.3d 813, 820 (8th Cir. 2010) (internal quotation marks and citations omitted).

ARGUMENT

There is no need for a hearing in this matter because the material facts underlying Claimants' claims are not genuinely disputed and the undisputed facts show that the claims asserted by both the estates of Lori Braun and Tavon Jenkins fail as a matter of law. As detailed below, the negligence claims against the ASP are barred by the doctrines of comparative fault and intervening cause. As a result, the Commission should enter summary judgment in favor of the ASP and dismiss the Claims as asserted against it with prejudice.

According to Arkansas law, in all actions for damages for personal injuries or wrongful death in which recovery is predicated upon fault, the fault of all of the parties is compared, and if a person seeking damages is 50% or more at fault, then that person is not entitled to damages. *See* Ark. Code Ann. §16-64-122(b)(2). The word "fault" as used in the statute "includes any act, omission, conduct, risk assumed, breach of warranty, or breach of any legal duty which is a proximate cause of the any damages sustained by any party." Ark. Code Ann. § 16-64-122(c). Here, given the undisputed facts surrounding the accident, Lori Braun is not entitled to damages because no reasonable finder of fact could find that Cassandra Braun is less than 50% at fault for her own injuries. Ms. Braun

assumed the risk of riding in a car with a drunk driver, and she did so without wearing her seat belt. She thus assumed the risk of any injuries she may suffer as a result of any accident. The Chief Medical Examiner's report demonstrates that it is more likely than not that she would not have suffered life-threatening injuries had she been wearing her seat belt. Because she is at least 50% at fault, Ms. Braun's claim fails as a matter of law and must be rejected. *See* Ark. Code Ann. §16-64-122(b)(2).

Moreover, as discussed in more detail below, Ms. Braun's Claim fails for lack of proximate cause. The accident would not have happened at all but for the intervening negligence of Cassandra Braun's friend, Tavon Jenkins, who was driving the Malibu and attempted an illegal left turn straight into the path of the oncoming Trooper. This bars Ms. Braun's recovery entirely. *See Barriga v. Ark. & Mo. R. Co.*, 79 Ark. App. 358, 87 S.W.3d 808 (2002) (affirming summary judgment to defendant railroad in negligence action brought by injured motorist and his wife after finding that the proximate cause of collision between automobile and train was motorist's failure to stop before reaching tracks rather than the presence of parked boxcars close to intersection on side track). "Proximate cause" is defined, for negligence purposes, "as that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." *Barriga*, 79 Ark. App. at 361, 87 S.W.3d at 810. Proximate cause is a question of law appropriate for resolution on summary judgment if reasonable minds could not differ regarding the causal connection between the negligence of the defendant and the damage to the plaintiff. *Id.* Here, reasonable minds cannot differ on the issue of proximate causation because, as the Eighth Circuit has already affirmed, the

accident would not have happened but for Mr. Jenkins's conduct in attempting the illegal left turn. As in *Barriga*, this Commission should conclude that reasonable minds could not differ that the proximate cause of the collision was Jenkins's failure to yield the right of way to the Trooper despite having a statutory duty to do so.

Similarly, on the undisputed facts, reasonable minds cannot differ that Tavon Jenkins is *at least* 50% at fault for his own injuries. He chose to drive while legally intoxicated and without wearing his seatbelt. He then attempted to make a left turn into the path of an oncoming State Trooper, who was in active high-speed pursuit of an alleged offender. This was in violation of Arkansas state law, which required him to yield the right of way to the oncoming Trooper. *See* Ark. Code Ann. § 27-51-502 ("The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard."). Black box data from the Malibu shows that Mr. Jenkins did not apply his brakes or attempt to avoid the collision in any way. The accident was, to put it plainly, entirely his fault, rendering his actions the sole proximate cause of the collision. It would not have occurred but for his tragic choice to attempt a left turn in front of the Trooper. Thus, for both of these reasons, the Commission should enter summary judgment in favor of the ASP on Ms. Perry's negligence claim, as well.

CONCLUSION

On the undisputed facts, the Claims against the ASP arising out of the October 10, 2016, collision between a 2016 Dodge Charger driven by ASP Trooper Burke and a 2011 Chevrolet Malibu driven by Tavon Jenkins, in which Cassandra Braun was a passenger, are barred by the doctrine of comparative fault and for lack of proximate cause. The Commission should deny Claimant Lori Braun's motion for partial summary judgment and instead enter summary judgment in favor of the ASP with regard to both Claim No. 190497 and Claim No. 200290.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jennifer L. Merritt, hereby certify that on this 11th day of February, 2022, I served a true and correct copy of the foregoing by electronic mail upon the following:

Arkansas State Claims Commission
ASCCPleadings@Arkansas.gov

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/s/ Jennifer L. Merritt
Jennifer L. Merritt

LITTLE ROCK POLICE DEPARTMENT

501-371-4605
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700 W. Markham Street
Little Rock, AR
72201

December 10, 2016

Officer Phillip DeFoor
Hot Springs Police Department
641 Malvern Ave,
Hot Springs National Park, AR 71901

Dear Officer DeFoor,

I was contacted by your department on October 12, 2016 to assist you with a crash data download of two vehicles that were involved in a fatal crash on October 10, 2016 (Incident number [redacted].

On October 18, 2016 I arrived at your department and we traveled to the airport in Hot Springs. The two vehicles were secured in an airplane hanger, and were in the same condition that you recovered them in at the collision scene. Both vehicles were completely disabled and unable to be driven. Due to the damage of the vehicles I requested that we remove the Air Bag Control Modules (ACM) of both vehicles. A search warrant was obtained for both vehicles and signed by a magistrate prior to downloading the data.

The ACM in the 2016 Dodge Charger was in the center console near the dash of the vehicle, and could be seen without removing much of the interior. The ACM was undamaged and was removed with very little effort. I photographed the ACM before and after (see photo 1 and 2).

The ACM in the 2011 Chevrolet Malibu was in the center console just in front of the front seats. The ACM was also visible, and was not damaged. I removed it with minimal effort. This ACM was also photographed during the process (see photo 3 and 4).

We then transported the ACMs to your office where I proceeded to download the data in both modules. Once the data was secured I converted it to a PDF file and I was able to read the information.

The data in the 2016 Dodge Charger was complete and contained the following information.

1. The vehicle was involved in a deployed event. This means that the collision caused the airbag(s) to deploy, and 43 pages of data were downloaded.
2. The vehicle had a sole occupant and that driver did not have a seatbelt on (confirmed by page 6 of 43). The lack of a front seat passenger can be

confirmed by the data on page 5 of 43 when it explains that the seatbelt pretensioner did not deploy for the passenger side.

3. This was the only collision that this vehicle was in, and this can be confirmed by the Ignition cycle count. The count shows that the vehicle was started 693 times, and at 694 is when this download occurred (pages 5-6 out of 43).

4. This vehicle has 2 events recorded. The first one was caused by the initial impact with the other vehicle (see pages 19-31), and the second (8-18) was caused during a "slap" of the two vehicles after the initial impact. The vehicles speed was 113 mph five seconds before impact, and 98 mph at impact with the other vehicle (page 28).

5. The brakes are either on or off in the data. The driver perceived the other vehicle at .8 seconds before the impact, and at 143 feet per second the vehicle could not stop before impact. The driver applied the brakes and held them until the vehicle ground to a halt. This is evident in the data and by the injury the driver sustained during the collision.

6. The steering input data shows where the steering wheel is in relation to the front of the vehicle. In this case the steering shows + or -. The data is in degrees and it is out of 360. The data will show the positive numbers toward the driver's side and the negative toward the passenger side. The driver saw the other vehicle at 1 second before impact and applied the brake. In addition the driver appears to have been in a slight right hand curve, or changing lanes. After impact the driver attempted to turn into the slide that the vehicle was in, and turned the wheel toward the driver's door.

The data in the 2011 Chevrolet Malibu was completed and contained the following information.

1. The vehicle was involved in a deployed event. This means that collision caused the airbag(s) to deploy, and 10 pages of data were downloaded.

2. The vehicle had two occupants and neither had a seatbelt on during the collision(see page 5). However, nothing in the data can determine who the driver or the passenger was. During the removal of the ACM I suggested that the driver's front airbag be removed and submitted to the Arkansas State Crime Lab to be tested for touch DNA. Failure to wear the seatbelts resulted in both subjects being ejected from the vehicle, and ultimately resulted in their deaths.

3. This vehicle appears to have been involved in a recorded event prior to this one. This is evident by the ignition cycle count on page 5 of 10. The count shows that this collision occurred 254 cycles after an event that was erased.

There is no way to recover this data unless it was archived by a police collision report.
This could be why the passenger side airbag failed to inflate.

4. The vehicle was going 40 mph five seconds before the collision, and 16 mph at impact.

5. The brakes were applied during the 5 second data download. This shows that the driver was slowing the vehicle, and coupled with the steering data shows that the driver was making a left hand turn.

This concludes my report, and I am available to explain any of this information.

Sincerely yours,

Ralph Breshears

Vehicle Homicide Investigator

ARKANSAS MOTOR VEHICLE CRASH REPORT

(Rev. 1/07)

Report # [redacted] Unit Assigned 139 Premises US Hwy Lat/Long District 6

Mo/Day/Yr	Day of Week	Time of Crash	No. Of Vehicle	Time Notified	Time Arrived	Hit & Run	Direction of Travel	Official Use Only
10/10/16	Mon	9:23 ☐ AM ☑ PM	2	9:23 ☐ AM ☑ PM	9:26 ☐ AM ☑ PM	☐ YES ☑ NO	V# 1 E; V# 2 W	

County	City	Not In City, But	Distance	Direction	of	City Limits	Speed Limit
GARLAND	HOT SPRINGS						45

Road / Street / Highway	Section	Log Mile	At Intersection With	Posted
Airport Road / US70	8	14.2	Kleinshore Road	☑ YES ☐ NO

Not At Intersection, But _____ Distance ☐ N ☐ S ☐ E ☐ W _____ Reference Point

VEHICLE # 1 (PEDESTRIAN # _____)

Also Complete Truck and Bus Crash Report for each qualifying vehicle. If crash involves fatality, injury, or tow.

Driver's Name (First/MI/Last Name)	Inj. Code
Brian Ray Burke	2

Address	Safety Equip	Air Bag	Eject
[redacted]	0	5	0

City	State	Zip Code
[redacted]	AR	[redacted]

Additional Information

DOB	Race	Sex	Driver's License State	Class	End
[redacted]	W	M	AR # [redacted]	D	

Test Req ☑ Blood ☐ Breath ☐ Urine ☐ Toxicology Results: negative ☐ None Req.

Vehicle Owner's Name (First/MI/Last): Arkansas State Police

Address: 1 State Police Plaza Drive

City	State	Zip Code
Little Rock	AR	72209

Vehicle Description: Year 2016 Make Dodge Model Charger Body Style 4D Color white

Vehicle Identification Number	Estimated Damage
[redacted]	$15000

Vehicle License Plate: ☐ NONE Year 2017 State AR Number K15

Trailers	#Of Units	Reg. State	Plate #
☐ YES ☑ NO			

Prior Vehicle Damage? ☐ YES ☑ NO If Yes, Describe Damage & Location

Vehicle Damage As Result Of Crash: ☑ Disabled ☐ Other Damage ☐ Functional ☐ No Damage

Towed?	Name Of Tow Service
☑ YES ☐ NO	HOLCOMB'S 767-9999

Address Vehicle Removed To: 2281 AIRPORT

City	State	Zip Code
HOT SPRINGS	AR	71913

Additional Information: State Police, self insured

Insurance Company	Policy #

EMS Notified 9:24 ☐ AM ☑ PM Transported By
EMS Arrived 9:27 ☐ AM ☑ PM
☐ No Injury / Transport LifeNet

Injured Transported To (Hospital Name /City /State): St Vincent Hospital, 300 Werner Hot Springs, AR 71913

VEHICLE # 2 (PEDESTRIAN # _____)

Also Complete Truck and Bus Crash Report for each qualifying vehicle. If crash involves fatality, injury, or tow.

Driver's Name (First/MI/Last Name)	Inj. Code
Tavon Desean Jenkins	1

Address	Safety Equip	Air Bag	Eject
[redacted]	0	5	1

City	State	Zip Code
[redacted]	AR	[redacted]

Additional Information

DOB	Race	Sex	Driver's License State	Class	End
[redacted]	B	M	FL # [redacted]	E	

Test Req ☑ Blood ☐ Breath ☐ Urine ☐ Toxicology Results: 0.1 ☐ None Req.

Vehicle Owner's Name (First/MI/Last): Cassandra Marie Braun

Address: [redacted]

City	State	Zip Code
[redacted]	FL	[redacted]

Vehicle Description: Year 2011 Make Chevrolet Model Malibu Body Style 4D Color silver

Vehicle Identification Number	Estimated Damage
[redacted]	$15000

Vehicle License Plate: ☐ NONE Year 2016 State FL Number CIRI91

Trailers	#Of Units	Reg. State	Plate #
☐ YES ☑ NO			

Prior Vehicle Damage? ☐ YES ☑ NO If Yes, Describe Damage & Location

Vehicle Damage As Result Of Crash: ☑ Disabled ☐ Other Damage ☐ Functional ☐ No Damage

Towed?	Name Of Tow Service
☑ YES ☐ NO	ERNIE'S 623-1081

Address Vehicle Removed To: 312 LINCOLN

City	State	Zip Code
HOT SPRINGS	AR	71901

Additional Information: AGENT: 239-398-4931

Insurance Company	Policy #
[redacted]	[redacted]

EMS Notified 9:24 ☐ AM ☑ PM Transported By
EMS Arrived 9:27 ☐ AM ☑ PM
☐ No Injury / Transport Coroner

Injured Transported To (Hospital Name /City /State):

Report Number [redacted]

Vehicle # 1 Point Of Initial Contact	Vehicle # 2 Point Of Initial Contact
Trailer Top > Undercarriage; Top > Undercarriage ☑	Trailer Top > Undercarriage; Top > Undercarriage ☑

Damage To Property Other Than Vehicle	Object Struck	Owner's Name	Damage Estimate
☑ Yes ☐ No	**Warning Sign**	**Arkansas State Highway Department**	$ **200.00**
		Address (City / State / Zip Code) **6300 Albert Pike Road Hot Springs, AR 71901**	Owner Notified ☑ Yes ☐ No

Witness Name(s) (First / MI / Last)	Address (City / State / Zip Code)
NONE LOCATED	

Citation(s) Issued To (First / MI / Last)	Charge(s) And Statute Number(s)	Citation Number

Narrative

V1 was traveling eastbound on Airport Road/US70 approaching the intersection of Airport and Kleinshore Road.

V2 was in the center turn lane of Airport Road/US70 turning left onto Kleinshore Road.

V2 started it's turn, pulling into the path of V1. V1 and V2 collided in the eastbound lanes of Airport Road/US70. The force of the impact ejected both occupants of V2.

Officer's Name (Rank / First / MI / Last)	Badge No.	Department	Reviewing Officer	Date Filed	Photo
OFC Phillip S De Foor	**139**	**Hot Springs Police**		**10/10/16**	☐ Yes ☑ No

0 **ATMOSPHERIC CONDITIONS**
0 Clear 4 Fog 8 Dust
1 Rain 5 High Winds 9 Mist
2 Sleet 6 Smoke 98 Other
3 Snow 7 Smog 99 Unknown

RELATION TO JUNCTION
0 Non-Junction 4 Alley 8 Crossover Lane
1 Intersection 5 Exit Lane 98 Other
2 Intersection Related 6 Entrance Lane 99 Unknown
3 Driveway 7 R R Crossing
1

2 **Light Conditions**
1 Daylight 3 Dawn 5 Dark /But Light 98 Other
2 Dark 4 Dusk 6 Dark /Light Not Functional 99 Unknown

Traffic Controls
0 No Traffic Controls 5 R R Crossing W/Gate & Signals 11 Traffic Lanes Marked
1 Flashing Beacon 6 R R Crossing W/Flashing Signals Only 12 No Passing Signal
2 Traffic Signal 7 R R Crossing W/Crossbuck Only 13 Slow Or Warning Sign
3 Slop Sign 8 School Zone 14 Officer Or Flagman
4 Yield Sign 9 Pedestrian Signal 98 Other
10 Lane Symbols Painted On Roadway 99 Unknown
11

2 **Accident Locale**
1 Rural 2 Urban 99 Unknown

Traffic Control Device
0 Device Not Present 1 Device Not Functioning 2 Device Functioning Properly 3 Device Not Functioning Properly
2

1 **Roadway Surface Conditions**
1 Dry 4 Sand 98 Other
2 Wet 5 Dirt 99 Unknown
3 Ice 6 Oil

Type Of Collision
0 Single Vehicle / Non Collision With Motor Vehicle In Transport 2 Rear End 4 Sideswipe Same Direction 6 Backing
1 Head On 3 Angle 5 Sideswipe Opp Direction 98 Other
3

Road System
1 Interstate 5 City Street
2 U S Highway 6 Frontage Road
2,5 3 State Highway 7 Ramp
4 County Road 99 Unknown

Contributing Factors

0 None	11 Improper Right Turn	22 Cutting In
1 Too Fast For Conditions	12 Improper Left Turn	23 Impeding Traffic
2 Failure To Yield	13 Improper Lane Change	24 Improperly Parked
3 Driving Without Lights	14 Improper Passing	25 Crowded Off Road
4 Failure To Dim Lights	15 Prohibited U Turn	26 Alcohol
5 Disregard Stop Sign	16 Defective Lights	27 Drugs
6 Disregard Yield Sign	17 Defective Brakes	28 Careless / Prohibited Driving
7 Disregard Traffic Signal	18 Other Detective Equipment	29 Crossing Median
8 Wrong Side Of Road	19 Improper Backing	98 Other
9 Wrong Way/One Way Traffic	20 Failure Or Improper Signal	99 Unknown
10 Following Too Close	21 Disregard Officer / Flagman	

1 V1
26 V2

2 **Road Surface**
1 Concrete 3 Gravel 98 Other
2 Asphalt 4 Dirt 99 Unknown

1 **Road Alignment**
1 Straight 2 Curve

1 **Road Profile**
1 Level 3 Hillcrest 98 Other
2 Grade 4 Sag 99 Unknown

2 **Construction / Maintenance Zone**
1 Yes 2 No

Traffic Flow
1 Not Divided 98 Other
2 Divided By Median-No Barrier 99 Unknown
3 Divided By Perm Barrier
1 4 Divided By Temp Barrier
5 One Way Traffic

Vehicle Action

1 Going Straight	9 Making Right Turn	17 Avoiding Animal	98 Other
2 Negotiating Curve	10 Making Right Turn On Red	18 Avoiding Other Object	99 Unknown
3 Slowing	11 Making Left Turn	19 Passing	
4 Stopped In Traffic Lane	12 Making Left Turn On Red	20 Changing Lanes	
5 Merging	13 Making U Turn	21 Ran Off Road-Right	
6 Enter Parked Position	14 Backing	22 Ran Off Road-Left	
7 Exiting Parked Position	15 Avoiding Vehicle	23 Crossing Median	
8 Parked	16 Avoiding Pedestrian		

1 V1
11 V2

Number Of Traffic Lanes

1	1	3	3	5	5	7	7
2	2	4	4	6	6	8	8

5

First Harmful Event Collision With / Non Collision

1 Pedestrian	9 Unknown Obj Not Fixed	17 Utility Pole	25 Concrete Barrier
2 Pedacycle	10 Overturned	18 Fence or Fence Post	26 Culvert / Ditch
3 Train	11 Fire	19 Guard Rail or Post	27 Bridge Rail
4 MV In Transport	12 Immersion	20 Bridge or Underpass	28 Other Fixed Object
5 MV In Other Roadway	13 Fell From Vehicle	21 Sign/Traffic Signal	
6 Parked Vehicle	14 Jackknifed	22 Impact Cushion Device	98 Other
7 Animal	15 Bank or Ledge	23 House/Building	99 Unknown
8 Other Object Not Fixed	16 Tree(s)	24 Light/Luminary Pole	

4 V1
4 V2

Roadway Defects
0 No Defects 6 Bumps
1 Obstruction Warning 7 Defective Shoulder
2 Obstruction No Warning 8 No Markings
0 3 Loose Materials On Surface 9 Reduced Width
4 Holes 98 Other
5 Ruts 99 Unknown

Driver Distraction
99 V1 0 Not Distracted
1 Electronic Communication Device (cell phone, pager, ecl)
2 Other Electronic Device (navigation device, palm pilot, ecl)
99 V2 3 Other Inside the Vehicle
4 Other Outside the Vehicle 99 Unknown

First Harmful Event Location
1 On Roadway 3 Median 5 Outside Traffic Way
2 Shoulder 4 Roadside 99 Unknown
1 V1
1 V2

Occupancy
0 Non-Motorist
1-999 Vehicle Number Of Occupant

Position In/On Veh.
10
10 | x | 2 | 3 | 10
| 4 | 5 | 6 |
| 7 | 8 | 9 |
10
10 Riding Or Hanging Outside
11 Bed Of Pickup
12 Trailing Unit
13 Sleeper Section
98 Other Enclosed 99 Unknown

Injury Code
1 Fatal Injury
2 Incapacitating Injury
3 Non-Incapacitating Injury
4 Possible Injury
5 No Injury/Property Damage Only

Fire Occurrence
0 No Fire Occurrence 1 Fire Occurrence
1

Driver Vision Obscured
0 Not Obscured 5 Building 11 Dirty Windshield
1 Rain/Snow/Sleet On Windshield 6 Billboard 12 Obscured By Vehicle Load
2 Fog 7 Trees/Shrub/ Ecl 13 Hillcrest
3 Sunlight 8 Parked Vehicle(s) 98 Other
4 Headlights 9 Moving Vehicle(s) 99 Unknown
10 Broken Windshield
99 V1
99 V2

Vehicle Defects
0 No Defects 3 Defective Steering 6 Windshield/Mirrors
1 Defective Lights 4 Worn/Slick Tires 98 Other
2 Defective Brakes 5 Motor Trouble 99 Unknown
0 V1
0 V2

Safety Equipment Used
0 None Used 7 Helmet
1 Shoulder Belt 8 Helmet W/Face Shield
2 Lap Belt 9 Eye Protection
3 Lap & Shoulder Belt 98 Other
4 Child Restraint 99 Unknown

Air Bag
0 Not Applicable
5 Deployed Air Bag
6 No Air Bag Deployment

Ejection From Vehicle
0 Not Ejected
1 Totally Ejected
2 Partially Ejected
99 Unknown

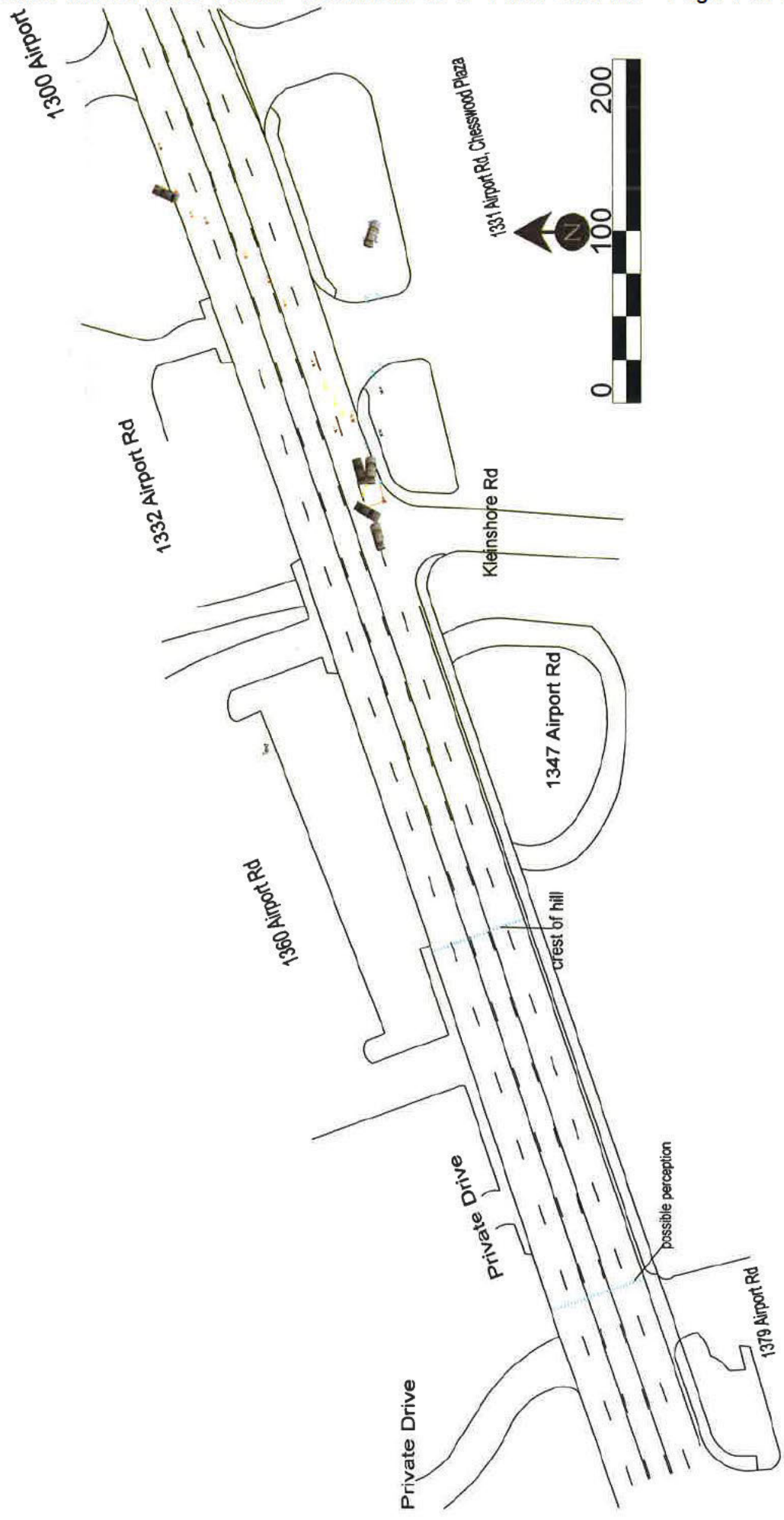
Pedestrian Action / Location
1 Crossing At Intersection With Signal
2 Crossing At Intersection Against Signal
3 Crossing At Intersection No Signal
4 Crossing At Intersection Diagonally
5 Crossing Not At Intersection/Rural
6 Crossing Not At Intersection/Urban
7 Coming From Behind Parked Car
8 Unloading/Loading On School Bus
9 Playing In Roadway
10 Unloading/Loading On Other
11 Lying In Roadway
12 Walking On Roadway With Traffic/ Sidewalks Available
13 Walking On Roadway With Traffic/Sidewalks Not Available
14 Walked On Roadway Against Traffic/Sidewalks Available
15 Walking On Roadway Against Traffic/Sidewalks Not Available
16 Working In Roadway
17 Standing In Roadway
18 Not In Roadway
98 Other
99 Unknown

Condition Of Driver And Ped
1 Appeared Normal 98 Other
2 Illness 99 Unknown
3 Fatigue
4 Fell Asleep
5 Physical Disability/Disease/Disorder
6 Mental Disability/Disease/Disorder
7 Defective Sight
8 Defective Hearing
9 Seizure / Blackout
99 V1
99 V2
NA Ped

Alcohol / Drugs Impairment
1 None 3 Not Impaired
2 Impaired 4 Unknown
1 V1
2 V2
NA Ped

Passenger/Pedestrian

13	14	15	16	17	18 Race	19 Sex	20 Age	21	22	23 Name Of Passenger(s) Pedestrian(s) Address, City, State, Zip Code
2	3	0	6	1	W	F	26	1		Cassandra Marie Braun [redacted]


1300 Airport
1331 Airport Rd, Chesswood Plaza
N
200
100
0
1332 Airport Rd
Kleinshore Rd
1347 Airport Rd
1360 Airport Rd
crest of hill
Private Drive
possible perception
1379 Airport Rd
Private Drive

Hot Springs Police Department

Officer Report for Inciden[redacted]

Nature: Accident Fatal

Address: 1331 AIRPORT RD; Chesswood Plaza
Hot Springs AR 71913

Location: 6

Offense Codes: TRAF
Received By: Stearns,W **How Received:** 9 **Agency:** HSPD
Responding Officers: Steed,S, Patrick,L, Nunez,R, Burfeind,J, Langford,J, Dauberger,S, Means,M, Tinney,J, Harkness,R, DeFoor,P, Allen,P, T137, Stillian,S, Allison,P, McDaniel,S, Zaner,L
Responsible Officer: Stillian,S **Disposition:** ECP 01/02/17
When Reported: 21:22:57 10/10/16 **Occurred Between:** 21:22:32 10/10/16 and 21:22:38 10/10/16

Assigned To: Allen,P **Detail:** GEN **Date Assigned:** **/**/**
Status: ECP **Status Date:** 01/02/17 **Due Date:** **/**/**

Complainant:
Last: **First:** **Mid:**
DOB: **/**/** **Dr Lic:** **Address:**
Race: **Sex:** **Phone:** **City:** ,

Offense Codes

Reported: **Observed:**
Additional Offense: TRAF Traffic offenses

Circumstances

LT13 Highway/Road/Alley

Responding Officers:	Unit :
Steed,S	P147
Patrick,L	P14
Nunez,R	P179
Burfeind,J	P24
Langford,J	P102
Dauberger,S	P110
Means,M	P21
Tinney,J	P126
Harkness,R	T18
DeFoor,P	T139
Allen,P	D148

T137	T137
Stillian,S	K137
Allison,P	T10
McDaniel,S	T10
Zaner,L	E116

Responsible Officer: Stillian,S
Received By: Stearns,W
How Received: 9 911 Line
When Reported: 21:22:57 10/10/16
Judicial Status:
Misc Entry:

Agency: HSPD
Last Radio Log: 01:56:35 10/11/16 CMPLT
Clearance: ACC Accident Report
Disposition: ECP **Date:** 01/02/17
Occurred between: 21:22:32 10/10/16
and: 21:22:38 10/10/16

Modus Operandi: **Description :** **Method :**

Involvements

Date	Type	Description	
10/12/16	Name	Haak, Jesse L	witness
10/12/16	Name	Blair, Jason Daniel	witness
10/12/16	Name	Lavalle, Kelly C	witness
10/12/16	Name	Crook, Joel S	witness
10/12/16	Name	Whipkey, Nicole Marie	witness
10/12/16	Name	Burke, Brian R	Suspect
10/12/16	Name	Jenkins, Tavon Desean	victim
10/12/16	Name	Braun, Cassandra Marie	victim
10/10/16	Accident	49965	Related Incident
10/10/16	Cad Call	21:22:57 10/10/16 Accident PI	Initiating Call
10/20/16	Evidence	Driver's side airbag	Evidence Incident
10/20/16	Evidence	2 original search warrants	Evidence Incident
10/20/16	Evidence	event data recorder/Charger	Evidence Incident
10/20/16	Evidence	event data recorder/Malibu	Evidence Incident
10/11/16	Evidence	Watch Guard 4RE DVR2-026917	Evidence Incident
10/11/16	Evidence	DVD of dash cam from K-15s car	Evidence Incident

Narrative

Tow Report Scanned

_____

Responsible LEO:

_____

Approved by:

_____

Date

Supplement

---------- (lwmain17141410112016)
On 10/11/16 at approximately 0845 hours I, OFC Shawn Lowrey #133, was present with SGT Scott Joe of the Arkansas State Police when he unlocked and removed the flash drive from the DVR of the wrecked Arkansas State Police unit while it was parked in the back lot of the police department. SGT Joe handed me the flash drive and Officer Billy Perkins #127 and myself took the flash drive to Arkansas State Police Headquarters in Little Rock. Once at ASP Headquarters we met with Major Forest Marks of the Arkansas State Police and he escorted us to the IT department where we met with Allen Fitzgerald and Kerry Tabor. They both advised that they needed the whole DVR and not just the flash drive. They looked on the flash drive and advised that there was only one traffic stop on the flash drive. They then advised Major Marks and me that they would come to Hot Springs and retrieve the DVR to download any information that might be on it. I forgot to get the flash drive back from them and we returned to Hot Springs. Later in the day I was advised that I needed to return to ASP Headquarters to retrieve the flash drive. I spoke with Major Marks and he advised that when Mr. Fitzgerald and Mr. Tabor came to Hot Springs they brought the flash drive with them and placed it back into the DVR when they removed it from the unit.
---------- (lwmain17141410112016)--

Supplement

On 10/11/16 at approximately 1030 hours, Allen Fitzgerald and Kerry Tabor of the Arkansas State Police IT Section arrived at the Hot Springs Police Department. I, Lt. Stringer, observed Fitzgerald remove the DVR from State Police unit K-15. A small amount of water was dripping out of the DVR due to water being sprayed on the vehicle the previous evening by the Hot Springs Fire Department in an effort to extinguish a vehicle fire. Fitzgerald shook the water out of the DVR, then handed the DVR to OFC Robert Plyler. Plyler took the DVR to State Police Troop K Headquarters to have it downloaded. After the DVR was downloaded, OFC Plyler returned it to the Hot Springs Police Department and placed it in the Evidence Division.

Supplement

On 10/12/16 at approximately 1305 hours, I, Lt. Stringer, received a phone call from Rosalie Smith (D.O.B. [redacted]. Smith stated that she was leaving work from Hawg's Pizza Pub, 1442 Airport Road, on 10/10/16 at approximately 2113 hours. According to Smith, she observed "no lights" and exited left from the Hawg's Pizza Pub driveway into the northbound inside lane. Smith then changed lanes into the northbound outside lane. Smith stated that following her lane change, an Arkansas State Police vehicle traveling at a high rate of speed with no emergency lights or sirens activated, almost side swipped her vehicle. Smith stated that the State Police vehicle had to swerve to keep from hitting her vehicle. Smith further stated that she did not see the crash involving the State Police vehicle, but heard it, then observed the State Police vehicle veer to the right and come to rest in the front of Chesswood Plaza where it caught fire. Smith stated that she was unaware that another vehicle was involved at the time.

Rosalie Smith: [redacted]

Supplement

09:32:17 10/13/2016 - DeFoor,P

On Monday October 10th 2016 at 9:32pm I, OFC Phillip De Foor, received a call from Sgt R. Harkness. I was informed that there was a fatal crash in the 1300 block of US70/Airport Rd involving a State Police vehicle. I responded to the scene and arrived at 9:59pm.

Upon my arrival I noted a State Police unit (2016 Dodge Charger) in the grass in front of Chesswood Plaza, 1331 Airport Rd, facing East. I noted a 2011 Chevrolet Malibu stopped partially in the outside westbound lane facing northeast. There were two covered bodies in the road. The first was lying in the outside eastbound lane of Airport East of Kleinshore RD. The second body was lying in the outside westbound lane East of the Malibu. The driver of the State vehicle had already been transported to St Vincent's Hospital for medical attention.

The State vehicle had significant damage to the front. There also appeared to be a secondary impact on the driver's side rear. The vehicle had caught fire on the passenger's side. There was fire damage in the engine compartment and in the passenger compartment on the passenger's side. Front, side and lower dash air bags had deployed. The driver's seatbelt was fully retracted and locked in position.

The Malibu had significant damage to the passenger's side front fender. There also appeared to be a secondary impact on the passenger's side rear. The driver's air bag had deployed. Both the driver's and Passenger's seatbelts were fully retracted and locked in position.

I noted significant gouging in the inside lane of Airport Rd at its intersection with Kleinshore. There was a clear path of scrapes and gouging traveling East to where the Charger was found at rest. There was a second clear path of scrapes and engine fluids traveling in an arc to the northeast that ended where the Malibu was found at rest. I located a blood trail southwest of the Malibu that traveled to the northeast body.

OFC S. Stillian and I measured the scene and documented the evidence located. CID and Crime Scene were notified and responded to the scene. Both vehicles were removed to the Hot Springs Police back lot. The deceased were taken into the custody of Garland County Coroner Stuart Smedley.

Wednesday morning the two vehicles were moved by Burks and Mahoney, escorted by OFC S. Stillian and myself, to a secure hanger at the Hot Springs Airport. While at the Airport OFC Stillian and I measured the vehicles damage.

Supplement

On 10/13/16 at approximately 1319 hours, I, Lt. Greg Stringer received the State Police vehicle Watchguard DVR from Jessica Ault in Property and Evidence. The sealed box containing the DVR was then placed in the safe located in the Traffic Office. The DVR was removed on this date in order for a Watchguard representative to download data from on 10/14/16, and due to Jessica Ault being at the State Crime Lab that morning, leaving Property and Evidence locked and unaccessible.

Supplement

---------- (lwmain07395510142016)
On 10/11/2016, at approximately 1150 hours I, Ofc. Plyler, was instructed by my supervisor Lt. Stringer to standby with Sgt. Scott Joe and IT Techs Allen Fitzgerald and Kerry Tabor with the Arkansas State Police in the back lot of the Hot Springs Police Department.

I was advised the IT technicians were to remove the DVR out of Trooper Burke's patrol unit (K15). I stood by and observed IT Tech Kerry Tabor remove the DVR from the front of the patrol unit. After the DVR was removed it was placed into my possession were I transported it to Arkansas State Police Troop K Headquarters.

Once at Troop K Headquarters I handed the DVR back to IT Tech Kerry Tabor in the trooper work room. IT Tech Tabor advised the DVR unit was damaged and he was unable to retrieve anything from the hard drive. Tabor took the DVR apart and removed the hard drive from Trooper Burke's DVR. Tabor took the hard drive and placed it into a DVR that was removed from Sgt. Scott Joe's patrol unit (K3) where he was able to retrieve video footage from Burke's hard drive and placed it onto two compact disk. Burke's hard drive was placed back into it's original DVR and put back together and handed back to me along with the two compact disk containing the video footage.

The thumb drive Ofc. Lowery had in his possession earlier in the day was placed back into the DVR by Tabor.

The DVR and one compact disk was placed into the property room as evidence and the second was given to Det. Allen #148 per supervisors. While at Troop K Headquarters I had visual on the DVR and hard drive at all times.
~~---------- (lwmain07395510142016)~~

Supplement

On 10/07/16 at approximately 0850 hours, I, Lt. Stringer, removed the State Police vehicle DVR from the locked safe in the Traffic Division office and presented it to Michael Picou; Hardware Reliability Engineer from Watch Guard Video. Picou was attempting to recover several seconds of video footage from the DVR that lost power due to the vehicle crash. Picou was unable to recover any further video footage,and at approximately 1210 hours,handed the DVR to me. I placed the DVR in the evidence box, resealed it, and handed it to Jessica Ault to be returned to Property and Evidence.

Supplement

On 10/10/2016 at approximately 2130 hours I, Det. Paul Allen #148, responded to a fatality accident near the 1300 block of Airport Road. When I arrived I observed numerous emergency vehicles on scene. There was a very large debris field with damaged car parts and fragments spread over a large area. I could see a light colored passenger car on my right (the North side of the road) with extensive damage. There was what appeared to be a covered body, later identified as Tavon Jenkins, on the ground near the vehicle. On my left (the South side of the road) I could see a state trooper patrol unit with extensive damage. It had what appeared to be fire damage on the passenger side of the car. Near Airport roads intersection with Kleinshore I observed a second covered body on the ground later identified as Cassandra Braun. I was advised the trooper, Brian Burke, had been taken to the hospital by ambulance.

Shortly after my arrival a witness, Nicole Whipkey, came back to the scene and spoke with me about what she had witnessed. Nicole told me she was travelling West on Airport road when she heard the collision. She said she didn't see the collision at all just heard it. She was able to avoid the vehicle that veered to the North side of the road. She saw some people running towards the troopers car and realized he was still inside. She said she could see smoke and some flames. Nicole ran to help and they were able to pull the trooper from the vehicle and drag him a short distance away. She said she was asking him questions trying to keep him awake until the ambulance got there. She said while she was talking to the trooper she looked and saw a heavyset black female in a peach or coral blouse near Tavon praying over him. I attempted to locate the black female but was unsuccessful.

I learned that a video of the trooper being pulled from the car was uploaded to a local news Facebook post about the accident. Arkansas 911 news. I noticed the proprietor of Arkansas 911 news, Paul Maddox, was on scene and spoke with him. I asked to view the video and he told me had already taken it down. I asked if he could still view it and he said no. It was posted in a comment on a Facebook post and could not be retrieved. Roger was able to tell me the name of the man that posted it was Jason Daniel Blair and according to his Facebook page his date of birth is [redacted]

I located another witness, Joel Crook, who told me he was driving East on Airport Road when he heard a loud crash behind him. He looked in his rear view mirror and saw a small cloud of debris. He turned around and pulled into the parking lot of Chesswood Plaza. He said he saw a wrecked State Troopers car that had come to rest near the Chesswood Plaza sign and that it had began to catch on fire. He and another man, identified as Jessie Haak, pulled the Trooper from the patrol unit and dragged him a short distance away. Joel said he didn't witness the accident but he believed the Troopers lights were on when he was pulling him from the car. I asked Joel if the Trooper said anything and he said not really just his name.

I noticed there was a baby seat in the back seat of the wrecked Malibu and what looked like a baby blanket. It was a cool night and I feared there may have been a child in the car that had not been located. I learned that Cassandra had a son that was approximately 4 years old. I looked in the car and saw that the seatbelt that would have been used to restrain the child was not drawn. I looked in the wood line for the child or any evidence that there had been one. I was unable to locate anything else that would indicate the presence of a child. I was finally able to ascertain that Cassandra's son was safe and with family in Florida.

I attempted to find out if any of the business's in Chesswood Plaza had surveillance footage that had a view of where the accident occurred. None of them had a surveillance camera that pointed at the road. I was able to make contact with the owner of Chesswood Plaza and discovered that it was a John Gibson property. I spoke with one of the Gibson's by telephone and they told me it was possible they had surveillance video that had a view of Airport Road. They said I could come by tomorrow (10/11/16) and view the video footage.

On 10/11/16 I went to John Gibson's Auto, located at 1425 Airport Road and spoke with one of the employees Kelly Lavalle. Kelly lives at 102 Gwendolyn Way which is directly behind John Gibson Auto. He told me at approximately 2117 hours he was standing on his porch when he heard the sound of a vehicle engine as it accelerated on Airport Road. He looked and saw a State Trooper unit travelling East on Airport Road. Kelly said the State Trooper was "flying." Kelly said he didn't see any lights or hear a siren. I looked through the footage that had been recorded by John Gibson Auto surveillance cameras. I reviewed the footage for 10/10/16 starting at 2110 hours. At 2116:54 hours I observed what appeared to be a black SUV travelling East on Airport Road at a high rate of speed. It appeared the vehicle's passenger side blinker was flashing. At 2117:12 hours I observed what appeared to be the white State Trooper vehicle travelling East on Airport Road at a high rate of speed.

I also obtained video from the Exxon, located at 1591 Airport Road, and from Wal Mart located at 1640 Airport Road. I viewed the video for each of these locations. On the Wal Mart video the time stamp on the video varies slightly from the time stamp on the other videos. The Wal-Mart video shows what appears to be the black SUV travelling east on Airport Road at approximately 2121:04 and it appears their driver side blinker was flashing. At approximately 2121:30 it shows what appears to be the white State Trooper vehicle travelling East on Airport Road in front of Wal-Mart. Compared to the other vehicles in the video it appears that both the black SUV and the State Troopers vehicle were travelling at a high rate of speed. There was no stamp available on the Exxon video but it also a shows a dark colored SUV travelling East on Airport at what appears to be a high rate of speed and shortly after shows what appears to be the white State Trooper vehicle also travelling East on Airport Road at a high rate of speed.

When I returned to the Police Department I received a copy of the video from Trooper Burke's dash camera. The first image on the dash cam video was of Airport Road with one lane of traffic for each direction. The GPS on the dash cam reported the speed as 85 mph, the date was 10/10/16, the GPS coordinates were North 34.43733 West 93.25488, and the time was 21:16:54. There is no audio on the video until 21:17:54. The audio throughout the entire video is difficult to understand and I can only pick up on bits and pieces of it. Shortly after the audio starts the GPS reported the speed as 101 mph. At 2118:34 trooper Burke travels through the intersection of Airport Road and Wolf Street at 93 mph. At 2119:40 he passes a car on the left while in the inside lane of traffic travelling 96 mph. At 2119:53 he passes a semi tractor trailer on the left while in the inside lane of traffic travelling 111 mph. At 2119:58 he passes through the intersection of Airport Road and Moore Road at 105 mph. At 2120:16 he passes a passenger car on the right while in the outside lane of traffic travelling 105 mph. At 2120:33 he passes an SUV on the left while travelling in the inside lane of traffic at 107 mph. At 2120:47 he passes a vehicle on the right while travelling in the outside lane of traffic at 95 mph. At 2121:09 he travels through the intersection with Marion Anderson Road travelling 92 mph. At 2121:18 he passes a truck pulling a trailer on the right while travelling in

the outside lane of traffic at 64 mph. At 2121:30 he passes a vehicle on the left while travelling in the inside lane of traffic at 84 mph through Airport Road's intersection with Adcock Road. At 2121:50 he passes a vehicle on the left hand side while travelling in the inside lane of traffic at 117 mph. 2121:52 is the last image that was recorded on the dash camera before the impact. You can just see the victim's vehicle headlights in the turn lane on Airport Road before the video stops. The last reading from the GPS was 115 mph at 2121:52 with the coordinates of North 34.47031 and West 93.13181. The distance between where the Troopers video begins and the where the impact occurred is 8.1 miles. It took Trooper Burke 4 minutes and 58 seconds to go that distance. This made his average speed 1.63 miles per minute or 97.8 miles per hour.

Supplement

08:32:20 10/20/2016 - DeFoor,P

On October 18th 2016 at about 10:00am I, OFC Phillip De Foor, served a search warrant to recover the Airbag Control Module's of the two vehicles. The vehicles, a 2011 Chevrolet Malibu vin: [redacted] and a 2016 Dodge Charger vin: [redacted] were located in a hangar at the Hot Springs Airport.

With the assistance of Officer Ralph Breshears, Little Rock Police Department, the two Airbag Control Modules were collected and taken into my custody. The data was downloaded by Officer Breshears for analysis. I placed the two Airbag control modules and the 2 search warrants into property.

A copy of the search warrant was left with each vehicle. The warrant service was completed at approximately 12:00pm.

Supplement

CRIMINAL INVESTIGATION DIVISION

DATE:10-20-16 INVESTIGATOR: Sgt. C. Hays

I spoke to Lauir Braun, mother to Cassandra Braun and Mrs. Perry, mohter to Tavon Jenkins related to this case. Coroner Smeldely delivered personal effects from each of the victims with orders to release the items to the parents. Both victims parents live out of state. Mrs. Braun has been in Hot Springs and I was authroized by Mrs. Perry to release Tavon Jenkins's effects to Mrs. Braun.

I completed a Property Inventory Form and released the listed items to Mrs. Braun on 10-20-16. PIF will be retained in the investigative file.

Contact information for the two are:
Lauri Braun [redacted]
Mrs. Perry [redacted]

Sgt. Chris Hays

Supplement

On 10/24/16 I, Det. Paul Allen #148, received information that there was a witness that had additional information in regards to the victims in this case. Her name is Jessica Kelly and her telephone number is [redacted] I called and left a message for her to call me back.

On 10/27/16 at approximately 1050 hours I made contact with Jessica by telephone and she said she would call me back later today and set up a time to give me her statement.

On 10/27/16 at approximately 1430 hours I interviewed Jessica Kelly in reference to this accident. Jessica told me she and her husband, Teddy, were inside Boondocks, located at 1331 Airport Road, playing pool. She said the week prior she had met Cassandra and Tavon at the pool hall. She said Cassandra was sitting at the bar and Tavon was walking around. Jessica said she knows they left around 2110 because her husband Teddy asked Tavon if he wanted to play pool and Tavon declined telling him he was about to go. She told me she didn't hear or see any of the accident only the aftermath when all the people started to gather.

Supplement

On 11/04/16 I submitted a request for a prosecutor subpoena to be issued for the medical records for Trooper Burke. We haven't received the test results from the state crime lab for the victims.

Supplement

On 11/10/16 I, Det. Paul Allen #148, placed a copy of the serology report from the driver's side airbag and the two autoposy reports from the State Crime Lab into the case file.

Supplement

On 11/23/16 at approximately 1543 hours I, Det. Paul Allen #148, spoke with Jennifer Baley from the Arkansas State Crime Lab. She told me the case concerning the airbag was currently unassigned but she would get it assigned first thing Monday morning and get the results expedited.

Supplement

On 11/28/16 I received a copy of Trooper Burke's blood and urine test results from St. Vincent's Hospital taken the night of the accident. I placed a copy of the test results into the case file.

Supplement

09:22:48 12/16/2016 - DeFoor,P

The Arkansas State Crime Laboratory has completed the analyses requested in this case. Serology was requested from both occupants of the 2011 Chevrolet Malibu, Tavon Jenkins and Cassandra Braun. DNA analysis was also requested from the driver's side airbag.

[redacted]

A DNA analysis was completed for the driver's side airbag. The DNA profile obtained by the Crime Lab from the air bag is consistent with the DNA profile obtained from Tavon's Jenkin's blood sample. This indicated Jenkins was likely the driver of the Malibu.

Supplement

12:07:00 12/20/2016 - DeFoor,P

I performed a momentum analysis for the vehicles involved in this crash. I used the FARO program used by the HSPD to perform this analysis. Of note in this analysis, I did not have information of the load carried by the vehicles. Because of this I used the manufacturer's gross weight of each vehicle. I was not able to get a definitive drag factor (f value) for each vehicle. This was because the vehicles were partially sliding on tires and various metal parts of the vehicles. The vehicles also traveled on asphalt, grass, concrete, struck curbs and a sign, dug ruts in the grass and roadway, and slid thru oils spilled on the roadway. This rendered the drag factor too varied and unpredictable for me to be able to confidently supply my own. Because of this I used the suggested default drag factor provided by the FARO program of .40.

The Chevrolet Malibu had a weight of 3414.96 lbs. I assigned it an approach angle of 0 degrees.

The Dodge Charger had a weight of 4252.72 lbs. Because I assigned an approach angle of 0 degrees to the Malibu, this caused the approach angle of the Charger to be 136.61 degrees.

For the Malibu, my analysis showed an impact speed of 19.19 mph (28.14 fps).

For the Charger, my analysis showed an impact speed of 98.03 mph (143.77 fps).\

Data was recovered by R. Breshears, LRPD, from the airbag control module regarding this crash.

The Malibu's data is recorded ever 1 second. The data for the Malibu showed a speed of 16 mph, slightly different than my analysis. I did note that the recorded speed was 1 second prior to the recorded event (crash) and the accelerator pedal was depressed in the Malibu, indicating the Malibu was accelerating immediately prior to the crash. This may account in the 3.19 mph discrepancy. The steering input also indicates the Malibu was making a turn. It does not appear that the driver of the Malibu was making any attempt to avoid the crash.

The Charger's data is recorded every .1 second. The data for the Charger indicated it was traveling at 98 mph. This is nearly the same as my analysis of 98.03mph. In the second leading up to the crash the accelerator pedal was in the 0% position with the brake applied. The steering input indicated the Charger was making an effort to avoid the crash/change lanes. It appears that the driver of the Charger began to attempt to avoid the crash 1 second prior to impact.

Supplement

I, Det. Paul Allen #148, have placed copies of all the State Crime Lab reports, all the videos, 911 calls from the HSPD and GCSO, HSPD and GCSO radio traffic, the accident report, all the crash data from the control modules, all the FOI requests, the search warrants and returns, the State Police fatal accident report, Trooper Burke's medical records, barrier equivalent velocity report, two measurement log reports, the momentum report, prosecutor subpoena, and all the related vehicle and driver printouts.

Supplement

On 12/27/16 at approximately 1340 hours I, Det. Paul Allen #148, discovered a discrepancy between the copy of Trooper Burke's dash camera footage that was recovered by the State Police and the dash camera footage that was recovered by Watchdog hardware reliability engineer Michael Picou. The copy of the dash camera footage he provided has an additional seven minutes at the beginning of the video that the State Police copy didn't have. The additional footage shows Trooper Burke driving West on Airport Road, pull into an empty parking lot, and interact with a woman that was there (during the interview Trooper Burke told me it was a hit and run accident investigation.) At approximately 2115 hours the dash camera catches an image of a dark colored SUV travelling East on Airport at a high rate of speed with it's flashers on. Trooper Burke finishes speaking with the woman, walks back to his unit, and at approximately 2116:08 he activates his overhead emergency lights and turns East onto Airport Road from the parking lot. At approximately 2116:32 he deactivates his overhead emergency lights and continues travelling East.

The video recovered by Watchdog begins at approximately 2109:50. The video recovered by the State Police begins at approximately 2116:50. A copy of the video has been placed into the case file.

On 12/27/16 the HSPD personal involved in this case met with Prosecutor Terri Harris. Mrs. Harris had spent the previous several days reviewing the case file and all related information. After her review Mrs. Harris is declining to pursue criminal charges against Trooper Burke. Her letter of explanation informing the Chief of her decision has been placed into the case file.

Case closed per Terri Harris.

Supplement

On 05/28/16 at approximately 1200 hours, Captain Forrest Marks of the Arkansas State Police contacted me in reference to the wrecked Arkansas State Police 2016 Dodge Charger involved in the fatality accident on 10/10/16 at Airport Road and Kleinshore Road. Captain Marks stated that he had talked with Garland County Prosecuting Attorney Terri Harris, who agreed to release the Arkansas State Police vehicle, along with the 2011 Chevrolet Malibu owned by Cassandra Braun, that had also been involved in the accident. Both vehicles had been stored in a locked airplane hanger at Hot Springs Municipal Airport at 525 Airport Road. I then contacted the Hot Springs Municipal Airport Manager, Glen Barentine, at approximately 1250 hours and explained to him that the holds on the vehicles had been released. The Arkansas State Police will send their own wrecker to effect the removal of the 2016 Dodge Charger. The 2011 Chevrolet Malibu will be removed by a wrecker service to be determined later following notification to Rainwater, Holt, and Sexton attornys.

Name Involvements:

victim : 192108
Last: Braun **First:** Cassandra **Mid:** Marie
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: W **Sex:** F **Phone:** ( ) - **City:** [redacted]

witness : 48643
Last: Haak **First:** Jesse **Mid:** L
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: W **Sex:** M **Phone:** [redacted] **City:**

witness : 181598
Last: Whipkey **First:** Nicole **Mid:** Marie
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: **Sex:** **Phone:** **City:**

witness : 63271
Last: Lavalle **First:** Kelly **Mid:** C
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: W **Sex:** M **Phone:** **City:**

witness : 53550
Last: Blair **First:** Jason **Mid:** Daniel
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: W **Sex:** M **Phone:** **City:**

victim : 192107
Last: Jenkins **First:** Tavon **Mid:** Desean
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: B **Sex:** M **Phone:** ( ) - **City:**

Suspect : 182294
Last: Burke **First:** Brian **Mid:** R
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: W **Sex:** M **Phone:** **City:**

witness : 146294
Last: Crook **First:** Joel **Mid:** S
DOB: [redacted] **Dr Lic:** [redacted] **Address:** [redacted]
Race: W **Sex:** M **Phone:** **City:**

Unsigned
COPY

STATE OF ARKANSAS
PROSECUTING ATTORNEY
18TH JUDICIAL DISTRICT EAST
TERRI L. HARRIS

MICHELLE C. LAWRENCE
CHIEF DEPUTY
PROSECUTING ATTORNEY

December 27, 2016

Jason Stachey, Chief of Police
Hot Springs Police Department

Re: Fatality Accident Investigation;
Date of Accident: October 10, 2016;
Hot Springs Police Department Case No. 16L032154

Dear Chief Stachey:

On Thursday, December 22, 2016, I met with Hot Springs Police Department investigators regarding the above captioned matter. At that meeting I was provided a copy of the complete investigative file from your agency. I would like to commend the investigators with your agency who assisted in this investigation. Their work on preparing a complete investigative file was exhaustive and without partiality to any individual involved in this tragic accident. I have now made a thorough review of all available admissible evidence produced from the investigation. I have also reviewed applicable Federal and State law. This research has also included issues pertaining to a public policy analysis of high speed police pursuits.

High speed pursuits by law enforcement agencies of the suspected criminal element occur frequently. These pursuits are probably one of the most dangerous jobs for law enforcement officers. The fact that police pursuits are dangerous is undisputed. In some of these pursuits, all too often a tragedy unfolds, in one of three scenarios. Injury or death results to a law enforcement officer. Injury or death results to the individual who is the target of the pursuit. And finally, injury or death results to an innocent bystander or to other motorists in the path of the pursuit.

In most, if not all of the reported cases where tragedy has occurred as a result of a high speed pursuit, the legal remedy for the aggrieved party is to pursue monetary damages against the agency conducting the pursuit. Typically, even where death results to either the target of the pursuit or an innocent bystander, the officer involved in the pursuit is not the subject of a criminal charge, absent the officer acting wholly outside the scope of his or her legal authority. The reason these matters are best resolved in the civil courts is clear. Fear of criminal sanctions on the part of any law

501 OUACHITA AVENUE • HOT SPRINGS, ARKANSAS 71901
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enforcement officer for doing his or her job would result in a chilling effect on the apprehension of violent criminals.

Over the course of the last several years, high speed pursuits conducted by law enforcement agencies across the country have been the object of criticism and disagreement among Federal, State and local officials. However, all State and local agencies as a part of effective law enforcement duties are required from time to time to engage in this activity.

In light of the above and foregoing analysis, I am declining to institute any criminal charges against Trooper Brian Burke for the tragic events that occurred on October 10, 2016.

I will consider this investigation closed by my office and am returning the investigative file I have reviewed to your agency.

Sincerely,

Terri L. Harris
Prosecuting Attorney

TLH/sj

From:	Jennifer Merritt
To:	ASCC Pleadings; Paul James; "Andrew Clarke"; Tiffany Mays O"Guinn
Cc:	Kathryn Irby; Johanna Hinkle
Subject:	Braun/Jenkins, Claim Nos. 190497-CC & 200290-CC - email 1 of 2
Date:	Friday, February 11, 2022 3:07:24 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png 2022-02-11 - ASP Resp to Pl MSJ & Cross-MSJ.pdf Exhibit 1 - Burke Depo Transcript.pdf Exhibit 2 - Burke EVOC File.pdf Exhibit 3 - Hoyt Depo Transcript.pdf Exhibit 4 - ASP EVOC Manual.pdf Exhibit 5 - Burke Letters of Commendation.pdf Exhibit 6 - Burke Affidavit.pdf

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Good afternoon,

Please find attached Respondent's response in opposition to Claimant Lori Braun's motion for partial summary judgment and cross-motion for summary judgment on both the Braun and Perry claims, along with 6 supporting exhibits. I will send the other 6 exhibits and a brief in support in a second email due to file-size limitations. Please let me know if you have any questions or concerns. If you would kindly confirm receipt of both emails, I would greatly appreciate it.

Kind regards,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov |ArkansasAG.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

RESPONDENT'S RESPONSE IN OPPOSITION TO CLAIMANT LORI BRAUN'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

Respondent Arkansas State Police, for its response in opposition to Claimant Lori Braun's motion for partial summary judgment on the issue of causation and cross-motion for summary judgment on both Claim No. 190497 and Claim No. 200290 pursuant to Ark. R. Civ. P. 56, states:

1. These claims arise out of a fatal car accident that occurred between Cassandra Braun, Tavon Jenkins, and former Arkansas State Trooper Brian Ray Burke on October 10, 2016.

2. Ms. Braun and Mr. Jenkins were tragically killed when the vehicle in which they were traveling failed to yield the right of way to an oncoming Arkansas State Police ("ASP") Trooper, Brian Ray Burke, who was in high-speed pursuit of a suspected

offender. The Trooper tried but failed to avoid the accident. Trooper Burke was seriously injured in the crash, and both occupants of the Braun vehicle—who were legally intoxicated and not wearing their seatbelts—were ejected from the vehicle and died instantly.

3. The estates of Ms. Braun and Mr. Jenkins filed claims seeking millions of dollars each in damages for the alleged negligence of the Trooper and the ASP. But as discussed in the accompanying brief, those claims are barred by the doctrine of comparative fault and because no negligent act of Burke or the ASP was the proximate cause of their injuries.

4. Instead, the accident was solely caused by Ms. Braun's and Mr. Jenkins's own intentional and negligent acts, which completely bars their claims under state law.

5. Because there are no genuine issues of material fact in this case, the Arkansas State Police is entitled to judgment as a matter of law, and the Commission should enter summary judgment in the ASP's favor on both the claim brought by Ms. Braun and the claim brought by Ms. Perry.

6. The ASP offers the following exhibits in support of its response/cross-motion, which are attached and incorporated by reference:

- Exhibit 1 – Deposition of Brian Ray Burke
- Exhibit 2 – Burke's EVOC File
- Exhibit 3 – Deposition of Ben Hoyt
- Exhibit 4 – ASP EVOC Manual
- Exhibit 5 – Letters of Commendation for Trooper Burke

- Exhibit 6 – Affidavit of Brian Ray Burke
- Exhibit 7 – Breshears Report on Black Box Data
- Exhibit 8 – Accident Report
- Exhibit 9 – Hot Springs Police Department Report
- Exhibit 10 – Letter from Prosecuting Attorney
- Exhibit 11 – Deposition of Colonel Bill Bryant
- Exhibit 12 – Memorandum of Chief Medical Examiner Charles P. Kokes

7. A brief in support is also being filed with this motion and is incorporated by reference.

WHEREFORE, Respondent Arkansas State Police prays that the Commission deny Claimant Lori Braun's motion for partial summary judgment, grant the ASP's motion for summary judgment on both Claim No. 190497 and Claim No. 200290, enter an order dismissing those Claims with prejudice, and for all other relief to which it may be entitled.

Respectfully Submitted,

LESLIE RUTLEDGE
Attorney General

By: JENNIFER L. MERRITT (2002148)
Senior Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Tel: (501) 682-1319
Fax: (501) 682-2591
Email: Jennifer.Merritt@ArkansasAG.gov

Attorneys for Respondent Arkansas State Police

CERTIFICATE OF SERVICE

I, Jennifer L. Merritt, hereby certify that on this 11th day of February, 2022, I served a true and correct copy of the foregoing by electronic mail upon the following:

Arkansas State Claims Commission
ASCCPleadings@Arkansas.gov

Paul J. James
pjj@jamescarterlaw.com

Andrew C. Clarke
aclarke@cochranfirmmidsouth.com

/s/ Jennifer L. Merritt
Jennifer L. Merritt

Transcript of the Testimony of

Brian Burke

Date: November 8, 2018

Case: Lori Braun v. Trooper Brian Ray Burke, et al.

Bushman Court Reporting
Jeff Bennett
Phone: (501) 372-5115
Fax: (501) 378-0077
<www.bushmanreporting.com>

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF CASSANDRA BRAUN
Plaintiff,

vs. CASE NO. 4:18-CV-334 BRW

TROOPER BRIAN RAY BURKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE ARKANSAS STATE POLICE; COLONEL BILL BRYANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE CHIEF EXECUTIVE OFFICER OF THE ARKANSAS STATE POLICE
Defendants.

ORAL DEPOSITION OF BRIAN RAY BURKE

APPEARANCES:

MR. ANDREW C. CLARKE, ESQ.
6250 Poplar Avenue, Second Floor
Memphis, Tennessee 38119; and

MR. PAUL J. JAMES, ESQ.
James, Carter & Priebe,LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

*** For the Plaintiff ***

MR. BRIAN W. RAY, ESQ.
MR. MATTHEW G. FRENCH, ESQ.
Collins, Collins & Ray, P.A.
912 West 4th Street
Little Rock, Arkansas 72201

*** For the Trooper Brian Ray Burke ***

APPEARANCES (CONTINUED):

MS. JENNIFER MERRIT, ESQ.
MR. GARY SULLIVAN, ESQ.
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201; and

MR. GREGORY C. DOWNS, ESQ.
Arkansas State Police
1 State Police Plaza Drive
Little Rock, Arkansas 72209-4822

*** For the Arkansas State Police ***

ALSO PRESENT:
Colonel Bill Bryant

TAKEN BEFORE Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, Bushman Court Reporting, 620 West Third Street, Suite 302, Little Rock, Arkansas 72201 on November 8, 2018 at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas commencing at 9:05 a.m.

I N D E X

WITNESS SWORN: BRIAN RAY BURKE

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(Under separate cover)

Certificate 215
Witness' Signature 216

ANSWERS AND DEPOSITION OF BRIAN RAY BURKE, a witness produced at the request of Plaintiff, taken in the above styled and numbered cause on the 8th day of November, 2018, before Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, a Notary Public in and for Saline County, Arkansas, taken at the offices of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas at 9:05 a.m.

S T I P U L A T I O N S

IT IS STIPULATED and AGREED by and between the parties through their respective counsel that the deposition of BRIAN RAY BURKE may be taken at the time and place designated pursuant to the Federal Rules of Civil Procedure.

BRIAN RAY BURKE

The witness hereinbefore named, having been duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CLARKE:

Q. Would you please state your name?

A. Brian Ray Burke.

Q. Mr. Burke, in October of 2016 were you an employee of the Arkansas State Police?

A. Yes, sir, I was.

Q. Have you ever given a deposition before?

A. No, sir.

Q. Because you haven't given a deposition let's go over some ground rules, so that we communicate well during this deposition. Okay?

A. Yes, sir.

Q. Obviously your testimony here is under oath and subject to the penalty of perjury. You understand that, correct?

A. Yes, sir.

Q. And obviously we have a court reporter taking things down. So it's important to give audible answers, yes and no, instead of nodding your head or shaking your head yes and no. Okay?

A. Yes, sir.

Q. Also try not to say uh-huh or huh-uh because we don't know if that means yes or no sometimes when we read the transcript. Okay?

A. Yes, sir.
Q. Obviously there's going to be lot of questions that are asked you of the attorneys in this case that are important to this litigation. If you don't understand a question will you please let me know?
A. Yes, sir.
Q. I don't want you to answer a question if you don't understand it. All right?
A. Yes, sir.
Q. If you answer a question, I'm going to assume you understood it. Is that fair?
A. Fair enough.
Q. If you need to refer to something to give a better answer, please let me know. Okay?
A. Yes, sir.
Q. And depending on the nature of the question, I will see if I can provide you with some information.
All right?
A. Yes, sir.
Q. When I ask you questions, pretty much I'm asking for any communications that you had. However, I'm not trying to invade anything that you specifically have discussed with your attorney. Okay?
A. Repeat that?
Q. If I ask you something -- I might ask you a lot of

questions, open-ended questions, and obviously you have an attorney.
A. Yes, sir.
Q. And communications between you and your attorney are privileged.
A. Yes, sir.
Q. Okay. That doesn't mean that just because if you told it to other people, and I ask the question, if there's something that involves a consultation that you had with your attorney about something, please let me know before you answer. It's not my intention to ask about those communications. All right?
A. Yes, sir.
Q. Before you came in for your deposition, did you review anything?
A. As in?
Q. Did y u review the tape; did you review statements; did you review papers; did you review transcripts; did you review anything?
A. Yes, sir.
Q. And what did you review to prepare yourself for this deposition?
A. I tried to review the video the best I could, some of the video that I had. I could not watch the entire video.

Q. All right.
A. I tried to look over most of the paperwork that was given to me by my attorney.
Q. Okay.
A. To the best of my knowledge.
Q. You understand that you've been sued as a result of a wreck that occurred on October 10, 2016, correct?
A. Yes, sir.
Q. All right. Have you read a copy of the complaint?
A. Yes, sir.
Q. And I'll make that Exhibit Number 1.
(Deposition Exhibit 1 was marked.)
Q. Now, you understand that once we filed the complaint there were answers that were filed where you had to respond to the allegations of the complaint, correct?
A. Yes, sir.
Q. And what I want to do is mark as Exhibit Number 2 your first answer to the complaint.
(Deposition Exhibit 2 was marked.)
Q. And did you go over the complaint and try to assist in responding to the allegations? The complaint that was served on you, did you look over that?
A. Yes, sir.
Q. All right. And then on October 31 it looks like

you filed an amended answer. Did you know you filed an amended answer in this case?
A. Yes, sir.
Q. After getting the tape?
A. Yes, sir.
Q. I'll mark that Exhibit Number 3.
(Deposition Exhibit 3 was marked.)
Q. During the course of discovery when we got the lawsuit filed, there are certain things that we have to produce. One is called Rule 26(a) disclosures where you identify certain things. Let me show you this. I've marked it as Exhibit Number 4.
(Deposition Exhibit 4 was marked.)
Q. Have you ever seen that document?
A. You're asking have I seen this?
Q. Yes.
A. No, sir, I've not.
Q. That was something that the attorneys have to file about people that have certain information pertaining to the complaint. And that was filed on your behalf. And I'm going to mark that as an exhibit here.
A. I may have seen this.
Q. Okay. And some of these documents, if you need to refer to or reference them, please let me know. These are things that were filed on your behalf that have

certain types of statements in them. Okay?
A. Yes, sir.
Q. All right. And what I want to mark as Exhibit Number 5, let me show you this, and see if you can identify it?
(Deposition Exhibit 5 was marked.)
Q. Do you remember there being a set of questions that were asked of you?
A. The interrogatories?
Q. The interrogatories.
A. Yes, sir.
Q. Okay. And after those were completed your attorney produced what's called a verification. And I'll mark that as Exhibit Number 6.
(Deposition Exhibit 6 was marked.)
Q. Did you sign that verification?
A. Yes, sir, I did.
Q. And based on that verification when you went through your responses, were they true and accurate to the best of your knowledge, information and belief?
A. Yes, sir.
Q. Have you reviewed -- did you review your interrogatories before you came in here?
A. Not recently, no, sir.
Q. All right. When was the last time you reviewed

them?
A. Right when we submitted them, to the best of my knowledge.
Q. Okay. Next I'm going to mark as an exhibit, this will be Exhibit Number 7, is a copy of your personnel and training files. And I've got one extra copy.
Let me show you Exhibit Number 7. Have you seen that before?
(Deposition Exhibit 7 was marked.)
A. No, sir, I have not.
Q. You've never looked through your personnel and training file?
A. I have not seen it, no, sir.
Q. Okay. That was produced by the State of Arkansas as setting forth your personnel and training file while employed by the State of Arkansas.
I'll mark this as Exhibit Number 8. Exhibit Number 8 is a copy of the documents that were produced by the State of Arkansas that were identified as your EVOC training.
(Deposition Exhibit 8 was marked.)
Q. Have you reviewed those?
A. No, sir, I have not.
Q. Okay. I'm marking these on the front end so that we can try to get that off to the side, and if we have

to refer to those we will. Okay?
A. Yes, sir.
Q. Tell me a little bit about yourself; what's your date of birth?
A. [redacted]
Q. And were you born in Arkansas?
A. Yes, sir.
Q. And what's your highest educational background?
A. A bachelor's degree in business administration.
Q. And when did you graduate from high school?
A. High school in 1999.
Q. 1999?
A. Yes, sir.
Q. And where did you graduate from high school?
A. Fordyce, Arkansas.
Q. All right. And when did you start college, was it right after high school?
A. Yes, sir.
Q. And where did you go to college?
A. I started college at Arkansas State University in Jonesboro. Then moved to the University of Arkansas at Monticello.
Q. At what?
A. University of Arkansas at Monticello.
Q. And did you go continuously?

A. Yes, sir.
Q. And when did you graduate from college?
A. I believe it was December of '03.
Q. And what was your major?
A. Business administration.
Q. All right. Have you ever been arrested?
A. No, sir.
Q. All right. Any other post bachelor's degree courses?
A. As far as college?
Q. Yes.
A. No, sir.
Q. Okay. Take me through your employment history from the time you got out of college?
A. At that time I was working for Walmart.
Q. Okay.
A. I stayed with Walmart until 2006. I then went to work for Gander Mountain Sporting Goods Store. And I worked for them until my employment at the Arkansas State Police, which started in January of 2011.
Q. Okay. So your first law enforcement job was with the Arkansas State Police?
A. Yes, sir.
Q. All right. Were you ever fired or terminated from any job?

A. No, sir.
Q. All right. So take me through how you became an Arkansas State Police officer or trooper? Do you have to fill out an application and get approved?
A. Yes, sir. I think they call it an initial contact form.
Q. All right.
A. And then you go through a rigorous hiring process. Then you have to be selected. As far as the actual, each step in the process, I can't remember.
Q. Well, you didn't get out on the street until like June of 2011, correct?
A. That would have been with an FTO, somewhere in that ballpark, yes, sir.
Q. All right. So you had to apply sometime in 2010, correct?
A. I think. I don't know when I applied. Obviously I would have had to have at least by that point. I can't tell you when I applied.
Q. Well, after you went through whatever you applied and you went through the process, is it your understanding in January of 2011 is when you were hired with the Arkansas State Police?
A. Yes, sir. That's when we started troop school or training.

Q. And how long was troop school?
A. I believe my class was 20 weeks.
Q. All right. And if you would pull out Exhibit Number 7?
A. Okay.
Q. There's some numbers at the bottom. Do you see in the middle?
A. Yes.
Q. Go to ASP 0010? This is in your training file, I mean in your personnel and training file. Do you see that, you went to troop school in 2011?
A. Yes, sir.
Q. All right. What made you want to be a police officer?
A. All I can tell you is that's all I ever wanted to do. I don't know how else to answer your question.
Q. Okay. Do you have family that's in law enforcement or --
A. Well, not really. I had an uncle that was a city marshal. I guess he was part-time. But even before he did that, I always -- that's what I always wanted to do.
Q. Okay. Prior to that did you have any military service?
A. No, sir.
Q. So prior to showing up at troop school you had no

law enforcement training whatsoever, correct?
A. That would be correct.
Q. All right. Obviously we're here involving the driving and the wreck that occurred on October 10, 2016. So I'm not going to go through everything you did in troop school. But do you recall getting training while you were in troop school on a variety of topics?
A. Yes, sir.
Q. If you look through this syllabus, there's four or five pages of different topics that you had to go through, correct?
A. Yes, sir.
Q. And with respect to it looks like you had 20 hours of training on the Arkansas policies and procedures and directives, correct?
A. What page?
Q. Page 10.
A. Page 10. Yes, sir.
Q. And tell me what you remember of that; did you have -- did they give you a complete copy of the entire policies and directives manual?
A. Sir, I'm going to tell you, that's so long ago, I don't remember. I know we had a manual, a policy manual.
Q. Did you have to turn that in when you retired?

A. The policy manual?
Q. Yeah.
A. My policy manual was damaged in the accident, sir. It was trashed.
Q. So you had a policy manual. How thick was it?
A. Pretty thick. I don't remember.
Q. Did you carry it with you every shift?
A. It stayed in my car, yes, sir.
Q. Okay. And are you normally assigned a car that you were always in, or did you have to take it out and put it back in every day?
A. No, sir, we were assigned a car.
Q. All right. Was it a take-home car?
A. Yes, sir.
Q. All right. So you can't tell me what you remember about the actual training on the policies and directives while you were in troop school, correct?
A. No, sir.
Q. All right. Let's go to page ASP 11? You can just take that whole thing off if it's easier.
The second topic in there is you had a class on constitutional law and liabilities. Do you see that, 24 hours?
A. Yes, sir.
Q. All right. Do you recall being trained on

potential liabilities stemming from inappropriate driving?
A. Sir, honestly I can't tell you the contents of these courses. I remember taking these courses, but as far as contents on this stuff. I remember Lieutenant Coppinger. But as far as the content of what each of these courses held, I'm not able to tell you that.
Q. Okay.
A. That's been seven or eight years ago.
Q. Any time during your law enforcement career do you recall being instructed or told that improper conduct, driving conduct can result in liability?
A. I'm sure at some point, yes, sir.
Q. Do you know that today?
A. Well, I mean, I can't tell you a specific incident, but yes.
Q. All right. Did you ever have any other training on constitutional law and liabilities other than in the trooper academy that you're aware of?
A. Not that I remember.
Q. Let's go to page 12. You had a course on crash investigations, TraCs. Do you recall what that was?
A. TraCs at the time was the reporting program that we used to record our traffic accidents in.
Q. Is that traffic accidents that you investigate or

that you're involved in?
A. That we investigate.
Q. Okay. So they gave you information on how in that course, and it looks like it was 120 hours, it gave you information on that on how to do the reports and what to look for?
A. Yes, sir.
Q. Okay. Are you any type of crash investigator certified?
A. Well, just general crash investigation, not a reconstructionist or anything.
Q. Okay. So you can't look at a crash and determine speeds and do calculations like that?
A. Not really, no, sir.
Q. Okay. You got a training on in-car videos for two hours. What were you trained about in-car videos?
A. I really don't remember that class to be honest with you.
Q. Is there a certain time that you're supposed to put on your in-car video or was it the operation of them?
A. I don't remember, sir.
Q. Okay. I know you sustained some injuries in this wreck. Do you have any injuries or disabilities stemming from that wreck which affects your memory?

A. Well, certain parts. There's certain things of the wreck and stuff prior to that that I don't remember.
Q. Okay.
A. Definitely at the time of the wreck, I don't remember some of that.
Q. Okay. What I'm talking about, I just -- and I'm trying to ask a delicate question, Officer Burke. You didn't sustain some kind of head injury that makes you forgetful about things in the past just pertaining to the actual incident, correct?
A. As far as years ago, no, sir. If you're asking if I received injuries that made me forget back this far, not that I'm aware of. I just don't remember some of these classes.
Q. Did you sustain a head injury?
A. I did get a head injury, yes, sir.
Q. Were you diagnosed with a traumatic brain injury or anything?
A. I believe so, but I really don't know. My wife has said that they told her that I had a TBI, traumatic brain injury. But I don't -- I didn't ever talk to that doctor after I left the hospital.
Q. Have you received any followup treatment?
A. Not for that, no, sir.
Q. Are you working now?

A. Yes, sir.
Q. Where do you work now?
A. I work at Win Transport.
Q. And what do you do there?
A. I'm a DOT safety compliance officer.
Q. AND how long have you been doing that?
A. For about six months.
Q. After you medically retired before you had that job did you have any other employment?
A. No, sir. I mow yards and stuff but --
Q. You didn't work for anybody else?
A. No say.
Q. I'm going to go down a little bit on these course things. It looks like you had something on mock patrol stops. You had 40 hours of that. Do you recall, did they have certain types of situations where you had to show how to make traffic stops, high risk stops, things of that nature?
A. Yes, sir. I know we did different scenarios. I couldn't tell you the scenarios. But I remember doing different scenarios as to things that could go wrong, things that could go right, things of that nature.
Q. Were any of them involving driving a car?
A. I don't understand that question.
Q. Were these things done on a computer simulator,

were they out in the field?
A. They were not in the field. They were in a training field, if you will.
Q. Okay.
A. Not actual live traffic stops.
Q. All right.
A. They were mock stops.
Q. But you actually were in cars and you had to pull people over and do that somewhere?
A. Yes, sir.
Q. Okay. Did any of them involve how to stop a traffic offender or how to pursue, or was that in a different topic?
A. There again, I don't remember exact situation, sir.
Q. Okay. And if you will go to the next page. It looks like you had on ASP 13 you had 40 hours of training on EVOC. Do you see that?
A. Yes, sir.
Q. What is EVOC?
A. Emergency vehicle 15.
Q. Okay. Would that include pursuits?
A. I know that we did some things that were -- most of it was learning how to drive the cars in emergency situations and stuff.

Q. All right.
A. I'm going to say we did some chasing cars or going after cars that were fleeing. Sir, I really don't remember. To give you an honest answer, I can't.
Q. Okay. Well --
A. Seems like we did go after some cars in that training.
Q. Okay. That says --
A. Most of it was driving a course, trying to drive this course without hitting cones and stuff of that nature.
Q. Like backing up, serpentine?
A. Yes, sir.
Q. And you had to do it within a certain time period?
A. Well, I don't know that we had a time period. We tried to beat each other's times, but I don't remember a time period we had to do it in to pass or fail.
Q. Okay. Let's go to Exhibit Number 8. Let me show you what's been produced by the Arkansas State Police as a lesson plan. Do you remember being trained on EVOC by Captain Eremea and these people up here, Sergeant Speer, do you remember who your trainer was?
A. We had a bunch of trainers. I Captain Eremea being there and Sergeant Speer, yes.
Q. All right. Now, let's go through this. On the

first page it notes at the bottom of the left-hand side, Part of the training was to understand the liability issues in the operation of a police vehicle. Do you see that?

A. Yes, sir.

Q. What is your understanding of the liability issues with respect to the operation of a police vehicle?

A. Well, you have a duty to drive in a safe manner. You can't blow red lights. You can't blow stop signs and stuff like that.

Q. Okay. Were you trained on the emergency vehicle policy and the pursuit policy?

A. I'm sure I was.

Q. If you would over look this.

(Deposition Exhibit 9 was marked.)

Q. I'll mark as Exhibit Number 9 the vehicle use policy. And I'll mark as Exhibit Number 10 the pursuit policy.

(Deposition Exhibit 10 was marked.)

Q. Were you required to comply with these policies?

A. Yes, sir.

Q. Were these policies -- did you go over these policies and then have your instructors try to interpret them for you and tell you what they mean?

A. I don't remember that. I'm sure we probably did,

sir. I really can't answer you on that.
Q. Let's go back to Exhibit Number 8. We're going to keep this out for a second.
A. Okay.
Q. According to this, and I'll have to get confirmation from another witness, I believe this is the training that you received at the academy. It looks like if you go ASP 961.
A. Yes, sir.
Q. You had 10 minutes of training on or an introduction. If you go to page 962. You had an hour of classroom instruction with respect to maintenance of your vehicle. Do you remember being trained on maintaining your vehicle?
A. No, sir.
Q. Okay. Then the next topic, the next objective was to learn the laws of physics that affect vehicle dynamics in a moving vehicle. It was 30 minutes of classroom training for that. Do you see that?
A. Yes, sir.
Q. Do you remember being trained on vehicle dynamics, inertia momentum and things of that nature?
A. I remember like weight transfer and stuff like that, yes, sir.
Q. Okay. Objective number 3, Examine proper

techniques used in performance 15 at 30 minutes of classroom instruction on that. Do you see that?
A. Yes, sir.
Q. Okay. And if you look through the objective. Do you remember having training on the proper braking and curves and steering techniques?
A. Yes, sir.
Q. All right. Objective number 4. Techniques used to avoid skids and recover from skids. Do you remember having training on that?
A. Vaguely, yes, sir.
Q. Objective number 5. Do you recall receiving training on how to use the PIT maneuver?
A. Yes, sir.
Q. And how do you do a PIT?
A. That's when you try to use your front bumper, the front of your vehicle to immobilize another vehicle and hit them on the opposite side from --
Q. Do you hit them from behind?
A. From the side.
Q. Okay. Is there a certain amount you're supposed to steer into them once you make contract?
A. I believe it's a quarter turn, but I don't remember for sure.
Q. You're supposed to accelerate through the turn?

A. Yes, sir.
Q. And is that supposed to safely spine the car out?
A. Yes, sir.
Q. Have you ever had to use a PIT maneuver?
A. Never did a PIT maneuver, no, sir.
Q. All right. Objective number 6 on page is 964. Do you remember being trained and you had 30 minutes of classroom instruction on the use of spike strips, do you see that?
A. Yes, sir.
Q. It looks like for objective number 7, Demonstrate correct techniques associated with 15 a vehicle. That was on the 15 track. And there were 30 hours of that. Do you remember that?
A. Yes, sir.
Q. Based on this it was talking about backing and not striking cones, serpentine forward and backwards, high speed 15 without hitting cones. Do you remember going through those courses?
A. Yes, sir.
Q. So a good portion of your EVOC training involved 30 hours being on the track. Do you remember that being a big part of it?
A. Yes, sir.
Q. All right. Objective number 8. It looks like

after you had some classroom training on the PIT you had an hour of training on demonstrating that in the field. Do you recall practicing the PIT in the field?
A. Yes, sir.
Q. All right. Then out on the field do you remember 30 minutes or a block or a section on deploying spike strips out in the field?
A. Yes, sir.
Q. Objective number 10. It summarizes the consequences of civil liability in the operation of police vehicles. Do you recall having an hour of classroom discussion on that? It's ASP 964 at the bottom.
A. I would assume. I don't recall a class. I remember that.
Q. Do you remember any civil cases involving the 15 of the vehicle that they discussed?
A. No, sir.
Q. Okay. Never heard of Lewis v. Sacramento?
A. I don't know what that is, no, sir.
Q. Fiest v. Simonton?
A. No, sir.
Q. Helseth v. Burch?
A. No, sir.
Q. Scott v. Harris?

A. No, sir.
Q. Do you know what Tennessee v. Garner says?
A. No, sir.
Q. Do you know what Brower versus County of Inyo says?
A. No.
Q. Do you recall any training on whether the use of a motor vehicle can be deadly force?
A. Yes, sir.
Q. Tell me when the use of a motor vehicle can be deadly force?
A. Well, you can't run someone down.
Q. So what were you trained with respect to the use of motor vehicles and deadly force?
A. Like during a pursuit, hitting a motorcycle would be considered deadly force with a police vehicle or with a car. Also striking a person, intentionally trying to run them over to apprehend him would be deadly force.
Q. All right. After we went through this lesson plan, did you see anything in this lesson plan with respect to pursuits?
A. In this one here?
Q. Right, Exhibit 8.
A. I didn't really go through it. I was just following you along.

Q. You need to go through it.
A. Sir?
Q. I need you to go through it then.
A. Okay. No, I don't.
Q. Do you recall getting any -- obviously you used some of the skills, the 15 skills that you learn in emergency vehicle operation while you're engaging in a high speed pursuit, correct?
A. Yes, sir.
Q. Do you see any training block on when to engage in a pursuit?
A. No, sir.
Q. Do you have see any training block on when you're allowed to engage in emergency vehicle 15?
A. No, sir.
Q. Did it appear, after going through this lesson plan, did it appear that most of it kind of -- I think your recollection was in EVOC you did a lot of 15 and going through cones and things of that nature, correct?
A. Yes, sir.
Q. Was that the majority of what you learned and what you recall after we've gone through the lesson plan of your training with respect to EVOC and pursuits?
A. Yes, sir. It was more on handling of a vehicle, yes, sir.

Q. All right. How the weight transfers when you brake, how to go into a turn, the inertia and momentum and things of that nature, right?
A. That's correct.
Q. Skidding, how to recover from a skid, correct?
A. Yes, sir.
Q. The physical operation of a vehicle, correct?
A. Yes, sir.
Q. Now, you had a lot of training. Have you ever had to use your firearm in the course of your law enforcement duties, shoot it, I know you've had to probably pull it out?
A. Yes, sir.
Q. Have you ever had to use deadly force?
A. No, sir.
Q. And while you've never used deadly force, you had a significant amount of training on the use of a firearm, correct.
A. Yes, sir.
Q. You didn't have to pull your firearm out every day, right?
A. No, sir.
Q. You had to drive your car every day, correct?
A. Every day, yes, sir.
Q. Every day do you think you responded to an

emergency call?
A. No, sir.
Q. Fairly frequently?
A. Sometimes frequently, sometimes not.
Q. Okay. You could go --
A. It's not uncommon, no, sir.
Q. Right. I'm trying to figure out in a day of a trooper the chances of you pulling out a gun. It could happen any time, right?
A. Yes, sir.
Q. But the chances of you pulling out a gun if you do everything right are slim, correct?
A. Yes, sir.
Q. And you in your career have never had to use deadly force with your firearm, correct?
A. Correct.
Q. You had to use it I'm sure to make arrests in certain situations, correct?
A. Yes, sir.
Q. But with respect to a car and getting calls and responding to it, that's a much more common occurrence, correct?
A. Yes, sir.
Q. All right. And again, in those training blocks we didn't see anything -- you understand the difference

between when you were in training you were trained how to actually shoot with marksmanship, correct?
A. Yes, sir.
Q. And then you received substantial training on when to use deadly force, correct?
A. Yes, sir.
Q. You didn't have that type of training with respect to when you engage in an emergency vehicle operational pursuit; would that be fair?
A. Ask me that question one more time?
Q. All right. You understand with respect to the use of firearms there's two components; one is marksmanship, do you agree with that?
A. Yes.
Q. You have to be able to shoot the weapon and hit what you're trying to shoot, correct?
A. Yes, sir.
Q. The other aspect is when you're entitled to use deadly force, correct?
A. Yes, sir.
Q. And you received substantial training on your marksmanship, correct?
A. Yes, sir.
Q. And substantial training on when you can use deadly force, correct?

A. Yes, sir.
Q. With respect to EVOC or emergency vehicle operations or pursuits, we went through the lesson plan, and it appeared that there was a significant amount of the physical operation of a vehicle, correct?
A. Yes, sir.
Q. And no topics that directly addressed when to engage in a pursuit or an emergency vehicle operation, correct?
A. Not in this lesson, no, sir.
Q. Do you recall it at any other lesson?
A. Not off the top of my head, no, sir.
Q. And we have more documents that we can get to that. Let's go back to Exhibit Number 8. It looks like if you go to page 966. You went through and this looks like these are scorings on your 15 test. Do you see that?
A. Yes, sir.
Q. And do you remember there's certain different topics. One is called precision moving, serpentine forward, serpentine reverse, PIT and performance driving. Do you see those five documents?
A. Yes, sir.
Q. All right. And according to these, if you look at them, you have to do a certain amount of time and a

certain amount of cones. Do you see that up at the top?
A. Yes, sir.
Q. All right. Now, let's just talk about your -- before we get into further training, I wanted to go through the academy. Do you remember anything else in your academy training -- well, let me ask you this. Were you tested that you're aware of on whether or not you understood the EVOC training, did you have written tests?
A. I don't know on that specific course. I know some courses we did. I don't remember on that specific course.
Q. Some courses you did, some courses you didn't?
A. Or some courses they may take one or two questions out of it and do a weekly test.
Q. Okay.
A. On that particular course I don't remember.
Q. Okay. Obviously you had tests with respect to your driving performance, correct?
A. I would feel like that's what this here is.
Q. Right. Okay. Then let's go through a little bit about your career as a trooper. Based on my understanding, you were put out in the field with an FTO officer in June of 2011. Does that sound correct?
A. Sounds about correct, yes, sir.

Q. Okay. And were you assigned to a specific FTO officer or did they change?
A. They changed.
Q. Do you know how long the FTO program was?
A. I'm going to say 10 or 11 or 12 weeks or something like that.
Q. Okay. And tell me a little bit, what is FTO, that's a field training officer, right?
A. Yes, sir. You work alongside or with another officer that has been through a training course as to how to train other officers.
Q. Okay. Is it kind of like on the job learning with a more experienced officer?
A. We start out, I don't remember the time frame, but the first couple of weeks I would just kind of ride and observe the way he did things. And then we transitioned into me doing it.
Q. All right.
A. And him being there with me. And then we transitioned into where I did it and he stayed in the car and observed from the car.
Q. Okay. So I'm just going to generalize it. There was a period of time where you were just an observer?
A. Yes, sir.
Q. There was a period of time where you watched what

he did, the first period of time you watched what he did to learn how to do certain things like traffic stops, correct?
A. Yes, sir.
Q. Then there was a period of time where he let you start doing some of it, correct?
A. Yes, sir.
Q. And then there was a final period of time where you kind of ran the car and did everything while he was watching to make sure it was done correctly?
A. Yes, sir.
Q. Tell me the names of any of the field training officers that you remember?
A. I had Mac Davis, I think his name is Shannon Davis, he goes by Mac. I had Ricky Denton, Charlie Edmondson, I think Chris Waters for a few days. I want to say I rode with Dwight Lee for a few days.
Q. All right. And when you were going through field training and FTO training, were you assigned to a particular troop?
A. That was all in my troop, yes, sir.
Q. What troop was that?
A. Troop H.
Q. And what does Troop H cover?
A. That's up there at Fort Smith. It covers

Sebastian County, Crawford County, Scott County, Logan County and Franklin County.
Q. All right. And how many different troops are there throughout the state, do you know?
A. 12.
Q. 12?
A. Yes, sir.
Q. Did you stay at Troop H until like 2014?
A. I believe it was '14 we moved, yes, sir.
Q. And then where did you move to?
A. To Hot Springs.
Q. And what troop is that?
A. That's Troop K.
Q. When you were at -- I'm sorry. Troop H was the first one?
A. Yes, sir.
Q. Who was your commander, tell me who your -- take me through your chain of command while you were there?
A. From my sergeant and above?
Q. I want to know --
A. My sergeant was Randall Dias. The lieutenant was Bryan Davis. My captain was Steve Coleman.
Q. And is there a commander of each troop?
A. That could be the captain, yes, sir.
Q. So the captain runs the troop?

A. Yes, sir. During my time there Steve Coleman retired. And Bryan Davis become our captain. And we did not have a lieutenant.
Q. When you went to Hot Springs what troop was that again?
A. Troop K.
Q. Troop K. Who was your -- what was your chain of command?
A. When I first moved there my sergeant was Scott Joe. We did not have a lieutenant. And my captain was Mark Allen.
Q. All right.
A. Mark retired. And we got Forrest Marks was my captain. And he transferred or promoted to Little Rock. And then we got Ron Casey. Somewhere during that time we got Lieutenant David Cooper.
Q. Now, when you're hired what is your title?
A. You're a trooper.
Q. And did you ever receive any promotion?
A. I was promoted to trooper 1st class.
Q. Is that after four and a half years of service?
A. I believe so, yes, sir.
Q. And is that what your rank was at the time of the wreck?
A. Yes, sir.

Q. How many officers are in a trooper, do you know, do you have any idea?
A. I don't know.
Q. Did you work a particular shift or were you all different shifts?
A. We rotated shifts.
Q. During the course of your career did you ever have anybody make a complaint against you?
A. Yes, sir.
Q. Tell me about that?
A. That was a citizen complaint. He thought I mistreated him on a traffic stop.
Q. Was that [redacted]?
A. That sounds about right, yes, sir.
Q. And that was investigated and found to be unfounded, correct?
A. That's correct.
Q. All right. Any other complaints that you're aware of?
A. Not that I'm aware of, no, sir.
Q. Any verbal or written discipline?
A. No, sir.
Q. Okay.
A. Other than just normal day-to-day.
Q. Do better on this or --

A. Yes, sir.
Q. Nothing formal?
A. No, sir.
Q. Now, what's an officer's primary job function, to protect and serve?
A. Well, yes, sir.
Q. It's not just to catch criminals, correct?
A. No, sir.
Q. Are you trained that there are certain requirements or limitations to your authority as a police officer?
A. Yes, sir.
Q. For example, you can't just go up to anybody and pat them down for no reason, correct?
A. Correct.
Q. As a law enforcement officer, as you get more and more experienced you come to know your beat, correct, know your area?
A. Yes, sir.
Q. You know certain areas are more high crime than other areas, correct?
A. Yes, sir.
Q. And a good law enforcement officer can go by certain places and know that drugs are being sold there, but can't take any law enforcement action unless you see

something that gives you reasonable suspicion or probable cause to believe that a crime is committed, correct?
A. Correct.
Q. So while you know 100 percent that something may be -- that something may be going on, there are restrictions to what you can do, correct?
A. Sure.
Q. Part of what your obligations and your duties are is to protect the public, correct?
A. That's correct.
Q. And sometimes you have to stop doing things even when you're trying to catch a criminal or stop criminal action in the interest of protecting the public, correct?
A. Yes, sir.
Q. Now, do you recall having any other EVOC training or pursuit training other than basic troop school?
A. I don't know about any classes. I know I don't recall any 15 courses or anything like that. But as far as classes, I can't answer that. I don't know.
Q. Once you become a trooper, is it your understanding that you have to take a certain number of courses per year to maintain your certification?
A. I'm not aware of that. I know we do some firearm

training, but I don't know.
Q. Well, with firearms you have to train quarterly, correct?
A. We train quarterly, yes, sir. I don't know what the requirements are, but we train quarterly.
Q. So you have to go and qualify every three months, correct?
A. No, sir. We qualify once a year. We train quarterly.
Q. Okay. Tell me what the difference between qualification and training is?
A. Qualification you're shooting, you got to shoot a certain percentage on a target, a score target, I guess. When you're training you don't that. You're just training in different scenarios of shooting and transition weapons and things like that.
Q. All right. Again does that training tell you both how to actually encounter a situation and when it's appropriate to use deadly force?
A. I don't recall that, no, sir. It's more just training on shooting a firearm. You'll have scenarios and stuff like that, but it's mainly for shooting.
Q. But what I'm trying to get at is are there shoot and don't shoot scenarios?
A. There may be some in there, yes, sir.

Q. Firearms qualification you got to score X amount on targets at different positions, correct?
A. Correct.
Q. All right. When you had firearms training quarterly, did you go through -- were they how to handle your firearm, how to draw your firearm, or were they when do you shoot or not shoot a firearm?
A. I don't remember. They may say or have a scenario where it would be a don't shoot scenario based off of doesn't have a weapon or has a weapon. But as far as the whole training, no, sir, it's more just towards shooting.
Q. While they concentrated a lot of training on firearms, do you remember them putting that type of emphasis on EVOC or pursuits? You didn't have quarterly training on EVOC or pursuits, did you?
A. No, sir.
Q. Do you even recall any particular training that you had on EVOC or pursuits after the troop academy?
A. I don't recall. I'm not saying there's not, but I don't recall.
Q. And we have some documents that we're going to go through. Let's talk about your FTO training for a second. You went through your FTO training, to the best of your recollection, do you recall ever going on an

emergency call during your FTO training?
A. I cannot tell you that. I'm sure we did, but I can't say that we did.
Q. Well, I'm not trying to trick you. I'm trying to get an understanding of what your understanding of the training was and your requirements were?
A. I can't remember a specific time that we did, if that's what you're asking.
Q. Do you ever remember having a discussion with your FTO officer about how the appropriate way is to respond to an emergency call?
A. No, sir.
Q. Were you trained what is an emergency call?
A. Not that I know of, no, sir.
Q. Okay.
A. Through the FTO?
Q. Through your FTO?
A. I don't recall that, no, sir.
Q. How about in trooper school?
A. To my recollection, no.
Q. Do you recall getting in a pursuit with your FTO officer?
A. No, sir.
Q. Do you recall going over either the vehicle use or the pursuit policy with your FTO officer?

A. I don't recall, no, sir.
Q. When you went through FTO training, did you have to sign any documents that indicated what you had accomplished in FTO training?
A. I don't remember. We signed documents. I know they would generally go over on a weekly basis kind of how we did it. I don't recall if we signed those or not.
Q. Okay. So it's your understanding there was documentation of FTO training?
A. Yes, sir.

MR. CLARKE: Jennifer, I hadn't seen any FTO training documents. Do you know if you produced them?

MS. MERRIT: You have what we produced. We can talk about that off the record.

MR. CLARKE: Just for my record, to the extent they exist, I'm going to mark as late filed Exhibit 11 Burke's FTO training documents, if they exist.

(Deposition Exhibit 11 was marked.)

BY MR. CLARKE:
Q. Now, are you looking for something in there? I'll let you look.
A. I was just seeing if they was in my file. That's

all I was looking for.
Q. Why don't you look through your file and see if you see anything?
A. I don't see any.
Q. Okay. Keep that exhibit out. We're going to go through your personnel file right there.
A. Okay.
Q. Now, is that Exhibit 7?
A. Yes.
Q. Do you understand that there are two separate policies; a vehicle use policy and a pursuit policy?
A. Yes, sir.
Q. All right. It looks like if we go to ASP 15.
A. Okay.
Q. It looks like there were certain type of reading assignments that you had to do while you were in the academy. Do you remember those?
A. Yes, sir.
Q. Okay. I don't see on the reading assignments on the second page. The pursuit policy is LE 13. Do you see where you had any assignments on the pursuit policy?
A. LE section 13?
Q. Yeah.
A. Yes, sir.
Q. You do. Where?

A. ASP 16, page 16.
Q. It's not on my highlight. I'm sorry. It looks like you had two assignments on LE or general -- you had one assignment on the general section 23 policy, vehicle use, correct?
A. Yes, sir.
Q. Go to ASP 19. If you look through the traffic stops policy, this looks like it was your lesson plan when you were in troop school. Can you look through that and tell me from ASP 19 through basically 37 whether or not any traffic stops dealt with emergency vehicle operations or pursuits?
A. You said through 23?
Q. The training plan goes on -- the actual lesson plan goes on through 30.
A. What was your question again?
Q. Was there any training on pursuits or emergency vehicle operations during traffic -- during traffic stops based on the lesson plan?
A. No, sir.
Q. All right. It does have some information if you go to ASP 23, objective number 1 says, demonstrate officer safety skills while conducting traffic stops.
Is it your understanding that traffic stops dealt with primarily how to perform, where to perform and how

to conduct a traffic stop with respect to officer safety?
A. Yes, sir.
Q. Where you park your car, how you park your car, how you approach a car, correct?
A. Yes, sir.
Q. What to -- how to instruct somebody to get out of the car, correct?
A. Yes, sir.
Q. It also dealt with some certain type of stops when you have what's called a high risk stop or a felony stop, correct?
A. Yes.
Q. And I'm sure they explained to you numerous times that more officers are killed during traffic stops than a lot of other things, correct?
A. I don't recall that.
Q. You don't. Is it your understanding then that you were trained when you make a traffic stop that you don't turn on your blue lights until you have made -- until you have caught up to a vehicle and you have selected a place to make the safe traffic stop?
A. That's correct.
Q. All right. So if you have to exceed the speed limit to catch up to somebody before you perform a

traffic stop, was it your understanding, based on your training, that you didn't have to have your lights and siren on?

A. That would be correct.

Q. So throughout your career was it your custom that if you were going to engage in a traffic stop, that you would pull out and drive -- pull out to try to make it and then get up right behind the vehicle before you put your blue lights on siren on?

A. The majority of the time, yes, sir.

Q. All right. Is that the way that you observe most other troopers do it?

A. Yes, sir.

Q. Is that the way you were taught to do it?

A. Yes, sir.

Q. All right. And a lot of those times when you're trying to engage in a traffic stop you would have to get in a position to catch up -- well, let's just talk about a speeder. Okay?

A. Yes, sir.

Q. Somebody speeding in order to catch back up with them you have to exceed the speed limit, correct?

A. Yes, sir.

Q. And it was your training and the way that you observed other officers do this, that you would catch up

with them without activating your lights and siren until you got behind them and were actually ready to make the traffic stop, correct?

A. Correct.

Q. Were you told that you -- well, I'll leave it at that.

Let's go to ASP 38. I think we've already gone through the lesson plan on EVOC. At the end of it there's a PowerPoint. We've gone through the EVOC lesson plan, but let's go to ASP 45.

Trooper Burke, if you ever need a break or something, I didn't say that at the beginning, let me know. This isn't an endurance contest. I'll just keep going.

A. Yes, sir.

Q. Okay. And this appears to be a PowerPoint that must have accompanied your lesson plan. Do you remember seeing PowerPoints and training materials in the classroom?

A. Yes, sir.

Q. All right. And the title of this PowerPoint is Defensive 15. Do you see that?

A. Yes, sir.

Q. Okay. They talk to you about different types of physiological effects that occur to you when you're

engaged in emergency vehicle operations or high speed 15?
A. Was that a question?
Q. Yeah. Did they -- did you receive any training in your EVOC that indicates that certain physiological things happen within your body when you engage in high speed 15?
A. Are you talking about like tunnel vision, is that what you're referring to?
Q. Yes, sir.
A. Yes, sir.
Q. And what other things or is that the only thing?
A. I don't see anything in here yet. Are you talking about all this stuff in here, is that what you're referring to?
Q. My question is really not based on this training. It looks like, according to these PowerPoints, 45 to 48, they all dealt with the physical operation of a vehicle, correct?
A. Yes, sir.
Q. Do these training slides indicate anything with respect to the physiological effects of high speed 15 like getting tunnel vision, auditory occlusion and making bad decisions?
A. I'll be honest with you. I can't half read some

of this stuff.
Q. Again these really deal with the physical aspects of 15, correct?
A. Yes, sir.
Q. Okay. You had heard of tunnel vision. Were you trained or provided information with respect to any other physiological characteristics of high speed 15 that officers may experience when engaged in high speed 15?
A. I don't guess I'm understanding what you're asking.
Q. That's fine. Please make sure you tell me that.
Okay. When you were training with a gun, did they train you with respect to how to do things under high stress conditions?
A. Yes, sir.
Q. Did they talk to you about certain types of stress responses that you have to combat when you're using your firearm so that you don't inappropriately use it?
A. Yes, sir.
Q. All right. Did they train you -- and those are that you train a lot to get muscle memory, correct?
A. Yes, sir.
Q. So that it becomes instinctual, correct?
A. Correct.

Q. And they try to provide you information about the type of things your body will experience when you're in a high stress situation with a firearm, so that you can better understand it, correct?
A. Yes, sir.
Q. And you do that four times a year, correct, as part of the firearms training, correct?
A. Well, not necessarily. Not every time.
Q. Okay. But you had firearms classes that dealt with different aspects of that four times a year, correct?
A. Well, sometimes it's just shooting. It's not just --
Q. Okay.
A. I'm trying to think how to explain this to you. Sometimes you're just shooting different scenarios. And sometimes they may put the stress level in there. Sometime it may not be.
Q. All right. I understand that. That happened on a somewhat frequent basis, correct? Qualification -- let me make sure. I thought you said you qualified one time a year, correct?
A. That's correct.
Q. You had firearms training four times a year, correct?

A. Well, three counting qualification. It would be four.
Q. Four firearms training; one is straight qualification, the other ones deal with other aspects, correct, you could be shooting, correct?
A. You're shooting, but it's more target shooting than it is --
Q. Okay. I think I understand. Let me try to ask a better question.
All right. When you have firearms training four times a year in all the training are you using a gun?
A. Yes, sir.
Q. Okay. So you're shooting?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. There's state mandated qualifications that you have to score a specific thing with respect to certain shooting distances and conditions, correct?
A. Yes, sir.
Q. And you do that once a year for a score to make sure you maintain your firearms qualification, correct?
A. Yes, sir.
Q. The other three times, are they all done at the range?

A. Yes, sir.
Q. Okay. The other times you're actually still physically shooting, correct?
A. Yes, sir.
Q. Do they put in -- does the Arkansas State Police have a shoot/don't shoot range or a computer simulator, a FATS machine?
A. I can't answer that question. I can tell you I trained on a FATS machine one time during troop school.
Q. Okay.
A. But I can't tell you if they still have that FATS machine or not.
Q. Okay.
A. I've never been on it since.
Q. Okay. So you did it. And in the FATS machine there's a computer screen with different scenarios where they take you through things, how to make a stop or how to deal with a citizen, correct?
A. Yes.
Q. And the scenarios can change where somebody comes at you with a knife out of nowhere and you have to use deadly force, correct?
A. Yes, sir.
Q. All right. When you did your firearms training, did you have any -- that's what I call a shoot/don't

shoot scenario?
A. Correct.
Q. Did you have that shoot/don't shoot scenario when you were doing your quarterly firearms training?
A. You may have, you may not have.
Q. Okay.
A. They may incorporate some of that in there.
Q. All right.
A. The lesson plan, I don't know where it comes from, if they get direction from someone else or if they just come up with it on their own. There may be a shoot/don't shoot scenario and there may not be.
Q. At the shooting range do they have moving targets?
A. We didn't, no, sir.
Q. Were you ever told to shoot a certain object or shape or number and not shoot a certain object, shape or number?
A. Well, to a degree, yes, sir.
Q. They told you. Okay. So according to this lesson plan it didn't deal with the actual -- it dealt with on EVOC it dealt with again the physical operation of the vehicle, correct?
A. Correct.
Q. All right. Let's go to ASP 51. And in this lesson plan it was two hours. And did you actually have

to -- it says, Review the pursuit policy specifically concerning hollow spike strips.

Did you go over the pursuit policy with respect to when it was appropriate to deploy those strips and how to deploy them?

A. I don't remember. I remember going over using the strips, but I don't know.

Q. Okay. All right. If you go to ASP 56. It came with a PowerPoint. Is there anything in the PowerPoint pertaining to emergency vehicle operation or pursuits?

A. This talks about how the strips increase the safety of pursuits.

Q. All right. Which is a method of terminating a pursuit, correct?

A. Correct.

Q. Anything else about pursuits?

A. I don't see anything.

Q. Let's go to ASP 63. Do you recall having training on use of force and use of deadly force?

A. Yes, sir.

Q. All right. What is deadly force?

A. When a life is taken or can be taken, when you use force for that or it could end in death.

Q. Does it have to be with a gun?

A. No, sir.

Q. Are there certain deadly force areas if you use a baton?
A. Yes, sir.
Q. If you look at page ASP 66. Do you recall being trained that a motor vehicle can be the use of deadly force?
A. Yes, sir.
Q. Are you allowed to use deadly force on somebody if they're just trying to escape?
A. No, sir.
Q. You have to be in immediate physical harm to yourself or another officer or another person, correct?
A. Correct.
Q. If you go to page 81, ASP 81.
A. Yes, sir.
Q. Do you recall getting training on vehicles and the standard they're supposed to be evaluated on for using them as a force option?
A. Yes, sir.
Q. And you have to apply the same standards if you're using your vehicle in a force scenario as you would with any other police weapon, correct?
A. Correct.
Q. All right. Let's go to page ASP 101. Do you recall getting any understanding that the 15 in the

wreck that you were involved in on October 10th was being investigated?
A. Yes, sir.
Q. Do you know if that investigation came to any conclusion or were you told any conclusion?
A. Not that I'm aware of, sir.
Q. My understanding is you medically retired --
A. That's correct.
Q. -- in March; is that correct?
A. Yes, sir.
Q. Were you off work from October 10th until the time you medically retired?
A. Yes, sir.
Q. Excuse me?
A. Yes, sir.
Q. And what type of -- did you have to fill out -- what type of injuries did you sustain in the car wreck?
A. I had my head injury, received a foot injury and a leg injury and a hip injury.
Q. Did you have to have surgery?
A. Yes, sir.
Q. Just tell me in general what --
A. I really don't know. I'm knocked out during this whole time pretty much.
Q. But you're alive now. You know what happened to

you?
A. I don't know exactly what all happened. I know I broke my foot. And they obviously had to do surgery on that. I broke my leg. And they had to do surgery on that. I don't know if they were done at the same time or different times. The same thing with my head. And then my hip was done on a different date.
Q. Did you have surgery on your head?
A. On my head?
Q. On your head.
A. I don't know what all they done to it, sir. I really don't.
Q. Did you then have medical treatment continuous? How long were you in the hospital?
A. I was in the hospital 10 or 11 days.
Q. All right. And did you receive followup care after that?
A. After that I went to inpatient rehab for 10 or 11 days, 21 days total.
Q. Okay.
A. Between the hospital and the rehab.
Q. Okay. And after you got out of the -- after you got out of the rehab hospital or the rehab place did you then follow up with a doctor?
A. I followed up. I had outpatient rehab as well.

Q. Okay. And what happened in March that you put in for medical retirement?
A. It was obvious that I wasn't going to be able to return back to work due to my injuries. The doctor told me that from day one. I thought I'd beat the odds. It's not there, so.
Q. Okay. And what type of limitations or restrictions did you sustain in this wreck that you believe precluded you from being able to go back as a trooper?
A. The way my foot was put back together, I know I can't do the job that I'd have to do.
Q. Okay.
A. That foot is pieced together at best.
Q. Okay.
A. And so I know it's not worth the risk.
Q. So you couldn't run appropriately?
A. The doctor told me no running, no jumping, anything of that nature, no twisting on that leg and stuff like that.
Q. What doctor was that?
A. Dr. Robert Olive.
Q. Is he an orthopedic doctor?
A. Yes, sir.
Q. Okay. In March of 2017, was that about the time

that you realized that you were not going to make enough improvement to be able to perform the job duties of a law enforcement officer?
A. That's correct.
Q. All right. Let's look at page 155.
A. Okay.
Q. This looks like you signed on 8/14/13. It's an acknowledgment that you received the revised provisions, and one of them was general section 23 on vehicle use. Do you see that?
A. Yes, sir.
Q. Were you just given a copy of this policy to put in the book, or did you receive any training or undergo any testing?
A. I don't really know, sir.
Q. It says it's an acknowledgment that you received it. Do you recall when you got policy updates that you had to have testing or training on them?
A. Sometimes, no. I can't remember if we would go to a class. I don't remember that.
Q. Okay. All right.
A. Usually we'd get it and sometimes even electronically we'd get it and just make an acknowledgment of it and put it in our binder.
Q. Do you know what the changes were?

A. I have no idea.
Q. Throughout your whole time of working as a trooper, was it your understanding under the vehicle use policy that you were allowed to exceed the speed limit while you were trying to catch up with somebody to perform a traffic stop?
A. Yes, sir.
Q. Nobody told you any differently, correct?
A. That's correct.
Q. All right. If you can go to page 156. It looks like on 8/14/2012 you signed an acknowledgment that you received an updated pursuit policy. Well, it doesn't say updated. Well, it does, it says revisions. Do you see that?
A. Yes, sir.
Q. Do you recall whether you received any testing or training on your understanding or knowledge of the pursuit policy?
A. No, sir.
Q. Do you know what the changes were?
A. No, sir.
Q. It didn't change your understanding of your training that you could, if you were going to try to -- I guess every pursuit starts, unless you're called into an active pursuit, as some type of traffic stop or some

type of stop, correct?
A. Well --
Q. Or some type of law enforcement action?
A. Correct.
Q. Okay. And again, were you told that if you were going to engage in a pursuit, you catch up to them before you put on your blue lights and siren?
A. It's not a pursuit until you do put on your blue lights and siren.
Q. Is it your training that when you were going to engage in a pursuit, you caught up to them just like you did in a traffic stop, before you put on your blue lights and siren?
A. I don't think I'm following your question.
Q. Okay. My understanding, based on your testimony --
A. Are you talking about an existing pursuit?
Q. No. Let's take out the scenario where you get called into a pursuit that's already been initiated or is already on-going. Okay?
A. Okay.
Q. Let me try to preface my question with some background. It's my understanding, based on your testimony here today, that when you performed a traffic stop, if you saw a speeder, that you were trained and

allowed to then try to catch up to the speeder before you put on your blue lights and siren, correct?
A. Correct.
Q. And in so doing, if they're speeding and they don't slow down immediately, you have to exceed the speed limit to catch up to them, correct?
A. That's correct.
Q. Many traffic stops then become pursuits, correct?
A. Yes, sir.
Q. And that's one of the circumstances by which a pursuit is initiated, correct?
A. Yes, sir.
Q. So if a pursuit -- so a traffic stop can turn into a pursuit once a suspect or a citizen fails to comply or fails to pull over once you put on your blue lights and siren, correct?
A. Correct.
Q. And takes evasive action, correct?
A. Correct.
Q. So again, with respect to pursuits, was it your understanding that you are allowed, based on your training, to exceed the speed limit while attempting to catch up to the suspected violator before putting your blue lights and siren on?
A. As a traffic stop, yes.

Q. Well, a traffic stop, that could turn into a pursuit based on the actions of the person you're trying to stop, correct?
A. It could, yes, sir.
Q. All right. You're performing the same function either way before you get -- before it turns into a pursuit, correct?
A. Correct.
Q. That decision is made by the suspect?
A. Yes, sir.
Q. Okay. You are performing the same function up to that point, and what they do determines whether or not it becomes a pursuit, correct?
A. Yes, sir.
Q. And have you throughout your career had to catch up to a speeder by exceeding the speed limit?
A. Every day.
Q. Every day. All right. And every day that you do that did you follow what we talked about as being your training, that being that you caught up to them before you put on and found a place where you wanted to pull them over before you put your blue lights and siren on?
A. That's correct.
Q. All right. How many pursuits do you think you were ever engaged in?

A. I don't have any idea.
Q. All right. More than five?
A. I'd say more than five. Probably 10 or so. I don't know for sure.
Q. All right. So when you engaged in a pursuit most of these things were traffic stops that had turned into pursuits once the violator refused to stop, after you put on your blue lights and siren?
A. Most of them, yes, sir.
Q. Okay. And did your understanding of how those were dealt with change at any time while you were at the Arkansas State Police?
A. In what way?
Q. As to how to perform a traffic stop and what to do once in pursuit?
A. No, sir.
MR. CLARKE: Let's take a break.
(A recess was had.)
BY MR. CLARKE:
Q. Trooper Burke, we just took a break. Is there anything else that you recall about training on emergency vehicle operations or pursuits other than what we've covered today?
A. No, sir.
Q. Do you remember having any training out on the

track again after your initial troop school?
A. No, sir.
Q. Do you recall any tests on emergency vehicles or pursuits after troop school?
A. No, sir.
Q. Do you recall any emails or other memos coming out pertaining to a change in policies or practice with respect to vehicle use, emergency vehicle operations or pursuits after the troop school, other than those acknowledgments that we went through?
A. Just the revision in the policy.
Q. Let's talk about the events of October 10, 2016.
All right?
A. Yes, sir.
Q. What was your assigned shift?
A. I don't know.
Q. Do you recall around what time the accident happened?
A. It was that evening. I don't remember what time.
(Deposition Exhibit 10 was marked.)
Q. I'll mark the accident report Exhibit Number 10 just for the purposes of discussion.
And you didn't fill out the accident report because you went to the hospital, correct?
A. Correct.

Q. It looks like according to this it happened on Monday, 10/10/16 at 9:23 p.m. Does that sound about right?
A. I'll have to take your word on it, sir.
Q. Okay. Is that nighttime on that day?
A. Yes, sir.
Q. I'm trying to do this in a way where we don't have to sit down and go over the whole tape.
A. Yes, sir.
Q. So if you're going to testify that it's some other time this is my opportunity to find out?
A. Sir, I can't tell you one way or the other.
Q. I understand that. I appreciate that. I'm just trying to go through that. Tell me a little bit about that particular day; did anything unusual happen on your shift?
A. No, sir, not that I remember.
Q. All right. When you're working on a particular day or on a particular shift like this Monday at 9 o'clock, how many other troopers are on-call with your troop?
A. I really can't answer that. I don't know. Also it's going to vary. You may have -- we're divided into posts inside the troop. And our post consisted strictly of Garland County. And that was the only troopers that

I really worked with on a normal basis. You may have something that someone else comes over and works with you or you go work with them. You could be out by yourself.
Q. Okay. That's what I'm trying to get at.
A. Or you could be five or six or seven people.
Q. So from one to six or seven?
A. On a good day maybe depending on what time of the day and stuff like that, yes, sir.
Q. I'm just trying to get an idea of what type of law enforcement resources that your troop had available to you?
A. On this particular day?
Q. Yes.
A. There was one other trooper working.
Q. And sometimes that were more?
A. Yes, sir.
Q. Okay. And you say you had two troopers for all of Garland County?
A. That would have been in our post, yes, sir.
Q. And how many posts did you have within your troop?
A. Three.
Q. All right. And you just kind of work with the people who kind of work your particular post?
A. Well, you're assigned to a county.

Q. All right.
A. You know, different counties, you may have three or four counties in a post.
Q. Okay.
A. And so in our particular post we only had one county in our post.
Q. Okay.
A. And those were the people that I worked with were people who were assigned to that on a normal basis.
Q. And who were the people in 2016 that you normally worked with at your post?
A. On my particular shift was James Avant, Brandon Margis, Kevin Steed, Jorge Oseguera, Jorge was on our shift then, and Brandon Cook.
Q. And tell me what a trooper does on a normal basis?
A. Well, we work accidents. And then we work traffic, you know, make traffic stops and stuff. We would also assist Garland County agencies, Sheriff's Office there if need be, and then take calls for whatever else.
Q. Well, I'm just trying to get at when you go on-duty do you have to check in at troop headquarters?
A. Yes, sir. We get on the radio and check in.
Q. Okay. You have a take home car, right?
A. Yes, sir.

Q. So before you go out in the field do you have to go to a physical location to check in first?
A. No, sir.
Q. So you're assigned a particular shift, and if you have your car you check in and say I'm on-duty or something, correct?
A. Correct.
Q. Is there a 10 code for that?
A. 10-8.
Q. Okay. And what's the 10 code for pursuit?
A. I don't even remember to be honest with you.
Q. Is there a 10 code for emergency response?
A. It's been about two years since I used them 10 codes. I don't remember. If you don't use it you lose it.
Q. I'll mark this as Exhibit Number 11. It's the radio procedures policy.
(Deposition Exhibit 11 was marked.)
Q. What's the 10 code for pursuits?
A. Pursuit in progress is 10-37.
Q. Is there a pursuit -- is there a 10 code for when you are involved in emergency response that you're aware of?
A. I don't understand your question.
Q. Okay. What is your understanding of what an

emergency call is or an emergency response?
A. Well, it requires you to get there in a timely manner. There may be that someone's in harm or facing harm or something of that nature, life or death situation. And some of them may not even be life or death, but it would still be an emergency situation.
Q. Is there a -- what I'm trying to get at is, you know, I asked you before how many times were you involved in an emergency response and you said I don't know.
A. Right.
Q. Is there something that you're supposed to do to inform dispatch that you're involved in an emergency response so that they would know that?
A. If there's a -- a lot of that is probably going to come from them anyway.
Q. Okay.
A. You're going to be dispatched to it usually. In case that they weren't aware and if something happened, and if you wanted to -- if you had emergency traffic that you needed to tell them that you were wanting to radio for more help, there's a 10 code for that.
Q. And what's that 10 code?
A. 10-33.
Q. That's when you're asking other people to not get

on the radio because you need the dispatcher's undivided attention, correct?
A. Then you would direct that, which is 10-63, which is telling everyone to stay off the radio for emergency traffic only.
Q. Okay. So if you were involved in a pursuit you're supposed to say 10-37, correct?
A. Correct.
Q. And if you want no traffic to come during the course of that pursuit, then you would tell them and you would say -- what would you say then?
A. Well, at that point every time I've ever been in that situation, the dispatcher was actually directing that and call for emergency traffic only.
Q. Okay.
A. We didn't do that. Well, I didn't anyway.
Q. And that was kind of part of the communications when a pursuit was in progress the dispatcher would clear the channel?
A. Correct.
Q. Okay.
A. Or someone would, yes.
Q. Right. And that's just so you don't have talk-over, correct?
A. Correct.

Q. All right. Now, when you go on-duty are there -- a lot of departments and troopers are set up a lot different than like municipal police departments. So there's so kind of roll call that you have before every shift, correct?
A. No, sir.
Q. Do you have -- how do you know where you're going, are you given any direction as to where you're going to be patroling on a particular day?
A. Normally, no.
Q. All right.
A. There may be times that your sergeant has had a request for something or he wants to do a saturation in a particular area, and he says, I want you to go here. But generally you go where you want to go.
Q. On a normal basis you have Garland County, you get in your car, you're in Garland County, and you say 10-8 I'm here, and you just start doing your law enforcement duties?
A. Yes, sir.
Q. When a trooper -- when you're out in the field are your trooper cars set up to listen to dispatch from local agencies?
A. I assume you're talking about my particular car, because I can't speak for everybody's else car.

Q. And everyone has -- do they all have lights and siren?
A. Well --
Q. I'll just strike that.
A. I can't answer what all of them have.
Q. Okay. You were 15 a marked police car, correct?
A. Yes.
Q. And it was a Charger, right?
A. Yes, sir.
Q. And it had lights and siren?
A. Yes, sir.
Q. Was your car set up to where you could listen to dispatch from other agencies?
A. I could listen to the Garland County Sheriff's Office. I could listen to Hot Springs PD. I couldn't talk to them or communicate with them, but I could with the county.
Q. All right. And if the county -- your radio, do you have to set it to the county, or are you listening to the county and the Arkansas State Police dispatch at the same time?
A. I actually have two different radios. But I generally kept the county turned down. They weren't signing my paycheck. So that's what I tried to concentrate on. Sometimes I wouldn't even have the

Garland County radio on.
Q. Okay. Sometimes you say you go out and a good officer knows his beat and knows what's going on. I'm sure you tried to cover the whole county and concentrate on places where you knew there were problems, correct?
A. Correct.
Q. Sometimes -- I thought you said that sometimes you respond to calls for assistance from other agencies, correct?
A. Correct.
Q. All right. If you got -- if you were listening to the Garland County Sheriff's Department radio, and they had a call for a shooting or a robbery in progress, what was the criteria as to whether or not you responded to that?
A. I guess first and foremost is what else I was engaged in. Second would be the criteria of the call or what the call was for. Sometimes they could be short on manpower and couldn't take a simple call. They would call us and ask us to respond.
Q. Would they call you directly on the radio?
A. No, sir. If I heard them and I heard that they were needing help I would go ahead and acknowledge that and try to respond. If not, they would contract our dispatch and then dispatch would contact us.

Q. So there are times it came directly from the county and times that the county contacted Arkansas State Police dispatch to see if they could get manpower, correct?
A. Correct.
Q. And whether you respond would be based on what you were currently doing, correct?
A. Correct.
Q. I guess in your location?
A. Correct.
Q. Whether or not you could get there?
A. Correct.
Q. All right. Throughout your career have you heard calls over the radio where you then attempted to go to that location at high speeds?
A. A few of them, yes, sir.
Q. Okay. And were you required to have your lights and siren on for that?
A. Yes, sir.
Q. Okay.
A. Under most circumstances, yes, sir.
Q. And it's my understanding, in looking at the policy, officers had discretion as to whether or not to put on their lights and siren depending on whether a silent approach was deemed necessary by the trooper,

correct?
A. That's correct.
Q. Were you trained, do you recall, on any of the state statutes in Arkansas pertaining to the use of lights and siren?
A. I don't recall.
Q. We went through the lesson plans. It didn't appear to be in that, did it?
A. I don't remember. I don't recall seeing them in that, no, sir.
Q. And what would be a circumstance where there was a call where you may want to get there quickly, but not utilize your lights and siren?
A. Do you want one I actually went on or just a scenario?
Q. I want to know how you make that decision?
A. I think a lot of that is going to come into safety of other people and the officer. If I had a call where someone was robbing someone or something like an armed robbery, I wouldn't want to go in there with my lights and siren on because that could cause harm or danger to the person that they're robbing. And also I want to have the element of surprise on that person. I don't want them to know I'm there until I'm ready for them to know that I'm there.

Q. All right. And sort of similar to the traffic stops, you want to get there and pick your location before you put on your blue lights to make sure they don't run or you're in the most tactically advantageous position, correct?
A. Correct.
Q. All right. I would imagine a lot of emergency calls that you would responding to that weren't dispatched would be the calls that appear that more serious, correct?
A. Would you repeat that?
Q. I mean, you have certain calls where there's a traffic accident that you want to get there fairly quickly, correct?
A. That would be dispatched.
Q. All right. If you hear a call that you need to engage in emergency response that's not dispatched that's heard from Garland County, the ones that you would go to would be probably the more serious; a robbery or domestic or officer needs help, correct?
A. Not in Garland County. They're short-staffed and sometimes they have a high call volume a lot of times. And they simply wouldn't have the manpower to cover some calls.
Q. All right.

A. And we'd go. Some of them could be domestic issues and stuff like that, and some of them could just be simple stuff.
Q. What I'm trying to get at is if it's to take a report that's not an emergency response, correct?
A. That would be correct. But we might still respond to that if they don't have an officer available.
Q. All right. What I'm trying to get at is trying to figure out what calls require emergency response. Somebody needs to take some type of report and you get there and you don't have to go into emergency mode, correct?
A. That's correct.
Q. Depending on the nature of the report?
A. Even go back to the nature of the call. It's the circumstances that you're given at the time.
Q. You're trained that that's officer discretion as to how quickly you have to respond to that, correct?
A. Yes, sir. And it's based off of the totality of the call and what information you have available to you at the time.
Q. And as far as you know in discussing matters with your supervisor and your chain of command, they all understood or they agreed with -- let me take that back.
We talked about traffic stops and pursuits and how

they're started, and whether you have to use your blue lights and siren. Do you remember those questions?
A. Yes, sir.
Q. It's your understanding the supervisors, your sergeant and your supervisors handle traffic stops and pursuits in the same manner?
A. Yes, sir.
Q. All right. With respect to emergency calls, did you ever have any discussions with your supervisors or your chain of command as to what type of calls require emergency responses?
A. No, sir.
Q. You just kind of use your common sense?
A. Yes, sir.
Q. All right. So on this particular date on October 10, 2016, do you recall any of the stops or any type of enforcement activities that you were doing on that day?
A. No, sir.
Q. And apparently prior to the 15 which ended up in the crash you were on some type of stop. Do you recall what that stop was?
A. That was a call to a hit and run accident.
Q. All right.
A. I don't remember if it was a male or female. They

had pulled in there to the parking lot there. And I went to investigate the accident.
Q. Let me just stop you there for a second. Who dispatched it?
A. The State Police.
Q. And did you run there in emergency mode?
A. I really don't remember. But I wouldn't think so.
Q. That wasn't the type of thing that required an emergency response, correct?
A. No, sir.
Q. I guess the nature of the call was that it was a hit and run?
A. No injury.
Q. All right. And we have a tape or we have tapes of certain things. Let me ask you this. How does your camera, your in-car camera in your car operate; do you have to flick it on, does it automatically go on if you put on your lights and siren, tell me how it physically is operated?
A. How does it activate?
Q. Yeah.
A. It is activated through you could turn it on manually, or if you activated your lights and siren it would automatically come on, and I believe at speeds reached at 100 miles an hour it would come on.

Q. Okay.
A. Any of those three triggers.
Q. Okay. Had you ever had to review a tape with a supervisor when your camera went on when you were exceeding speeds of over 100 miles an hour?
A. I don't recall. They're supposed to review video footage. As far as being talked to about it, no, sir.
Q. In your chain of command who was supposed to review video?
A. My sergeant.
Q. What was his name again?
A. Here at Troop K?
Q. Yes.
A. Scott Joe.
Q. Scott Joe?
A. Yes, sir.
Q. And was he your sergeant the whole time?
A. The whole time I was at Troop K, yes, sir. Yes, sir, I think so.
Q. Are you aware of whether he ever reviewed any of your tapes?
A. I cannot answer that.
Q. Do you know or do you have any understanding as to when he was supposed to review your tapes?
A. I think it's once a month.

Q. Do you know whether or not there were any reports or anything generated from his review of your tapes?
A. I have no idea.
Q. I understand. I'm just trying to figure that out. But you don't recall him ever talking to you about any particular tape during your time at Troop K, correct?
A. No.
Q. All right. We have a video of -- tell me what you did when you got to the call of the hit and run with no injuries?
A. I spoke with the driver of that vehicle.
Q. Okay.
A. There was very minimal damage to the vehicle. I believe they only had liability insurance. And they did not have a license plate or anything of the vehicle that hit them. And so we did not do a report on the accident.
Q. Okay. Do you know how long your encounter with that person was?
A. I do not know, no, sir.
Q. Excuse me?
A. No, sir, I don't.
Q. Okay. Would you dispute it's about four minutes? We can look at all the tapes.
A. I don't think that's in question, no, sir.

Q. It wasn't a long stop, was it?
A. No, sir.
Q. Now, apparently at some point during that stop you observed a car. Well, let me ask you this. Where was the stop?
A. This was at the Pearcy Post Office on Highway 70.
Q. All right. And that's kind of east of Hot Springs?
A. It would be west of Hot Springs.
Q. Yeah. I'm sorry. And tell me what you observed or what drew your attention away from the stop?
A. I heard the wind noise of a vehicle coming. And I observed the vehicle come by. It was running flashers. And in my opinion, it was speeding, based off my experience of working traffic and running radar and stuff, I estimated this car to be going 90 to 95 miles an hour.
Q. All right. You didn't hit them with your radar though, did you?
A. No, sir.
Q. The car had its flashers on, correct?
A. Correct. It actually was a sport utility vehicle.
Q. That particular vehicle?
A. Yes, sir.
Q. Dark colored, you had very little information

about the car other than it was a newer model, dark colored SUV with its flashers on, correct?
A. I advised them it was a GMC or a GM product like a Tahoe or Yukon or something of that nature.
Q. Okay. It's a common car, correct?
A. I don't know what an uncommon car would be.
Q. An uncommon car would be like a Lamborghini.
A. I wouldn't even know what that looked like.
Q. Well, I'm trying to say is your description was very general, correct?
A. Well, I gave the best I could at the time of what I had.
Q. We can listen to dispatch. Did that description meet a bunch of cars?
A. I guess any description can meet the criteria of a bunch of cars.
Q. Well, not if you had a license plate number or if it had some unique characteristic; damage on the front, damage on the side, a broken window. If you saw -- if you saw another dark model GMC car down the road, that wouldn't give you probable cause or reasonable suspicion to stop it unless you observed it engaged in an actual crime, correct?
A. That would be correct.
Q. Okay. So in law enforcement we have to have a

certain quantum of evidence before we can do certain things, correct?
A. That's correct.
Q. You were giving out the best description that you could give out on the vehicle in the very short time that you saw it, correct?
A. That's correct.
Q. And that description was general with no specifically identifying characteristics of the vehicle, correct?
A. I would think that the hazard flashers running would be some type of specific characteristic.
Q. Okay. I'm just talking about the car itself. If somebody saw it with hazards on that's what also made it stick out to you, correct?
A. Correct.
Q. Because where you were was dark, correct?
A. Correct.
Q. All right. And it appears that after the car went by and we have you on videotape, how far down the road or how many seconds did you see this vehicle and observe this vehicle?
A. I would say two or three or four seconds maybe somewhere.
Q. All right. So you have a belief, based on your

training and your experience, that it's speeding, correct?
A. Yes, sir.
Q. A general description of the car, correct, of the SUV?
A. If that's what you call it. You got some defining characteristics.
Q. Let's just look at the dispatch tape.
(The video was played.)
Q. That's all on videotape, correct?
A. That sounds like me, yes, sir.
Q. And you said it was a what?
A. Suburban or Escalade.
Q. Do you even give a color?
A. I don't recall.
(The video was played.)
Q. All right. Who were you talking to?
A. That's one of the deputy sheriffs. I don't know who it is, sir.
Q. That wasn't a trooper?
A. No, sir, that's a deputy sheriff.
Q. Did the deputy sheriffs listen to the trooper channel?
A. I was on their radio.
Q. You were on their radio?

A. Yes, sir.
Q. Did you advise your dispatch of what you saw?
A. No, sir, I did not.
Q. Why not?
A. As I stated earlier, there was one other trooper working. We generally know where each other is at. And he's on Highway 70 East. He's nowhere near my vicinity.
Q. Okay.
A. So there's really no reason for me to call him. The county was going to be more help to me on this than he could have been.
Q. According to your description, the reason I say it's general, you gave out four or five different models; you said Escalade, GMC, Tahoe or something like that, correct?
A. Usually a Suburban and Tahoe and Yukon all look the same.
Q. You couldn't get a warrant with that information, could you?
A. I agree with that.
Q. That's what I call a general description, one that you cannot when you find the vehicle identify it as the particular car, you could not do that unless you actually observed it in --
A. That was the intentions of the call was for them

to try and observe and find that vehicle that I was talking about. And if they were still violating the law, observe that violation and then stop them. We would be looking for the same car.

Q. All right. You saw a vehicle that you thought was speeding. And you were advising other law enforcement people who may be in the area of this violation, correct?

A. Correct.

Q. If somebody saw a black Escalade, Suburban, Tahoe down the road that was going within the speed limit and didn't have its flashers on, they could not stop it based on your description, correct?

A. That's correct.

Q. Because you have to have a basis to make a stop, correct.

A. Correct.

Q. All right. So after this car went by you did not immediately stop your call and run to your car, correct?

A. There was a little bit of time there.

Q. It was over a minute, correct?

A. I've got less than a minute when I watched the video.

Q. Around a minute?

A. 45 seconds from the time I dealt with them and

then --
Q. When you watched the video you didn't run, did you?
A. I don't recall running, no, sir.
Q. All right. You walked to your car, correct?
A. I don't remember running.
Q. You got in your car?
A. Yes, sir.
Q. Were you done with your stop at that time?
A. I finished up.
Q. You got in your car and you put on your lights and siren as you were getting ready to go on Highway 70, correct?
A. Correct.
Q. And that's because there were cars that passed by your location before you got onto Highway 70, correct?
A. Correct.
Q. And you passed them with your lights. Did you have your lights and siren on or just your lights?
A. I don't really know. I know I had my lights on. I don't know about the siren.
Q. And after those cars went passed you put on your lights and siren and you passed them across a double yellow line on Highway 70, correct?
A. I don't remember double yellow. I didn't pass

them per se, I went around them. They pulled over and let me by.
Q. You were in the opposite lane of traffic?
A. Somewhat, yes, sir.
Q. All right. And then when you got passed them you turned your lights off for sure, and if you had your siren on you turned your siren off, correct?
A. Correct.
Q. And is that because the way that you were trained and understood the way the policies work, that you were going to try to catch up to this car to engage in a traffic stop?
A. Yes, sir.
Q. Okay. And based on the way your understanding of the training and the policies, is that until you got up to it where you can see it, you didn't want to put on your lights and siren, correct?
A. Until I was ready to make a stop.
Q. All right. Highway 70, describe Highway 70 before you get into Hot Springs, what type of roadway is it?
A. It's an asphalt highway. Some of it is two lane and some of it is five lane.
Q. Where it started is pretty much all two lane, isn't it?
A. Where it started, yes, sir.

Q. And do you dispute that from the post office to where the wreck happened was 8.1 miles?
A. That sounds probably about right. I don't remember the exact number. That's pretty close, yes, sir.
Q. All right. And the speed limit on Highway 70 is 55, correct?
A. Yes, sir.
Q. Okay. Do you dispute that your average speed throughout this whole encounter was 98 miles an hour?
A. I won't dispute that.
Q. Do you agree that during the course of this, what do you call this, a catch-up?
A. Yes, sir. I'm trying to catch up and locate a vehicle.
Q. And until you catch up to them there's no pursuit, correct?
A. There's no pursuit until you turn your blue lights on and they begin to flee.
Q. So as you're trying to catch up to them this is not a pursuit, it's just an attempted traffic stop, correct?
A. Correct.
Q. Would you agree that during the course of this 15 from the post office you passed numerous cars on the

left-hand side, you passed them going in your direction and you went around them?
A. There's some, yes, sir, I went around.
Q. Would you dispute that you did that 22 times?
A. I would have to watch the video and count it, sir. I don't know.
Q. Do you agree it was a lot?
A. I guess a lot of that depends on what your definition of a lot is.
Q. Well --
A. And the other thing is -- like I said, I would have to watch the video and count the cars before I could answer.
Q. I'm not trying to do that.
A. I did go around some cars, yes, sir. As to how many I cannot tell you.
Q. Well, every time you passed a car that was an opportunity for you to think of the danger of your driving to the public, correct?
A. I disagree with that.
Q. Why do you disagree with that?
A. I don't think I'm 15 to endanger the public, sir.
Q. Well, you're driving the way you were trained, correct?
A. That's correct.

Q. Do you understand that state law requires you to either be in pursuit of a vehicle or on an actual emergency call before you can violate any rules of the road?
A. Here's the thing. I realize we exceed the posted speed limits or I exceeded the posted speed limit. I did that and I realize that violates the statute. But in the course of my training and the way the policy is written, I was exempt from that.
Q. I understand that. My question is you said I don't believe I was driving dangerously. All right. You averaged 98 miles an hour.
A. How do you get that average?
Q. If you look at the videotape and you count the miles and you do a calculation.
A. That's what I did and I got 87 miles an hour. It's almost 6 minutes, 5.9.1 minutes.
Q. Did you do some kind of calculations?
A. I did.
Q. What are the papers that you keep pulling out?
A. This is your complaint that y'all filed. I just wrote some notes on there last night when I was reviewing the video.
Q. Is that when you were preparing?
A. Yes.

Q. Let me see those? So when you did your speed calculations --

MR. CLARKE: Can we get a copy of that, Jennifer?

MS. MERRIT: All right.

A. I had 5 minutes and 55 seconds I believe it was.

(Off the record.)

(Deposition Exhibit 12 was marked.)

BY MR. CLARKE:

Q. I'll hand you Exhibit Number 12. It's the Hot Springs Police Department investigation of this matter. If you go to page -- have you seen what we marked as Exhibit Number 12 before?

A. I don't recall this, no, sir.

Q. Okay. Go to page 12 of 26. Let's mark this as Exhibit 13.

(Deposition Exhibit 13 was marked.)

Q. I'll mark this as Exhibit Number 13. Exhibit Number 13 is going to be your calculations.

A. Okay.

Q. All right. According to that the way that they start their calculation they showed the first time your GPS came up you were going 85 miles an hour. And they have the coordinates. But on the tape it was at 21.16.54. Is it your understanding that once you turn

on your lights and siren the audio doesn't tape for a period of time?
A. Yes, sir.
Q. All right. On Highway 70 do you recall getting -- do you dispute you got up to 101 miles an hour?
A. I have no idea on that.
Q. Did you see the videotape on WatchGuard with your speeds?
A. Probably. It's been a while since I've seen it.
Q. What is the highest speed that you believe you attained?
A. I don't remember.
Q. You don't remember seeing 117 miles an hour?
A. No, sir.
Q. And when you did your calculations how many minutes did you use as the amount of time -- you had to do a calculation, you have to have a time and a distance?
A. That's correct.
Q. Okay. What is the distance you used?
A. I used 8.7 miles, which I believe was in your complaint. I did not look all that up last night.
Q. All right. If you look at page 13 of 26, it says 8.1 miles. The longer the distance and the time that would make your speed lower, correct?

A. The time period that I had was from the time that I pulled out to the time the video cut out was 5.9.1 minutes.
Q. All right. And they're starting this from the time that you first reported at 85 miles an hour. Do you see that?
A. Yes.
Q. And that gives an actual latitude and longitude and then we know where it came to rest. Do you reason to dispute it's 8.1 miles?
A. No, sir, I'll go with that.
Q. Okay. And according to that on this clock, according to their calculations, they show you -- let's just go through this thing at page 12. At 21:18:34 Burke travels through the intersection of Airport Road and Wolf Street. Is that on Highway 70?
A. What page?
Q. I'm on 12 of 26, the last paragraph.
A. Okay.
Q. About midway through it.
A. Okay.
Q. Where is Airport Road and Wolf Street?
A. I don't know where Wolf Street is.
Q. What?
A. I'm not sure where Wolf Street is.

Q. Do you dispute at that point you were going 93 miles an hour?
A. I don't know where it is, so I can't answer that question.
Q. Do you recall passing a car on the left in the inside lane of traffic at 96 miles an hour?
A. Rephrase that?
Q. I'm reading right here. At 21:19:40 passes a car on the left while in the inside lane of traffic traveling 96 miles an hour.
A. Okay.
Q. Do you dispute that?
A. I can't answer that question. I don't know.
Q. Are you going come into court and say you weren't doing that at that time?
A. I don't know if I was doing that at that time or not.
Q. Then you can say you can't dispute it, right?
A. I don't know if it was or not.
Q. Okay. If I ask you how fast -- what the fastest speed was that you were going during this 15 that ended in the wreck, what are you going to testify to at trial?
A. I'll have to review the video again before that.
Q. Did you not review the video last night?
A. I did not have a video that has speed and stuff on

it.
Q. We'll watch all this in a second. Here is my review of the video. I'm just going to cut right to it. Based on my review of the video, during your 15 from the post office to the crash site you passed 89 cars that were going in the opposite direction of you. Do you dispute that?
A. I would think it's not that high.
Q. Okay. We can go through it. Would you agree it was -- well, if I asked you at trial how many cars were going in the opposite direction, what is your testimony going to be?
A. Again, I'm going to have to review the video and look for that specifically. I didn't count cars when I was --
Q. All right. Cars that you passed in the same direction I have 23. Do you remember passing cars going in your same direction 23 times?
A. No, sir.
Q. Is the reason why you can't remember this because you had tunnel vision?
A. No, sir.
Q. Would you agree that every time you're out there your job is to protect and serve, correct?
A. That's correct.

Q. Do you agree that the potential crime that you were investigating was solely a traffic offense?
A. I don't have enough knowledge to know that, sir. That's what sparked it.
Q. Excuse me?
A. That's what sparked the whole thing, yes, sir.
Q. I understand. How many dead bodies have you found in the back of a car when you pulled over somebody for speeding?
A. There's other crimes that go along with that. I hadn't found any dead bodies.
Q. Okay. What I'm trying to get at is were you trained that you're supposed to police on the basis of hunches or speculation, or based on reasonable suspicion and probable cause?
A. You have to use all that.
Q. But you can't do anything based on a hunch, correct?
A. That's correct.
Q. All right. So as far as what you had any type of reasonable suspicion or probable cause of was of a potential speeding violation, correct?
A. At that time, correct, yes, sir.
Q. And you couldn't put down a number because you didn't have it on radar, correct?

A. The number I gave is 90 or 95 miles an hour.
Q. Can you go to court and say I think it was going 90 or 95 miles an hour?
A. I believe you can based --
Q. Have you?
A. I've never had to.
Q. Because we don't do law enforcement that way, you go in when you have an actual documented --
A. But you observe that first through visual observation of that vehicle, and then you confirm that with the radar.
Q. Never happened in this case, right?
A. Not this time, no, sir.
Q. What I'm getting at is we have the spectrum of criminal activity on the lower end to the high end; murder, rape, violent crimes are on the serious side, correct?
A. Okay.
Q. Do you agree with that?
A. Yes, sir.
Q. And you have traffic offenses and other things on the lowest side, correct?
A. Yes, sir.
Q. A good law enforcement officer may take law enforcement action based on a potential traffic offense,

you could find evidence of other crimes, correct?
A. That's correct.
Q. But it could just be a traffic offense, correct?
A. Could be.
Q. So you're supposed to perform your law enforcement duties based on what you can prove, correct?
A. Yes, sir.
Q. All right. And at this time you were trying to investigate a potential crime, which would be, what is a speeding ticket, a class C misdemeanor?
A. I don't remember.
Q. Is it even a misdemeanor or is it just a traffic offense?
A. I don't remember. I think it's just a traffic offense, but I'm not sure. Well, actually that speed I think would be a class C misdemeanor.
Q. All right. That's assuming you confirmed the speed, correct?
A. Correct.
Q. But you couldn't testify to that and that's just an estimate based on two to three seconds of observation, correct?
A. That's correct.
Q. All right. Would you agree that every time you saw a car, that gave you an opportunity to consider the

danger of your driving to the public?
A. Ask me that again?
Q. Would you agree that every time you encountered a car on the road while you were 15 in excess of the speed limit without your lights and siren on, in an effort to catch up to the car you observed, presented an opportunity for you to consider the dangerousness of your driving to the public?
A. Are you saying that every car --
Q. What I'm saying is if you were 15 out on a road by yourself and you encountered no cars, you could reasonably assume that the speed that you're 15 represents no danger to anybody. Do you agree with that?
A. Other than myself, yes, sir.
Q. All right. And every time you see a car when you're driving at a speed in excess of the speed limit, that gives you the opportunity to evaluate what your driving needs to be, at that time, based on the danger to the public?
A. I agree with that.
Q. All right. You were trained with vehicle dynamics and stuff that the faster the speed, the more likely there is to be an adverse effect, correct?
A. Possibly, yes, sir.

Q. All right. How you drive and what you drive and your conduct of 15 is also dependent on what you experience in the road, correct?
A. Correct.
Q. If there are more cars you have to be more careful, correct?
A. Correct.
Q. We're going to watch the video at some point. Do you agree that you passed cars on the left 15 in the same lane of traffic?
A. Yes, sir.
Q. Without lights and siren, correct?
A. Yes, sir.
Q. Would you agree that you passed cars on the right without lights and siren?
A. Yes, sir.
Q. Would you agree that you drove into the opposite lane of traffic at times when you were passing vehicles?
A. I don't recall the opposite lane, no, sir.
Q. Do you recall seeing cars coming in the other direction when you were driving?
A. I recall seeing other cars, yes, sir, meeting cars, yes, sir.
Q. All right. And then it goes from kind of a dark two lane road and then you made it into the city,

correct?
A. I never made it into the city, no, sir.
Q. You never made it into Hot Springs?
A. No, sir.
Q. You came to where on the part of 70 where it started there's no real traffic devices, correct, until you get closer to the city, correct?
A. What do you mean traffic devices?
Q. Stop signs, road lights.
A. Correct.
Q. Okay. When you get closer to where it's more populated you experienced more cars, correct?
A. Yes, sir.
Q. It became more dangerous, didn't it?
A. Well, with more traffic there is increased risk, yes, sir.
Q. When you're 15 you can't anticipate what other people are going to do, correct?
A. Correct.
Q. And is one of the reasons why you don't put on your lights and siren is you were trained that sometimes when you do that it spooks the people in front of you?
A. Yes, sir.
Q. Even though they're supposed to pull to the right, were you taught that if you do that sometimes you're

going to risk an accident?
A. Yes, sir.
Q. Now, did you run through any red lights?
A. No, sir.
Q. Tell me about where the crash happened; do you dispute that 5 seconds before the crash you were going 98 miles an hour?
A. I've seen the video. It's probably been a year since I've seen the video with speeds on it.
Q. If I ask you, at the time of the crash, how fast were you going, what are you going to testify to?
A. I don't know.
Q. You did some calculations before to come up with an average speed. You agree that it's just a mathematical calculation, you just need to know the distance and time, correct?
A. That's correct.
Q. All right. And you used 8.7 miles and 5.9.1 minutes, correct?
A. Correct.
Q. According to Hot Springs, when they tracked it they used 8.1 miles and 4 minutes and 58 seconds. Where did you get your 5.9.1 minutes?
A. I took the time that I left the parking lot off the video time where it's 3 minutes into the video, 3

minutes and 12 seconds, I took that time until the time the video cut out. And that's where I got my minutes and seconds. I think it come up to 5 minutes and 55 seconds.

Q. All right.

A. That's 5.9.1 minutes if you divide by 60.

Q. Do you ever recall going 117 miles an hour while you were -- and maybe I'm getting this wrong. You were never in Hot Springs?

A. I was never in the city limits, no, sir.

Q. Are you coming from -- you're coming from more the Memphis side of Hot Springs or the Mt. Ida side?

A. Mt. Ida. That's on a different highway, but yes, sir.

Q. Tell me where the wreck happened the speed limit was 45, correct?

A. Yes, sir.

Q. And you were exceeding that speed substantially, correct?

A. Yes, sir.

Q. Tell me the geography, you were kind of coming up over a hill and on a turn, correct?

A. I wasn't on a turn. I was on a straight stretch.

Q. You're trained to understand the environmental conditions of the roadway, correct?

A. That's correct.
Q. How would you describe it?
A. There was a slight little hill there. I had already passed the hill.
Q. Okay.
A. Then it went into a straight stretch and then you get into the bridge over Lake Hamilton. I think there's a slight curve in that, a curve to the left from my direction of travel, slight curve, not much, but a slight curve.
Q. You didn't have your lights and siren on, correct?
A. That's correct.
Q. You weren't warning anybody of your impending high speed 15, correct?
A. Correct.
Q. And tell me what happens in the crash, what you remember?
A. Just prior to the crash I located that vehicle or a vehicle SUV running with flashers on. I radared that vehicle. And at that point I was catching up to it. I had the vehicle in sight and was catching up to the vehicle.
Q. Where did you first see the vehicle?
A. I was around John Gibson, I believe it is. It was maybe just west of John Gibson, right there in the John

Gibson cars.
Q. And you got a speed or you didn't get a speed?
A. I did get a speed.
Q. Do you have some kind of printout of it?
A. How do I get a printout of it?
Q. I don't know. Is there any documentation that you actually engaged the radar and --
A. You can hear the radar on the video.
Q. Okay. And what happens with that, does the speed show up on your computer?
A. It shows up on the radar.
Q. If you were going to go to court for a traffic ticket do you print that out?
A. There's no way to print it out, no, sir.
Q. All right. And when you saw the car it was around other cars too, wasn't it?
A. I don't think so, no, sir.
Q. And tell me how the radar works; how far away was it?
A. Honestly I don't remember that.
Q. To be fair, Officer, you say I know speeds and distances. I thought the car was going 90 to 95 miles an hour, and now you're saying I don't know distance. Was it a mile away from you?
A. I say at most maybe a quarter.

Q. You think you got within a quarter mile of it?
A. I think so, yes, sir.
Q. And tell me what happened in the crash?
A. I don't understand your question.
Q. Tell me what happened in the crash?
A. A vehicle turned in front of me and I hit the car. And that's all I can tell you about that. I don't know anything else.
Q. In your answer at some point you blame the driver of the car. What did the driver of the car do wrong?
A. The driver made a left turn in front of me.
Q. And you were going how fast?
A. I don't know that.
Q. All right. You also blamed the fact that the driver was drinking. Do you have any basis, in fact, to determine whether or not drinking played any role in the accident?
A. I can tell you, based on my experience -- first off, I'm going off the basis of a lab technician as far as the BAC and stuff like that. I'm going off the premise of the police report that they had been drinking. The police report stated a contributing factor was alcohol.
Q. Listen to my question. You can be drunk and you can have a .4 sitting at a traffic light and get hit

from behind, and it has no effect on whether or not there was a crash that occurred. Do you agree with that?
A. I agree with that.
Q. All right. What I'm trying to say is there was a blood alcohol run on the driver and the passenger. Okay. You understand how to observe signs of intoxication, right?
A. Yes, sir.
Q. Signs of drunk 15, correct?
A. Yes.
Q. Did you observe any signs of drunk 15?
A. Unfortunately the only thing I observed is them pulling in front of me.
Q. All right. They were turning left at an intersection, correct?
A. We know that alcohol contributes to poor judgment.
Q. Were you drunk that night?
A. I was not.
Q. Okay. You don't have to be drunk to use poor judgment, do you?
A. I didn't say you had to be. I'm just saying we know that alcohol does contribute to that.
Q. I'm trying to say -- I don't need your theory or philosophy on what drinking does. What I need is

observable facts that made you indicate that this car and this wreck was caused in any way by somebody having alcohol? If you want to look at the accident report that your lawyer just put in front of you that's fine.
A. I don't know how to answer your question. Because most of the DWI stops -- I've never stopped a car -- probably 99 percent of the cars you stop there's impaired drivers. They're not waving a flag saying I'm impaired and I've been drinking. They're not exhibiting textbook signs of impaired 15. It could be as simple as a broken taillight.
Q. Did you observe a broken taillight on this car? You're a law enforcement officer. You're supposed to investigate stuff. From what you observed on that car when you were coming up at 98 miles an hour, what did you observe of that made you think that that car was being operated by an intoxicated person?
A. I didn't say there was anything that made me think that.
Q. That's my question. My question is what facts do you have that made you indicate that this wreck was caused by alcohol?
A. You're wanting me to go back to my training and stuff of that nature. I'm trying to do that and you're not letting me do it.

Q. I know you're trained to observe signs of alcohol and drunk 15, right?
A. Yes, sir.
Q. What were you trained that you observed on that day from this vehicle you smashed into?
A. I didn't get to observe it long enough to determine --
Q. Right. The speed limit is 45, right?
A. Yes, sir.
Q. People have a right -- do you understand that people have a right to believe that other people will be following the traffic laws?
A. Yes, sir.
Q. And somebody who's making a left-hand turn into that intersection from there would not expect a car going 98 miles an hour, over twice the speed limit, correct?
A. Correct.
Q. I'm just going to be honest with you. I find it offensive that there's an answer in here blaming the car in any way. And I'm trying to explore factually why you think that. Because had you been going 45 miles an hour this car would have had sufficient time to turn, correct?
A. I have not seen a reconstruction on that to know

that.
Q. Well, based on your law enforcement training, where did you hit the car, you hit it with your front, what lane were you in?
A. I don't know.
Q. I just want in this deposition I want you to tell me every fact that you know of to blame the driver or Lori Braun or Cassandra Braun for this accident; I want you to tell the jury these facts?
A. Like I tried to state before, we know that alcohol impedes judgment and makes you make poor decisions or could make you make poor decisions. Let me rephrase it that way. And you don't have the best judgment. Your judgment is impaired. And the BAC being, according to the lab report, above the legal limit --
Q. What was it?
A. I believe his was a .10, if I remember correctly.
Q. Just above it, right?
A. Correct. .08 states the you're impaired enough that you shouldn't be 15.
Q. State law says you shouldn't be 1598 miles an hour without your lights and sirens on, correct?
A. Correct.
Q. All right. I just don't like the blame game here. Do you not agree that had you not been going 98 miles an

hour in a 45 mile an hour zone, this wreck wouldn't have happened?
A. Like I stated, sir, I have not seen a reconstruction on this. I don't know that it could or couldn't have still happened.
Q. Well, you would be closing the distance twice as fast going double the speed limit, right?
A. Correct.
Q. All right. Do you think any reasonable driver on the highway, at that time, should have been prepared for an officer going close to a hundred miles an hour without lights and sirens on on that street?
A. I think they should be aware of their surroundings and be able to judge distances. I can look at a car and tell they're going a little faster than what they should be.
Q. You're asking a lot actually. The person who was fleeing from you provided more warning to the public than you did. Would you agree with that?
A. Fair enough.
Q. You're putting all the -- and listen, part of my claim against -- of my client's claim against you is punitive damages, which is to punish you.
A. Yes, sir.
Q. And if you're going to sit here and still blame my

client, I need to explore that. My client was actually a passenger. You agree that she did nothing wrong, correct?
A. Yes, sir.
Q. The driver, while he turned did he have his blinker on?
A. I don't remember.
Q. If he had his blinker on, that would be what he's required to do, correct?
A. Yes, sir.
Q. Do you not believe that when they are performing their 15 activities that they have a right to expect a sworn officer of the law to obey the traffic laws?
A. Yes, sir.
Q. And to not anticipate a cop 15 without lights and sirens at more than twice the speed limit. Did they have a right to expect that a car coming there, if it's a law enforcement officer, it's going to be complying with the law?
A. Yes, sir.
Q. And you weren't, right?
A. Correct.
Q. You were complying with the way that you were taught and trained to catch up with people for traffic stops, correct?

A. Correct.
Q. All right.
MR. CLARKE: Let's take a break for a second. I may be done.
(A recess was had.)
BY MR. CLARKE:
Q. We're back on the record. Trooper Burke, what we're going to do is go over this tape. I'm going to ask you some questions. I'm going to stop it and may ask you some questions about some things going through those. It's very hard to rewind on this. So we're going to try to get it in one take because it doesn't go back.
What I'm going to do is start this tape that was produced by the Arkansas State Police. And it's being played on their WatchGuard software. Have you seen a videotape with this type of information on it before?
A. Yes, sir.
Q. Okay. You understand it has the date, time, the latitude and longitude and the speed, correct?
A. Yes, sir.
Q. And it will show certain things like braking at times, correct?
A. Yes, sir.
Q. All right. And what I'm going to do is start this

video at 21:11:17.

(The video was played.)

Q. I'm going to stop it at 21:11:55. Is that when you pulled into the post office?

A. Yes, sir.

Q. And this is when you started your encounter with the people at the post office, correct?

A. Yes, sir.

Q. And that's 21:11:55.

(The video was played.)

Q. The next thing I'm trying to look for is when the car goes by.

A. Okay.

Q. At this time during the stop, are you just talking to the lady and checking damage to her car?

A. Yes, sir. And trying to figure out what happened. Maybe if she had a description of the other car.

Q. Okay.

A. And stuff of that nature.

Q. And did she have a description of the other car?

A. Not enough to -- I don't think she even knew which direction the car went, to the best of my memory.

(The video was played.)

Q. Did you just see the car --

A. Yes, sir.

Q. -- go by?
A. Yes, sir.
Q. That was roughly around 21:15:05. Does that sound about right, based on what you're seeing?
A. Yes, sir.
Q. Now, once the car got out of the vision of the video with the hazard lights on, is that the last that you could see it from where you were?
A. Yes, sir. As best as I can answer that question, yes.
Q. All right.
A. I can't give you two different perspectives from that angle, if that's what you're asking.
Q. What I'm saying is what we just saw on the videotape with that car going by, that is the full extent of any conduct that you saw engaged in by that vehicle, correct?
A. At that point yes, sir.
Q. Until you saw it at the very end, correct?
A. Correct.
Q. You never saw it again until then?
A. That's correct.
Q. All right.
(The video was played.)
Q. Now, 21:15:54, that's when you walked back to your

car, correct?
A. Walked back to my car, yes, sir.
Q. And that's at 21:15:54.
(The video was played.)
Q. And when you are getting ready to go back on the road to get behind that car is 21:16:09, right?
A. Yes, sir.
Q. And as you're getting on the highway two cars were going passed you, correct?
A. That's correct.
Q. And you put on your lights, correct?
A. Correct.
Q. At 21:16:30 you passed the second car with your blue lights, but it's on a two lane road, correct?
A. Correct.
Q. There are two cars coming in the opposite direction, correct?
A. Correct.
Q. You just passed two cars, correct?
A. Correct.
Q. With your lights and sirens the cars moved to the right side of the road, correct?
A. Correct.
Q. And allowed you to go in between them in the middle of the road, correct?

A. Correct.
Q. And you're going between these cars at 52 miles an hour, correct?
A. Correct.
(The video was played.)
Q. At 21:17:19 you passed your second car on the left, correct?
MR. RAY: Object to the form of the question.
Q. You passed two cars coming -- the second car coming in the opposite direction?
A. I met the second, yes.
Q. Okay. And at this time you have no lights and sirens on, correct?
A. Correct.
Q. And your speeds, you got up to at this point it's 91 miles an hour, correct?
A. Yes, sir.
Q. Two lane, unlit, winding road, correct?
A. Correct.
Q. With hills on it too, correct?
MR. RAY: Object to the form of the question. It's flat.
A. That's flat.
Q. Okay. You haven't seen hills yet. We'll get to

them.

(The video was played.)

Q. Why is there no sound for a period of time, do you know?

A. No, sir.

Q. At 21:17:57 you're going 103 miles an hour, correct?

A. Correct.

Q. You see cars approaching in the opposite direction?

A. I see one car.

Q. All right.

(The video was played.)

Q. And it's 21:18:18 and you're going 106 miles an hour, and you passed three other cars that were coming in the opposite direction, correct?

A. Yes, sir.

Q. And if lose control of your car they're in danger, correct?

A. Possibly, yes, sir.

Q. It's not straight, there are curves in the road, correct?

A. Curves, yes, sir.

(The video was played.)

Q. You passed a light. Do you know what intersection

that was?
A. That would be on at Highway 227, Lake Hamilton School. Some of them call it Sunshine Highway. It's 70 West.
Q. Was that light green?
A. It was green.
Q. All right. At this point at 21:18:36 you're going 95 miles an hour, and another car is approaching in the opposite direction, correct?
A. Yes.
(The video was played.)
Q. From the time we just stopped it your speed was 105. You saw that?
A. Yes, sir.
Q. And there were including the first two that we counted there were four cars coming in the opposite direction; is that right?
MR. RAY: Object to the form of the question.
A. I thought there was three.
Q. Okay.
A. I'm just trying to watch everything at once.
Q. I understand. If there's a better way to do it to help me.
A. No, it's --

Q. Okay.

(The video was played.)

Q. At 21:19:14 you passed two other cars coming in the opposite direction, correct?

A. Correct.

Q. And there seems to be some businesses or some buildings on here. Is that Mount Ida?

A. No, sir. This is the middle of nowhere really. It's between Pearcy and Hot Springs.

Q. Okay. People could be at these businesses, correct?

A. I think that's a storage building place is what that is.

Q. All right. When you passed these people that were going in the opposite direction up until now, did you consider that your 15 could be a danger?

A. No, sir.

Q. All right. Did you consider that people may be coming in or out of any of the businesses that you're coming up on?

A. That's what I'm watching for when I'm 15.

Q. Were you considering them so you didn't crash into them, were you considering that so you could determine whether or not your 15 should be stopped?

A. Well, if a situation became unsafe I would have

stopped.
Q. Well, you're going 90 miles an hour. Do you know what the speed limit is here?
A. 55.
Q. Do you think that's appropriate?
A. I think it's within my training.
Q. Okay.
(The video was played.)
Q. We're at 21:19:37 and you passed three cars that were coming in the opposite direction?
A. Yes, sir.
Q. At speeds above 90 miles an hour, correct?
A. Showing 91 there, yes, sir.
Q. All right. It was higher earlier, was it not?
A. I was watching cars.
Q. All right. And you're coming up to a car that's going in the same direction in the right-hand lane, correct?
A. Correct.
(The video was played.)
Q. And at 21:19:56 the last time we stopped it you passed one car going in the same direction on the left, correct?
A. Yes, sir.
Q. And then you're passing an 18-wheeler on the left,

correct?
A. Correct.
Q. And there were other cars on the other side of the road, correct, that you passed, from the time we last stopped it until now?
MR. RAY: Object to the form of the question.
Q. I'll move on. And as you're passing this tractor-trailer you're going 100 miles an hour, correct?
A. Correct.
(The video was played.)
Q. Just before 21:20:01 you went through another traffic signal. Do you know what that was?
A. It should be the intersection of North Moore Road and --
Q. And you go through that intersection going 107 miles an hour, correct?
A. Correct.
Q. Do you dispute any of these times that are shown on this video?
A. I don't have no way to dispute them, no, sir.
Q. Okay.
(The video was played.)
Q. From the time we last stopped it to 21:20:17 there were cars on the opposite side of the road, correct?

A. Yes, sir.
Q. And then you passed a car at 105 miles an hour on the right-hand side, correct?
A. Correct.
Q. And are we in any type of city? There's more buildings and stuff here. Do you know what this is?
A. It's still between -- it's between North Moore Road and the City of Hot Springs.
Q. All right. Do you know from being a trooper, that the closer you get to Hot Springs the more traffic you may encounter?
A. Yes, sir.
Q. All right. Do you know that people could be coming out or leaving or going into these buildings or businesses along the road?
A. Yes, sir.
Q. And 15105 miles an hour poses a danger to them, right?
MR. RAY: Object to the form of the question.
Q. You can answer.
A. Ask me again.
Q. 15105 miles an hour in these conditions poses a danger to people who are driving on the road?
A. It could pose a danger, yes, sir.

Q. Trying to keep it in control, correct?
A. Correct.
Q. But the fast you go the more danger there is, correct?
MR. RAY: Object to the form of the question.
Q. When he says, object to the form, you can still answer.
A. The faster you go the likelihood of maintaining control is less.
Q. Right. And the other people who are 15 on the road have a right to assume that somebody 15 on the opposite or in the same lane of traffic would be going the speed limit, correct?
A. I would disagree with that.
Q. Well --
A. How many violations every day do we write tickets to for speeding.
Q. Well, you're a cop, right?
A. Yes, sir.
Q. You have some kind of training, correct?
A. Yes, sir.
Q. You got trained on motion and inertia and skidding, correct?
A. Yes.

Q. The faster you go the less control you have of your vehicle, correct?
A. Yes, sir.
Q. And the greater the stopping distance?
A. Correct.
Q. People who are 15 on the road would expect an officer not to be going 105 miles an hour without their lights and sirens on, correct?
MR. RAY: Object to the form of the question.
A. I agree.
Q. All right. And we went from kind of a two lane road to a four lane road at some point here, correct?
A. It's a five lane road.
Q. It's got a turn lane in the middle?
A. Yes, sir.
Q. And what's the speed limit here, has the speed limit gone down?
A. I think it's 50 there, I think.
Q. And you're doing double the speed limit?
A. Correct.
Q. Okay.
(The video was played.)
Q. At 21:20:35 you passed some additional cars going in the opposite direction, correct?

MR. RAY: Object to form.
A. Correct.
Q. I counted three. How many did you count?
A. Two or three.
Q. All right. For passing the car going in the same direction as you were going at 113 miles an hour, correct?
A. Correct.
Q. What were you thinking?
A. As far as what?
Q. Going 113 miles an hour -- let me take that back. As we've started the tape is traffic increasing?
MR. RAY: Object to form.
Q. Are you encountering more cars?
MR. RAY: Object to form.
A. Not really. There's one or two here and two or three there, that's the way I see it.
Q. All right. You're passing cars at 113 miles an hour without lights and sirens, correct?
A. Correct.
(The video was played.)
Q. We're at 21:20:50. Do you see that now traffic is increasing?
A. I've seen a few more cars, yes.
Q. Right around 21:20:50 you passed a car on the

right, correct?
A. Correct.
Q. And you're seeing more of a steady flow of cars of the traffic coming at you or coming in the opposite direction is increasing, correct?
A. It's the same for everybody.
MR. RAY: Object to form.
Q. All right.
(The video was played.)
Q. At 21:20:00 where are we now? There's a lot more businesses, correct?
A. It's coming up of the intersection of Marion Anderson and Highway 70.
Q. And is that as you're getting into Hot Springs or approaching?
A. It's approaching it, yes, sir.
Q. Okay. And there's businesses there, correct?
A. Correct.
Q. Did you consider that there may be people from businesses going to and from and coming in or off the highway?
A. Yes, sir.
Q. All right. And you felt that at 21:20:00 109 miles an hour was safe?
A. Yes, sir.

(The video was played.)

Q. At 20:21:18 you're passing another car or a truck pulling something on the right at 64 miles an hour, correct?

A. Correct.

Q. There's a McDonald's there, right?

A. Right.

Q. Is the McDonald's open?

A. I would think so.

Q. You're supposed to be thinking of the dangers, correct?

A. Correct.

Q. Every time you pass one of these businesses is another opportunity for you to reconsider your actions, correct?

A. There's no car there at McDonald's. That's what I'm watching for as I'm 15.

Q. It only takes one, right?

A. That's correct.

Q. Are you supposed to pass on the right?

A. There are times that you can pass on the right.

Q. Is there a law that says you pass on the left?

A. That doesn't apply on these roads. Like if there's slower traffic in the left lane you can pass on the right.

Q. Okay. Just good 15, right?
A. Correct.
MR. RAY: Object to form.
(The video was played.)
Q. We'll stop it at 21:21:45. Are you still maintaining it's the same amount of traffic?
A. They are a few more cars, but it's still light traffic for the area.
Q. And at this particular time you're driving in the center lane, correct?
A. Partially.
Q. Primarily?
A. Partially.
Q. Okay. So if you saw somebody 15 in that lane at night like that would you think it's a violation of the law?
A. Yes, sir.
Q. All right. But you can do it at 95 miles an hour and you're okay, right?
A. Yes, sir.
(The video was played.)
Q. All right. You saw where you're up to 117 miles an hour, correct?
A. I didn't see that. I was watching the road.
Q. You see it right before, and we don't have the

crash on video, correct?
A. Not that I've seen.
Q. Okay.
(The video was played.)
Q. We're at 21:20:40 and at that time you're going 114 miles an hour, correct?
A. Correct.
Q. All right. At some point you can see that a car with flashers on in front of you, correct?
A. Correct.
Q. All right. And we're going to play that. I want you to tell me when you see that?
A. Okay.
Q. And I'm going to try to pause it there.
A. I will tell you, and I don't know if it's on the computer screen or not, but when you start hearing radar I've got them in sight. I don't know if the camera depicts that or not or in this video you can see that or not.
Q. Well, we're going to talk about that, because there's other cars on the road. I want to talk to you about how you think your radar works.
A. What I'm telling you is at the point that that radar is going off, I've got that car in sight.
Q. Well, we can look out the window of your car,

correct?
A. What I'm saying is what I see and what the camera sees is not necessarily always the same thing.
Q. Do you have super eagle vision?
A. I do not.
MR. RAY: Object to the form of the question.
Q. Okay.
A. But the camera can't see the way that I see. So there's times that I can see that may not be depicted on this video.
Q. Okay. Well, we're just going to go with the video.
A. Yes, sir.
Q. If there's some time where you sense that you can tell on this video where you say that you first observed the car let me know?
A. Okay.
(The video was played.)
A. Right there I see it.
Q. 21:20:45 somewhere around there?
A. 21:21:45.
Q. 21:21:45. All right. And it's your belief or it's your testimony that running at 95 miles an hour, there's cars on both sides of the road before it,

correct?
A. Correct.
Q. How do you know what car you're getting a radar on?
A. It goes back to the visual observation of the vehicles. As I'm watching them cars you can tell which car is doing what. It goes back to the observation of those cars and confirming that with radar.
Q. All right. You can't make out how fast that car is going that far ahead of you, can you?
A. If I can see the car and I can see the travel, then yes, I can make a good observation of that.
Q. Okay. And when you see that there you think that's about a quarter mile?
A. I'd say somewhere in there.
Q. All right. And the car that you saw, the only thing you saw that makes you believe that it's the car is that it had flashers on, correct?
A. I can tell it's a larger vehicle and stuff like that running their flashers. At this point on radar I'm getting a speed that's in excess of the speed limit.
Q. You could pull them over for that --
A. It doesn't matter if it's the car that I initially saw or not. It's a car that matches that description that is now violating the law.

Q. You're throwing out the 6 minutes in between while you're 15 like a maniac, correct?
MR. RAY: Object to the form of the question. You're just arguing with him. These are not questions.
BY MR. CLARKE:
Q. From the point you first saw him you cannot -- you don't have reasonable suspicion or probable cause to believe that the car that you observed up there with its flashers on is the same car that passed you, correct?
MR. RAY: Object to form.
A. I believe it is. Now, can I say for certain that it is, no, sir, I cannot.
Q. Could you go get a warrant for it?
A. No, sir.
Q. Okay. You understand the level of suspicion you have to have, correct?
A. I'm just saying at this point I'm seeing a car that still matched that description that is violating the law. I have a legal right to go stop that car.
Q. All right. Did you have a legal right to drive from the post office until you saw them again?
MR. RAY: Object to form.
A. I believe I did.
Q. And that's based on your training, correct?

A. Correct.
Q. All right. I'm going to play this up until the screen goes black or white. And I'm going to stop and I want you to watch the video. And I'm going to ask you this question. I'm going to ask you when did you see the car, what lane that you crashed into, what lane was it in?
A. It does not show in the video.
Q. You don't believe that you can see the car that you ultimately hit in the video?
A. I can see the video. I don't know what lane we hit in. That's not shown in the video.
Q. Okay. I want you to tell me what lane that car was in, whether it had its blinkers on, and the last speed that you can speed before it blacks out?
A. Okay.
Q. All right.
(The video was played.)
Q. All right.
A. I don't know about blinkers. The car was in the center left turn lane.
Q. And what was your speed?
A. 115.
Q. 115. The speed limit is 45?
A. Yes, sir.

Q. You're going more than two times and less than three times the speed limit, right?
A. Correct.
Q. And you actually as you come up to it you have to crest the hill, a slight hill before you can see the car, correct?
A. Yes, sir.
Q. It's on a slight curve?
A. Well, you can see kind of back from the hill from where I'm going. But yes, sir, there's a slight hill there.
Q. All right. Do you not agree that if you had your lights on that that would have given your car more visibility to the driver of the other car?
A. I can't speculate to that.
MR. RAY: Object to form.
Q. Okay. Why can't you speculate to that?
A. I don't know whether it would have helped them or not.
Q. What's lights and sirens for?
A. I'm not saying it would hurt it, but I don't know that it would help it.
Q. Well, you can speculate that alcohol played a role in the wreck, correct?
MR. RAY: Object to the form of the

question.
A. What I'm saying is the person who investigated the accident stated that alcohol was a factor in the accident.
Q. All right. Did you observe anything that made you believe alcohol was a factor in the accident?
A. That would be a question you're going to have to call --
Q. Well --
MR. RAY: Let him answer the question.
MR. CLARKE: He's not answering my question.
BY MR. CLARKE:
Q. Here's my question. Are you basing your allegation that somebody in the car with my client in it that alcohol played a role in the wreck, is based on what somebody else investigated?
A. That's what all this is about is what someone else investigated.
Q. That's not an answer to my question. Did you observe anything they led you to believe that that driver of the car that you crashed into was drunk?
A. The accident report. I observed the accident report that notated --
Q. Listen to my question. I'm not asking you about

the accident report. I'm asking you what happened while you were 15.
A. Okay.
Q. When you came up upon that car, did you observe any conduct from them that led you to believe that they were 15 in an intoxicated state?
A. I've already tried to answer this question. I don't know how else to answer it. I don't know what else to tell you.
Q. I don't know what your answer is.
A. If my answer isn't sufficient for you, so be it, but that's my answer.
Q. I need you to answer.
A. I have answered it.
Q. Well, you're going to answer it again.
A. I'm not.
MR. RAY: Object to the form.
Q. You're going to answer the question.
MR. RAY: You keep asking the same question over and over. It's asked and answered. It's come to the point where it's not probably legitimate discovery, but it becomes instead harassment.
MR. CLARKE: You make that call when you want to.

MR. RAY: I'm still objecting to the form of the question.

MR. CLARKE: Okay. And I'm objecting to speaking objections. Are you going to terminate the deposition?

MR. RAY: When is my turn to talk, you just tell me?

MR. CLARKE: All right. You can say object to the form.

MR. RAY: I have.

MR. CLARKE: That's all you need to say.

MR. RAY: He's told you that he answered the question. And he answered it again.

MR. CLARKE: I don't believe he's answered the question. So I'm going to ask it again.

MR. RAY: He's told you all this before.

MR. CLARKE: I'm going to ask the question again.

MR. RAY: It's asked and answered.

MR. CLARKE: That's not a proper objection. You can say object to form.

MR. RAY: Object to form.

BY MR. CLARKE:

Q. I'm going to ask you this question. Did you

observe, while you were 15 before the crash, any conduct from the driver of the car that you crashed into that made you conclude or believe that they were intoxicated?

MR. RAY: Object to the form.

A. I don't know why we -- like I stated before, you have impaired judgment when you've be drinking. He's above the level, according to the lab report, the investigator at the lab, he's above the level to be safe to be 15.

Q. You're above the level of the speed to be safe to be driving, right?

MR. RAY: Object to the form of the question.

Q. Listen to my question.

A. I'm trying to answer your question.

Q. You're answering my question by saying -- I'm asking you whether you observed anything.

A. I'm trying to explain that to you and you won't let me.

Q. Just answer that question.

A. I'm trying to.

Q. Did you know he had a .10 blood alcohol before you crashed into him?

A. The failure to yield would be -- could be an indicator. That's what I'm trying to say.

Q. That's all you had to say and not talk about the other stuff.

So failure to yield to a car that was going 115 miles an hour without lights and sirens, correct?

A. That would be correct, yes, sir.

Q. All right. How much fault do you think they have for this accident?

MR. RAY: Object to form.

A. I don't know.

Q. This is my opportunity to ask you questions about what you're going to say at trial. So I want to know if you have to assign 100 percent fault for the accident, what percentage of fault will you assign to the driver of the car that did something wrong?

A. I don't know that I can put a percentage on it, but I'll tell you a large percentage.

Q. And that's because they should have been anticipated a car coming in the other direction at almost three times the legal speed limit before they made a turn, correct?

MR. RAY: Objection to form.

A. It's the totality of the circumstances which makes -- you asked me a percentage and I told a large percentage. It's not based off of one single thing.

Q. What amount -- you don't think it's a large

percentage and that it's your fault for going almost three times the speed limit?
A. Ask me that again?
Q. I'll move on.
A. Okay. Can I take a restroom break?
Q. Yeah.
(A recess was had.)
BY MR. CLARKE:
Q. We've gone through the tape up to the wreck. After looking at that tape, do you believe that you did everything appropriately?
MR. RAY: Object to form.
A. I believe I did everything as I was trained to do.
Q. According to your training policies as they were taught to you, correct?
A. I believe I was within those, yes, sir.
Q. Okay. After this wreck did you ever see Ms. Braun or Mr. Jenkins, the people that were killed in the car wreck, did you ever see them?
A. No, sir.
Q. Were you trapped in your car?
A. Yes, sir.
Q. Do you have -- do you personally have any information to believe whether or not these people who were killed in the wreck would have been saved had they

had their seatbelts on?

MR. RAY: Object to the form of the question.

A. The only thing I've got is the investigative report.

Q. And where is that?

A. It's from the Little Rock Police Department.

Q. Let's mark this as 14.

(Deposition Exhibit 14 was marked.)

Q. Is it your contention that this document shows that they would have lived had they had their seatbelt on?

MR. RAY: Object to the form.

A. I believe that's basically the way it's worded, yes, sir.

Q. Where do you see that?

A. Page 3, I think it is. It's down here toward the bottom. It says, Failure to wear the seatbelts resulted in both subjects being ejected from the vehicle, and ultimately resulted in their deaths.

Q. Do you know whether they would have survived the impact had they them them on?

MR. RAY: Object to form.

A. I don't have any idea. I didn't even see their car or anything.

Q. You didn't see it before you hit it?
A. I saw it before I hit it. I didn't see where I hit it or anything like that.
Q. Okay. Were you taken to the hospital by ambulance?
A. Yes, sir.
Q. And I believe we went through your medical treatment. You were in the hospital and rehab hospital for some 21 days?
A. Yes, sir.
Q. After this wreck did you -- you had to give a statement to the Hot Springs Police Department, correct?
A. Correct.
Q. And you also gave a statement to the Arkansas State Police, correct?
A. Correct.
Q. In either one of those statements did you ask anything about -- did you tell anybody you were sorry for what you did?
MR. RAY: Object to the form.
A. No, sir. I didn't talk to any family or anything.
Q. Did you express, to your understanding, any remorse about the wreck during either of those interviews?
MR. RAY: Object to the form.

A. Do I wish we could go back in time, yes, sir, I do. I don't know. I don't guess I really understand your question who I would show remorse to.
Q. If they asked you or if you were in questioning you could say, I can't believe I did this, I'm sorry I killed these people, anything like that, or did you just answer the questions asked?
MR. RAY: Object to form.
A. I think I just answered the questions they asked.
Q. Okay. Did you have any -- did you have any psychological counseling or anything stemming from this to deal with the tragic event?
A. No, sir.
Q. All right. Did you find out anything about any type of investigation that was on-going pertaining to the Arkansas State Police of your actions?
A. As far as?
Q. You gave a statement, correct?
A. Correct.
Q. In that were you told you were being brought up on any charges?
A. Just on the initial complaint, which is what stemmed the investigation. And after the investigation a couple of months whenever I took my medical retirement, and I never heard anything about else it.

Q. Is the only thing you heard from the Arkansas State Police is the time that you went in and gave a statement, or did you have other communications with people from the Arkansas State Police before you retired?
A. I talked to my captain and stuff but nothing that --
Q. Did he talk to you about -- did he review the video, did you talk to him about the events?
A. I'm sure he reviewed it. I don't know that though. I would think he did.
Q. My question is did you talk to anybody about what happened in this event other than your official statement to the Arkansas State Police and the Hot Springs Police Department?
A. Like my wife and stuff?
Q. No. You gave a statement to the Hot Springs Police Department, correct?
A. Correct.
Q. You gave a statement to the Arkansas State Police, correct?
A. Correct.
Q. And both of those involved what happened that night, correct?
A. Correct.

Q. Did you talk to anybody else from the Arkansas State Police about your driving or your conduct on that night?
A. Like other troopers or supervisors?
Q. Anybody.
A. I'm sure I discussed it with some other troopers.
Q. Do you recall who you did?
A. I talked to a lot of people. I couldn't tell you exact names.
Q. Was that kind of just informally?
A. Yes, sir.
Q. Did anybody tell you you did anything wrong?
A. No, sir.
Q. Did anybody formally tell you you did anything wrong?
A. No, sir.
Q. Tell me what you do or what the process is to go on medical retirement?
A. I had to submit a letter of resignation. And I don't remember how it started. I ended up I had to have a note from my doctor. And he told me from day one I couldn't go back to work. I had to go see a doctor from the State Police or I was told to go see this doctor. I was taken to that doctor. He told me I couldn't go back to work. And then I don't know what the process is

after that. The board's got to approve it or something of that nature.
Q. Is it like somebody in human services that you turned in this paperwork to?
A. I really don't remember. I think I turned it into my captain or sergeant or somebody and they sent it up to wherever it goes.
Q. Did you talk to anybody at the Arkansas State Police about other jobs like a dispatcher or administration?
A. No, sir.
Q. Did they talk to you about any other positions that you could potentially apply for?
A. No, sir.

MR. CLARKE: That's all I have.

MR. RAY: I probably should go last.

MR. CLARKE: Let's go off the record.

(Off the record.)

MR. CLARKE: On the we apparently had two Exhibit 10s. One was the pursuit policy law enforcement section 13, and one was the accident report or motor vehicle crash report. I have made the pursuit policy Exhibit Number 10, and the motor vehicle crash report 10A. And then to compound the errors, I had two

number 11s. And what I'm marking as 11 is the FTO training documents, if they exist. And then Exhibit 11A would be the radio procedure policy.

(Deposition Exhibits 10, 10A, 11 and 11A were marked.)

EXAMINATION

BY MR. SULLIVAN:

Q. Mr. Burke, my name is Gary Sullivan. I'm an assistant attorney general. And today I'm representing one of the defendants, Colonel Bryant in this case.

Can you hear me?

A. Yes, sir.

Q. I can't always hear you. So I'm going to ask you to try to speak up when you're answering questions. I'll probably if I don't hear you I'm going to ask you to speak up. Please don't think I'm being disrespectful, it just means I can't hear you.

A. Yes, sir.

Q. And you can do the same with me if you don't hear me or understand a question. Is that agreeable?

A. Fair enough.

Q. Okay. I'm going to show you what I have marked as Exhibit 15 to this deposition.

(Deposition Exhibit 15 was marked.)

Q. Is that your signature on this letter, Brian Burke?
A. Yes, sir.
Q. Did you sign this letter March 1, 2017.
A. Yes.
Q. And is this your resignation letter? It says you respectfully submit your medical retirement from the State Police effective April 1, 1217; is that correct?
A. Correct.
Q. And do you remember when you submitted this letter?
A. It's dated March 1st.
Q. Was it shortly after that that you would have submitted it?
A. I would say so, yes, sir.
Q. Okay. I'm going to show you what will be Exhibit 16 to the deposition.
(Deposition Exhibit 16 was marked.)
Q. Do you recognize this document?
A. Yes, sir.
Q. Is this a certificate showing that you received training on the Dodge Charger training in April of 2011?
A. Yes, sir.
(Deposition Exhibit 17 was marked.)
Q. I'm going to show you Exhibit 17 to your

deposition. Is this also a training certificate that you received?
A. I guess. It's got my name on there.
Q. You're Brian Ray Burke, correct?
A. Correct.
Q. And according to this document, you completed emergency 15 decision-making in March of 2012, correct?
A. Correct.
Q. Do you remember taking that training?
A. Not really.
Q. You don't dispute that you had that training, do you?
A. I'm not disputing that. I just don't remember.
Q. I'm going to show you Exhibit 18 to your deposition.
(Deposition Exhibit 18 was marked.)
Q. This is also a training certificate. Do you recognize this one?
A. That's been three years ago. To be honest, I don't. I'm not going to dispute it.
Q. Well, let's go through it. This is an Arkansas State Police training unit certificate, correct?
A. Correct.
Q. And it says that Brian Burke successfully completed the course of 2015 in-service, correct?

A. Yes, sir.
Q. And under that it says, Meeting with Colonel one hour, correct?
A. Yes, sir.
Q. Healthy lifestyle/fitness post troop school, one hour, correct?
A. Yes, sir.
Q. PT test two hours, correct?
A. Yes, sir.
Q. Legal updates, traffic stop safety, one hour, correct?
A. Yes, sir.
Q. EVOC classroom, three hours, correct?
A. Yes, sir.
Q. EVOC training, eight hours, correct?
A. Correct.
Q. Tactical emergency medicine, eight hours, correct?
A. Yes, sir.
Q. And this appears to be dated April the 18th through 20th of 2016, correct?
A. Yes, sir.
Q. And don't dispute that you had all of this training, do you?
A. No, sir.
(Deposition Exhibit 19 was marked.)

Q. I'm going to show you Exhibit 19 to our deposition.

MR. CLARKE: It's the same one.

MR. SULLIVAN: Let's go off the record.

(Off the record.)

BY MR. SULLIVAN:

Q. I have shown you what I marked as Exhibit 19, which we'll no longer be using. This deposition will not have an Exhibit 19 because it was duplicative.

I'm going to show you Exhibit Number 20 to our deposition.

(Deposition Exhibit 20 was marked.)

Q. There's an employee signature line on this form. Does that appear to be your signature, Mr. Burke?

A. Yes, sir.

Q. And does it appear that you signed this in May of 2012?

A. Yes, sir.

Q. The title of this document is Acknowledgment of receipt of ASP policies and procedures revisions; is that correct?

A. Yes, sir.

Q. Do you recall while you were working as a trooper that from time-to-time you would receive policy and procedure revisions documents like this one?

A. Yes, sir.
Q. And you had a policy manual in your car, correct?
A. Correct.
Q. And you were to actually take these revisions and insert them into that book in your car, correct?
A. Correct.
Q. You probably don't recognize this specific one, do you?
A. Well, that's my signature on there.
Q. So you don't deny that you received this particular one?
A. On the electronic control device, yes, sir.
Q. So you don't dispute that, do you?
A. No, sir.
(Deposition Exhibit 21 was marked.)
Q. I'm going to show you Exhibit 21 to our deposition. Do you see your signature on that form?
A. Yes, sir.
Q. This is another form just like the last exhibit we looked at. It's a policy procedures manual acknowledgment that you received a policy and procedures manual. This is your original one, July 1, 2008, correct? I'm sorry. July 1, 2008 is the date of the manual that you received in 2011, correct?
A. Correct.

Q. And you don't deny that you got that book, and it's the one that you kept in the car, right?
A. Correct.
(Deposition Exhibit 22 was marked.)
Q. I'm going to show you Exhibit 22 to the deposition. And is that your signature on this form?
A. Yes, sir.
Q. And this is another policy and procedures revision form that you received, correct?
A. Correct.
Q. This one in 2012, correct?
A. Correct.
Q. On this one you see a list of the provisions that were revised; rules of conduct, external public communications, transfers and promotions, disciplinary matters, reporting and investigating use of force, pursuits, physical fitness and wellness, athletic events, security, law enforcement policy, table of contents. Did I read that correctly?
A. Yes, sir.
Q. And you don't deny that you received these in 2012, do you?
A. No, sir.
(Deposition Exhibit 23 was marked.)
Q. I'm going to show you Exhibit 23 to our

deposition, which is actually a part of a previous exhibit that Mr. Clarke went through today. This is titled, Troop school 2011 basic curriculum. Do you agree with that?

A. Yes.

Q. And that's when you went to troop school in 2011, correct?

A. Correct.

Q. And as you see on this chart, which is five pages, I think, there's a list for the course, the number of hours, who the instructors were and the dates you attended. Do you agree with that?

A. Yes, sir.

Q. And let's go through those. First of all you had a welcome. Then you had a study skills, independent studies and policy issues segment for one hour, correct?

A. Yes, sir.

Q. Then you had six hours to go over State Police forms, correct?

A. Yes, sir.

Q. Next you had three hours for State Police mission, correct?

A. Yes, sir.

Q. Then you had an hour for State Police organization, correct?

A. Yes, sir.
Q. Then you had three hours of State Police history, correct?
A. Correct.
Q. Then you had 20 hours going over State Police policies and directives, correct?
A. Yes, sir.
Q. You had four hours of computer issue and setup policy, correct?
A. Yes.
Q. And 12 hours of report writing, correct?
A. Yes.
Q. Four hours of preventing sexual harassment, correct?
A. Correct.
Q. 10 hours of interpersonal communications, correct?
A. Correct.
MR. CLARKE: I'll stipulate he had all this training.
MR. SULLIVAN: I appreciate that. We're going to go through some of these though.
BY MR. SULLIVAN:
Q. The total on the first page for general administrative courses was 105 hours, correct?
A. Yes, sir.

Q. And you were present for all of those training hours in 2011, weren't you?
A. I didn't miss any troop school.
Q. That was troop school?
A. If that's what they gave, yes, sir.
Q. At the top of the second page you'll see legal and judicial courses?
A. Correct.
Q. Looks like there's seven categories there. Constitutional law and liabilities is the second one. 24 hours for that, correct?
A. Correct.
Q. Were y'all doing eight hour days, roughly?
A. We wish.
Q. Was it more than that?
A. I don't know what it was. A lot of classroom and PT and stuff. They're long days.
Q. If you had 24 hours of constitutional liabilities, that was more than two days, wasn't it?
A. Probably. It was probably eight hours in the classroom.
Q. So that was three days' worth of constitutional law and liabilities, correct?
A. Probably.
Q. And that section, legal and judicial courses was a

total of 70 hours, correct?
A. Correct.
Q. Do you remember what your trooper school, how many days you were there, how many weeks you were there?
A. I think it was 20, but I'm not real certain of that.
Q. 20 what?
A. 20 weeks.
Q. Okay. The next section is criminal investigation courses. You see that you had 42 hours in those courses?
A. Yes, sir.
Q. On the next page you had a section of patrol courses. Do you see that there were 223 hours for patrol courses?
A. Yes, sir.
Q. The first one is crash investigations 120 hours, correct?
A. Yes, sir.
Q. If you'll go down to about the second from the last you see patrol procedures and stops, 24 hours of training, correct?
A. Correct.
Q. The bottom section of that page there's force courses. You had 184 hours in force courses, correct?

A. Correct.
Q. The top of the next page, it's specialized in unit courses. You see that 205 hours of training in specialized and unit courses?
A. Yes.
Q. Do you see a large section down there EVOC 40 hours?
A. Yes.
Q. EVOC, what does that stand for?
A. It's emergency vehicle driver. I don't know what it actually stands for but --
Q. So if you went eight hours a day it's 40 hours. That's one whole week of EVOC training, correct?
A. Correct.
Q. And the bottom section is physical fitness, drill courses and testing, total of 212 hours, correct?
A. Correct.
Q. And on the last page, Other activities there were eight hours, correct?
A. Yes.
Q. So you had a total of 1,049 hours of training total in trooper school, correct?
A. Correct.
Q. Let me show you Exhibit 24 to our deposition.
(Deposition Exhibit 24 was marked.)

Q. Would you agree with me that the first four pages of this exhibit are a PowerPoint on defensive 15?
A. Yes.
Q. And the date on this is April 3, 2017, correct?
A. Yes, sir.
Q. You were not working in April of 2017, were you?
A. That's correct.
Q. You were already on medical leave?
A. I took -- I didn't work after October the 10th of '16.
Q. Okay. Had you seen another defensive 15 PowerPoint presentation similar to this one?
A. I can't deny or confirm it.
Q. Is it possible?
A. I guess it is, but I don't recall one.
Q. Okay. And I'll tell you now I'm probably going to ask some questions that you may have answered, but I'm wanting to get them cleared up and that's why I'm doing it.

I'm going to give you back Exhibit 10 from earlier today. Do you agree with me that the effective date of this pursuit policy was July 14, 2008, do you see that in the upper right-hand corner?
A. Yes, sir.
Q. And it was revised October 15, 2014, correct?

A. Correct.
Q. And you have seen this policy before when you were working as a trooper, correct?
A. Yes, sir.
Q. Let's look at the definition.
MR. CLARKE: Can you hold off while I find a copy?
MR. SULLIVAN: Sure.
BY MR. SULLIVAN:
Q. I'm starting at the sentence, Vehicle pursuit and pursuit means an attempt by an ASP officer in an official vehicle to stop a moving vehicle when the driver of such vehicle is aware the officer is signaling for the vehicle to stop and disregards the officer's attempt to stop the vehicle.
Did I read that correctly?
A. Yes, sir.
Q. And you testified about this earlier today. A pursuit is defined by the person being pursued as being aware that you're pursuing them, correct?
A. That's correct.
Q. And one of the easiest ways would be if you had lights and sirens on, correct?
A. Correct.
Q. Okay. Do you see the next bold section, Pursuit

guidelines?
A. Yes, sir.
Q. The fourth point down I'm going to read. Only official vehicles shall engage in pursuits. Emergency lighting equipment and sirens shall be in operation throughout the pursuit.
Did I read that correctly?
A. Yes, sir.
Q. And did you understand that to be the policy in 2016?
A. Yes, sir.
Q. Back up to the first point in that section. It says, When involved in a pursuit the officer has the duty to drive his emergency vehicle with due regard for the safety of all persons using the highway.
Did I read that correctly?
A. Yes, sir.
Q. Did you understand that to be the policy in 2016?
A. Yes, sir.
Q. I'm going to have you look at Exhibit 9 again.
A. Okay.
Q. This is the vehicle use policy. If you look in the first bold section, Use and operation of Arkansas State Police vehicles. Do you see that?
A. Yes, sir.

Q. Let's back up. The top right-hand corner, this was effective July 14, 2008, correct?
A. Correct.
Q. And it was revised in August of 2013 and again in April of 2016, correct?
A. Correct.
Q. If you look at the last sentence of the first paragraph I'm going to read. All commissioned officers and civilian employees shall exercise ordinary care. Ordinary care is defined as the care a reasonably prudent person would exercise for the safety of others on the road.
Did I read that correctly?
A. Yes, sir.
Q. Did you understand that to be the policy for vehicle use while you were a trooper?
A. Yes, sir.
Q. If you'll go down to the fourth paragraph. I'm going to read starting at the second sentence. It says, Immediate pursuit means the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary.
Did I read that correctly?
A. Yes, sir.

Q. And when you were testifying earlier I think you or Mr. Clarke or both used those words, silent response.
Is this what you were talking about at that time?
A. I don't guess I understand. Can you rephrase that question?
Q. Okay.
A. I think I understand what you're saying, but I'm not real sure.
Q. Tell me what a silent response means to you?
A. Silent response would be when you need to respond to a situation that you did not to warn the others about.
Q. Would that be the same thing as not turning on your lights until you get close to in this situation a speeder?
A. I think that would be more immediate pursuit as opposed to silent response.
Q. And in that same paragraph there's a statute referenced, Arkansas Code Annotated 27-51-204. Do you see that?
A. Yes, sir.
Q. And that's something y'all went over in training, isn't it?
A. I don't recall that.
Q. Did you understand this to be the policy when you

were a trooper?
A. Yes, sir.
Q. Okay. I'm going to hand you Exhibit 7 to the deposition. And hopefully yours at the bottom has red numbers in the bottom center starting with the letters ASP. Do they?
A. They're black.
Q. Those are the copies. Would you turn to ASP 0038, please. The title at the top of that page is, Lesson plan, correct?
A. Correct.
Q. And these were in this particular section do you see the section titled, Purpose?
A. Yes, sir.
Q. It says, The purpose of this course is to acclimate drivers of the specific characteristics of police vehicles that are used on a daily basis.
Did I read that correctly?
A. Yes, sir.
Q. And right above that the time frame on this was 36 hours, correct?
A. Correct.
Q. The training title at the top is, Basic EVOC, correct?
A. Correct.

Q. I believe you testified to some of this earlier. The date on this is October 2009, correct?
A. Correct.
Q. And I believe you remembered that Captain Eremea was part of this training, correct?
A. Correct.
Q. Is that Keith Eremea?
A. Yes.
Q. Down on the left do you see the section titled, Objectives?
A. Yes, sir.
Q. Let's go through those. The first one is, Explain the department policy pertaining to vehicle maintenance. Two, Explain the laws of physics as they pertain to vehicle operations. Three, Describe the techniques used to maximize performance in high speed operation of the police vehicle. Four, Demonstrate correct techniques associated with 15 the vehicle. Next, Operate the vehicle on the approved course under the allotted time. Next, Explain and perform the PIT maneuver. Next, Deploy and retrieve spike strips. Next, Understand liability issues in the operation of a police vehicle.
Did I read those correctly?
A. Yes, sir.
Q. And I you don't remember everything from training.

But do you remember generally that these topics were brought up in your training?
A. Yes, sir. Some of them, yes, sir.
Q. If you'll turn back to ASP 0035, please. Is this a traffic stop performance evaluation?
A. Yes, sir.
Q. Have you ever seen one of these before?
A. Not really.
Q. You don't recall ever getting graded on your performance in these evaluations?
A. I've seen these. I don't know if we reviewed them in general or not.
Q. So you've never seen your scores on this particular evaluation or any --
A. I don't recall, sir. Not during troop school I didn't see it. I saw my test scores when we took a test, but I don't recall seeing this stuff here.
Q. Okay. Well, this purports to be your performance evaluation. Do you deny that this is correct or an accurate representation of your evaluation on April 20, 2011?
A. I've never seen it that I know of, sir. So I can't deny it or confirm it.
Q. Okay. The instructor name is Kennedy. Do you know who that is?

A. Probably Mike Kennedy.
Q. Okay. Do you see at the top it says your score between 1 and 5 in each area?
A. Yes.
Q. 5 being the strongest in the area. If you look down the scores it looks like you got a whole lot of 5s, correct?
A. Yes, sir.
Q. Okay. Turn to page 36, please. Am I to assume if you didn't recognize the last one you don't recognize this one either?
A. Correct.
Q. Do you deny that this is your performance evaluation?
A. No, sir.
Q. Turn to the next page 37. The same question. Do you deny that this is your performance evaluation?
A. I don't know. I don't know how to answer a question. I've never seen it.
Q. You don't think I made this document up?
A. I don't think that, no, sir.
Q. This came out of your personnel file. Do you think anybody made it up and put it in your personnel file?
A. I wouldn't think so.

Q. Okay. Do you still have Exhibit 7? Is that what that one is?
A. Yes, sir.
Q. Turn to ASP 26, please. Some of these read the same. If I'm going over one we've already gone over I apologize. If you'll look at objective 3 on that page.
A. Okay.
Q. It says, Recruits will demonstrate their ability to properly utilize the equipment, emergency lights and sirens, flashlight, spotlight, baton, OC spray, radio, radar, PA system, vehicle, weapons, et cetera required to perform their duties.
Did I read that correctly?
A. Yes, sir.
Q. Do you agree that was one of the objectives of training troopers?
A. Yes, sir.
Q. And you were taught how to do all of those items, correct?
A. Yes, sir.
Q. Under that it says, Troopers shall wear seatbelts while operating or occupying an ASP vehicle, correct?
A. Correct.
Q. It says, Explain the importance of using the emergency lights on every stop, correct?

A. Correct.
Q. It says, Blue lights and siren on ASP vehicles, correct?
A. Correct.
Q. You received training on all of that, didn't you?
A. Correct.
Q. I didn't finish that last portion. It's blue lights and siren on ASP vehicles must be activated during emergency operation of the vehicle, correct?
A. Correct.
Q. Demonstrate different techniques of holding the flashlight, ticket book and miscellaneous paperwork, correct?
A. Correct.
Q. And the rest of those are not applicable to what we're talking about today.
If you'll look on page 29, please. You see the section titled, Practical exercises?
A. Yes, sir.
Q. I'm going to read from that. It says, Recruits will rotate through scenarios using simmunition weapons, protective gear and the basic equipment required for highway patrol duties. Scenarios will start off very slow and methodical and will progress to dynamic and complex scenarios. The scenarios will range from

motorist assists, accident investigations, hitchhikers, high volume traffic stops, and progressing to the escalation of force, the transportation of prisoners, search and seizure, evidence, chain of custody, dealing with disabled persons, multiple occupants and felony high risk traffic stops. All traffic stop scenarios will be based on actual traffic stops instructors have encountered throughout their career. Attached are the different scenarios recruits will rotate through. Each scenario will have a list of variables that will dictate the complexity.

Do you recall participating in these different types of scenarios in your training?

A. Yes, sir. Let me reanswer that real quick. I remember doing scenarios. I don't remember specific scenarios.

Q. That's what I meant.

A. I remember doing some scenarios, yes.

Q. Okay. I'm going to back up just a little bit to Exhibit 9. I didn't ask you. You said that you are aware of these policies. Do you remember that you have actually seen this particular policy?

A. I can't deny that.

Q. This one should have been in your book, correct?

A. Correct.

Q. And the same questions for number 10?
A. Yes, sir.
Q. Those are two of the main things that apply to someone that 15es a patrol vehicle, correct?
A. Correct.
Q. Okay. I'm going to give you Exhibit 8. If you'll turn to page 966. This purports to be a 15 performance evaluation. Is this one of the ones you have seen before?
A. I don't think we saw these. Most of that we didn't see, that I recall.
Q. Okay. This is again from your personnel file. It lists you as the student. Do you have any reason to believe that this is not your driving performance evaluation?
A. No, sir.
Q. The overall performance says, A natural driver, exclamation point, correct?
A. Correct.
Q. And the next page 967 is another 15 performance evaluation. This one is April 26, 2011. It says, Overall performance, good job, correct?
A. Correct.
Q. Do you have any reason to believe this is not your 15 performance evaluation?

A. No, sir.
Q. The next page is April 26, 2011. You have an evaluation, the overall performance says, Good. Do you have any reason to believe this is not your performance evaluation?
A. No, sir.
Q. Page 969. 15 performance evaluation on precision immobilization technique. And that's a PIT maneuver, correct?
A. Correct.
Q. And your performance says, Did well. Do you have any reason to believe this is not your performance evaluation?
A. No.
Q. The next page is a 15 performance evaluation, performance 15. This says, Overall performance is very good performance. Do you see that?
A. Yes, sir.
Q. If you see lap 3 the person grading this said, Good run. Do you see that?
A. Yes, sir.
Q. Do you have any reason to believe this is not your performance evaluation?
A. No, sir.
Q. Now, the next page after that 971 appears to be

another PowerPoint presentation, correct?
A. Correct.
Q. Now, when you were in classes and people put these PowerPoint slides up, did they just put them up there and click through them or did they talk to you?
A. Well, they went through them and we talked about them.
Q. Okay. So normally in a PowerPoint presentation the presenter puts the slide up and then talks about it and puts the next slide up, correct?
A. Correct.
Q. So what we see here is not everything you learned in the class, is it?
A. Well, it would be a good focus of what we learned.
Q. It's more like an outline, isn't it? What I'm asking you is did the presenter explain the things that are on these slides to you?
A. I would assume they explained it. You're talking about --
Q. It's not a trick question.
A. I want to answer you fairly. But that's been six or seven or eight years ago, seven years ago.
Q. Okay.
A. I can't tell you what this particular instructor talked about.

Q. That's not what I'm asking you. Did this instructor put these slides up and just click through them or did he actually talk to you?
A. That's what I'm saying, I can't remember what this exact instructor did.
Q. Would you remember it if anybody in any class did a PowerPoint presentation and just sat there and clicked through the slides and didn't talk?
A. That wasn't your question.
Q. That's a new question.
A. Well, that wasn't --
Q. Would that stand out in your mind if I went to a class and the presenter just put slides up and didn't say anything?
A. That would stand out.
Q. Okay. So do you think that ever happened to you?
A. No, sir.
Q. Okay. This page this PowerPoint presentation is entitled, Arkansas State Police EVOC in-service 2012, correct?
A. Yes, sir.
Q. And if we go down the left side there's a slide titled, Skill training, correct?
A. Correct.
Q. And to the right of that another slide titled,

Skill training, correct?
A. Yes, sir.
Q. Let's start with the first one. It says, Extremely important for troop school. Many recruits have never driven a vehicle at high speeds. They are unfamiliar with 15 techniques associated with EVOC.
Did I read that correctly?
A. Yes, sir.
MR. CLARKE: Is that a question?
MR. SULLIVAN: It is indeed.
MR. CLARKE: Are we going to just read everything. I'll stipulate you can read.
MR. SULLIVAN: I appreciate that.
BY MR. SULLIVAN:
Q. Now, were these items explained to you in this course?
A. I would say that these slides were explained, yes, sir.
Q. Okay. And then after the skill training there are slides on firearms, correct?
A. Correct.
Q. And the next page, Critical incidents?
A. Yes, sir.
Q. Do you see that?
A. Yes, sir.

Q. There's one titled, Muscle memory. That's a term that's come up in your testimony today. Tell me what that means?
A. Well, through repetition you develop a natural inclination like drawing your weapon. I don't have to look at my weapon to draw that weapon, because I know right where it's at every time, because I've done it so many times, you go for that weapon. It's just repetitive action that your body becomes accustomed to that action.
Q. Okay. The bottom right slide is titled, EVOC, correct?
A. Correct.
Q. It says, Operating an emergency vehicle during critical incidents is no different, correct?
A. Correct.
Q. So you received training on that topic right there, correct?
A. Correct.
Q. The next page there's several slides about EVOC, correct?
A. Correct.
Q. And some of these look like they're going through some specific fact situations. Do you see that?
A. Correct.

Q. And the same for the next page 974, correct?
A. Yeah.
Q. There's some specific fact situations given as well as some statistics, correct?
A. Correct.
Q. If you go to 976 there's several slides -- well, there's a few slides on seatbelts, correct?
A. What page?
Q. 976.
A. Yes, sir.
Q. And at the top the titles they went over with you were Speed versus reaction time, correct?
A. Correct.
Q. If you'll turn to page 979. The two slides at the bottom of the page are titled, ASP policy change. Do you see those?
A. Yes, sir.
Q. And you agree on each one of those slides there's several points there, correct?
A. Yes, sir.
Q. If you'll turn to the next page 980. It has six slides with more policy changes, correct?
A. Correct.
Q. Turn to page 981. There's six more slides dealing with policy changes, correct?

A. Correct.
Q. And if you turn to page 982. There's a slide for policy, correct?
A. Correct.
Q. So the instructor went over a number of policy changes with you in this presentation, correct?
A. Correct.
Q. Turn to page 984, please. This is titled, In-service training April 18th to 20th. Tuesday EVOC, Wednesday tactical medicine.
Did I read that correctly?
A. Yes, sir.
Q. And Tuesday a whole day was dedicated to EVOC, correct?
A. Yes, sir.
Q. And if you'll look at line number 11, is that your signature?
A. That's me.
Q. And did you attend that EVOC training?
A. I would say so.
Q. I should have started with that question.
If you'll turn to page 985. There is yet another PowerPoint presentation. This one is titled, Emergency vehicle operations. Do you see that?
A. Yes, sir.

Q. Do you see that on that page are three slides dedicated to criminal code?
A. Correct.
Q. And this is fine print. I can see it. We're going to look at the names of these cases if you can see that. If you'll look at the second slide on the right-hand side. There's a reference to Statute 27-51-202, correct?
A. Yes, sir.
Q. And if you'll see the underlined bold in white words it talks about reckless disregard of the safety of others, correct?
A. Yes, sir.
Q. And then the next slide in the bottom left is criminal code. And the first point talks about the City of Little Rock versus Weber, City of Caddo Valley versus George. Do you see that at the very first point?
A. Yes, sir.
Q. Okay. And if you look to the third point, Statute 27-51-901 is referenced, correct?
A. Yes, sir.
Q. And the slide on the bottom right references Statute 27-49-109, Drivers of authorized emergency vehicles, correct?
A. Correct.

Q. Turn to page 986. The top left slide, Criminal code. It says, Criminal code, and then bold in white and underlined, Does not exempt us from negligent action on our part.

Do you see that?

A. Yes, sir.

Q. Then the remainder of the slides on that page are titled, Civil liability, correct?

A. Yes, sir.

Q. On the top right the case Graham versus Connor is cited. It says it was a landmark case for law enforcement. Do you see that?

A. Yes, sir.

Q. Now, when we start saying these names are they coming back to you that you heard those in training before?

A. Not really, no, sir.

Q. Okay. You don't deny that you were instructed about these cases though, were you?

A. No, sir.

Q. On the second slide on the right do you see the case Lewis versus Sacramento County cited?

A. Yes, sir.

Q. On the bottom right do you see the case Plumhoff versus Rickard?

A. Yes, sir.
Q. Turn to the next page 987. And all of these slides on this page deal with civil liability, correct?
A. Yes, sir.
Q. The bottom left you see the case of Scott versus Harris cited?
A. Yes, sir.
MR. CLARKE: For the record, I lost that case.
BY MR. SULLIVAN:
Q. In the bottom right the slide in the last point it says, the Statute 42 USC 1983 is cited, correct?
A. Yes.
Q. Turn to page 988. All six slides on this page are titled, Civil liability, correct?
A. Yes, sir.
Q. The top left case is discussing PIT maneuvers, correct?
A. Do what now?
Q. The top left slide is discussing liability related to PIT maneuvers, correct?
A. Are you still on 988?
Q. Yes.
A. Okay. Yes, sir, I see it.
Q. On page 989 the bottom four slides deal with

vehicle dynamics, correct?
A. Yes, sir.
Q. The bottom left one is talking about Newton's second law, correct?
A. Yes, sir.
Q. And this is talking about force equals mass times acceleration, correct?
A. Yes, sir.
Q. Why is that important to a trooper?
A. The faster you go the more force you have in mass acceleration and the longer the stopping distance.
Q. Very good. If you'll turn to page 990. All of these slides deal with vehicle dynamics, correct?
A. Yes, sir.
Q. Turn to page 991. You've got four slides -- excuse me -- you've got two slides dealing with vehicle dynamics, correct?
A. Yes, sir.
Q. Remainder of the slides on that page deal with performance 15, correct?
A. Yes, sir.
Q. The second slide on the left starts out in bold, The number one rule is to drive within your ability; is that correct?
A. Correct.

Q. Page 992. All the slides are dedicated to performance 15, correct?
A. Yes, sir.
Q. Go to page 996. There are several pages there with the presentation of dealing with braking and braking techniques, correct?
A. Yes, sir.
Q. Do you recall being taught about all these braking techniques?
A. Yes, sir.
Q. And why they're important to a trooper?
A. Correct.
Q. Who is the head of the State Police?
A. Colonel Bryant.
Q. Do you know him?
A. I've met him, yes.
Q. When was the last time you saw him?
A. Today.
Q. Is he here today in this room?
A. Yes, sir.
Q. Have you ever spoken with him personally other than to say hello?
A. I don't recall.
Q. That's a big deal in a big state agency meeting the director, isn't it?

A. Not really. You see them when you go to Little Rock and stuff. It's not uncommon.
Q. But you don't recall if you've ever had a conversation with him?
A. I'm not saying I didn't, but I don't recall it.
Q. Do you know who sets policy for the State Police?
A. I would assume that the Colonel approves the policy. I'm sure there's someone that helps make that. I don't really know.
Q. And who has the authority to change that policy?
A. The Colonel.
Q. Can anyone else supercede the Colonel's policies?
A. I don't know.
Q. Did anyone in your chain of command ever instruct you that you could drive 98 or 100 miles an hour in a high traffic area with no lights or sirens?
MR. RAY: Objection to form.
A. I was never told otherwise.
Q. Have you ever seen a written policy that said it was okay to drive in excess of 100 miles an hour with no lights or sirens?
A. The policy states that -- the immediate pursuit policy states you can drive without lights and siren in catching up to a vehicle.
Q. And that you can do that in a high traffic area?

MR. RAY: Object to form.
A. It doesn't say any situation. It says that you can exceed the posted speed limit. I think it's Exhibit Number 9, The vehicle use policy. Officer 15 an authorized emergency vehicle in immediate pursuit is exempt from posted speed limits. Immediate pursuit means the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary.
Q. And based on that, do you believe it was necessary to drive 100 miles an hour in the area that we viewed on the video today?
A. I believe I was within that policy.
Q. Do you believe that it authorized that?
A. Yes, sir. There's no limitations in the policy or anything of that nature.
Q. On the exhibit where you have written on the amended complaint your calculations of your speed.
A. Yes, sir.
MR. CLARKE: 14.
BY MR. SULLIVAN:
Q. 14. Did anyone assist you in making those calculations?
A. No, sir. I just used the video.
Q. Did you use a calculator?

A. Yes, sir.
Q. And that's the average speed that you believe you were going?
A. Based off the distance in the complaint or the -- I didn't do a -- obviously if we change the distance it's going to change things. But based off the distance that was from my recollection and in the complaint, which was 8.7 miles, and the time on the video.
Q. And in watching this video today you testified at several stop points to the speed that you were going. Do you dispute any of those speeds that are on that video?
A. I don't have any way to dispute that.
Q. Do you have any reason to believe you weren't going over 100 miles per hour where it indicates that?
A. I'm not saying that, no, sir.
Q. Okay.
MR. SULLIVAN: Let's take a short break.
MR. CLARKE: All right.
(A recess was had.)
BY MR. SULLIVAN (CONT.):
Q. Mr. Burke, you testified while watching a video earlier today, and you may have answered part of my questions, the vehicle that you crashed into we've referred to sometimes as the Braun vehicle because the

passenger's name was Braun, and that's the name of the plaintiff in this case.

You know which vehicle I'm talking about, correct?

A. Yes, sir.

Q. That is not the vehicle that you were trying to catch up to because you thought they were speeding, is it?

A. No, sir.

Q. And at no point were you trying to stop the Braun vehicle, were you?

A. No, sir.

Q. And you did not certainly didn't intentionally crash into the Braun vehicle, did you?

A. Absolutely not.

Q. And you weren't trying to stop them in any way, were you?

A. No, sir.

Q. Okay. Now, you also testified that you believed that Ms. Braun and the driver of her vehicle were largely at fault here. Do you remember saying that just a few minutes ago?

MR. RAY: Object to the form of the question.

A. Yes, sir.

Q. Do you believe that you were in any way at fault

for this incident?
A. I think you could say speed was a factor in the accident. There again, I'm not a reconstructionist. I haven't seen a reconstruction on it. I think to be able to say that we're going to say that had I been going the speed limit the accident would not have happened before we can say I'm at fault or had any fault or no fault at all. Because the accident could have still happened even if I was going the speed limit.
Q. Do you believe you were at fault at all?
A. I think I just answered your question.
Q. Well, I'm not clear on that. Do you think you were at fault at all no matter what percentage?
A. I think speed could be a factor.
Q. I didn't ask you that.
A. Okay. At the time of the accident the only state law I violated is speed. So that would be my only contributing factor to the accident.
Q. So are you saying if you weren't speeding the accident might not have happened?
A. I'm saying if a reconstruction was done on there, and it was determined that the accident would have still happened, even with my speed being the speed limit, then I'm going to say I'm not at fault at all.
Q. So you don't -- go ahead. I'm sorry.

A. If speed is a factor, and if the accident would not have happened, then I would say that -- I would just have to see a reconstruction before I could answer your question, a reconstruction of the accident.
Q. So are you saying you believe it's possible that you were not at fault at all?
A. That's correct.
Q. That's correct?
A. That's correct.
Q. You're trained to work crashes, aren't you?
A. I work crashes, yes, sir.
Q. You did work crashes?
A. Yes, sir.
Q. So if you had worked this accident, say you weren't involved in it, but you got called to work this very same accident, do you think you would have determined that speed was a factor?
A. I do not have the qualifications for that, sir.
Q. You've never worked a crash where you determined that speed was a factor?
A. Not an accident like this.
Q. You were trained on measuring skid marks, right?
A. I was not trained in the reconstruction of an accident.
Q. That's not my question. You were trained to

measure skid marks, weren't you?
A. I can measure skid marks.
Q. And the size and length of a skid mark can help you draw conclusions about an accident, correct?
A. When you start taking drag factors and all that stuff, which is mainly done through a reconstructionist.
Q. Well, the state doesn't hire reconstruction experts for every road accident that a trooper works, correct?
A. That's correct.
Q. Because a trooper is trained to evaluate an accident, isn't he?
A. They investigate accidents, yes, sir.
Q. So if you came -- if you were the first person called to this incident, would you have determined that speed was a factor?
A. I would have requested additional resources.
Q. Why?
A. Because I don't have the training to investigate an accident like this. I was taught how to use drag factor. And drag factor goes a lot into what skid marks are.
Q. This crash occurred when, according to you, a car turned left in front of you?
A. That's correct.

Q. And you hit it and you were going approximately 100 miles per hour, correct?
A. Correct.
Q. Where is the difficulty in evaluating this situation that would require an accident reconstructionist?
A. To determine that speed is a factor in the accident.
Q. Well, we know you were going approximately 100 miles per hour, don't we?
A. That's correct.
Q. Okay. Before the crash did you see the Braun vehicle start to turn?
A. Yes, sir.
Q. Did you see their turn signal was on?
A. I do not remember the turn signal.
Q. So you don't know either way?
A. No, sir.
Q. But you saw them start to turn?
A. Yes, sir.
Q. Did you brake?
A. I'm sure I did.
Q. As I was watching the video I saw the word brake come on and off sometimes. What does that indicate on your video?

A. That your brake has been applied.
Q. Okay. Did you notice if your brake was applied right prior to the crash?
A. It cut out prior to the crash.
Q. Okay.
A. The video did.
Q. But you believe you applied your brake?
A. I think that's the reason I received the damage to my leg that I did because I was on the brake.
Q. Just a few minutes ago we took a short break and we've had other breaks today. Have you thought of anything that you want to change about your answers that you've given in this deposition today?
A. No, sir.

MR. SULLIVAN: That's all I have.

A. Yes, sir.

EXAMINATION

BY MR. RAY:
Q. Let me ask you a few things. I'm not going to go on. This accident you were involved in that's the subject of this case, who investigated it?
A. Hot Springs Police Department.
Q. During the course of the investigation did anyone from the Hot Springs Police Department talk to you about it?

A. Yes, sir.
Q. And did they tell you what their conclusions were about the accident?
A. No, sir. Let me back up. I did a statement to the Hot Springs Police Department. It was a detective or investigator. We discussed the accident. But no one actually discussed that I recall that we actually discussed the details of the accident. It was just him asking me questions.
Q. All right. So if you're asked questions about what facts are there to lead the investigating officer from the Hot Springs Police Department to describe, for example, alcohol as a contributing factor, who would know more about that; the investigating officer or you?
A. The investigating officer.
Q. And these same questions about apparently another investigator was called in to analyze the data, crash data or the data on the Braun vehicle. And you spoke about that officer associated with the Little Rock Police Department?
A. Yes, sir.
Q. In his report did you have any input or make any conclusions that are included within that report?
A. He just notes that -- and I don't remember what the -- it had that if both the subjects in the car,

if they had had their seatbelts on they might not have been killed.

Q. And is that your conclusion or is that one that the officer made?

A. That's one of the statements from that officer.

Q. And so between you and this officer at the Little Rock Police Department that's Exhibit 14, who would know more about how he reached his conclusions between you and him?

A. He would.

Q. All right.

MR. RAY: I'm going to reserve the remainder of my questions for trial. Pass the witness.

RE-EXAMINATION

BY MR. CLARKE:

Q. Let's talk about a couple of things.

Exhibit 14, how fast, according to the black box recorder, was the vehicle containing Cassandra Braun going? I believe it's on the first page.

A. 16 miles per hour at impact.

Q. All right. Is that consistent with your observations?

A. Sir, I don't recall.

Q. Okay. That's within the speed limit, right?

A. Yes, sir.
Q. Okay. Now, all your driving, up until the time of the crash, you were 15 intentionally, correct?
A. I was 15 what?
Q. You made a decision to leave the parking lot and to try to catch up with the car with the hazards, correct?
A. Yes, sir.
Q. You made that decision, and it was part of the training that you had was that you have to use ordinary care, correct?
A. Correct.
Q. And part of a law enforcement officer's job is to constantly evaluate the circumstances based on what they're doing, correct?
A. Correct.
Q. And you intentionally put that calculus in your mind as you were 15 up until the crash, correct?
A. Correct.
Q. Every car you passed, every business you passed you intentionally thought it was okay to do, correct?
A. Correct.
Q. All right. Now, they asked you some stuff about training. Get Exhibit Number 8 out. Well, first let's go to Exhibit Number 9, the policy. We have a vehicle

use policy. And I believe it's your testimony that you were given this policy, correct?
A. Yes, sir.
Q. And that you were asked some questions about this policy. If you look at the second paragraph. You're allowed, according to the policy, are exempt from the traffic laws when responding to an emergency call or in the immediate pursuit of an actual or suspected violator, correct? Second paragraph.
A. Correct.
Q. All right. The policy in that situation does not talk about whether or not you have to have your lights or sirens on, does it?
A. Correct.
Q. The next paragraph talks about you're allowed to -- if you're not in an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and you go outside the speed limit, then you're supposed to have your lights and sirens on, correct?
A. Correct.
Q. And the third paragraph basically says, and this is what the policy is that you understood and you were trained on, said if you're trying to perform a traffic stop or catch up to somebody or do a silent response, you don't have to have your lights and sirens on,

correct?
A. Correct.
Q. So it's your understanding that even though there are laws that require lights and sirens to exceed the speed limit, that the training that you were provided allowed you some leeway with those laws if you determine the silent response to an emergency call was necessary, or if you were in the process of catching up to somebody to perform a traffic stop, correct?
A. Correct.
Q. All right. And you've been asked a lot of questions about fault and things of that nature. You know, it got a little testy and I apologize for that.
Is it your testimony that what you did was appropriate, based on the training and the policies of the Arkansas State Police?
A. That is my belief, yes, sir.
Q. And if you complied with what they told you to do, you would expect that you weren't at fault because that's what they told you, correct?
A. Correct.
Q. All right. So whether you feel morally responsible, you feel like you complied with the training that was provided and the policy that was provided, correct?

A. Correct.
Q. And if they wanted you to have your lights and sirens on any time you exceed the speed limit for anything, they should have trained you that, correct?
A. Correct.
Q. They did not train you that, correct?
A. Correct.
Q. They actually trained you the opposite of that, correct?
A. Correct.
Q. And you were a trooper for some six years, five and a half years?
A. Six years.
Q. And it's your understanding, based on conversations with other troopers, that they had the same interpretation?
A. Correct.
Q. Your supervisors, correct?
A. Correct.
Q. They're supposed to be reviewing your tapes, right?
A. Correct.
Q. And nobody told you that you were going too fast, correct?
A. Correct.

Q. If this is somebody's fault, and your conduct was ultimately found to be at fault, would you not then say the people who trained you should be the ones who are responsible?
A. Correct.
Q. Now, if you get Exhibit 8 out. He went through a number of PowerPoints, and you couldn't remember, and we went through these lesson plans and some of the PowerPoints, correct?
A. Yes, sir.
Q. Do any of them, if you go through it and if you just look at the lesson plan at the beginning, none of that says anything on page 959 to 960 anything about using lights and sirens whenever you're going over the speed limit, correct?
A. No, sir. That would be correct.
Q. And then we have these objectives. There's 10 objectives. None of them deal -- none of those objectives deal with using lights and sirens any time you exceed the speed limit, correct?
A. Correct.
Q. It looks like the way that I look at this is page 971 there's a PowerPoint slide that you went over, and based on the first pages if you look at the slides, they were basically telling you that it involved a heck of a

lot more in 15 cars than using firearms, correct?
A. Yes, sir.
Q. If you go to page 973, in most of your training that we talked about and we went over with your trooper training you had 30 hours out on the track, correct?
A. That seems right. It says 36 hours of EVOC.
Q. Right. If you go -- if you go back to that for a second. When you go through the objectives and stuff -- let's go back to that.
A. Driving track 30 hours.
Q. All right. So of the 36 hours, 30 involved the physical operation of a vehicle, correct?
A. Well, this is dated '09.
Q. This is what the state produced.
A. That's the same time frame that we used in '11.
Q. All right. This has been produced to me as your training from the Police Academy. That might have been one that was used and it may not have been updated.
A. Yes, sir.
Q. Okay. All right. You didn't have any classes on -- well, we'll just move on.
Then it looks like if you go to the PowerPoints, and I'll tell you that there's 68 slides total. Do you see any that interpret Exhibit 9, the policy about catching up to speeders without your lights and sirens

or silent response?
A. No, sir.
Q. And if you look at 973. Do you see at the bottom there Captain Travis Yates?
A. Yes, sir.
Q. In the bottom part on the left it says he did research results of the way we train. And 75 percent was on skill sets and only 25 percent was on decision-making. Do you see that?
A. Yes, sir.
Q. And his conclusion is that type of training is not working, correct?
A. Correct.
Q. The next training says, the next slide to the right says, We are not crashing ASP units because of how we drive, we are crashing because of the decisions that are made that put us in the situation to begin with, correct?
A. Yes, sir.
Q. And according to the next slide on the next page, you need to reverse the priorities to 75 percent training on decision-making and just 25 percent on skill sets, correct?
A. Correct.
Q. Did you ever -- did they ever give you 75 percent

training on the decision-making as opposed to going out on the track?
A. No, sir.
Q. The training you received is not consistent with what they say should be the way it's done, correct?
A. Correct.
MR. CLARKE: That's all.
RE-EXAMINATION
BY MR. SULLIVAN:
Q. Mr. Burke, were you thought by the State Police to use ordinary care at all times when 15?
A. Yes, sir.
Q. Were you ever taught not to use ordinary care when 15?
A. No, sir.
Q. You testified, and correct me if I'm wrong, reading the report that the Braun vehicle was going 16 miles per hour when you crashed; is that correct?
A. Correct.
Q. Why did you apply your brakes?
A. Because I saw them coming into my path.
Q. Is there anything else you could have done to avoid hitting them?
A. I tried and tried to look back and see if there's a way that it could not have happened that way, based on

the circumstances, as far as me avoiding the crash. And I don't know. A lot of that is blurry to me. I don't remember. I remember that car cutting in front of me and that's all I really remember. So I really don't have an answer for your question because I don't know.

Q. What is the law regarding civilians 15 when they see an emergency vehicle with its lights flashing and sirens on?

A. They're supposed to yield to the right.

Q. So if you had had your lights and sirens on, do you agree with me the Brauns might not have turned in front of you? If they had obeyed the law they would not have turned in front of you, would they?

A. Repeat that?

Q. If they had obeyed the law, this is a hypothetical question, if they had obeyed the law and seen you with lights and sirens on, they would not have turned in front of you, would they?

MR. RAY: Object to the form of the question.

A. I can't say they would have turned. If they had obeyed the law they wouldn't have turned to begin with.

Q. They wouldn't have what?

A. Regardless of whether the lights and sirens were on, they wouldn't have turned if they would have obeyed

the law.
Q. Certainly if they saw lights and sirens coming they would have been alerted not to turn, correct, that's the law, isn't it?
A. That's the law whether there's lights and sirens on or not.
Q. Would you agree with me that it's more likely --
MR. RAY: Object to form.
Q. -- if they had hired a siren, they're more likely to have noticed you and not turned than if you didn't have a siren on?
MR. RAY: Object to the form.
A. A lot of times you outrun those sirens at those speeds anyway.
Q. That's not my question.
A. I can't say they would have heard it. I can't say --
Q. I know you can't say what they would have done. My question is isn't it possible they wouldn't have turned?
MR. RAY: Object to the form of the question.
A. Anything is possible.
Q. And so if you had had your siren on they might still be alive, correct?

MR. RAY: Object to the form of the questions.

A. I can't answer that, sir.

Q. It's a hypothetical. They might still be alive, correct?

MR. RAY: Object to the form of the question.

A. Maybe, maybe not. I can't say.

MR. SULLIVAN: That's all I have.

MR. CLARKE: Nothing further.

MR. RAY: We'll reserve the rest of our questions.

(WHEREUPON, the deposition was concluded at 3:43 p.m.)

C E R T I F I C A T E

STATE OF ARKANSAS*
ss *
COUNTY OF SALINE *

I, JEFF BENNETT, Certified Court Reporter, a Notary Public in and for the aforesaid county and state, do hereby certify that the witness, BRIAN RAY BURKE, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me in machine shorthand notes and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

In accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was requested by the deponent or a party thereto.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

GIVEN UNDER MY HAND and SEAL OF OFFICE on this 27th day of November, 2018.

_____
Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

ERRATA SHEET OF BRIAN RAY BURKE

PAGE #	LINE #	ERROR	CORRECTION & REASON

WITNESS SIGNATURE PAGE

I, BRIAN RAY BURKE, the witness, hereby certify that I have thoroughly read the transcript of my deposition taken on the 8th day of November, 2018, and have made any necessary changes or corrections to make the transcript a true and accurate accounting of my testimony given on that day.

Signature

Date

****

STATE OF *
* ss.
COUNTY OF *

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for County, .
Given under my hand and seal of office on this day of , 2018.

My commission expires .

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, JEFF BENNETT, LS No. 19, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 214 constitute a true and correct copy of the original deposition of BRIAN RAY BURKE taken on November 8, 2018.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 27th day of November, 2018.

_____
Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

Lesson Plan

Training Title: Basic EVOC

Trainer(s): Sgt. Speer, Cap. Eremea, Sgt. Mark Johnson, Cpl. Dennis Overton, Sgt. Rick Neill, Cpl. Mark Gregory, Lt. Barry Saffold

Prepared By: Sgt. Jackie Speer

Date: 10/14/09

Time Frame: 36 Hours	Audience: All Active ASP Troopers Number of Participants: 28 Space Requirements/Room Setup:
Purpose: The purpose of this course is to acclimate drivers of the specific characteristics of police vehicles that are used on a daily basis. Objective(s): At the end of this instruction, the participants will be able to: • Explain the department policy pertaining to vehicle maintenance • Explain the laws of physics as they pertain to vehicle operations • Describe the techniques used to maximize performance in high speed operation of the police vehicle • Demonstrate correct techniques associated with driving the vehicle • Operate the vehicle on the approved course under the allotted time • Explain and perform the PIT maneuver • Deploy and retrieve spike strips • Understand liability issues in the operation of a police vehicle	Evaluation Procedures: Practical Evaluation

Logistical Checklist:

- Contact Stuttgart airport:_____
- Contact FAA:_____
- Lodging: _____
- Meals: _____
- Credit Card: _____

Equipment Needed:

- Vehicles: _____
- Cones: _____
- Helmets: _____
- Radios: _____
- Stop Watches: _____
- Water: _____
- Hand Cleaner: _____
- Paper Towels: _____

Trailer Supplies:

- Tires: _____
- Floor Jack: _____
- Hand Tools: _____
- Motor Oil: _____
- Transmission Fluid:_____
- Anti-freeze: _____
- Brake Pads: _____
- 4-way Lug Wrench: _____
- Gasoline: _____

Preparation Notes and Comments:

Participant Materials:
(Manuals, handouts, etc.)

Title ASP Pursuit Driving *Number Needed 28* *Special Instructions or Comments*

Advance Preparation Required:

Opening			
Content: • Introduce self and other instructors • Explain purpose • Explain objectives	Training Activity: Classroom	Time Frame: 10 Min	Trainer Processing Notes and Cues for Materials:

Body			
Content: **Objective 1: To relate to the students how important daily vehicle maintenance is in the safe operation of the patrol vehicle.** • Tell what equipment is checked in a pre-patrol inspection. • Explain the basic components of both disc and drum brakes • Recognize the primary cause of brake fade. • Recognize what the brake pad sensor tells the driver • Locate the speed ratings on the tires and know what they mean to the driver • Calculate the difference in pressure readings in a hot tire as compared to a cold tire • Recognize how normal permeation will affect tire pressure. **Objective 2: To describe how the Laws of Physics affect the vehicle dynamics in a moving police vehicle** • Discuss Newton's Laws of Motion as they apply to the operation of motor vehicles. • Describe the forces that affect a vehicle in motion • Explain the difference between understeer and oversteer and how to correct each condition • Identify what type of weight transfer occurs in various vehicle maneuvers.	Training Activity: Classroom Instruction Classroom Instruction	Time Frame: 1 Hour 30 Min	Trainer Processing Notes and Cues for Materials:

Objective 3: To examine the proper techniques used in performance driving. • Explaining the capabilities and limitations of both the driver and the patrol vehicle • Employing the proper braking techniques • Identifying the three most common types of curves. • Relating how to read the roadway • Demonstrating the use of proper steering techniques • Discussing the affects of forward inertia (centrifugal force).	Classroom Instruction	30 Min	
Objective 4: To examine proper techniques used to avoid skids and to recover if a skid occurs. • Discussing what effective skid control training will teach you. • Explaining the three types of friction and the difference in the "grip". • Describing the four different types of skids. • Evaluating the proper driver actions to recover from a skid. • Relating what a driver should anticipate when involved in a skid.	Classroom Instruction	30 Min	
Objective 5: To properly explain the Precision Immobilization Technique (PIT) • Discussing the department policy in the use of PIT. • Relating the dynamics of the maneuver. • Describing the proper method of use of the PIT maneuver.	Classroom Instruction	30 Min	

Objective 6: To properly explain the proper use of issued spike strips. • Discussing the department policy in the use of spike strips. • Demonstrating the proper deployment and recovers of the spike strips.	Classroom Instruction	30 Min	
Objective 7: To demonstrate correct techniques associated with driving the police vehicle. • Operating the vehicle in backing garage without striking cones. • Operating the vehicle in serpentine, forward and backward. • Applying proper techniques in traversing the high speed course without striking critical cones. • Completing the course in under the maximum time.	Driving Track	30 Hrs.	
Objective 8: To demonstrate the correct technique in performing the PIT maneuver. • Completing a proper PIT at 35 MPH • Completing a proper PIT at 45 MPH	Driving Track	1 Hour	
Objective 9: To demonstrate the proper technique in deploying spike strips. • Deploying and retrieving spike strips on a moving vehicle.	Driving Track	30 Min	
Objective 10: To summarize the consequences of civil liability in the operation of police vehicles. • Discussing recent court cases concerning police crashes	Classroom Instruction	1 Hour	

Closing			
Content:	Training Activity:	Time Frame:	Trainer Processing Notes and Cues for Materials:
• Debrief • Review purpose and objectives • Questions? • Final Test	Classroom Instruction	1 Hour	

ARKANSAS STATE POLICE

DRIVING PERFORMANCE EVALUATION

Precision Maneuvering

Performance: 1 of 2 Successful Runs (2:10 & 5 Cones)

Student: Brian R. Burke Date: 4-26-11

Instructor: Cpl. Frederick W. Williams Surface: Concrete - Wet

	1st Run	2nd Run
Proper Driver Position	(✓)	(✓)
Proper Hand Position	(✓)	(✓)
Proper Steering Inputs	(✓)	(✓)

Overall Performance: A Natural Driver!

Time # 1 _____ Number of Cones Ø

Time # 2 _____ Number of Cones Ø

ARKANSAS STATE POLICE

DRIVING PERFORMANCE EVALUATION

Serpentine - Forward

Performance: 3 of 4 Successful Runs (35 MPH +/- 2 MPH) No Cones

Student: Brian Burke Date: 4-26-11

Instructor: Sgt RL Newell CSP Surface: Lon.

	1 st Run	2 nd Run	3 rd Run	4th Run	5th Run
Proper Hand Position (9-3)	(✓)	(✓)	(✓)	(✓)	✓
Proper Speed/Accelerator Control	(✓)	(✓)	(✓)	(✓)	✓
Uses Brakes	NO	NO	NO	NO	NO
Number of Cones Struck	0	0	0	(1)	0

Overall Performance: Good Job!

ARKANSAS STATE POLICE

DRIVING PERFORMANCE EVALUATION

Serpentine - Reverse

Performance: 1 of 2 Successful Runs (No Cones)

Student: Brian Burke Date: 4-26-11

Instructor: Sgt RL Newell 68 Surface: Con.

	1st Run	2nd Run
Proper Driver Position	✓	✓
Proper Hand Position (Left Hand at 12)	✓	✓
Proper Steering Inputs (No Palming)	✓	✓
Uses Brakes	NO	NO
Number of Cones Struck	0	0

Overall Performance: Good

ARKANSAS STATE POLICE

DRIVING PERFORMANCE EVALUATION

Precision Immobilization Technique

Performance: 2 Proper PITs from each side

Student: Brian Burke Date: 7-26-11

Instructor: Gunnar Gibson Surface: WET ASPHALT

	Left Side	Left Side	Right Side	Right Side
Proper Speed/Accelerator Control	(✓)	(✓)	( )	(✓)
Proper Vehicle Alignment	( )	(✓)	( )	(✓)
Contact Until 26 Degrees	( )	(✓)	(✓)	(✓)
No Double Taps	(NO)	(NO)	(NO)	(NO)

Overall Performance: GOOD

ARKANSAS STATE POLICE

DRIVING PERFORMANCE EVALUATION

Performance Driving

Performance: 1:50 Maximum—No Loss of Control

Student: Brian R. Burke Date: 4-27-11

Instructor: Cpl. Frederick W. Williams Surface: Concrete-Wet

	Pass	Fail	Comments
Proper Steering Technique	(✓)	( )	
Leaves Roadway	(✓)	( )	
Loss of Control -None	(✓)	( )	

Lap 1	One (cone) on Curve	Time 2'00.97	Key:
Lap 2	one (cone) Garage	Time 2'06.47	BIT- Brakes in Turn
Lap 3	Good Run!	Time 1:59.50	E- Early Apex
Lap 4		Time 1:56.90	L- Late Apex
Lap 5		Time	W- Wide of Apex
Lap 6		Time	OR- Off Road
Lap 7		Time	P- Proper Line

Ford X

Chevrolet

Overall Performance: Very Good Performance!

Arkansas State Police EVOC In-Service 2012

Decision Making

Vs.

Skill Training

EVOC: Skill Training

- Extremely important for Troop School
- Many Recruits have never driven a vehicle at high speeds
- They are unfamiliar with driving techniques associated with EVOC

EVOC: Skill Training

- Skill Training is much less effective with our incumbents
- It's almost impossible to overcome **BAD** muscle memory with in-frequent skill training.
- Why is it less Effective than Firearms Training?

EVOC Vs. Firearms

- When is the last time you fired your Weapon in the line of duty?

-When is the last time you have had Firearms Training

EVOC Vs. Firearms

- When is the last time you have driven your ASP Unit in the line of duty?

-When is the last time you have attended EVOC Training?

Critical Incidents:

- Cognitive Thought Decreases
- Muscle Memory Increases

Critical Incidents

- Officer Involved Shootings
- Cognitive Thoughts and Actions are replaced by Muscle Memory

Muscle Memory:

- Muscle Memory is a direct result from Training, and Repetition
- Combat Shooting is Prime Example

Combat Shooting

- Training Techniques have transitioned from "Marksmanship Training" to "Combat Shooting"
- WHY?

Officer Involved Shootings:

- We know that Officers will revert back to their Training when involved in shooting incidents
- Good and Bad Muscle Memory will surface during Critical Incidents

EVOC:

- Operating an Emergency Vehicle during Critical Incidents is no different.

EVOC:

- Decisions will be made in Split Seconds
- Actions **will not** be dictated by Cognitive Thought
- Actions **will be** dictated by Muscle Memory

EVOC:

- Was that **Muscle Memory** learned during EVOC Training at Troop School?

EVOC:

- Our Muscle Memory is learned and reinforced every time we get behind the wheel of a vehicle:
  - Good or Bad muscle memory
  - On duty or off
  - Emergency Operations, or not

EVOC: ?????

- Skill Sets
- Decision Making

Captain Travis Yates

- Tulsa Police Department
- Researched the results of the way we train.

75 % Skill Sets

25 % Decision Making

NOT WORKING!

EVOC Training:

- The **Accidents / Incidents** within the **Arkansas State Police** Reinforce this Theory!

We are not Crashing ASP Units because of how we drive, rather, We are Crashing because of the **Decisions** that are made to put us in that situation to begin with!

EVOC Training

- We Need to Reverse the Priorities, especially as it relates to In-Service Training for our Incumbents

75 % Decision Making
25 % Skill Sets

Are we making good decisions?

- Why do Police Officers drive fast?
  - Responding to Emergency Situations
  - Pursuit of violators
- **Because We can!**

What are the consequences?

- Is it legally defensible?
- Is it morally defensible?
- Is it worth it?
  - As it relates to your career?
  - As it relates to your family's well being?
  - Psychologically?

Ask yourself those three questions:



Texas DPS, Trp. Chavez

- Trooper responding to "Officer needs Assistance"
- Requesting Officer was Trp. Chavez' brother.

Trp. Chavez

- Was this legally defendable?

Trp. Chavez

- Was it worth it?

EVOC:

- **RISKS:**

This is an inherently dangerous profession.

We work with enough risks when "We do everything Right"

WE HAVE TO LEARN TO REDUCE UNNECESSARY RISKS!!

Speed:

- As Speed Increases, Survival Decreases
- Reaction Time Decreases
- Collateral Damage Increases

Speed:

- Risk vs. Reward

Speed:

- What are we actually gaining?
- Northstar Driving School
  -Distance, Speed, and Time Calculator
- Is it worth it ?

Illinois Trp. Matt Mitchell

- Trooper Responding to a P.I Accident
- Trooper Speeds were in excess of 120 MPH

Speed Vs. Reaction Time



Speed Vs. Reaction Time

Officer Michael Vaughn
October 17, 2009

IS IT WORTH IT ???

Seatbelts

- NHTSA: In 733 fatal crashes between 1980 and 2008, officers were not wearing seatbelts in 42% of accidents.
- Are we wearing our seatbelts?

WHY NOT ??

Seatbelts:

- Why do Police Officers / Troopers not wear seatbelts?

Seatbelts:

- It's tactically unsound
- I don't want to be "trapped" in my car if it is submerged in water or consumed by fire
- I can't get out quick enough (Foot Pursuit)
- What if I get ambushed?

Seatbelts:

- We have to look at the statistics!
- Officers are EXPONENTIALY more likely to be killed or significantly injured in a crash where they are not wearing their seatbelt, than they are to be a casualty as a result of an ambush, entrapment, etc.

Spike Strips:

- Very Dangerous Tactic!
- It comes with an inherent risk
- We have to minimize the unnecessary risks

Spike Strips: Rule # 1

- If you are in a hurry or feel rushed, **DO NOT DEPLOY SPIKE STRIPS!!**
- When we are under stress and in a hurry, we tend to make bad decisions!
- It is not worth the risks involved

Spike Strips: Rule # 2

- **LOCATION, LOCATION, LOCATION**
- Spike Strips should be deployed from a position of "Hard Cover"
- If you have questions about your deployment location, **don't do it!**

Spike Strips: Rule # 3

- **COMMUNICATION**
- If you are not reasonably certain that the other units involved in the pursuit know that you are deploying the device, **don't do it!**

Spike Strips:

- Dane County Sheriff's Office, Upper Mid-West

Post Pursuit Tactics:

- Why are we "rushing" vehicles after a pursuit has ended?
- The "Risk" far out-weighs the "Reward"

Post Pursuit Tactics:

- Be the "Voice of Reason"
- Communicate to other officers involved
- Attempt to do this while the pursuit is in progress
- Don't wait for the pursuit to come to an end before we communicate....it may be too late!

Post Pursuit Tactics:

- Senior Corporal Mark Nix
- End Of Watch: March, 2007

Dallas Police Department

- Six months ***after*** Cpl. Nix was killed
- Suspect involved in the pursuit had killed his wife and two kids.
- He had also repeatedly raped a third child but did not kill her
- The pursuit began days after the initial murders. The officers involved in the pursuit knew what he had done

P.I.T.

- Dodge Charger introduced to Law Enforcement Fleet in 2006

P.I.T.

- Charger's "configuration" caused concern for the Law Enforcement Community
- The longer Wheel Base resulted in a very small "contact patch"

P.I.T.

- Rumors began to circulate in the EVOC community that the Charger was unsafe to P.I.T. in.
- Incidents began to surface that indicated Officers had been injured while performing the P.I.T. maneuver in a Dodge Charger.

P.I.T.

- The Arkansas State Police "erred" on the side of Caution and placed an "enhancer" in the policy as it relates to P.I.T. and the Charger.

P.I.T.

- In 2011, information was obtained that indicated that multiple agencies had been using the P.I.T. technique with the Charger without incident.
- The ASP EVOC Instructors began to research the issue further and found that the original concerns that surfaced in 2006 appeared to be without merit, and that no incidents could be found that showed a correlation between P.I.T and the Charger to indicate an Officer Safety Issue.

P.I.T.

- The Command Staff of the ASP authorized the Training Division to conduct a test with the Charger and P.I.T.
- Multiple P.I.T.'s were performed with the factory Charger, no P.I.T. bumpers or rails on the cars.
- The P.I.T.'s were without incident.
- Based on the ASP P.I.T. tests and data from other agencies, the Director has decided to remove the "enhancer" from the policy manual as it relates to P.I.T. and the Dodge Charger

ASP Policy Change

- **Definitions:** For purposes of this policy, the following definitions apply:
- "Vehicle Pursuit" and "Pursuit" means an attempt by an ASP officer in an official vehicle to stop a moving vehicle when the driver of such vehicle is aware the officer is signaling the vehicle to stop and disregards the officer's attempt to stop the vehicle.
- "Official Vehicle" means a vehicle issued by the department equipped with emergency lights and siren and operated by an Arkansas State Police officer.
- "Fleeing / Attempting to Elude" refer to Ark. Code Ann. §5-54-125.
- "Supervising Officer" means the officially designated officer-in-charge.
- "Primary Unit" means the officer who is closest to the fleeing vehicle.
- "Secondary Unit" means the second officer to engage in a pursuit, whether upon the request of the primary unit or a supervising officer.
- "Third Unit" means the requested or assigned third unit.

ASP Policy Change

- **Pursuit Guidelines:** The following guidelines are intended to assist officers in making sound decisions regarding pursuits:
- When involved in a pursuit the officer has the duty to drive his/her emergency vehicle with due regard for the safety of all persons using the highway.
- No more than two (2) units should be committed to a pursuit unless the primary unit or a supervising officer specifically advises that additional units are needed to safely affect the arrest of the suspect(s).
- Officers in partially marked, or unmarked official vehicles should turn over primary unit status upon the arrival of a marked secondary unit.
- Only official vehicles shall engage in pursuits. Emergency lighting equipment and siren shall be in operation throughout the pursuit.
- Officers involved in pursuits should use their unit number with all radio transmissions and should communicate on the same radio frequency.
- Officers transporting persons other than commissioned officers shall not engage in pursuits. This does not apply to approved observation riders (*see* Vehicle Use policy located in the General Manual).
- Vehicles operated by non-commissioned personnel shall not engage in pursuits.

ASP Policy Change

- **Primary Unit Responsibilities:** When a primary unit initiates a pursuit, he/she is responsible for advising the communications center of the following:
- Unit identification;
- Location, direction of travel, speed, and traffic volume;
- Any hazardous conditions, if possible;
- Description of the fleeing vehicle and license number, if known;
- Description of the suspect driver, if known; and
- Reason for the pursuit, including crimes or violations committed.

ASP Policy Change

- **Secondary Unit Responsibilities:** The acknowledged or assigned secondary unit, upon joining the pursuit, shall advise the communications center of its involvement. The secondary unit shall be primarily responsible for radio communications so that the primary unit can devote full attention to the fleeing vehicle. The secondary unit shall replace the primary unit in the event the primary unit cannot continue the pursuit.
- **Third Unit Responsibilities:** A third unit, in the event one is requested or assigned, shall have the following responsibilities:
- Replace either of the first two units in the event that one of them is unable to continue the pursuit;
- Discontinue the pursuit and render aid in the event of a collision involving third parties or to recover evidence; and
- Be in a position at the point of pursuit termination to implement a felony stop, containment, or apprehension of fleeing suspects or to provide traffic control as necessary.

ASP Policy Change

- **Backup Unit(s) Responsibilities:** Other units in the pursuit area should monitor the progress of the pursuit. They should not engage in the pursuit unless requested to do so by the primary unit or directed to do so by a supervising officer. These units should be ready to replace any assigned unit in the event the assigned unit cannot continue the pursuit. They should also be in a position to respond to any collision that may result from the pursuit. Backup units should be available to assist in the apprehension of the suspect(s) at the termination of the pursuit or provide any needed traffic control.
- **Supervising Officer Responsibilities: Once a supervisor has been notified of a pursuit he/she assumes command of the pursuit and may order termination of the pursuit.**
- The supervisor in command of the pursuit should advise the communications center.
- A supervisor shall continue supervisory command of a pursuit until it has ended. In situations when no supervising officer is on duty when a pursuit occurs, the involved officer(s) may proceed with the pursuit in accordance with

ASP Policy Change

- **Communications Center Responsibilities:** The communications center should immediately broadcast available information concerning a pursuit to local units, designate the radio frequency to be used during the pursuit, and follow departmental procedures for the use of emergency traffic status. Pursuit communications should be considered priority.
- If possible, the communications center shall advise the on duty or on call supervisor of an ongoing pursuit. Initiation or any change of supervisory command should be communicated to all involved units. Through available data/information, the communications center should attempt to obtain information concerning the identity of the driver and ownership of the vehicle.
- When a pursuit approaches or occurs in a municipal jurisdiction, the communications center shall notify the affected jurisdiction. When a pursuit extends into or approaches an adjoining Troop, the controlling communications center should transfer the pursuit to the newly affected Troop as soon as practical.

ASP Policy Change

- **Opposing Direction of Traffic Pursuits:** Absent exigent circumstances, officers shall not proceed in an opposing direction, on a divided highway, freeway, freeway access, or one-way street. Officers should obtain supervisor approval before proceeding in an opposing traffic direction. Supervisors shall cautiously consider traffic volume and hazards, severity of the crime, and the need for immediate apprehension before authorizing an officer to proceed.
- Officers shall not normally follow the pursuit on parallel streets unless authorized by a supervisor or when it is possible to conduct such an operation without unreasonable hazard to other vehicular or pedestrian traffic.
-
- **Pursuits into Another Jurisdiction or Troop:** When a pursuit extends into a municipal jurisdiction or adjoining Troop, the pursuing officers may turn over the pursuit to a local officer, if available, and advise the communications center that their involvement has been terminated.

ASP Policy Change

- **Out of State Pursuit:** Laws in Oklahoma, Missouri, Mississippi, Tennessee, Texas, and Louisiana, provide for ASP officers in pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony to continue pursuing into their state. Officers making a felony arrest in another state shall take the arrestee, without unnecessary delay, before a magistrate of the county in the state in which the arrest is made.
- **Other Agency Pursuits:** Absent exigent circumstances officers should not become involved in pursuits initiated by another agency without an official supervisory request from the other agency and approval from the on call/on duty ASP supervisor. ASP officers engaged in other agency pursuits shall adhere to ASP pursuit policies.

ASP Policy Change

- **Initiation and Termination of a Pursuit:** Officers should exercise discretion in deciding whether to initiate a pursuit. The decision to terminate a pursuit can be made by the primary unit or ordered by a supervisor at any time during the pursuit. Those making decisions to initiate or terminate a pursuit should consider the totality of the circumstances, such as: the nature of the offense; the time of day; an evaluation of hazardous conditions; geography; familiarity with the area; types of official vehicles involved; and the actions of the fleeing driver.
- Factors to consider in determining whether to terminate a pursuit should be terminated when include the following:
- The officer or supervisor believes that the risk to the public outweighs the need for immediate apprehension of the suspect;
- A supervisor orders the pursuit terminated; or
- The officer loses visual contact with the fleeing vehicle for an extended period of time.

ASP Policy Change

- Whenever an official vehicle experiences mechanical breakdown or equipment failure, the unit should terminate its involvement in the pursuit.
- Once the pursued vehicle is stopped, officers shall utilize appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.
- Officers who have terminated a pursuit shall deactivate emergency equipment and drive at routine patrol speeds. Upon termination, officers may follow the suspect vehicle's predicted route of travel.

ASP Policy Change

- **Methods of Forcible Stop**
-
- **Intentional Intervention:** For purposes of this policy, "intentional intervention" means the use of an ASP vehicle to intentionally cause a collision with another motor vehicle for the purpose of functionally damaging or forcing the other vehicle off the road. A Precision Immobilization Technique (PIT) falls within this definition.
- **Roadblocks:** A roadblock is a barricade using vehicles or other obstructions, excluding the hollow spike strip, across a roadway set up to stop or prevent the escape of a fleeing vehicle.
- Roadblocks may be used to stop a fleeing vehicle when objectively reasonable to do so, provided:
- A description of the suspect(s) and suspect vehicle is available (the description must be adequate for proper identification).
- Unless Deadly Physical Force is justified, the roadblock must be plainly visible to the operator of the fleeing vehicle from a distance that would allow the operator of the fleeing vehicle to safely stop before reaching the roadblock.
- Supervisory approval is obtained, when possible.

ASP Policy Change

- **Hollow Spike Strip:** Pursuing officers should keep officers at the site of the spike strip informed of the following:
- Location by milepost or cross-street.
- Direction of travel and speed.
- Erratic driving behaviors.
- Possible weapons involved.
- Any other data pertinent to the pursuit.

ASP Policy Change

- When deploying a hollow spike strip, the following precautions should be considered:
- The officer deploying the spike strip should do so from a position of safety.
- During high speed pursuits, the spike strip should not be used in locations where specific geographic configurations increase the risk of serious injuries to the officer, violator, or the public (alongside of rivers, embankments, etc.).
- Effort should be made to stop oncoming traffic some distance from the actual deployment site before deploying a spike strip on two-way roadways.
- The spike strip may be used to stop fleeing motorcycles when Deadly Physical Force is justified.
- Absent exigent circumstances, the use of spike strips should not be used for trucks carrying hazardous materials or vans/buses occupied by passengers who appear to be victims.

Policy Change

- **Precision Immobilization Technique (PIT):** The Precision Immobilization Technique (PIT) is a method to reduce risks in bringing pursuits to a conclusion. PIT is a forced rotational vehicle stop of a suspect vehicle in an effort to end the suspect's flight.
- Except when it is objectively reasonable to protect an officer or a third person from imminent death or serious physical injury, PIT should not be utilized on trucks carrying hazardous materials, pick-up trucks with passengers in the bed of the truck, vans or buses occupied with passengers who appear to be victims, or motorcycles.

ASP Policy

- **Investigation Of Pursuits / Intentional Intervention / Precision Immobilization Technique (PIT):** After all pursuits, the involved officer(s) shall complete a Pursuit Report Form (ASP 21), which should be reviewed by the officer's immediate supervisor. The Pursuit Report should be forwarded through the chain of command to the officer's Division Commander, and then filed in Internal Affairs.
- When a pursuit involves the use of force, as defined in Use of Force policy, the involved officers and their immediate supervisors shall also complete the necessary investigation and documentation required by the Use of Force policy.
- The Highway Patrol Division Commander shall immediately be notified of any pursuit that results in death, personal injury, or damage to property.
- If the Commander believes that a specific policy was violated, the Commander shall commence an investigation in accordance with Disciplinary Matters.

EVOC: IN-Service 2012

QUESTIONS ??

ARKANSAS STATE POLICE

04/04/06

DRIVING SCHOOL

INSTRUCTORS

CPL. DONNIE BELEW	HP ADMIN
CPL. JUSTIN BOBBITT	TROOP H
CPL. DAVID CHASTAIN	COMPANY B
SGT. JEFF CROW	TRAINING
CPL. MIKE DAWSON	TROOP A
CPL. RICHARD EADS	TROOP A
SGT. KEITH EREMEA	TROOP J
CPL. KIM FONTAINE	TROOP E
CPL. SHANNON HUITT	AIRCRAFT.
SGT. MARK JOHNSON	TROOP A
CPL. RICK NEILL	EXE. PROTECTION
CPL. DENNIS OVERTON	TROOP K
SGT. JACKIE SPEER	TROOP D
CPL. JAN SIMONETTI	TROOP D
CPL. JERRY WATTS	TROOP I
SGT. KEVIN WEBB	TRAINING
CPL. FREDDIE WILLIAMS	TROOP J

IN-SERVICE TRAINING

APRIL 18-20

Tuesday: EVOC

Wednesday: Tactical Medicine

	PRINT	SIGN
1.	Justin Nowlin	1.
2.	Taylor Elkins	2.
3.	Ken Wheelock	3.
4.	Chuck Riggs	4.
5.	[redacted] Richard Scott	5.
6.	Phillip Pierce	6.
7.	Mike Middleton	7.
8.	Bobby Clemence	8.
9.	Jay McAllister	9.
10.	Mark Bryce	10. Mark Bruce
11.	Brian Burke	11.
12.	Gabriel Monroe	12.
13.	Greg Rowland	13.
14.	Chris Short	14.
15.	Bob Love	15.
16.	Terry May	16.
17.	Clayton McDonald	17. Trp.
18.	Ryan Felton	18.
19.	Gary Gambill	19.
20.	Scott McLaughlin	20.
21.	David Moore	21. David Moore
22.	Asa Lacid	22.
23.	Adrian Ray	23.
24.	Chuck Lewis	24. Chuck Lewis
25.	Brad Lann	25. Brad Lann
26.	Wesley Smithee ~~Mike Middleton~~	26. Wesley Smithee

Arkansas State Police



Emergency Vehicle Operations

OBJECTIVES

- Become familiar with the Arkansas Criminal Code concerning emergency vehicle operations.
- Become familiar Arkansas State Policies and Procedures concerning Pursuits and vehicular use of force.
- Become familiar with the risks of civil liability in pursuits and U.S. Supreme Court decisions
- Discuss what it takes to make good decisions during high intensity situations.

OBJECTIVES

- Discuss vehicle dynamics and laws of physics that translate to performance driving.
- Describe fundamental steering, braking, and acceleration techniques used in performance driving
- Learn apex driving and the dangers of entering curves too fast.
- Learn fundamentals of methods of forcible stop including tire deflation devices, Precision Immobilization Technique (P.I.T.), maneuver, "spin and pin", and rolling road blocks.
- Discuss specific U.S. Supreme Court decisions concerning P.I.T. and how it applies.

CRIMINAL CODE

- Although §27-51-202 of the Arkansas Criminal and Traffic Law Manual states "the prima facie speed limitations set forth in this subchapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver thereof is operating the vehicle's emergency lights and is also operating an audible signal by bell, siren, or exhaust whistle", this section shall not protect the driver of any emergency vehicle from the consequence of a ***reckless disregard*** of the safety of others.

CRIMINAL CODE

- The Arkansas Supreme Court has held that a driver of an emergency vehicle is held to a standard of *ordinary care*, which is the same standard that applies to civilian drivers. *City of Little Rock v. Weber; City of Caddo Valley v. George.*
- Operating an emergency vehicle differs from any other scenario due to the *ordinary care* standard unlike use of force that has a continuum.
- Under 27-51-901, you must activate *both lights and siren* to be considered an emergency vehicle, requiring drivers to yield the right-of-way.
- Not having *both* lights and siren activated and being involved in an accident while violating the traffic laws or exceeding the posted speed limit, could subject you and the ASP to liability.

CRIMINAL CODE

- **27-49-109. Drivers of authorized emergency vehicles.**

(a) The driver of any authorized emergency vehicle when responding to an emergency call upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety but may proceed cautiously past the red or stop sign or signal. At other times, drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal.

(b) No driver of any authorized emergency vehicle shall assume any special privilege under this act except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

CRIMINAL CODE

Criminal Code ***does not*** exempt us from negligent action on our part!

CIVIL LIABILITY

- Graham v. Connor was a landmark case for law enforcement.
- Allows for "reasonableness" when considering an officer's decision when using force.
- Takes into account "severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

CIVIL LIABILITY

- Chief Justice Williams Rehnquist's words were concise: "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application."

CIVIL LIABILITY

- Lewis v. Sacramento County - A police officer ***does not*** violate substantive due process by causing death through a deliberate or reckless indifference to life during a high speed chase. Unless the officer acted with improper or malicious intent during the pursuit, he is not liable for death or injuries caused.
- "High-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment"

CIVIL LIABILITY

CIVIL LIABILITY

- The case of *Plumhoff v. Rickard*, decided unanimously by the U.S. Supreme Court on May 27, 2014, involves the use of deadly force against a suspect who led police officers on a dangerous chase reaching speeds of over 100 miles per hour and who continued to try to escape even after the police had him cornered.
- The use of deadly force by police officers in this case – firing multiple rounds into a car during a high-speed chase, contributing to the death of the driver and a passenger – was not unreasonable given the threat to public safety posed by the driver's reckless behavior. As such, the officers did not violate the Fourth Amendment. But in any event, the officers were entitled to qualified immunity because they did not violate any clearly established law.

CIVIL LIABILITY

- Excessive force, which is used to effectuate a seizure, if deemed unreasonable, is considered to be a violation of the Fourth Amendment. In determining whether the use of force is appropriate, courts look to balance the particular intrusion of rights against the governmental interest being advanced. If the intrusion upon a person's rights is deemed greater than the governmental interest, the use of force will be considered unreasonable. Likewise, if the governmental interest is so substantial that it compels such an intrusion of rights, it will be deemed reasonable. In such use-of-force cases, the standard for reasonableness is based upon what a reasonable officer on the scene would do under the same circumstances. This reasonableness standard acknowledges that an officer often must act on limited knowledge in emergencies or urgent situations that do not permit lengthy deliberation.

CIVIL LIABILITY

- In this case, the court utilized this analysis in assessing the specific facts at hand to determine whether Rickard's Fourth Amendment rights were violated as a result of the use of excessive force. Having concluded that the use of deadly force was severely intrusive, the court then examined the governmental interest involved. In particular, the governmental interest here was deemed to encompass more than simply a law enforcement purpose, as it directly pertained to the safety of the officers involved in the high-speed pursuit, as well as pedestrians and drivers who were within harm's way. In determining the strength of the governmental interest, the court looked to the facts of the case—the excessively high speed of the fleeing vehicle, the number of vehicles that were passed, the likelihood that the driver would continue to engage in speeding (if not stopped)—in addition to the fact that the driver was attempting to escape when the first shots were fired by police.

CIVIL LIABILITY

- After review of all the facts, the court concluded that when officers attempt to terminate a high-speed chase that threatens the lives of those involved in the pursuit, as well as innocent bystanders, police officers do not violate the fleeing individual's Fourth Amendment rights, even if their use of force puts the fleeing suspect at risk of significant injury or death. In doing so, the court reinforced its holding in *Scott v. Harris*, which addressed a similar set of facts involving the use of deadly force in a high speed pursuit endangering innocent lives.
- It is also important, however, to recognize that the facts of this case led to the ruling by the U.S. Supreme Court. In this instance, the court recognized not only the danger that Rickard posed, but also the potential for future danger if he were to continue fleeing. As such, the ruling in this case is fact specific, and the facts involved in other pursuits may not justify the use of lethal force to end the pursuit

CIVIL LIABILITY

CIVIL LIABILITY

- Scott v. Harris was a landmark case concerning the 4th amendment rights of a suspect in a police chase.
- The case was based on a 2001 vehicular pursuit launched after a Coweta County, Georgia Deputy clocked 19-year-old Victor Harris going 73 mph in a 55 mph zone. As the pursuit entered Peachtree City, Deputy Timothy Scott joined the chase and took over as the lead vehicle. Although not yet trained in the Precision Intervention Technique (P.I.T.), Deputy Scott radioed in a request to a supervisor to perform the maneuver. The request was granted.

CIVIL LIABILITY

- After receiving approval, Scott determined that he could not perform the PIT maneuver because he was going too fast. Instead, however, he rammed his cruiser directly into Harris' vehicle, causing Harris to lose control, leave the roadway, run down an embankment, and crash. As a result, Harris was rendered a quadriplegic.
- Harris filed a lawsuit under 42 U.S.C. 1983 alleging the use of excessive force based on an unreasonable seizure under the Fourth Amendment.

CIVIL LIABILITY

- With a resounding 8-1 vote, the Court decided the case on summary judgment.
- The Court used the "reasonableness" test of the 4th Amendment to determine the outcome of the case. If the P.I.T. itself was deadly force was irrelevant to the court stating "what matters is whether those actions were reasonable."
- The court clearly felt that Mr. Harris "intentionally placed himself and the public in danger" by participating in a high speed pursuit.

CIVIL LIABILITY

- In his majority opinion, Justice Scalia wrote "The court rules that a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death."
- The lower courts had relied on Harris's testimony rather than the in-car video provided from Deputy Scott. The video evidence strongly refuted Harris's account of the pursuit. Scalia wrote, "Indeed, reading the lower court's opinion, one gets the impression that respondent, rather than fleeing from police, was attempting to pass his driving test."

CIVIL LIABILITY

- This decision placed the blame squarely on the suspect and rejecting the argument that cancelling the pursuit would've been sufficient to keep the public safe stating, "...we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create."
- The ruling does not create a free-for-all, anything-goes scenario for law enforcement but rather allows us to justify our actions based on the reasonableness of them.

CIVIL LIABILITY

- So as the first paragraph of the majority opinion states, "We consider whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?"

CIVIL LIABILITY

- The answer is ***YES***.
- It must be ***reasonable*** and must be articulated in your report. Articulation will explain your actions, in much detail, and give the story from your eyes and your feelings.

CIVIL LIABILITY

- Always weigh the risk against the reward. The courts will look at the "objective reasonableness" in which you acted and if an emergency existed enough to justify your actions. This would be in a pursuit or operating lights and siren on the way to an accident.
- Going to a crash with no injury and not presenting a danger to motorists would be hard to justify to a court why you ran a red light and injured or killed a citizen.
- **ARTICULATION** is the single most important tool in justification of pursuits, termination of pursuits, uses of force or any situation with potential judicial consequences. The devil is in the details.

DECISION MAKING

- COMPLACENCY can get you in as much trouble as negative physical affects can.
- Always assume Murphy's Law is in effect. ***What can go wrong, will go wrong.***
- Always have your head on a swivel. If you are the best driver in the world that means that no one else can drive as well as you.

DECISION MAKING

- Use caution when negotiating through high water.
- We have had to replace engines in 2 cars that were driven in approximately 6 inches of water.

VEHICLE DYNAMICS

- Vehicle dynamics are the laws of physics that govern motor vehicles and your ability to control them.
- Understanding of vehicle dynamics will give you confidence in your abilities and make you aware of what happens when you underestimate them.

VEHICLE DYNAMICS

Newton's Laws of Motion are the building blocks to understanding simple vehicle dynamics.

- Newton's First Law is also called the Law of Inertia. It means an object at rest will remain at rest unless acted on by an unbalanced force. An object in motion continues in motion with the same speed and in the same direction unless acted upon by an unbalanced force.

VEHICLE DYNAMICS

- Newton's Second Law - Acceleration is produced when a force acts on a mass. The greater the mass (of the object being accelerated) the greater the amount of force needed (to accelerate the object).
- This is expressed in the mathematical equation F=MA (Force=Mass x Acceleration)

VEHICLE DYNAMICS

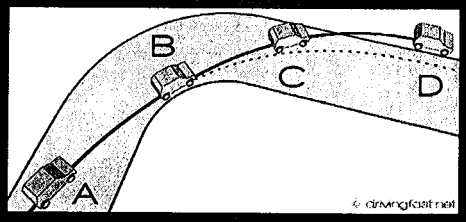
- Newton's Third Law – For every action, there is an equal and opposite reaction.
- When a vehicle accelerates, the motor and engine transfer force to the tires, which push backwards against the pavement. The pavement or track pushes back on the race car.
- When two forces push against each other, the lighter object moves farther and faster.

VEHICLE DYNAMICS

- Oversteer and understeer are commonplace in driving for a number of reasons.
- Understeer occurs when traction is lost at the front wheels while cornering, forcing you wide on a curve despite applying the correct steering input.
- Oversteer occurs when the rear tires reach the limit of adhesion in a corner before the front.

VEHICLE DYNAMICS

UNDERSTEER

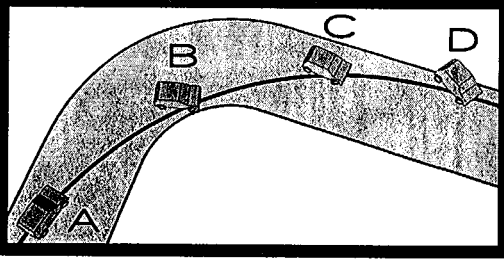


VEHICLE DYNAMICS

- Understeer is most likely to result from the following scenarios:
  1. Accelerating into a curve
  2. Braking into a corner
  3. Entering a corner too fast
  4. Weather elements

VEHICLE DYNAMICS

OVERSTEER



VEHICLE DYNAMICS

- Symptoms of oversteer are the rear of the vehicle becomes unstable and 'light' due to lack of grip and the car starts to rotate so the driver is facing towards the inside of the corner.
- Entering a corner too fast or accelerating aggressively can cause oversteer.
- Drifting is a very controlled form of oversteer.

VEHICLE DYNAMICS

- Weight transfer in a motor vehicle occurs side to side or back to front depending on the type of input.
- The 3 types of input to cause a weight transfer are steering, acceleration and deceleration.
- Weight transfer centers around the roll center of the vehicle depending on the suspension setup.

VEHICLE DYNAMICS

- Inputs must be smooth in order for the vehicle to maintain stability around its center of gravity.
- Unbalanced weight transfers cause a variety of problems including loss of control.
- Keep in mind when accelerating, braking or steering, the body of the car rotates in the opposite direction, which compresses the suspension on one side of the car, while releasing the weight on the other side.

VEHICLE DYNAMICS

- Contact patches are the portion of the tire that touches the roadway, or "footprint".
- The heavier the load on the tire, the bigger the contact patch. Conversely, the lighter the load, the smaller the contact patch.

PERFORMANCE DRIVING

- **THE NUMBER ONE RULE IS TO DRIVE WITHIN YOUR ABILITY!**
- Smooth inputs are key to minimizing lateral weight transfer. Erratic inputs will cause you to lose control.
- Your hand positioning will dictate how well you can recover and how quick you can navigate through obstacles.
- Hands should be at the 9 to 3 positions to ***prevent your hands from crossing one another.***
- ***ALWAYS KEEP BOTH HANDS ON THE STEERING WHEEL.***
- Shuffle steering, or the push pull method, is the most effective type of steering to keep control of the vehicle.

PERFORMANCE DRIVING

- Your steering grip should be loose and relaxed. Don't turn your knuckles white.
- Ideal steering inputs should be smooth, progressive, and controlled.
- ***SMOOTH IS FAST!***

PERFORMANCE DRIVING

- To recover from a skid, you should steer into the direction of the skid and keep your foot off the accelerator or brake pedal.
- Recovery isn't guaranteed but this will greatly increase your chances.

PERFORMANCE DRIVING

- Braking should be done in a ***STRAIGHT LINE.***
- Braking while making steering inputs will cause unbalanced weight transfer, understeer and loss of control.
- ABS brakes are designed to prevent wheel lockup and will allow some steering input during a panic stop.
- Never left foot brake. A tendency to apply uneven and constant pressure with the left foot will cause unnecessary heat build-up.

PERFORMANCE DRIVING

- An apex is the highest point in a curve.
- You know you've reached the apex when you start reducing the amount of steering input.
- Apexes are important in order to take a proper line of travel through a curve.
- Proper lines of travel will allow your greatest speed through a curve.
- Not achieving secondary apexes leading into your primary apex will cause you to miss your primary apex.

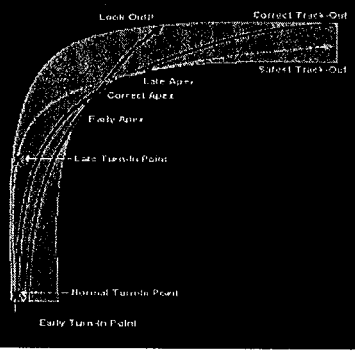
PERFORMANCE DRIVING

- There are 3 types of curves that have different apexes.
  1. Constant Radius
  2. Increasing Radius
  3. Decreasing Radius
- Outside-Inside-Outside and Outside-Outside-Inside lines of travel will work depending on the type of curve.

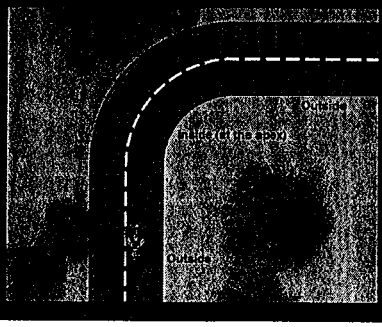
PERFORMANCE DRIVING

- ***EARLY APEX WILL LEAD TO OFFROAD RECOVERY!***
- The centrifugal force pushes the car to the outside due to entering a curve too fast causing a crash.

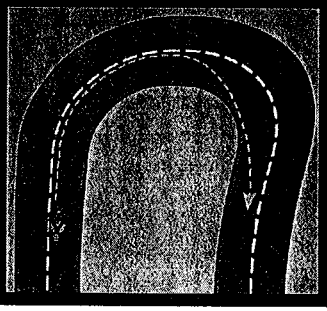
PERFORMANCE DRIVING

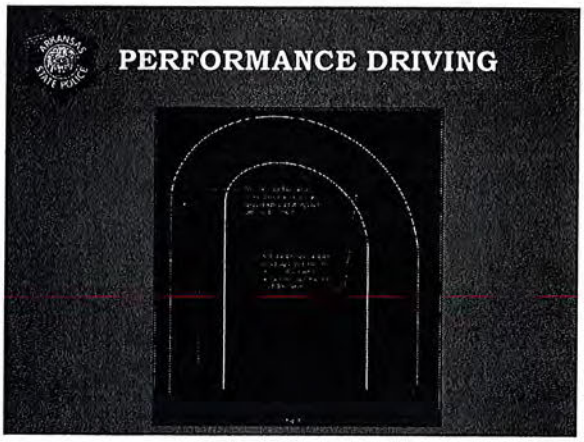


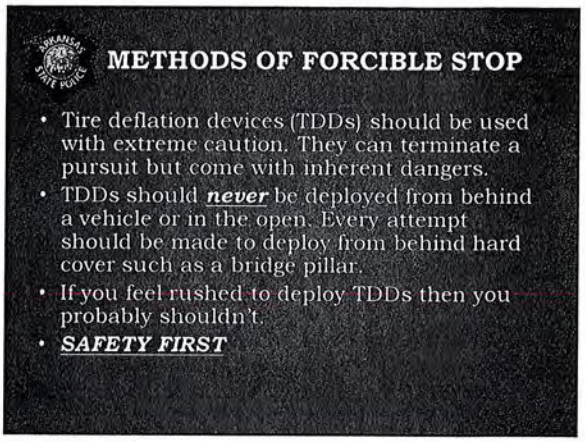
PERFORMANCE DRIVING

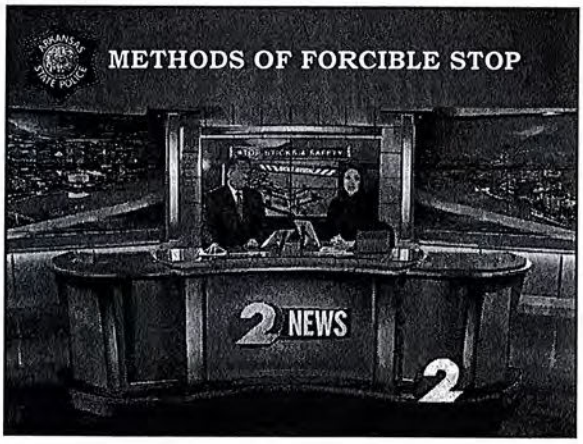


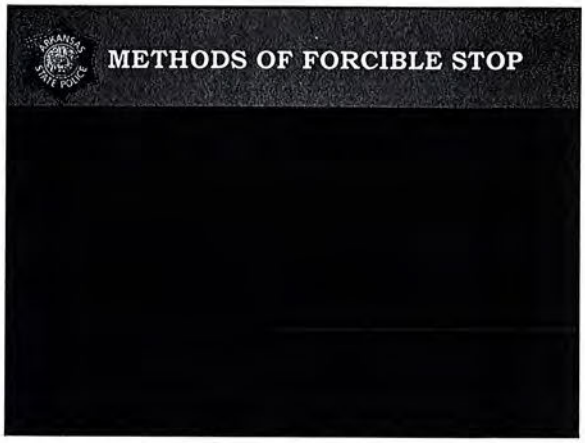
PERFORMANCE DRIVING

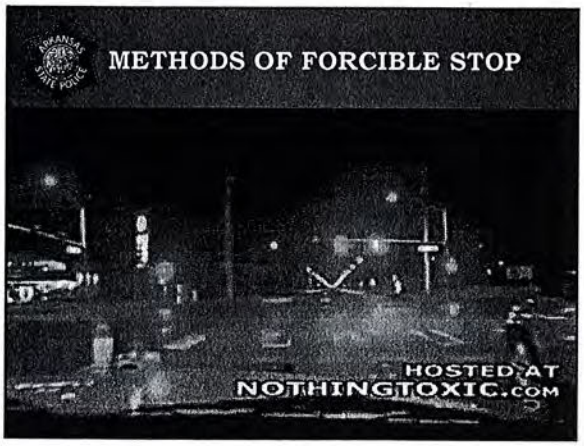


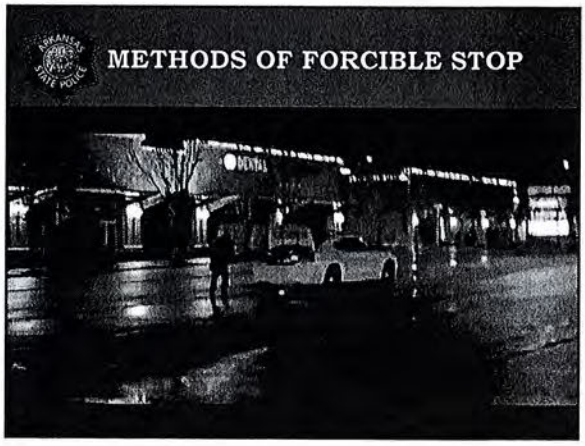

PERFORMANCE DRIVING


METHODS OF FORCIBLE STOP
• Tire deflation devices (TDDs) should be used with extreme caution. They can terminate a pursuit but come with inherent dangers.
• TDDs should never be deployed from behind a vehicle or in the open. Every attempt should be made to deploy from behind hard cover such as a bridge pillar.
• If you feel rushed to deploy TDDs then you probably shouldn't.
• SAFETY FIRST

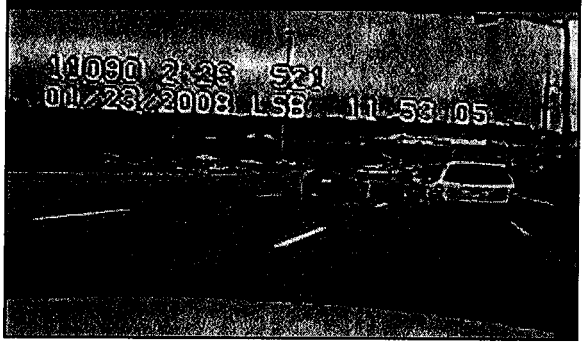

METHODS OF FORCIBLE STOP
2 NEWS 2


METHODS OF FORCIBLE STOP


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METHODS OF FORCIBLE STOP

METHODS OF FORCIBLE STOP



METHODS OF FORCIBLE STOP

- P.I.T. is a much safer way to terminate a pursuit.
- When deciding to use P.I.T. consider the totality of the circumstances and "reasonableness". Consider the risk against the reward. Can you articulate the need for apprehension against the risk of safety (violator and citizens)?

METHODS OF FORCIBLE STOP

- Factors to consider before using P.I.T.
  1. Experience
  2. Ability
  3. Dangers of Continuing Pursuit
  4. Location
  5. Traffic Conditions
  6. Severity of Crime
  7. Type of Vehicle

METHODS OF FORCIBLE STOP

- Once you commit to the decision to P.I.T., you should talk about your decision aloud.
- Find a safe location to perform the maneuver.
- Communicate to other units involved your intention to P.I.T.
- Match the speed of the violator's vehicle.

METHODS OF FORCIBLE STOP

- Make contact to the rear quarter panel of the violator's vehicle with the front quarter panel of your unit.
- Make a ¼ turn into the violator. This will cause the violator to break the plane and lose control.
- Drive through the P.I.T. after the ¼ turn and stop or turn around.
- Follow through with the arrest or render medical aid.

METHODS OF FORCIBLE STOP

- USE COMMON SENSE
- Every scenario can't be covered. If you have doubt before using P.I.T., you probably shouldn't.

METHODS OF FORCIBLE STOP

- "Spin and Pin" requires 2 units
- The first unit will utilize P.I.T. ("Spin")
- The second unit will keep a safe distance to allow the violator's vehicle to come to rest.
- The second unit will then pin the front of his unit to the front or rear bumper of violator's vehicle (whichever is closer)
- The first unit will turnaround and pin the opposite end of the violator's vehicle.
- This will "pin" the violator and keep them from fleeing further.
- This comes with a chance of crossfire so communication and awareness is important.

METHODS OF FORCIBLE STOP

- Rolling roadblock utilizes 3 units.
- The first unit will announce the intention to use the rolling roadblock on the radio.
- After confirmation is received from other units involved, the 1st unit will then accelerate past the violator and quickly, and as safely as possible, cut in front of the violator.
- The 2nd unit will accelerate and pull along side the violator just past the rear door.
- The 3rd unit will pull as close as safely possible to the rear bumper of the violator.
- These actions will collectively prevent escape of violator because every exit will be covered once complete.

CONCLUSION

- We've covered the basics of policy, civil liability, and decision making but the ultimate burden falls on you to make the right choices based on the foundation we've given you.
- We've also covered the basics of vehicle dynamics and performance driving to give you an idea why a vehicle may or may not do what you expect of it.
- P.I.T. and other forcible stop techniques were discussed so you can apply when the proper situation arises.
- Remember this: Drive within your ability. It's ok to not have as good of an ability as the guy next to you because recognizing that could save your life.
- We will leave you with this…

CONCLUSION

Officer Michael Vaughn
October 17, 2008

Braking and Braking Techniques

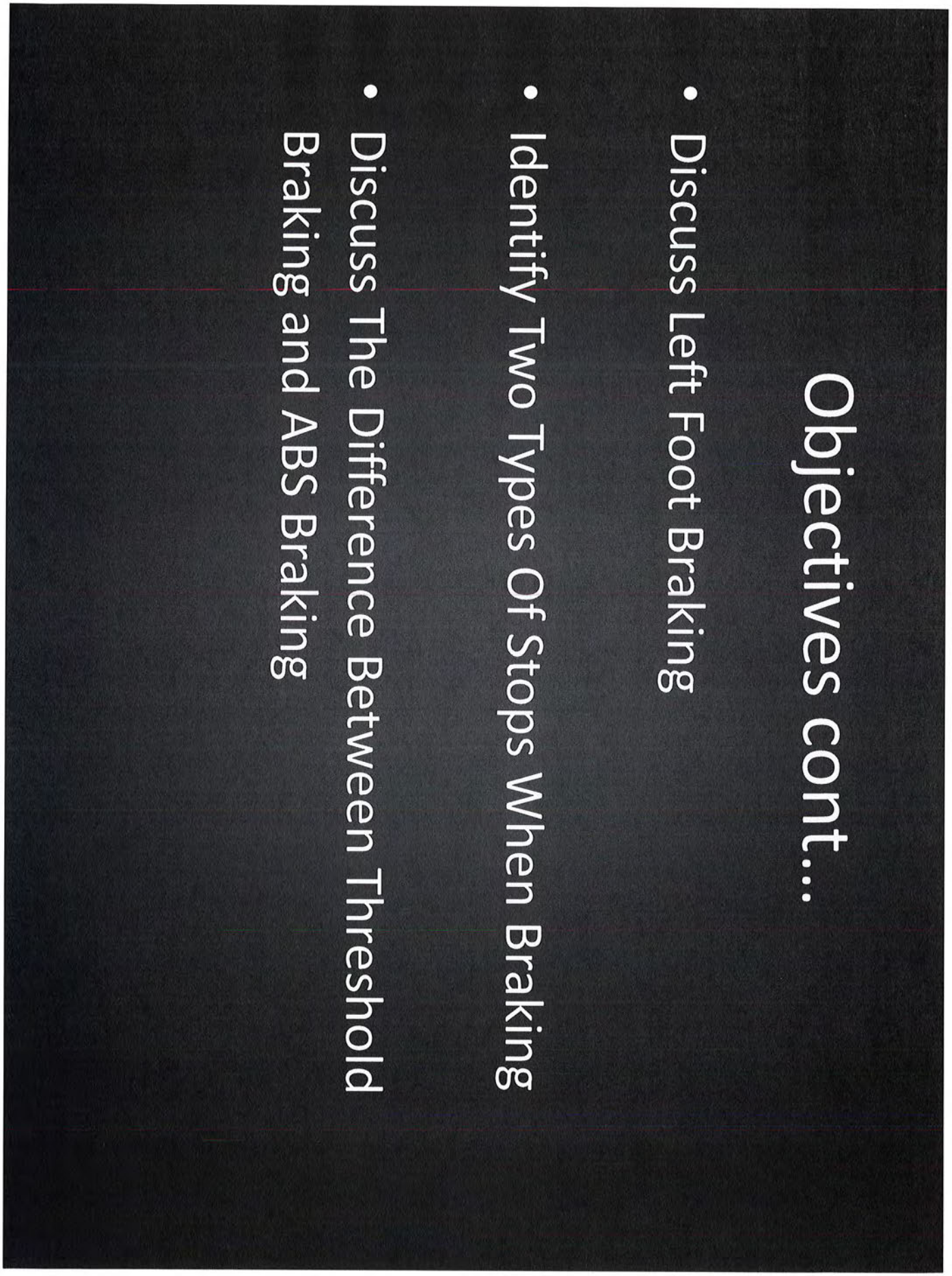
Arkansas State Police EVOC

Objectives

- You will be equipped with a vehicle that has the anti-locked braking system. The driver will demonstrate proper ABS braking techniques to avoid an obstacle in the roadway while controlling the direction and placement of the vehicle.

Objectives Cont...

- Identify How To Properly Stop
- Identify How Friction Affects The Ability To Stop
- Identify How To Prevent "Brake Fade"


Objectives cont...
• Discuss Left Foot Braking
• Identify Two Types Of Stops When Braking
• Discuss The Difference Between Threshold Braking and ABS Braking

Elements of Stopping

- Perception and Reaction
- Weather and Roadway Conditions
- Proper Stopping Distance

Friction and Braking

- A Vehicle Slows And Stops Because Of Gravity And Friction
- Friction Or Two Surfaces Rubbing Together Creates Heat.
- Rolling Friction Between The Brakes And Wheel And The Tire And The Road Allows You To Control And Stop The Vehicle.

Fading Brakes and How to Prevent

- Mostly due to excessive use of brakes
- The more the brake pads rub together the more heat it produces. Therefore preventing you from having any brakes. (Feels like a sponge)
- Allowing the vehicle to sit and cool down will allow the brakes to work properly again.
- Avoiding excessive braking will reduce brake fade. (manual shifting your engine (when possible) to slow will also save you from brake fade)

Dangers of Left Foot Braking

- People who brake with a left foot tend to ride the brakes more which creates more heat.
- Driving with two feet can cause you to apply the gas and brakes simultaneously during a traffic accident.
- Pumping the brake pedal can be a heat/cool method to stop a vehicle that is not equipped with ABS. Being smooth will prevent excessive weight shift.

Controlled Stops vs Panic Stops

- Ample Distance to Stop
- Early Application of Brakes
- Smooth release of Brakes as Stop

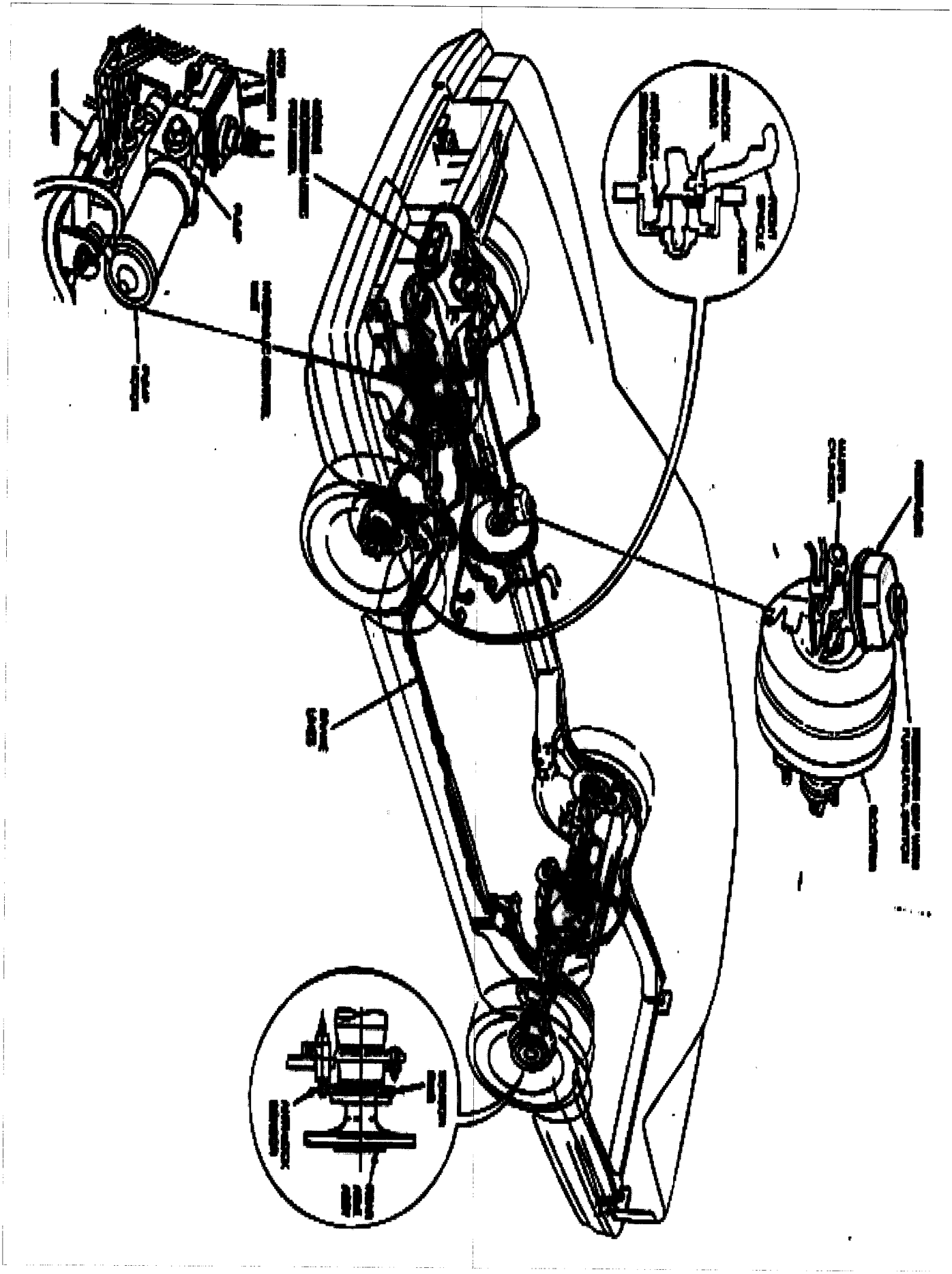
Used 99% of the Time

-Unplanned and result of trouble

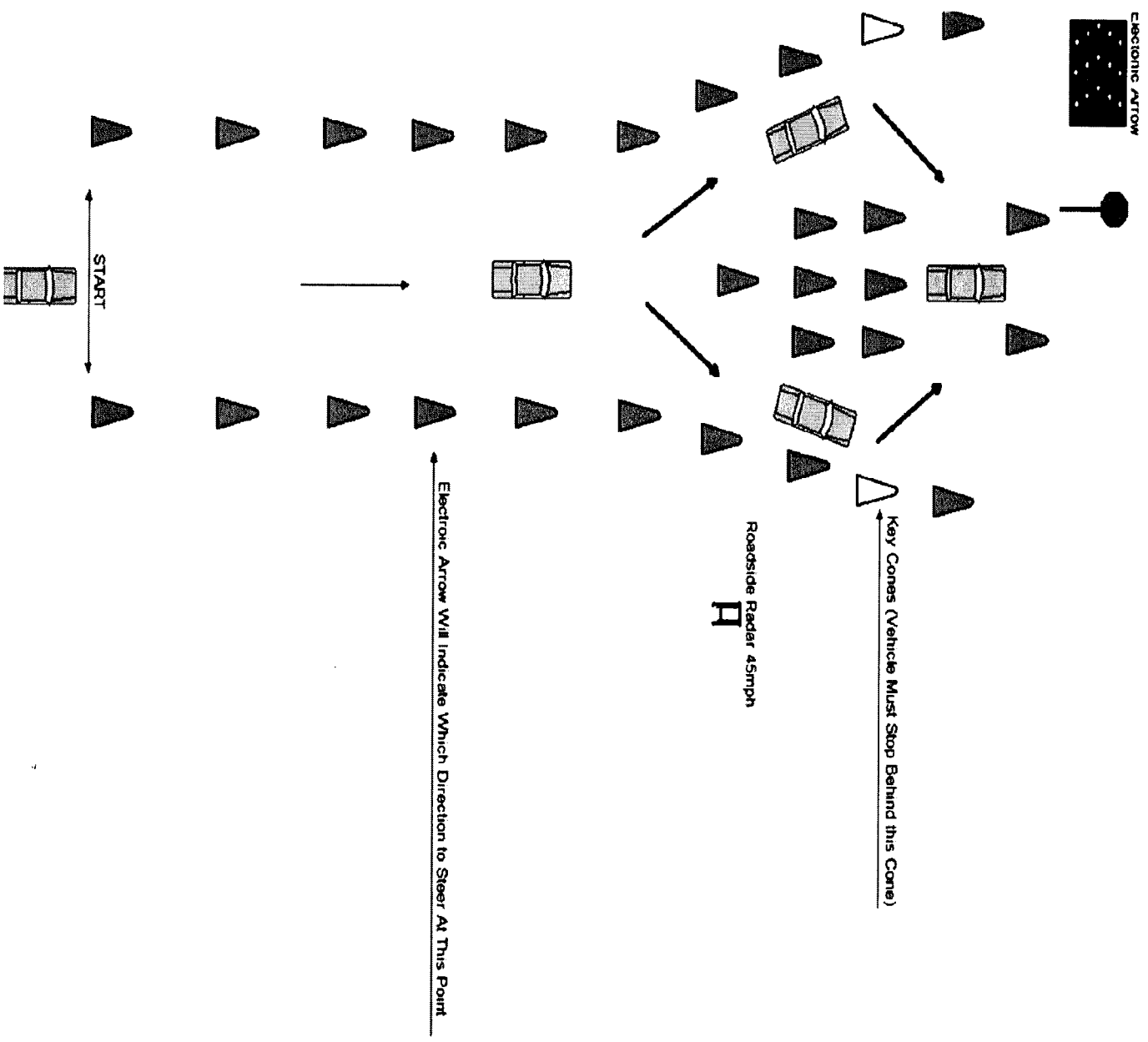
-Often Requires Steering Maneuver

-Must maintain Rolling Friction

-Threshold method on non ABS vehicles prevents wheel lock-up



[redacted]



[redacted]

Arkansas State Police
Training Unit

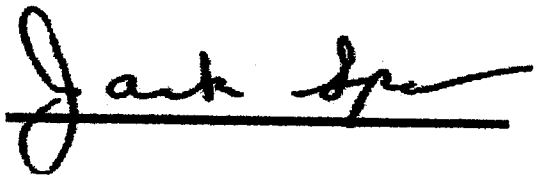
This is to verify that

Brian R. Burke

Has successfully completed the course
Dodge Charger Training

April 27, 2011

(4 Hours)



Training Sergeant

ASP-1007

799

Case 4:18-cv-00334-BRW Document 58-2 Filed 08/01/19 Page 49 of 52

Arkansas State Police
Training Unit

This is to verify that

Brian Burke

Has successfully completed the course

Stinger Spike Strip Training

April 28, 2011

(3 Hours)

Training Sergeant

ASP-1008

800

Case 4:18-cv-00334-BRW Document 58-2 Filed 08/01/19 Page 50 of 52

Arkansas State Police
Training Unit

2204

This is to verify that

Brian Burke

Has successfully completed the course

Stinger Spike Strip Training

October 29, 2013

(1 Hours)

Scott Joe

Troop H *Training Instructors*

ASP-1009

801

Case 4:18-cv-00334-BRW Document 58-2 Filed 08/01/19 Page 51 of 52

EX. 5, dt

Arkansas State Police

Training Unit

This is to certify that

Brian Burke

Has successfully completed the course of

In-Service

Meeting with Colonel (1 Hr), Headquarters Employee Post (1 Hr), PT Tests (2 hrs), Legal Updates/ Ethics (1 Hr), Classroom (3 Hrs), EVOC Training (8 Hrs), Tactical Emergency Medicine (8 Hrs)

April 16-20, 2018

Trooper Jeremy Hutchens — Instructor

Transcript of the Testimony of

Ben Hoyt

Date: November 9, 2018

Case: Lori Braun v. Trooper Brian Ray Burke, et al.

Bushman Court Reporting
Jeff Bennett
Phone: (501) 372-5115
Fax: (501) 378-0077
<www.bushmanreporting.com>

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF CASSANDRA BRAUN
Plaintiff,
vs CASE NO 4:18-CV-334 BRW
TROOPER BRIAN RAY BURKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE ARKANSAS STATE POLICE; COLONEL BILL BRYANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE CHIEF EXECUTIVE OFFICER OF THE ARKANSAS STATE POLICE
Defendants

ORAL DEPOSITION OF BEN HOYT, 30(b)(6)

APPEARANCES:

MR ANDREW C CLARKE, ESQ
6250 Poplar Avenue, Second Floor
Memphis, Tennessee 38119; and

MR PAUL J JAMES, ESQ
James, Carter & Priebe,LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

*** For the Plaintiff ***

MR BRIAN W RAY, ESQ
MR MATTHEW G FRENCH, ESQ
Collins, Collins & Ray, P A
912 West 4th Street
Little Rock, Arkansas 72201

*** For the Trooper Brian Ray Burke ***

APPEARANCES (CONTINUED):
MS. JENNIFER MERRIT, ESQ.
MR. GARY SULLIVAN, ESQ.
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201; and

MR. GREGORY C. DOWNS, ESQ.
Arkansas State Police
1 State Police Plaza Drive
Little Rock, Arkansas 72209-4822

*** For the Arkansas State Police ***

ALSO PRESENT:
Brian Ray Burke

TAKEN BEFORE Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, Bushman Court Reporting, 620 West Third Street, Suite 302, Little Rock, Arkansas 72201 on November 9, 2018 at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas commencing at 9:11 a.m.

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WITNESS SWORN: BEN HOYT 30(b)(6)

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Exhibit 36 82
Exhibit 37 88
(Under separate cover)

Certificate 91
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ANSWERS AND DEPOSITION OF BEN HOYT, 30(b)(6), a witness produced at the request of Plaintiff, taken in the above styled and numbered cause on the 9th day of November, 2018, before Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, a Notary Public in and for Saline County, Arkansas, taken at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas at 9:11 a.m.

STIPULATIONS

IT IS STIPULATED and AGREED by and between the parties through their respective counsel that the deposition of BEN HOYT, 30(b)(6) may be taken at the time and place designated pursuant to the Federal Rules of Civil Procedure.

BEN HOYT, 30(b)(6)

The witness hereinbefore named, having been duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, testified as follows:

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EXAMINATION
BY MR. CLARKE:
Q. Would you please state your name?
A. Sergeant Ben Hoyt.
Q. And Sergeant Hoyt, my name is Andy Clark. I just met you a second before this deposition.
Have you ever given a deposition before?
A. I have not.
Q. Okay. Let's just kind of go. I know you probably talked to your attorney about this deposition. When I ask you questions, I'm never asking you to divulge what you and your attorney talk about. But I'm going to go over kind of some of the ground rules of the deposition so we can create a good record and get through this as smoothly as we can. Okay?
A. Yes, sir.
Q. Obviously, your testimony here is under oath. So it would be to the penalty of perjury. You understand that?
A. Yes.
Q. This is not a trick. This is not an endurance test. If there's some document that you need to look at to give a full or accurate answer, please let me know and I'll try to accommodate you. Okay?
A. Okay.

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Q. Obviously, if you need to take a break for any time, please let me know and I'll let you take a break. The only thing I'd ask you to do is answer the question that's before you before we take a break. Okay?
A. Yes, sir.
Q. Sometimes when he get in conversations live, we kind of anticipate what somebody's questioning or we think what they're doing and we start talking or I start asking my question when I think you're done. We only have one court reporter taking testimony down. And let's try to be cognizant not to talk over each other. Okay?
A. Yes, sir.
Q. If I ask you a question that you don't understand or, you know, it's worded in a way that you can't answer, please let me know. Okay?
A. Yes, sir.
Q. Basically all your answers to the questions here are important to all the parties to this litigation. So it's important that we get full, accurate and complete answers. Okay?
A. Okay.
Q. If you don't understand a question, just don't answer it and ask me to rephrase it and I'll do the best that I can to rephrase it. All right?

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A. Yes, sir.
Q. If you answer a question, I'll assume that you understood it. Okay?
A. Okay.
Q. Before we go on, I'm going to mark just a couple of exhibits. I'm going to mark as Exhibit 25 Colonel Bryant's Rule 26AS.
(Deposition Exhibit 25 was marked.)
Q. I'm going to mark as Exhibit 26 a copy of the Notice to Take Deposition.
(Deposition Exhibit 26 was marked.)
Q. All right. And then as Exhibit 27 -- I'm going to keep the notice in front you. I'm going to mark as Exhibit 27 Colonel Bryant's Discovery Responses.
(Deposition Exhibit 27 was marked.)
Q. And Exhibit 28 is Verification to the Discovery Responses.
(Deposition Exhibit 28 was marked.)
Q. Do you have Exhibit 26 in front of you?
A. I do. Yes, sir.
Q. Okay. Now, have you seen this document before?
A. Yes, sir.
Q. Okay. Do you understand what a -- what you're here to testify about today?
A. For the most part, yes.

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Q. Okay. And list, we're kind of talking through this. So we're going to start it off and try to get it on the same footing.
What I've given you is Exhibit Number 26 is what's called a Notice to Take Deposition Duces Tecum of a 30(b)(6) Corporate Representative.
My understanding is that the Arkansas State Police has selected you to speak on behalf of the Arkansas State Police with respect to a particular topic in this notice, which is on page 2 of it, the training?
A. Yes.
Q. Okay. Obviously, corporations or entities can't speak. So there's a procedure by which we can ask a corporation to identify somebody to speak on behalf of the corporation or the entity. And they selected you on training. Is that your understanding?
A. Yes, sir.
Q. Okay. To prepare yourself for this deposition, what did you -- what did you review?
A. Policy, some Act 300 law. A little bit of the file on the case. I was able to watch the video that was supplied. And some of the PowerPoints, I guess. Some of the in-service training that was -- that was done.
Q. Okay. And we're going to go over a lot of that

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during your deposition.
So what policies did you go over? The vehicle use involved in pursuit?
A. Vehicle use, pursuit policy. I was asked to look at the use of force policy.
Q. Okay.
A. Which I did that, also.
Q. All right. And you said you looked at the 300 law?
A. Act 300. Our criminal traffic law. Just referencing these --
Q. These statutes?
A. These specific statutes that were asked about.
Q. Okay. The statutes 27-51-905, they weren't in effect in 2016; is that correct?
A. That's correct under my understanding, yes.
Q. Okay. So -- and we'll talk about some of these other things.
Let's talk a little bit, just take me through your kind of background? I'm going to throw you a softball. Explain to me where y'all are and what you've done with the Arkansas State Police?
A. Yes, sir. I started with the State Police in 2009. I worked Highway Patrol in Troop A. Was assigned to Pulaski County. Was transferred to Faulkner County

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upon request. That was my home. And I believe it was 2015 I was transferred to the training section of admin services. And in this year, I believe it was March 15th, I got promoted to a sergeant in the training section.
Q. Okay. So have you actually provided training at the academy?
A. Yes, sir.
Q. Okay. And what topics have you trained on?
A. Multiple.
Q. Well, let me just ask you this way. Have you given training on anything dealing with the operation of vehicles?
A. Yes, sir.
Q. Okay. And what topics on that? Did you teach EVOC?
A. Yes. Yes, I am an EVOC instructor.
Q. Okay. And there's no separate pursuit training block in the Academy, is there? It's all covered in EVOC?
A. I mean, there's a lot of stuff in driving that could be covered in multiple facets of training other than EVOC. That's where the practical training comes in place, yes.
Q. Okay. And I guess we'll get -- and when did you

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start actually providing EVOC training, what year?
A. It would have been when I transferred to the training section, which if my memory is correct, it was in 2015.
Q. Okay. So you didn't have any role in training Officer Burke in trooper school?
A. Not in his troop school, no.
Q. Okay. But to prepare yourself for this deposition, you've gone through some of the PowerPoints and lesson plans and stuff that were applicable to him, correct?
A. Well, the PowerPoints that I have is in-service that he attended after the fact that I -- after I came over to the training section.
Q. Okay. And you have produced something called Police Civil Liability. When was this taught?
A. That should have been taught during his troop school.
Q. Okay. I'm going to mark this as Exhibit 29.
(Deposition Exhibit 29 was marked.)
MR. CLARKE: Do you have another copy of that?
MS. MERRIT: I made five copies. And he has his own copy.
MR. CLARKE: Okay. We'll get to that.

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BY MR. CLARKE (CONT.):
Q. But this should have been in-service 2015?
A. No, sir. That was -- should have been troop school 2011.
Q. I apologize. You said that. That was my mistake. All right. We'll go through that. What is the purpose of training?
A. To prepare officers for the job that they're going to have to do out on the road.
Q. All right. To provide guidance?
A. Sure.
Q. Okay. Do you agree that sound behavioral and tactical training enables officers who may be involved in high stress cases to process events in rapidly evolving situations as if they occurred at a more deliberate pace?
A. You have that in writing where I can read it and I can process that a little better? Are you asking if I agree with that statement?
Q. Yeah. The bolded part. It has some names in it. You have to somewhat modify it.
MS. MERRIT: You can ask him to rephrase the question if you didn't understand it.
A. Yeah.
Q. And I'll ask the question. My question is, do you

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agree that good behavioral and tactical training enables officers to process events in rapidly evolving situations as if they occur at a more deliberate pace?
A. So what I'm getting at that you're saying that people are able to process the situation better if they're trained?
Q. Correct.
A. Yes.
Q. And you need to --
A. In most cases, I would agree with that, yes.
Q. Okay. I mean, there's some students who don't get it.
A. Sure.
Q. But the purpose of training, just like watching film if you're an athlete, is to learn and to repeat it so it becomes more natural so you can rely on your training, correct?
A. Yes.
Q. You know, we get muscle memory, correct?
A. Yes.
Q. Muscle memory, you know, when you're using firearms, you know, you want a -- you want to be able to instinctively get your -- get your gun without having to think about it, correct?
A. You would, yes.

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Q. Okay. Muscle memory applies to EVOC, too, correct?
A. It can, yes.
Q. I mean, does it or does it not? And do you train that it does?
MS. MERRIT: Object to the form.
Q. Do you train that muscle memory is involved in EVOC?
A. I don't know that there's enough -- driving is a different skill set on its own, which incorporates a lot -- a lot more. That would be -- that would be hard to -- for me to --
Q. All right. Well, we'll go through the training --
A. -- say definitively.
Q. -- slides.
All right. Would you agree that one of the purposes of training is to expose officers to stressful -- you know, some of the training, to stressful incidents so that they can better handle them when they encounter them?
A. Sure.
Q. Emergency vehicle driving is -- can be a high stress event, correct?
A. Yes.
Q. A shooting can be a high stress event, correct?

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A. Yes.
Q. Call those critical incidents. Are you aware of that?
A. Yes.
Q. Okay. And when we train, we train people for things they're going to have to do everyday, correct?
A. Yes.
Q. Writing tickets, you know, just the mundane stuff, correct?
A. Yes.
Q. We also train on things, why they may not happen every single day, there are high likelihood that a bad result could happen without training, correct?
A. It could, yes.
Q. Take for example, hopefully an officer who is out in the field never has to use his firearm, correct?
A. Correct.
Q. And some officers go their whole career without using their firearm, correct?
A. Yes.
Q. But they got to qualify and they've got to train quarterly, correct?
A. Yes, sir.
Q. With a firearm, because there is a -- there is a high likelihood of a bad result if somebody uses a

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firearm inappropriately, correct?
A. Yes.
Q. Okay. The same with emergency vehicle operations, correct?
A. It could be the same. I mean, there could be -- there are potential bad results for negligent action on driving, yes.
Q. Right. Or intentionally wrong driving?
A. Sure.
Q. And are you aware of any of the statistics about the number of deaths that occur as a result of emergency vehicle operation versus firearms?
A. Not specifics. But I have seen stuff, yes.
Q. Okay. And more injuries or deaths that result of improper driving than firearms, correct?
A. Probably.
Q. Okay. I mean, officers are driving their car everyday and everyday there is an opportunity for them to have to respond to an emergency call or get involved in a pursuit, correct?
A. Yes.
Q. It's one of the kind of more common things that officers do that can result in bad outcomes if performed wrongly; that is, driving, correct?
A. It is a more used skill probably, yes.

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Q. Right.
A. If that's what you're asking.
Q. So sometimes you have to train people with things because they have do it all the time and you want to make sure that they're doing it. Do you agree with that? Doing it correctly. Do you agree with that?
A. Say it one more time? Repeat that?
Q. Sometimes we train people on topics -- well, let me take that back.
You can't train on every single thing that an officer is going to encounter, correct?
A. That is correct.
Q. We have to kind of use our resources to try to cover the things that are most important to the department, correct?
A. Yes.
Q. Okay. One of those things is everyday things that they have to do, correct? You know, writing tickets, stopping, working -- you know, talking on the radio, the basic stuff, correct?
A. Yes, sir.
Q. And like we talked about before, some of it is when the outcome could be bad even if it doesn't happen on a regular occurrence, correct?
A. If the outcome isn't bad --

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Q. If the outcome -- if the consequences of improper use, like a firearm, even though it's not used all the time, but the consequences could be severe, we still train them on that?
A. We still train, yes.
Q. Right. And do you agree that there is an obvious need to train officers with respect to emergency vehicle responses and pursuits?
A. Absolutely.
Q. Okay. I mean, every department should do it?
A. Yes.
Q. Okay. Now, does training, to your understanding, work in tandem with, you know, the people in charge of policies or OPS?
A. In some instances, but not always.
Q. Okay. And explain that to me?
A. So if policies may be directly towards something that we're -- that we're instructing or teaching, they may -- we may meet together to come to a -- the best solution and agreements on policies and revisions.
Q. Okay. What about -- I mean, what I'm trying to get at is, if OPS has some type of, you know, investigation and they find an officer may have done something wrong, do they discuss that with training to your knowledge?

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A. Not usually directly.
Q. Okay. You know, for example, if somebody did something wrong and there's a videotape of it, do they use that videotape in training?
A. Well, we usually have access to videos for training purposes.
Q. From Arkansas State Police Officers or, you know, stock?
A. Internally, yes.
Q. Okay. Do you know of any training that was provided by the Arkansas State Police where they utilized any type of video from an Arkansas State Trooper with respect to pursuits or emergency vehicle operations?
A. Repeat that, please?
Q. All right. Are you aware of any instance where the Arkansas State Police used in training a -- as an example of what not to do or what to do in emergency vehicle operations or pursuits of a video that was captured by an Arkansas State Trooper?
A. Any specifics?
Q. Right. What I'm saying is, did they use Burke's videotape in a training -- in any training of what to do or what not to do?
A. I'm not aware that his video has been shown to

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anybody.
Q. Are you aware of any officers from the Arkansas State Police video that has been shown in training?
A. Yes.
Q. What video?
A. We show -- we show several videos. I've got videos that have been shown of stuff from -- from our section and videos that have been shown of various pursuits.
Q. Okay.
A. But there's -- I mean, that's a very broad question there.
Q. Well, doesn't training document what they train?
A. Sure.
Q. Okay. So if we go through the PowerPoints and the slides, it should be identified?
A. There are some in the PowerPoints, yes.
Q. Okay. I didn't see any that were tapes from an Arkansas State Police Officer. There were tapes from other instances. Are you aware of using, with respect to the topics of just EVOC and pursuits, any Arkansas State Trooper's video?
A. I am aware of some that are currently used. I couldn't say some that are used when this incident happened or when --

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Q. What tapes are currently used?
A. There's two pursuit videos that we currently use in our -- our driving. They are, I believe it's Trooper [redacted], who is no longer employed with us.
Q. Okay. You said there were a couple. Is that the only one --
A. Those are the two that I'm aware of right now that are being used.
Q. You said [redacted]. Is that one?
A. There's two videos.
Q. What's the other one?
A. There's two videos from --
Q. Two from him?
A. Yes, sir.
Q. Do you know when these -- were they pursuits? What were they?
A. Those are both pursuit videos, yes, sir.
Q. Okay. Were they examples of what to do or what not to do?
A. Most of it is stuff that we're teaching. It's a decision-making type video of the risk versus the need to apprehend suspects.
Q. All right. And in those videos that you show of [redacted], do you say the decision-making was good or bad?

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A. Most of it is poor decision-making.
Q. Do you know when that pursuit happened?
A. There's two separate pursuits there.
Q. Do you know when they happened?
A. I do not off the top of my head.
Q. All right. Do you have access to those videos?
A. Not at this moment. But, yes, I do have access to them.
Q. All right. I would like to mark as the next Exhibit 30, late filed, the [redacted] videos, and ask that they be produced?
(Late-Filed Deposition Exhibit 30 was marked.)
MS. MERRIT: I'm sorry. Did you just ask me to produce those?
MR. CLARKE: Yes.
MS. MERRIT: You can send me a discovery request?
MR. CLARKE: I have sent you a request for all training materials, so.
MS. MERRIT: They should have been in the pursuit packets that we've already produced for you.
MR. CLARKE: They have not been produced in response to my discovery of all training

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material. I'm not going to get in a discovery argument with you right now. We'll take it up with the judge afterwards. I've asked for all training materials and videos. So I'm not going through pursuit videos when you have a specific request to produce something.
BY MR. CLARKE (CONT.):
Q. All right. Now, any other -- any other -- I know we have videos of other incidents, high profile incidents sometimes showing -- shown in training from other departments, correct?
A. Yes. There are videos shown from various sources --
Q. Okay.
A. -- that we use in training, yes.
Q. Now, the Arkansas State Police has it's own academy, right?
A. Yes, sir.
Q. You know, a lot of law enforcement departments, they go to a generalized academy and in that academy they -- they really just do general law enforcement as opposed to the specific policies of the Arkansas State Police.
Does the Arkansas State Police, when they're in their own academy, do they train on the actual policies?

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A. Yes, sir.
Q. Okay. And we'll talk about some of the policies and how they work in training.
But what I want to do is go through some of the training that Officer Burke had. And if you can get this big exhibit?
A. This right here?
Q. Yeah.
A. Okay.
Q. If you go to page 10? This is produced in discovery, and this looks like the curriculum of troop school that Officer or Trooper Burke went to. Have you reviewed this before?
A. I have not. No, sir.
Q. Okay. And you went to the academy in 2009?
A. 2009, yes.
Q. All right. And I'm here to talk about the training that was provided to Trooper Burke. And I'm going to ask you some questions about particular topics. The issue on -- is the PowerPoint that you brought that we marked as Exhibit 29, this one, is this -- was this taught, to your understanding, at troop school?
A. It is.
Q. Okay. What section was it taught in on this syllabus or outline?

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A. That would be hard for me to say exactly since I was not --

MR. CLARKE: You can't actually point to a witness during depositions.

MS. MERRIT: I'm just trying to help, Andy.

MR. CLARKE: Okay. That's what the witness is here for.

BY MR. CLARKE (CONT.):

Q. All right. You see something Constitutional Law on Liability?

A. Well, again, it was one of the classes that -- which is now Captain Coppinger would have taught in the Criminal Law, Constituional Law and Liability sections, probably.

Q. Okay. So that -- this would be part -- this would be the outline for that topic, Constitutional Law and Liability?

A. Now, it may not be the -- it may not be the complete. But it was something that was in his -- in that file.

Q. Okay. Why did you bring this with you?

A. Because that was one of the topics that I saw was the Civil Liability that may have been taught during his troop school. So it was something I had for reference

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material.

Q. Okay. And let's talk about -- let's look at this outline.

A. Okay.

Q. All right. What were they taught about Liability for Negligence or Constitutional Violations with Respect to Police Driving?

A. Well, it looks like here it's got two case briefs on the "City of Little Rock versus Webber" and then the "City of Caddo Valley versus George."

Q. And what are they trained about those cases?

A. I believe those were both -- I'm not an expert on that. But I believe those were dealing with ordinary care with operation of vehicles.

Q. All right. And those two cases, is it your understanding that they are told that regardless of what they're doing, they still have to comply with the ordinary care standard?

A. I would assume. That's hard for me to speculate exactly what the instructor did on the -- on those two cases.

Q. Well, for the purpose of my depositions, you're the Arkansas State Police.

A. Sure.

Q. And your answer is going to be what --

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A. I'm going to say that Captain Coppinger would have given a brief of those two, since that's what his PowerPoint shows --

Q. Okay.

A. -- is a case brief and review.

Q. And as the spokesman for the Arkansas State Police, I want you to tell me what he told them -- what he trained them about those cases?

A. Well, I wasn't there that day that he taught this course.

Q. Okay. So as the spokesman for the Arkansas State Police, you don't know what particular aspects of these cases were trained to the officers?

A. Not exactly.

Q. All right. When you produced this PowerPoint, did you do anything to understand what the PowerPoint meant or what was actually trained?

A. I was given very little time. I received this yesterday afternoon.

Q. All right. When you went through Trooper Academy in 2009, were you trained on those cases?

A. I honestly couldn't tell you for sure.

Q. Okay. Is there anything else in this PowerPoint that you contend is training with respect to emergency vehicles or pursuits?

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A. Before those two slides, there's stuff on examples of negligence and operative requirements for negligent lawsuits. We have an example of a lawsuit that we were involved in criminal liability with Trooper [redacted].

Q. Okay. Where is that at?

A. It's on page 5.

Q. I'm looking at page 5. Where does it talk about -- oh, Mississippi -- I got you.

Do you know what was trained, what actual training was produced about that case?

A. I would imagine it was a briefing of the scenario and the consequences afterward.

Q. And are you aware that [redacted] -- was it -- do you know whether Officer [redacted] was terminated for his conduct?

A. I believe so.

Q. He was reinstated, correct?

A. That is correct.

Q. And did you tell them that he was reinstated because the Commission reviewed his claim and found that he didn't operate outside of policy?

A. I don't know if that's told or not.

Q. That's what happened in the case, correct?

A. He was reinstated by the Commission, yes.

Q. Because the Commission, the Board or whatever

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found that they terminated him for policy violations, correct?
A. I've never studied the findings on the [redacted] case.
Q. Were you ever trained on anything involving Officer [redacted]
A. Yes.
Q. Okay. Were you ever told that he was reinstated?
A. Yes, I was.
Q. Was that during training?
A. The [redacted] stuff actually happened during, I believe during my troop school time. So, yes, it was -- it was emphasized then.
Q. Okay. But his conduct was ultimately found insufficient to terminate him, correct, and he was reinstated?
A. He was reinstated.
Q. Okay. Anything else in this on pursuits, pursuits or EVOC?
A. There's a lot of stuff that could pertain to pursuits and EVOC just talking about the --
Q. The general law?
A. The law and -- where did I read that.
Q. Go ahead.
A. You know, it talks about allegations brought against police officers which goes into operation of

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vehicles.
Q. Okay. Let me just conclude it. So during that there's -- when you talk about liabilities or negligence and constitutional violations, based on your understanding of that training, that they were -- they were told that certain conduct that they engage in during the course of emergency vehicle operations or pursuit could result in liability, correct?
A. Yes.
Q. So any reasonably objective officer who went through the Troop Academy and had this would have an understanding that their conduct during the course of emergency vehicle driving or pursuits could result in liability, correct?
A. Yes.
Q. Okay. All right. We can move off that. Let's go back to the lesson plan.
Okay. Go to page 12, ASP 12? Crash Investigation TraCs. That doesn't involve pursuits or EVOCs, that's more the investigation of accidents by troopers in the field, correct?
A. Yes, that is crash investigation. TraCs is the actual documentation of crash investigations.
Q. The system they use to do it?
A. It was the old system, yes.

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Q. Okay. All right. And Patrol Procedures and Stops. Does that involve EVOC or pursuits?
A. It can, yes.
Q. Okay. I'm not asking if it can. I'm asking did it in this case?
A. It should have.
Q. Okay.
A. It involved more of the traffic situations like initiating emergency equipment, actually do practical patrol stops in that class time.
Q. Well, if you'd look at the next page, we have EVOC and we have a lesson plan where they have that. Isn't patrol procedures and stops dealing with the type of stops and how you conduct them, like high risk stops, traffic stops, how you approach --
A. Not just. It's not just that. It does probably entail that.
Q. Okay. Well, how do I find out exactly what was trained in Patrol Procedures and Stops?
A. That may have a -- it may have a PowerPoint. I don't know. I don't know exactly what all has been provided to you.
Q. Okay. Well, I don't have something on that. Was there supposed to be a separate lesson plan and stuff for that particular topic?

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A. If this is a classroom section, which it looks like it is now that I look here, because it looks like we have mock patrol stops. It's two lines underneath the one you were referring to. So that was probably a classroom section of patrol procedures.
Q. All right. I'm going to mark as late-filed Exhibit Number 31, and ask you to produce the Patrol Procedures and Stops lesson plans and materials?
(Late-Filed Deposition Exhibit 31 was marked.)
Q. All right. And it looks like, if you go to the next page, ASP 13?
A. Yes, sir.
Q. There is a section on EVOC of 40 hours. Do you see that?
A. Yes, sir.
Q. And what does EVOC training in general entail in the Trooper Academy?
A. There is a -- there's a PowerPoint which I --
Q. We'll get to that. I'm just saying in general?
A. Normally there's a classroom section followed by practical driving.
Q. Okay.
A. It's --
Q. Okay. Pursuit is covered in there?

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A. Yes.
Q. Okay. Is there a separate section in this lesson plan that's trained to officers about pursuits, pursuit decision-making?
A. Some of that should have been covered in EVOC, in the EVOC practical portion. It's also in the normal lesson plan teaching. And then Patrol Stops probably had some of that stuff in there, also.
Q. What do you mean, "the normal lesson plan teaching?"
A. In your normal classroom section of EVOC or Patrol Stops, it should be talking about emergency vehicle operations.
Q. Okay. But you would agree there's not a separate topic on pursuits in this lesson plan?
A. Well, pursuits would be considered a part of Emergency Vehicle Operations, yes.
Q. So part of the 40 hours that they have in here would be devoted to pursuits?
A. Say that one more time?
Q. Part of the 40 hours they have -- this tells you how many hours and everything, correct?
A. Yes.
Q. You have EVOC, and during EVOC it says 40 hours is what they're trained in, correct?

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A. Yes.
Q. Part of that would be pursuits?
A. Yes.
Q. Okay. And we'll get to the lesson plan.
Okay. If you go to page ASP 19? And to the extent this -- do you believe this to be the lesson plan on Patrol with respect to the topic Patrol Procedures and Stops.
A. It's dated '08. It's very possible that this was one that was the years following until a new instructor took over, yes.
Q. Just because it says '08, they could have used those materials when there's changes or stuff they get updated?
A. Yes, sir.
Q. So this was produced as part of Trooper Burke's personnel file. And if we go through this, can you look through this up to ASP 30 and tell me if anything has to do with EVOC or pursuits?
A. Yes. The very first one has to do with EVOC and/or pursuits.
Q. Tell me what you're reading that says that? I don't mean see the word EVOC or pursuits.
A. We've got Policies and Procedures on Highway Patrol Duties, which would entail EVOC and pursuits.

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Q. There's a whole section in the book on traffic procedures?
A. Sure.
Q. Correct?
A. Highway Patrol Procedures, yes.
Q. Isn't that what they're talking about there, the policies and procedures on Highway Patrol Duties and then there's a whole section on Highway Patrol Division Duties?
A. Yes. There's also stuff in policy. Procedures and policies are separated in our manuals.
Q. Are you just speculating to that, because we also have the lesson plan and the objectives?
A. Okay.
Q. If you want to look through ASP 19 through ASP 30. Because we have a general lesson plan, and then we have a more detailed thing with the objectives in it and stuff.
A. More detailed, where are you referring to that?
Q. It's all passed that. This lesson plan is from 19 to page --
A. Okay.
Q. -- 30. And it has a more detailed description of the general topics in the two-page lesson plan.
A. Okay.

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Q. Do you see anything about pursuits or emergency vehicle operations in those pages?
A. Well, on the first one on the second page, it looks like number 3, this could be part of EVOC/pursuits demonstrate their ability to properly utilize equipment; emergency lights, siren, and it goes into some other stuff which is not related to the vehicle.
Q. Let me ask you a question. With respect to EVOC emergency vehicle and pursuits, do you agree that there are two separate skill sets that have to be learned; one is how to physically drive the car in a safe manner, and number two, when it's necessary to drive in a high speed response?
A. Separate, but essentially together, too. Just like with firearms; there's teaching how to do a firearm and there's teaching when to use a firearm, but those still can be taught in the same classes.
Q. Well, they can, but you have to make that distinction in training, correct?
A. Well, in training we do a lot more -- we do a lot of reality-based training. And in reality-based training you incorporate as many things as you can, because you can't just say go drive your car and go pull your gun, it's the totality of skill sets.
Q. Right. In firearms training, you get firearms

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training quarterly, correct?
A. Yes.
Q. You don't get EVOC training quarterly, correct?
A. No, we don't.
Q. There's a lot more emergency calls and pursuits than shootings, correct, at the Arkansas State Police?
A. That's correct.
Q. Training and skill sets are perishable skills, correct? You need to retrain?
A. Yes. And the reason we do quarterly firearms is because some people may not have the ability to go to a range, they may not have the motivation to go to a range, but they are in that car every single day working. So that skill set is still being used, even though it's not being used maybe in an EVOC facility. They're still getting driving skill practice every day they're getting inside that car.
Q. Right. But if you're not telling them what to do, they could be reinforcing bad habits every day, correct?
A. And that's why we monitor or should be monitoring all of our highway patrol guys' driving habits.
Q. How do you monitor your highway patrol's driving habits?
A. If a complaint comes in, that's something that's going to be checked into. Other than that they've got a

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minimum video review of three, three videos per month that's made for corrective action.
Q. That's made for what?
A. It's used for any kind of corrective action to find any kind of those deficiencies within those troopers.
Q. I'm going to mark as Exhibit Number 32 late-filed all Trooper Burke's video audits. It's been requested in discovery.
(Late-File Deposition Exhibit 32 was marked.)
Q. Do you do that as a sergeant now? Well, you're in the training academy.
A. Yes, sir. My guys aren't on the highway patrol.
Q. All right. Let's just go through these things. Let's go to ASP 23? This is the body of the lesson plan that gives more detail. Objective 1, Demonstrate officer safety skills while conducting traffic stops.
A. Hold on just a second. You said 23?
Q. 23.
A. Okay.
Q. Okay. We have --
A. We're underneath objective 1?
Q. Right. Basically the way I understand this, we have a lesson plan and then the content, there's more

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detail to this lesson plan that goes over the topics a little bit in more detail?
A. Yes.
Q. Is that your understanding of what we're looking at?
A. That's what it appears to be, yes.
Q. All right. You had said some of the patrol stops dealt with emergency vehicles and pursuits potentially, correct?
A. Yes.
Q. We're going to go through more detail and see if that's true. If you look at objective number 1, it says, Demonstrate officer safety skills while conducting stops. And what they're talking about in this is how to select a location for a stop and where to park for a stop, correct, for officer safety?
A. That appears to be correct on that first one, objective 1, yes.
Q. Look through the whole objective number 1. They also talk about high risk stops, which is a different kind of stop which requires different things for officer safety, correct?
A. Yes.
Q. So this is again about how to select a place to stop, where to pull them over, how to park, and how to

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deal with it for officer safety, correct?
A. Among other things, yes. There's several different bullets there in that one, yes.
Q. I'm trying to talk in general. Nothing about pursuits or EVOC?
A. I don't see anything about pursuits in there, no, sir.
Q. All right. Let's keep going through all of objective number 1. And we're going to go to objective number 2. Tell me if there's anything about pursuits or EVOC?
A. I don't see anything other than unless you read into the high risk stop as being. Because there are some things that could be referred to as emergency vehicle operations for high risk situations.
Q. That has nothing to do with EVOC, does it? High risk stop, the training on that is if you have somebody who's known to be dangerous. It has nothing about emergency. It's how you conduct your stop and how you address the people in there for officer safety, correct?
A. Not entirely.
Q. Okay.
A. High risk stop can incorporate a lot of different things.
Q. Okay. Well, where does it say anything about EVOC

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or emergency driving or driving over the speed?
A. It doesn't say specifically anything about speed or EVOC per se. But it has in there -- I'm not finding what I was seeing at the beginning. Nothing in particular for EVOC, but it's still all incorporated in driving per se.
Q. Okay. Objective number 2.
A. Okay.
Q. It talks about what you're supposed to do with respect to the radio when you're doing a traffic stop, correct?
A. And different buttons and functions and procedures for checking out on traffic stops, vehicle description, tag, roadway, direction of travel. Those are important things with emergency vehicle driving.
Q. But this is in a traffic stop. Are you saying as the Arkansas State Police, that because something may be applicable -- this is an actual training session on traffic stops, correct?
A. Yes.
Q. So when they're talking about roadway, explain the procedure for checking out on stops, this is how they're pulling them over and what you do on the radio, correct?
A. Well, most of our driving that's how it begins is as a traffic stop or a potential traffic stop.

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Q. Okay. Let's go to objective number 3. This is where they say they have to use all their equipment and it talks about explain the importance of using emergency lights on every stop, and blue lights and siren must be activated during emergency operation of vehicles. Do you see that?
A. Yes, I do.
Q. That seems to directly address some of the issues in pursuits and EVOC driving, correct?
A. Yes.
Q. Do you know if they go over the policy, the pursuit and EVOC policy during this or should it be gone over?
A. It doesn't specifically say that they do the policy. The policy is normally done in general. All policy is checked off on by every trooper when they receive that policy. They have to sign off that they read and understand it. But this one doesn't particularity say that the policy was gone over. It just says that they explained the importance of it.
Q. But the importance of that is also addressed in policies which are trained, correct?
A. Yes, sir.
Q. I'm going to give you Exhibits 9 and 10, which are the vehicle use and pursuit policies.

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A. Yes, sir.
Q. Let's look at vehicle use first. Now, are they actually trained on the policy and what it means, or do they get it and they have to acknowledge it and that they've read it?
A. Both, yes.
Q. Both. So it says, The policy on vehicle use talks about that everybody has -- in the first paragraph, officers have to use ordinary care when driving, correct?
A. Yes. This is a -- I think this is a different policy than would have been in effect then though.
Q. Do you have the policy that was in effect then?
A. It's probably very similar.
Q. That looks like it's got some use.
A. It is the same one.
Q. You have the same policy?
A. Yes.
Q. Okay. All right. The second paragraph says, The driver of an authorized emergency vehicle is only exempt from traffic laws when responding to an emergency call or in immediate pursuit of an actual or suspected violator of the law.
Do you see that?
A. Yes, sir.

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Q. So when they're -- they don't have to comply with speed limits when -- what's an emergency call?
A. Let me see this. If it's okay if I reference 27-51-202. For purposes of this section, emergency calls means legitimate emergency situations which call for the operation of an emergency vehicle, including a police vehicle.
Q. Is a traffic stop an emergency call?
A. Not ordinarily, no.
Q. Okay. What is an immediate pursuit of an actual or suspected violator of the law?
A. Immediate pursuit means initial approach to a violator for the purpose of initiating a traffic stop or situations where silent response is appropriate or necessary. And that's according to our policy.
Q. Okay. So that means, according to your policy, as they're trying to catch up to them -- a pursuit is initiated by the fleeing person, correct?
A. Yes.
Q. For an officer most pursuits start with a traffic stop, correct?
A. Yes.
Q. And when you perform a traffic stop when the lights and sirens are activated, the conduct of the person trying to be pulled over determines whether or

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not it turn into a pursuit, correct?
A. Yes.
Q. Once they basically take active efforts to not comply with the order to pull over, that's when the suspect has initiated the pursuit, correct?
A. That's correct.
Q. The officer at that time has to decide whether he's going to pursue or not, correct?
A. Yes.
Q. And we have a pursuit policy that they have to comply with in making that decision, correct?
A. Correct.
Q. All right. Is it your understanding the way that they're trained is that officers can not use their lights and sirens while trying to catch up to perform a traffic stop?
A. Under an immediate pursuit. And it's for these situations here, yes.
Q. What I'm trying to get at, I had testimony and I've read the Trooper Rhew transcript and I have other information to base this question on. It's my understanding that troopers do not have to put on their lights and sirens while they're trying to catch up to a person to perform a traffic stop. And they only activate their lights and sirens when they get up behind

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them and select an appropriate place to pull them over; is that correct?
A. Under an immediate pursuit, yes. And I'll give an example here. So if you passed me for speeding on 430. And the reason that that is the case is 430 northbound and you come up on the river bridge and you're running 90 miles an hour. Yes, I have to approach you. So I'm going to have to go above the limitations of the speed on there. So I'm outside of the boundaries of the law. But for me to operate my lights and sirens immediately is most likely going to make you stop, because according to law as a citizen being pulled over you're supposed to immediately yield to the right of roadway. Where you end up becoming more hazardous and I become more hazardous to the public, because we've selected a bad location to make that stop. So that's where that immediate pursuit comes into play is for the protection of the public. We want to have good safety spots to be able to pull somebody over where they're not at risk, where the other motorists aren't at risk and where the officer also is not at substantiated risk.
Q. And is that what a silent response would be?
A. Yes. Without having your audible siren on, yes.
Q. All right. So they're trained that for officer and public safety, if they're going to initiate a

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traffic stop, that they can exceed the speed limits without their lights and sirens on until they catch up to them to pull them over in the appropriate spot, correct?
A. Still under ordinary care and due regard, yes.
Q. Ordinary care and due regard, let's make sure for the purpose of the question, everything they do in the car that's the foundation, correct?
A. Should be, yes.
Q. Okay. So there would be circumstances where you might want to put your lights and sirens on before, if that was necessary to provide ordinary care to get out of traffic or something?
A. Absolutely, yes.
Q. But as a general rule they are given the discretion to exceed the speed limit without their lights and sirens while they're catching up to a traffic --
A. Violator.
Q. -- traffic violator and select the appropriate spot to pull them over?
A. That would be safe to say, yes.
Q. Okay. And are they trained on how long they have to catch up to them?
A. That's kind of -- trained on how long?

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Q. Right. The issue is, the issue in this case is he went 8.1 miles.
A. Sure.
Q. Did they say -- is there a geographic limitation on how long that you can drive --
A. I think obviously the immediate approach definition is -- that's beyond an initial approach to a violator.
Q. It depends on how fast they're going and how fast you have to go to catch up to them, correct?
A. Sure.
Q. It's all immediate?
A. Per se.
Q. I'm just asking you this question. I understand what you're saying. I understand the difficulty with it. Are you aware of any particular training that said immediate only means a minute or a couple of miles?
A. There is no definitive, if that's what you're asking, definitive time frame or I think the bigger scope there is the due regard and ordinary care.
Q. All right. And I'm not trying to trick you. I'm trying to communicate with you.
A. Yes, sir.
Q. Ordinary care and due regard is going to apply to every single thing they do in a car, correct?

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A. Yes, sir.
Q. So I'm not taking that out. I'm not trying to trick you and not have that in a question. I'm saying once they're going to pull over a traffic offender and in utilizing ordinary care and due regard, they try to catch up to them, they're allowed to do that under the policy without lights and sirens, so that they can get to a place to activate the lights and sirens to pull them over safely, correct?
A. Yes, sir.
Q. Okay. All right. Let's go to ASP 38.
A. Did you say 38?
Q. Yes, sir. This is the EVOC lesson plan for Trooper Burke. Have you reviewed this?
A. I've seen it. I haven't thoroughly reviewed it.
Q. Let's do this for a second. Why don't you look at pages 38 through 42 and kind of familiarize yourself with that for a second before I start asking you questions. I've got to take a restroom break.
A. Yes, sir.
Q. And if you need to take a restroom break do it as well.
A. Okay.
(A recess was had.)

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BY MR. CLARKE:
Q. Do you believe that the primary topics covered in this lesson plan in EVOC all involve the physical operation of the vehicle as opposed to the decision-making of when to engage in high speed driving?
A. Was I supposed to go through 42?
Q. To 44.
A. Your question was the practical, is that what you're saying?
Q. No. What I'm asking you is after reviewing this lesson plan and the objectives, this was a 36 hour course, correct?
A. Yes, that's what it shows.
Q. And it goes through and tells you the hours that were done and it has the objectives, correct?
A. Yes, sir.
Q. Objective number 1, that deals with -- it doesn't really deal with any decision-making with respect to emergency driving or pursuits, it deals with checking your vehicle before you go out, correct?
A. Yes.
Q. Objective number 2 talks about the physics of high speed driving and steering, correct?
A. Yes.
Q. Objective number 3 talks about braking and the

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different types of turns and how to handle these things when you're driving at high speeds, correct?
A. Yes.
Q. Number 4 talks about what to do with skids and how to deal with skids, correct?
A. That's correct.
Q. Number 5 talks about using a particular maneuver, the PIT maneuver to terminate a pursuit, correct?
A. Yes, sir.
Q. Number 6 talks about spike strips, correct?
A. Yes, sir.
Q. Objective 7 deals with you're out on the driving track for that for 30 hours, correct?
A. Yes.
Q. That's when you go through all the different courses and have to do certain types of skills with the vehicle with cones and driving and backing in a certain period of time, correct?
A. Yes, sir.
Q. Objective number 8, that deals with actually going out there and actually performing a PIT, correct?
A. Yes, sir.
Q. Objective number 9 talks about going out there and actually deploying spike strips, correct?
A. Yes, sir.

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Q. And objective 10, which is one hour, discusses civil liability with respect to operation of police vehicles. That could talk some about the decision-making, correct?
A. That's correct.
Q. So that would be one hour of this training block, correct?
A. Yes.
Q. And then if we go to ASP 45. That is the PowerPoint that went with this. That all deals with the operation of the vehicle and not the decision of when to get into an emergency call or a pursuit, correct? You can look through it.
A. I don't think this is the PowerPoint exactly for this course.
Q. Did you bring a different PowerPoint?
A. I do not have a PowerPoint that was designed on this. But this is a -- this looks like an entirely different. This is a defensive driving course which does not get the lesson plan. So I can't imagine this would be the PowerPoint for that lesson plan course.
Q. All right. It may be somewhere else, but to the extent that it's a different one and we haven't produced it, I'm going to ask that the lesson plan for EVOC in Burke's academy training be produced, if not already

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produced. That will be Exhibit 33.
(Deposition Exhibit 33 was marked.)
Q. You agree the defensive driving outline doesn't discuss EVOC or pursuits?
A. It describes some stuff that should be used with any kind of driving. I think there's some good stuff in here and I have seen this before. But it doesn't particularly talk about the EVOC. Even things like aim high in steering. It's something we talk about not getting so focused in on exactly what's in front of you. Driving out in front of your vehicle so you see upcoming hazards, and then tributes of drivers, because people do get emotional when they're driving. That's kind of what this is going over.
Q. Those things are saying different types of people, it doesn't actually say that these are physiological responses that occur during EVOC and high speed pursuits?
A. Not the types of people, but the types of emotions in those people.
Q. All right. Tell me what you're talking about? I didn't -- let me go back to it. It's basically saying there's different types of officers out there. It doesn't --
A. Self-centered, aggressive, impatient, immature,

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demanding are the ones under the egotistical driver.
Q. Right. Let me stop you for a second and make sure I'm asking you a question. What I'm saying is you understand that in emergency driving there are physiological responses that occur in an officer's body, correct?
A. Sure.
Q. And the literature documents them very well; tunnel vision, auditory occlusion, laser focus on the suspect to the detriment of other things, correct?
A. Correct. Not just with driving, with any kind of critical incident or high stress, yes.
Q. High stress with guns as well, correct?
A. Yes.
Q. This is not telling you -- this is telling you different type of people that drive, not that these are different types of emotions that come over you during high speed driving; is that correct?
A. It may be a characteristic that an officer is able to identify that they have in themselves where they can fix that if it is one of them.
Q. Does it say anything about what to do to fix it in this training block?
A. No. This is more about identifying an issue. You can't really fix your own emotions.

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Q. Then you shouldn't be a cop if you're not egotist, right?
A. I agree with that.
Q. Okay. You either fix it or you weed them out, correct?
A. Right.
Q. So are you saying you can't fix it?
A. In driving though it sometimes is -- and we see it a lot out there with road rage incidents. It may not be that the person is a bad person, they just get so consumed in their driving that they start coming out with traits that aren't really their characteristic in their person, it's just in driving. Does that make sense?
Q. It does. But is the Arkansas State Police saying those type of people shouldn't be officers or are we going to try to train those officers to not exhibit those things when they're going out in the field?
A. I don't think the Arkansas State Police says either one of those. This is more of a identifying that this is stuff that can happen to drivers.
Q. Okay.
A. It's something that any driver could experience.
Q. I would disagree. I think it identifies people as opposed to informs them that certain things -- a good

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officer can get all this tunnel vision, auditory occlusion and -- and focus on the suspect, correct?
A. A good officer can -- say it one more time?
Q. A good -- the egotist or the hotdog, you don't want -- if that's who those people are, you don't want them as cops, correct?
A. Correct.
Q. All right. A good officer can experience physiological symptoms or issues during a high stress event, correct?
A. They can experience it?
Q. Right.
A. Yes.
Q. And you train them to be able to identify them when they come over them and to basically refocus and do things with ordinary care and due regard, correct?
A. We train as well as we can for stress management, yes.
Q. Okay. Do you see anything in that training material that tells what you train to avoid those physiological characteristics?
A. A lot of that is troop school. Troop school in general is a high stress -- that's what troop school is.
Q. This is a troop school training slide. I'm asking you, in these training slides as you're looking at here,

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does it say anything about how to combat those?
A. No, it does not.
Q. Okay. Let's go to Exhibit Number 8.
(Deposition Exhibit 8 was identified.)
Q. This document was what was produced to us called "Burke's EVOC Training Package." Okay?
A. Okay.
Q. The first thing that we went over is a lesson plan that was in his personnel file. Do you agree?
A. Yes. Was that in here?
Q. Yes.
A. Okay.
Q. Okay. So I'm just -- we're going to go to other documents that weren't in there.
A. Okay.
Q. They just were put together in an exhibit already. I'm not going to make another exhibit.
A. Okay.
Q. But just for the purposes of the lesson plan, how many hours of classroom work on the 10 objectives were performed in troop school on EVOC?
A. According to this schedule?
Q. Yeah.
A. Okay. We've got an hour on objective 1, 30 minutes on objective 2, 30 minutes on objective 3, 30

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minutes on objective 4, 30 minutes on objective 5, 30 minutes on objective 6, and then objective 7, 8 and 9 are driving tracks, and then 10 is back in the classroom for an hour.
Q. All right. So we got 5.3 hours of classroom time on EVOC?
A. Five hours and 10 minutes it looks like.
Q. Okay. And then 31 hours on the track, 31 1/2 hours?
A. Yes, sir.
Q. Okay. If we go to Arkansas -- in Exhibit 8, 971? All right. This is a training -- an in-service training that I guess Trooper Burke went to. Did you go to this in-service training in 2002 -- 2012? I'm sorry.
A. Okay. Let me look at this for a second and see.
Q. Well, let me -- let me just withdraw the question, because you're not here really as a personal knowledge. I mean, you can look over it, but I don't need you to answer that question.
Again, here this is the in-service on EVOC. Do you know how often they do in-service on EVOC at the Arkansas State Police?
A. As often as we can.
Q. Okay. Well, I mean, you can do it. You can do it. That depends on priorities, correct?

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A. Yes, sir. It's resource and -- and priorities, yes.
Q. Okay. From 2011 to 2016, how many times did they offer EVOC and in-service?
A. In-service would have probably been less. The 2015/2016 in-service.
Q. Okay.
A. And then we're doing one right now, just wrapping one up.
Q. Okay. So they have troop school. If you were in 2011 trooper, you'd have trooper school where you covered it, you'd have in-service in 2012 and in-service in 2015, correct?
A. Yes.
Q. And did you train the 2015 one?
A. I was there. Yes, sir.
Q. Okay. Let's just go through, do you think that's enough training on EVOC and pursuits?
A. My personal opinion, we could train our whole lives and never be as good as we want to be.
Q. I understand. There have been a number of wrecks and crashes and people have died during the course of emergency vehicles or pursuits, correct?
A. Yes, sir.
Q. Would that make it a priority compared to other

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things that haven't killed people?
A. I think so.
Q. Okay. So as the Arkansas State Police EVOC trainer and designee, do you think they provide enough training?
A. I think it's a very high propriety.
Q. Okay.
A. I think that we provide it as much as we can.
Q. Once every three years?
A. As often as we can. Some of our resources and times, troop schools dictate when we can and cannot do something that extensive as driving.
Q. Well, you can sit down in a classroom and go over all the decision-making stuff without going on a track, correct?
A. Sure.
Q. You can do that eight hours a day, correct?
A. That's correct.
Q. All right. You don't do that? Arkansas State Police doesn't do that, correct?
A. Well, we do -- you can do policy revisions on your own, too, to know policy at any time you want to.
Q. Right. But they send that out to the officer and he has to acknowledge he got it. That doesn't provide him with training on what it is?

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A. Well, it's knowledge.
Q. Well, it's an identification of the issue. It's not training on the issue to make sure they understand it, correct?
A. That is correct.
Q. Okay. What I'm trying to get at is, if you had some type of activity that caused a death a year and another activity that caused a death every five years, would you agree that you should provide more training on the issue that caused, you know, a death a year rather than a death every five years?
A. If possible.
Q. Okay.
A. You provide as much training for where you need the training, yes.
Q. Okay. Well, you get firearms training -- you only have to qualify once a year, right?
A. Yes, state law.
Q. You train quarterly?
A. Yes.
Q. Correct?
A. Yes.
Q. Okay. How many people to your knowledge have been shot by troopers in the last five years?
A. How many people have been shot by troopers?

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Q. Yes.
A. I couldn't say, tell you that number.
Q. But it's a small number, correct?
A. Probably.
Q. Were there more people that were injured in car wrecks during emergency vehicle calls or pursuits to your knowledge?
A. Probably.
Q. All right. So, again, you don't -- you don't -- it's priorities, right?
A. But it's the -- we drive a lot more than we shoot, yes.
Q. I understand. But, you know, carrying a gun and pulling a gun. You pull a gun more than you shoot a gun. But when you do driving -- when you do shooting stuff, you do all the stuff from proper handling, proper holstering to drawing, the way to hold it, correct?
A. Yes, sir.
Q. Okay. And according to this training thing, it basically, if you look at the last two slides on 971, they talk about this distinction. You know, when is the last time you fired your weapon in the line of duty, and they said, when is the last time you had firearms training. And then the next slide says, when is the last time you've driven your unit in the line of duty.

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Still on the same page. When is the last time you attended EVOC training. You see that?
A. Uh-huh.
Q. They're trying to say that we don't get enough EVOC training?
A. It's trying to say it's important, yes.
Q. All right. And if we go down to -- if we go down to page 973? Do you know who Captain Travis Yates is?
A. I do not.
Q. Okay. I think he's on that Live PD now. But he was somebody from Tulsa who got involved in pursuits. And what he notes in his research, and you trained your officers in this thing, is the way that officers are trained are 75 percent with respect to -- this is emergency vehicles. 75 percent with respect to skill sets and only 25 percent with decision-making, correct?
A. That's what it says, yes.
Q. All right. And what does he say with that; that's not working, correct?
A. That's what the PowerPoint says, yes.
Q. Right. This is what you're training your officers, right?
A. Yes.
Q. Okay. We have 31 1/2 hours for driving skill sets, right? And only 5 hours of -- of decision-making

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or potential decision-making, classroom training, correct?
A. Well, some of the decision-making is carried over into other classes. That's what we have to remember. It's not all done there at the EVOC.
Q. Decision-making -- I mean, with EVOC we're talking -- in this -- in this particular PowerPoint, we're talking about the training with respect to EVOC, correct?
A. This is a EVOC PowerPoint, yes.
Q. There are specific decision-making or decisions they have to make that are specific to EVOC, correct?
A. That is correct.
Q. Do I exceed the speed limit; do I put on my lights; do I put on my sirens; do I pursue him; what are the traffic conditions; what are the geographic conditions, correct?
A. Correct.
Q. You have to provide specific training on that decision-making, correct?
A. Yes.
Q. So I know there's all kinds of other decision-making. I'm talking about the decision when to start a pursuit, when to continue a pursuit, when to terminate a pursuit. Those are decisions, correct?

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A. That is correct.
Q. Same like with guns; when do I pull my gun, when I use my gun, when can I not use my gun, correct
A. That is correct.
Q. There's a specific sets of skill sets and decision-making that are applicable only to or primarily to EVOC to do it correctly, right, in pursuits, correct?
A. Yes.
Q. All right. The next training shows -- the next slide on 973 shows the accidents and incidents within the Arkansas State Police reinforce this theory. And it says, ASP units are being crashed not because of how we drive but because of the decisions that are made that put us in the situation to begin with. Do you see that?
A. I do.
Q. Okay. So based on this training, at least in 2002, the decision-making with driving was borne out by the statistics of the wrecks of the Arkansas State Police, correct?
A. Say it one more time?
Q. I mean, basically shows the accidents and incidents of the Arkansas Police reinforce the theory that officers are crashing cars not because of their driving skills but because of the decisions they make when driving, correct?

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A. That's what it sounds like, yes.
Q. Okay. And do you agree that that continues today?
A. Poor decision-making is probably a leading cause of our crashes, yes.
Q. All right. And there are a number of crashes. It's not one a year, correct?
A. There are.
Q. All right. So then when we get back to the next slide, it says, you train the officers, we need to reverse the propriety especially as it relates to in-service training to 75 percent decision-making and 25 percent skill sets. Do you see that?
A. Uh-huh.
Q. Arkansas State Police doesn't do that, do they, with respect to EVOC and pursuits?
A. We do.
Q. Okay. So in a lesson plan that has 36 hours, 31 1/2 are on driving track and skill sets, right?
A. Yes.
Q. And only 5 hours is classroom which covers a variety of topics, not all even decision-making, right?
A. Right.
Q. Okay. That's not -- that's not a 75 percent decision-making to 25 percent skill set, correct?
A. In this particular -- so in the one you're talking

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about, the lesson plan for troop school, troop school, one of the big focuses is increasing their skill sets because we have young people that come in that don't have those skill sets. They've never driven in an emergency situations. They've never driven at a high rate of speed. And so for them to even be able to -- we talked about that stress management. To be able to make those proper decisions under stress, they have to be given those skills before we can work on decision-making.
Q. I understand they have to have the skills first. But here's a PowerPoint that says, we need to reverse our stuff consistent with our record on wrecks, correct?
A. That's what it says, yes.
Q. Okay. And I don't believe in this PowerPoint they have -- they have a slide where they actually went through a particular videotape and then did ask questions. Is it legally defensible, morally defensible, and worth it. This is on page 974, correct? That would be the -- that would be some type of decision-making training, correct? Remember 974?
A. Well, you're saying -- asking these questions?
Q. Yeah. Are we making good decisions. There is some decision-making training given in this. We haven't seen any decision-making actual training PowerPoints up

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to this point, have we?
A. No. But that's what I was saying, I think the PowerPoint to the troop school is one that's missing in your file so far. So that may be something that needs to be located.
Q. Okay. And if we have that, then we'll look at it.
A. Okay.
Q. I would venture to say that we have gone over it. But we'll try to find that.
A. Yes, sir.
Q. But up to that point, up until this point in in-service, we don't -- this is the first time that we talk about decision-making, correct --
A. Yes.
Q. -- based on the materials?
A. In this in-service, yes.
Q. Okay.
A. What it looks like.
Q. And then they go over it and they talk about speed versus 976, speed versus reaction time. And then they talk about seatbelts and spike strips and things of that nature, correct?
A. Yes, sir.
Q. And then in this one they go over the -- some of the policy changes, correct? Towards the end, 979 to --

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A. 979 is policy updates.
Q. Okay. Now, do you see in any of these slides the requirement that they -- or the mention of, the way I count it, there's 68 slides, and this in-service was -- do you know how many hours it was? I think it was 2 hours.
A. Do I see any --
Q. Do you know how many hours it was?
A. I do not. This is the first time I'm seeing this, this particular PowerPoint.
Q. What's the dated on that? It was April 2012; is that correct?
A. I can't -- I don't see a date.
Q. The first slide.
A. It just says 2012. Mine is blacked out if it was on there.
Q. Okay. I think this was previously marked. I'm going to mark it again.
(Deposition Exhibit 34 was marked.)
Q. I'm going to show you. This is in there, I think. Do you think that would help you identify the date of the --
A. That looks like this is probably the same course.
Q. Okay.
A. Yeah, it's showing 2 hours, it appears.

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Q. Okay. So 2 hours will be covering, there's 68 slides that they go over?
A. Yes, sir.
Q. Is there any discussion during this policy, during this PowerPoint about the use of lights and sirens?
A. You'll have to give me a few minutes to look through it, if you want me to answer that one?
Q. I'll be easier to you. How about looking at page 9 and page 11?
A. Okay.
Q. I think the bottom right one, Emergency equipment and sirens shall be in operation throughout the pursuit. On the bottom, right-hand corner. It's hard to read. I'm sorry. It's small.
A. Yes, I do see that one. Bullet 5.
Q. All right. And then on page 11, the second slide up at the top, it talks about deactivating emergency equipment when you terminate a pursuit. And do you see that?
A. I do.
Q. And we talked about what you're trained to do. Is there any discussion in this about decision-making with respect to high -- well, emergency vehicle driving itself as opposed to pursuits?
A. That would be encompassed in emergency vehicle

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driving, a pursuit would.
Q. Okay.
A. So --
Q. All these are dealing with pursuits, correct? PITs is an emergency vehicle driving, spike strips is an emergency vehicle driving. Do you know what this Trooper [redacted] was in a pursuit or was it a emergency vehicle driving, this video from Trooper [redacted]
A. Where is this one at?
Q. I'm sorry. 974.
Do you know whether that was a pursuit or emergency vehicle example?
A. I have seen that video before, but it's been a long time. I don't think it was a pursuit.
Q. Okay.
A. But I would have to pull it to be able to say that for sure.
Q. Is that still available at the training academies?
A. I think that one is in the file.
Q. Okay. I'll mark this as the next Exhibit 35.
(Deposition Exhibit 35 was marked.)
A. So on page 5 it talks about speed. That would deal with emergency vehicle operations.
Q. Okay.
A. Speed increasing, decreasing in reaction time --

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Q. Okay.
A. -- and then damages, collateral damages. The Officer [redacted] video. That's a speed versus reaction time. That's actually a -- and that one is available. We still show that video.
Q. Let me do this. What is that one called?
A. Officer [redacted].
Q. Officer [redacted] video. I'm going to add that to Exhibit 35.
A. That's an extremely good video as far as decision-making in emergency vehicle.
Q. All right. And where do you see that was mentioned in this training point?
A. The video was shown. It's showing the face of it on page 6. It's the top, right one. Speed versus reaction time.
Q. I gotcha. Okay.
A. Yeah. That's a video that in the -- embedded in the PowerPoint.
Q. All right. And then seatbelts. That's just officer safety, it looks like. And then we get into spike strips, PIT maneuvers?
A. And post pursuit.
Q. Pursuit. That all deals with pursuits, correct?
A. Yes, sir. And then policy changes.

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Q. All right. And again the training with respect to use of lights and sirens, that was done in the academy. We've already discussed. That you're allowed to exceed the speed limit to catch up before you use your lights and sirens, correct?
A. In the immediate pursuit clause, yes.
Q. When a silent response is necessary, correct?
A. Yes.
Q. All right. Then it looks like the next PowerPoint that we talk about is, if you go to Arkansas 985?
A. Yes, sir.
Q. Is this the 2015?
A. It appears to be so.
Q. I wish we had your copy.
A. This one is not the exact one from 2015, it doesn't appear. It's similar. It's got a lot of the stuff in it. But this is -- this is the -- does it say how many slides? Do you have that number?
Q. I have 64. That's just by count. And then I don't know if the braking is part. That's without the braking.
Do you have the 2015?
A. This one should be the one that's 2015?
MR. CLARKE: Can we make a copy of that?
MS. MERRIT: Yes.

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MR. CLARKE: We'll wait until she gets back.
MS. MERRIT: Okay.
(A recess was had.)
BY MR. CLARKE (CONT.):
Q. Let's go back on the record. I'm going to do kind of some housekeeping stuff. Some more stuff, if that's okay.
Okay. Sergeant, we were looking at it and we're right now going upstairs. You brought your actual training, your training PowerPoint from the 2015 class, correct?
A. Yes, sir.
Q. Okay. And we're getting that copied now.
A. Can y'all get me a copy of this, too, so I can -- these PowerPoints have a lot of the same slides in them. And I just want to verify that we -- there's -- a lot of them are the same. Some of them may have a little more than the other one does.
Q. All right. If I have it, I'll give it to you right now.
A. The other one is the only -- I think -- I've got this one. The one that you got in your packet.
MS. MERRIT: We'll bring yours back in just a minute. We're making copies.

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THE WITNESS: Is this mine? Is this a copy for me or --
MS. MERRIT: This is your copy to look at and then we're making copies of the packet that you brought with you today.
THE WITNESS: All right. So we'll just stand by for that.
BY MR. CLARKE (CONT.):
Q. Yeah. I have it somewhere here. I'll make sure he has one.
But if you'd look at the back of this packet? Do you have the Number 8?
A. Uh-huh.
Q. The second to last page, I believe it is?
A. Stinger spike strips.
Q. It's the last page.
A. Okay.
Q. Is this the course? This is 2015 in-service.
A. Yes, sir.
Q. Is this where the EVOC training was provided, the -- the PowerPoint that we're having copied that you provided?
A. Yes, sir.
Q. It looks like there was, and it's hard to read, EVOC classroom, 3 hours?

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A. Yes, sir.
Q. You do you see that?
A. Yes.
Q. Did you provide that training yourself?
A. I did some of it.
Q. Okay.
A. We had various instructors that were assisting because we had a lot of stuff going on. So I was in and out. Yes, sir.
Q. Okay. Would that be where the PowerPoint that we're having copied over is gone through?
A. Yes, sir.
Q. And then it says, EVOC training 8 hours. Is that out on the track?
A. Yes.
Q. All right. So in 2015 there was another 3 hours of classroom training on EVOC and 8 hours back out on the track?
A. Yes.
Q. Okay.
A. And that other PowerPoint, that was one that I pulled from that folder. But I would like to verify this is -- because, like I said, they're very similar.
Q. Okay.
A. So that's something I'm going to have to verify

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that that was the one that was actually used in in-service and it wasn't this one. Because this one may be the one that was used in in-service.

Q. Okay. Well, what we can do, when we get that back, I think the best thing to do is, we'll go over the one that you've reviewed --

A. Okay.

Q. -- that we're getting copied and we can kind of keep this open here to the side. If you need to reference either one of them, that's fine.

A. Okay.

Q. Okay. While they're doing that, let me ask you this. Other than trooper school, EVOC training in 2012, EVOC training in 2015, are you aware of any other training that was provided to troopers with respect to emergency vehicle operations or pursuits?

A. We did a -- we did a transition training when we got the Chargers. And I'm trying to remember what year that was. Probably in 2012, also.

Q. It looks like he got -- if you look at Exhibit Number 8 and some of the certificates at the back?

A. Uh-huh.

Q. Officer Burke was certified in a Charger in April of --

A. In troop school.

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Q. In troop school?

A. That would have been before he has his -- his troop school.

Q. That they -- but if you look to the back of these things?

A. Yes, sir.

Q. Like three or four pages from the back, Arkansas 1007?

A. Okay.

Q. Okay. There wasn't -- he didn't have the transition training. He trained on the Charger in school, correct?

A. Is that -- that's the same date; is that what you're saying, April 27th?

Q. No. What I -- I was -- maybe I misunderstood. Let me start over.

A. What was his -- what was his troop school dates?

Q. From January to June of 2011.

A. Okay. Then, yes, that would have been in troop school.

Q. I mean, at some point when he went to a different car, he's got to again learn all the characteristics of that particular car, it's a skill set like using a different weapon, correct?

A. Yes.

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Q. Okay. So other than EVOC and pursuits in troop school, in-service in 2012, and in-service in 2015, was there any other training given to any other troopers with respect to emergency vehicle operations or pursuits?

A. Yes, there was some where there was notified issues. And I believe in that time frame where they would actually have done remedial, some remedial driving training.

Q. Okay. And I guess I'm talking, that would be if a particular person --

A. It wasn't like a blanket training.

Q. Right. What I'm talking about, if somebody -- some issue was identified with somebody's driving, part of an OPS review might say we want you to go back and have some remedial driving?

A. Yes.

Q. I'm talking about the training program for -- you know, that's kind of part of a disciplinary scenario for a particular officer, correct?

A. Not really disciplinary. It's for training.

Q. Right.

A. It's to fix a problem and identify a problem.

Q. Okay. And I think we're saying the same thing --

A. Okay.

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Q. -- just a little bit differently.

What I'm trying to do with respect to your testimony is find out what the training program was with respect to EVOC that every officer got.

A. Yes, sir.

Q. That doesn't mean that other people may have individually received some type of training based on deficiencies or based on, you know, I'm sure somebody can request some additional training or assistance if they need it, correct?

A. Yes, sir.

Q. All right. So the training program, from at least 2011 to 2016, involved a trooper would have gone to school and got some classroom training and some track training, correct?

A. Yes.

Q. And they would have gone to in-service in 2012. And that looked like the EVOC was just 20 hours of classroom time, correct?

A. Yes, sir.

Q. And then in 2015 they had another in-service where one of the topics was EVOC. And there was 3 hours of training for that and 8 hours on a track, correct?

A. Yes, sir.

Q. And was there any other training provided to

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supervisors on emergency -- you know, I mean, are supervisors trained differently on any of these topics than the troopers?

A. They go through the -- a lot of the EVOC stuff just the same.

Q. Okay.

A. But obviously they have a different role as a supervisor in taking command of an emergency vehicle.

Q. And I understand that. They have different responsibilities. Do they get any different training on EVOC or pursuits?

A. So they would have gotten some EVOC training when they were initially promoted to a supervisor. They get what it's called a supervisor's class.

Q. Okay.

A. And they would have most likely done an EVOC course. And I haven't seen that lesson plan. I know we did it in the ones we have now. The ones I've been involved in.

Q. Okay. And I know we talked -- this is identifying things to be more specific going forward. So when somebody gets promoted, they get a supervisory -- some sort of supervisory training, correct?

A. Yes, sir.

Q. And you don't know for certain, but there could be

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EVOCs or pursuits that are trained to supervisors when they get promoted?

A. Yes, sir.

Q. Okay.

A. I know the ones in -- in the classes now, they are, because I was involved in the last couple.

Q. Okay.

A. But prior to that, I'm not sure because I wasn't involved in those.

Q. Okay. And we'll just mark as -- or identify for future reference, I'm calling that supervisory training. If there's any kind of package that would discuss that.

(Deposition Exhibit 36 was marked.)

Q. I would assume, when a supervisor gets a particular type of training, they -- it covers a lot of topics, correct?

A. Yes, sir.

Q. And what you're saying is there may be some type of EVOC or pursuits within that training, correct?

A. Yes, sir.

Q. And at least at the present time you know that there are some people who have been promoted who are now taking the EVOC training, correct?

A. Supervisory, yes.

Q. Okay. Any other particular seminars,

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presentations, that type of thing with respect to supervisors, commanders on EVOC or pursuits that you're aware of?

A. Not off-hand. I know information is disseminated just like any big -- big business. You know, there's -- I'm aware of several emails being sent in, you know, with reminders for things, operations in those vehicles, policy reminders. As far as like classes, no.

Q. All right. Any -- and, you know, I don't try to hide stuff. There was apparently some type of training done where a lady came in whose kids were killed. Do you know [redacted], any training regarding [redacted] -- provided by [redacted]?

A. That's the first time I've ever heard that name.

Q. I'm getting it for you. [redacted].

And there was a video that was presented to us by a lady whose kids, two daughters were killed by an Illinois State Trooper.

A. Uh-huh.

Q. I'm -- it says that it was provided on 9/27/16. Do you know if that was provided to all the troopers or to --

A. I do not.

Q. Let me just show you.

(The video was played.)

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Q. All right. And I'm not going to play this whole video. But this was produced in discovery. And I've just shown you that front page that says, Arkansas State Police, September 27, 2016.

(The video was played.)

Q. We're not going to go through the whole tape. It's an hour.

Do you know what that training was?

A. I do not.

Q. You've been at the training academy since 2016?

A. Yes.

Q. I mean, 2015?

A. Yes, sir.

Q. Is that training that you guys put on? Who was the person who was speaking?

A. That's Lieutenant Colonel Shawn Gardner.

Q. And is he in training?

A. He is not. He's the lieutenant colonel. He's the -- under the director.

Q. Do you have -- you have no knowledge of this particular training?

A. No. I'm trying to think. When this happened I may have been out with my third child. So I may have been on leave when this happened. But I'm not recalling this training.

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Q. Okay. So it's -- other than, you know, since you've been at the training academy, you're not aware of this training other than the fact it may have been provided when -- at one time when you were not there?
A. Correct.
Q. This was produced by you in discovery. It's a video.
All right. So you can't tell me, is this -- can you tell where it is in that in the training academy -- I mean, I know it's a vanilla --
A. It looks like it could be Classroom C. But is that the only shot we get? Do we get any other shots of the walls?
(The video was played.)
Q. I think it's pretty much all from the podium, but. If you don't know, you don't know.
A. I'm not sure.
Q. Are there ever any training that's provided, you know, just to supervisors on topics at the training academy?
A. The -- so the supervisors' class, that's what it's dedicated for is supervisors. And then the supervisors are engaged in some of the off-site stuff. So, you know, we have some mandatory supervisor stuff through the state that's required and then some of them go off

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to like the FBI Academies and they will do some leadership academies through different organizations. So there's several different courses through -- as far as leadership courses.
Q. You know, I'm sure a lot of commanders or higher-ups, people in the supervisory thing go off-site and go to different seminars, correct?
A. Yes, sir.
Q. When they come back, do they ever put on seminars about what they learned?
A. Sometimes, but I can't attest to all of them.
Q. Okay.
A. Because some of that stuff may be done at troop level. You know, we've got 12 individual troops. And so some of the stuff, like let's say a captain goes to the FBI Leadership Academy and he comes back, he may host something there about something he learned, especially with his command staff, like his first line supervisors, sergeants, lieutenants up to him. But I -- that's not something that we normally organize.
Q. Okay. Are you aware of that happening in any circumstances involving EVOC or pursuit driving?
A. Any kind of training?
Q. Yeah, training where somebody came back and actually did it?

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A. Now, in troop meetings that would get -- so when I was in Troop A, that was something we always had topics that were -- that were portrayed; such as driving with regard to your speed. Speed has always been a thing that they've always taught us. Everybody slow down. Because they don't like accidents anywhere. And a commander, that's his worse nightmare is having to deal with accidents. So I know it's happened in Troop A because I was part of it. But as far as the stuff that goes on on the other troops, I haven't been -- haven't been present in those to be able to say if they do or don't.
Q. Any of the training that you recall or received in your particular troop, from your particular commander or supervisor, any of it inconsistent with anything that we've been talking about here with respect to the training that was formally provided?
A. No, sir.
Q. Is it kind of more reinforcement, kind of like roll call training?
A. Usually reinforcement of policies and procedures is the biggest.
Q. Okay. I think we got this thing copied. We're going to mark as Exhibit Number 37 the PowerPoint that you brought with you.

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(Deposition Exhibit 37 was marked.)
Q. And if you want to look at Exhibit 8 while we're going through it, that's fine.
Now, just for the purpose of identification, what we've marked as Exhibit 37, that is -- that is the PowerPoint that you used, correct?
A. That is not the PowerPoint that we have currently, no. This is one that was pulled out of a 2015 folder in our training drive.
Q. And we don't know if -- if exactly what was -- what was contained in Exhibit 8 at 985 to -- you know, starting at page 985 is the actual one that was trained and in-serviced or Exhibit 37, correct?
A. That is correct.
Q. All right. Well, let's look -- and you've looked over the one that we have marked as Exhibit 37, correct?
A. Yes, I have.
Q. Okay. It looks like, again, in this one, and this was a 3 hour class, correct, in 2015?
A. The in-service class?
Q. Yeah.
A. Yes, sir.
Q. All right. Again, they look like they start out making the analogy between gunfire and deaths caused by vehicles, correct?

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A. Yes, sir.
Q. And note that there's a lot more deaths that occur with respect to emergency vehicle operations, correct?
A. Yes, sir.
Q. All right. Always Be Alert. That's that videotape that we were talking about, correct?
A. I don't know that we have talked about that one. That is a videotape, yes.
Q. I thought that was the one. That's not the Michael Vaughn?
A. No, sir. It should be a different one.
Q. Okay. And this one appears to be a lot more on decision-making than the one marked as Exhibit Number 8, correct? It starts off completely different. Let me get to it. Actually, let me just try to conclude this up here.
These PowerPoints say what these PowerPoints say, right?
A. Yes, sir.
Q. Is there anything that you trained with respect to use of lights and sirens or pursuits or the immediate catch up to traffic offenders without lights and sirens that's not contained -- that is not already contained in this exhibit?
A. Only during practical stuff. So, yes. I mean,

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there are practicals that are done out there on EVOC, during traffic stops, during troop school.
MR. CLARKE: Okay. Let's take a break. I think I'm done.
MS. MERRIT: Sure.
(A recess was had.)
MR. CLARKE: No further questions.
(WHEREUPON, at 11:31 a.m., the taking of the above-entitled deposition was concluded.)

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CERTIFICATE

STATE OF ARKANSAS*
ss *
COUNTY OF SALINE *

I, JEFF BENNETT, Certified Court Reporter, a Notary Public in and for the aforesaid county and state, do hereby certify that the witness, BEN HOYT, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me in machine shorthand notes and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability

In accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was requested by the deponent or a party thereto

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action

GIVEN UNDER MY HAND and SEAL OF OFFICE on this 27th day of November, 2018

Jeff Bennett, CCR, LS No 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020

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ERRATA SHEET OF BEN HOYT

PAGE #	LINE #	ERROR	CORRECTION & REASON

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WITNESS SIGNATURE PAGE

I, BEN HOYT, the witness, hereby certify that I have thoroughly read the transcript of my deposition taken on the 9th day of November, 2018, and have made any necessary changes or corrections to make the transcript a true and accurate accounting of my testimony given on that day.

Signature

Date

****

STATE OF *
* ss.
COUNTY OF *

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for County, .
Given under my hand and seal of office on this day of , 2018.

My commission expires .

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REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, JEFF BENNETT, LS No. 19, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 90 constitute a true and correct copy of the original deposition of BEN HOYT taken on November 9, 2018.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 27th day of November, 2018.

_____
Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas
My Commission expires November 29, 2020.

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ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

CIVIL LIABILITY RELATING TO THE OPERATIONS OF POLICE VEHICLES

INTRODUCTION

Officers and their employing agencies routinely face the possibility of being held civilly liable for their actions, or the actions of their subordinates in law enforcement driving activities. Certain legal principles are common to the three types of law enforcement driving: non-emergency driving, emergency driving, and pursuit driving. Three liability concepts central to officers understanding the potential implications of their driving are negligence actions, intentional torts, and constitutional tort violations. Two other considerations officers must be aware of are departmental sanctions and criminal liability arising from the operations of police vehicles.

A basic understanding of the legal principles of liability will assist the officer in making proper driving decisions, and adjust his driving behavior to minimize the potential for liability in non-emergency driving, emergency response driving, and pursuit driving situations. Injured parties often argue that the officer's conduct was unreasonable under the circumstances, or constituted an intentional disregard for the victim or property. Officers must know the statutory requirements of police driving, possess the required driving skills, document training received, make legally proper driving decisions, and exhibit a driving behavior that weighs all factors existing at the time when engaging in the various types of police driving.

BASIC LEGAL CONCEPTS

An officer executing driving decisions and performing driving maneuvers must conform to existing statutes, case law, general liability principles, and departmental policy, to minimize the potential for the officer to incur civil, criminal, and departmental liability. Departments must ensure officer compliance with these principles to minimize financial loss due to officer driving misconduct, resulting in liability to the department.

Arkansas statutes and liability principles vary according to the type of driving the officer engages in, namely: non-emergency driving, emergency response driving, and pursuit driving. It is important that the officer understand the distinctions between the three types of police driving, the

various factors that vary from vehicle to vehicle depending upon ground, the officer will be able to make legally proper driving decisions to avoid unnecessary damage, injury, and liability to his department, as well as himself.

NON-EMERGENCY DRIVING

Non-emergency police driving is governed by the same liability principles applicable to civilian motorist. No statutory exemptions exist by virtue of the driver being a police officer, in a police vehicle, during non-emergency driving situations. Therefore, it is important police officers realize this, and drive in full compliance of statutes during typical non-emergency driving situations. If a statute is violated by an officer, the officer will be deemed negligent. If a lawsuit results, absent negligence by other parties, liability will be assumed against the officer and possibly the agency. The question will then become, "how much is it worth?" and not "was it the officer's fault?" Officers must also learn, understand, and comply with departmental policy. Policies are the department's view of what the law is relating to the area in question.

EMERGENCY RESPONSE DRIVING

The second type of police driving, emergency response driving arises when the officer is responding to an emergency and the officer is driving an "emergency vehicle". A.C.A. 27-36-303 defines an emergency police vehicle as "ALL state, county, or city and municipal police agencies shall install, maintain, and exhibit blue rotating or flashing emergency lights upon all police vehicle which are equipped with emergency lighting and operated within the Stat of Arkansas.

During emergency response driving situations, certain exemptions from compliance with the statutory requirements have been granted by statute to officers when responding to an emergency situation or where the officer reasonably believes his is responding to an emergency.
The officer must be responding in an authorized emergency vehicle activate certain emergency equipment in order to enjoy the exemptions granted in the statutes.

The officer must understand that a court applying the particular facts of the situation against the applicable statutes, determines if an emergency exists, not the officer.

A.C.A. 27-49-109 The driver of any authorized emergency vehicle when responding to any emergency call upon approaching

red or stop signal or any stop sign shall slow down as necessary for safety but may proceed cautiously past the red or stop sign or signal. At other times, drivers of authorized emergency vehicles shall stop in obedience to a stop sign or signal.

No driver of any authorized emergency vehicle shall assume any special privilege under this subtitle except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

A.CA. 27-51-901 Upon the immediate approach of an authorized emergency vehicle, when the driver is giving audible signal by siren, exact whistle, or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right hand edge or curb of the highway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

It can be readily seen that even though an officer may be exempt from certain traffic laws, the officer must exercise sound judgment and always consider the safety of others on, and near the roadways, or face civil and criminal liability.

PURSUIT DRIVING

A police pursuit can generally be described as the attempt to apprehend a person suspected of violating a law when that person is attempting to avoid apprehension. The legal definition of pursuit is by no means clear and is the subject of much controversy and many lawsuits. The same statutes that create exemptions from certain traffic laws for emergency vehicles also mandate that the driver must drive with due regard and caution, and without reckless disregard for the safety of all others. Officers must balance the seriousness of the emergency run against the potential damage or injury considering the existing circumstances. In these situations, the courts will

concerns are unfounded and are based on misinformation, uncertain, and rapidly evolving.

LEGAL BASIS FOR LIABILITY

Officers may incur liability from one or more of the available three legal theories: negligence actions, intentional torts, or constitutional torts. Many times officers are sued under a combination of these theories leaving the final determination up to a jury who often award large judgments against officers and their employing agencies. Usually these judgments are a result of a lack of reasonable department policies, a lack of or improper supervision, an absence of proper or current training for the officers, officer attitude and resulting behavior, and sloppy officer testimony during the civil trial. Officers, who have a solid understanding of departmental policy, current legal requirements, documented proficiency of job related skills, and an understanding of the proper techniques of testifying, will have the best chance of obtaining a favorable verdict if sued.

NEGLIGENCE ACTIONS

A negligence action contains the following four elements:

1. DUTY (police have a duty to perform in a non-negligent manner)
2. BREACH (perform in a negligent manner)
3. INJURY (an injury results from police conduct)
4. LEGAL CONNECTION (police conduct caused the injury)

An officer has a duty to perform in a reasonable manner - the way a reasonably prudent person would in a like circumstance. When an officer is driving 35 MPH in a 25 MPH zone, and strikes a child on a bicycle, a finding of negligence will probably result since a reasonable person would not have been driving in excess of the speed limit. Also, since the officer was exceeding the legal speed limit in a non-emergency situation, no statutory exemption will apply and he will be held negligent. Since the officer had a duty to drive without striking others, his breech of duty resulted in injury to another. His breech was the cause (legal connection) of the injury. It is important that officers drive in a reasonable manner-- complying with all applicable statutes when on routine patrol.

INTENTIONAL TORTS

An intentional tort is a wrongful act, intentionally perpetrated against another, and includes the following three elements:

1. INTENTIONAL ACT (an act intended to be committed)
2. NOT JUSTIFIED (no legal basis for the act)
3. RESULTING INJURY (injury or loss to the victim)

An intentional tort is an act committed with the intent to do the act. Where an officer intentionally rams a vehicle for fleeing and eluding, resulting in injury to the suspect, the officer may incur liability since ramming to apprehend for a misdemeanor is excessive force. (Ramming a two ton vehicle into a misdemeanant has been equated to the use of deadly force as with a firearm, since the potential for serious harm or death may result.) The three elements of an intentional tort are present in this ramming situation. The act was intended by the officer, an injury resulted, and the officer was not justified in using possibly fatal force to affect a misdemeanor arrest. The proper action is to understand the legal basis for doing what is intended (such as arrest authority or what constitutes a certain crime) and using only the force that is legally justified/objectively reasonable in that situation. Departments must ensure adequate policies exist to guide officers in the various areas encountered by those officers. Compliance must be ensured by the department including; if necessary, discipline up to and including dismissal where proper and justified. This is the only way for employing departments to attempt to avoid liability for intentional acts on the part of their officers. Departments cannot afford to employ officers who intentionally injure the very people they are sworn to protect.

CONSTITUTIONAL TORTS

A constitutional tort violation involves the following three elements:

1. A PERSON (includes people or municipalities, not states)

2. ACTING UNDER COLOR OF STATE AUTHORITY (acting in an official capacity enforcing a statute, ordinance, official policy, or unofficial policy allowed by the department)

3. DEPRIVATION OF A RIGHT, PRIVILEGE, OR IMMUNITY (includes rights guaranteed by the Constitution, statute, or other means)

Federal statutes (42 USC 1983) allow for suits where there ahs been a deprivation of any right, privilege, or immunity guaranteed by the Constitution and existing laws. If during a pursuit an officer or the person who the officer is pursuing, strikes an innocent third party and kills them, the

deceased person may sue the suspect, and/or the officer(s) depriving the deceased of life. The requirements of this cause of action are that a "person" acting under the color of the state law, deprived a person of a right, privilege, or immunity guaranteed by the Constitution or law. In the pursuit example, the officer was acting as an officer, he was a person (as required by federal statute) and if he worked for a township, city or county, the municipality may also be sued (since they are considered persons) and the deceased victim was deprived of the right (right to life). Therefore, the officer and employing department may incur liability in the situation.

Under federal tort violations, mere negligence on the part of the officer will not give rise to liability, however, intentional actions on the part of officers may. Supervisors whose officers engage in intentional misconduct have been held liable for improper supervision or inadequate training. For liability to attach for lack of or improper training, the lack of training must amount to a reckless disregard or a deliberate indifference to the rights of others. This means the departments must know an injury will likely result due to the lack of or improper training of its officers.

CONCLUSION

The goal of every officer and department should be to operate in a law enforcement environment effectively, safely, and professionally, without the constant fear of lawsuits against them. The most effective method of accomplishing this goal is to educate and maintain skill areas, and to establish and enforce departmental policies. Effective law enforcement methods must be implemented within the bounds of the law. Officers and departments can no longer merely "shoot from the hip" but instead must act based on knowledge and training to ensure compliance with existing legal mandates placed on law enforcement.

To protect yourself from the fear of lawsuits, you will have to establish that the police conduct in the course of the pursuit was reasonable under the circumstances, and in compliance with state law governing the operation of emergency vehicles.

DEFENSIVE DRIVING
OBJECTIVES

Given a written examination containing a number of statements taken from the lecture material and/or handouts, the student will be able to select the correct answer or determine whether the statement is true or false to the following:

*** The definition of defensive driving

*** The four driving patterns identified by the Life Style Theory of Driving and which is the most dangerous

*** The four characteristics of a good law enforcement officer

*** The five areas that comprise the Smith Systems of defensive driving

*** In normal routine driving situations, the basic driving skills which can reduce traffic collisions involving police fleet vehicles

*** Given that approximately forty percent of all officer deaths each year are traffic related, and that the average officer can expect to be involved in a crash every 28,000 miles of driving, state additional reasons why police officers should wear safety belts

*** The myths that some officers still adhere to that cause them not to wear safety belts

DEFENSIVE DRIVING
STUDY GUIDE

INTRODUCTION

Defensive driving is the ability to operate your vehicle in such a manner as to be able to avoid involvement in a preventable accident no matter what the road/weather conditions.
Anticipate a drivers next move, not waiting and then reacting to it.

EXPECT THE UNEXPECTED

Defensive driving is an overall philosophy that we were all exposed to since the beginning of our driving experience.

I. DRIVER

A. Basic understanding of human behavior in the driving environment is the essential ingredient in predicting the actions of other drivers. The Life-Style Theory of Driving is a plausible explanation of why drivers do the things they do. This theory proposes that in the driving environment, individuals are most likely to demonstrate the trait, behaviors, or personality characteristics that are evident during their non-driving time. We drive as we live. There are four driving patterns identified by the Life-Style Theory.

1. The Egotist

   a) Self centered (view highway as theirs)

   b) Aggressive (a get even philosophy but keeps emotions under wraps; rational aggression)

   c) Impatient (why wait when highway belongs to me)

   d) Immature (take everything as a personal affront)

   e) Demanding (insist on everyone driving his way)

2. The Over-Emotional

   a) Has all of the traits of an egotist, with immaturity as the most evident.

   b) Is the most dangerous type because of immediate and irrational reaction to everything.

   c) Commentary driving as an indicator (constant verbal barrage; evident to a lesser extent in the egotist).

3. The Rationalizer

   a) The most common of the four traits.

   b) Attributes actions to rational and credible motives.

   c) Always the other persons fault.

   d) Causes an air of over-confidence, which can be dangerous.

4. The Show off / Hot Dog

   a) Evident in drivers 16 to 24 years of age, predominately male.

   b) Ultimate risk takers with little concern of the consequences.

   c) Distorted opinion of their driving abilities and the performance capabilities of their vehicles.

5. Most drivers have a tendency to lapse into one or more of these driving patterns when they get behind the wheel of a vehicle. It becomes a measure of ones growth as an individual, of a developing maturity, for the frequency and duration of these lapses to diminish as age and experience are acquired.

B. Characteristics of a good law enforcement driver

The most important characteristic the law enforcement driver can possess is maturity. In addition, the educated law enforcement driver will need to possess the following specific attributes:

1. A level of driving skill beyond that possessed by non-law enforcement drivers.

2. A high degree of self control and emotional stability, i.e. the ability to remain cool, calm, and collected in stressful driving situations.

3. An accurate perception of their driving abilities and the performance capabilities of their vehicle.

4. The ability to successfully apply their actual driving skills to specific situations in the driving environment.

C. The Smith System of Defensive Driving

1. Aim high in steering

   a) Having your focus too close to the front of the vehicle will cause difficulty in keeping the car positioned in the lane.

   b) In urban areas 1-2 blocks ahead, in rural areas up to one half mile.

2. Keep your eyes moving

   a) Visually scanning everything in front of you and behind you produces the following benefits.

   b) Enhances peripheral vision.

   c) Prevents highway hypnosis.

   d) Reduces over-concentrating.

   e) Reduces physical and mental fatigue.

f) Increases powers of observations.

3. Get the big picture

a) Detecting everything in front, on the sides, and to the rear of your vehicle.

b) Double checking intersections.

c) Watching out for pedestrians, especially children.

d) Watching other drivers to predict their next move.

4. Leave yourself an out

a) Seeing potential conflict situations.

b) Establishing a "space cushion".

c) Planning an evasive maneuver.

d) Timing and execution of the evasive maneuver.

5. Make sure they see you

a) Establish eye contact with the other driver.

b) Signal intentions well before execution.

c) Use horn & lights.

d) Avoid other driver's blind spots.

e) Head check for your own blind spots.

f) No system of defensive driving can be better in its application, unless the driver possesses certain basic driving skills.

D. **The traffic collision experience among law enforcement drivers is almost three times greater than the traffic collision experience among non-law enforcement drivers.** Most of these traffic collisions involving police fleet vehicles occur in normal, routine driving situations. Listed below are the basic driving skills:

1. Establishing a safe speed

   a) Mindful of existing conditions.

   b) More speed, more distance required to stop.

   c) Slow down in urban areas:

      (1) Pedestrians: especially children.

      (2) Intersections.

      (3) Traffic congestion.

      (4) Reduced visibility.

2. Negotiate intersections

   a) Reduce potential conflict at intersections by:

      (1) Reducing speed on approach.

      (2) Covering the brake when approaching.

      (3) Establishing eye contact.

      (4) Knowing the right of way can become the dead right of way.

      (5) Left-center-right, right-center-left.

      (6) Watching out for right turns on red lights.

      (7) Never speed up to "beat the light".

(8) Always waiting 1-2 seconds before starting through on green light.

(9) Never enter an intersection at a speed faster than would permit a safe stop.

3. Lane position

a) Aim high in steering to help stay in your lane.

b) Care in changing lanes:

(1) Check rear and side mirrors.

(2) Signal early.

(3) Physically check your blind spot.

(4) Check mirrors again.

(5) Execute lane changes if safe to do so.

4. Executing turning movements

a) Next to intersections, the left turn is rated second as having the most potential for conflict.

b) Proper turn (lane usage).

c) Reduce speed.

d) Watch out for pedestrians.

e) Hard to judge speed of oncoming traffic during left hand turns, allow them plenty of space.

5. Police radio use

a) Transmit while driving in a straight line.

b) Always return radio "mic" to its holder.

(1) Never attempt to steer the patrol vehicle with the radio "mic" in your hands.

(2) Never drop the mic between your legs.

c) Know where your equipment is located.

d) Secure your equipment in the patrol vehicle.

II. VEHICLE

Of all the conditions that exist while driving, we only have control over two; driver and vehicle. It should be your responsibility to make sure your vehicle is in proper working condition. The best way to ensure the reliability and safety of the vehicle is through proper care and maintenance.

III. ENVIRONMENT

This area we have not control over. However, we can educate ourselves about the environment we live and work in by various means. Knowledge of forecast, roadways, traffic and light conditions, may dictate your approach to an emergency.

A. Weather Conditions

1. Affects your ability to see and be seen.

2. Severe weather may obscure traffic control devices.

3. Slow down, consider using high beams for better visibility.

B. Road Conditions

1. Curves, turns, hills, etc. hazard recognition is _____ reduced.

2. Road surfaces may vary from one to the next.

3. Shoulder driving - straddling the shoulder as an option.

1. Applies to both vehicle and pedestrians.

2. Morning vs. noon vs. afternoon.

3. Construction zones. (areas)

D. Light Conditions

1. Day vs. night are obvious factors.

2. Overcast skies, fog, smog, smoke, glare factors.

CONCLUSION

Many officers have never been properly trained in the skills needed with driving in the law enforcement environment. This fact alone makes it all the more important for the officer to be able to develop and implement an effective system of defensive driving. Remember, you and you alone are responsible for the passengers in your vehicle. Drive as though your own family is in the other car. The next time you get involved in a pursuit or emergency run, proceed accordingly.

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

VEHICLE DYNAMICS
OBJECTIVES

Given a written examination containing a number of statements taken from the lecture material and/or handouts, the student will be able to select the correct answer or determine whether the statement is true or false to the following:

*** Newton's Laws of Motion as they apply to the operation of motor vehicles

*** Forces that affect a vehicle in motion

*** The difference between under steer and overseer and how to correct each condition

*** What type of weight transfer occurs in various vehicle maneuvers

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

VEHICLE DYNAMICS
STUDY GUIDE

I. INTRODUCTION

Vehicle dynamics is an analytical and experimental technology that is used to study and understand the responses of a vehicle in various in motion situations. In driver training it is not necessary to deal with the specifics of this technology, but rather with some of the basic physical principals involved in it. There is no intent to give complete technical definition of each principal, but to present them in a manner that will be useful in understanding why a vehicle acts as it does.

II. DEVELOPMENT

A. Newton's First Law

1. Also known as the law of inertia.

2. A body at rest will remain at rest while a body in motion will remain in motion and at the same speed and in a straight line.

3. An external force is required to change the present state of the body.

B. Newton's Second Law

1. Also know as the law of acceleration.

2. The acceleration of a body is directly proportional to the force acting on the body while it is inversely proportional to the mass of the body.

3. A vehicle weighing 2,000 pounds equipped with a standard engine will accelerate at a certain rate. If the same vehicle is equipped with an engine with twice the power, the vehicle will accelerate at twice the rate as with the original engine (directly proportional).

4. If a vehicle weighing 4,000 pounds is equipped with the standard engine, this vehicle will accelerate at one half the rate of the 2,000 pound vehicle with the same engine (inversely proportional).

C. Newton's Third Law

1. Also known as the law of Reaction.

2. For every action there is an equal and opposite reaction.

3. During acceleration, the drive tires exert a force on the road surface. The road surface exerts a like force on the tires which moves the tires and the car forward.

D. Forces affecting a moving vehicle

1. Kinetic Energy

   a) The energy a solid object (vehicle) has due to mass and velocity.

   b) Kinetic energy moves in a geometric, not linear progression.

      (1) If speed is doubled, the kinetic energy is quadrupled.

      (2) It takes 4 times the distance to stop at 30 MPH as it does at 15 MPH.

2. Inertia (centrifugal force)

   a) The force that resist change in direction and velocity.

   b) Inertia increases with speed.

3. Centripetal Force

a) The force created by a vehicle while turning.

b) A center directed force that opposes inertia.

4. Momentum

a) The amount of motion (defined).

b) The product of the vehicle's mass times its velocity.

5. Coefficient of Friction

a) The maximum force generated by the tires of a vehicle upon the surface of the roadway divided by the weight of the vehicle.

b) Represented as a percentage of the pull of gravity

E. Under steer

1. What is it?

a) The vehicle travels in a line straighter than the front wheels are turned.

2. Causes

a) Built into car by the manufacturer.

b) Entering a curve too fast .

3. How to correct under steer

a) Release the brake and accelerator.

b) Unwind some steering to allow the wheels to regain rolling friction.

F. Over steer

1. What is it?

   a) The front wheels are turning in a tighter radius than are the rear wheels.

2. Causes

   a) Results from rough steering.

   b) Braking too deep and hard into a turn.

3. How to correct over steer

   a) Release brakes and ease off the accelerator.

   b) Steer in the direction you want to go.

G. Weight Transfer

1. Longitudinal

   a) Occurs during braking, accelerating, or decelerating.

   b) Weight is transferred front to rear or rear to front.

2. Lateral

   a) Occurs when turned from a straight line.

   b) Causes the suspension to be compressed on the opposite side from the direction of the turn.

   c) A series of reversing turns can have a cumulative effect of storing energy in the suspension.

H. Limit of Friction

1. The total amount of friction available is dependent on the surface.

2. It can be used for accelerating, breaking, or turning.

3. The sum total of friction used for accelerating braking and turning cannot exceed the friction limit or skidding will occur.

I. Tires

1. Tread grooves are designed to move water from under the tire.

   a) Sipes relieve water pressure from under the tread.

2. Tire Pressure

   a) Do not exceed manufacturer's maximum pressure as stated on the sidewall.

   b) Under inflation is the major cause of tire failure.

   c) Check tires cold (4 minutes or 1 mile).

   d) If hot, tires will read 4 psi high.

   e) Tires will lose 1 psi per month through permeation.

3. Speed ratings

   a) Be certain the speed rating is greater than the speed capability of the vehicle on which the tire is being used.

b) Speed rating symbols.

S = 112
T = 118
U = 124
H = 130
V = 149
Z = OVER 149

4. Tires affect vehicle handling

a) Incorrect tire pressure will create under steer or over steer in an otherwise good handling vehicle.

III. SUMMARY

The laws of motion are always at work as we operate a vehicle. Although they are rarely noticed at lower speeds, during pursuit and emergency driving, they will become a real noticeable factor. By understanding these laws and applying the techniques you will learn, they can be used to aid in high speed maneuvering.

PURSUIT DRIVING SCHOOL

VEHICLE MAINTENANCE
OBJECTIVES

Given a written examination containing a number of statements taken from the lecture material and/or handouts, the student will be able to select the correct answer or determine whether the statement is true or false to the following:

*** What equipment is checked in a pre-patrol inspection

*** The basic components of both disc and drum brakes

*** The primary cause of brake fade

*** What a brake pad sensor tells the driver

*** What speed ratings on tires mean to the driver

*** The difference in the pressure reading of the same tire hot as compared to cold

*** How normal permeation will affect tire pressure

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

VEHICLE MAINTENANCE
STUDY GUIDE

I. INTRODUCTION

The vehicle is one of the most important tools a law enforcement officer will use to carry out his/her duties. The manufacturer's have recognized this need and developed a special "Police Package" vehicle to meet the special needs of police work. Because it is so vital to carry out the functions, it becomes most important that the vehicle be reliable. The best way to insure the reliability and safety of the vehicle is through proper care and maintenance.

II. DEVELOPMENT

A. Pre-patrol vehicle checks

1. Brakes – good pedal, don't pull .
2. Steering - Excessive steering play, pulls.
3. Tires - Check for tread depth, cuts, bulges, and tire inflation.
4. Lights - Headlights, taillights, and turn signals all working and clean. Also check emergency lights.
5. Windshield - Clean and free of obstructions, wipers and washers working properly.
6. Horn - In proper working order.
7. Exhaust system – not leaking .
8. Seat Belts - In proper working order and adjusted snugly in place.
9. Parking brake - Properly adjusted and released.
10. Fuel – full tank at start of shift .

cracked and loose belts, check all fluid levels and replenish as needed.

12. Trunk - Check spare tire, fire extinguisher, first aid kit, and for loose articles.

B. Periodic Maintenance

1. Establish mileage or time for service.

2. Determine what service is to be performed.

   a) Oil change and filter

   b) Transmission fluid change

   c) Tune-up

   d) Check suspension and undercarriage for wear and damage.

C. Who Performs Maintenance?

1. Daily checks are done by the officer before and after each tour of duty.

2. A certified mechanic should perform service work

D. Brake Types

1. Disc brakes

   a) Generally on the front wheels.

   b) Major components are a rotor and caliper.

2. Drum brakes

   a) Generally on the rear wheels.

   b) Major components are a drum and shoes.

E. Brake systems

1. Hydraulic systems

   a) The system employs steel lines to each wheel with fluid being forced through lines, which forces the pads against the rotor or the shoes against the drum.

2. Mechanical system

   a) The system operates by cable or rod.

   b) It is generally used to operate the parking (emergency) brake.

3. Anit-lock Brake System (ABS)

   a) This system automatically accomplishes threshold braking when maximum braking is required.

   b) ABS works on any surface including split coefficient.

   c) A failure in the system will allow braking the same as a conventional hydraulic system.

F. Brake Maintenance and Troubleshooting

1. Brake burnishing

   a) Perform four impending skids from 60 MPH done in rapid succession.

   b) Allow brakes to cool before proceeding.

2. Brake fade

   a) It is generally a result of brake overheating.

   b) Once brakes have cooled, normal operations will resume.

a) Sensors produce a high pitch squeal which changes when brakes are applied.

b) Sensor noise indicates pads are nearly _____ worn out and must be replaced soon.

G. Tires

1. The only contact between the vehicle and the road, each tire has a contact patch about the size of the palm of your hand.

2. All vehicle movement (i.e. : starting, stopping, and turning) is transmitted from the vehicle to the road's surface through the contact patch.

3. Types of tires

   a) Bias ply - same stiffness in the tread and sidewall.

   b) Belted bias ply - belts under tread for tread stability increased tread wear.

   c) Radial - plies run from bead to bead.

   NOTE: Always use all the same type of tires on a vehicle.

4. Tire wear bars

   a) Wear bars appear when tread depth reaches 2/32 inch.

   b) At 2/32 inch tread, a tire has not more wet weather capability than a smooth tire.

5. Speed ratings.

   a) Be certain the tire speed rating meets or exceeds the speed capability of the vehicle on which the tire is being used.

NOTE: A spinning tire can attain a speed twice the speedometer reading.

6. Inflation

a) Do not exceed maximum pressure as indicated on the tire sidewall.

b) Under inflation is the major cause of tire failure.

c) Check pressure when tire is cold (less than 4 minutes of 1 mile of driving).

d) If hot, pressure will read 4 psi high.

Because the vehicle is so vital to carrying out the functions of a law enforcement officer, we must do all we can to assure the reliability and safety of the vehicle. By performing these routine checks and service work, we will increase reliability and safety. Since all starting, stopping, and turning are accomplished through the tires, proper care of tires is essential to safe operation. Do not mix types of tires on the same vehicle. Be certain that the speed rating on the tire meets or exceeds the speed capability of the vehicle on which the tire is being used. Maintain proper inflation, not exceeding maximum pressure as printed on the sidewall.

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

PERFORMANCE DRIVING
OBJECTIVES

Given a written examination containing a number of statements taken from the lecture material and/or handouts, the student will be able to select the correct answer or determine whether the statement is true or false to the following:

*** The capabilities and limitations of both the driver and the patrol vehicle

*** The use of proper braking techniques

*** The three most common types of curves

*** Reading the roadway

*** The use of proper steering techniques

*** The affects of forward inertia (centrifugal force)

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

PERFORMANCE DRIVING
STUDY GUIDE

I. PERFORMANCE DRIVING

A. This portion of the curriculum is devoted to developing good driving attitudes and to familiarize you with the proper principals and techniques used in performance driving. To select a proper line of travel through different radius turns by employing proper braking, steering, and acceleration techniques to safely negotiate turns and maintain control of the vehicle on the roadway. Performance driving will make you very aware of your own limitations as well as those of the patrol car.

B. Three types of curves

1. Constant radius curve - The radius remains constant throughout the curve.

2. Decreasing radius curve - The radius of the curve decreases as you traverse it.

   a) This type of curve can cause the greatest concern for law enforcements officers.

3. Increasing radius curve - The curve begins with a tighter radius, then increases as you traverse it.

C. Every curve will have an Apex .

1. An apex is described as the highest point of the inside of a curve. Before the apex the curve is tightening; beyond the apex the curve is opening up.

2. Driving apex locations.

   a) A constant radius apex location is found in the middle of the curve and is described as being a mid apex turn .

b) A decreasing radius apex location is found later in the curve, and is described as being a late turn .

c) An increasing radius apex location is found earlier in the curve, and is described as being an early turn .

D. Traversing a curve

1. Decrease your speed before the turn - slow into fast out of - it's always better to enter the turn too slow than too fast.

   a) All braking should be accomplished in a straight line - prior to entering the curve.

2. Line of travel

   a) A proper line of travel will be the safest and quickest route through a turn. Utilize all of the pavement legally available.

      (1) Reduces the stress on the vehicle.

   b) Outside - Inside - Outside

      (1) Set the vehicle up to the outside right edge for a left turn maneuver.

      (2) For a right turn, move out to the left side of the roadway as far as possible (staying within your own land on a two lane roadway).

   c) Outside - Outside - Inside

      (1) When negotiating a late apex turn, your need to stay outside longer through the turn. Remember that the apex is later in the curve.

(2) All of the wheels will remain on the same.

3. Steer the vehicle to the apex when you can see at about a 45 degree angle across the turn.

a) You should be as close to the inside edge of the turn as possible without leaving the paved portion of the roadway.

b) The vehicle is at its most stable point as it crosses the apex.

c) If there is a doubt of the apex location, take a late one. This will cause your entry speed to be slower but should ensure your safe exit out of the curve.

(1) Taking an early apex in a late apex curve increases your chance that you will run out of roadway before you exit the turn.

4. As you cross the apex, begin a gradual acceleration allowing your vehicle to move back to the outside of your lane.

a) The vehicle will want to move outside naturally, because of the increased forward inertia. (centrifugal force)

(1) Use only the amount of steering input necessary to complete the turn.

(a) Smooth steering inputs are a must, if you hope to maintain control of the vehicle.

5. Utilize shuffle steering for inputs greater than 45 degrees.

E. Reading the roadway

1. Is there more than one turn?

a) You must position the vehicle properly for additional turns which may be ahead.

b) You have to begin to scan ahead through the curve as much as possible, concentrating as much on where you're heading as where you're at.

c) The existing land contour can also be helpful in reading the road ahead.

2. How much roadway should be used?

a) Utilize as much roadway as is legally available.

b) On a two lane roadway, legally you must stay within your own lane.

c) On a limited access highway, traffic permitting, more than one lane may be available for your use.

d) Remember that the Act 300 identifies the laws which can be disregarded during an emergency run.

F. Braking for a curve

1. Threshold braking - right foot only.

a) Left foot brakers often ride the brake pedal, which can cause premature brake fade or loss, due to excessive heat buildup.

b) The vehicle is not designed to stop and go at the same time.

2. If braking during a turn is required, it should be a light squeeze of the pedal.

G. Driving within yourself

1. Never over drive the capabilities of either yourself or your vehicle.

2. Drive at 80% of your ability.

3. Driving at 100% of your ability leaves no room for error.

4. Smoothness is the safest and fastest.

5. Competition type driving has no place in law enforcement. If you wish to compete, then compete with yourself and work hard to improve your technique.

6. Learn to accept and stay within your limitations.

H. Any driver can approach a curve at high speed.
The true talent is in the proper completion of the cornering maneuver.

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

SKID CONTROL
OBJECTIVES

Given a written examination containing a number of statements taken from the lecture material and/or handouts, the student will be able to select the correct answer or determine whether the statement is true or false to the following:

*** What effective skid control training will teach you

*** What a driver will have greater success at than regaining control after a skid

*** The "critical link" in the control of your vehicle

*** The three types of friction

*** The differences in "grip" between the three types of friction

*** The four different types of skids

*** The proper driver actions to recover from the four types of skids

*** What a driver should always anticipate when involved in a skid

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

SKID CONTROL
STUDY GUIDE

I. SKID CONTROL

A. Probably the major factor that makes skids a significant accident cause is the aura of mystery and misinformation regarding their cause, effect, and correction.
The driver who is "caught off guard" by a skid and who knows little or nothing about the forces involved suffers momentary panic, and hence, does either nothing or reacts improperly.

1. A skid can be defined as loosing traction or "grip" with the roadway, by one or more or the tires.

2. Effective skid control training will teach you

   a) To recognize the start of a skid

   b) What to do when a skid occurs

   c) How to avoid a skid

3. A driver will have greater success in avoiding a skid, than he/she does of regaining control after a skid is experienced.

B. The "critical link" in the control of your vehicle is your tires.

1. Since they are the points where the vehicle comes into direct contact with the road, anything the vehicle does, including any skid, is ultimately translated through them.

2. Remember that the tire "contact patch" with the roadway, is not larger than the palm of your hand.

C. Friction, or the "grip" between the tires and the road, allows the car to start, stop, and corner.

1. There are three types of friction at work in a vehicle.

   a) Static friction

   b) Kinetic friction

   c) Rolling friction

2. Static friction is the greatest, then rolling friction, with Kinetic/sliding friction providing the least amount of grip.

3. Once a vehicle is under motion, only two types of friction will have any influence on the vehicle - rolling friction and sliding friction.

D. Skids can be divided into four major categories.

1. Acceleration skids.

   a) Although this type of skid can at times, involve all four wheels, generally only the drive wheels are involved.

2. Cornering skids.

   a) Generally caused when a vehicle in a turn, is traveling at a great enough speed to cause the tires to lose rolling friction.

3. Braking skids.

   a) Caused by excessive braking, resulting in wheel lockup.

4. Hydroplaning skids.

   a) Caused by the tires riding up on top of a thin layer of water present on a wet roadway.

F. **When a sudden and unexpected skid occurs, driver experience and/or training will dictate the driver's actions.** Proper corrective action, in a timely manner, is essential if control of the vehicle is to be regained.

1. Acceleration skids

   a) Reduce acceleration - allow the drive wheels to stop spinning and regain rolling friction with the roadway surface.

   b) If steering adjustments are necessary, look and steer the vehicle in the direction you want to go.

2. Cornering skids

   a) Take your foot off the accelerator, to allow the front wheels of the vehicle to regain rolling friction.

   b) Slightly decrease your steering input.

   c) If steering adjustments are necessary, look and steer the vehicle in the direction you want to go.

3. Braking skids

   a) Reduce your foot pressure on the brake pedal to allow the wheels of the vehicle to regain rolling friction.

   b) If steering adjustments are necessary, look and steer the vehicle in the direction you want to go.

4. Hydroplaning skids

   a) Reduce your speed.

   b) If steering adjustments are necessary, look and steer the vehicle in the direction you want to go.

5. Use hand over hand steering inputs to regain control of the vehicle after being involved in a skid.

6. If involved in any type of skid, you should always be aware of, and anticipate a secondary skid.

F. The best measure in skid control is being aware of the causes of skids and driving to avoid them if possible, and adjusting your driving style for different conditions, such as:

1. Highway and weather conditions.

   a) Adjust your speed and following distances accordingly for:

      (1) Weather - fog, ice, snow, rain, etc.

      (2) Traffic - rush-hour, tie-ups, etc.

      (3) Night driving - your view ahead will be reduced.

      (4) Your vehicles handling, its capabilities and limitations.

2. No two patrol cars will handle exactly the same.

   a) Develop a fell for the vehicle's brakes.

   b) Be familiar with the location of the various controls inside the vehicle.

   c) Know the vehicle's power potential.

G. Remember that to be effective in regaining control of your vehicle when experiencing a skid requires that you react quickly to the start of the skid, using quick hand over steering inputs.

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

PRECISION IMMOBILIZATION TECHNIQUE (PIT)

OBJECTIVES

Given a written examination containing a number of statements taken from the lecture material and / or handouts, the student will be able to select the correct answer or determine whether the statement if true or false to the following:

*** The capabilities and limitations of both the driver and the patrol vehicle

*** The proper use of the accelerator and brake in performing the PIT maneuver.

*** The proper target area

*** Understanding proper site selection

*** ASP policy regarding PIT

ARKANSAS STATE POLICE
PURSUIT DRIVING SCHOOL

PRECISION IMMOBILIZATION TECHNIQUE (PIT)
STUDY GUIDE

A. COURSE GOAL

To equip students with the knowledge, tools, and hands on training experience of performing the Precision Immobilization Technique. To make students aware of the dangers and or hazards associated with this training. To inform students of the liability that comes with utilizing this technique. Great emphasis will be placed on safety, using good judgment and decision making.

B. THE PIT TECHNIQUE

1. Match the vehicle's speed
2. Gently make contact in target area
3. Turn wheel and accelerate until vehicle passes 26 degrees
4. After 26 degrees, straighten wheel and tap brakes
5. Assume proper take down position

C. SITE SELECTION

1. Desired Locations
    a. Free of oncoming traffic
    b. Free of pedestrians
    c. Open field/empty lot
    d. Divided highway
    e. Median dividers
    f. Curves (if visibility is not restricted)

2. Undesirable Locations (Do not Use)
    a. Pedestrians present
    b. Convenience stores (fuel pumps)
    c. Electrical poles or boxes
    d. Parked vehicles
    e. Embankments

D. VEHICLE SELECTION

1. The PIT maneuver can be successfully completed on almost any passenger vehicle, however vehicles with a high center of gravity takes extra finesse and smoothness. These vehicles have a high propensity to overturn.

2. Vehicles not to be pitted
   a. Vehicles carrying Haz-Mat
   b. Motorcycles
   c. Pickup trucks with passengers in bed
   d. Vans or busses with passengers that appear to be victims
   e. Hi-Rider pickups

E. PIT POSITIONS

1. Right Curve Advantages
   a. Both vehicles are slower
   b. Violator's vehicle suspension is loaded
   c. Violator's vehicle will travel shorter distance
   d. Violator's vehicle will not enter oncoming traffic

2. Right Curve Disadvantages
   a. Visibility around curve
   b. Patrol vehicle may be on surface of lesser traction

3. Left Curve Advantages
   a. Both vehicles are slower
   b. Violator's vehicle suspension is loaded
   c. Violator's vehicle will travel shorter distance
   d. Patrol vehicle will be on solid surface
   e. Violator is watching roadway

4. Left Curve Disadvantages
   a. Visibility around curve
   b. Vehicle will cross oncoming lanes

5. Straight Roadway Right Side Advantages
   a. Good visibility ahead
   b. Violator's vehicle travels to right side

6. Straight Roadway Right Side Disadvantages
   a. Violator is watching and may read your intentions and attempt an evasive maneuver
   b. Speeds are generally higher
   c. Patrol vehicle may have to be on surface of lesser traction

7. Straight Roadway Left Side Advantages
   a. Good visibility
   b. Patrol vehicle will be on solid surface

8. Straight Roadway Left Side Disadvantages
   a. Violator is watching and may read your intentions and attempt an evasive maneuver
   b. Speeds are generally higher
   c. Violator's vehicle may cross over into oncoming traffic

F. VIOLATOR TAKEDOWN

1. Assume proper position
2. Apply felony takedown

USE OF FORCE

General Guidelines: Officers are allowed to use such force as is reasonably necessary under the circumstances to carry out their duties.

Officers should escalate or de-escalate their use of force in response to the actions of the subject against whom force is used.

Under no circumstances should officers use force as a means of retaliation or punishment.

Definitions: For purposes of this policy, the following definitions apply:

"Force" and "Use of Force," as used in this policy, refers to any form of "physical force" or "deadly physical force" as those terms are defined below.

"Physical force," as used in this policy, is defined as any bodily impact, restraint, or confinement, or the threat thereof. A.C.A. § 5-2-601(6).

"Deadly physical force," as used in this policy, is defined as physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. A.C.A. § 5-2-601(2).

"Serious physical injury," as used in this policy, is defined as physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. A.C.A. §5-1-102(21).

"Reasonably believe" or "reasonable belief," as used in this policy, is defined as a belief that an ordinary, prudent person would form, under the circumstances in question, and not recklessly or negligently formed. A.C.A. § 5-1-102(18).

"Subject" as used in this policy, is defined as any person with whom an officer has contact in the course of carrying out the officer's official duties.

Examples of Force: Use of force includes, but is not limited to:

- Striking, pushing, shoving, holding, or any other physical contact by an officer's body which has the intended purpose of disabling, immobilizing, restraining, detaining, or arresting a subject;

- Carotid restraint which has the intended purpose of restricting the flow of blood to the brain by applying pressure to the sides of a person's neck;

- Striking a subject with a solid object;

- Use of Oleoresin Capsicum (OC) or other authorized chemical agents or a combination of authorized chemical agents;

- Use of electronic control devices;

- Use of tire deflation devices;

- Intentionally cause a collision with another motor vehicle for the purpose of functionally damaging or forcing the other vehicle off the road.

- Use of kinetic energy impact projectiles which are intended to incapacitate a subject with a minimal potential for causing death or serious physical injury when compared to conventional projectiles;

- Use of a canine under circumstances where the canine causes injury to a subject at the direction of the handler; or

- Intentional discharge of a firearm in the direction of a subject, an occupied motor vehicle, or an occupied house or other structure.

Officers are allowed to use such force as is reasonably necessary under the circumstances to carry out their duties.

Actions by an officer which are not considered use of force include, but are not limited to:

- The reasonable touching of a person or a firm grasp used to maintain control, guide, or assist an individual;

- The application of handcuffs where the person being handcuffed does not offer serious physical resistance; or

- The reasonable touching or display of an authorized weapon.

Use of Non-deadly Physical Force Generally: An officer is authorized to use non-deadly physical force or threaten to use deadly physical force upon another person if the officer reasonably believes it necessary to: (1) effect an arrest or to prevent the escape from custody of an arrested person unless the officer knows the arrest is unlawful; or (2) defend himself or herself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape. A.C.A. § 5-2-610 (a) (1-2).

Use of Deadly Physical Force Generally: An officer is authorized in using deadly physical force upon another person if the officer reasonably believes that it is necessary to: (1) effect an arrest or prevent the escape from custody of an arrested person whom the officer reasonably believes has committed or attempted to commit a felony and is presently armed or dangerous; or (2) defend himself or herself or a third person from what the officer reasonably believes to be the use or imminent use of deadly physical force. A.C.A. § 5-2-610(b)(1-2).

Authorized Use of Firearms: The use of a firearm in the performance of an officer's official duties should conform to the requirements set forth this Manual.

Appropriate Medical Aid: Appropriate medical aid will be provided in a safe and reasonable manner to any person who is injured or who complains of injury.

Appropriate aid includes but is not limited to:

- Observation by an officer to detect obvious changes in the person's condition which may require additional aid;
- Flushing chemical agents from the eyes and face;
- Summoning emergency medical personnel or transportation to a medical facility;
- Application of first-aid treatment.

REPORTING AND INVESTIGATING USE OF FORCE

Definitions: The definitions defined in the Use of Force policy in this Manual also apply to this policy.

Deadly Physical Force

I. Involved Officer(s) Reporting Requirements:

Preliminary Actions: An officer that has been involved in deadly physical force or the use of deadly physical force should immediately or as soon as practical:

- Render medical assistance to any injured persons;
- Call for any needed medical assistance;
- Secure any weapons, vehicles, or other items used to employ force, if necessary;
- Notify the local Arkansas State Police communications center;
- Notify the on-duty supervisor for the area of occurrence;
- Stand by, preserve the scene, and take whatever other action is appropriate under the circumstances (traffic control, crowd control, etc.);
- Await further instructions from the on-duty supervisor; and
- Make a preliminary verbal report of the incident to the on-scene supervisor or as directed.

Additional Reporting Requirements for Involved Officers: A preliminary verbal report with the Criminal Investigations Division Agent(s) and officer(s) who took such action or used such force is required. Details from that interview should be reduced by the CID interviewing Agent, to a written narrative statement on an (ASP 3). The ASP-3 and a Use of Force Report (ASP 22) should be completed within 48 hours unless it is impractical to do so under the circumstances.

As soon as practical under the circumstances, all other Arkansas State Police officers who were involved in, or who witnessed the incident involving deadly physical force should verbally describe their involvement to the on-scene supervisor and/or as directed. Those officers should also reduce their verbal statements to a detailed written report.

The officer(s) utilizing deadly physical force and the officer(s) witnessing such force should review all video tapes and audio tapes relating to the incident prior to completing the written report and/or the Use of Force Report (ASP 22).

Drug/Alcohol Testing: Upon being notified of a use of force incident where an officer(s) used deadly physical force, the Troop/Company/Section Commander, or his/her designee, from the Division primarily responsible for the matter, should arrange for the drug/alcohol testing of the officer(s) involved as prescribed in Critical Incident Testing. See policy entitled Drug and Alcohol Free Workplace located in the General Manual.

Removal from Line of Duty Assignment Pending Review: Any officer whose actions or use of deadly physical force result in a death or serious physical injury will be temporarily removed from a line of duty assignment pending a preliminary administrative review. This action should not be construed as an indication of wrongdoing by the officer. The Administrative Services Division Commander or his/her designee will serve as the officer's point of contact for informational purposes during the administrative review.

The officer's Division Commander will determine the length of time during which the officer will be temporarily removed from line of duty assignments and may arrange for the officer temporarily to assume other duties, if appropriate under the circumstances. The Division Commander may restore the officer to a line duty assignment after the preliminary administrative review of the incident has been completed and the officer has completed a debriefing through a professional designated by the department. The department will assist the officer in obtaining additional counseling and any other such services that may assist the officer in recovering from stress and/or other psychological effects resulting from the incident.

II. Use of Deadly Physical Force Criminal Investigation:

Notification of CID Regarding the Use of Deadly Physical Force: Upon being notified of a use of force incident where an officer(s) used Deadly Physical Force, the Troop/Company/Section Commander, or their designee, from the Division primarily responsible for the matter, should promptly notify the local Criminal Investigation Division (CID) Commander. The Troop/Company/ Section Commander, or his/her designee, from the Division primarily responsible for the matter, should also make the notifications which are required for matters that fall within Reporting, Level One. See policy entitled Chain of Command in this Manual.

The CID will have the primary responsibility for conducting the deadly physical force investigation. This investigation will document the criminal violations of the suspect that resulted in the officer's use of deadly physical force and will include all details surrounding the use of deadly physical force by the officer.

Prosecutor's Review: Upon CID's completion of the investigation, the investigative case file will be delivered to the prosecuting attorney of the appropriate jurisdiction with

a copy provided to the Commander of the involved officer. It is recommended that a letter be requested from the prosecuting attorney after his review summarizing his findings and determinations. A copy of this letter should be provided to the officer(s) involved in the incident.

III. Use of Deadly Force Administrative Investigation:

The Troop/Company/Section Commander, or their designee, from the Division primarily responsible for the matter, should notify the Office of Professional Standards. OPS will monitor the CID investigation for administrative purposes. The OPS will send an officer to the scene if death or physical injury has occurred or if directed by the administration.

The Use of Force Report (ASP 22) and a copy of the completed CID investigation will be forwarded to the Division Commander for review. The Division Commander will deliver a final copy to the Office of Professional Standards (OPS). OPS will maintain a copy of the investigation and reports in the Use of Force files. The Division Commander will, if appropriate, make copies for other Division Commanders having officers involved in the use of deadly physical force directly related to this incident.

Upon the Division Commander's review of the investigation, the Division Commander, in conjunction with the Deputy Director or Director, should determine whether the officer's use of force was consistent with Arkansas State Police policy and whether the officer's actions were appropriate.

If the officer's actions were determined to have met legal standards and conformed to ASP policy, the Division Commander will provide a letter to the officer indicating that the officer's actions met legal guidelines and standards required by ASP policy.

Office of Professional Standards (OPS) Responsibilities: If the Division Commander determines that Arkansas State Police policy may have been violated the matter will be referred to OPS.

If an investigation is warranted, OPS should report directly to the Deputy Director, or designee, and shall keep the Deputy Director, or designee, informed the status of the investigation. At the conclusion of the investigation and upon receipt of the investigative file, the Deputy Director, or designee, should review the file for accuracy and completeness.

When the file is complete, the Deputy Director, or designee, will forward the file to the respective Division Commander who should request a Command Staff Review Board (CSRB) be convened.

Deadly Physical Force Review Board: The Deadly Physical Force Review Board is established for the purpose of reviewing and evaluating incidents where officers employ deadly physical force. All such incidents will be reviewed by the Deadly Physical Force Review Board as soon as practical after completion of the use of force investigation. The incident being reviewed will consist of a duplicate copy of the criminal investigation. All documents will remain confidential until the criminal investigation and charges, if any, have been adjudicated.

The Deadly Physical Force Review Board should consist of not less than three (3) or more than five (5) members appointed by the Director. The Board should be comprised of the following: a member of the training staff; the ASP State Firearms Officer; a Troop Commander; a Company Commander, and an at-large member. Three (3) board members will constitute a quorum. The Board is responsible for reviewing the officer's use of force and evaluating such force in comparison to training, supervision, equipment needs or other issues identified. The Deadly Physical Force Review Board is not assigned the responsibility for determining legal, policy or procedural violations as they relate to disciplinary actions. The Command Staff Review Board (CSRB) is responsible for the review and determination of policy violations per LE SEC 4.

The senior board member, measured by length of time in rank, should serve as the chairman of the board. The chairman will convene the Deadly Physical Force Review Board for the purpose of reviewing an incident that involves the use of any form of deadly physical force, regardless of whether the use of such force resulted in, or is alleged to have resulted in, death or physical injury.

The Deadly Physical Force Review Board will meet in closed session. The Review Board has the authority to require officers, and to request other witnesses, to appear before it to answer questions concerning the use of the deadly physical force being reviewed.

After conducting its review of the use of deadly physical force incident, the members of the Deadly Physical Force Review Board will confer on the matter. Thereafter, the chairman should assign one (1) member of the Review Board to prepare a written report of the Board's findings and recommendations, if any. Once the written report is approved by all Board members who were in attendance at the meeting, the chairman will provide a copy of the written report to the Director. Until the Director acts upon the recommendations of the Deadly Physical Force Review Board, all documents will remain confidential.

Reporting and Investigating Non-Deadly Physical Force or Other Action – Resulting in Injury or Alleged Injury: The following investigative requirements apply when an

officer's use of non-deadly physical force results in or are alleged to have resulted in injury, other than serious physical injury to another person.

Additional Reporting Requirements for involved officers:

- The verbal report required from the officer(s) who took such action or employed such force should be reduced to a written report. The written report and a Use of Force Report (ASP 22) should be completed within twenty-four (24) hours unless it is impractical to complete under the circumstances.

- As soon as practical under the circumstances, all other Arkansas State Police officers who were involved in, or who witnessed the incident involving such action or force should verbally describe their involvement to the on-scene supervisor and/or as directed. Those officers should also reduce their verbal statements to a written report.

- The officers utilizing non-deadly physical force and the officers witnessing such force should review all video tapes and audio tapes relating to the incident prior to completing the narrative statement and/or the Use of Force Report (ASP 22).

- A supervisor should be responsible for conducting the use of force investigation and for ensuring that the Use of Force Report (ASP 22) and any additional investigative reports are complete and accurate.

- The supervisor should forward the required report(s) through the chain of command to the officer's Troop/Section/Company Commander. Upon their review, the Troop/Section/Company Commander will forward the report(s) to the Division Commander. Upon receipt of the reports, the Division Commander will review the file and forward a copy of the file to OPS.

Reporting and Investigating Non-Deadly Physical Force Incidents (No Injury or Alleged Injury): The following investigative requirements apply when an officer's use of non-deadly physical force does not result in, and is not alleged to have resulted in injury.

- The officer should immediately notify and make a verbal report of the incident to the on-duty supervisor.

- The officer should reduce his verbal report of the incident to writing on a Use Non-Deadly Physical Force Report (ASP 22).

- The officers utilizing non-deadly physical force and the officer's witnessing such force should review all video tapes and audio tapes relating to the incident prior to completing the narrative statement and/or the Use of Force Report (ASP 22).

- A supervisor should be responsible for conducting the use of force investigation and for ensuring that the Use of Non-Deadly Physical Force Report (ASP 22) and any additional investigative reports are complete and accurate.

- The supervisor should forward the required report(s) through the chain of command to the officer's Troop/Section/Company Commander. Upon their review, the Troop/Section/Company Commander will forward the report(s) to the Division Commander. Upon receipt of the reports, the Division Commander will review the file and forward the original file to OPS.

Review of the Use of Non-Deadly Physical Force Incidents: The use of non-deadly physical force by officers should be reviewed by the officer's supervisors and forwarded through the chain of command to the officer's Division Commander.

At every stage of review by the officer's supervisor, the supervising officer should note his approval or disapproval of the officer's use of force in the use of force investigative file. If a supervisor disapproves of the officer's use of force, the supervisor should explain the reason(s) in a memorandum and place a copy of the memorandum in the investigative file.

Upon the Division Commander's review of the investigation, the Division Commander should determine whether the officer's use of force was consistent with Arkansas State Police policy and whether the officer's actions were appropriate. If the Division Commander determines that Arkansas State Police policy may have been violated, the use of force incident will be referred to OPS.

Distribution of Report(s): When the investigation is completed and the file becomes accessible under the Arkansas Freedom of Information Act, copies of the use of force investigation, including video and audio evidence, should be forwarded to the designee of the Director for data collection and analysis.

PURSUITS

Definitions: For purposes of this policy, the following definitions apply:

"Vehicle Pursuit" and "Pursuit" means an attempt by an ASP officer in an official vehicle to stop a moving vehicle when the driver of such vehicle is aware the officer is signaling the vehicle to stop and disregards the officer's attempt to stop the vehicle.

"Official Vehicle" means a vehicle issued by the department equipped with emergency lights and siren and operated by an Arkansas State Police officer.

"Fleeing / Attempting to Elude" refer to Ark. Code Ann. §5-54-125.

"Supervising Officer" means the officially designated officer-in-charge.

"Primary Unit" means the officer who is closest to the fleeing vehicle.

"Secondary Unit" means the second officer to engage in a pursuit, whether upon the request of the primary unit or a supervising officer.

"Third Unit" means the requested or assigned third unit.

Pursuit Guidelines: The following guidelines are intended to assist officers in making sound decisions regarding pursuits:

- When involved in a pursuit the officer has the duty to drive his/her emergency vehicle with due regard for the safety of all persons using the highway.
- No more than two (2) units should be committed to a pursuit unless the primary unit or a supervising officer specifically advises that additional units are needed to safely affect the arrest of the suspect(s).
- Officers in partially marked, or unmarked official vehicles should turn over primary unit status upon the arrival of a marked secondary unit.
- Only official vehicles shall engage in pursuits. Emergency lighting equipment and siren shall be in operation throughout the pursuit.
- Officers involved in pursuits should use their unit number with all radio transmissions and should communicate on the same radio frequency.
- Officers transporting persons other than commissioned officers shall not engage in pursuits. This does not apply to approved observation riders (*see* Vehicle Use policy located in the General Manual).
- Vehicles operated by non-commissioned personnel shall not engage in pursuits.

Primary Unit Responsibilities: When a primary unit initiates a pursuit, he/she is responsible for advising the communications center of the following:

- Unit identification;
- Location, direction of travel, speed, and traffic volume;
- Any hazardous conditions, if possible;
- Description of the fleeing vehicle and license number, if known;
- Description of the suspect driver, if known; and
- Reason for the pursuit, including crimes or violations committed.

Secondary Unit Responsibilities: The acknowledged or assigned secondary unit, upon joining the pursuit, shall advise the communications center of its involvement. The secondary unit shall be primarily responsible for radio communications so that the primary unit can devote full attention to the fleeing vehicle. The secondary unit shall replace the primary unit in the event the primary unit cannot continue the pursuit.

Third Unit Responsibilities: A third unit, in the event one is requested or assigned, shall have the following responsibilities:

- Replace either of the first two units in the event that one of them is unable to continue the pursuit;
- Discontinue the pursuit and render aid in the event of a collision involving third parties or to recover evidence; and
- Be in a position at the point of pursuit termination to implement a felony stop, containment, or apprehension of fleeing suspects or to provide traffic control as necessary.

Backup Unit(s) Responsibilities: Other units in the pursuit area should monitor the progress of the pursuit. They should not engage in the pursuit unless requested to do so by the primary unit or directed to do so by a supervising officer. These units should be ready to replace any assigned unit in the event the assigned unit cannot continue the pursuit. They should also be in a position to respond to any collision that may result from the pursuit. Backup units should be available to assist in the apprehension of the suspect(s) at the termination of the pursuit or provide any needed traffic control.

Supervising Officer Responsibilities: Once a supervisor has been notified of a pursuit he/she assumes command of the pursuit and may order termination of the pursuit.

The supervisor in command of the pursuit should advise the communications center.

A supervisor shall continue supervisory command of a pursuit until it has ended. In situations when no supervising officer is on duty when a pursuit occurs, the involved officer(s) may proceed with the pursuit in accordance with this policy.

Communications Center Responsibilities: The communications center should immediately broadcast available information concerning a pursuit to local units, designate the radio frequency to be used during the pursuit, and follow departmental procedures for the use of emergency traffic status. Pursuit communications should be considered priority.

If possible, the communications center shall advise the on duty or on call supervisor of an ongoing pursuit. Initiation or any change of supervisory command should be communicated to all involved units. Through available data/information, the communications center should attempt to obtain information concerning the identity of the driver and ownership of the vehicle.

When a pursuit approaches or occurs in a municipal jurisdiction, the communications center shall notify the affected jurisdiction. When a pursuit extends into or approaches an adjoining Troop, the controlling communications center should transfer the pursuit to the newly affected Troop as soon as practical.

Opposing Direction of Traffic Pursuits: Absent exigent circumstances, officers shall not proceed in an opposing direction, on a divided highway, freeway, freeway access, or one-way street. Officers should obtain supervisor approval before proceeding in an opposing traffic direction. Supervisors shall cautiously consider traffic volume and hazards, severity of the crime, and the need for immediate apprehension before authorizing an officer to proceed.

Officers shall not normally follow the pursuit on parallel streets unless authorized by a supervisor or when it is possible to conduct such an operation without unreasonable hazard to other vehicular or pedestrian traffic.

Pursuits into Another Jurisdiction or Troop: When a pursuit extends into a municipal jurisdiction or adjoining Troop, the pursuing officers may turn over the pursuit to a local

officer, if available, and advise the communications center that their involvement has been terminated.

Out of State Pursuit: Laws in Oklahoma, Missouri, Mississippi, Tennessee, Texas, and Louisiana, provide for ASP officers in pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony to continue pursuing into their state. Officers making a felony arrest in another state shall take the arrestee, without unnecessary delay, before a magistrate of the county in the state in which the arrest is made.

Other Agency Pursuits: Absent exigent circumstances officers should not become involved in pursuits initiated by another agency without an official supervisory request from the other agency and approval from the on call/on duty ASP supervisor. ASP officers engaged in other agency pursuits shall adhere to ASP pursuit policies.

Initiation and Termination of a Pursuit: Officers should exercise discretion in deciding whether to initiate a pursuit. The decision to terminate a pursuit can be made by the primary unit or ordered by a supervisor at any time during the pursuit. Those making decisions to initiate or terminate a pursuit should consider the totality of the circumstances, such as the nature of the offense, the time of day, an evaluation of hazardous conditions, geography, familiarity with the area, types of official vehicles involved, and the actions of the fleeing driver.

A pursuit should be terminated when:

- The officer or supervisor believes that the risk to the public outweighs the need for immediate apprehension of the suspect;
- A supervisor orders the pursuit terminated;
- The name and address of the suspect is known to the officer and the offense involved is a traffic violation, a misdemeanor, or a non-violent felony; or
- The officer loses visual contact with the fleeing vehicle for an extended period of time.

Whenever an official vehicle experiences mechanical breakdown or equipment failure, the unit should terminate its involvement in the pursuit.

Once the pursued vehicle is stopped, officers shall utilize appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

Officers who have terminated a pursuit shall deactivate emergency equipment and drive at routine patrol speeds. Upon termination, officers may follow the suspect vehicle's predicted route of travel.

Methods of Forcible Stop

Intentional Intervention: For purposes of this policy, "intentional intervention" means the use of an ASP vehicle to intentionally cause a collision with another motor vehicle for the purpose of functionally damaging or forcing the other vehicle off the road. A Precision Immobilization Technique (PIT) falls within this definition.

Roadblocks: A roadblock is a barricade using vehicles or other obstructions, excluding the hollow spike strip, across a roadway set up to stop or prevent the escape of a fleeing vehicle.

Roadblocks may be used to stop a fleeing vehicle when objectively reasonable to do so, provided:

- A description of the suspect(s) and suspect vehicle is available (the description must be adequate for proper identification).
- Unless Deadly Physical Force is justified, the roadblock must be plainly visible to the operator of the fleeing vehicle from a distance that would allow the operator of the fleeing vehicle to safely stop before reaching the roadblock.
- Supervisory approval is obtained, when possible.

Hollow Spike Strip: Pursuing officers should keep officers at the site of the spike strip informed of the following:

- Location by milepost or cross-street.
- Direction of travel and speed.
- Erratic driving behaviors.
- Possible weapons involved.
- Any other data pertinent to the pursuit.

When deploying a hollow spike strip, the following precautions should be considered:

- The officer deploying the spike strip should do so from a position of safety.

- During high speed pursuits, the spike strip should not be used in locations where specific geographic configurations increase the risk of serious injuries to the officer, violator, or the public (alongside of rivers, embankments, etc.).

- Effort should be made to stop oncoming traffic some distance from the actual deployment site before deploying a spike strip on two-way roadways.

- The spike strip may be used to stop fleeing motorcycles when Deadly Physical Force is justified.

- Absent exigent circumstances, the use of spike strips should not be used for trucks carrying hazardous materials or vans/buses occupied by passengers who appear to be victims.

Precision Immobilization Technique (PIT): The Precision Immobilization Technique (PIT) is a method to reduce risks in bringing pursuits to a conclusion. PIT is a forced rotational vehicle stop of a suspect vehicle in an effort to end the suspect's flight.

Due to the configuration of the Dodge Charger, PIT should not be used except when it is objectively reasonable to protect an officer or a third person from imminent death, serious physical injury, or an armed or dangerous fleeing felon.

Except when it is objectively reasonable to protect an officer or a third person from imminent death or serious physical injury, PIT should not be utilized on trucks carrying hazardous materials, pick-up trucks with passengers in the bed of the truck, vans or buses occupied with passengers who appear to be victims, or motorcycles.

Investigation Of Pursuits / Intentional Intervention / Precision Immobilization Technique (PIT): After all pursuits, the involved officer(s) shall complete a Pursuit Report Form (ASP 21), which should be reviewed by the officer's immediate supervisor. The Pursuit Report should be forwarded through the chain of command to the officer's Division Commander, and then filed in Internal Affairs.

When a pursuit involves the use of force, as defined in Use of Force policy, the involved officers and their immediate supervisors shall also complete the necessary investigation and documentation required by the Use of Force policy.

The Highway Patrol Division Commander shall immediately be notified of any pursuit that results in death, personal injury, or damage to property.

If the Commander believes that a specific policy was violated, the Commander shall commence an investigation in accordance with Disciplinary Matters.

Identify the reasons for law enforcement driver training.

UNIT 2.1

Introduction

A student is likely to put into practice what is learned when the importance of training and the personal benefits to be gained from the training become clear.

Content

The purpose of law enforcement officer driver training is to:

1. Reduce collisions
2. Reduce personal injury
3. Reduce the liability against the driver, community, or agency
4. Increase the level of attention to the driving task
5. Increase the desire to continue to improve as a driver
6. Create higher levels of maturity
7. Create greater emotional control and discipline
8. Reduce risk acceptance when there is insufficient gain
9. Reduce stress levels on the driver
10. Improve the professional image of law enforcement officers
11. Increase the information-processing and decision-making skills necessary to avoid potential collision situations
12. Improve the skills necessary to cope with on-going driving conditions
13. Improve vehicle control skills to cope with normal and abnormal conditions
14. Improve skills which carry over into the off-the-job driving responsibilities

To achieve maximum carry-over from the training course to the on-the-job driving performance, students must realize the individual benefits to be gained from this experience.

SUGGESTED INSTRUCTIONAL METHODOLOGY

Lecture

Small Group

Add reasons for your agencies' collisions

Identify factors that influence the stopping distance of a vehicle

UNIT 2.12

II. Environmental conditions which will increase the stopping distance are:

A. Road surface: wet, dry, surface debris, pavement type, temperature

B. Road design: flat, uphill, downhill, curved, crowned, banked

C. Visibility relative to perception time: weather conditions, day or night, blind spots, other traffic

D. Wind

III. Some aspects of the vehicle's capabilities or limitations plus a lack of maintenance can increase the stopping distance. These include:

A. Braking system: poorly maintained, brake fade, low brake fluid, improper techniques

B. Suspension system and steering components: bad shock absorbers, tie rods

C. Tires: improper tire tread, improper tire pressure, alignment, ice studs

D. Vehicle weight and distribution of extra weight: uneven distribution, greater mass

E. Speed

These forces are always present.

IV. Some aspects of vehicle dynamics and their effect on the stopping distance are:

A. Kinetic energy: the stopping distance increases with an increase in the kinetic energy.

B. Gravity: reduces the distance given an uphill, banked, or other cooperating road design, but increases distance with a non-cooperative design.

C. Friction: controlling friction offers the potential for the shortest stopping distance.

D. Inertia: braking is the process of overcoming inertia. This force not only wants to keep your vehicle in motion, but the occupants, as well.

E. Velocity: the greater the speed, the greater the total stopping distance.

Identify the changes in vehicle dynamics that occur during an emergency response.

3.7

Introduction

As the officer responds to an emergency, the vehicle will usually travel at speeds greater than normal. With increased speed, and the distraction from driving caused by the emergency condition, the officer should understand how the vehicle dynamics will change.

Content

The following concepts are consistent with increased speeds:

A. See page 2-156 for information on weight transfer

B. Steering

1. Counter-steering: due to speed and weight transfer, the vehicle may experience a side skid while negotiating a correct turn. The skid will necessitate counter-steering which is turning the front wheels to counter the effects of a previous turning movement or skid, to put the vehicle on its intended course of travel. When counter-steering, drivers should concentrate on smoothness and the application of equal amounts of steering input to regain their original path of travel.
2. Over-Correct Steering: in a secondary skid there is a tendency to over-correct steering input and allow the vehicle to get into a lesser skid in the opposite direction. This skid requires a conscious effort on the part of the driver to carefully control the steering of the vehicle.
3. Steering In A Skid: when the vehicle wheels lock-up, there is loss of control in the steering of the vehicle. Regardless of the steering, the vehicle will proceed in a straight line. This skid requires the driver to release the locked brakes, use the threshold braking method and steer in the direction the driver wants to go.
4. Under-steer: the handling characteristic of a vehicle that tends to increase the desired cornering radius as the vehicle progresses through a turn. To correct this condition, the driver should steer in the direction of the turn.
5. Over-steer: the handling characteristics of a vehicle that tends to reduce the desired cornering radius as the vehicle progresses through a turn. To correct this condition, the driver should steer away from the direction of the turn.

SUGGESTED INSTRUCTIONAL METHODOLOGY

Lecture with videotapes

Lecture with demonstration

Range

Understanding vehicle dynamics with increased speed enhances control.

Effects of increased speed on vehicle dynamics in relationship to:

- ***steering***
- ***braking***
- ***cornering***
- ***weight transfer***

Identify the changes in vehicle dynamics that occur during an emergency response.

UNIT 3.7

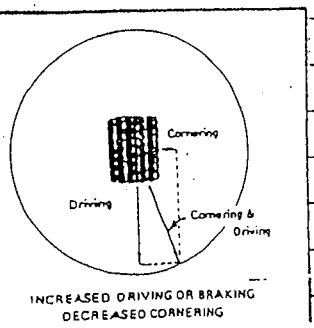
C. Braking

1. Front Wheel Lock-up
   a. Caused by improper brake adjustment or slick spot on the road
   b. Causes reduced braking ability and loss of steering
   c. Rear wheels act as a rudder and maintain straight-ahead slide
2. Four Wheel Lock-up
   a. Caused by a panic situation in which brakes are applied abruptly and hard enough to lock all four wheels
   b. The vehicle will probably skid in a straight line as long as variables such as road surface, tire tread, and air pressure are fairly even
3. Rear Wheel Lock-up
   a. Caused by improperly adjusted brakes which cause rear wheels to lock while front wheels continue to rotate
   b. The vehicle will usually begin to rotate as the back wheels lose their steering capacity
4. Brake Fade
   a. Most common during a drive when frequent use of the brakes does not allow for proper cooling: the brakes are unable to grab and stop wheel movement

D. Cornering

1. Centrifugal force: as a vehicle travels around a corner at high speed, there is an increase in the centrifugal force which impels an object outward from a center of rotation.
   a. A turn or curve cannot be entered at a speed greater than the driver and vehicle can handle
   b. Any braking done in a curve will take away from the steering capability. Whenever possible separate braking and steering
   c. No increase in acceleration should occur until the vehicle begins to exit the turn or curve

Centrifugal force and centripetal force must be in balance when cornering.



2. Centrifugal Force: The force of a body in motion which tends to keep it continuing in the same direction rather than following a curved path. Under-steering is an example.

3. Centripetal Force: The force on a body in a curved motion that is directed toward the center axis of rotation. The force required to keep a moving mass in a circular path. Ove-rsteering is an example.

> Note:
>
> Centripetal force and centrifugal force must be in balance when driving around a curve or turning a corner.

E. Weight Transfer

1. It occurs when the vehicle changes velocity or direction.

2. As a vehicle accelerates, the front lifts causing weight in rear to increase. This weight shift to the rear can cause a loss of acceleration traction for front-wheel drive vehicles, but an increase in traction for rear-wheel drive vehicles. However, a loss of steering traction is experienced by both types of vehicles.

3. When braking the vehicle, weight is transferred to front wheels which have high braking efficiency. Braking and steering capacity for rear wheels is reduced.

4. Change of direction transfers weight from one side of the vehicle to the other, which is more noticeable in vehicles with a high center of gravity.

Weight transfer occurs when vehicle changes velocity or direction.



Summary

When the student understands how vehicle dynamics change during the increased speeds of an emergency response, the chance for vehicle control increases significantly.

Identify acceptable methods of cornering during an emergency response.

3.9

Introduction

During an emergency response driving situation, increased speeds are to be expected. With increased speeds comes the need for increased skills to drive through turns and curves. The officer should be able to perform a precise step-by-step system for cornering during increased speeds.

SUGGESTED INSTRUCTIONAL METHODOLOGY

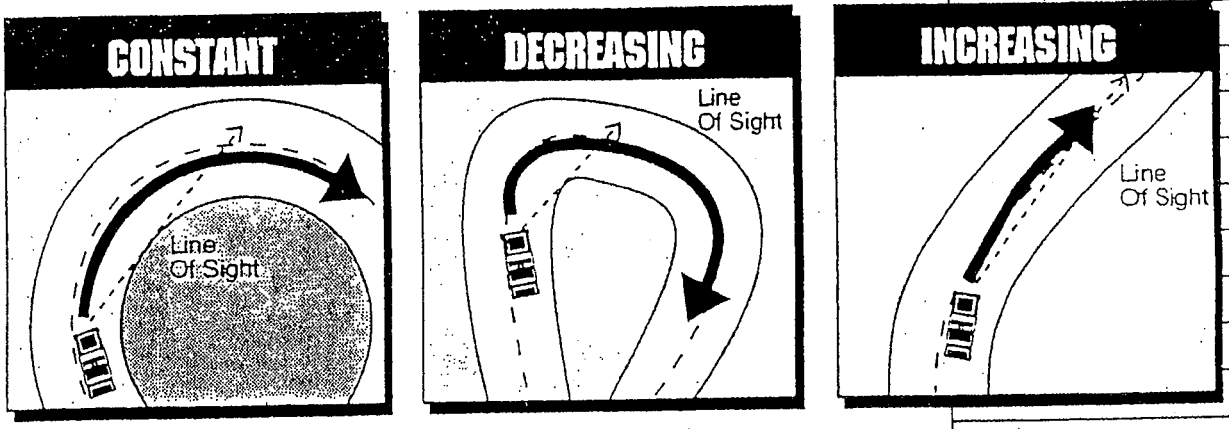
Lecture with visuals

Small groups

Content

The officer should understand the types of turns that are common to highway design. Turns are divided into two types:

- Corners (typical 90° turning movements)
- Curves (including constant, increasing, and decreasing radius turns)

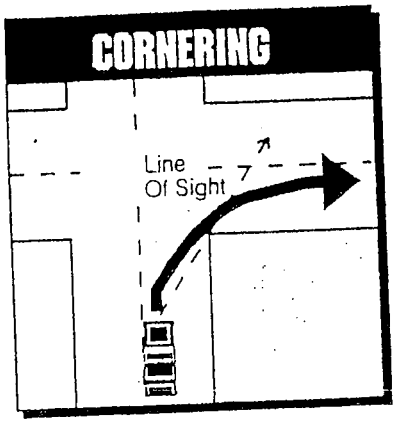


- Cornering Methods
  1. Search 12 seconds ahead, if possible, and evaluate the conditions of the corner being approached.
  2. Start lane position adjustments prior to reaching the corner. Position to the outside or wide position. Avoid oncoming lanes.
  3. Brake, if necessary, to entry speed prior to any turning movement.
  4. Steer towards the apex of the corner. Avoid accelerating or braking. Use smooth steering movements. The apex will be located to the inside or tight portion of the corner.

Speed, heavy braking, apex location, and travel lane are essential considerations.

Identify acceptable methods of cornering during an emergency response.

5. As the vehicle passes through the apex, the driver should steer the vehicle toward the desired exiting lane position.
6. Acceleration methods and steering adjustments are added at this same moment.



- Additional Considerations
  1. Have speed under control before entering the corner to avoid heavy braking while steering.
  2. Use of the travel lane must take into consideration the line-of-sight restrictions and the legal lane limitations, roadway design characteristics such as surface conditions, crowned roadway, and traffic patterns.
- Driving in a Curve
  1. Search 12 seconds ahead, if possible, and evaluate the conditions of the curve being approached.
  2. Start lane position adjustments prior to reaching the curve. Position to the outside or wide position. Avoid oncoming lanes.
  3. Look through the curve as far as possible to judge entry speed.
  4. Brake, if necessary, to establish proper entry speed prior to entering the curve.
  5. Once in the curve the driver should look as far ahead in the curve as possible (at least one third of the curve) and drive based upon what is seen. The normal tendency will be for vision to center in front of the car. This will reduce the driver's ability to judge turning and speed adjustments. Therefore, drivers should concentrate on keeping their vision ahead in the curve for maximum driving efficiency.

6. Constant radius curves will allow constant speed and steering input. A decreasing radius curve will mean speed reduction and tighter turning. An increasing radius turn may allow for increased speed and a straighter path of travel.
7. When the end of the curve comes into view. The driver should steer the vehicle toward the desired exiting lane position.
8. Acceleration is added at this moment to straighten the path of the vehicle and regain traveling speed for the straight-away.

Summary

Any driver can approach a corner at high speed. The true talent is in the successful completion of the cornering maneuver. Through the use of an acceptable cornering method, the officer increases vehicle control through a turning situation. The officer also is able to identify and correct errors in method while cornering before losing vehicle control.

Appropriate cornering methods increase vehicle control

IV. Human Factors

A. Psychological

The stress endured during pursuit can greatly affect an officer's risk-taking decisions. Attitudes and emotions become significant factors. Prejudice and bias are specific types of attitudes usually based on emotional factors.

Impact of stress of pursuit on:

psychological factors

physiological or physical factors

1. Personal Involvement

The role of the officer in a pursuit must be understood. The public perceives the officer's role as protector of lives and property and rightly so. The officer must maintain these high ethical standards to prevent a pursuit-related tragedy. The decision to pursue is easier to make than the decision to terminate. Officers will often become emotionally and personally involved in a pursuit and take risks they would not normally take.

Decision making and pursuit

2. Decision Making

If, for example, the need to capture is the primary perception of the officer's role, this perception will affect the outcome of the pursuit and could lead to poor decisions or to unnecessary risks in the process of pursuit.

A rationally-thinking officer utilizes all of the input-data to make decisions relating to the pursuit. Unfortunately, this rational thinking is strongly affected by emotion, peer pressure, social image, competition, frustration, attitude, stress, physiological factors, and bias or prejudice. An officer has to have maturity, experience, and a clear mind to prioritize information. The first priority is the safety of the public the officer is sworn to protect. The apprehension of the fleeing motorist is secondary in importance.

Ethical standards

Note:

Remember, the officer's job is not to catch the suspect vehicle, but rather to warn the public and be in a position to apprehend the driver when the pursuit ends.

3. Aggressive or Assertive Behavior

This type of behavior is usually exhibited by immature or inexperienced officers. This behavior also heavily affects an officer's ability to think clearly. The "police machismo" image tends to influence officers to push themselves too hard in a pursuit and past the point where they should have terminated the pursuit.

4. Multiple Pursuit Vehicles

Normally a pursuit will involve no more than two police units. Officers will feel compelled to join a pursuit, but they should only do so according to agency policy and procedures.

B. Physiological

Physiological factors such as fatigue, drugs, shift work, and medical conditions affect a driver's ability to act and react in pursuit situations. Senses such as vision, hearing, smell, and touch all provide input data for making decisions in pursuits.

1. Vision

It supplies 90-95 percent of incoming data. At high speeds peripheral vision narrows, depth perception is less accurate, vision distorts, and color or night vision is reduced.

2. Hearing

Provides input of traffic conditions, tires scuffing or spinning, sirens, radio transmissions, and other noises.

3. Smell

The ability of the nose to detect and differentiate between odors of gasoline, brake or engine overheating, or electrical short.

4. Touch

Provides input from hands, feet, and the buttocks as to vehicle dynamics and equilibrium. During a pursuit, the body receives an "adrenaline kick" due to the heightened anxiety and emotion which provides assistance to body functions and reactions.

C. Pursuit Conditions

An ongoing pursuit must be continuously evaluated based on the time elapsed, distance covered, number of vehicles involved, type of violation, and fleeing motorist personality and threat to the public or officer.

Knowledge of the critical factors of whether to engage in or terminate a pursuit will enhance the officer's decision making process.

Pursuit considerations

Identify factors that have an impact on initiating and terminating vehicle pursuit.

4.1

Summary

The decision to initiate a pursuit will most often be made by the driver. The factors mentioned should assist the student in forming the correct decision regarding initiation of vehicle pursuit. The decision to terminate may be made by the officer or by an officer of higher rank based on legal restrictions, agency policy, or other considerations. The factors mentioned will assist the driver in making the correct decision regarding termination of the vehicle pursuit.

Introduction

Once an officer decides to initiate vehicle pursuit, pursuit driving tactics and strategies will be utilized. When the officer conducts a pursuit without knowledge of a pursuit strategy, a collision is likely. By identifying what factors are involved in conducting a vehicle pursuit, the student will significantly reduce the chances of a collision.

SUGGESTED INSTRUCTIONAL METHODOLOGY

Small group interaction

Lecture with film and discussion

Content

Assuming that a pursuit has been initiated, for whatever reason, the following factors will be involved in the development of a pursuit driving strategy.

Develop a pursuit driving strategy

I. Following Distance

Initially the following distance will be close to the fleeing driver, approximately 1-2 seconds of following distance, in order to apply psychological pressure and create a sense of futility in the fleeing driver. However, if the pursuit lasts more than one minute, the close following distance strategy apparently did not work. Normally, the more experienced officer will begin to increase following distance to allow for improved reaction time, usually 3-4 seconds of following distance. Realizing the futility and danger in continuing pursuit, the fleeing driver may terminate the pursuit.

Speed and vehicle positioning

II. Speed and Vehicle Positioning

Adjustments should be made in an effort to maintain a space cushion around the law enforcement vehicle and create improved line-of-sight conditions. Avoid merging with on-coming traffic or approaching intersections at high speeds.

A. Unless specifically requested by the primary unit, another officer should never pass another police vehicle while in pursuit. Back-up units should maintain at least a 2-4 second following distance.

B. Generally, an officer will never pass the fleeing vehicle during a pursuit.

C. The officer should use a lane position behind the violator which affords the best field of vision.

Reaction to fleeing drivers

III. Officer Reaction to a Fleeing Driver

The officer will often increase concentration on the fleeing driver to the level of actually duplicating the actions of the fleeing driver. Officers should avoid duplicating the unsafe actions. Some tactics utilized by a fleeing driver are:

A. Timing driving decisions to cause an innocent third party to collide with the pursuing officer.

B. Violating motor vehicle laws: driving in the wrong lane, driving the wrong way on a one-way street, driving off the roadway, driving on private property, violating speed limits and traffic controls.

C. Using the vehicle as a weapon against the pursuing officer's vehicle.

D. Or any other action to elude an officer.

Communication tactics

IV. Communication Tactics

A. Maintain use of emergency warning devices, both audible and visual.

B. Use effective radio communication covered in radio usage on pages 2-146 through 2-150. Turn the volume higher and keep the windows up or only slightly open. Concentrate on voice quality, precise sentences, and reduced emotions. When communicating with headquarters, the following topics should be addressed:

1. Identify your unit.
2. Identify the fleeing driver's vehicle for the purpose of vehicle identification; make, model, year, color, number of doors, any distinguishing marks or characteristics, and license plate.
3. Identify the current location of the pursuit, direction of travel, road name(s), conditions, and speed.
4. Identify the fleeing driver and occupants; type of violation, number of occupants, occupant descriptions, actions or intentions.
5. Request assisting officers, strategy, supervisory opinion.
6. Termination decisions; conditions, causes, and locations.

V. Termination Considerations

An officer should terminate a pursuit if:

Termination considerations

A. An arrest can be made at a later time because the fleeing driver has been identified.

B. The fleeing driver "loses" the pursuing officer for several seconds.

C. The pursuing officer experiences equipment or vehicle failure.

D. The danger caused by continuing pursuit outweighs the benefits of a possible apprehension. If the officer(s) choose to terminate pursuit:

1. The location should be communicated.
2. The vehicle should be slowed to the posted speed limit.
3. Emergency warning devices should be turned off.
4. Notify the dispatcher that you have terminated the pursuit.

Summary

Sound pursuit strategies reduce the potential of collisions.

It is not the intention of this module to promote or denounce pursuit driving as a method of law enforcement. The intention is to acknowledge that vehicle pursuit does take place. The student who is able to identify what factors are involved in conducting a vehicle pursuit will unquestionably make acceptable decisions regarding pursuit strategy.

PART I: DRIVING COURSE GLOSSARY

Introduction

The purpose of the two glosssaries in this appendix is to establish statewide accepted definition of words and terms associated with the development of training in general and driver training in particular. Terms associated with instruction on motor vehicle law, collision investigation, and vehicle stops are not included in this glossary.

Having nationally-accepted terminology will result in a number of advantages for police training. First: it will help ensure more accurate communication between trainers and agencies and it will reduce the possibilities of miscommunication. Second: it will permit a more accurate analysis of training documents generated by other agencies. Third: it will be a sign that police training has made a transition from parochially developed training courses to a professional level. Training materials can be utilized in all parts of the country, as developed. Fourth: it will reduce the possibility of having the validity of training attacked because the use of words and terms are at odds with the definitions used by the scientific and technical communities.

The improvement of police training is dependent upon many things, the acceptance of common terminology being one of them. You can help improve the quality of training by adopting the glossary as presented. This glossary was developed as a result of the contribution and review of countless agencies throughout the country. Uncontrolled modification of the meanings, no matter how slight, will eventually destroy the value of the glossary.

The listing of words and terms was organized to increase comprehension. All similar terms are grouped together for comparison. For examples: If you look up "impending skid" you would be referred to "skid, impending." There you would see a listing of other terms that include the word "skid". If you want to look up a term and it isn't listed, you could look up the general category; i.e., "skid", "objective", "driving." You may find the definition you are seeking under a different terminology.

A-1

PART I: DRIVING COURSE GLOSSARY

acceleration: the rate of change of velocity with respect to time. It can be expressed as feet per second.

acuity: the capacity of either eye to recognize small space intervals in the discrimination of form.

adhesion point: the molecular attraction exerted between the surfaces of two bodies at a specific point. *Distinguish from* ***cohesion.***

apex: the highest or culminating point.

apex of a curve: the point of a turn or curve where the vehicle first begins to exit; the highest point of a curve.

balanced hand position: a wide grip on the steering wheel. Some prefer a 9 o'clock and 3 o'clock position, and others a 10 o'clock and 2 o'clock positioning.

banked pavement: one side of the roadway is elevated, banked, or higher than the opposite side; normally occurs during a curve. Also referred to as "super elevation." An engineering technique used so a vehicle will not have to depend upon friction to keep the vehicle from sliding.

brake fade: the loss of braking efficiency, normally due to heat build-up resulting from excessive use.

brake lock-up: The application of brakes to the point that the wheels can no longer rotate.

braking distance: the distance through which brakes are applied to slow a vehicle; the shortest distance in which a particular vehicle can be stopped by braking from a specified speed on a particular surface; the distance from application of brakes to collision or stop.

braking skid: *see* ***skid, braking***

PART I: DRIVING COURSE GLOSSARY

braking, threshold: the brakes are pressed firmly to a point just before lock-up and held at that point and the wheels never lose their rolling friction.

centrifugal force: *see* ***force, centrifugal***

centripetal force: *see* ***force, centripetal***

coefficient of friction: *see* ***friction coefficient***

cohesion: the mutual attraction by which the particles of a body are united throughtout the mass. *Distinguish from* ***adhesion.***

collision: that occurrence in a sequence of events which usually produces unintended injury, death, or property damage. Sometimes loosely and incorrectly called an accident.

condition, varying or ongoing: those factors which have an influence on choices of speed, lane position, or communication needs. Some examples are: legal limitations, lane width, lane selection, traffic flow, traffic density, traffic controls, needs of the driver, roadway conditions, roadway design, visibility, environmental conditions, time of day, weather conditions.

cornering skid: *see* ***skid, cornering***

counter-skid: *see* ***skid, secondary***

counter-steer: turning the front wheels to counter the effects of a previous turning movement or of a skid, to put the vehicle on its intended course of travel.

crowned pavement: a roadway on which the center portion is higher than either of its sides.

deceleration: the rate of change of velocity with respect to time. The slowing down of a body.

PART I: DRIVING COURSE GLOSSARY

defensive driving: *see* ***driving, defensive***

drag factor: a number which has been assigned to scientifically describe the slipperiness of a surface in a fluid median, oriented in a stream -wise direction. The higher the drag factor, the greater the resistance. Air is considered a fluid. *Distinguish from* ***friction coefficient.***

driving, defensive: operating a vehicle in such a manner as to be able to avoid involvement in a preventable accident, no matter what the road and weather conditions. *Synonymous with* ***driving, precision.***

driving, emergency: a response to a situation that is life threatening or that involves an extreme property loss; justifies the legal use of an emergency warning device.

driving, non-emergency: all operations of a vehicle in other than an emergency or pursuit mode, as defined herein.

driving, precision: the operation of a vehicle in such a manner as to avoid involvement in a collision, no matter what the road and weather conditions or the actions of other drivers. *Synonymous with* **driving, defensive**.

driving, pursuit: the act or instance of chasing or pursuing a fleeing vehicle in an attempt to overtake and apprehend the driver.

emergencies, medical: heart attack, stroke, injury accident, electrical accident, drug overdose, imminent childbirth, and other instances where there is the possibility of death or further injury; MCL 423.232.

emergency: a condition or situation in which an individual declares a need for immediate medical attention for an individual, or where the need is declared by emergency medical personnel or a public safety official; MCLA 333.20703: a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential; MCLA 750.540a.

emergency service: fire protection services, emergency medical services, police protection, and any other emergency health or safety services designated in the articles of incorporation of an authority; MCL 124.601.

emergency signal devices: a siren, flashing or revolving lights that meet the requirements of a state statute(s). *Synonymous with* ***emergency warning device.***

energy, kinetic: the energy possessed by a body in motion. Kinetic energy = 1/2 mass x velocity ^{2}. *Distinguish from* ***momentum and force.***

energy, potential: the energy a body possesses by virtue of its position, e.g., a vehicle parked on a hill; the energy stored in a spring as it is stretched or compressed.

evasive action: any action taken by a driver to avoid a hazardous situation; steering, braking, or accelerating; to avoid a collision or other accident. Sometimes referred to as a tactic.

EVOC: An acronym for Emergency Vehicle Operation Course. An emergency vehicle operation course involving the control of an emergency vehicle using emergency equipment.

feet per second: an alternative to mph as a means of expressing speed. It is determined by multiplying mph by 1.47.

force: that which changes the state of rest or motion of matter, measured by the rate of change of momentum. Mass times acceleration.

force, centrifugal: the force on a body in a curved motion that is directed away from the axis of rotation. A force which acts or impels an object away from the center of rotation.

force, centripetal: the force on a body in a curved motion that is directed toward the center axis of rotation. The force required to keep a moving mass in a circular path. A force which acts or impels an object toward a center of rotation.

force, gravitational: the force associated with the attraction of a particle to the earth.

force, inertia: the tendency of a body to resist acceleration; the tendency of a body at rest to remain at rest or a body in motion to stay in motion in a straight line unless disturbed by an external force.

force, momentum: the product of a body's mass times velocity. An amount of motion; it is the property of a moving body which determines the length of time required to bring it to a rest. *Distinguish from* ***kinetic energy***.

friction: resistance to any force trying to produce motion; constantly present and always working opposite the direction in which an object is being moved. A force of resistance acting on a body which prevents or inhibits any possible slipping of the body.

friction coefficient: a number which has been assigned to scientifically describe the resistance of motion between two surfaces. *Distinguish from* ***drag factor.***

friction, rolling: the frictional force that opposes one body rolling over another body.

friction, sliding: the frictional force acting between surfaces in relative motion.

friction, static: a force exerted by a body on another when they are at rest; the holding force that prevents motion from two surfaces at rest.

front end swing: the movement of the front end in the opposite direction of the steering input when backing up.

gravitational force: *see* ***force, gravitational***

handling: a vehicle's ability to quickly and accurately respond to a driver's command with no or minimal negative reaction, and the ability to compensate for sudden irregularities in road or wind conditions. *Distinguish from* ***ride***.

PART I: DRIVING COURSE GLOSSARY

high speed: *see* ***speed, high***

high speed pursuit: *see* ***pursuit, high speed:***

hydroplaning: to skim along on the surface of water. The condition occurs when a tire rides upon water rather than the roadway.

impact force: the force measured when one object collides with another. It is determined by the velocity of the objects and the mass of the objects.

impending skid: *see* ***skid, impending***

inertia: *see* ***force, inertia***

intentional tort: *see* ***tort, intentional***

kinetic energy: *see* ***energy, kinetic***

longitudinal weight transfer: *see* ***weight transfer, longitudinal***

lateral weight transfer: *see* ***weight transfer, lateral***

liability, direct civil: the liability that is imposed upon a person for causing injury to another through a negligent or willful misconduct.

liability, vicarious civil: the liability which is imposed upon one who is without personal fault or complicity, because of the relationship that person bears towards the person who actually performed the wrongful act or omission.

marked vehicle: *see* ***vehicle, marked***

ride: the result of a vehicle's absorption of the irregularities of the road. This is accomplished through the design of tires and suspension system (springs, shock absorbers). *Distinguish from* ***handling***.

rolling friction: *see* ***friction, rolling***

semi-marked vehicle: *see* ***vehicle, semi-marked***

siren: a device used to generate and transmit the easily recognized siren sound whose frequency varies with time, used as a warning signal by police vehicles, fire vehicles, and ambulances. There are three types of sirens: electro-mechanical, electronic, and mechanical.

skid: the loss of traction to one or more wheels.

skid, braking: the loss of traction when one or more wheels are locked by excessive braking pressure.

skid, cornering: the loss of traction in negotiating a curve or a turn at a speed faster than can be sustained by the tire-road cornering traction limits.

skid, impending: a preliminary skid caused by maximum pedal pressure short of locking the brakes. Sometimes improperly used as a synonym for threshold braking.

skid pad or pan: an area designed to practice skid control.

skid, power: the loss of traction when excessive power is applied, causing the drive wheels to spin and no longer provide cornering traction.

skid, secondary: A skid in the opposite direction of the original skid.

sliding friction: *see* ***friction, sliding***

space cushion: the open area surrounding a vehicle while it is in motion. An "escape route" to the front, rear, and sides.

space management: the selection of the best speed control, path of travel, or communication technique to maximize control of the space surrounding the vehicle.

spatial: relating to or involving space.

speed, high: a speed, that given the posted or prima facie speed, would constitute reckless driving.

speed, moderate: 50% to 75% of the maximum speed at which a vehicle may be safely operated, considering the nature, condition, and type of roadway, volume and direction of the flow of traffic, presence of intersections, visibility, and weather conditions.

speed smear: central and peripheral vision becomes less acute as speed increases.

static friction: *see **friction, static***

strategy: an overall plan to increase the probability of success and to minimize the probability of failure. *Distinguish from **tactic.***

super elevation: *see **banked pavement***

supervisor: an individual having responsibility for the control or training of others.

tactic: the actions of an individual or small group for achieving a limited goal or objective. *Distinguish from **strategy.***

threshold braking: *see **braking, threshold***

time, reaction: the total length of time it takes for the brain to receive the information from the senses (eyes, ears, nose), make a decision, transmit the decision to the appropriate muscles, and for the muscles to respond.

time spatial judgment, rate of closure: ability to judge the proper rate of deceleration necessary to negotiate a curve or avoid a hazard.

tire footprint: the contact area of a tire tread with the roadway.

tort: a private or civil wrong against a person or property for which a court may award money damages.

tort, intentional: a wrongful act committed by a person who knows that the law requires that the act not be committed.

track: the distance on the ground between the center of the tire tread on one side of the vehicle to the center of the parallel tire tread on the opposite side.

tunnel vision: *see **vision, tunnel***

unmarked vehicle: *see **vehicle, unmarked***

under-steer: the tendency of a vehicle to continue in a straight line and resist turning from a direct course of travel. A characteristic of a motor vehicle as loaded that results in a tendency to swerve toward the outside of a curve. Motor vehicles with more weight on front wheels than on rear or with too little pressure in front tires is likely to under-steer at high speed.

vehicle control: developing an understanding of the principles and developing the proficiency pertaining to the successful operation of vehicles under all driving conditions.

vehicle dynamics: any force or condition that effects the path of a vehicle in motion.

vehicle, marked: a police patrol vehicle equipped with a permanent emergency roof light, siren, and police agency vehicle identification decals. It may or may not be painted with the standard color(s).

vehicle, semi-marked: a police patrol vehicle equipped with a siren, permanent emergency lights in the grill area, or mounted in the front or rear window area.

vehicle, unmarked: a standard vehicle with no indicators that it is a law enforcement vehicle. It may or may not be equipped with portable or concealed emergency lights and siren.

velocity: the rate of change of position relative to time.

vision, peripheral: a wide arc of vision that allows a person to see objects to the right and left of center.

vision, tunnel: a narrow arc of vision. The focus of attention on a particular object or area to the exclusion of adjacent areas of activity.

visual horizon: the point at which a driver's eyes are focused on the roadway.

wheel base: the distance from the center of the front wheels to the center of the of the rear wheels.

weight transfer: the transfer of weight to the front, rear, or either side caused by acceleration, deceleration, or turning.

weight transfer, lateral: the transfer of weight to the opposite side of the vehicle due to a turn.

weight transfer, longitudinal: transfer of weight to the rear axle due to acceleration or to the front axle due to deceleration.

PART II: GLOSSARY OF INSTRUCTIONAL TERMINOLOGY

ability: the actual power present in an organism to carry to completion any given act or to make adjustments successfully, the response being subject to voluntary control and dependent on the motivation of the subject to perform optimally. *Distinguish from* ***capacity.***

advanced training: *see* ***training, advanced***

affective objective: *see* ***objective, affective***

aptitude: (1) a group of characteristics deemed to be symptomatic of an individual's ability to acquire proficiency in a given area; examples might be a particular art, school subject, or vocational area (2) ability measured by the amount of time required by the learner to acquire mastery of a task; thus, given enough time, all students can conceivably attain such mastery.

attitude: the predisposition or tendency to react specifically towards an object, situation or value; usually accompanied by feelings and emotions; some writers differentiate a verbal attitude (what the reacting person says) from a behavioral attitude (what that person does when confronted with the affect-producing stimuli); attitudes cannot be directly observed but must be inferred from overt behavior, both verbal and non-verbal.

basic training: *see* ***training, basic***

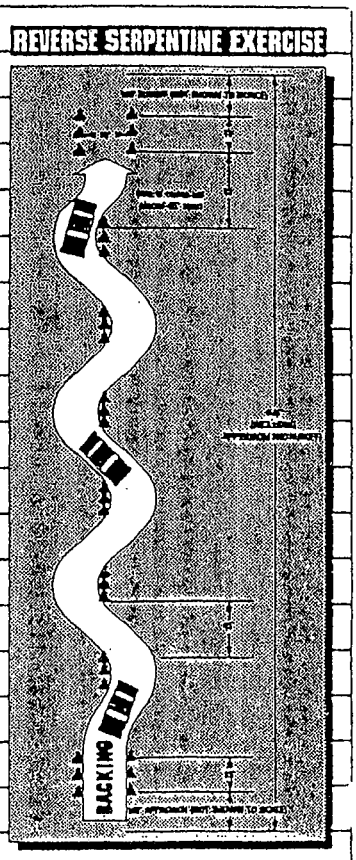
capability: the ultimate limit of an individual's possible development as determined at a given time, assuming optimum environment and training from that time onward.

capacity: the ultimate limit to which an individual could develop any function, given optimum training and environment.

certified or approved instructor: an instructor who has the knowledge, skills, abilities, experience, education, and training required by the certifying or approving agency to teach a particular subject or course, and who is properly registered. *Distinguish from* ***technician or assistant instructor.***

- Backing

Over 50 percent of all non-emergency law enforcement related collisions occur while the vehicle is in reverse. The officer needs to complete reverse maneuvering at a point when there is the least amount of vulnerability and with full control over the vehicle.



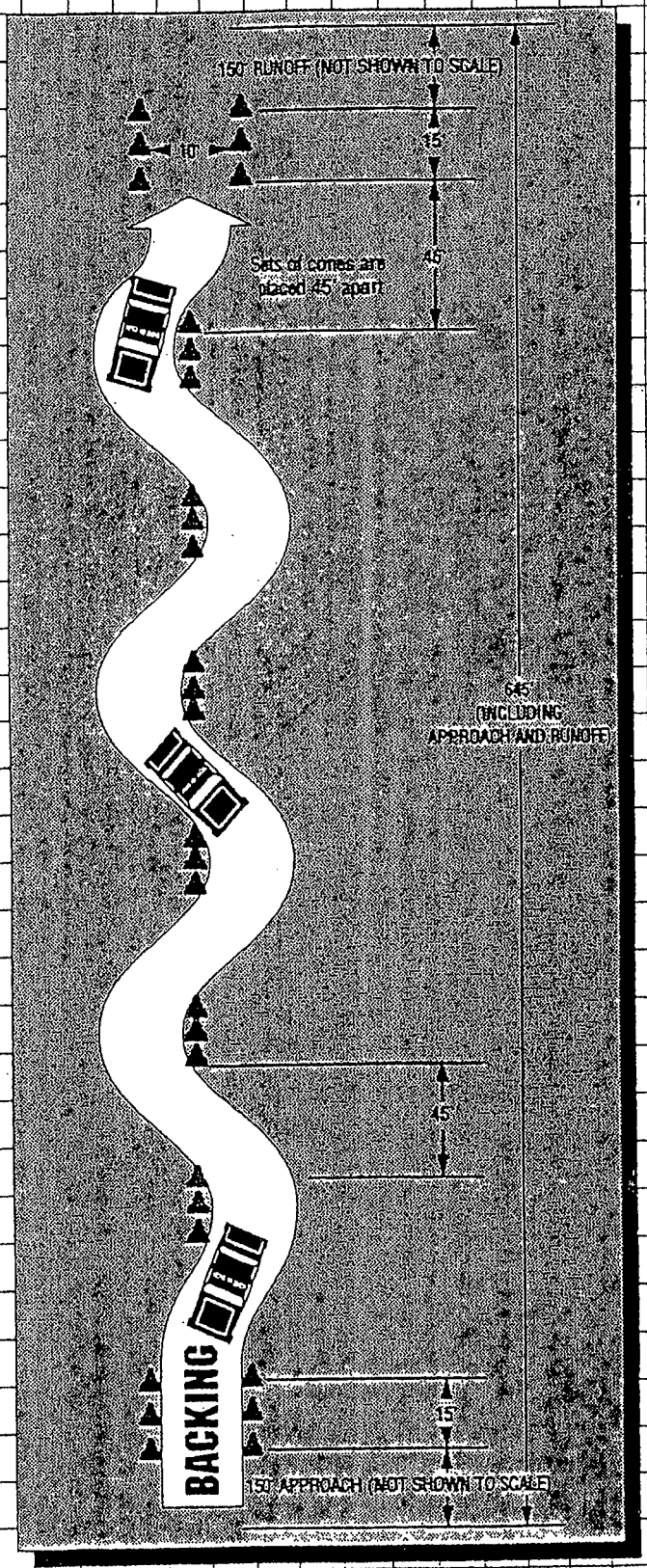
The following methods are suggested to aid the driver when completing reverse maneuvering.

1. Straight line backing - position and technique
   a. Driver's body should be turned around
   b. Driver is looking squarely out the rear window with both eyes
   c. Driver's right arm is over the front seat
   d. Left foot braced against the fire wall
   e. Left hand kept at the 12 o'clock position
   f. Have a clear view to the rear
   g. Accelerate lightly
   h. There should be minimum hand movement on the steering wheel

2. Backing and turning - technique
   a Properly position left hand at the 12 o'clock position
   b. Driver's body is turned to look out the rear window
   c. Frequent checks of the front corners are made to check the swing of the car before turning
   d. Turn steering wheel with palm steering technique
   e. Maintain speed control; in close quarters creep the vehicle

Covered in more detail in Appendix C.

REVERSE SERPENTINE EXERCISE



EXERCISE REQUIREMENTS

645' x 70' including approach and runoff

Requires 30 traffic cones

Reverse Serpentine Exercise Evaluation

Student's name _____ Date _____ Vehicle make / number _____

Initial Qualification Yes No

Requalification Attempt Number _____

A check indicates a failure.

Test Run Number	1	2	3
A. Assumed proper driving position	☐	☐	☐
B. Entered exercise correctly	☐	☐	☐
C. Performed exercise in 30 seconds	☐	☐	☐
D. 12 o'clock hand position	☐	☐	☐
E. Turned in seat to look bac	☐	☐	☐
F. Checked mirrors	☐	☐	☐
G. Controlled acceleration	☐	☐	☐
H. Steering control	☐	☐	☐
I. Accelerator, steering coordination	☐	☐	☐
J. Smooth acceleration	☐	☐	☐
K. Foot movement	☐	☐	☐
L. Use of brakes	☐	☐	☐
Number of cones knocked down or touched	___	___	___
Reaction time adequate.	☐	☐	☐
Vehicle remained under control at all times	☐	☐	☐

Remarks (e.g. Failed to complete exercise because of negative actions or attitudes.)

_____

_____

_____

_____

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_____

_____

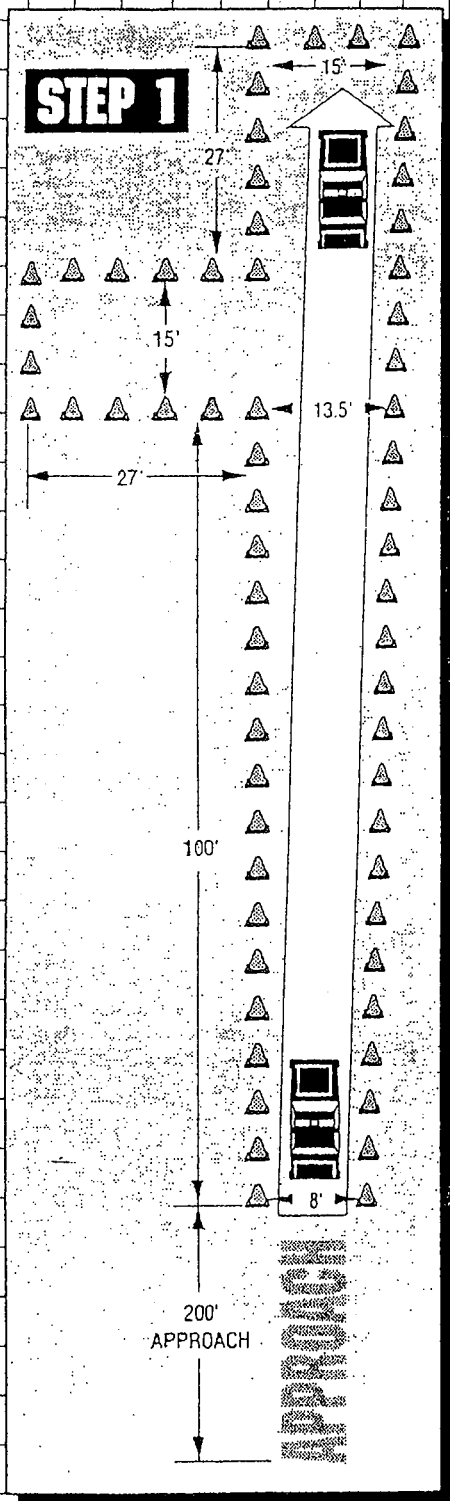
The student has passed 2 of the 3 evaluation runs.
I have informed the student of his/her progress.

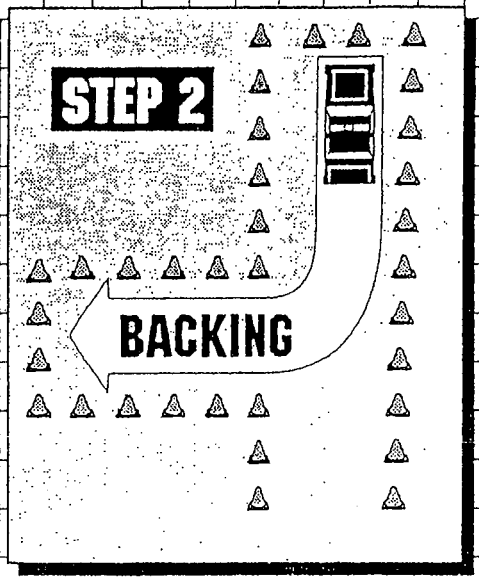
Instructor's signature _____ Date _____

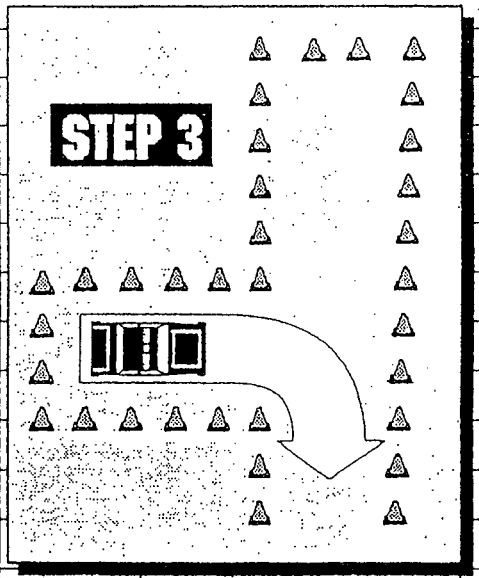
Reviewer's signature _____ Date _____

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TURNAROUND EXERCISE







EXERCISE REQUIREMENTS

342' x 42' including approach
Requires 100 traffic cones
No speed requirement

Turnaround Exercise

Purpose:

To develop the skills of steering, braking, and turning in a confined area, 12 o'clock and palm steering techniques, and to develop the recognition of fixed objects in relationship to the vehicle.

Procedure:

Instructor

- Explains purpose of exercise and key factors of the exercise.
- Demonstrates exercise at moderate speed.
- Demonstrates exercise at required speed.
- Has student wear duty leather goods. (Optional).

Student

1. Assumes proper driving position; seat, mirrors, seat belt.
2. Enters exercise as directed.
3. Maintains 9 - 3 hand position.
4. Brake, steering coordination.
5. Shifts into reverse.
6. 12 o'clock hand position.
7. Looks squarely out the back window.
8. Smooths acceleration.
9. Palm steering technique.
10. Turns in one movement.
11. Vehicle is centered in lane after completion of turn.
12. Shifts into drive.
13. Smooth acceleration.
14. Hand-over-hand steering.
15. Does not strike cones.

U-Turn Exercise

Purpose:

To develop the coordination of acceleration, turning, judgment of road width, and signaling.

Procedure:

Instructor

- Explains purpose of exercise and key factors of the exercise.
- Demonstrates exercise at moderate speed.
- Demonstrates exercise at required speed.
- Has student wear duty leather goods. (Optional).

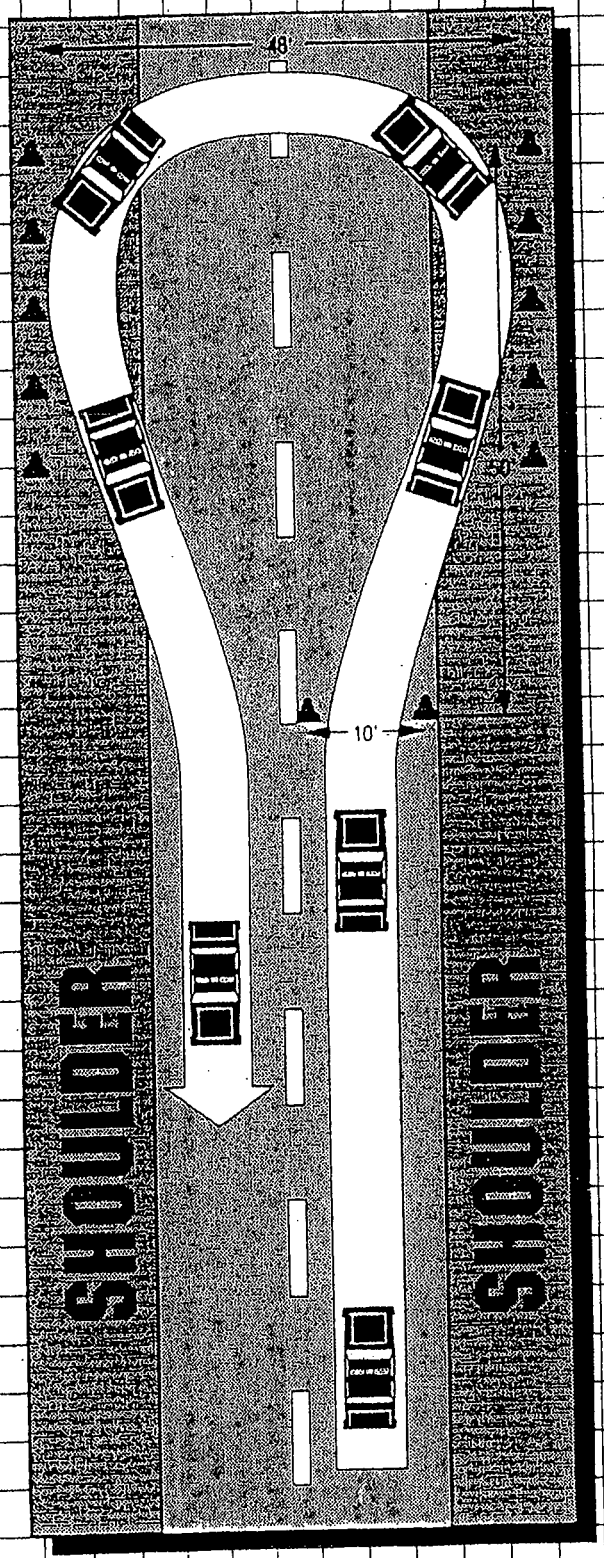
Student

1. Assumes proper driving position; seat, mirrors, seat belt.
2. Enters exercise at speed determined by instructor.
3. Signals for a right turn at least 100 feet in advance.
4. Turns onto the right shoulder, and steers sharply to the left using hand-over-hand steering.
5. Pauses momentarily to check for oncoming traffic.
6. Follows through with the counter-clockwise turn using hand-over-hand recovery.
7. Pauses momentarily to check for oncoming traffic.
8. With practice, should be completed in 10 to 14 seconds.
9. Avoids situations with considerable cross traffic or pedestrians and where hills and curves are present.
10. Considerably safer when a minimum number of traffic lanes are crossed.
11. Negotiates the exercise smoothly.
12. Keeps steering movements constant and even.
13. Maintains 9 - 3 hand position.
14. Exits exercise at direction of instructor.
15. Increases speed for subsequent practices at the direction of the instructor.

EVALUATION DEVICES: TURNING

APPENDIX C

U-TURN EXERCISE



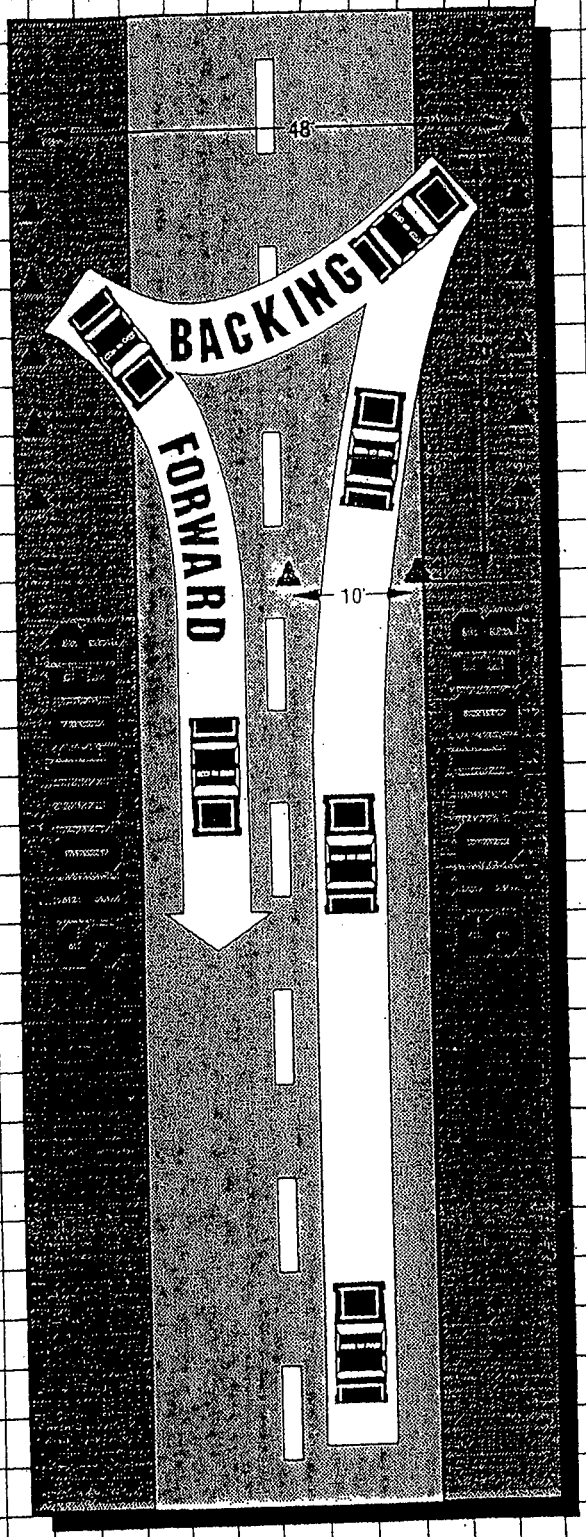
EXERCISE REQUIREMENTS

158' X 48'

Requires 75 traffic cones

When using cones use a 15' radius

Y-TURN EXERCISE



EXERCISE REQUIREMENTS

30 ' X 150 '

Requires
75 traffic
cones

Y Turn Exercise Evaluation

Student's name _____ Date _____ Vehicle make / number _____

Initial Qualification Yes No

Requalification Attempt Number ____

A check indicates a failure.

Test Run Number	1	2	3
A. Assumed proper driving position	☐	☐	☐
B. Entered exercise correctly	☐	☐	☐
C. Exercise completed in 13 - 18 seconds	☐	☐	☐
D. Proper postion for Y turn	☐	☐	☐
E. Momentarily stopped	☐	☐	☐
F. Checked mirrors	☐	☐	☐
G. Turned head	☐	☐	☐
H. 12 o'clock steering technique	☐	☐	☐
I. View squarely out the rear window	☐	☐	☐
J. Palm steering technique	☐	☐	☐
K. Accelerator, steering coordination	☐	☐	☐
L. Smooth acceleration	☐	☐	☐
M. Signaled intent	☐	☐	☐
N. Use of brakes	☐	☐	☐
O. Foot movement	☐	☐	☐
Number of cones knocked down or touched	__	__	__
Reaction time adequate.	☐	☐	☐
Vehicle remained under control at all times.	☐	☐	☐

Remarks (e.g. Failed to complete exercise because of negative actions or attitudes.)

_____

_____

_____

_____

_____

_____

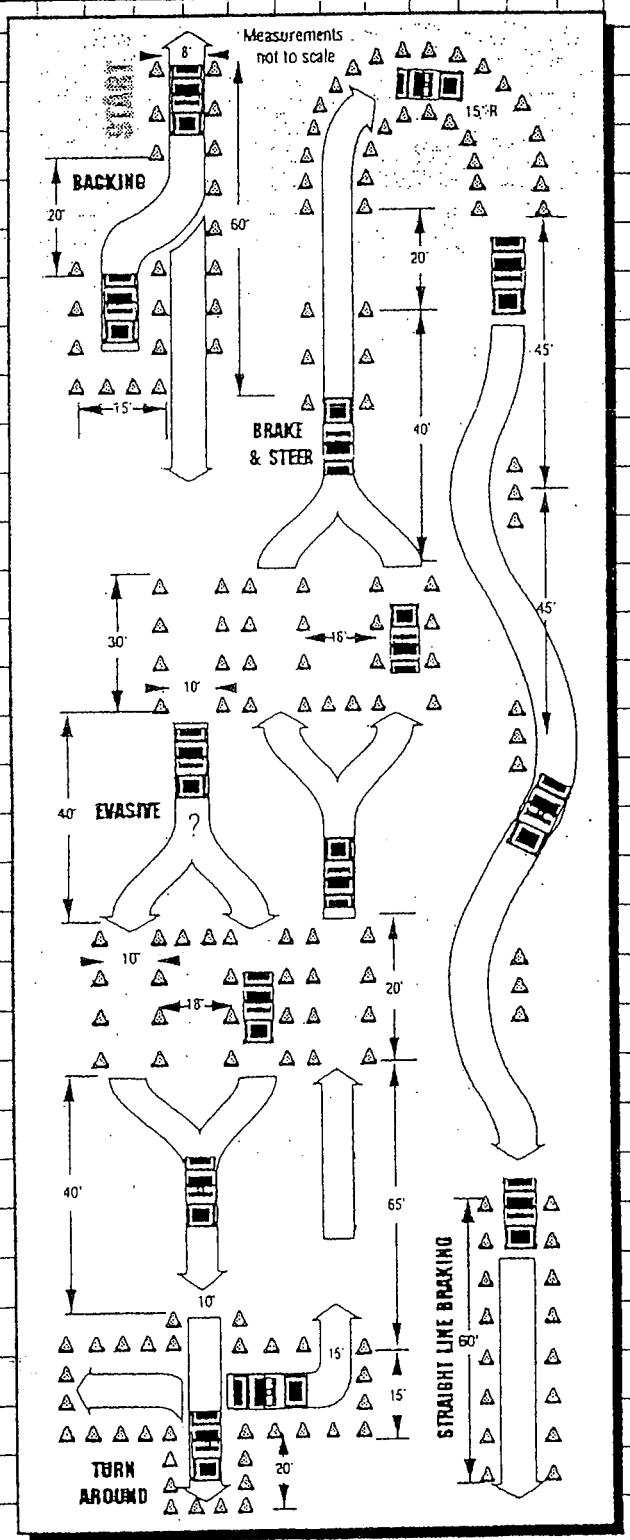
The student has passed 2 of the 3 evaluation runs.

I have informed the student of his/her progress.

Instructor's signature _____ Date _____

Reviewer's signature _____ Date _____

CUMULATIVE SKILL ASSESSMENT COURSE C



EXERCISE REQUIREMENTS

110 X 300
250 Cones

Cumulative Skills Assessment Course C

Purpose:

To develop within the student the confidence to apply the learned accident avoidance, vehicle dynamics, and vehicle turnaround exercises during a simulated emergency run. The student is to complete the Cumulative Skills Assessment Course in a controlled manner, by applying all the techniques taught in the Precision Driving Program.

Procedure:

Instructor

- Explains purpose and key factors of the course.
- Demonstrates course at moderate speed.
- Demonstrates course at required speed.
- Uses radio equipment. (Optional).
- Uses flashlight. (Optional).
- Has student wear leather duty goods. (Optional).

Student

1. Demonstrates knowledge of proper radio communication.
2. Demonstrates knowledge of the Motor Vehicle Code (AEV exemptions).
3. Demonstrates knowledge of the classroom lecture material.
4. Demonstrates knowledge of vehicle dynamics.
5. Demonstrates knowledge of the accident avoidance exercises.
6. Demonstrates knowledge of the vehicle turnaround exercises.
7. Successfully completes the course within the time limit.
8. Successfully completes the course without touching or knocking down a cone.
9. Successfully completes the course with 100% techniques.

CUMULATIVE SKILLS

'mulative Skills Assessment Course C Evaluation

Student's name _____ Date _____ Vehicle make / number _____

Initial Qualification Yes No Requalification Attempt Number ____

A check indicates a failure.

Backing
- 12 o'clock hand position ☐
- Viewed out back window ☐
- Palm steering ☐
- Turn in one movement ☐
- Smooth acceleration ☐

Evasive
- 9-3 hand position ☐
- Controlled acceleration ☐
- 3-point steering ☐
- Accelerator/steering coordination ☐
- Steer into proper lane ☐
- Use of brakes ☐

Turnaround
- 9-3 hand position ☐
- Braking/steering coordination ☐
- 12 o'clock position ☐
- View out back window ☐
- Accelerator/steering coordination ☐
- Palm steering ☐
- Turn in one movement ☐
- Hand-over-hand steering ☐

Turn
- 9-3 hand position ☐
- Controlled acceleration ☐
- Threshold braking ☐
- Hand-over-hand steering ☐
- Accelerator/steering coordination ☐
- Accelerator control ☐

Serpentine
- 9-3 hand position ☐
- Controlled acceleration ☐
- Acclerator/steering coordination ☐
- Use of brakes ☐

Braking
- 9-3 hand position ☐
- Braking/steering coordination ☐
- Smooth acceleration ☐
- Threshold braking ☐
- Controlled stopping ☐

Number of cones knocked down or touched ____

Reaction time adequate. ☐

Vehicle remained under control at all times. ☐

Remarks (e.g. Failed to complete course because of negative actions or attitudes.)

The student has passed 2 of the 3 evaluation runs.

I have informed the student of his/her progress.

Instructor's signature _____ Date _____

iewer's signature _____ Date _____

ARKANSAS STATE POLICE

ARKANSAS STATE POLICE
PRECISION DRIVING UNIT
EXERCISE TIP SHEET

PRECISION MANEUVERING

I. Purpose: to develop a sense of control of the vehicle while backing as well as moving forward. The exercise will assist in recognizing the relationship of the vehicle to fixed objects and will assist with the proper technique and use of the right side and left side road turns.

II. Proper execution.

A. From parked position, proceed to the end of the course.

B. Back the entire length of the course and stop.

C. Drive forward to the end, back up and complete a right side road turn.

D. Next, make a left turn and drive forward to the starting point.

E. Back to the extreme end of the course and stop.

F. Proceed forward and complete the left side road turn.

G. Back to the end of the course and stop.

III. Instructor tips.

A. Watch for 9-3 hand position.

B. Smooth brake use.

C. Smooth transition between forward and reverse with gear changes.

D. Uses 12 o'clock hand position when backing.

E. Allow engine to assist in controlling vehicle.

F. Looks over right shoulder while backing.

G. Look for quick steering inputs.

ARKANSAS STATE POLICE
PRECISION DRIVING UNIT
EXERCISE TIP SHEET

CONTROLLED BRAKING

IV. Purpose: to develop the ability to achieve maximum braking while still being able to control the direction of the vehicle.

V. Proper execution.

A. Reach the designated speed as quickly as possible prior to entering the exercise.

B. At the cue cone, simultaneously steer and brake around the barrier.

C. Once past the barrier, steer back into the exit lane.

D. Once past the barrier, stop the vehicle centered in the lane.

VI. Instructor tips.

A. Designate speed at the beginning of the exercise and have the student reach it as quickly as possible and maintain the speed.

B. Braking should be done with the right foot.

C. Watch foot movement - uses brakes before given the cue.

D. Cones on first barrier must be reset if knocked down.

E. If the wheels are locked, release pressure to allow them to roll again.

1. Stress: locked wheels provide no steering control.

2. Must be able to sense locked wheels.

F. Must coordinate steering and throttle control.

G. 9-3 steering provides enough input to complete the exercise.

H. Bring vehicle to a stop within the correct lane.

I. Speeds: 25, 30, 35, MPH.

ARKANSAS STATE POLICE
PRECISION DRIVING UNIT
EXERCISE TIP SHEET

EVASIVE MANEUVERING

I. Purpose: to illustrate that less distance is required to steer around an object than is required to stop before striking it. Also serves to demonstrate the maneuvering capability and stability of the vehicle, as well as show the driver his capabilities and limitations in making such a maneuver.

II. Proper execution.

A. Reach the designated speed and maintain that speed prior to entering the exercise.

B. At the cue cone, steer toward the exit lane.

C. Countersteer into the exit lane and leave the course.

III. Instructor tips.

A. It is most important not to strike cones.

B. Watch for vehicle/driver movement.

1. Shifting or leaning of driver position to indicate direction.

2. Movement of hands on wheel.

C. Hand position is sufficient to complete the exercise.

D. Watch for proper timing of steering inputs.

1. Too slow.

2. Too fast (jerky).

E. Watch throttle control.

1. Does not release throttle.

2. Applies more throttle pressure.

F. Should not use brakes.

1. Steering inputs.

2. Initial steering.

3. Countersteering.

4. Correction to align vehicle - usually needed at higher speeds.

G. Speeds: 25, 30, 35 MPH

ARKANSAS STATE POLICE
PRECISION DRIVING UNIT
EXERCISE TIP SHEET

SKID CONTROL

I. Purpose: teach the student to stop the skid and regain directional control of the vehicle as soon as possible after the skid is experienced.

II. Proper execution - arc vehicle across pad on wetted surface.

A. Steer to keep the front of the vehicle pointed in the direction you want to go.

B. Ease off the throttle.

C. Do not use the brake.

D. Be prepared for secondary skids.

III. Instructor tips.

A. Watch hand movements (9-3, hand-over-hand, and hands-off wheel).

B. Listen to the sound of the engine - possibly using accelerator.

C. Use simple skids in the beginning.

D. Uses 9-3 hand position driving onto the pad and changes to hand-over-hand method when steering is required.

E. Watch foot movement - tendency to use the brakes.

F. Severity of the skid determined by:

1. Speed.

2. Angle of entry onto the pad.

3. Length of time the instructor keeps the wheels locked.

4. Steering input of the student to initiate the skid.

G. Watch for proper timing of steering inputs in relation to skid recognition.

1. Too slow - may allow vehicle to go beyond the point of control.

2. May not steer enough.

3. May steer too much - inducing secondary skids.

4. Steers in the wrong direction.

H. Vary direction of entry onto the pad.

I. Speeds: 25, 30, 35 MPH

ARKANSAS STATE POLICE
PRECISION DRIVING UNIT
EXERCISE TIP SHEET

OFF-ROAD RECOVERY

I. Purpose: to give the student an understanding of the problems involved in off-road recovery and develop his skills in making an off-road recovery over a curb at operating speed.

II. Proper execution.

A. Reach the designated speed as quickly as possible.

B. The student drops the wheels off the edge after the vehicle has reached the curb area.

C. The student turns the steering wheel 45-90 degrees to bring the vehicle back onto the road.

D. Upon hearing or feeling the second front tire strike the curb, the student makes a slight steering adjustment to maintain lane position.

III. Instructor tips.

A. Be sure to watch the student's steering motions closely to determine the amount and timing of his/her steering inputs.

B. Until the student is familiar with the exercise, he/she should be cued when to make the recovery. After that, initiation of the maneuver is at their own discretion.

C. 45 to 60 degrees of steering input is all that is needed to make the recovery.

D. The greater the curb height and/or the closer the tire is to the curb, the greater the amount of steering and the quicker the steering wheel needs to be turned in order to recover the roadway.

E. If the student turns the steering wheel to maintain lane position before the second front tire strikes the curb, there is the possibility that the front tire will climb the curb and the rear tire will not. The rear tire can then scrub, causing a problem.

F. Speeds: 25, and 30 MPH.

IV. Common errors.

A. Does not allow sufficient space between the curb and the tire to assume the angle needed to come up over the curb without scrubbing.

B. Steers too slowly, this can cause tire scrub, resulting in an improper recovery.

C. Steers more than necessary to make the vehicle recover onto the roadway.

ARKANSAS STATE POLICE
PRECISION DRIVING UNIT
EXERCISE TIP SHEET

TURNS

I. Purpose: to illustrate the four acceptable precision turns. The exercise will assist in the selection and performance of the turns, depending upon the location.

II. The U-turn.

A. Proper execution.

1. Signal for a right turn at least 100 feet in advance.
2. Stop completely and lock the wheels to the left while stopped on the shoulder.
3. Check front and rear traffic.
4. Make a head check and complete the turn.

B. Instructor tips.

1. Utilize hand over hand when locking the wheel, do not allow "palming".
2. Make sure the student selects a wide enough area to complete the turn without backing up.
3. Make sure the student does not spin the drive wheels on the shoulder.
4. The turn should be completed in 10-14 seconds.

III. The Y-turn.

A. Proper execution.

1. Signal for a turn at least 100 feet in advance.
2. Stop the vehicle on the shoulder, with a 15 degree angle pointed towards the ditch.
3. Begin backing, turning the wheel slowly the first five feet.
4. Complete the turn, making sure that the patrol car is on the right side of the centerline.

B. Instructor tips.

1. Make sure the student has at least a 15 degree angle towards the ditch.
2. Make sure that the student does not lock the wheel while stopped, prior to backing.
3. Make sure that the student is on their side of the centerline after backing up.
4. Watch to make sure that they don't drop the right rear wheel into the ditch
5. Watch for proper driver backing position.

6. With practice, the turn should be completed in 13-18 seconds.

IV. The right side road turn.

A. Proper execution.

1. Signal for a right turn at least 100 feet in advance of the turn.
2. Pull as far onto the shoulder as the shoulder width will allow.
3. Stop 10-20 feet beyond the driveway.
4. Allow traffic approaching from the rear to pass.
5. Assume the proper backing position and back into the driveway.
6. Check for traffic in both directions, signal for a left turn, and complete the turn.

B. Instructor tips.

1. Make sure the student stops beyond the driveway.
2. Utilize the same backing position when backing into the driveway.
3. Make sure that they are locking the wheel quickly while backing.
4. Watch for the student dropping off the edge of the driveway while backing.
5. Make sure that the student is not spinning their tires in the driveway.
6. With practice, the turn should be completed in 13-18 seconds.

V. The left side road turn.

A. Proper execution.

1. Check for traffic and signal for the left turn at least 100 feet in advance of the turn.
2. Turn into the driveway, off setting on the right side of the drive and steer slightly to the left just prior to stopping.
3. Assume the proper backing position and back onto the shoulder or roadway if there is no shoulder available.

B. Instructor tips.

1. Make sure of proper positioning when pulling into the drive.
2. Make sure the student is not spinning their tires in the driveway.
3. If there is no shoulder available to use, make sure that the student does not cross the centerline upon backing out the driveway.
4. With practice, the turn should be completed in 13-18 seconds.

From:	Donna Johnson
To:	ASCC Pleadings
Cc:	Tiffany Mays O"Guinn
Subject:	Braun/Jenkins, Claim Nos. 190497-CC and 200290-CC
Date:	Tuesday, February 15, 2022 1:36:14 PM
Attachments:	Perry-Braun-Unopposed Mtn to Extend SJ Resp.pdf

Attached for filing please find:

Unopposed Motion for Extension of Time to Respond to Respondent Arkansas State Police's Cross-Motion For Summary Judgment Against Claimants, Lori Braun and Lavon Tishette Perry

Question -- Do we prepare the proposed Order or does the Claims Commission prepare the Order?

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LAVON TISHETTE PERRY, as the Personal Representative of the Estate OF TAVON JENKINS, deceased	)	**CLAIM NO. 200290**	
LORI BRAUN, As the Administratrix of the Estate of CASSANDRA BRAUN	)	**CLAIM NO. 190497**	**CLAIMANTS**
V.	)		
STATE OF ARKANSAS, ARKANSAS STATE POLICE	)		**RESPONDENT**

UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO RESPONDENT ARKANSAS STATE POLICE'S CROSS-MOTION FOR SUMMARY JUDGEMENT AGAINST CLAIMANTS, LORI BRAUN AND LAVON TISHETTE PERRY

COMES NOW, the Claimant, Lori Braun, as the Administratrix of the Estate of Cassandra Braun, deceased, and Lavon Tishette Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased, by and through their undersigned counsel of record, for their Unopposed Motion for Extension of Time to Respond to Respondent Arkansas State Police's Cross-Motion for Summary Judgment and states as follows:

1. Respondent, Arkansas State Police, filed its Cross-Motion for Summary Judgement against both said Claimants on or about February 11, 2022.

2. The Claimants response is currently due on March 4, 2022.

3. Counsel for Claimant, Lavon Tishette Perry, has a series of depositions in another state in preparation for trial in a separate matter around the same period and also a number of deadlines in preparation for the said trial. In addition, Counsel for Claimant, Lori Braun, have a series of professional obligations that interfere with the said deadline to respond

to Respondent's Cross-Motion for Summary Judgment. For these reasons outlined herein, Claimants respectfully request an extension of time to March 25, 2022 to respond to the pending Cross-Motion for Summary Judgment filed by the Respondent.

4. Counsel for the Claimants have conferred and counsel for the Arkansas State Police has no objection to the requesting extension.

6. Claimants make this request in good faith and not for any improper purpose.

7. For the reasons stated herein and for good cause shown, Arkansas Claims Commission should enter an Order extending the Claimants, Lori Braun and Lavon Tishette Perry's time to respond to the pending Respondent's Cross-Motion for Summary Judgment to March 25, 2022.

WHEREFORE, Claimants, Lori Braun and Lavon Tishette Perry, pray for an extension of time to March 25, 2022, to respond to Respondent's Cross-Motion for Summary Judgment and for all other relief to which it may be entitled.

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
(501) 372-6303-telephone
(501) 399-9280- facsimile

BY: /s/ Tiffany Mays O'Guinn
TIFFANY MAYS-O'GUINN, AR. Bar# 2006053
Attorney for Claimant, Lavon Tishette Perry

AND

By: /s/ Paul J. James
Paul J. James (Ark Bar# 83091)
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, Arkansas 72201
(501) 372-1414 (Telephone)
(501) 372-1659 (Facsimile)

By: /s/ Andrew C. Clarke
Andrew C. Clarke (Ark. Bar 95080)
THE COCHRAN FIRM-MIDSOUTH
One Commerce Square, Suite 1700
Memphis, TN 38103
(901) 523-1222 (Telephone)
(901) 523-1999 (Facsimile)
Attorneys for Claimant. Lori Braun

CERTIFICATE OF SERVICE

I, Tiffany Mays O'Guinn, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on the 15th day of February 2022.

Jennifer L. Merritt, Attorneys for Respondent Arkansas State Police
Senior Assistant Attorney General
Catlett-Prien Tower Building
323 Center Street, Suite 200
Little Rock, AR 72201-2610
(Via email to Jennifer.Merritt@ArkansasAG.gov)

Arkansas Claims Commission
101 E. Capitol Avenue, #410
Little Rock, AR 72201

/s/ Tiffany Mays O'Guinn
Tiffany Mays O'Guinn

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased **CLAIM NO. 200290**

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIM NO. 190497**

CLAIMANTS

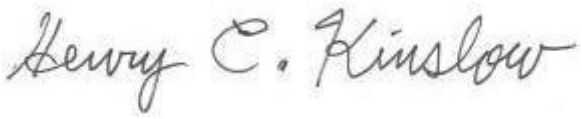
V.

ARKANSAS STATE POLICE **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the unopposed motion filed by counsel for Lavon Tishette Perry, as the personal representative of the Estate of Tavon Jenkins, deceased and Lori Braun, as the administratrix of the Estate of Cassandra Braun (collectively, the "Claimants") seeking up to and including March 25, 2022, to respond to the cross-motion for summary judgment filed by the Arkansas State Police. The Claims Commission GRANTS Claimants' motion and will extend the deadline to respond to the cross-motion for summary judgment up to and including March 25, 2022.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: February 21, 2022

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Jennifer Merritt; Paul James; "Andrew Clarke"; Tiffany Mays O"Guinn
Cc:	Johanna Hinkle
Subject:	ORDER: Braun and Perry, Claim Nos. 190497 & 200290
Date:	Monday, February 21, 2022 2:15:00 PM
Attachments:	Perry and Braun v. ASP -- order granting motion for extension to respond to cross MSJ.pdf

Ms. Mays-O'Guinn, Mr. James, Mr. Clarke, and Ms. Merritt, please see attached order entered by the Claims Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From:	Cydni Arterbury
To:	Kathryn Irby
Cc:	Jennifer Merritt; Paul James; Andrew Clarke; Johanna Hinkle; tmays@maysbyrdlaw.com
Subject:	Braun and Perry, Claim Nos. 190497 & 200290
Date:	Monday, February 21, 2022 3:57:43 PM
Attachments:	image001.jpg 2022 02 21 Reply to Resp. to M4PSJ.pdf

Ms. Irby:

Please find attached Claimant's Reply to Respondent's Response to Claimant's Motion for Partial Summary Judgment that we would like to file with the Claims Commission on today's date.

Thank you.

Cydni Arterbury

Legal Assistant to Paul J. James
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, AR 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Braun — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANT BRAUN'S REPLY TO RESPONDENT'S RESPONSE TO CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Claimant, Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased, pursuant to Rule 56 of the Arkansas Rules of Civil Procedure, for her Reply to Respondent's Response to Claimant's Motion for Partial Summary Judgment, states as follows:

The Estate of Cassandra Braun ("Claimant Braun") filed a Motion for Partial Summary Judgment on December 17, 2021. The Respondent filed its response on February 11, 2022 and incorporated a Cross-Motion for Summary Judgment in the response. The response time to respond to the Respondent's Cross-Motion has been

extended to March 25, 2022 by this Commission's Order entered on today's date. Claimant Braun will respond to Respondent's Cross-Motion for Summary Judgment within that time. This reply is limited to the Respondent's Response to Motion for Partial Summary Judgment.

The Respondent did raise issues of fact regarding comparative fault and causation but failed to address the Section I of Claimant Braun's Brief in Support of Motion for Partial Summary Judgement which dealt with the issue of Trooper Burke's admitted negligence and the legal issue of vicarious liability.

The Respondent did not address the issue of admitted negligence that it alleged affirmatively in its Answer in this proceeding. (Answer ¶4, filed November 30, 2018). Interestingly, in its response, the Respondent, over three (3) years later, once again affirms Arkansas State Police Colonel Bryant's conclusion that Trooper Burke failed to use ordinary care and drove in a reckless, negligent manner. See p. 11, ¶2 of Respondent's February 17, 2022 response citing Bryant's sworn deposition testimony. (Respondent's Exhibit 11 pp. 142:25-143:14). Therefore, Claimant Braun's Motion for Partial Summary Judgement should be granted regarding Trooper Burke's negligence. The fact that Trooper Burke was negligent has been affirmed and not contested.

Likewise, the Respondent cites no authority regarding vicarious liability. This is because there is no authority for the proposition that supports the fact that Burke's negligence and reckless conduct is not attributable to the Respondent. Therefore, Claimant Braun's Motion for Partial Summary Judgment should also be granted regarding the issue of vicarious liability.

In addition to failing to address the admission of fault and vicarious liability, at p. 2, ¶1 of its Response, the Respondent represents as follows:

> On the undisputed facts of this case, and as already determined by two federal courts, the accident would not have happened but for the negligence of the drive of the Braun vehicle in failing to yield the right of way to the approaching Trooper. (Response, p. 2, ¶1)

This is not correct. The federal court decisions did not address the negligence claims and sought to recover for civil rights violations of Cassandra Braun substantive due process rights under the Fourteenth Amendment. As noted by the Eighth Circuit's opinion in this case:

> To establish a substantive due process violation under the Fourteenth Amendment, Braun must show that Trooper Burke's conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *See Terrell v. Larson*, 396 F.3d 975, 978 (8th Cir. 2005) (en banc). [Footnote omitted]. In evaluating her substantive due process claim, we first must determine what level of culpability Braun must prove to demonstrate Burke's behavior was conscience shocking. *See id.* **Negligence is never enough.** *Id.* Deliberate indifference makes sense "only when actual deliberation is practical." *Id.* (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 851, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)). But, typically—and especially in "rapidly evolving, fluid, and dangerous situations"—the plaintiff must show an intent to harm. *Id.* Here, Braun argues we should apply the deliberate indifference standard and implicitly concedes she cannot satisfy a higher standard. Conversely, Appellees argue we should require an intent to harm.
>
> * * * * *
>
> In sum, Trooper Burke believed he was responding to an emergency, and thus we apply the intent-to-harm standard. This resolves Braun's claim against him, as she does not even argue, much less present any evidence, that he intended to harm anyone. Therefore, the district court correctly granted summary judgment for Trooper Burke on Braun's substantive due process claim because she failed to establish a constitutional violation.

Braun v. Burke, 983 F.3d 999, 1002-1003 (8th Cir. 2020), *cert. denied,* 142 S. Ct. 215, 211 L. Ed. 2d 93 (2021).

Accordingly, it is clear that the issues pertaining to Trooper Burke's negligence were not at issue in the federal case. This is exactly why the Claimant's filed both federal civil rights claim in the federal courts and a claim for negligence in the Arkansas Claims Commission. Now that the federal claims have been decided, the issues regarding negligence are now for the Arkansas Claims Commission to decide, pursuant to Ark. Code Ann. § 19-10-201, *et seq.* *See Arkansas Department of Human Services Crimes Against Children Division v. Steven D. Mitchell,* 2021 Ark. 187 (2021).

The fact that Braun's constitutional rights were not violated does not mean that she is without recourse for any injury that she sustained due to the Respondent's negligence. As the U.S. Supreme Court has noted, the enactment of tort-claim statutes reflects the view that injuries caused by negligence should generally be redressed. *Daniels v. Williams*, 474 U.S. 327, 106 S.Ct, 662, 88 L.Ed.2d 662 (1986); *see also Ark. Code Ann. §§ 19-10-201, et seq.* (establishing the Arkansas State Claims Commission). The Respondent successfully argued qualified immunity in a federal court lawsuit. As a result, this is the proper forum to address the death of Claimant Braun based upon Respondent's negligence.

WHEREFORE, PREMISES CONSIDERED, Claimant prays, based on the foregoing, that her Motion for Partial Summary Judgment on the specific issue of Respondent's negligence be granted and for all such relief to which she may be entitled.

RESPECTFULLY SUBMITTED,

Paul J. James (Ark. Bar 83091)
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, Arkansas, 72201
(501) 372-1414 (Telephone)
(501) 372-1659 (Facsimile)
pjj@jamescarterlaw.com

ANDREW C. CLARKE (Ark. Bar 95070)
THE COCHRAN FIRM - MIDSOUTH
One Commerce Square, Suite 1700
Memphis, TN 38103
(901) 523-1222 (Telephone)
(901) 523-1999 (Facsimile)
aclarke@cochranfirmmidsouth.com

CERTIFICATE OF SERVICE

I, Paul J. James, on this 21st day of February 2022, hereby certify that a true and correct copy of the foregoing was served via electronic mail and/or hand delivery to the following:

Arkansas Claims Commission
101 E. Capitol Ave., #410
Little Rock, AR 72201
Via Hand Delivery

Jennifer Merritt
Senior Assistant Attorney General
Catlett-Prien Tower Building
323 Center Street, Suite 200
Little Rock, AR 72201-2610
jennifer.merritt@arkansasag.gov
Via Electronic Mail

Attorney for Arkansas State Police

Tiffany Mays O'Guinn
MAYS, BYRD & ASSOCIATES, P.A.
Centre Place
212 Center Street, 7th Floor
Little Rock, AR 72201-3801
tmays@maysbyrdlaw.com
Via Electronic Mail

Attorney for Tavon Jenkins

Paul J. James

From:	Donna Johnson
To:	ASCC Pleadings
Cc:	Tiffany Mays
Subject:	Braun/Jenkins, Claim Nos. 190497-CC and 200290-CC
Date:	Wednesday, February 23, 2022 12:13:49 PM
Attachments:	Perry Joinder Mtn to Braun Resp to State Repy.pdf

Attached for filing please find:

Perry Joinder in Previously Filed Braun's Reply to Respondent's Response to Claimant's Motion for Partial Summary Judgment.

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Braun CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

JOINDER OF CLAIMANT, LAVON TISHETTE PERRY, IN PREVIOUSLY FILED CLAIMANT LORI BRAUN'S REPLY YO RESPONDENT'S RESPONSE TO CLAIMANTS" MOTION FOR PARTIAL SUMMARY JUDGEMENT

COMES NOW, the Claimant, Lavon Tishette Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased, by and through her counsel of record, and joins in and adopts, pursuant to Arkansas Rule of Civil Procedure 10, Claimant Lori Braun's Reply to Respondent's Response to Claimants' Motion for Partial Summary Judgment filed on or about February 21, 2022, and states as follows:

1. The Estate of Cassandra Braun filed a Motion for Partial Summary Judgment on December on December 21, 2021.

2. The Estate of Tavon Jenkins filed its Joinder of Claimant, Lori Braun's Motion for Partial Summary Judgment and Incorporated Brief on February 9, 2022.

3. On or about February 11, 2022, the Respondent filed its Response to Claimants' Motion for Partial Summary Judgment and incorporated a Cross-Motion for Summary Judgment in the said response. Claimant, Lavon Tishette Perry, hereby states that she will respond to Respondent's Cross Motion for Summary Judgment in accordance with the Order set forth by the Arkansas Claims Commission which extended the Claimants' deadline to respond until March 25, 2022.

4. On or about February 21, 2022, Claimant, Lori Braun, filed her reply to Respondent's Response to Claimants' Motion for Partial Summary Judgment and pursuant to that said filing, Claimant, Lavon Tishette Perry, hereby adopts the facts, authorizes, and legal arguments upon which Claimant Braun's said Reply are based and cited therein. Specifically, Claimant Perry adopts and reasserts that the Respondent failed to address the facts of admitted negligence in its Response to Claimants' Motion for Partial Summary Judgment and that Respondent admitted the negligence of Trooper Burke on various occasions. Therefore, partial Summary Judgment should be granted regarding Trooper Burke's negligence as a matter of law.

5. Claimant Perry reserves the right to supplement these filings as necessary and

waives no individual positron or argument by joining in these motions and/or Response.

Date: 02/23/2022

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
(501) 372-6303-telephone
(501) 399-9280- facsimile

BY: /s/ Tiffany Mays O'Guinn
TIFFANY MAYS-O'GUINN, AR. Bar# 2006053
Attorney for Claimant, Lavon Tishette Perry

CERTIFICATE OF SERVICE

I, Tiffany Mays O'Guinn, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on the 23rd day of February 2022.

Jennifer L. Merritt, Attorneys for Respondent Arkansas State Police
Senior Assistant Attorney General
Catlett-Prien Tower Building
323 Center Street, Suite 200
Little Rock, AR 72201-2610
(Via email to Jennifer.Merritt@ArkansasAG.gov)

Arkansas Claims Commission
101 E. Capitol Avenue, #410
Little Rock, AR 72201

Andrew C. Clarke, Esq.
(Via email to aclarke@accfirm.com)

Paul J. James, Esq.
(Via email to pjj@jamescarterlaw.com)

/s/ Tiffany Mays O'Guinn
Tiffany Mays O'Guinn

From:	Misty Scott on behalf of ASCC Pleadings
To:	pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com; tmays@maysbyrdlaw.com; jennifer.merritt@arkansasag.gov
Cc:	ASCC Pleadings; Kathryn Irby; Johanna Hinkle
Subject:	CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 200290
Date:	Tuesday, March 1, 2022 1:06:12 PM
Attachments:	Lori Braun and Lavon Perry v. ASP .pdf

Dear Counselors:

Please see attached. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

March 1, 2022

Mr. Paul J. James *(via email)*
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

Mr. Andy Clarke *(via email)*
Law Offices of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119

Ms. Tiffany Mays-O'Guinn *(via email)*
Mays, Byrd & Associates, P.A.
212 Center Street
Little Rock, Arkansas 72201

Ms. Jennifer Merritt *(via email)*
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun v. Arkansas State Police***
Claim No. 190497

Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police
Claim No. 200290

Dear Counselors,

The Claims Commission has scheduled a hearing on the pending motions for Thursday, August 18, 2022, beginning at 9:00 a.m. All parties will attend virtually via Zoom. If either party

objects to the Zoom format, that objection should be submitted in writing to me via email (kathryn.irby@arkansas.gov) no later than March 4, 2022. The Zoom invite is set out below.

As this is a motion hearing, no prehearing materials are requested.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: msscott

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings
Time: Aug 18, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/86544436200?pwd=VVp0Yy94SlFsNlpqSWlaUGtVUVA2dz09

Meeting ID: 865 4443 6200
Passcode: 2L08Hb
One tap mobile
+13017158592,,86544436200#,,,,*574953# US (Washington DC)
+13126266799,,86544436200#,,,,*574953# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 929 436 2866 US (New York)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
Meeting ID: 865 4443 6200
Passcode: 574953
Find your local number: https://us06web.zoom.us/u/kdbZPfqSPS

From:	Cydni Arterbury
To:	ASCC Pleadings; Paul James; aclarke@cochranfirmmidsouth.com; tmays@maysbyrdlaw.com; jennifer.merritt@arkansasag.gov
Cc:	Kathryn Irby; Johanna Hinkle
Subject:	RE: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 2002
Date:	Tuesday, March 1, 2022 1:18:46 PM
Attachments:	image001.jpg

Please be sure to add me to the service list for anything that is sent to Paul James.

Thank you!

Cydni Arterbury



Legal Assistant to Paul J. James
James & Carter, PLC
500 Broadway, suite 400
Little rock, Ar 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

Important Confidentiality statement – The information contained in this electronic communication from James & Carter, PLC may be confidential attorney-client privilege and protected by law. If you are not the intended recipient, please immediately delete the e-mail and be aware that any disclosure, copying, distribution, or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender or calling our office at 501.372.1414 and delete this copy and the reply from your computer and network system.

From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Tuesday, March 1, 2022 1:06 PM
To: Paul James <pjj@jamescarterlaw.com>; aclarke@cochranfirmmidsouth.com; tmays@maysbyrdlaw.com; jennifer.merritt@arkansasag.gov
Cc: ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: CORR: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 200290

Dear Counselors:

Please see attached. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

From:	Donna Johnson
To:	ASCC Pleadings
Cc:	Tiffany Mays; pjj@jamescarterlaw.com; Andrew Clarke; jennifer.merritt@arkansasag.gov
Subject:	Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 200290
Date:	Friday, March 4, 2022 11:46:14 AM
Attachments:	Motion for Pro Hac Vice.pdf Perry-Executed Affidavit LW.pdf

Attached for filing please find the following:

1. Motion for Admission to Practice Pro Hac Vice by Lorenzo Williams with Certificate of Good Standing attached
2. Executed Affidavit of Lorenzo Williams

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of TAVON JENKINS, deceased	)	CLAIM NO. 200290
LORI BRAUN, as the Administratrix of the Estate of CASSANDRA BRAUN	)	CLAIM NO.190497 CLAIMANTS
V.	)	
STATE OF ARKANSAS, ARKANSAS STATE POLICE	)	RESPONDENTS

_____/

MOTION FOR ADMISSION TO PRACTICE PRO HAC VICE

Pursuant to Rule 36 of the Arkansas Rules of Civil Procedure, motion is hereby made for the admission to practice Pro Hac Vice of Lorenzo Williams, 221 SE Osceola Street, telephone number 772-283-8260, facsimile number 772-463-4647, on behalf of Claimants, Lavon Tishette Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased. In support of said motion, a Certificate of Good Standing from the appropriate court is attached and incorporated herein by reference. That below-named counsel is the named designee local counsel whom the Court may readily communicate regarding the conduct of this case. The State of Florida likewise accords similar comity and courtesy to Arkansas lawyers who may desire to appear and conduct cases in the State of Florida pursuant to Florida Rules of Professional Conduct 4-5.5(c).

Respectfully submitted,

MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street
Little Rock, Arkansas 72201
(501) 372-6303-telephone
(501) 399-9280- facsimile

BY: /s/ Tiffany Mays O'Guinn
TIFFANY MAYS-O'GUINN, AR. Bar# 2006053
Attorney for Claimant, Lavon Tishette Perry

CERTIFICATE OF SERVICE

I, Tiffany Mays O'Guinn, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on the 4th day of March, 2022.

Jennifer L. Merritt, Attorneys for Respondent Arkansas State Police
Senior Assistant Attorney General
Catlett-Prien Tower Building
323 Center Street, Suite 200
Little Rock, AR 72201-2610
(Via email to Jennifer.Merritt@ArkansasAG.gov)

Arkansas Claims Commission
101 E. Capitol Avenue, #410
Little Rock, AR 72201

Andrew C. Clarke, Esq.
(Via email to aclarke@accfirm.com)

Paul J. James, Esq.
(Via email to pjj@jamescarterlaw.com)

/s/ Tiffany Mays O'Guinn
Tiffany Mays O'Guinn

The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

State of Florida)

County of Leon)

In Re: 0249874
Lorenzo Williams
Gary Williams Parenti Watson & Gary, P.L
221 SE Osceola St
Stuart, FL 34994-2213

I CERTIFY THE FOLLOWING:

I am the custodian of membership records of The Florida Bar.

Membership records of The Florida Bar indicate that The Florida Bar member listed above was admitted to practice law in the state of Florida on **March 28, 1978**.

The Florida Bar member above is an active member in good standing of The Florida Bar who is eligible to practice law in the state of Florida.

Dated this 2nd day of **March**, **2022**.

Cynthia B. Jackson, CFO
Administration Division
The Florida Bar

PG:R10
CTM-172024

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of TAVON JENKINS, deceased	)	CLAIM NO. 200290
LORI BRAUN, as the Administratrix of the Estate of CASSANDRA BRAUN	)	CLAIM NO.190497 CLAIMANTS
V.	)	
STATE OF ARKANSAS, ARKANSAS STATE POLICE	)	RESPONDENTS

_____/

AFFIDAVIT OF LORENZO WILLIAMS

STATE OF FLORIDA

COUNTY OF MARTIN

I, Lorenzo Williams being duly sworn, deposes and states as follows:

1. That I am an attorney licensed to practice in the State of Florida, and I am in good standing, and I desire to appear *Pro Hac Vice* in the above-styled and numbered cause.

2. That I am a resident of the State of Florida, and I practice at the Law Offices of Gary, Williams, Parenti, Watson, Gary, and Gillespie P.L.L.C., 221 SE Osceola Street, Stuart, Fl. 34994 Telephone: 772-283-8260, Facsimile 772-463-4647.

3. That I have been a member in good standing of the Bar of the State of Florida since March 28, 1978; of the United States District Court, Middle District of Florida since July 7, 1997; the United States District Court, Southern District of Florida since February 22, 1980 and the Supreme Court of the United States since May 30, 2017.

4. That I am a foreign attorney currently licensed in good standing to practice law in the State of Florida;

5. That I nor any member of my firm is under suspension or disbarment by any jurisdiction from which I or any member of my firm was ever admitted to practice;

6. That my license has not been suspended in any jurisdiction;

7. That once admitted *Pro Hac Vice* to represent the Plaintiff in the above-styled and numbered cause, I will continue to represent the Plaintiff as co-counsel until final determination or until an order is entered excusing me from the representation of the Plaintiff by this Court;

8. That I will be associated in this cause with the attorneys indicated herein, who are presently licensed and in good standing to practice in the State of Arkansas; and

9. That I agree to comply with the Rules of Professional Conduct as set forth in the Arkansas Rules, and become subject to discipline by the Courts of the State of Arkansas and hereby designate the Clerk of this Court for service of process.

10. Attorneys licensed to practice in the State of Arkansas can apply for Pro Hac Vice admission in the State of Florida pursuant to Florida Rules of Professional Conduct 4-5.5(c).

FURTHER, Affiant sayeth not.

By: _____
LORENZO WILLIAMS

VERIFICATION

SWORN TO AND SUBSCRIBED TO before me a duly appointed notary public, this 2nd day of March, 2022.

_____
NOTARY PUBLIC

My Commission Expires:

_____

Diane N. Edward
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG189604
Expires 5/27/2022

From:	Donna Johnson
To:	ASCC Pleadings
Cc:	Tiffany Mays; pjj@jamescarterlaw.com; Andrew Clarke; jennifer.merritt@arkansasag.gov; Cydni Arterbury
Subject:	Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 2002
Date:	Friday, March 25, 2022 1:27:49 PM
Attachments:	2022 03 25 JOINT RESPONSE TO CROSS MOTION FOR SUMMARY JUDGMENT_FINAL.pdf Ex. H - Hoyt, Ben.pdf Ex. I - Burke, Brian.pdf Ex. J - Bryant Condensed.pdf Ex K - Black Box Crash Data Download.pdf Ex. L - 9 video animations.pdf

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Attached for filing for today's date, please find the following:

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Exhibits H, I, J, K and L (Exhibit L is a disc that will be hand delivered)

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

COMES NOW the Claimants, Lori Braun and Lavon Perry in their stated capacities, by and through their attorneys of records and in opposition to the Respondent's Cross Motion for Summary Judgment would respectfully state as follows:

INTRODUCTION

On October 10, 2016, Cassandra Braun and Tavon Jenkins were killed in a car crash when their vehicle was stuck by a fully marked ASP police vehicle being driven by Trooper Burke which was traveling 98 miles per hour in a 45 miles per hour zone.

As a result of this collision, Claimant Braun filed two actions: 1) a claim in Federal Court seeking to for violation of Ms. Braun's substantive due process rights under the 14th Amendment; and 2) a claim in the Claims Commissions for state law torts, including negligence and recklessness. While the federal court action was pending, the case in the Claims Commission was stayed. The parties engaged in discovery and took depositions in the federal court case. Claimant, Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased, Individually and on behalf of all wrongful death beneficiaries of Tavon Jenkins later filed a claim in the Claims Commissions for state law torts, including negligence.

On August 30, 2019, the federal court granted Trooper Burke and Colonel Bryant summary judgment on Ms. Braun's federal constitutional claims for violation of her substantive due process rights under the 14th Amendment to the United States Constitution which are based on constitutional standards – the "intent to harm" standard. In so ruling, the District Court concluded "the intent-to-harm standard applies, and there is no evidence that Trooper Burke intended to harm to decedents." (D.E. 90). This ruling was affirmed by the 8th Circuit on December 30, 2020.

The dismissal of the federal claims has no impact on the current claims for negligence and recklessness currently pending before the Claims Commission as these claims are based on different standards and the state law claims were not, and could not, be litigated in the federal court action. The dismissal of the federal claim is of no consequence to the instant action which is based on state law for claims for negligence or recklessness.

PROCEDURAL HISTORY

Claimant Braun filed the instant claim with the Claims Commission on October 19, 2018. On November 30, 2018, the Arkansas State Police filed an Answer. In Paragraph 4 of the Answer, the Respondent admitted that Trooper Burke was negligent and a proximate cause of the accident, noting: "Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in willfully reckless of negligent manner in violation of Respondent's policies and procedures." Answer ¶ 4. Similarly, Claimant Lavon Perry in her stated capacity filed a Complaint for Damages with the Arkansas Claims Commission on September 20, 2019. On October 28, 2019, the Arkansas State Police filed an Answer. Again, in paragraph 4 of its Answer, the Respondent affirmatively plead: "Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in a willfully reckless of negligent manner in violation of Respondent's policies and procedures and in contravention of his training." Answer ¶ 4. to Claimant Perry's Complaint. Therefore, Trooper Burke's negligence is admitted for the purpose of both of these litigation proceedings.

On December 17, 2021, Claimant Braun filed a Motion for Partial Summary Judgment seeking partial summary judgment with respect to negligence, agency and proximate causation. In support of her Motion for Partial Summary Judgment, Claimant Braun relied upon: 1) Trooper Burke's dash camera video - Ex A; 2) Expert

report of Matthew Jackson - Accident Reconstructionist – Ex B; 3) Trooper Burke's Responses to Request for Admissions – Ex. C; 4) the expert Report of Kris Sperry, M.D. – Ex. D; 5) Colonel Bryant's Responses to Request for Admissions – Ex. D; 5) Expert Report of Dr. Geoffrey P. Alpert, Police Expert – Ex. E; and 6) Deposition of Gregory Downs. On February 9, 2022, Claimant Lavon Perry filed a Joinder in Claimant Braun's Motion for Partial Summary Judgment and adopted by reference all of the facts, authorities and attached exhibits.

On February 11, 2022, Respondent filed a response to Claimants' Motion for Partial Summary Judgment and Cross Motion for Summary Judgment. Since Respondent filed a combined response to the Claimants' Motion for Partial Summary Judgment and Cross Motion for Summary Judgment, it is hard to determine which part of its brief attempts to respond to Claimants' Motion for Partial Summary Judgment and which portions of its brief support its Cross Motion for Summary Judgment. However, an analysis of the brief indicates that both the response to the motion for partial summary and cross motion are without merit.

Respondent's brief contains 10 pages of what Respondent contends are undisputed facts. (Brief, pp. 2-12). Thereafter, Respondents' brief contains 6 pages setting forth the procedural history of the federal civil rights claims addressed by the federal court.[1] (Brief, pp. 11-17). Finally, Respondent's brief contains 3 pages of legal argument, which argue that Claimant Braun's and Claimant Perry's claims are

[1] As previously noted, the proceedings in the federal case seeking to recover for violations of Ms. Braun's federal substantive due process rights under the Fourteenth Amendment of the United States Constitution are irrelevant as they applied the civil rights standard of "intent to harm" as opposed to the state law negligence standard applicable to these proceedings.

barred, as a matter of law, based on comparative fault, failure to wear a seat-belt and intervening cause. However, these arguments are without merit as Trooper Burke was travelling at 98 miles per hour in a 45 mile per hour zone without utilizing his lights and sirens and the accident would not have occurred but for his admitted negligence and recklessness.

In opposition to Respondent's Cross-Motion for Summary Judgment, Claimants rely upon the arguments and exhibits submitted in support of their Motion for Partial Summary Judgment and the additional exhibits:

Exhibit H-Deposition of Ben Hoyt

Exhibit I-Deposition of Brian Burke

Exhibit J-Deposition of William J. Bryant

Exhibit K-Black Box Crash Data Download

Exhibit L-Matthew Jackson Animations (Disc provided)

RESPONDENTS' STATEMENT OF UNDISPUTED FACTS

In its Motion for Summary Judgment, Respondent set forth its statement of undisputed facts in paragraph form in six (6) headings set forth in bold & italicized font. In response, Claimants identify below the six (6) headings (topics) and provide their responses as follows.

1. Trooper Brian Ray Burke/Burke's 2011 Training on Emergency vehicle Operations/Burke's 2012-2013 EVOC training.

Claimants admit that Trooper Burke began working for the ASP in January 2011, went to ASP basic training and received some training on high-speed pursuits. However, while Claimants admit that there was some training provided in basic

trooper school, the majority of which dealt with the physical operation of a vehicle. (MPSJ – Ex. F – Decl. of Alpert, pp. 21-24). Sgt. Hoyt was questioned about the training that Trooper Burke received at the training academy in 2011 and a syllabus of Trooper Burke's academy training was produced. (Ex. H – Depo. of Hoyt, pp. ASP 959-965). An evaluation of this syllabus indicates there is no specific training section at the ASP dealing specifically with pursuits. However, there is a section of training on EVOC which is 40 hours. *Id*. During the 40 hours of EVOC training, both emergency vehicle operations and pursuits were covered. (Ex. H – Depo of Hoyt, pp. 32: 14-33:23). The lesson plan pertaining to the EVOC training at the ASP academy sets forth the topics covered during the training and reflects:

a. 10 minutes of classroom training introducing students to the topic;

b. Objective # 1: 1 hour of classroom training on the importance of daily vehicle maintenance;

c. Objective # 2 - 30 minutes of classroom instruction on the laws of physics and vehicle dynamics;

d. Objective # 3 - 30 minutes of classroom instruction on proper techniques of performance driving;

e. Objective # 4 - 30 minutes of classroom instruction on proper techniques to avoid skids and recover from skids;

f. Objective # 5 - 30 minutes of classroom instruction on Precision Immobilization Technique (PIT);

g. Objective # 6 - 30 minutes of classroom instruction on proper use of spike strips;

h. Objective # 7 - 30 hours on the driving track demonstrating the proper techniques associated with driving a police vehicle;

i. Objective # 8 – 1 hour on driving track demonstrating proper

performance of PIT maneuver;

j. Objective # 9 – 30 minutes on driving track demonstrating proper deployment of spike strips;

k. Objective # 10 – 1 hour of classroom instruction summarizing the consequences of civil liability in the operation of police vehicle; and

l. 1 hour of classroom training debriefing, reviewing purposes and objectives and final test. (Ex. H – Depo. of Hoyt, Ex 7, 10-15).

Sgt. Hoyt reviewed these objectives and agreed that this training primarily dealt with the physical operation of a vehicle during emergency driving as opposed to decision making (*i.e.* when engaging in emergency driving is appropriate and the requirements needed to engage in emergency driving). (Ex. H - Depo. of Hoyt, pp. 50-52). For further response, the training provided was based upon an unconstitutional policy that allows Arkansas State Police troopers to drive in excess of the speed limit in non-emergency situations without engaging emergency lights and siren. (MPSJ - Ex. F – Decl. Alpert, pp. 21-25, 37-43).

For further response, Claimants have submitted the Declaration of Dr. Geoffrey P. Alpert which is unrefuted and discusses the deficiencies with the training provided to troopers as follows:

> While the syllabus for EVOC training does not indicate that the ASP policies with respect to emergency driving and pursuits are covered during the training, Sgt. Hoyt testified that troopers are required to review the policy and sign an acknowledgement that they understood it and they are actually trained on the policy. (DE 58-3 – Depo of Hoyt, p. 43). In reviewing the Vehicle Use policy, Sgt. Hoyt testified that troopers are trained that they do not have to utilize their lights and sirens when exceeding the speed limit when they are in immediate pursuit which he testified is the initial approach to a violator for the purpose of initiating a traffic stop or in situations when a silent response is appropriate or necessary. (DE 58-3 – Depo of Hoyt, pp. 43-47). In particular, Sgt. Hoyt testified:

Q. All right. So, they're trained that for officer and public safety, if they're going to initiate a traffic stop, that they can exceed the speed limits without their lights and sirens on until they catch up to them to pull them over in the appropriate spot, correct?

A. Still under ordinary care and due regard, yes. (Pages 46:24 to 47:5)

Q. But as a general rule they are given the discretion to exceed the speed limit without their lights and sirens while they're catching up to a traffic --

A. Violator.

Q. -- traffic violator and select the appropriate spot to pull them over?

A. That would be safe to say, yes. (DE 58-3 – Depo. of Hoyt, pp. 47:15 to 47:22)…

Q. So I'm not taking that out. I'm not trying to trick you and not have that in a question. I'm saying once they're going to pull over a traffic offender and in utilizing ordinary care and due regard, they try to catch up to them, they're allowed to do that under the policy without lights and sirens, so that they can get to a place to activate the lights and sirens to pull them over safely, correct?

A. Yes, sir. (Ex. H - Depo. of Hoyt, pp. 49:2 to 49:10)

Sgt. Hoyt testified that troopers are not trained with respect to any limitations with respect to the amount of time or distance that a trooper can travel while attempting to catch up to a suspected violator without lights and sirens. (DE 58-3 – Depo of Hoyt, pp 48-49).

After training at the academy, Sgt. Hoyt testified that troopers received in-service training on emergency vehicle operations and pursuits in 2012 and 2015 and was questioned about the training materials and power points discussed during these in-service training. While troopers train quarterly with respect to firearms, EVOC

and pursuit driving is trained once every three years. Sgt. Hoyt acknowledged that more people are injured and killed during emergency vehicle operations and pursuits than with firearms for the ASP. (DE 58-3 – Depo. of Hoyt, pp. 61-62).

The in-service training on emergency vehicles in 2012 was a two-hour class. (DE 58-3 – Depo. of Hoyt, p. 69). The power point for this training contains 68 slides, the majority of which is use of seatbelts, spike strips, PIT maneuver and no real discussion on decision making with respect to emergency vehicle driving, including the use of lights and sirens. (DE 58-2 – Burke Training File, ASP #971-982). Significantly, the in-service training provided in 2012 set forth the requirements for proper EVOC and pursuit training in the following training slides:

> EVOC v. Firearms
> When is the last time you fired your weapon in the line of duty?
> When is the last time you had firearms training?
>
> EVOC v. Firearms
> When is the last time you have driven you ASP unit in the line of duty?
> When is the last time you have attended EVOC training?
> (DE 58-2 – Burke Training File, ASP 971).
>
> Captain Travis Yates
> Tulsa Police Department
> Researched the results of the way we train.
> 75% skill set
> 25% decision making
> NOT WORKING!!!!
>
> EVOC Training
> The Accident/Incidents within the Arkansas State Police Reinforce this Theory!!
> We are not Crashing ASP units because of how we drive, rather, We are Crashing because of the Decisions that are made to put us in that situation to begin with!
> (DE 58-2- Burke Training File, ASP 973).

EVOC Training
We Need to Reverse the Priorities, especially as it relates to In-Service Training for our incumbents. The Accident/Incidents within the Arkansas State Police Reinforce this Theory!
75% decision making
25% skill sets

(DE 58-2 – Burke Training File, ASP 974)

Despite this acknowledgement in training, Colonel Bryant and the ASP failed to reverse these priorities and did not hold any additional in-service training on EVOC or pursuits until 2015. The 2015 in-service training consisted of 3 hours of classroom training and 8 hours on the driving track. (DE 58-3 – Hoyt Depo., p. 76). There are two separate power points that were produced concerning this training session: 1) Ex. 8, Bates 985-1006 which was produced in discovery; and 2) Ex. 37 which was produced by Sgt. Hoyt. Regardless of which materials were actually used in training, these PowerPoint slides do not cover much concerning the decision making involved in emergency driving, but cover topics such as civil liability, vehicle dynamics, performance driving, PIT maneuver. These training slides again acknowledge that there are many more deaths per year from emergency driving and pursuit versus firearms. (DE 58-3 – Hoyt Depo., p. 89). Further, these training slides confirm that the ASP failed to even follow in own guidance with respect to training from the 2012 in-service training which noted that spending 75% of training on driving skill sets and 25% on decision making "WAS NOT WORKING!!!!" In fact, it confirms that Colonel Bryant and the ASP simply continued a training regimen that they provided to troopers that they specifically acknowledged was not working. This reflects a conscience indifference to the deadly consequences of emergency driving

and pursuits.

There were other documents and power points that were produced on defensive driving and other topics that touched on emergency vehicle operations and pursuits. However, these documents failed to properly address the requirements of state law and the confusion created by the improperly and poorly written policies. Based on my review of the entirety of the training documents, it is my opinion that ALL troopers with the ASP were actually improperly trained with respect to emergency driving. In fact, ALL troopers with the ASP were intentionally trained to violate state laws designed to protect the public. The fact that troopers were trained that it was acceptable to drive at excessive speeds without lights and sirens to warn the public illustrates deliberate indifference to the rights of the public. Colonel Bryant's continued adherence to this improper training and policy in the face of the past conduct of ASP officers and his review of numerous OPS investigation illustrates his reckless disregard for the safety of the public. (Ex F - Declaration of Alpert, pp. 21-25, 37-43).

Based on the Declaration of Dr. Alpert and the testimony of Sgt. Hoyt, Claimants deny that Trooper Burke was properly trained on pursuits and Arkansas law on emergency vehicle driving. This much was acknowledged by Trooper Burke who testified, "I realize we exceed the posted speed limits or I exceeded the posted speed limit. I did that and I realize that violates the statute. But in the course of my training and the way the policy is written, I was exempt from that." (Ex. I – Burke Depo. p. 98).

2. The Suspect.

Claimants admit that Defendant Burke was working a non-injury, hit and run accident in the parking lot of Pearcy Post Office on Highway 70 and testified that he observed an SUV traveling east with its hazard lights flashing. Thereafter, Trooper Burke finished with the hit and run claimant and walked to his patrol car. (MPSJ-Ex A - Burke Patrol Video; Ex. I - Burke Depo., p. 93). Claimants dispute that Officer Burke had sufficient time to accurately estimate the speed of the SUV as: 1) he observed the car while actually working the scene of a non-injury hit and run; 2) it was a dark, unlit area; 3) he only observed the car for a period of 2-4 seconds; and 4) he did not observe any specific, identifying characteristics of the vehicle other general body type and use of hazard lights. (Ex. I - Burke Depo., p 88-93). Trooper Burke even testified that he could not testify under oath that the speed of the vehicle was 90 to 95 miles per hour based on 2 to 3 seconds of observation. (Ex. I - Burke Depo., p. 106).

After walking to his patrol car, Trooper Burke engaged in a deadly joyride in a fully marked ASP patrol vehicle that: 1) at most, involved an investigation of a potential speeder travelling with hazard lights on; 2) began over a minute he observed the vehicle and completed his stop of another vehicle; 3) began after Trooper Burke **walked** to his car; 4) began without being dispatched or requested to apprehend the vehicle (in fact no other city, county or state law enforcement officer joined in Burke's efforts in regard to the unidentified vehicle); 5) covered 8.7 miles; 6) was undertaken without lights and sirens in violation of state law; 7) reached speeds of up to 117 mph

in 40-55 mph speed zones with an average speed of 98 mph; 8) passed over 64 cars on the route, including passing 12 travelling in the same direction, 52 on the opposite side of the road and 5 attempting to pull out onto the road; 9) failed to maintain the police vehicle in proper lane of travel due to excessive speeds 29 times, including driving into the opposite lane of traffic 13 times; 10) traveled 113 mph in a 45 mph zone just 5 seconds prior the crash; and 11) crashed into the vehicle containing Ms. Braun at 98 mph in a 45 mph speed zone with multiple Hot Springs, Arkansas businesses in the immediate vicinity. (MPSJ- Ex. A – Burke Dash Video).

Further, the vehicle being driven by Mr. Jenkins and containing Ms. Braun was travelling within the posted speed of 45 miles per hour and travelling at 40 miles per hour five seconds prior to the crash and 16 miles per hour at the time of impact. (Ex. K – Crash Data Jenkins/Braun Vehicle).

3. *The Accident.*

Claimants' dispute the Respondent's statement of undisputed facts under the section The Accident. In opposition, Claimants rely upon the Expert Report of Mathew Jackson which states as follows:

> At approximately 9:23 PM on October 10, 2016, a two-vehicle collision occurred on US Highway 70/Airport Road at the intersection of Klienshore Road, in Hot Springs, Garland County, AR. Approximately 5 seconds prior to this collision, Arkansas State Trooper Brian Burke was operating a 2016 State Police Dodge Charger and was traveling east, without emergency lights or siren, on US Highway 70/Airport Road at an unusually high rate of speed (approx. 113 MPH).
>
> At this same time, Mr. Tavon Jenkins was operating a 2011 Chevrolet Malibu owned by his passenger, Ms. Cassandra Braun, and was traveling westbound in the center turn lane of US Highway 70/Airport Road approaching the intersection with Klienshore Road. A collision occurred as Mr. Jenkins attempted to turn left onto Klienshore Road from the center turn lane. The collision resulted in the

deaths of Mr. Jenkins and Ms. Braun and serious, but non-fatal, injuries to Trooper Burke.

1. US Highway 70/Airport Road contains a significant hillcrest approximately 240 feet west of Kliensh ore Road sufficient to completely obscure approaching eastbound vehicles on its western side.

2. Due to the number of intersecting roads and business drives in this area of US Highway 70/Airport Road and the geographic line-of-sight limitation, an appropriate speed limit and its observance are necessary to limit dangerous situations and protect drivers from harm.

3. Trooper Burke was traveling 113 mph without emergency/pursuit lights or siren 5 seconds before impacting the Chevy Malibu driven by Mr. Jenkins and occupied by Ms. Braun.

4. The headlights of Trooper Burke's State Police Charger would have first become visible to a driver in Mr. Jenkin's position approximately 330 feet west of the center of Kliensh ore Road or 345 feet west of the area of impact.

5. Trooper Burke's State Police Charger covered that 345 feet in approximately 2.2 seconds at an average speed of 107 MPH.

6. Prior to Trooper Burke's headlights becoming visible, Mr. Jenkins had already initiated his left turn toward Kliensh ore Road from the center turn lane.

7. Mr. Jenkins did not have sufficient time to perceive and react to Trooper Burke's extreme closing speed to avoid the collision, nor did his passenger, Ms. Braun, have sufficient time to perceive the hazard and give warning.

8. Had Trooper Burke's State police Charger been traveling the speed limit (45 mph) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.

9. Had Trooper Burke's State Police Charger been traveling 60 mph (15 mph over the speed limit) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.

10. Had Trooper Burke been operating his emergency/pursuit "blue lights", Mr. Jenkins and Ms. Braun could have appreciated the approach of an emergency vehicle despite the hillcrest and been afforded the opportunity to adjust their expectations of making a safe left turn.

Opinion Support – Matthew Jackson:

1. US Highway 70/Airport Road contains a significant hillcrest approximately 240 feet west of Kliensshore Road sufficient to completely obscure approaching eastbound vehicles on its western side.

   An examination of the scene revealed a dip in the highway just west of Kliensshore Road where east bound vehicles would disappear for a significant amount of time before reappearing just before the hill crest. As part of the scene examination, a total station survey was done of US Highway 70/Airport Road in and west of the area of the collision, including measurements intended to model this line of sight problem.

   Using the measurements obtained via total station, a virtual 3D model of the relevant section of highway was created for the purpose of analyzing sight distance and serving as the analysis environment for the reconstruction and subsequent animations. Elevation measurements of the highway revealed the eastern crest of the hill to be approximately 240 feet west of the center of Kliensshore Road.

2. Due to the number of intersecting roads and business drives in this area of US Highway 70/Airport Road and the geographic line-of-sight limitation, an appropriate speed limit and its observance are necessary to limit dangerous situations and protect drivers from harm.

   Drivers must have time to perceive and react to their environment during the driving task. The distance drivers continue to cover during that process is, in part, a function of their speed. Consider a usual speed limit for an interstate of 70 mph; typically, in that driving environment, drivers have only to contend with traffic traveling the same direction, with no on-coming or cross-traffic situations. For that reason, the speed limit in such environments can be higher. When the driving environment becomes inclusive of a wider array of situations, however, such as cross-traffic, on-coming vehicles, the frequent slowing of fellow motorists facilitating turns onto side streets, or slow-moving vehicles that have just entered the road from residential or business drives, the speed limit must be set lower to accommodate those situations and allow enough time for drivers to respond.

   Consider a 2.0 second perception/reaction process and a 0.7 emergency braking factor. At 45 mph, a driver would cover 132 feet between visual acquisition of a hazard and initiating their response to it, requiring an additional 96 to stop. At 70 mph, that same driver would cover 205 feet before they could respond and would then require an additional 233 feet to stop. Between the two speeds, the driver traveling 45 mph could come to a stop in about half the distance needed by the 70 mph driver, which could certainly mean the difference between a severe

or fatal collision and no collision at all.

Now, at 110 mph, around the speed of Trooper Burke, a driver would continue traveling 110 mph for an additional 322 feet before even being able to initiate their braking response. To illustrate the extreme danger created by such speeds, that would be like driving a car onto a football field and going so fast that, despite being alert and seeing a kid standing in the opposite endzone the moment you drove onto the field from the other end, you'd cross the entire field and hit him before you could even reach your brake to slow down. When you finally did hit your brakes, you'd need an additional 2 football fields to stop.

In the 600 foot section of highway where this collision occurred, considering 300 feet east and 300 feet west of the area of impact, US Highway 70/Airport Road has no fewer than 10 connecting drives or side streets and contains a significant geographic line-of-sight limitation, all of which inform the 45 mph speed limit. Traveling 113 mph on such a road, at night, no less, in the presence of normal evening traffic, is extremely dangerous, and would continually create numerous situations where a severe or fatal collision is almost a certainty.

3. Trooper Burke was traveling 113 mph at night without emergency/pursuit lights or siren 5 seconds before impacting the Chevy Malibu driven by Mr. Jenkins and occupied by Ms. Braun.

   The electronic data recovered from the airbag control module of Trooper Burke's State Police Charger shows his vehicle speed to be 113 mph 5 seconds prior to the deployment event that corresponded to the first impact and is consistent with the totality of the evidence. The video recovered from Trooper Burke's State Police Charger shows that, at the time of this event and for a significant amount of time prior to this event, Trooper Burke had been traveling at extreme speeds for conditions and without emergency/pursuit lights or siren.

4. The headlights of Trooper Burke's State Police Charger would have first become visible to a driver in Mr. Jenkin's position approximately 330 feet west of the center of Klienshore Road or 345 feet west of the area of impact.

   Electronic data was recovered from the airbag modules of both Trooper Burke's State Police Charger and Ms. Braun's Malibu. Both sources of data contained approximately 5 seconds of pre-crash data, such as, among other things, vehicle speed and braking. The data contained in both modules was locked, complete, internally consistent, and externally consistent with the nature of this collision and the resultant physical evidence.

   Based on this electronic data, in conjunction with the physical evidence and the dashcam video from Trooper Burke's Charger, each vehicle can be backed up in

time from impact to recreate their approximate positions with respect to time, the area of impact, each other, and the highway. An analysis animation can then be constructed to show the relative movements of each vehicle 5 seconds prior to the collision, observable in real time.

Each vehicle was 3D modeled based on measurements obtained during examination and database measurements for each year/make/model, then placed within the virtual 3D scene. Starting with the Malibu, an animation path was constructed that was consistent with the speeds, times, and turning information contained within its airbag control module as well as its angular position relative to the highway and the Charger at the time of impact. The Charger was done the same way, with an animation path constructed that was consistent with the speeds and times contained within its airbag control module as well as its angular approach and impact position relative to the highway and the Malibu. The Trooper's dashcam video was also used to determine the Charger's approach path and pre-impact travel up to the video cut-out. The resultant analysis animation creates a visual representation of the 5 seconds immediately prior to the collision that is consistent with the totality of the evidence.

Animation cameras were placed inside the Charger and Malibu models in order to examine the location on the highway and the pre-collision time where and when each vehicle's headlights would have become clearly visible to the opposing driver. Doing so revealed that the Charger's headlights would have become visible to a driver in the same position as Mr. Jenkins when the Charger was approximately 345 feet west of the area of impact or 330 feet west of the center of Klienshore Road.

5. Trooper Burke's State Police Charger covered the 345 feet from visibility to impact in approximately 2.2 seconds at an average speed of 107 MPH.

   Considering the distance from impact of 345 feet and the time remaining from that point to reach impact of 2.2 seconds, an average travel speed over that short distance comes to approximately 157 ft/sec or, converted to miles per hour, 107 MPH, which, again, is consistent with the totality of the evidence.

6. Prior to Trooper Burke's headlights becoming visible, Mr. Jenkins had already initiated his left turn toward Klienshore Road from the center turn lane.

   An analysis of the data from the Malibu's airbag control module, which contains steering information, suggests that, by 2.2 seconds from impact, when the Charger's headlights first became visible, the Malibu had already initiated its left turn maneuver. This is based on the reported yaw rate and steering wheel angle data, their associated pre-impact times, the resultant analysis animation, and is supported by the Trooper's dash cam video showing the angle of the Malibu's

headlights when they first come into view.

7. Mr. Jenkins did not have sufficient time to perceive and react to Trooper Burke's extreme closing speed in order to avoid or mitigate the collision, nor did his passenger, Ms. Braun, have sufficient time to perceive the hazard to give warning.

   The appearance of Trooper Burke's headlights would not have been sufficient to communicate the extreme speed of those headlights to a reasonable driver the moment they appeared. At night, especially for zero-angle closing situations, like head-on meetings or one vehicle overtaking or passing another, the normal amount of visual cues a driver relies upon to inform things like their following distance to other vehicles, their passing opportunities, or their opportunities to turn safely across traffic, are not visually available. What drivers do have in these situations are headlights and taillights, the perceived distance those objects are away, a looming threshold that must be met before a driver appreciates that a closing speed is unacceptable for certain actions, and general experience and expectations of how traffic moves and the time it takes for distances to close under reasonable circumstances.

   In nighttime, left-turn situations like this one, drivers make go-ahead decisions based not on how fast the approaching vehicle is traveling, since that can't be accurately assessed, but on how far away the other driver is when the decision to turn is considered under the working assumption that the approaching vehicle is traveling within a normally-experienced range of speeds.

   It is unknown at what point in time Mr. Jenkins, or a driver in a similar situation, or Ms. Braun, as an observer, could have appreciated the extreme closing speed of the Charger based upon on-coming headlight movement alone, but it is certain that it could not have been upon their appearance. Even if a driver in this situation could have managed to perceive the extreme closing speed of the headlights within a second or even half a second of observing their movement after they first became visible (highly improbable), there would be no time prior to impact to effectuate a response. It is not unexpected, then, that the electronic evidence from the Malibu's airbag control module appears to show no emergency braking response; there simply would not have been enough time to perceive the hazard and respond.

   Even taken to the asbsurd, had Mr. Jenkins recognized, at the exact moment the headlights appeared over the hill crest, that the vehicle to which those headlights belonged would reach him before he completed his turn, he could not have avoided the collision. Every driver must have time to detect, identify, make some decision, then react to their environment, which includes other drivers. The amount of time that process takes is variable, but research suggests most drivers will

respond within 1.5 to 2.0 seconds for straight forward, emergency situations. Assuming the impossible for a moment, that Mr. Jenkins could have recognized the headlights as a hazard for his left turn the moment those headlights became visible, of the 2.2 seconds with which he had to work before impact occurred, 1.5 to 2.0 seconds of that time would be eaten up before he could even get his foot to the brake. That would leave him with 0.2 to 0.7 seconds of brake application, which would have been insufficient to keep out of the path of the Charger.

8. Had Trooper Burke's State police Charger been traveling the speed limit (45 mph) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.

   The moment in time and the position on the highway that Trooper Burke's Charger became visible to Mr. Jenkins' position was considered and identified within the previously referred to and explained 3D analysis environment. Leaving all other aspects of the recreation the same, a similar Charger was modeled and positioned accordingly and at the same moment in animation time. This Charger, however, was assigned a speed of 45 mph, instead of 109 mph, and allowed to continue at this speed, maintaining the inside travel lane. This scenario found the Malibu, during its course of making a left turn onto Kliensshore Road, clearing the Charger's travel lane with the Charger approx. 180 feet away from the would-be impact. Additionally, in this same scenario, the Malibu was able to fully complete its turn onto Kliensshore Road with the Charger still approx. 135 feet from the would-be impact.

9. Had Trooper Burke's State Police Charger been traveling 60 mph (15 mph over the speed limit) when its headlights became visible, Mr. Jenkins could have safely completed his left turn.

   Following the same process set forth in the previous explanation, a similar Charger was modeled and positioned accordingly with a fixed speed set to 60 mph, 15 mph above the posted speed limit. This scenario found the Malibu, during its course of making a left turn onto Kliensshore Road, clearing the Charger's travel lane with the Charger approx. 120 feet away from the would-be impact. Additionally, in this same scenario, the Malibu was able to fully complete its turn onto Kliensshore Road with the Charger still approx. 70 feet from the would-be impact.

10. Had Trooper Burke been operating his emergency/pursuit blue lights, Mr. Jenkins and Ms. Braun could have appreciated the approach of an emergency vehicle despite the hillcrest and been afforded the opportunity to adjust their expectations of making a safe left turn.

    Certain situations may call on emergency vehicles to, within reason, exceed

> posted speed limits and violate other traffic safety rules that are in place to protect the motoring public; however, emergency vehicles, such as Trooper Burke's Charger, are equipped with emergency lights and sirens designed to offset the danger such actions create by not only conspicuously alerting other drivers to their presence but also communicating the likelihood that the emergency vehicle will not be behaving as other vehicles in terms of following traffic laws, allowing other drivers to adjust their expectations, thereby protecting them from harm.
>
> The pervasive characteristics and brightness, especially during night-time operation, of state police pursuit lights or emergency lights would have been available for a driver in Mr. Jenkins' position to appreciate, even if the Charger's headlights were not visible due to the geography of the highway. A driver in Mr. Jenkins' position or a passenger in Ms. Braun's position, then, could have been put on notice as to the approaching emergency vehicle and taken that information into account before making the decision to initiate a left turn maneuver. As it was, however, Mr. Jenkins and Ms. Braun were never afforded the opportunity.
>
> All illustrations, graphics, animations, 3D environments (ARAS HD) and/or stills provided with this report are offered as visual demonstratives of the opinions expressed herein and as opinions in and of themselves, and will be of assistance in explaining opinions to the jury; they are attached to this report.
>
> All of the above opinions are based on the information evaluated to date. Should new information or questions arise at some future time through disclosures, testimony, deposition, or otherwise, these opinions may be supplemented in consideration of such.

(MPSJ-Ex. B – Jackson Expert Report)

In further opposition to the Respondents recitations of the facts of the accident, Claimant's rely upon the animations prepared by their expert, Mathew Jackson, and attached on CD as Exhibit L.

4. Accident Investigations

Claimants admit that the Hot Springs Police Department did an investigation of this crash, with the assistance of the Little Rock Police Department. Claimants admit that Cassandra Braun was a passenger in the vehicle being driven by Mr.

Jenkins. Claimants admit that BAC tests indicate that Ms. Braun had a blood alcohol level of .12 and Tavon Jenkins had a blood alcohol level of .10. For further response, Claimants rely upon the accident reconstruction of these events by their expert, Mathew Jackson, as set forth above.

5. Investigation by Chief Medical Examiner.

In this discussion, Respondents submit a memorandum of Dr. Charles P. Kokes dated June 6, 2019, to support its argument that Ms. Braun's death was caused as a result of her ejection from the vehicle as opposed to the crushing force from crash. Dr. Kokes opinion only addresses the cause of death of Ms. Braun and does not provide any analysis of Mr. Jenkins injuries. It appears that Respondent is attempting to utilize Dr. Kokes' memorandum to argue that Ms. Braun's injuries were proximately caused by her failure to wear a seat belt as opposed to the crash. Further, Respondent is attempting to utilize Dr. Kokes' memorandum to suggest that Mr. Jenkins ethanol level was an intervening cause which impaired his ability to observe Trooper Burke's oncoming vehicle, estimate its speed, and take proper evasive actions. However, these arguments are without merit.

6. Colonel Bill Bryant.

With respect to this allegation of undisputed facts, Claimants admit that Burke failed to use ordinary care and drove in a negligent and reckless manner. However, Claimants deny that Colonel Bryant provided proper training or supervision of his trooper's emergency vehicle operation. Claimants submit that the ASP has a long-history of allowing its officers to violate state law when engaging in

emergency driving as detailed by their expert Dr. Alpert who opined as follows:

> Colonel Bryant did not require his officers to comply with the speed limitations set forth in the statutes which would be simple. Colonel Bryant could have simply amended the policies to specifically state that when officers exceed the speed limits, lights and sirens must be activated. The position of every single reputable law enforcement organization, and common sense, require the use of lights and sirens when exceeding the speed limit. Instead, Colonel Bryant testified he decided to go the legislature to seek authority to violate the speed limitations without using lights and sirens under the guise of "clarity." Significantly, the use of lights and sirens is designed to protect the motoring public by warning them of the approach of emergency vehicles at high-speeds so that they can clear the roadway and move to the left as required by law. This testimony and these actions reflect Colonel Bryant's complete indifference to the public with respect to emergency driving. There is simply no legitimate law enforcement purpose for allowing high-speed emergency driving without a simple warning to the public through the use of lights and sirens. After reviewing the statutes in conjunction with the policy, Colonel Bryant testified that the policy could be clearer. (DE 58-11 – Bryant Depo., p. 45).
>
> Colonel Bryant testified that there is no requirement that officers call into dispatch when they are exceeding the speed limit, unless there engaged in a pursuit. (DE 58-11 – Bryant Depo., p. 48). Therefore, there is no accurate way for the ASP to be advised of high-speed driving, other than a pursuit. However, other policies provide a manner to actually track potentially improper driving but were ignored by Colonel Bryant. The in-car camera policy requires that patrol video cameras are automatically activated when an officer exceeds 99 mph. (DE 58-11 – Bryant Depo., p. 48). Despite having an express policy to automatically activate video cameras when a trooper exceeds 99 mph without lights and sirens, Colonel Bryant did not review these videos and did not even have a mechanism in place for the review of these videos. (DE 58-11 – Bryant Depo., p. 49). Instead of reviewing the actual tapes from vehicles where the camera was automatically activated when triggered by excessive speeds, a random audit of three tapes per month is required. (DE 58-11 – Bryant Depo., p. 49- 50). However, if the policy requires automatic activation of a camera at speed in excess of 99 mph, the failure to actually review these tapes reflects a complete indifference to this high-speed driving.
>
> The failure to review these tapes also prevents Colonel Bryant and the ASP from actually tracking and monitoring officers who travel in excess of 100 mph without lights and sirens because they are not reviewed. This is especially egregious given: 1) cameras are set to automatically activate when an officer exceeds 100 mph without lights and sirens; 2) there is no 10 code to alert dispatch of high-speed driving or travelling in excess of 100 mph, unless

engaged in a pursuit which requires lights and sirens; 3) travelling at 100 mph is dangerous; and, 4) the video tape would only be review if there was an accident or complaint. (DE 58-11 – Bryant Depo., pp. 51-52). Accordingly, Colonel Bryant had policies designed to automatically record troopers travelling in excess of 99 mph without lights and sirens but failed to require a review of these tapes unless there was an accident. This bad-results based analysis reflects deliberate indifference to the rights of the public as the conduct should be evaluated and corrected, regardless of whether there has been a crash or fatality….

Prior to and upon his ascension to Director of the ASP, Colonel Bryant was advised of the Andrew Rhew litigation stemming from a traffic fatality crash which occurred when a trooper responded to an emergency call without lights and sirens. (DE 58-11 – Bryant Depo., p. 52). Colonel Bryant was aware that a multi-million-dollar award was entered against the ASP for this conduct and acknowledges that this was a serious incident and a big deal. (DE 58-11 – Bryant Depo., pp. 52-54; Ex. B - Stewart v. ASP Judgment). However, Colonel Bryant never read the transcript of the proceedings concerning Trooper Rhew's termination and reinstatement by the Arkansas State Police Commission (ASPC) either before or after this litigation. (DE 58-11 – Bryant Depo., p. 55). The testimony from the Rhew's disciplinary hearing reveals the following concerning the policies, practices and customs of the ASP both before and during Colonel Bryant's tenure as follows:

Lt. Wesley Smithee testified that he performed the investigation of the Rhew crash. (Ex. A – Rhew Transcript, p. 63). During his investigation, Lt. Smithee only asked Trooper Rhew two questions: 1) if he knew how fast he was going to which Trooper Rhew responded that he did not know; and 2) if he had his lights and sirens on to which Trooper Rhew testified that he did not. *Id.* at 73.

Lt. Charles Westerman testified that he assisted the investigation by performing crash reconstruction analysis. Lt. Westerman was asked how many times he had responded to calls in excess of the speed limits without his lights and sirens, "Quite a bit. I don't know the exact number, but it's the nature of the beast. It's part of the things that we have to do. It's something that – you can't do your job and not do it." *Id.* at 111. Lt. Westerman testified that he engaged in driving in excess of the speed limit without lights and sirens in normal police work and not only when on emergency calls or in pursuits. *Id.* at 113.

Corporal Doug Cash was part of the ASP reconstruction team. Corporal Cash testified that he exceeded the speed limits without lights and sirens "several times without an accident" during his career. *Id.* at 128.

Colonel J.R. Howard was the Director of the Arkansas State Police at the time of the Rhew crash fatality and recommended that Trooper Rhew be terminated. *Id.* at 144-145. Director Howard testified that Trooper Rhew had been found to have been travelling at 100 mph without lights and sirens but was not involved in a crash, Trooper Rhew would not have been terminated. *Id.* at 148-149. Colonel Howard also testified that if he had 50 officers who said that they responded to emergency dispatch calls and exceeded the speed limits without lights and sirens, he would not fire them all. *Id.* at 150. During Colonel Howard's testimony, Commissioner Fowler made the astute observation concerning the regularity of troopers driving without lights and sirens, noting, "Now that I hear that quite a lot of trips are made or emergency calls are made without blue lights on, with the siren on; and was that a typical thing for him to be doing or – whether it was against the rules or not, I don't know, because it happened every day." *Id.* at 154.

Captain Tommy Wicker was a Captain and Troop Commander with the Arkansas State Police. Captain Wicker served 37 years with the ASP and was Trooper Rhew Trooper Commander at the time of the wreck. *Id. at* 179-180. Captain Wicker testified that he found out that Trooper Rhew was not using his lights and sirens but was not concerned because it was not "unusual" and "officers do it every day." *Id.* at 181-182. Captain Wicker testified that he has driven without lights and sirens in excess of the speed limit. *Id.* at 182). When asked why lights and sirens would not be activated while exceeding the speed limit, Captain Wicker testified, "… [W]e just didn't. You know, if it wasn't any reason to run blue lights and siren and cause more problems with traffic, we just didn't do it. We just – troopers are trained to drive – respond safely to calls. And they normally do that whether they are running blue lights and siren or not." *Id.* at 182. Captain Wicker testified that he did not recommend any discipline against Trooper Rhew because he did not believe that Trooper Rhew violated policy. *Id.* at 183-184. Even after he learned of information noting that Trooper Rhew was travelling at an excessive speed, he still did not believe that Trooper Rhew should have been disciplined. *Id.* at184. Further, he testified that every trooper that he had known had driven in excess of the speed limits without blue lights and sirens. *Id.* at 186. Significantly, Captain Wicker testified that if every trooper who drove at excessive speeds without lights and sirens, there "probably wouldn't be anyone left." *Id.* at 186-187.

Sergeant Benny Cox was employed by the ASP for 30 years. *Id.* at 187. Sgt. Cox supervised Trooper Rhew and testified that while riding with Trooper Rhew, they responded to emergency calls and that lights and sirens were not always activated. *Id.* at 188). Sgt. Cox testified that lights and sirens are not always required especially in rural areas and because using blue lights and sirens can cause problems. *Id.* at 189. He did not instruct Trooper Rhew to use blue lights and sirens all the time. He testified that he has seen other

troopers travelling above the speed limit without lights and sirens, and testified that if troopers were fired for driving in excess of the speed limits without lights and sirens, there "would be a lot of openings." *Id.* at190.

Captain Keith Eremea[2] testified that he had been a trooper for 34 years. *Id.* at 192. Captain Eremea testified that he had driven in excess of the posted speed limits without lights and sirens. *Id.* He testified that he has reached speeds of 145-150 mph without using his lights and sirens. *Id.* He was asked how many troopers he had observed travelling 20-25 mph in excess of the speed limits and responded, "Most of them." *Id.* Captain Eremea testified that he used his lights and sirens "sometimes" when responding to an emergency all. *Id.* at 193. Captain Eremea testified that he did not always put on lights and sirens for emergency driving and, if trying to arrest felon, would not put on lights and sirens until had back up to make stop. *Id.* Captain Eremea testified that he has never been in an accident while responding to a call without lights and sirens. *Id.* at 196.

Captain Rick Dickinson was employed by the ASP as the CID Commander at time of accident. He testified that he was aware of troopers exceeding the speed limits without lights and sirens and testified that "that goes on everywhere" and that is "not unusual." *Id.* at 203. Captain Dickinson testified that if he had to fire every officer driving twice the speed limit without their lights and sirens, he would "have to fire himself first; and then someone else would have to take care of the rest of them, because we probably wouldn't have anybody." *Id.* at 203. He testified that troopers are trained not use lights and sirens in certain situations like responding to a silent alarm which would be a violation of the law but justified by exigent circumstances. *Id.* at 204.

Lt. Robert Speer was an Assistant Troop Commander. He testified that the use of lights and sirens is discretionary, even if in violation of state law, because troopers cannot perform their jobs complying with the letter of the law. *Id.* at 217). Lt. Speer testified that it is very common for troopers to exceed the speed limit by double without lights and sirens. *Id.* He also testified that if all trooper who exceeded the speed limit without lights and sirens were fired there would be no troopers left and that he has driven in excess of the speed limit without lights and sirens. *Id.* at 218-219.

Sgt. Lance Huey testified that he had exceeded the speed limit without lights and sirens while employed as a trooper. *Id. at* 229. He testified that whether to use lights and sirens when exceeding the speed limit was discretionary. *Id.* Sgt. Huey testified that it was also common practice for troopers to exceed the speed limit without lights and sirens when he was at the ASP. *Id. at* 230.

[2] Unbelievably, Captain Eremea was actual an emergency vehicle driving instructor for the ASP and was one of Trooper Burke's training officers. (Ex. 7, 38).

Trooper Phillip Hydron was a criminal investigator for the ASP and also served as a training officer for the ASP and taught traffic stops. *Id. at* 232-233. He testified that he trained troopers with respect to use of lights and siren during stops. Troopers were trained not to activate their lights and sirens until troopers "catch up" to the violator, call in the tags, find a safe location to stop and then put on your lights and sirens for safety reasons. *Id. at* 233-234. Trooper Hydron testified that he understood what law and policy says, but states that he trains officers that they have discretion on using lights and sirens based on officer safety and believes putting lights and sirens on can make it more dangerous. *Id. at* 235. Trooper Hydron also testified he was one of Trooper Rhew's FTO officers and observed him respond to emergency calls without lights and sirens. *Id. at* 237.

After the disciplinary hearing was concluded, the Arkansas State Police Commission reversed the decision to terminate Trooper Rhew. The only potential basis for this reversal based on the testimony presented to the ASPC is that Trooper Rhew's failure to use lights and sirens while driving at an excessive speed was that this was the custom and practice of the ASP and Trooper Rhew was trained that it was acceptable.

On January 26, 2012, a claim was filed against the Arkansas State Police in the Arkansas Claims Commission by Melissa A. Stewart, Administrator of the Estate of V.L. Freemyer. On November 15, 2012, the Claims Commission issued Findings of Fact which found in favor of the Estate of V.L. Freemyer and found the total damages to be $3,300,000 which was reduced to $2,970,000 based on a finding of 10% fault assigned to V.L. Freemyer. (Ex. B – Judgment)

The Rhew crash, investigations, disciplinary process and litigation provides the most complete glimpse into the actual customs and practices of the ASP with respect to emergency driving and use of lights and sirens. Based on these documents, it is clear that as of 2011, ASP troopers were trained that it was acceptable to exceed the speed limits without lights and sirens and this was an ingrained custom and practice within the ASP which was known and authorized by the highest members of the ASP, including the Director of the ASP. Based on a review of post-Rhew documentation, it is clear that this training, custom and practice exists to this date and that troopers are still trained that they do not have to comply with state law pertaining to lights and sirens when exceeding the speed limit. Allowing this custom and practice to continue reflects a conscious disregard to the rights of the motoring public for no legitimate law enforcement need or purpose.

Colonel Bryant was questioned about the testimony of numerous high-ranking officers of the ASP at this hearing which reflected that these officers, including

training officers, testified that officers were not required to use lights and sirens when exceeding the speed limits and that if troopers were disciplined for this conduct, there would be no troopers left to serve. (DE 58-11 – Bryant Depo., pp. 55-68). Colonel Bryant acknowledged that the testimony from the Rhew cases reflected that the ASP had custom or practice of allowing officers to routinely drive above the speed limits without lights and sirens without discipline unless they were involved in a crash. (DE 58-11 – Bryant Depo., pp. 68, 70).

Colonel Bryant testified that he investigates officer misconduct and policy violations and that the majority of the complaints or investigations he performs involve motor vehicle crashes. (DE 58-11 – Bryant Depo., p.Tr. 47).

OPS INVESTIGATIONS

The Office of Professional Standards (OPS) investigates complaints or misconduct involving ASP troopers. Therefore, OPS only investigate issues involving emergency vehicle operations and pursuits when there is a complaint made by a citizen/other officer or the action results in a bad outcome such as a wreck. I have generally reviewed the 34 OPS files provided and videotapes from 18 files from both before this incident.

While the previous review of the policies and training provided by Colonel Bryant and the ASP reflect that Trooper Burke's outrageous conduct was specifically authorized by the written policies and training, a review of the Office of Professional Standards (OPS) investigations further serves to confirm this fact and illustrates the wanton disregard of Colonel Bryant and the ASP to the consequences of improper emergency vehicle operations and pursuit driving. Further, a review of the video illustrates the dangerousness of troopers driving actions and reflects outrageous conduct including travelling at speeds of as high as 155 mph, passing civilians on the shoulders of highways and other reckless and dangerous activities.

During the course of OPS investigations, it became clear that both OPS and Colonel Bryant were specifically made aware of officer misconduct during emergency operations and pursuits and failed to adequately address these issues and allowed the improper customs and practices to continue. An overview of the some of the more relevant and egregious actions are set for below:

1. OPS – [redacted] - Trooper [redacted] – DOI – 3/17-18. According to Colonel Bryant's notes concerning this incident, Trooper [redacted] was travelling at speeds greater than 90 mph

while attempting to catch a speeder and ultimately engaged in a pursuit and crashed his patrol car. During the course of his actions, Trooper [redacted] reached speeds of 113 mph in a 35-mph zone. Trooper [redacted] was suspended for two days. (Ex. 75/85 & Video)

2. OPS – [redacted] – Trooper [redacted] – DOI – 5/5/18. According to Colonel Bryant's notes, Trooper [redacted] observed a speeder and attempted a U-turn without lights and sirens, causing a crash. Trooper [redacted] noted that he got tunnel vision which should be addressed in proper training with lights and sirens. Trooper [redacted] was issued a Letter of Reprimand. (Ex 76/86 & Video)

3. OPS [redacted] Trooper [redacted] – DOI – 2/1/18. According to Colonel Bryant's notes, Trooper [redacted] was involved in a pursuit which reached speeds of over 140 mph which ended when Trooper [redacted] crashed into the fleeing suspect. Trooper [redacted] was previously issued a letter of warning and counseling as a result of two previous pursuits in 2016 and 2017. Trooper [redacted] was issued a Letter of Reprimand. (Ex 74/87 & Video)

4. OPS [redacted] – Trooper [redacted] – DOI 7/1/17. According to Colonel Bryant's notes, Trooper [redacted] observed a speeder and attempted to perform a U-turn without lights and sirens activated causing a wreck with another trooper travelling behind him. During the investigation, Trooper [redacted] denied that he violated policy. Trooper [redacted] received a Letter of Reprimand. (Ex 72/89 & Video).

5. OPS-[redacted] – Trooper [redacted] – DOI – 6/22/17. Trooper [redacted] initiated a traffic stop which resulted in a pursuit. During the pursuit, Trooper [redacted] reached speeds of 115 mph. The pursuit ended when Trooper [redacted] lost control of his vehicle during a turn and struck the suspect vehicle. Trooper [redacted] received a Letter of Reprimand. (Ex 71/90 & Video)

6. C[redacted] – Trooper [redacted] – DOI – 10/11/16. According to Colonel Bryant's notes, Trooper [redacted] attempted to initiate a traffic stop and reached speed of 136 mph without utilizing lights and sirens and struck the rear of the violator's vehicle. Trooper [redacted] noted that the "reason I did not use my blue lights and siren was so the driver would not hear or see me approaching. If the driver saw me, it would have given him the ability to take an exit ramp before I reached him." Trooper [redacted] said he turned on his

blue lights immediately before the crash as he was attempting to complete his traffic stop pursuant to previous training and policy. Trooper [redacted] acknowledged receiving an email from Lt. Austin dated 10/12/16 which requested that officers use blue lights and sirens when exceeding the speed limit.[3] Trooper [redacted] received a Letter of Reprimand. (Ex 69/91)

7. OPS [redacted] – Trooper [redacted] – DOI – 10/10/16. An investigation was commenced on 1/10/17 concerning the incident which is the subject matter of this action. Trooper [redacted] was interviewed. However, Trooper [redacted] was permitted to medically retire on March 1, 2017, without the completion of the investigation or conclusions despite the fact that all information was received prior to the submission of his medical retirement. (Ex. 38/Video)

8. OPS [redacted] – Trooper [redacted] – DOI 9/23/16. Trooper [redacted] was attempting to stop a motorcycle for a traffic violation and then ended up in a pursuit which concluded when he crashed into a fire hydrant which he initially failed to report. According to Colonel Bryant's notes, Trooper [redacted] drove at excessive speeds in high-volume traffic, travelling in excess of 100 mph in a 45-mph zone. A review of the video indicates that Trooper [redacted] was travelling 75 mph in a 35-mph zone; 77 mph in a 35-mph zone; and 105 mph in a 45-mph zone. Trooper [redacted] received a 2-day suspension. (Ex. 68/92 &Video)

9. OPS [redacted] – Trooper [redacted] – DOI – 3/25/16. Trooper [redacted] was attempting to initiate a traffic stop of a motorcycle. According to Colonel Bryant's notes, Trooper [redacted] pursued the motorcycle without lights and sirens, reaching speeds of 123 mph, running stop signs at 67 mph and driving into oncoming traffic at 119 mph. Colonel Bryant's notes also indicate that Trooper [redacted] justified his actions based on hearing Major Whitt speaking in the Commission Room and telling him that once you attempt to turn around on a speeder and were in immediate pursuit, you did not have to have your blue lights or sirens activated which is consistent with the practices set forth above. If Colonel Bryant did not agree with this practice, he was placed on specific notice from Trooper [redacted] that Major Witt was instructing officers that this practice was acceptable and should have immediately corrected this misconception through policy

[3] Significantly, at no time did Colonel Bryant ever send out an email or policy updates to troopers after any of his investigations involving emergency vehicle operations or pursuits.

revisions. However, Colonel Bryant did none of this. Instead, Colonel Bryant's notes indicate that he requested his legal counsel to institute some sort of progressive discipline, writing: "In regards to travelling over the posted speed limits without emergency equipment (lights & siren), my thoughts would be to initiate progressive discipline and be consistent across the board (depending on the individual circumstances) – Ex. 1st – Written Warning; 2nd Written Reprimand; 3rd Suspension; 4th Suspension to Termination." A sticky note on Colonel Bryant's notes the following comments, "Violation of State Law – Massive potential liability." Colonel Bryant testified that this sticky note was written by the ASP general counsel, Mr. Greg Downs. (Tr. 186). Trooper [redacted] received a Letter of Reprimand. (Ex 67/94 & Video).

10. OPS [redacted] – Sgt. [redacted] – DOI – 3/17/16. Sgt. [redacted] was responding to a call for assistance when she was involved in a wreck. According to Colonel Bryant's notes, Sgt. [redacted] was initially responding to a call for assistance but was informed that the suspect was in custody and back-up units on the scene but she continued to the call travelling at 114 mph and striking a civilian car at 83 mph. Colonel Bryant recommended a Letter of Reprimand but Sgt. [redacted] was ultimately given a 1-day suspension. (Ex 66/95 & Video did not play).

11. OPS [redacted] – Trooper [redacted] – DOI – 1/16/16. Trooper [redacted] was involved in a 15 minute pursuit which ended when he ran a stop sign and hit a van. During the pursuit, Trooper [redacted] was travelling over 90 mph in a 35-mph zone. According to Colonel Bryant's notes, 5 minutes into the chase, the suspect was positively identified and the further pursuit was unjustified. Trooper [redacted] received a 2-day suspension. (Ex. 65/96 & Video).

12. OPS [redacted] – Trooper [redacted] – DOI – 9/27/15. This investigation revealed that Trooper Berry initiated a traffic stop of a motorcycle for speeding which resulted in a pursuit. During the pursuit, Trooper [redacted] reached speeds of up to 150 mph in moderate to heavy traffic, passing on the shoulder of the highway 12 separate times and travelling on the shoulder for at least a quarter of a mile on two occasions. After being instructed to terminate the pursuit, Trooper [redacted] continued traveling in the direction of the pursuit at speeds over 85 mph without lights and sirens. During the investigation, Trooper [redacted] indicated he did not violate policy. According to Colonel Bryant's notes, this

pursuit covered 31 miles before instructed to terminate; Trooper [redacted] had been involved in 9 accidents since 2009; Trooper [redacted] was suspended for 15 days for a wreck that occurred while travelling at a high rate of speed without lights and sirens and striking another vehicle in 2011; Trooper [redacted] was a dedicated officer but shows that he is focused on trying to catch the suspects at all costs and unable to discern the dangers posed to the public which is documented and he has not learned from his prior disciplinary actions. Trooper [redacted] received a Letter of Reprimand and Disciplinary Transfer to Regulatory and Building Services. (Ex. 62/99 & Video produced but could not be played).

13. OPS [redacted] – Trooper [redacted] – DOI – 7/23/15. Trooper [redacted] attempted to initiate a traffic stop of a suspected speeder and performed a U-turn without lights and sirens, causing a wreck. Trooper [redacted] was issued a Letter of Reprimand. (Ex 60/100 & Video)

14. OPS [redacted] – Trooper [redacted] – DOI – 7/12/15. Trooper [redacted] was dispatched to a call regarding an intoxicated subject. Trooper [redacted] arrested the suspect and his juvenile son. Trooper [redacted] dropped the juvenile off at a location close to his grandmother's home but not the home. Trooper [redacted] then drove the suspect to jail at 111 mph without lights and sirens. Trooper [redacted] received a one-day suspension. (Ex. 59/101 & Video).

15. OPS [redacted] – Trooper [redacted] – DOI – 5/23/14. Trooper [redacted] initiated a traffic stop at speeds of up to 81 mph in downtown Little Rock which included streets and parking lots adjacent to Arkansas Children's Hospital without the use of lights and sirens. Trooper [redacted] rammed the vehicle (not a PIT maneuver) in a parking lot and when the suspect fled on foot. Trooper [redacted] struck the suspect with his vehicle. Trooper [redacted] indicated that his conduct was not in violation of policy. As a result of this incident, Trooper [redacted] was terminated but reinstated by the ASPC. (Ex. 57/103 & Video produced but does not work).

16. OPS [redacted] – Trooper [redacted] – DOI – 3/19/14. Trooper [redacted] initiated a traffic stop of a speeding motorcycle which resulted in a pursuit and crash. During the course of this pursuit, Trooper [redacted] reached speeds of 145 mph. Trooper [redacted] crashed his vehicle while trying to negotiate a curve. Trooper [redacted] received a Letter of Reprimand and required to

attend remedial driver training. (Ex 55/105 & Video)

17. OPS [redacted] – Trooper [redacted] – DOI – 1/11/14. Trooper [redacted] initiated a traffic stop of a motorcycle which ultimately resulted in pursuit and a crash. Trooper [redacted] failed to activate his lights and sirens. Trooper [redacted] was given a five-day suspension. (Ex 54 & Video)

18. OPS [redacted] – Trooper [redacted] – DOI – 1/8/14. Trooper [redacted] was responding to an accident call without his lights and sirens and was involved in a collision. Trooper [redacted] received a Letter of Reprimand. (Ex. 58)

19. OPS [redacted] – Trooper [redacted] – DOI – 10/26/13. Investigation for improper use of force after citizen complaint. During the course of the investigation, his patrol car video was reviewed and it was determined that he was travelling without his lights and sirens in response to the call at speeds over 100 mph. (Ex. 52).

20. OPS [redacted] – Captain [redacted] – DOI – 4/15/13. Captain [redacted] had an unauthorized female passenger in his patrol car and engaged in a pursuit which reached speeds of over 150 mph. Significantly, Captain [redacted] was an EVOC driving instructor and was one of Trooper Burke's training officers. Captain [redacted] signed a disciplinary agreement which transferred him from Troop A Commander to Highway Patrol Administration. (Ex. 50/106 & Video)

21. OPS [redacted] – Trooper [redacted] – DOI – 11/20/12. Trooper [redacted] was looking for a traffic violator on city street when he encountered a vehicle and began following it which began to attempt to elude him. Trooper [redacted] followed the vehicle without lights and sirens and ran through an intersection causing a wreck. Trooper [redacted] did not put on his lights and sirens until immediately prior to the intersection. Trooper [redacted] received a 3-day suspension. (Ex. 49/107 &Video).

22. OPS [redacted] – Trooper [redacted] – DOI – 8/15/11. Trooper [redacted] was responding to a theft call at an Ace Hardware store. In response to the call, Trooper [redacted] reached speeds of 105 mph without utilizing his lights and sirens and was involved in a crash with an impact speed of 97 mph. Trooper [redacted] noted that he did not utilize his lights and sirens because he believed a silent

response would give him the element of surprise and best chance of apprehending the suspect Trooper [redacted] received a 15-day suspension. (Ex 108)

23. OPS [redacted] – Trooper [redacted] – DOI 10/5/10. Trooper [redacted] initiated a traffic stop of a speeder without lights and sirens and was involved in a crash. Trooper [redacted] reach speeds of 116 mph during this incident and crashed when he was unable to maintain control of his vehicle. Trooper [redacted] noted that he was told by his FTO that he did not have to use lights and sirens "because you could get into an accident going to an accident." Trooper [redacted] was given and Written Reprimand and one-day suspension. (Ex. 48/109)
24. OPS [redacted] – Trooper [redacted] – DOI – 4/9/10. Trooper [redacted] initiated a traffic stop of a speeding motorcycle which resulted in a pursuit that reached speeds of 143 mph. The pursuit ended when the motorcycle crashed. The investigation noted that "lack of training for the officer and lack of supervision by Troop Supervisory Staff led to the problematic conclusion of the event." Significantly, Trooper [redacted] supervisor was Captain Eremea. Trooper [redacted] was issued a Letter of Reprimand and was suspended without pay for 24 hours. (Ex 46/100 & Video)

25. OPS [redacted] – Trooper [redacted] – DOI – 11/3/09. Trooper [redacted] responded to a call at excessive speeds without using his lights and sirens and was involved in a crash that killed a civilian. Trooper [redacted] was terminated but reinstated by the ASPC. Civil litigation was commenced which resulted in a multi-million-dollar judgment against the ASP. (Ex 39).

A review of these OPS investigations confirms the ingrained custom of improper driving by ASP troopers and the custom and practice of dangerous and reckless driving both before and after the incident which is the subject matter of this litigation. Further, a cursory review of these OPS files illustrates the need for better training and policy guidance with respect to emergency vehicle operations and pursuits. Finally, it is clear that Colonel Bryant was actually aware of the improper practices based on the OPS files he reviewed but failed to correct them.

(Ex. F Alpert Decl. pp. 5-10, 25-33, 37-43).

Accordingly, Claimants dispute that Trooper Burke, and all other

Arkansas State police officers were properly trained or supervised with respect to emergency driving under Arkansas state law. In fact, Claimants submit that Trooper Burke, and all other ASP police officers were improperly trained that it was acceptable to violate state law when responding to emergencies without lights and sirens, which is confirmed by Colonel Bryant's investigations of emergency vehicle driving by his troopers.

Summary Judgment Standard

Arkansas courts no longer view summary judgment as a drastic remedy, instead viewing it as one of many tools available to efficiently decide claims. *Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc.*, 365 Ark. 573, 576, 231 S.W.3d 720, 723 (2006). Summary judgment is granted when there "are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law." *Id*. The purpose of a summary judgment motion is to decide whether any factual issues exist warranting a full trial. *City of Barling v. Ft. Chaffee Redevelopment Auth*., 347 Ark. 105, 112, 60 S.W.3d 443, 446 (2001). Once a moving party has established a *prima facie* entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Stokes v. Stokes*, 2016 Ark. 182, 8, 491 S.W.3d 113, 120. Summary judgment is not proper where evidence, although in no material dispute as to actuality, reveals aspects from which inconsistent hypothesis might reasonably be drawn and reasonable minds might differ. *Flentje v. First National Bank of Wynne*, 11 S.W.3d 531, 340 Ark. 563 (2000). Finally, while proximate causation is usually a question of

fact for the jury, where reasonable minds cannot differ a question of law is presented for determination by the Court. *Cragar v. Jones,* 280 Ark. 549, 660 S.W. 2d. 168 (1983).

ARGUMENT

As Respondent filed a combined Response to Claimants' Motion for Summary Judgment and Cross-Motion for Summary Judgment, it is unclear as to which arguments are in opposition to Claimants' Motion for Partial Summary Judgment and which arguments are in support of its Cross-Motion for Summary Judgment. Accordingly, Claimants incorporate by reference as if fully set forth herein verbatim, Claimants' previously filed Motion for Partial Summary Judgment.

In its 3-page argument section of its brief, Respondent asserts that it is entitled to summary judgment, arguing that Claimants' "negligence claims against the ASP are barred by the doctrines of comparative fault and intervening causes." (Brief, p. 19). In support of its argument, Respondent relies upon the Arkansas comparative fault standard set forth in Ark. Code Ann. § 16-64-122(b)(2). For the purposes of the Claimants' response herein, Claimants bring the Claims Commission attention to the following relevant parts of Arkansas Comparative Fault Statute, Ark. Code Ann. § 16-64-122:

> (a) In all actions for damages for personal injuries or wrongful death or injury to property in which recovery is predicated upon fault, liability is determined by comparing the fault chargeable to the claiming party with the fault chargeable to the party or parties from whom the claiming party seeks to recover damages.
>
> (b) (1) If the fault chargeable to a party claiming damages is of a lesser degree than the fault chargeable to the party or parties from whom the

> claiming party seeks to recover damages, then the claiming party is entitled to recover the amount of his or her damages after they have been diminished in proportion to the degree of his or her own fault.
>
> (2) If the fault chargeable to a party claiming damages is equal to or greater in degree than any fault chargeable to the party or parties from whom the claiming party seeks to recover damages, then the claiming party is not entitled to recover such damages. *Id.*

Pursuant to Arkansas' comparative fault statute, there must be a determination of proximate cause before any fault can be assessed against a claiming party, and proximate cause is generally a question for the jury. *Craig v. Traylor*, 915 S.W.2d 257, 323 Ark. 363 (1996). Proximate cause is "defined as 'that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury, and without which the result would not have occurred.' " *City of Caddo Valley v. George*, 340 Ark. 203, 9 S.W.3d 481, 487 (2000) (quoting *Union Pac. R.R. v. Sharp*, 330 Ark. 174, 952 S.W.2d 658, 662 (1997)). Proximate cause encompasses two distinct aspects: cause in fact and legal cause. *See Chambers v. Stern,* 347 Ark. 395, 64 S.W.3d 737, 744 (2002) ("[A] plaintiff must show causation in fact and legal causation."), cert. *denied, 536 U.S. 940, 122 S.Ct. 2621, 153 L.Ed.2d 804 (2002).* Cause in fact addresses whether, as a matter of fact, an injury followed from a particular action. Legal cause addresses the separate issue of how far legal responsibility should extend for a party's actions. *See W. Keeton, Prosser & Keeton on Torts* § 41, at 264 (5th ed. 1984) ("As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability."). While proximate cause is generally a fact issue to be decided by a jury, it becomes a question of law for the court

when reasonable minds could not differ. *Wilson v. Evans,* 284 Ark. 101, 679 S.W.2d 205, 206 (1984) (reversing jury verdict where there was no causal connection between two accidents occurring five months apart); *cf. Young v. Bryco Arms*, 213 Ill.2d 433, 290 Ill. Dec. 504, 821 N.E.2d 1078, 1086 (2004) ("[T]he lack of proximate cause may be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause."). *Ashley County, Ark v. Pfizer Inc.,* 552 F. 3d 659 (2009).

While admittedly Trooper Burke's excessive speed is not causal merely because it placed his vehicle at the intersection at the same time as the Malibu, it is causal if the accident would not have occurred. *Blashfield Automobile Law and Practice, Fourth Edition* § 89:6, 89:7. Reasonable minds cannot differ regarding the uncontested fact that if Trooper Burke had been driving 60 miles per hour or less, the collision would not have occurred.

Traffic Accident Reconstructionist Consultant Matthew Jackson's analysis and opinion is that if Trooper Burke had been driving within 15 mph over the speed limit, the Claimants' vehicle would have cleared the intersection and no collision would have occurred. (Ex B – MPSJ). In other words, Trooper Burke's driving was the sole and proximate cause of the fatal collision. Because there are no facts or evidence offered by Respondent to contradict this fact, Respondent's Cross-Motion for Summary Judgement must be denied as to both Claimants.

Further, even assuming that the Claimants' nonuse of their seat belts constituted a failure to exercise ordinary care for purposes of comparative fault, such

nonuse is not "fault" for purposes of comparative negligence unless it proximately caused their damages. Under Arkansas law, "proximate cause" is "a cause which, in a natural and continuous sequence, produces damage and without which the damage would not have occurred." AMI 501, Arkansas Model Jury Instructions (Civil) (3d ed. 1989); *see also Collier v. Citizens Coach Co.,* 231 Ark. 489, 330 S.W.2d 74, 76 (1959). Thus, while the nonuse of a seat belt may constitute a proximate cause of injury if some or all of the damage sustained by the nonuser would not have occurred had the seat belt been worn, *Potts v. Benjamin 882 F.2d. 1320 (8th Cir 1989),* in this case Claimant Braun has presented the affidavit of Dr. Kris Sperry which indicates that her fatal injury was a result of the intrusion of passenger compartment of the car and that she would have been killed regardless of whether she was belted in the passenger seat. (Ex D – MPSJ).

Respondent relies upon its Chief Medical Examiner, Dr. Charles P. Kokes', "Memo" attached as "Exhibit 12" to its Response and Cross-Motion as evidence of comparative fault and intervening cause on behalf of the Claimants. First, Arkansas law is well settled on that courts may only consider pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, for summary judgment purposes. *Pyle v. Robertson*, 313 Ark. 692, 858 S.W. 2d 662 (1992); *UMLIC 2 Funding Corp. v. Butler*, 333 Ark. 442, 970 S.W.2d 211 (1998). Here, Respondent supplied a memorandum based on merely conclusions in support of its Cross-Motion; this evidence does not meet the burden of proof set forth by Ark. R. Civ. P. 56. *See American Gamebird Research Educ. & Dev. Found, Inc. v. Burton*,

2017 Ark. App. 297, 521 S.W.3d 176 (2017). Therefore, Respondent, as the moving party, is not entitled to summary judgment as a matter of law as it has not established a prima facie entitlement to summary judgment. The Respondent's shortcoming is proof that eliminates the Claimants' burden to demonstrate the existence of a material issue of fact to avoid summary judgment. *Collyard v. American Home Assurance Co.*, 271 Ark. 228, 607 S.W.2d 666 (1980). There is simply nothing to dispute.

Additionally, Respondent does not offer any facts or evidence in its Cross-Motion for Summary Judgment that Mr. Tavon Jenkins' non-use of his seat belt was the proximate cause of his injuries. In fact, the only reference that Respondent makes in its entire argument section pertaining to this issue is an unsubstantiated legal conclusion that Mr. Jenkins is somehow at least 50% at fault for driving "without wearing his seatbelt." (Brief, pg. 21). Therefore, Claimants need not address this issue at this time and reserve the right to plead further as necessary. More importantly, reports of such which are conclusory rather than factual are insufficient. *McDonald v. Eubanks*, 292 Ark. 533, 731 S.W.2d 769 (1987).

Respondent also assigns the same unfounded 50% apportionment of fault to Cassandra Braun. Even if this Claims Commission accepts Respondent's baseless assertions of evidence of negligence on the part of the Claimants, apportionment of fault under Arkansas comparative fault statute becomes a matter solely within the province of the finder of fact. *Lockett v. International Paper Co.*, 872 F.2d 82 (8th Cir. 1989). Stated differently, it is certainly not a legal issue ripe for summary judgement.

While Claimants acknowledge that Arkansas follows comparative fault, Respondent argues that there are no genuine issues of material facts pertaining to whether Ms. Braun or Mr. Jenkins' action were the sole proximate cause of their death. Respondent also argues that reasonable minds cannot differ that Mr. Tavon Jenkins is at least 50% for liable for his own injuries. In support of its argument, Respondent argues that Mr. Jenkins drove the Malibu vehicle while legally intoxicated and attempted an illegal left turn straight into the path of Trooper Burke. (Brief, pg. 21). In sum, Respondent asserts that Mr. Jenkins' actions were the "sole proximate cause of the collision" (Brief, pg. 21) and that as a result, both Ms. Braun and Mr. Jenkins are barred from recovery in this case. However, these arguments are simply frivolous and simply ignore the significant evidence presented by the Claimants in support of their claim. Further, Respondent's argument simply makes boldface conclusions about its entitlement to summary judgment without referencing any legal analysis.

First, the issue of proximate causation is generally an issue for the trier of fact unless all facts are undisputed. In fact, the only facts which are undisputed in this case are that Trooper Burke was negligent when he engaged in over an 8-mile high-speed joyride, without his lights and sirens in violation of state law, and crashed into the vehicle containing Ms. Braun and Mr. Jenkins, killing them both at 100 mph. The Claimants have presented admissible evidence in the form of supporting documentation which indicate that neither the consumption of alcohol nor the failure to wear a seat belt was a proximate cause of their death.

Specifically, Claimants have presented the sworn expert report of Matthew Jackson which indicates that Trooper Burke was travelling at 113 miles per hour in a 45 mile per hour zone without his lights and sirens five seconds prior to the crash. (MPSJ – Ex. B). Utilizing accident reconstruction analysis, Mr. Jackson concluded Mr. Jenkins began his turning movement, in compliance with all applicable laws, at a point of time when Trooper Burke's vehicle was not visible. *Id.* Further, Mr. Jackson concluded that Trooper Burke's speed (113 mph in a 45-mph zone) was so high that it prevented Mr. Jenkins, or any driver for that matter, from having sufficient time to perceive and react to Trooper Burke's extreme closing speed.

In support of his sworn testimony, Mr. Jackson constructed analysis animations which clearly illustrate the Claimants' inability to avoid this accident due to Trooper Burke's outrageous speed immediately preceding this accident. (See Exhibit A – MPSJ – Dash Camera Video; Ex. L – Jackson Animations. As such, no actions of either Mr. Tavon Jenkins or Ms. Cassaundra Braun could have prevented the crash.

Finally, Respondent's argument to bar the Claimants' claims on the doctrines of comparative fault and intervening cause fails for the lack of relevancy. In general, relevant evidence is evidence that has any tendency in reason to prove or disprove any disputed fact of consequence to the determination of action. Ark. R. Evid. 401. Arkansas courts have concluded that evidence of a person's impairment is not relevant in the absence of a link between the evidence and the cause of the accident. *Baker v. Trevathan*, 2018 Ark. App. 135, 542 S.W.3d 231. Here, the only purported

facts proffered by Respondent on this issue is Dr. Kokes' memorandum that concludes that Claimants', specifically Mr. Jenkins, was impaired at the time of the collision and thus, was the cause of the accident that injured Claimants. As previously stated herein, summary judgment is not appropriate where genuine issues of material fact exist or when reasonable minds could differ as to the interpretation of the facts as shown. *Inge v. Walker,* 70 Ark. App. 114, 15 S.W.3d 348 (2000). Claimants have presented undisputed facts that demonstrate the Claimants', specifically Mr. Jenkins', inability to avoid this accident. (MPSJ – Ex. B). Respondent has not provided any evidence to rebut the fact that Claimants did not have sufficient time to perceive and react to Trooper Burke's "extreme closing speed to avoid the collision" or "mitigate the collision." (MPSJ – Ex. B). Further, Respondent has not offered any evidence that Claimants operated the Malibu vehicle in an unsafe or improper manner at the moment of the accident. More importantly, the Claimants' ethanol consumption did not cause Trooper Burke to drive at a high rates of speed for over 8-miles, without his lights and sirens in violation of state law, and crash into the vehicle containing Ms. Braun and Mr. Jenkins, killing them both. As such, the Claimants' ethanol level was not a substantial factor or the proximate cause in the harm Claimants suffered and thus, is not relevant to the issue of apportioning liability or comparative fault in this case.

Although evidence may be relevant, a trial court may properly exclude it if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Ark. R. Evid. 403. *See also, Wade v.*

Grace, 321 Ark. 482, 902 S.W.2d 785 (1985) (affirming court's decision to exclude evidence of beer cans found near the boating accident because its prejudicial effect outweighed any probative value.) *Id*. In this case, Claimants' blood alcohol content, intoxication, impairment, and/or alcohol consumption, which had nothing to do with this accident, would confuse the issues, mislead the Arkansas Claims Commission and be more prejudicial than probative. Therefore, the Claims Commission should not consider Respondent's offered evidence in granting summary judgment against the Claimants. As such, Respondent's Cross-Motion for Summary Judgment is due to be denied.

WHEREFORE, PREMISES CONSIDERED, Claimants, Cassandra Braun and Lavon Perry in their state capacities, jointly move the Arkansas Claims Commission for an Order denying Respondent's Cross Motion for Summary Judgment and for all such further relief, both general and specific, to which they may be entitled under the premises.

RESPECTFULLY SUBMITTED,

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Attorneys for Lori Braun

CERTIFICATE OF SERVICE

I, Tiffany Mays O'Guinn, on this 25th day of March 2022, hereby certify that a true and correct copy of the foregoing was served via electronic mail to the following:

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Attorney for Arkansas State Police

/s/ Tiffany Mays O'Guinn
Tiffany Mays O'Guinn

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT H

Transcript of the Testimony of Ben Hoyt

Transcript of the Testimony of

Ben Hoyt

Date: November 9, 2018

Case: Lori Braun v. Trooper Brian Ray Burke, et al.

Bushman Court Reporting
Jeff Bennett
Phone: (501) 372-5115
Fax: (501) 378-0077
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF CASSANDRA BRAUN
Plaintiff,

vs. CASE NO. 4:18-CV-334 BRW

TROOPER BRIAN RAY BURKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE ARKANSAS STATE POLICE; COLONEL BILL BRYANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE CHIEF EXECUTIVE OFFICER OF THE ARKANSAS STATE POLICE
Defendants.

ORAL DEPOSITION OF BEN HOYT, 30(b)(6)

APPEARANCES:

MR. ANDREW C. CLARKE, ESQ.
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MR. PAUL J. JAMES, ESQ.
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*** For the Plaintiff ***

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*** For the Trooper Brian Ray Burke ***

APPEARANCES (CONTINUED):

MS. JENNIFER MERRIT, ESQ.
MR. GARY SULLIVAN, ESQ.
Arkansas Attorney General's Office
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Little Rock, Arkansas 72201; and

MR. GREGORY C. DOWNS, ESQ.
Arkansas State Police
1 State Police Plaza Drive
Little Rock, Arkansas 72209-4822

*** For the Arkansas State Police ***

ALSO PRESENT:
Brian Ray Burke

TAKEN BEFORE Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, Bushman Court Reporting, 620 West Third Street, Suite 302, Little Rock, Arkansas 72201 on November 9, 2018 at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas commencing at 9:11 a.m.

I N D E X

WITNESS SWORN: BEN HOYT 30(b)(6)

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ANSWERS AND DEPOSITION OF BEN HOYT, 30(b)(6), a witness produced at the request of Plaintiff, taken in the above styled and numbered cause on the 9th day of November, 2018, before Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, a Notary Public in and for Saline County, Arkansas, taken at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas at 9:11 a.m.

S T I P U L A T I O N S

IT IS STIPULATED and AGREED by and between the parties through their respective counsel that the deposition of BEN HOYT, 30(b)(6) may be taken at the time and place designated pursuant to the Federal Rules of Civil Procedure.

BEN HOYT, 30(b)(6)

The witness hereinbefore named, having been duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CLARKE:

Q. Would you please state your name?

A. Sergeant Ben Hoyt.

Q. And Sergeant Hoyt, my name is Andy Clark. I just met you a second before this deposition.

Have you ever given a deposition before?

A. I have not.

Q. Okay. Let's just kind of go. I know you probably talked to your attorney about this deposition. When I ask you questions, I'm never asking you to divulge what you and your attorney talk about. But I'm going to go over kind of some of the ground rules of the deposition so we can create a good record and get through this as smoothly as we can. Okay?

A. Yes, sir.

Q. Obviously, your testimony here is under oath. So it would be to the penalty of perjury. You understand that?

A. Yes.

Q. This is not a trick. This is not an endurance test. If there's some document that you need to look at to give a full or accurate answer, please let me know and I'll try to accommodate you. Okay?

A. Okay.

Q. Obviously, if you need to take a break for any time, please let me know and I'll let you take a break. The only thing I'd ask you to do is answer the question that's before you before we take a break. Okay?

A. Yes, sir.

Q. Sometimes when he get in conversations live, we kind of anticipate what somebody's questioning or we think what they're doing and we start talking or I start asking my question when I think you're done. We only have one court reporter taking testimony down. And let's try to be cognizant not to talk over each other. Okay?

A. Yes, sir.

Q. If I ask you a question that you don't understand or, you know, it's worded in a way that you can't answer, please let me know. Okay?

A. Yes, sir.

Q. Basically all your answers to the questions here are important to all the parties to this litigation. So it's important that we get full, accurate and complete answers. Okay?

A. Okay.

Q. If you don't understand a question, just don't answer it and ask me to rephrase it and I'll do the best that I can to rephrase it. All right?

A. Yes, sir.
Q. If you answer a question, I'll assume that you understood it. Okay?
A. Okay.
Q. Before we go on, I'm going to mark just a couple of exhibits. I'm going to mark as Exhibit 25 Colonel Bryant's Rule 26AS.
(Deposition Exhibit 25 was marked.)
Q. I'm going to mark as Exhibit 26 a copy of the Notice to Take Deposition.
(Deposition Exhibit 26 was marked.)
Q. All right. And then as Exhibit 27 -- I'm going to keep the notice in front you. I'm going to mark as Exhibit 27 Colonel Bryant's Discovery Responses.
(Deposition Exhibit 27 was marked.)
Q. And Exhibit 28 is Verification to the Discovery Responses.
(Deposition Exhibit 28 was marked.)
Q. Do you have Exhibit 26 in front of you?
A. I do. Yes, sir.
Q. Okay. Now, have you seen this document before?
A. Yes, sir.
Q. Okay. Do you understand what a -- what you're here to testify about today?
A. For the most part, yes.

Q. Okay. And list, we're kind of talking through this. So we're going to start it off and try to get it on the same footing.

What I've given you is Exhibit Number 26 is what's called a Notice to Take Deposition Duces Tecum of a 30(b)(6) Corporate Representative.

My understanding is that the Arkansas State Police has selected you to speak on behalf of the Arkansas State Police with respect to a particular topic in this notice, which is on page 2 of it, the training?

A. Yes.

Q. Okay. Obviously, corporations or entities can't speak. So there's a procedure by which we can ask a corporation to identify somebody to speak on behalf of the corporation or the entity. And they selected you on training. Is that your understanding?

A. Yes, sir.

Q. Okay. To prepare yourself for this deposition, what did you -- what did you review?

A. Policy, some Act 300 law. A little bit of the file on the case. I was able to watch the video that was supplied. And some of the PowerPoints, I guess. Some of the in-service training that was -- that was done.

Q. Okay. And we're going to go over a lot of that

during your deposition.

So what policies did you go over? The vehicle use involved in pursuit?

A. Vehicle use, pursuit policy. I was asked to look at the use of force policy.

Q. Okay.

A. Which I did that, also.

Q. All right. And you said you looked at the 300 law?

A. Act 300. Our criminal traffic law. Just referencing these --

Q. These statutes?

A. These specific statutes that were asked about.

Q. Okay. The statutes 27-51-905, they weren't in effect in 2016; is that correct?

A. That's correct under my understanding, yes.

Q. Okay. So -- and we'll talk about some of these other things.

Let's talk a little bit, just take me through your kind of background? I'm going to throw you a softball. Explain to me where y'all are and what you've done with the Arkansas State Police?

A. Yes, sir. I started with the State Police in 2009. I worked Highway Patrol in Troop A. Was assigned to Pulaski County. Was transferred to Faulkner County

upon request. That was my home. And I believe it was 2015 I was transferred to the training section of admin services. And in this year, I believe it was March 15th, I got promoted to a sergeant in the training section.

Q. Okay. So have you actually provided training at the academy?

A. Yes, sir.

Q. Okay. And what topics have you trained on?

A. Multiple.

Q. Well, let me just ask you this way. Have you given training on anything dealing with the operation of vehicles?

A. Yes, sir.

Q. Okay. And what topics on that? Did you teach EVOC?

A. Yes. Yes, I am an EVOC instructor.

Q. Okay. And there's no separate pursuit training block in the Academy, is there? It's all covered in EVOC?

A. I mean, there's a lot of stuff in driving that could be covered in multiple facets of training other than EVOC. That's where the practical training comes in place, yes.

Q. Okay. And I guess we'll get -- and when did you

start actually providing EVOC training, what year?
A. It would have been when I transferred to the training section, which if my memory is correct, it was in 2015.
Q. Okay. So you didn't have any role in training Officer Burke in trooper school?
A. Not in his troop school, no.
Q. Okay. But to prepare yourself for this deposition, you've gone through some of the PowerPoints and lesson plans and stuff that were applicable to him, correct?
A. Well, the PowerPoints that I have is in-service that he attended after the fact that I -- after I came over to the training section.
Q. Okay. And you have produced something called Police Civil Liability. When was this taught?
A. That should have been taught during his troop school.
Q. Okay. I'm going to mark this as Exhibit 29.
(Deposition Exhibit 29 was marked.)
MR. CLARKE: Do you have another copy of that?
MS. MERRIT: I made five copies. And he has his own copy.
MR. CLARKE: Okay. We'll get to that.

BY MR. CLARKE (CONT.):
Q. But this should have been in-service 2015?
A. No, sir. That was -- should have been troop school 2011.
Q. I apologize. You said that. That was my mistake.
All right. We'll go through that. What is the purpose of training?
A. To prepare officers for the job that they're going to have to do out on the road.
Q. All right. To provide guidance?
A. Sure.
Q. Okay. Do you agree that sound behavioral and tactical training enables officers who may be involved in high stress cases to process events in rapidly evolving situations as if they occurred at a more deliberate pace?
A. You have that in writing where I can read it and I can process that a little better? Are you asking if I agree with that statement?
Q. Yeah. The bolded part. It has some names in it. You have to somewhat modify it.
MS. MERRIT: You can ask him to rephrase the question if you didn't understand it.
A. Yeah.
Q. And I'll ask the question. My question is, do you

agree that good behavioral and tactical training enables officers to process events in rapidly evolving situations as if they occur at a more deliberate pace?

A. So what I'm getting at that you're saying that people are able to process the situation better if they're trained?

Q. Correct.

A. Yes.

Q. And you need to --

A. In most cases, I would agree with that, yes.

Q. Okay. I mean, there's some students who don't get it.

A. Sure.

Q. But the purpose of training, just like watching film if you're an athlete, is to learn and to repeat it so it becomes more natural so you can rely on your training, correct?

A. Yes.

Q. You know, we get muscle memory, correct?

A. Yes.

Q. Muscle memory, you know, when you're using firearms, you know, you want a -- you want to be able to instinctively get your -- get your gun without having to think about it, correct?

A. You would, yes.

Q. Okay. Muscle memory applies to EVOC, too, correct?
A. It can, yes.
Q. I mean, does it or does it not? And do you train that it does?
MS. MERRIT: Object to the form.
Q. Do you train that muscle memory is involved in EVOC?
A. I don't know that there's enough -- driving is a different skill set on its own, which incorporates a lot -- a lot more. That would be -- that would be hard to -- for me to --
Q. All right. Well, we'll go through the training --
A. -- say definitively.
Q. -- slides.
All right. Would you agree that one of the purposes of training is to expose officers to stressful -- you know, some of the training, to stressful incidents so that they can better handle them when they encounter them?
A. Sure.
Q. Emergency vehicle driving is -- can be a high stress event, correct?
A. Yes.
Q. A shooting can be a high stress event, correct?

A. Yes.
Q. Call those critical incidents. Are you aware of that?
A. Yes.
Q. Okay. And when we train, we train people for things they're going to have to do everyday, correct?
A. Yes.
Q. Writing tickets, you know, just the mundane stuff, correct?
A. Yes.
Q. We also train on things, why they may not happen every single day, there are high likelihood that a bad result could happen without training, correct?
A. It could, yes.
Q. Take for example, hopefully an officer who is out in the field never has to use his firearm, correct?
A. Correct.
Q. And some officers go their whole career without using their firearm, correct?
A. Yes.
Q. But they got to qualify and they've got to train quarterly, correct?
A. Yes, sir.
Q. With a firearm, because there is a -- there is a high likelihood of a bad result if somebody uses a

firearm inappropriately, correct?
A. Yes.
Q. Okay. The same with emergency vehicle operations, correct?
A. It could be the same. I mean, there could be -- there are potential bad results for negligent action on driving, yes.
Q. Right. Or intentionally wrong driving?
A. Sure.
Q. And are you aware of any of the statistics about the number of deaths that occur as a result of emergency vehicle operation versus firearms?
A. Not specifics. But I have seen stuff, yes.
Q. Okay. And more injuries or deaths that result of improper driving than firearms, correct?
A. Probably.
Q. Okay. I mean, officers are driving their car everyday and everyday there is an opportunity for them to have to respond to an emergency call or get involved in a pursuit, correct?
A. Yes.
Q. It's one of the kind of more common things that officers do that can result in bad outcomes if performed wrongly; that is, driving, correct?
A. It is a more used skill probably, yes.

Q. Right.
A. If that's what you're asking.
Q. So sometimes you have to train people with things because they have do it all the time and you want to make sure that they're doing it. Do you agree with that? Doing it correctly. Do you agree with that?
A. Say it one more time? Repeat that?
Q. Sometimes we train people on topics -- well, let me take that back.
You can't train on every single thing that an officer is going to encounter, correct?
A. That is correct.
Q. We have to kind of use our resources to try to cover the things that are most important to the department, correct?
A. Yes.
Q. Okay. One of those things is everyday things that they have to do, correct? You know, writing tickets, stopping, working -- you know, talking on the radio, the basic stuff, correct?
A. Yes, sir.
Q. And like we talked about before, some of it is when the outcome could be bad even if it doesn't happen on a regular occurrence, correct?
A. If the outcome isn't bad --

Q. If the outcome -- if the consequences of improper use, like a firearm, even though it's not used all the time, but the consequences could be severe, we still train them on that?
A. We still train, yes.
Q. Right. And do you agree that there is an obvious need to train officers with respect to emergency vehicle responses and pursuits?
A. Absolutely.
Q. Okay. I mean, every department should do it?
A. Yes.
Q. Okay. Now, does training, to your understanding, work in tandem with, you know, the people in charge of policies or OPS?
A. In some instances, but not always.
Q. Okay. And explain that to me?
A. So if policies may be directly towards something that we're -- that we're instructing or teaching, they may -- we may meet together to come to a -- the best solution and agreements on policies and revisions.
Q. Okay. What about -- I mean, what I'm trying to get at is, if OPS has some type of, you know, investigation and they find an officer may have done something wrong, do they discuss that with training to your knowledge?

A. Not usually directly.
Q. Okay. You know, for example, if somebody did something wrong and there's a videotape of it, do they use that videotape in training?
A. Well, we usually have access to videos for training purposes.
Q. From Arkansas State Police Officers or, you know, stock?
A. Internally, yes.
Q. Okay. Do you know of any training that was provided by the Arkansas State Police where they utilized any type of video from an Arkansas State Trooper with respect to pursuits or emergency vehicle operations?
A. Repeat that, please?
Q. All right. Are you aware of any instance where the Arkansas State Police used in training a -- as an example of what not to do or what to do in emergency vehicle operations or pursuits of a video that was captured by an Arkansas State Trooper?
A. Any specifics?
Q. Right. What I'm saying is, did they use Burke's videotape in a training -- in any training of what to do or what not to do?
A. I'm not aware that his video has been shown to

anybody.
Q. Are you aware of any officers from the Arkansas State Police video that has been shown in training?
A. Yes.
Q. What video?
A. We show -- we show several videos. I've got videos that have been shown of stuff from -- from our section and videos that have been shown of various pursuits.
Q. Okay.
A. But there's -- I mean, that's a very broad question there.
Q. Well, doesn't training document what they train?
A. Sure.
Q. Okay. So if we go through the PowerPoints and the slides, it should be identified?
A. There are some in the PowerPoints, yes.
Q. Okay. I didn't see any that were tapes from an Arkansas State Police Officer. There were tapes from other instances. Are you aware of using, with respect to the topics of just EVOC and pursuits, any Arkansas State Trooper's video?
A. I am aware of some that are currently used. I couldn't say some that are used when this incident happened or when --

Q. What tapes are currently used?
A. There's two pursuit videos that we currently use in our -- our driving. They are, I believe it's Trooper [redacted], who is no longer employed with us.
Q. Okay. You said there were a couple. Is that the only one --
A. Those are the two that I'm aware of right now that are being used.
Q. You said [redacted]. Is that one?
A. There's two videos.
Q. What's the other one?
A. There's two videos from --
Q. Two from him?
A. Yes, sir.
Q. Do you know when these -- were they pursuits? What were they?
A. Those are both pursuit videos, yes, sir.
Q. Okay. Were they examples of what to do or what not to do?
A. Most of it is stuff that we're teaching. It's a decision-making type video of the risk versus the need to apprehend suspects.
Q. All right. And in those videos that you show of [redacted], do you say the decision-making was good or bad?

A. Most of it is poor decision-making.
Q. Do you know when that pursuit happened?
A. There's two separate pursuits there.
Q. Do you know when they happened?
A. I do not off the top of my head.
Q. All right. Do you have access to those videos?
A. Not at this moment. But, yes, I do have access to them.
Q. All right. I would like to mark as the next Exhibit 30, late filed, the [redacted] videos, and ask that they be produced?

(Late-Filed Deposition Exhibit 30 was marked.)

MS. MERRIT: I'm sorry. Did you just ask me to produce those?

MR. CLARKE: Yes.

MS. MERRIT: You can send me a discovery request?

MR. CLARKE: I have sent you a request for all training materials, so.

MS. MERRIT: They should have been in the pursuit packets that we've already produced for you.

MR. CLARKE: They have not been produced in response to my discovery of all training

material. I'm not going to get in a discovery argument with you right now. We'll take it up with the judge afterwards. I've asked for all training materials and videos. So I'm not going through pursuit videos when you have a specific request to produce something.

BY MR. CLARKE (CONT.):

Q. All right. Now, any other -- any other -- I know we have videos of other incidents, high profile incidents sometimes showing -- shown in training from other departments, correct?

A. Yes. There are videos shown from various sources --

Q. Okay.

A. -- that we use in training, yes.

Q. Now, the Arkansas State Police has it's own academy, right?

A. Yes, sir.

Q. You know, a lot of law enforcement departments, they go to a generalized academy and in that academy they -- they really just do general law enforcement as opposed to the specific policies of the Arkansas State Police.

Does the Arkansas State Police, when they're in their own academy, do they train on the actual policies?

A. Yes, sir.
Q. Okay. And we'll talk about some of the policies and how they work in training.
But what I want to do is go through some of the training that Officer Burke had. And if you can get this big exhibit?
A. This right here?
Q. Yeah.
A. Okay.
Q. If you go to page 10? This is produced in discovery, and this looks like the curriculum of troop school that Officer or Trooper Burke went to. Have you reviewed this before?
A. I have not. No, sir.
Q. Okay. And you went to the academy in 2009?
A. 2009, yes.
Q. All right. And I'm here to talk about the training that was provided to Trooper Burke. And I'm going to ask you some questions about particular topics. The issue on -- is the PowerPoint that you brought that we marked as Exhibit 29, this one, is this -- was this taught, to your understanding, at troop school?
A. It is.
Q. Okay. What section was it taught in on this syllabus or outline?

A. That would be hard for me to say exactly since I was not --

MR. CLARKE: You can't actually point to a witness during depositions.

MS. MERRIT: I'm just trying to help, Andy.

MR. CLARKE: Okay. That's what the witness is here for.

BY MR. CLARKE (CONT.):

Q. All right. You see something Constitutional Law on Liability?

A. Well, again, it was one of the classes that -- which is now Captain Coppinger would have taught in the Criminal Law, Constituional Law and Liability sections, probably.

Q. Okay. So that -- this would be part -- this would be the outline for that topic, Constitutional Law and Liability?

A. Now, it may not be the -- it may not be the complete. But it was something that was in his -- in that file.

Q. Okay. Why did you bring this with you?

A. Because that was one of the topics that I saw was the Civil Liability that may have been taught during his troop school. So it was something I had for reference

material.
Q. Okay. And let's talk about -- let's look at this outline.
A. Okay.
Q. All right. What were they taught about Liability for Negligence or Constitutional Violations with Respect to Police Driving?
A. Well, it looks like here it's got two case briefs on the "City of Little Rock versus Webber" and then the "City of Caddo Valley versus George."
Q. And what are they trained about those cases?
A. I believe those were both -- I'm not an expert on that. But I believe those were dealing with ordinary care with operation of vehicles.
Q. All right. And those two cases, is it your understanding that they are told that regardless of what they're doing, they still have to comply with the ordinary care standard?
A. I would assume. That's hard for me to speculate exactly what the instructor did on the -- on those two cases.
Q. Well, for the purpose of my depositions, you're the Arkansas State Police.
A. Sure.
Q. And your answer is going to be what --

A. I'm going to say that Captain Coppinger would have given a brief of those two, since that's what his PowerPoint shows --

Q. Okay.

A. -- is a case brief and review.

Q. And as the spokesman for the Arkansas State Police, I want you to tell me what he told them -- what he trained them about those cases?

A. Well, I wasn't there that day that he taught this course.

Q. Okay. So as the spokesman for the Arkansas State Police, you don't know what particular aspects of these cases were trained to the officers?

A. Not exactly.

Q. All right. When you produced this PowerPoint, did you do anything to understand what the PowerPoint meant or what was actually trained?

A. I was given very little time. I received this yesterday afternoon.

Q. All right. When you went through Trooper Academy in 2009, were you trained on those cases?

A. I honestly couldn't tell you for sure.

Q. Okay. Is there anything else in this PowerPoint that you contend is training with respect to emergency vehicles or pursuits?

A. Before those two slides, there's stuff on examples of negligence and operative requirements for negligent lawsuits. We have an example of a lawsuit that we were involved in criminal liability with Trooper [redacted].

Q. Okay. Where is that at?

A. It's on page 5.

Q. I'm looking at page 5. Where does it talk about -- oh, Mississippi -- I got you.

Do you know what was trained, what actual training was produced about that case?

A. I would imagine it was a briefing of the scenario and the consequences afterward.

Q. And are you aware that [redacted] -- was it -- do you know whether Officer [redacted] was terminated for his conduct?

A. I believe so.

Q. He was reinstated, correct?

A. That is correct.

Q. And did you tell them that he was reinstated because the Commission reviewed his claim and found that he didn't operate outside of policy?

A. I don't know if that's told or not.

Q. That's what happened in the case, correct?

A. He was reinstated by the Commission, yes.

Q. Because the Commission, the Board or whatever

found that they terminated him for policy violations, correct?

A. I've never studied the findings on the [redacted] case.

Q. Were you ever trained on anything involving Officer [redacted]

A. Yes.

Q. Okay. Were you ever told that he was reinstated?

A. Yes, I was.

Q. Was that during training?

A. The [redacted] stuff actually happened during, I believe during my troop school time. So, yes, it was -- it was emphasized then.

Q. Okay. But his conduct was ultimately found insufficient to terminate him, correct, and he was reinstated?

A. He was reinstated.

Q. Okay. Anything else in this on pursuits, pursuits or EVOC?

A. There's a lot of stuff that could pertain to pursuits and EVOC just talking about the --

Q. The general law?

A. The law and -- where did I read that.

Q. Go ahead.

A. You know, it talks about allegations brought against police officers which goes into operation of

vehicles.
Q. Okay. Let me just conclude it. So during that there's -- when you talk about liabilities or negligence and constitutional violations, based on your understanding of that training, that they were -- they were told that certain conduct that they engage in during the course of emergency vehicle operations or pursuit could result in liability, correct?
A. Yes.
Q. So any reasonably objective officer who went through the Troop Academy and had this would have an understanding that their conduct during the course of emergency vehicle driving or pursuits could result in liability, correct?
A. Yes.
Q. Okay. All right. We can move off that. Let's go back to the lesson plan.
Okay. Go to page 12, ASP 12? Crash Investigation TraCs. That doesn't involve pursuits or EVOCs, that's more the investigation of accidents by troopers in the field, correct?
A. Yes, that is crash investigation. TraCs is the actual documentation of crash investigations.
Q. The system they use to do it?
A. It was the old system, yes.

Q. Okay. All right. And Patrol Procedures and Stops. Does that involve EVOC or pursuits?
A. It can, yes.
Q. Okay. I'm not asking if it can. I'm asking did it in this case?
A. It should have.
Q. Okay.
A. It involved more of the traffic situations like initiating emergency equipment, actually do practical patrol stops in that class time.
Q. Well, if you'd look at the next page, we have EVOC and we have a lesson plan where they have that. Isn't patrol procedures and stops dealing with the type of stops and how you conduct them, like high risk stops, traffic stops, how you approach --
A. Not just. It's not just that. It does probably entail that.
Q. Okay. Well, how do I find out exactly what was trained in Patrol Procedures and Stops?
A. That may have a -- it may have a PowerPoint. I don't know. I don't know exactly what all has been provided to you.
Q. Okay. Well, I don't have something on that. Was there supposed to be a separate lesson plan and stuff for that particular topic?

A. If this is a classroom section, which it looks like it is now that I look here, because it looks like we have mock patrol stops. It's two lines underneath the one you were referring to. So that was probably a classroom section of patrol procedures.

Q. All right. I'm going to mark as late-filed Exhibit Number 31, and ask you to produce the Patrol Procedures and Stops lesson plans and materials?

(Late-Filed Deposition Exhibit 31 was marked.)

Q. All right. And it looks like, if you go to the next page, ASP 13?

A. Yes, sir.

Q. There is a section on EVOC of 40 hours. Do you see that?

A. Yes, sir.

Q. And what does EVOC training in general entail in the Trooper Academy?

A. There is a -- there's a PowerPoint which I --

Q. We'll get to that. I'm just saying in general?

A. Normally there's a classroom section followed by practical driving.

Q. Okay.

A. It's --

Q. Okay. Pursuit is covered in there?

A. Yes.
Q. Okay. Is there a separate section in this lesson plan that's trained to officers about pursuits, pursuit decision-making?
A. Some of that should have been covered in EVOC, in the EVOC practical portion. It's also in the normal lesson plan teaching. And then Patrol Stops probably had some of that stuff in there, also.
Q. What do you mean, "the normal lesson plan teaching?"
A. In your normal classroom section of EVOC or Patrol Stops, it should be talking about emergency vehicle operations.
Q. Okay. But you would agree there's not a separate topic on pursuits in this lesson plan?
A. Well, pursuits would be considered a part of Emergency Vehicle Operations, yes.
Q. So part of the 40 hours that they have in here would be devoted to pursuits?
A. Say that one more time?
Q. Part of the 40 hours they have -- this tells you how many hours and everything, correct?
A. Yes.
Q. You have EVOC, and during EVOC it says 40 hours is what they're trained in, correct?

A. Yes.
Q. Part of that would be pursuits?
A. Yes.
Q. Okay. And we'll get to the lesson plan.
Okay. If you go to page ASP 19? And to the extent this -- do you believe this to be the lesson plan on Patrol with respect to the topic Patrol Procedures and Stops.
A. It's dated '08. It's very possible that this was one that was the years following until a new instructor took over, yes.
Q. Just because it says '08, they could have used those materials when there's changes or stuff they get updated?
A. Yes, sir.
Q. So this was produced as part of Trooper Burke's personnel file. And if we go through this, can you look through this up to ASP 30 and tell me if anything has to do with EVOC or pursuits?
A. Yes. The very first one has to do with EVOC and/or pursuits.
Q. Tell me what you're reading that says that? I don't mean see the word EVOC or pursuits.
A. We've got Policies and Procedures on Highway Patrol Duties, which would entail EVOC and pursuits.

Q. There's a whole section in the book on traffic procedures?
A. Sure.
Q. Correct?
A. Highway Patrol Procedures, yes.
Q. Isn't that what they're talking about there, the policies and procedures on Highway Patrol Duties and then there's a whole section on Highway Patrol Division Duties?
A. Yes. There's also stuff in policy. Procedures and policies are separated in our manuals.
Q. Are you just speculating to that, because we also have the lesson plan and the objectives?
A. Okay.
Q. If you want to look through ASP 19 through ASP 30. Because we have a general lesson plan, and then we have a more detailed thing with the objectives in it and stuff.
A. More detailed, where are you referring to that?
Q. It's all passed that. This lesson plan is from 19 to page --
A. Okay.
Q. -- 30. And it has a more detailed description of the general topics in the two-page lesson plan.
A. Okay.

Q. Do you see anything about pursuits or emergency vehicle operations in those pages?
A. Well, on the first one on the second page, it looks like number 3, this could be part of EVOC/pursuits demonstrate their ability to properly utilize equipment; emergency lights, siren, and it goes into some other stuff which is not related to the vehicle.
Q. Let me ask you a question. With respect to EVOC emergency vehicle and pursuits, do you agree that there are two separate skill sets that have to be learned; one is how to physically drive the car in a safe manner, and number two, when it's necessary to drive in a high speed response?
A. Separate, but essentially together, too. Just like with firearms; there's teaching how to do a firearm and there's teaching when to use a firearm, but those still can be taught in the same classes.
Q. Well, they can, but you have to make that distinction in training, correct?
A. Well, in training we do a lot more -- we do a lot of reality-based training. And in reality-based training you incorporate as many things as you can, because you can't just say go drive your car and go pull your gun, it's the totality of skill sets.
Q. Right. In firearms training, you get firearms

training quarterly, correct?
A. Yes.
Q. You don't get EVOC training quarterly, correct?
A. No, we don't.
Q. There's a lot more emergency calls and pursuits than shootings, correct, at the Arkansas State Police?
A. That's correct.
Q. Training and skill sets are perishable skills, correct? You need to retrain?
A. Yes. And the reason we do quarterly firearms is because some people may not have the ability to go to a range, they may not have the motivation to go to a range, but they are in that car every single day working. So that skill set is still being used, even though it's not being used maybe in an EVOC facility. They're still getting driving skill practice every day they're getting inside that car.
Q. Right. But if you're not telling them what to do, they could be reinforcing bad habits every day, correct?
A. And that's why we monitor or should be monitoring all of our highway patrol guys' driving habits.
Q. How do you monitor your highway patrol's driving habits?
A. If a complaint comes in, that's something that's going to be checked into. Other than that they've got a

minimum video review of three, three videos per month that's made for corrective action.

Q. That's made for what?

A. It's used for any kind of corrective action to find any kind of those deficiencies within those troopers.

Q. I'm going to mark as Exhibit Number 32 late-filed all Trooper Burke's video audits. It's been requested in discovery.

(Late-File Deposition Exhibit 32 was marked.)

Q. Do you do that as a sergeant now? Well, you're in the training academy.

A. Yes, sir. My guys aren't on the highway patrol.

Q. All right. Let's just go through these things. Let's go to ASP 23? This is the body of the lesson plan that gives more detail. Objective 1, Demonstrate officer safety skills while conducting traffic stops.

A. Hold on just a second. You said 23?

Q. 23.

A. Okay.

Q. Okay. We have --

A. We're underneath objective 1?

Q. Right. Basically the way I understand this, we have a lesson plan and then the content, there's more

detail to this lesson plan that goes over the topics a little bit in more detail?

A. Yes.

Q. Is that your understanding of what we're looking at?

A. That's what it appears to be, yes.

Q. All right. You had said some of the patrol stops dealt with emergency vehicles and pursuits potentially, correct?

A. Yes.

Q. We're going to go through more detail and see if that's true. If you look at objective number 1, it says, Demonstrate officer safety skills while conducting stops. And what they're talking about in this is how to select a location for a stop and where to park for a stop, correct, for officer safety?

A. That appears to be correct on that first one, objective 1, yes.

Q. Look through the whole objective number 1. They also talk about high risk stops, which is a different kind of stop which requires different things for officer safety, correct?

A. Yes.

Q. So this is again about how to select a place to stop, where to pull them over, how to park, and how to

deal with it for officer safety, correct?
A. Among other things, yes. There's several different bullets there in that one, yes.
Q. I'm trying to talk in general. Nothing about pursuits or EVOC?
A. I don't see anything about pursuits in there, no, sir.
Q. All right. Let's keep going through all of objective number 1. And we're going to go to objective number 2. Tell me if there's anything about pursuits or EVOC?
A. I don't see anything other than unless you read into the high risk stop as being. Because there are some things that could be referred to as emergency vehicle operations for high risk situations.
Q. That has nothing to do with EVOC, does it? High risk stop, the training on that is if you have somebody who's known to be dangerous. It has nothing about emergency. It's how you conduct your stop and how you address the people in there for officer safety, correct?
A. Not entirely.
Q. Okay.
A. High risk stop can incorporate a lot of different things.
Q. Okay. Well, where does it say anything about EVOC

or emergency driving or driving over the speed?
A. It doesn't say specifically anything about speed or EVOC per se. But it has in there -- I'm not finding what I was seeing at the beginning. Nothing in particular for EVOC, but it's still all incorporated in driving per se.
Q. Okay. Objective number 2.
A. Okay.
Q. It talks about what you're supposed to do with respect to the radio when you're doing a traffic stop, correct?
A. And different buttons and functions and procedures for checking out on traffic stops, vehicle description, tag, roadway, direction of travel. Those are important things with emergency vehicle driving.
Q. But this is in a traffic stop. Are you saying as the Arkansas State Police, that because something may be applicable -- this is an actual training session on traffic stops, correct?
A. Yes.
Q. So when they're talking about roadway, explain the procedure for checking out on stops, this is how they're pulling them over and what you do on the radio, correct?
A. Well, most of our driving that's how it begins is as a traffic stop or a potential traffic stop.

Q. Okay. Let's go to objective number 3. This is where they say they have to use all their equipment and it talks about explain the importance of using emergency lights on every stop, and blue lights and siren must be activated during emergency operation of vehicles. Do you see that?

A. Yes, I do.

Q. That seems to directly address some of the issues in pursuits and EVOC driving, correct?

A. Yes.

Q. Do you know if they go over the policy, the pursuit and EVOC policy during this or should it be gone over?

A. It doesn't specifically say that they do the policy. The policy is normally done in general. All policy is checked off on by every trooper when they receive that policy. They have to sign off that they read and understand it. But this one doesn't particularity say that the policy was gone over. It just says that they explained the importance of it.

Q. But the importance of that is also addressed in policies which are trained, correct?

A. Yes, sir.

Q. I'm going to give you Exhibits 9 and 10, which are the vehicle use and pursuit policies.

A. Yes, sir.
Q. Let's look at vehicle use first. Now, are they actually trained on the policy and what it means, or do they get it and they have to acknowledge it and that they've read it?
A. Both, yes.
Q. Both. So it says, The policy on vehicle use talks about that everybody has -- in the first paragraph, officers have to use ordinary care when driving, correct?
A. Yes. This is a -- I think this is a different policy than would have been in effect then though.
Q. Do you have the policy that was in effect then?
A. It's probably very similar.
Q. That looks like it's got some use.
A. It is the same one.
Q. You have the same policy?
A. Yes.
Q. Okay. All right. The second paragraph says, The driver of an authorized emergency vehicle is only exempt from traffic laws when responding to an emergency call or in immediate pursuit of an actual or suspected violator of the law.
Do you see that?
A. Yes, sir.

Q. So when they're -- they don't have to comply with speed limits when -- what's an emergency call?
A. Let me see this. If it's okay if I reference 27-51-202. For purposes of this section, emergency calls means legitimate emergency situations which call for the operation of an emergency vehicle, including a police vehicle.
Q. Is a traffic stop an emergency call?
A. Not ordinarily, no.
Q. Okay. What is an immediate pursuit of an actual or suspected violator of the law?
A. Immediate pursuit means initial approach to a violator for the purpose of initiating a traffic stop or situations where silent response is appropriate or necessary. And that's according to our policy.
Q. Okay. So that means, according to your policy, as they're trying to catch up to them -- a pursuit is initiated by the fleeing person, correct?
A. Yes.
Q. For an officer most pursuits start with a traffic stop, correct?
A. Yes.
Q. And when you perform a traffic stop when the lights and sirens are activated, the conduct of the person trying to be pulled over determines whether or

not it turn into a pursuit, correct?
A. Yes.
Q. Once they basically take active efforts to not comply with the order to pull over, that's when the suspect has initiated the pursuit, correct?
A. That's correct.
Q. The officer at that time has to decide whether he's going to pursue or not, correct?
A. Yes.
Q. And we have a pursuit policy that they have to comply with in making that decision, correct?
A. Correct.
Q. All right. Is it your understanding the way that they're trained is that officers can not use their lights and sirens while trying to catch up to perform a traffic stop?
A. Under an immediate pursuit. And it's for these situations here, yes.
Q. What I'm trying to get at, I had testimony and I've read the Trooper [redacted] transcript and I have other information to base this question on. It's my understanding that troopers do not have to put on their lights and sirens while they're trying to catch up to a person to perform a traffic stop. And they only activate their lights and sirens when they get up behind

them and select an appropriate place to pull them over; is that correct?

A. Under an immediate pursuit, yes. And I'll give an example here. So if you passed me for speeding on 430. And the reason that that is the case is 430 northbound and you come up on the river bridge and you're running 90 miles an hour. Yes, I have to approach you. So I'm going to have to go above the limitations of the speed on there. So I'm outside of the boundaries of the law. But for me to operate my lights and sirens immediately is most likely going to make you stop, because according to law as a citizen being pulled over you're supposed to immediately yield to the right of roadway. Where you end up becoming more hazardous and I become more hazardous to the public, because we've selected a bad location to make that stop. So that's where that immediate pursuit comes into play is for the protection of the public. We want to have good safety spots to be able to pull somebody over where they're not at risk, where the other motorists aren't at risk and where the officer also is not at substantiated risk.

Q. And is that what a silent response would be?

A. Yes. Without having your audible siren on, yes.

Q. All right. So they're trained that for officer and public safety, if they're going to initiate a

traffic stop, that they can exceed the speed limits without their lights and sirens on until they catch up to them to pull them over in the appropriate spot, correct?

A. Still under ordinary care and due regard, yes.

Q. Ordinary care and due regard, let's make sure for the purpose of the question, everything they do in the car that's the foundation, correct?

A. Should be, yes.

Q. Okay. So there would be circumstances where you might want to put your lights and sirens on before, if that was necessary to provide ordinary care to get out of traffic or something?

A. Absolutely, yes.

Q. But as a general rule they are given the discretion to exceed the speed limit without their lights and sirens while they're catching up to a traffic --

A. Violator.

Q. -- traffic violator and select the appropriate spot to pull them over?

A. That would be safe to say, yes.

Q. Okay. And are they trained on how long they have to catch up to them?

A. That's kind of -- trained on how long?

Q. Right. The issue is, the issue in this case is he went 8.1 miles.
A. Sure.
Q. Did they say -- is there a geographic limitation on how long that you can drive --
A. I think obviously the immediate approach definition is -- that's beyond an initial approach to a violator.
Q. It depends on how fast they're going and how fast you have to go to catch up to them, correct?
A. Sure.
Q. It's all immediate?
A. Per se.
Q. I'm just asking you this question. I understand what you're saying. I understand the difficulty with it. Are you aware of any particular training that said immediate only means a minute or a couple of miles?
A. There is no definitive, if that's what you're asking, definitive time frame or I think the bigger scope there is the due regard and ordinary care.
Q. All right. And I'm not trying to trick you. I'm trying to communicate with you.
A. Yes, sir.
Q. Ordinary care and due regard is going to apply to every single thing they do in a car, correct?

A. Yes, sir.
Q. So I'm not taking that out. I'm not trying to trick you and not have that in a question. I'm saying once they're going to pull over a traffic offender and in utilizing ordinary care and due regard, they try to catch up to them, they're allowed to do that under the policy without lights and sirens, so that they can get to a place to activate the lights and sirens to pull them over safely, correct?
A. Yes, sir.
Q. Okay. All right. Let's go to ASP 38.
A. Did you say 38?
Q. Yes, sir. This is the EVOC lesson plan for Trooper Burke. Have you reviewed this?
A. I've seen it. I haven't thoroughly reviewed it.
Q. Let's do this for a second. Why don't you look at pages 38 through 42 and kind of familiarize yourself with that for a second before I start asking you questions. I've got to take a restroom break.
A. Yes, sir.
Q. And if you need to take a restroom break do it as well.
A. Okay.
(A recess was had.)

BY MR. CLARKE:
Q. Do you believe that the primary topics covered in this lesson plan in EVOC all involve the physical operation of the vehicle as opposed to the decision-making of when to engage in high speed driving?
A. Was I supposed to go through 42?
Q. To 44.
A. Your question was the practical, is that what you're saying?
Q. No. What I'm asking you is after reviewing this lesson plan and the objectives, this was a 36 hour course, correct?
A. Yes, that's what it shows.
Q. And it goes through and tells you the hours that were done and it has the objectives, correct?
A. Yes, sir.
Q. Objective number 1, that deals with -- it doesn't really deal with any decision-making with respect to emergency driving or pursuits, it deals with checking your vehicle before you go out, correct?
A. Yes.
Q. Objective number 2 talks about the physics of high speed driving and steering, correct?
A. Yes.
Q. Objective number 3 talks about braking and the

different types of turns and how to handle these things when you're driving at high speeds, correct?

A. Yes.

Q. Number 4 talks about what to do with skids and how to deal with skids, correct?

A. That's correct.

Q. Number 5 talks about using a particular maneuver, the PIT maneuver to terminate a pursuit, correct?

A. Yes, sir.

Q. Number 6 talks about spike strips, correct?

A. Yes, sir.

Q. Objective 7 deals with you're out on the driving track for that for 30 hours, correct?

A. Yes.

Q. That's when you go through all the different courses and have to do certain types of skills with the vehicle with cones and driving and backing in a certain period of time, correct?

A. Yes, sir.

Q. Objective number 8, that deals with actually going out there and actually performing a PIT, correct?

A. Yes, sir.

Q. Objective number 9 talks about going out there and actually deploying spike strips, correct?

A. Yes, sir.

Q. And objective 10, which is one hour, discusses civil liability with respect to operation of police vehicles. That could talk some about the decision-making, correct?

A. That's correct.

Q. So that would be one hour of this training block, correct?

A. Yes.

Q. And then if we go to ASP 45. That is the PowerPoint that went with this. That all deals with the operation of the vehicle and not the decision of when to get into an emergency call or a pursuit, correct? You can look through it.

A. I don't think this is the PowerPoint exactly for this course.

Q. Did you bring a different PowerPoint?

A. I do not have a PowerPoint that was designed on this. But this is a -- this looks like an entirely different. This is a defensive driving course which does not get the lesson plan. So I can't imagine this would be the PowerPoint for that lesson plan course.

Q. All right. It may be somewhere else, but to the extent that it's a different one and we haven't produced it, I'm going to ask that the lesson plan for EVOC in Burke's academy training be produced, if not already

produced. That will be Exhibit 33.

(Deposition Exhibit 33 was marked.)

Q. You agree the defensive driving outline doesn't discuss EVOC or pursuits?

A. It describes some stuff that should be used with any kind of driving. I think there's some good stuff in here and I have seen this before. But it doesn't particularly talk about the EVOC. Even things like aim high in steering. It's something we talk about not getting so focused in on exactly what's in front of you. Driving out in front of your vehicle so you see upcoming hazards, and then tributes of drivers, because people do get emotional when they're driving. That's kind of what this is going over.

Q. Those things are saying different types of people, it doesn't actually say that these are physiological responses that occur during EVOC and high speed pursuits?

A. Not the types of people, but the types of emotions in those people.

Q. All right. Tell me what you're talking about? I didn't -- let me go back to it. It's basically saying there's different types of officers out there. It doesn't --

A. Self-centered, aggressive, impatient, immature,

demanding are the ones under the egotistical driver.
Q. Right. Let me stop you for a second and make sure I'm asking you a question. What I'm saying is you understand that in emergency driving there are physiological responses that occur in an officer's body, correct?
A. Sure.
Q. And the literature documents them very well; tunnel vision, auditory occlusion, laser focus on the suspect to the detriment of other things, correct?
A. Correct. Not just with driving, with any kind of critical incident or high stress, yes.
Q. High stress with guns as well, correct?
A. Yes.
Q. This is not telling you -- this is telling you different type of people that drive, not that these are different types of emotions that come over you during high speed driving; is that correct?
A. It may be a characteristic that an officer is able to identify that they have in themselves where they can fix that if it is one of them.
Q. Does it say anything about what to do to fix it in this training block?
A. No. This is more about identifying an issue. You can't really fix your own emotions.

Q. Then you shouldn't be a cop if you're not egotist, right?
A. I agree with that.
Q. Okay. You either fix it or you weed them out, correct?
A. Right.
Q. So are you saying you can't fix it?
A. In driving though it sometimes is -- and we see it a lot out there with road rage incidents. It may not be that the person is a bad person, they just get so consumed in their driving that they start coming out with traits that aren't really their characteristic in their person, it's just in driving. Does that make sense?
Q. It does. But is the Arkansas State Police saying those type of people shouldn't be officers or are we going to try to train those officers to not exhibit those things when they're going out in the field?
A. I don't think the Arkansas State Police says either one of those. This is more of a identifying that this is stuff that can happen to drivers.
Q. Okay.
A. It's something that any driver could experience.
Q. I would disagree. I think it identifies people as opposed to informs them that certain things -- a good

officer can get all this tunnel vision, auditory occlusion and -- and focus on the suspect, correct?
A. A good officer can -- say it one more time?
Q. A good -- the egotist or the hotdog, you don't want -- if that's who those people are, you don't want them as cops, correct?
A. Correct.
Q. All right. A good officer can experience physiological symptoms or issues during a high stress event, correct?
A. They can experience it?
Q. Right.
A. Yes.
Q. And you train them to be able to identify them when they come over them and to basically refocus and do things with ordinary care and due regard, correct?
A. We train as well as we can for stress management, yes.
Q. Okay. Do you see anything in that training material that tells what you train to avoid those physiological characteristics?
A. A lot of that is troop school. Troop school in general is a high stress -- that's what troop school is.
Q. This is a troop school training slide. I'm asking you, in these training slides as you're looking at here,

does it say anything about how to combat those?
A. No, it does not.
Q. Okay. Let's go to Exhibit Number 8.
(Deposition Exhibit 8 was identified.)
Q. This document was what was produced to us called "Burke's EVOC Training Package." Okay?
A. Okay.
Q. The first thing that we went over is a lesson plan that was in his personnel file. Do you agree?
A. Yes. Was that in here?
Q. Yes.
A. Okay.
Q. Okay. So I'm just -- we're going to go to other documents that weren't in there.
A. Okay.
Q. They just were put together in an exhibit already. I'm not going to make another exhibit.
A. Okay.
Q. But just for the purposes of the lesson plan, how many hours of classroom work on the 10 objectives were performed in troop school on EVOC?
A. According to this schedule?
Q. Yeah.
A. Okay. We've got an hour on objective 1, 30 minutes on objective 2, 30 minutes on objective 3, 30

minutes on objective 4, 30 minutes on objective 5, 30 minutes on objective 6, and then objective 7, 8 and 9 are driving tracks, and then 10 is back in the classroom for an hour.

Q. All right. So we got 5.3 hours of classroom time on EVOC?

A. Five hours and 10 minutes it looks like.

Q. Okay. And then 31 hours on the track, 31 1/2 hours?

A. Yes, sir.

Q. Okay. If we go to Arkansas -- in Exhibit 8, 971?

All right. This is a training -- an in-service training that I guess Trooper Burke went to. Did you go to this in-service training in 2002 -- 2012? I'm sorry.

A. Okay. Let me look at this for a second and see.

Q. Well, let me -- let me just withdraw the question, because you're not here really as a personal knowledge. I mean, you can look over it, but I don't need you to answer that question.

Again, here this is the in-service on EVOC. Do you know how often they do in-service on EVOC at the Arkansas State Police?

A. As often as we can.

Q. Okay. Well, I mean, you can do it. You can do it. That depends on priorities, correct?

A. Yes, sir. It's resource and -- and priorities, yes.
Q. Okay. From 2011 to 2016, how many times did they offer EVOC and in-service?
A. In-service would have probably been less. The 2015/2016 in-service.
Q. Okay.
A. And then we're doing one right now, just wrapping one up.
Q. Okay. So they have troop school. If you were in 2011 trooper, you'd have trooper school where you covered it, you'd have in-service in 2012 and in-service in 2015, correct?
A. Yes.
Q. And did you train the 2015 one?
A. I was there. Yes, sir.
Q. Okay. Let's just go through, do you think that's enough training on EVOC and pursuits?
A. My personal opinion, we could train our whole lives and never be as good as we want to be.
Q. I understand. There have been a number of wrecks and crashes and people have died during the course of emergency vehicles or pursuits, correct?
A. Yes, sir.
Q. Would that make it a priority compared to other

things that haven't killed people?
A. I think so.
Q. Okay. So as the Arkansas State Police EVOC trainer and designee, do you think they provide enough training?
A. I think it's a very high propriety.
Q. Okay.
A. I think that we provide it as much as we can.
Q. Once every three years?
A. As often as we can. Some of our resources and times, troop schools dictate when we can and cannot do something that extensive as driving.
Q. Well, you can sit down in a classroom and go over all the decision-making stuff without going on a track, correct?
A. Sure.
Q. You can do that eight hours a day, correct?
A. That's correct.
Q. All right. You don't do that? Arkansas State Police doesn't do that, correct?
A. Well, we do -- you can do policy revisions on your own, too, to know policy at any time you want to.
Q. Right. But they send that out to the officer and he has to acknowledge he got it. That doesn't provide him with training on what it is?

A. Well, it's knowledge.
Q. Well, it's an identification of the issue. It's not training on the issue to make sure they understand it, correct?
A. That is correct.
Q. Okay. What I'm trying to get at is, if you had some type of activity that caused a death a year and another activity that caused a death every five years, would you agree that you should provide more training on the issue that caused, you know, a death a year rather than a death every five years?
A. If possible.
Q. Okay.
A. You provide as much training for where you need the training, yes.
Q. Okay. Well, you get firearms training -- you only have to qualify once a year, right?
A. Yes, state law.
Q. You train quarterly?
A. Yes.
Q. Correct?
A. Yes.
Q. Okay. How many people to your knowledge have been shot by troopers in the last five years?
A. How many people have been shot by troopers?

Q. Yes.
A. I couldn't say, tell you that number.
Q. But it's a small number, correct?
A. Probably.
Q. Were there more people that were injured in car wrecks during emergency vehicle calls or pursuits to your knowledge?
A. Probably.
Q. All right. So, again, you don't -- you don't -- it's priorities, right?
A. But it's the -- we drive a lot more than we shoot, yes.
Q. I understand. But, you know, carrying a gun and pulling a gun. You pull a gun more than you shoot a gun. But when you do driving -- when you do shooting stuff, you do all the stuff from proper handling, proper holstering to drawing, the way to hold it, correct?
A. Yes, sir.
Q. Okay. And according to this training thing, it basically, if you look at the last two slides on 971, they talk about this distinction. You know, when is the last time you fired your weapon in the line of duty, and they said, when is the last time you had firearms training. And then the next slide says, when is the last time you've driven your unit in the line of duty.

Still on the same page. When is the last time you attended EVOC training. You see that?
A. Uh-huh.
Q. They're trying to say that we don't get enough EVOC training?
A. It's trying to say it's important, yes.
Q. All right. And if we go down to -- if we go down to page 973? Do you know who Captain Travis Yates is?
A. I do not.
Q. Okay. I think he's on that Live PD now. But he was somebody from Tulsa who got involved in pursuits. And what he notes in his research, and you trained your officers in this thing, is the way that officers are trained are 75 percent with respect to -- this is emergency vehicles. 75 percent with respect to skill sets and only 25 percent with decision-making, correct?
A. That's what it says, yes.
Q. All right. And what does he say with that; that's not working, correct?
A. That's what the PowerPoint says, yes.
Q. Right. This is what you're training your officers, right?
A. Yes.
Q. Okay. We have 31 1/2 hours for driving skill sets, right? And only 5 hours of -- of decision-making

or potential decision-making, classroom training, correct?

A. Well, some of the decision-making is carried over into other classes. That's what we have to remember. It's not all done there at the EVOC.

Q. Decision-making -- I mean, with EVOC we're talking -- in this -- in this particular PowerPoint, we're talking about the training with respect to EVOC, correct?

A. This is a EVOC PowerPoint, yes.

Q. There are specific decision-making or decisions they have to make that are specific to EVOC, correct?

A. That is correct.

Q. Do I exceed the speed limit; do I put on my lights; do I put on my sirens; do I pursue him; what are the traffic conditions; what are the geographic conditions, correct?

A. Correct.

Q. You have to provide specific training on that decision-making, correct?

A. Yes.

Q. So I know there's all kinds of other decision-making. I'm talking about the decision when to start a pursuit, when to continue a pursuit, when to terminate a pursuit. Those are decisions, correct?

A. That is correct.
Q. Same like with guns; when do I pull my gun, when I use my gun, when can I not use my gun, correct
A. That is correct.
Q. There's a specific sets of skill sets and decision-making that are applicable only to or primarily to EVOC to do it correctly, right, in pursuits, correct?
A. Yes.
Q. All right. The next training shows -- the next slide on 973 shows the accidents and incidents within the Arkansas State Police reinforce this theory. And it says, ASP units are being crashed not because of how we drive but because of the decisions that are made that put us in the situation to begin with. Do you see that?
A. I do.
Q. Okay. So based on this training, at least in 2002, the decision-making with driving was borne out by the statistics of the wrecks of the Arkansas State Police, correct?
A. Say it one more time?
Q. I mean, basically shows the accidents and incidents of the Arkansas Police reinforce the theory that officers are crashing cars not because of their driving skills but because of the decisions they make when driving, correct?

A. That's what it sounds like, yes.
Q. Okay. And do you agree that that continues today?
A. Poor decision-making is probably a leading cause of our crashes, yes.
Q. All right. And there are a number of crashes. It's not one a year, correct?
A. There are.
Q. All right. So then when we get back to the next slide, it says, you train the officers, we need to reverse the propriety especially as it relates to in-service training to 75 percent decision-making and 25 percent skill sets. Do you see that?
A. Uh-huh.
Q. Arkansas State Police doesn't do that, do they, with respect to EVOC and pursuits?
A. We do.
Q. Okay. So in a lesson plan that has 36 hours, 31 1/2 are on driving track and skill sets, right?
A. Yes.
Q. And only 5 hours is classroom which covers a variety of topics, not all even decision-making, right?
A. Right.
Q. Okay. That's not -- that's not a 75 percent decision-making to 25 percent skill set, correct?
A. In this particular -- so in the one you're talking

about, the lesson plan for troop school, troop school, one of the big focuses is increasing their skill sets because we have young people that come in that don't have those skill sets. They've never driven in an emergency situations. They've never driven at a high rate of speed. And so for them to even be able to -- we talked about that stress management. To be able to make those proper decisions under stress, they have to be given those skills before we can work on decision-making.

Q. I understand they have to have the skills first. But here's a PowerPoint that says, we need to reverse our stuff consistent with our record on wrecks, correct?

A. That's what it says, yes.

Q. Okay. And I don't believe in this PowerPoint they have -- they have a slide where they actually went through a particular videotape and then did ask questions. Is it legally defensible, morally defensible, and worth it. This is on page 974, correct? That would be the -- that would be some type of decision-making training, correct? Remember 974?

A. Well, you're saying -- asking these questions?

Q. Yeah. Are we making good decisions. There is some decision-making training given in this. We haven't seen any decision-making actual training PowerPoints up

to this point, have we?
A. No. But that's what I was saying, I think the PowerPoint to the troop school is one that's missing in your file so far. So that may be something that needs to be located.
Q. Okay. And if we have that, then we'll look at it.
A. Okay.
Q. I would venture to say that we have gone over it. But we'll try to find that.
A. Yes, sir.
Q. But up to that point, up until this point in in-service, we don't -- this is the first time that we talk about decision-making, correct --
A. Yes.
Q. -- based on the materials?
A. In this in-service, yes.
Q. Okay.
A. What it looks like.
Q. And then they go over it and they talk about speed versus 976, speed versus reaction time. And then they talk about seatbelts and spike strips and things of that nature, correct?
A. Yes, sir.
Q. And then in this one they go over the -- some of the policy changes, correct? Towards the end, 979 to --

A. 979 is policy updates.
Q. Okay. Now, do you see in any of these slides the requirement that they -- or the mention of, the way I count it, there's 68 slides, and this in-service was -- do you know how many hours it was? I think it was 2 hours.
A. Do I see any --
Q. Do you know how many hours it was?
A. I do not. This is the first time I'm seeing this, this particular PowerPoint.
Q. What's the dated on that? It was April 2012; is that correct?
A. I can't -- I don't see a date.
Q. The first slide.
A. It just says 2012. Mine is blacked out if it was on there.
Q. Okay. I think this was previously marked. I'm going to mark it again.
(Deposition Exhibit 34 was marked.)
Q. I'm going to show you. This is in there, I think. Do you think that would help you identify the date of the --
A. That looks like this is probably the same course.
Q. Okay.
A. Yeah, it's showing 2 hours, it appears.

Q. Okay. So 2 hours will be covering, there's 68 slides that they go over?
A. Yes, sir.
Q. Is there any discussion during this policy, during this PowerPoint about the use of lights and sirens?
A. You'll have to give me a few minutes to look through it, if you want me to answer that one?
Q. I'll be easier to you. How about looking at page 9 and page 11?
A. Okay.
Q. I think the bottom right one, Emergency equipment and sirens shall be in operation throughout the pursuit. On the bottom, right-hand corner. It's hard to read. I'm sorry. It's small.
A. Yes, I do see that one. Bullet 5.
Q. All right. And then on page 11, the second slide up at the top, it talks about deactivating emergency equipment when you terminate a pursuit. And do you see that?
A. I do.
Q. And we talked about what you're trained to do. Is there any discussion in this about decision-making with respect to high -- well, emergency vehicle driving itself as opposed to pursuits?
A. That would be encompassed in emergency vehicle

driving, a pursuit would.
Q. Okay.
A. So --
Q. All these are dealing with pursuits, correct? PITs is an emergency vehicle driving, spike strips is an emergency vehicle driving. Do you know what this Trooper Chavez was in a pursuit or was it a emergency vehicle driving, this video from Trooper Chavez?
A. Where is this one at?
Q. I'm sorry. 974.
Do you know whether that was a pursuit or emergency vehicle example?
A. I have seen that video before, but it's been a long time. I don't think it was a pursuit.
Q. Okay.
A. But I would have to pull it to be able to say that for sure.
Q. Is that still available at the training academies?
A. I think that one is in the file.
Q. Okay. I'll mark this as the next Exhibit 35.
(Deposition Exhibit 35 was marked.)
A. So on page 5 it talks about speed. That would deal with emergency vehicle operations.
Q. Okay.
A. Speed increasing, decreasing in reaction time --

Q. Okay.
A. -- and then damages, collateral damages. The Officer [redacted] video. That's a speed versus reaction time. That's actually a -- and that one is available. We still show that video.
Q. Let me do this. What is that one called?
A. Officer [redacted].
Q. Officer [redacted] video. I'm going to add that to Exhibit 35.
A. That's an extremely good video as far as decision-making in emergency vehicle.
Q. All right. And where do you see that was mentioned in this training point?
A. The video was shown. It's showing the face of it on page 6. It's the top, right one. Speed versus reaction time.
Q. I gotcha. Okay.
A. Yeah. That's a video that in the -- embedded in the PowerPoint.
Q. All right. And then seatbelts. That's just officer safety, it looks like. And then we get into spike strips, PIT maneuvers?
A. And post pursuit.
Q. Pursuit. That all deals with pursuits, correct?
A. Yes, sir. And then policy changes.

Q. All right. And again the training with respect to use of lights and sirens, that was done in the academy. We've already discussed. That you're allowed to exceed the speed limit to catch up before you use your lights and sirens, correct?
A. In the immediate pursuit clause, yes.
Q. When a silent response is necessary, correct?
A. Yes.
Q. All right. Then it looks like the next PowerPoint that we talk about is, if you go to Arkansas 985?
A. Yes, sir.
Q. Is this the 2015?
A. It appears to be so.
Q. I wish we had your copy.
A. This one is not the exact one from 2015, it doesn't appear. It's similar. It's got a lot of the stuff in it. But this is -- this is the -- does it say how many slides? Do you have that number?
Q. I have 64. That's just by count. And then I don't know if the braking is part. That's without the braking.

Do you have the 2015?

A. This one should be the one that's 2015?

MR. CLARKE: Can we make a copy of that?

MS. MERRIT: Yes.

MR. CLARKE: We'll wait until she gets back.

MS. MERRIT: Okay.

(A recess was had.)

BY MR. CLARKE (CONT.):

Q. Let's go back on the record. I'm going to do kind of some housekeeping stuff. Some more stuff, if that's okay.

Okay. Sergeant, we were looking at it and we're right now going upstairs. You brought your actual training, your training PowerPoint from the 2015 class, correct?

A. Yes, sir.

Q. Okay. And we're getting that copied now.

A. Can y'all get me a copy of this, too, so I can -- these PowerPoints have a lot of the same slides in them. And I just want to verify that we -- there's -- a lot of them are the same. Some of them may have a little more than the other one does.

Q. All right. If I have it, I'll give it to you right now.

A. The other one is the only -- I think -- I've got this one. The one that you got in your packet.

MS. MERRIT: We'll bring yours back in just a minute. We're making copies.

THE WITNESS: Is this mine? Is this a copy for me or --

MS. MERRIT: This is your copy to look at and then we're making copies of the packet that you brought with you today.

THE WITNESS: All right. So we'll just stand by for that.

BY MR. CLARKE (CONT.):

Q. Yeah. I have it somewhere here. I'll make sure he has one.

But if you'd look at the back of this packet? Do you have the Number 8?

A. Uh-huh.

Q. The second to last page, I believe it is?

A. Stinger spike strips.

Q. It's the last page.

A. Okay.

Q. Is this the course? This is 2015 in-service.

A. Yes, sir.

Q. Is this where the EVOC training was provided, the -- the PowerPoint that we're having copied that you provided?

A. Yes, sir.

Q. It looks like there was, and it's hard to read, EVOC classroom, 3 hours?

A. Yes, sir.
Q. You do you see that?
A. Yes.
Q. Did you provide that training yourself?
A. I did some of it.
Q. Okay.
A. We had various instructors that were assisting because we had a lot of stuff going on. So I was in and out. Yes, sir.
Q. Okay. Would that be where the PowerPoint that we're having copied over is gone through?
A. Yes, sir.
Q. And then it says, EVOC training 8 hours. Is that out on the track?
A. Yes.
Q. All right. So in 2015 there was another 3 hours of classroom training on EVOC and 8 hours back out on the track?
A. Yes.
Q. Okay.
A. And that other PowerPoint, that was one that I pulled from that folder. But I would like to verify this is -- because, like I said, they're very similar.
Q. Okay.
A. So that's something I'm going to have to verify

that that was the one that was actually used in in-service and it wasn't this one. Because this one may be the one that was used in in-service.

Q. Okay. Well, what we can do, when we get that back, I think the best thing to do is, we'll go over the one that you've reviewed --

A. Okay.

Q. -- that we're getting copied and we can kind of keep this open here to the side. If you need to reference either one of them, that's fine.

A. Okay.

Q. Okay. While they're doing that, let me ask you this. Other than trooper school, EVOC training in 2012, EVOC training in 2015, are you aware of any other training that was provided to troopers with respect to emergency vehicle operations or pursuits?

A. We did a -- we did a transition training when we got the Chargers. And I'm trying to remember what year that was. Probably in 2012, also.

Q. It looks like he got -- if you look at Exhibit Number 8 and some of the certificates at the back?

A. Uh-huh.

Q. Officer Burke was certified in a Charger in April of --

A. In troop school.

Q. In troop school?
A. That would have been before he has his -- his troop school.
Q. That they -- but if you look to the back of these things?
A. Yes, sir.
Q. Like three or four pages from the back, Arkansas 1007?
A. Okay.
Q. Okay. There wasn't -- he didn't have the transition training. He trained on the Charger in school, correct?
A. Is that -- that's the same date; is that what you're saying, April 27th?
Q. No. What I -- I was -- maybe I misunderstood. Let me start over.
A. What was his -- what was his troop school dates?
Q. From January to June of 2011.
A. Okay. Then, yes, that would have been in troop school.
Q. I mean, at some point when he went to a different car, he's got to again learn all the characteristics of that particular car, it's a skill set like using a different weapon, correct?
A. Yes.

Q. Okay. So other than EVOC and pursuits in troop school, in-service in 2012, and in-service in 2015, was there any other training given to any other troopers with respect to emergency vehicle operations or pursuits?
A. Yes, there was some where there was notified issues. And I believe in that time frame where they would actually have done remedial, some remedial driving training.
Q. Okay. And I guess I'm talking, that would be if a particular person --
A. It wasn't like a blanket training.
Q. Right. What I'm talking about, if somebody -- some issue was identified with somebody's driving, part of an OPS review might say we want you to go back and have some remedial driving?
A. Yes.
Q. I'm talking about the training program for -- you know, that's kind of part of a disciplinary scenario for a particular officer, correct?
A. Not really disciplinary. It's for training.
Q. Right.
A. It's to fix a problem and identify a problem.
Q. Okay. And I think we're saying the same thing --
A. Okay.

Q. -- just a little bit differently.

What I'm trying to do with respect to your testimony is find out what the training program was with respect to EVOC that every officer got.

A. Yes, sir.

Q. That doesn't mean that other people may have individually received some type of training based on deficiencies or based on, you know, I'm sure somebody can request some additional training or assistance if they need it, correct?

A. Yes, sir.

Q. All right. So the training program, from at least 2011 to 2016, involved a trooper would have gone to school and got some classroom training and some track training, correct?

A. Yes.

Q. And they would have gone to in-service in 2012. And that looked like the EVOC was just 20 hours of classroom time, correct?

A. Yes, sir.

Q. And then in 2015 they had another in-service where one of the topics was EVOC. And there was 3 hours of training for that and 8 hours on a track, correct?

A. Yes, sir.

Q. And was there any other training provided to

supervisors on emergency -- you know, I mean, are supervisors trained differently on any of these topics than the troopers?

A. They go through the -- a lot of the EVOC stuff just the same.

Q. Okay.

A. But obviously they have a different role as a supervisor in taking command of an emergency vehicle.

Q. And I understand that. They have different responsibilities. Do they get any different training on EVOC or pursuits?

A. So they would have gotten some EVOC training when they were initially promoted to a supervisor. They get what it's called a supervisor's class.

Q. Okay.

A. And they would have most likely done an EVOC course. And I haven't seen that lesson plan. I know we did it in the ones we have now. The ones I've been involved in.

Q. Okay. And I know we talked -- this is identifying things to be more specific going forward. So when somebody gets promoted, they get a supervisory -- some sort of supervisory training, correct?

A. Yes, sir.

Q. And you don't know for certain, but there could be

EVOCs or pursuits that are trained to supervisors when they get promoted?

A. Yes, sir.

Q. Okay.

A. I know the ones in -- in the classes now, they are, because I was involved in the last couple.

Q. Okay.

A. But prior to that, I'm not sure because I wasn't involved in those.

Q. Okay. And we'll just mark as -- or identify for future reference, I'm calling that supervisory training. If there's any kind of package that would discuss that.

(Deposition Exhibit 36 was marked.)

Q. I would assume, when a supervisor gets a particular type of training, they -- it covers a lot of topics, correct?

A. Yes, sir.

Q. And what you're saying is there may be some type of EVOC or pursuits within that training, correct?

A. Yes, sir.

Q. And at least at the present time you know that there are some people who have been promoted who are now taking the EVOC training, correct?

A. Supervisory, yes.

Q. Okay. Any other particular seminars,

presentations, that type of thing with respect to supervisors, commanders on EVOC or pursuits that you're aware of?

A. Not off-hand. I know information is disseminated just like any big -- big business. You know, there's -- I'm aware of several emails being sent in, you know, with reminders for things, operations in those vehicles, policy reminders. As far as like classes, no.

Q. All right. Any -- and, you know, I don't try to hide stuff. There was apparently some type of training done where a lady came in whose kids were killed. Do you know [redacted], any training regarding [redacted] -- provided by [redacted]

A. That's the first time I've ever heard that name.

Q. I'm getting it for you. [redacted]

And there was a video that was presented to us by a lady whose kids, two daughters were killed by an Illinois State Trooper.

A. Uh-huh.

Q. I'm -- it says that it was provided on 9/27/16. Do you know if that was provided to all the troopers or to --

A. I do not.

Q. Let me just show you.

(The video was played.)

Q. All right. And I'm not going to play this whole video. But this was produced in discovery. And I've just shown you that front page that says, Arkansas State Police, September 27, 2016.

(The video was played.)

Q. We're not going to go through the whole tape. It's an hour.

Do you know what that training was?

A. I do not.

Q. You've been at the training academy since 2016?

A. Yes.

Q. I mean, 2015?

A. Yes, sir.

Q. Is that training that you guys put on? Who was the person who was speaking?

A. That's Lieutenant Colonel Shawn Gardner.

Q. And is he in training?

A. He is not. He's the lieutenant colonel. He's the -- under the director.

Q. Do you have -- you have no knowledge of this particular training?

A. No. I'm trying to think. When this happened I may have been out with my third child. So I may have been on leave when this happened. But I'm not recalling this training.

Q. Okay. So it's -- other than, you know, since you've been at the training academy, you're not aware of this training other than the fact it may have been provided when -- at one time when you were not there?
A. Correct.
Q. This was produced by you in discovery. It's a video.
All right. So you can't tell me, is this -- can you tell where it is in that in the training academy -- I mean, I know it's a vanilla --
A. It looks like it could be Classroom C. But is that the only shot we get? Do we get any other shots of the walls?
(The video was played.)
Q. I think it's pretty much all from the podium, but. If you don't know, you don't know.
A. I'm not sure.
Q. Are there ever any training that's provided, you know, just to supervisors on topics at the training academy?
A. The -- so the supervisors' class, that's what it's dedicated for is supervisors. And then the supervisors are engaged in some of the off-site stuff. So, you know, we have some mandatory supervisor stuff through the state that's required and then some of them go off

to like the FBI Academies and they will do some leadership academies through different organizations. So there's several different courses through -- as far as leadership courses.

Q. You know, I'm sure a lot of commanders or higher-ups, people in the supervisory thing go off-site and go to different seminars, correct?

A. Yes, sir.

Q. When they come back, do they ever put on seminars about what they learned?

A. Sometimes, but I can't attest to all of them.

Q. Okay.

A. Because some of that stuff may be done at troop level. You know, we've got 12 individual troops. And so some of the stuff, like let's say a captain goes to the FBI Leadership Academy and he comes back, he may host something there about something he learned, especially with his command staff, like his first line supervisors, sergeants, lieutenants up to him. But I -- that's not something that we normally organize.

Q. Okay. Are you aware of that happening in any circumstances involving EVOC or pursuit driving?

A. Any kind of training?

Q. Yeah, training where somebody came back and actually did it?

A. Now, in troop meetings that would get -- so when I was in Troop A, that was something we always had topics that were -- that were portrayed; such as driving with regard to your speed. Speed has always been a thing that they've always taught us. Everybody slow down. Because they don't like accidents anywhere. And a commander, that's his worse nightmare is having to deal with accidents. So I know it's happened in Troop A because I was part of it. But as far as the stuff that goes on on the other troops, I haven't been -- haven't been present in those to be able to say if they do or don't.

Q. Any of the training that you recall or received in your particular troop, from your particular commander or supervisor, any of it inconsistent with anything that we've been talking about here with respect to the training that was formally provided?

A. No, sir.

Q. Is it kind of more reinforcement, kind of like roll call training?

A. Usually reinforcement of policies and procedures is the biggest.

Q. Okay. I think we got this thing copied. We're going to mark as Exhibit Number 37 the PowerPoint that you brought with you.

(Deposition Exhibit 37 was marked.)

Q. And if you want to look at Exhibit 8 while we're going through it, that's fine.

Now, just for the purpose of identification, what we've marked as Exhibit 37, that is -- that is the PowerPoint that you used, correct?

A. That is not the PowerPoint that we have currently, no. This is one that was pulled out of a 2015 folder in our training drive.

Q. And we don't know if -- if exactly what was -- what was contained in Exhibit 8 at 985 to -- you know, starting at page 985 is the actual one that was trained and in-serviced or Exhibit 37, correct?

A. That is correct.

Q. All right. Well, let's look -- and you've looked over the one that we have marked as Exhibit 37, correct?

A. Yes, I have.

Q. Okay. It looks like, again, in this one, and this was a 3 hour class, correct, in 2015?

A. The in-service class?

Q. Yeah.

A. Yes, sir.

Q. All right. Again, they look like they start out making the analogy between gunfire and deaths caused by vehicles, correct?

A. Yes, sir.
Q. And note that there's a lot more deaths that occur with respect to emergency vehicle operations, correct?
A. Yes, sir.
Q. All right. Always Be Alert. That's that videotape that we were talking about, correct?
A. I don't know that we have talked about that one. That is a videotape, yes.
Q. I thought that was the one. That's not the Michael Vaughn?
A. No, sir. It should be a different one.
Q. Okay. And this one appears to be a lot more on decision-making than the one marked as Exhibit Number 8, correct? It starts off completely different. Let me get to it. Actually, let me just try to conclude this up here.

These PowerPoints say what these PowerPoints say, right?
A. Yes, sir.
Q. Is there anything that you trained with respect to use of lights and sirens or pursuits or the immediate catch up to traffic offenders without lights and sirens that's not contained -- that is not already contained in this exhibit?
A. Only during practical stuff. So, yes. I mean,

there are practicals that are done out there on EVOC, during traffic stops, during troop school.

MR. CLARKE: Okay. Let's take a break. I think I'm done.

MS. MERRIT: Sure.

(A recess was had.)

MR. CLARKE: No further questions.

(WHEREUPON, at 11:31 a.m., the taking of the above-entitled deposition was concluded.)

C E R T I F I C A T E

STATE OF ARKANSAS*
ss *
COUNTY OF SALINE *

I, JEFF BENNETT, Certified Court Reporter, a Notary Public in and for the aforesaid county and state, do hereby certify that the witness, BEN HOYT, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me in machine shorthand notes and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

In accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was requested by the deponent or a party thereto.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

GIVEN UNDER MY HAND and SEAL OF OFFICE on this 27th day of November, 2018.

_____
Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

ERRATA SHEET OF BEN HOYT

PAGE #	LINE #	ERROR	CORRECTION & REASON

WITNESS SIGNATURE PAGE

I, BEN HOYT, the witness, hereby certify that I have thoroughly read the transcript of my deposition taken on the 9th day of November, 2018, and have made any necessary changes or corrections to make the transcript a true and accurate accounting of my testimony given on that day.

Signature

Date

****

STATE OF *
* ss.
COUNTY OF *

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for County, .
Given under my hand and seal of office on this day of , 2018.

My commission expires .

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, JEFF BENNETT, LS No. 19, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 90 constitute a true and correct copy of the original deposition of BEN HOYT taken on November 9, 2018.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 27th day of November, 2018.

_____

Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT I

Transcript of the Testimony of Brian Burke

Transcript of the Testimony of

Brian Burke

Date: November 8, 2018

Case: Lori Braun v. Trooper Brian Ray Burke, et al.

Bushman Court Reporting
Jeff Bennett
Phone: (501) 372-5115
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF CASSANDRA BRAUN
Plaintiff,

vs. CASE NO. 4:18-CV-334 BRW

TROOPER BRIAN RAY BURKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE ARKANSAS STATE POLICE; COLONEL BILL BRYANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE CHIEF EXECUTIVE OFFICER OF THE ARKANSAS STATE POLICE
Defendants.

ORAL DEPOSITION OF BRIAN RAY BURKE

APPEARANCES:

MR. ANDREW C. CLARKE, ESQ.
6250 Poplar Avenue, Second Floor
Memphis, Tennessee 38119; and

MR. PAUL J. JAMES, ESQ.
James, Carter & Priebe,LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

*** For the Plaintiff ***

MR. BRIAN W. RAY, ESQ.
MR. MATTHEW G. FRENCH, ESQ.
Collins, Collins & Ray, P.A.
912 West 4th Street
Little Rock, Arkansas 72201

*** For the Trooper Brian Ray Burke ***

APPEARANCES (CONTINUED):

MS. JENNIFER MERRIT, ESQ.
MR. GARY SULLIVAN, ESQ.
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201; and

MR. GREGORY C. DOWNS, ESQ.
Arkansas State Police
1 State Police Plaza Drive
Little Rock, Arkansas 72209-4822

*** For the Arkansas State Police ***

ALSO PRESENT:
Colonel Bill Bryant

TAKEN BEFORE Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, Bushman Court Reporting, 620 West Third Street, Suite 302, Little Rock, Arkansas 72201 on November 8, 2018 at the Office of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas commencing at 9:05 a.m.

I N D E X

WITNESS SWORN: BRIAN RAY BURKE

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ANSWERS AND DEPOSITION OF BRIAN RAY BURKE, a witness produced at the request of Plaintiff, taken in the above styled and numbered cause on the 8th day of November, 2018, before Jeff Bennett, Certified Court Reporter, LS Certificate No. 19, a Notary Public in and for Saline County, Arkansas, taken at the offices of the Arkansas Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas at 9:05 a.m.

S T I P U L A T I O N S

IT IS STIPULATED and AGREED by and between the parties through their respective counsel that the deposition of BRIAN RAY BURKE may be taken at the time and place designated pursuant to the Federal Rules of Civil Procedure.

BRIAN RAY BURKE

The witness hereinbefore named, having been duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CLARKE:

Q. Would you please state your name?

A. Brian Ray Burke.

Q. Mr. Burke, in October of 2016 were you an employee of the Arkansas State Police?

A. Yes, sir, I was.

Q. Have you ever given a deposition before?

A. No, sir.

Q. Because you haven't given a deposition let's go over some ground rules, so that we communicate well during this deposition. Okay?

A. Yes, sir.

Q. Obviously your testimony here is under oath and subject to the penalty of perjury. You understand that, correct?

A. Yes, sir.

Q. And obviously we have a court reporter taking things down. So it's important to give audible answers, yes and no, instead of nodding your head or shaking your head yes and no. Okay?

A. Yes, sir.

Q. Also try not to say uh-huh or huh-uh because we don't know if that means yes or no sometimes when we read the transcript. Okay?

A. Yes, sir.
Q. Obviously there's going to be lot of questions that are asked you of the attorneys in this case that are important to this litigation. If you don't understand a question will you please let me know?
A. Yes, sir.
Q. I don't want you to answer a question if you don't understand it. All right?
A. Yes, sir.
Q. If you answer a question, I'm going to assume you understood it. Is that fair?
A. Fair enough.
Q. If you need to refer to something to give a better answer, please let me know. Okay?
A. Yes, sir.
Q. And depending on the nature of the question, I will see if I can provide you with some information.
All right?
A. Yes, sir.
Q. When I ask you questions, pretty much I'm asking for any communications that you had. However, I'm not trying to invade anything that you specifically have discussed with your attorney. Okay?
A. Repeat that?
Q. If I ask you something -- I might ask you a lot of

questions, open-ended questions, and obviously you have an attorney.

A. Yes, sir.

Q. And communications between you and your attorney are privileged.

A. Yes, sir.

Q. Okay. That doesn't mean that just because if you told it to other people, and I ask the question, if there's something that involves a consultation that you had with your attorney about something, please let me know before you answer. It's not my intention to ask about those communications. All right?

A. Yes, sir.

Q. Before you came in for your deposition, did you review anything?

A. As in?

Q. Did y u review the tape; did you review statements; did you review papers; did you review transcripts; did you review anything?

A. Yes, sir.

Q. And what did you review to prepare yourself for this deposition?

A. I tried to review the video the best I could, some of the video that I had. I could not watch the entire video.

Q. All right.
A. I tried to look over most of the paperwork that was given to me by my attorney.
Q. Okay.
A. To the best of my knowledge.
Q. You understand that you've been sued as a result of a wreck that occurred on October 10, 2016, correct?
A. Yes, sir.
Q. All right. Have you read a copy of the complaint?
A. Yes, sir.
Q. And I'll make that Exhibit Number 1.
(Deposition Exhibit 1 was marked.)
Q. Now, you understand that once we filed the complaint there were answers that were filed where you had to respond to the allegations of the complaint, correct?
A. Yes, sir.
Q. And what I want to do is mark as Exhibit Number 2 your first answer to the complaint.
(Deposition Exhibit 2 was marked.)
Q. And did you go over the complaint and try to assist in responding to the allegations? The complaint that was served on you, did you look over that?
A. Yes, sir.
Q. All right. And then on October 31 it looks like

you filed an amended answer. Did you know you filed an amended answer in this case?

A. Yes, sir.

Q. After getting the tape?

A. Yes, sir.

Q. I'll mark that Exhibit Number 3.

(Deposition Exhibit 3 was marked.)

Q. During the course of discovery when we got the lawsuit filed, there are certain things that we have to produce. One is called Rule 26(a) disclosures where you identify certain things. Let me show you this. I've marked it as Exhibit Number 4.

(Deposition Exhibit 4 was marked.)

Q. Have you ever seen that document?

A. You're asking have I seen this?

Q. Yes.

A. No, sir, I've not.

Q. That was something that the attorneys have to file about people that have certain information pertaining to the complaint. And that was filed on your behalf. And I'm going to mark that as an exhibit here.

A. I may have seen this.

Q. Okay. And some of these documents, if you need to refer to or reference them, please let me know. These are things that were filed on your behalf that have

certain types of statements in them. Okay?
A. Yes, sir.
Q. All right. And what I want to mark as Exhibit Number 5, let me show you this, and see if you can identify it?
(Deposition Exhibit 5 was marked.)
Q. Do you remember there being a set of questions that were asked of you?
A. The interrogatories?
Q. The interrogatories.
A. Yes, sir.
Q. Okay. And after those were completed your attorney produced what's called a verification. And I'll mark that as Exhibit Number 6.
(Deposition Exhibit 6 was marked.)
Q. Did you sign that verification?
A. Yes, sir, I did.
Q. And based on that verification when you went through your responses, were they true and accurate to the best of your knowledge, information and belief?
A. Yes, sir.
Q. Have you reviewed -- did you review your interrogatories before you came in here?
A. Not recently, no, sir.
Q. All right. When was the last time you reviewed

them?
A. Right when we submitted them, to the best of my knowledge.
Q. Okay. Next I'm going to mark as an exhibit, this will be Exhibit Number 7, is a copy of your personnel and training files. And I've got one extra copy.
Let me show you Exhibit Number 7. Have you seen that before?
(Deposition Exhibit 7 was marked.)
A. No, sir, I have not.
Q. You've never looked through your personnel and training file?
A. I have not seen it, no, sir.
Q. Okay. That was produced by the State of Arkansas as setting forth your personnel and training file while employed by the State of Arkansas.
I'll mark this as Exhibit Number 8. Exhibit Number 8 is a copy of the documents that were produced by the State of Arkansas that were identified as your EVOC training.
(Deposition Exhibit 8 was marked.)
Q. Have you reviewed those?
A. No, sir, I have not.
Q. Okay. I'm marking these on the front end so that we can try to get that off to the side, and if we have

to refer to those we will. Okay?
A. Yes, sir.
Q. Tell me a little bit about yourself; what's your date of birth?
A. [redacted].
Q. And were you born in Arkansas?
A. Yes, sir.
Q. And what's your highest educational background?
A. A bachelor's degree in business administration.
Q. And when did you graduate from high school?
A. High school in 1999.
Q. 1999?
A. Yes, sir.
Q. And where did you graduate from high school?
A. Fordyce, Arkansas.
Q. All right. And when did you start college, was it right after high school?
A. Yes, sir.
Q. And where did you go to college?
A. I started college at Arkansas State University in Jonesboro. Then moved to the University of Arkansas at Monticello.
Q. At what?
A. University of Arkansas at Monticello.
Q. And did you go continuously?

A. Yes, sir.
Q. And when did you graduate from college?
A. I believe it was December of '03.
Q. And what was your major?
A. Business administration.
Q. All right. Have you ever been arrested?
A. No, sir.
Q. All right. Any other post bachelor's degree courses?
A. As far as college?
Q. Yes.
A. No, sir.
Q. Okay. Take me through your employment history from the time you got out of college?
A. At that time I was working for Walmart.
Q. Okay.
A. I stayed with Walmart until 2006. I then went to work for Gander Mountain Sporting Goods Store. And I worked for them until my employment at the Arkansas State Police, which started in January of 2011.
Q. Okay. So your first law enforcement job was with the Arkansas State Police?
A. Yes, sir.
Q. All right. Were you ever fired or terminated from any job?

A. No, sir.
Q. All right. So take me through how you became an Arkansas State Police officer or trooper? Do you have to fill out an application and get approved?
A. Yes, sir. I think they call it an initial contact form.
Q. All right.
A. And then you go through a rigorous hiring process. Then you have to be selected. As far as the actual, each step in the process, I can't remember.
Q. Well, you didn't get out on the street until like June of 2011, correct?
A. That would have been with an FTO, somewhere in that ballpark, yes, sir.
Q. All right. So you had to apply sometime in 2010, correct?
A. I think. I don't know when I applied. Obviously I would have had to have at least by that point. I can't tell you when I applied.
Q. Well, after you went through whatever you applied and you went through the process, is it your understanding in January of 2011 is when you were hired with the Arkansas State Police?
A. Yes, sir. That's when we started troop school or training.

Q. And how long was troop school?
A. I believe my class was 20 weeks.
Q. All right. And if you would pull out Exhibit Number 7?
A. Okay.
Q. There's some numbers at the bottom. Do you see in the middle?
A. Yes.
Q. Go to ASP 0010? This is in your training file, I mean in your personnel and training file. Do you see that, you went to troop school in 2011?
A. Yes, sir.
Q. All right. What made you want to be a police officer?
A. All I can tell you is that's all I ever wanted to do. I don't know how else to answer your question.
Q. Okay. Do you have family that's in law enforcement or --
A. Well, not really. I had an uncle that was a city marshal. I guess he was part-time. But even before he did that, I always -- that's what I always wanted to do.
Q. Okay. Prior to that did you have any military service?
A. No, sir.
Q. So prior to showing up at troop school you had no

law enforcement training whatsoever, correct?
A. That would be correct.
Q. All right. Obviously we're here involving the driving and the wreck that occurred on October 10, 2016. So I'm not going to go through everything you did in troop school. But do you recall getting training while you were in troop school on a variety of topics?
A. Yes, sir.
Q. If you look through this syllabus, there's four or five pages of different topics that you had to go through, correct?
A. Yes, sir.
Q. And with respect to it looks like you had 20 hours of training on the Arkansas policies and procedures and directives, correct?
A. What page?
Q. Page 10.
A. Page 10. Yes, sir.
Q. And tell me what you remember of that; did you have -- did they give you a complete copy of the entire policies and directives manual?
A. Sir, I'm going to tell you, that's so long ago, I don't remember. I know we had a manual, a policy manual.
Q. Did you have to turn that in when you retired?

A. The policy manual?
Q. Yeah.
A. My policy manual was damaged in the accident, sir. It was trashed.
Q. So you had a policy manual. How thick was it?
A. Pretty thick. I don't remember.
Q. Did you carry it with you every shift?
A. It stayed in my car, yes, sir.
Q. Okay. And are you normally assigned a car that you were always in, or did you have to take it out and put it back in every day?
A. No, sir, we were assigned a car.
Q. All right. Was it a take-home car?
A. Yes, sir.
Q. All right. So you can't tell me what you remember about the actual training on the policies and directives while you were in troop school, correct?
A. No, sir.
Q. All right. Let's go to page ASP 11? You can just take that whole thing off if it's easier.
The second topic in there is you had a class on constitutional law and liabilities. Do you see that, 24 hours?
A. Yes, sir.
Q. All right. Do you recall being trained on

potential liabilities stemming from inappropriate driving?

A. Sir, honestly I can't tell you the contents of these courses. I remember taking these courses, but as far as contents on this stuff. I remember Lieutenant Coppinger. But as far as the content of what each of these courses held, I'm not able to tell you that.

Q. Okay.

A. That's been seven or eight years ago.

Q. Any time during your law enforcement career do you recall being instructed or told that improper conduct, driving conduct can result in liability?

A. I'm sure at some point, yes, sir.

Q. Do you know that today?

A. Well, I mean, I can't tell you a specific incident, but yes.

Q. All right. Did you ever have any other training on constitutional law and liabilities other than in the trooper academy that you're aware of?

A. Not that I remember.

Q. Let's go to page 12. You had a course on crash investigations, TraCs. Do you recall what that was?

A. TraCs at the time was the reporting program that we used to record our traffic accidents in.

Q. Is that traffic accidents that you investigate or

that you're involved in?
A. That we investigate.
Q. Okay. So they gave you information on how in that course, and it looks like it was 120 hours, it gave you information on that on how to do the reports and what to look for?
A. Yes, sir.
Q. Okay. Are you any type of crash investigator certified?
A. Well, just general crash investigation, not a reconstructionist or anything.
Q. Okay. So you can't look at a crash and determine speeds and do calculations like that?
A. Not really, no, sir.
Q. Okay. You got a training on in-car videos for two hours. What were you trained about in-car videos?
A. I really don't remember that class to be honest with you.
Q. Is there a certain time that you're supposed to put on your in-car video or was it the operation of them?
A. I don't remember, sir.
Q. Okay. I know you sustained some injuries in this wreck. Do you have any injuries or disabilities stemming from that wreck which affects your memory?

A. Well, certain parts. There's certain things of the wreck and stuff prior to that that I don't remember.
Q. Okay.
A. Definitely at the time of the wreck, I don't remember some of that.
Q. Okay. What I'm talking about, I just -- and I'm trying to ask a delicate question, Officer Burke. You didn't sustain some kind of head injury that makes you forgetful about things in the past just pertaining to the actual incident, correct?
A. As far as years ago, no, sir. If you're asking if I received injuries that made me forget back this far, not that I'm aware of. I just don't remember some of these classes.
Q. Did you sustain a head injury?
A. I did get a head injury, yes, sir.
Q. Were you diagnosed with a traumatic brain injury or anything?
A. I believe so, but I really don't know. My wife has said that they told her that I had a TBI, traumatic brain injury. But I don't -- I didn't ever talk to that doctor after I left the hospital.
Q. Have you received any followup treatment?
A. Not for that, no, sir.
Q. Are you working now?

A. Yes, sir.
Q. Where do you work now?
A. I work at Win Transport.
Q. And what do you do there?
A. I'm a DOT safety compliance officer.
Q. AND how long have you been doing that?
A. For about six months.
Q. After you medically retired before you had that job did you have any other employment?
A. No, sir. I mow yards and stuff but --
Q. You didn't work for anybody else?
A. No say.
Q. I'm going to go down a little bit on these course things. It looks like you had something on mock patrol stops. You had 40 hours of that. Do you recall, did they have certain types of situations where you had to show how to make traffic stops, high risk stops, things of that nature?
A. Yes, sir. I know we did different scenarios. I couldn't tell you the scenarios. But I remember doing different scenarios as to things that could go wrong, things that could go right, things of that nature.
Q. Were any of them involving driving a car?
A. I don't understand that question.
Q. Were these things done on a computer simulator,

were they out in the field?
A. They were not in the field. They were in a training field, if you will.
Q. Okay.
A. Not actual live traffic stops.
Q. All right.
A. They were mock stops.
Q. But you actually were in cars and you had to pull people over and do that somewhere?
A. Yes, sir.
Q. Okay. Did any of them involve how to stop a traffic offender or how to pursue, or was that in a different topic?
A. There again, I don't remember exact situation, sir.
Q. Okay. And if you will go to the next page. It looks like you had on ASP 13 you had 40 hours of training on EVOC. Do you see that?
A. Yes, sir.
Q. What is EVOC?
A. Emergency vehicle 15.
Q. Okay. Would that include pursuits?
A. I know that we did some things that were -- most of it was learning how to drive the cars in emergency situations and stuff.

Q. All right.
A. I'm going to say we did some chasing cars or going after cars that were fleeing. Sir, I really don't remember. To give you an honest answer, I can't.
Q. Okay. Well --
A. Seems like we did go after some cars in that training.
Q. Okay. That says --
A. Most of it was driving a course, trying to drive this course without hitting cones and stuff of that nature.
Q. Like backing up, serpentine?
A. Yes, sir.
Q. And you had to do it within a certain time period?
A. Well, I don't know that we had a time period. We tried to beat each other's times, but I don't remember a time period we had to do it in to pass or fail.
Q. Okay. Let's go to Exhibit Number 8. Let me show you what's been produced by the Arkansas State Police as a lesson plan. Do you remember being trained on EVOC by Captain Eremea and these people up here, Sergeant Speer, do you remember who your trainer was?
A. We had a bunch of trainers. I Captain Eremea being there and Sergeant Speer, yes.
Q. All right. Now, let's go through this. On the

first page it notes at the bottom of the left-hand side, Part of the training was to understand the liability issues in the operation of a police vehicle. Do you see that?

A. Yes, sir.

Q. What is your understanding of the liability issues with respect to the operation of a police vehicle?

A. Well, you have a duty to drive in a safe manner. You can't blow red lights. You can't blow stop signs and stuff like that.

Q. Okay. Were you trained on the emergency vehicle policy and the pursuit policy?

A. I'm sure I was.

Q. If you would over look this.

(Deposition Exhibit 9 was marked.)

Q. I'll mark as Exhibit Number 9 the vehicle use policy. And I'll mark as Exhibit Number 10 the pursuit policy.

(Deposition Exhibit 10 was marked.)

Q. Were you required to comply with these policies?

A. Yes, sir.

Q. Were these policies -- did you go over these policies and then have your instructors try to interpret them for you and tell you what they mean?

A. I don't remember that. I'm sure we probably did,

sir. I really can't answer you on that.
Q. Let's go back to Exhibit Number 8. We're going to keep this out for a second.
A. Okay.
Q. According to this, and I'll have to get confirmation from another witness, I believe this is the training that you received at the academy. It looks like if you go ASP 961.
A. Yes, sir.
Q. You had 10 minutes of training on or an introduction. If you go to page 962. You had an hour of classroom instruction with respect to maintenance of your vehicle. Do you remember being trained on maintaining your vehicle?
A. No, sir.
Q. Okay. Then the next topic, the next objective was to learn the laws of physics that affect vehicle dynamics in a moving vehicle. It was 30 minutes of classroom training for that. Do you see that?
A. Yes, sir.
Q. Do you remember being trained on vehicle dynamics, inertia momentum and things of that nature?
A. I remember like weight transfer and stuff like that, yes, sir.
Q. Okay. Objective number 3, Examine proper

techniques used in performance 15 at 30 minutes of classroom instruction on that. Do you see that?

A. Yes, sir.

Q. Okay. And if you look through the objective. Do you remember having training on the proper braking and curves and steering techniques?

A. Yes, sir.

Q. All right. Objective number 4. Techniques used to avoid skids and recover from skids. Do you remember having training on that?

A. Vaguely, yes, sir.

Q. Objective number 5. Do you recall receiving training on how to use the PIT maneuver?

A. Yes, sir.

Q. And how do you do a PIT?

A. That's when you try to use your front bumper, the front of your vehicle to immobilize another vehicle and hit them on the opposite side from --

Q. Do you hit them from behind?

A. From the side.

Q. Okay. Is there a certain amount you're supposed to steer into them once you make contract?

A. I believe it's a quarter turn, but I don't remember for sure.

Q. You're supposed to accelerate through the turn?

A. Yes, sir.
Q. And is that supposed to safely spine the car out?
A. Yes, sir.
Q. Have you ever had to use a PIT maneuver?
A. Never did a PIT maneuver, no, sir.
Q. All right. Objective number 6 on page is 964. Do you remember being trained and you had 30 minutes of classroom instruction on the use of spike strips, do you see that?
A. Yes, sir.
Q. It looks like for objective number 7, Demonstrate correct techniques associated with 15 a vehicle. That was on the 15 track. And there were 30 hours of that. Do you remember that?
A. Yes, sir.
Q. Based on this it was talking about backing and not striking cones, serpentine forward and backwards, high speed 15 without hitting cones. Do you remember going through those courses?
A. Yes, sir.
Q. So a good portion of your EVOC training involved 30 hours being on the track. Do you remember that being a big part of it?
A. Yes, sir.
Q. All right. Objective number 8. It looks like

after you had some classroom training on the PIT you had an hour of training on demonstrating that in the field. Do you recall practicing the PIT in the field?

A. Yes, sir.

Q. All right. Then out on the field do you remember 30 minutes or a block or a section on deploying spike strips out in the field?

A. Yes, sir.

Q. Objective number 10. It summarizes the consequences of civil liability in the operation of police vehicles. Do you recall having an hour of classroom discussion on that? It's ASP 964 at the bottom.

A. I would assume. I don't recall a class. I remember that.

Q. Do you remember any civil cases involving the 15 of the vehicle that they discussed?

A. No, sir.

Q. Okay. Never heard of Lewis v. Sacramento?

A. I don't know what that is, no, sir.

Q. Fiest v. Simonton?

A. No, sir.

Q. Helseth v. Burch?

A. No, sir.

Q. Scott v. Harris?

A. No, sir.
Q. Do you know what Tennessee v. Garner says?
A. No, sir.
Q. Do you know what Brower versus County of Inyo says?
A. No.
Q. Do you recall any training on whether the use of a motor vehicle can be deadly force?
A. Yes, sir.
Q. Tell me when the use of a motor vehicle can be deadly force?
A. Well, you can't run someone down.
Q. So what were you trained with respect to the use of motor vehicles and deadly force?
A. Like during a pursuit, hitting a motorcycle would be considered deadly force with a police vehicle or with a car. Also striking a person, intentionally trying to run them over to apprehend him would be deadly force.
Q. All right. After we went through this lesson plan, did you see anything in this lesson plan with respect to pursuits?
A. In this one here?
Q. Right, Exhibit 8.
A. I didn't really go through it. I was just following you along.

Q. You need to go through it.
A. Sir?
Q. I need you to go through it then.
A. Okay. No, I don't.
Q. Do you recall getting any -- obviously you used some of the skills, the 15 skills that you learn in emergency vehicle operation while you're engaging in a high speed pursuit, correct?
A. Yes, sir.
Q. Do you see any training block on when to engage in a pursuit?
A. No, sir.
Q. Do you have see any training block on when you're allowed to engage in emergency vehicle 15?
A. No, sir.
Q. Did it appear, after going through this lesson plan, did it appear that most of it kind of -- I think your recollection was in EVOC you did a lot of 15 and going through cones and things of that nature, correct?
A. Yes, sir.
Q. Was that the majority of what you learned and what you recall after we've gone through the lesson plan of your training with respect to EVOC and pursuits?
A. Yes, sir. It was more on handling of a vehicle, yes, sir.

Q. All right. How the weight transfers when you brake, how to go into a turn, the inertia and momentum and things of that nature, right?
A. That's correct.
Q. Skidding, how to recover from a skid, correct?
A. Yes, sir.
Q. The physical operation of a vehicle, correct?
A. Yes, sir.
Q. Now, you had a lot of training. Have you ever had to use your firearm in the course of your law enforcement duties, shoot it, I know you've had to probably pull it out?
A. Yes, sir.
Q. Have you ever had to use deadly force?
A. No, sir.
Q. And while you've never used deadly force, you had a significant amount of training on the use of a firearm, correct.
A. Yes, sir.
Q. You didn't have to pull your firearm out every day, right?
A. No, sir.
Q. You had to drive your car every day, correct?
A. Every day, yes, sir.
Q. Every day do you think you responded to an

emergency call?
A. No, sir.
Q. Fairly frequently?
A. Sometimes frequently, sometimes not.
Q. Okay. You could go --
A. It's not uncommon, no, sir.
Q. Right. I'm trying to figure out in a day of a trooper the chances of you pulling out a gun. It could happen any time, right?
A. Yes, sir.
Q. But the chances of you pulling out a gun if you do everything right are slim, correct?
A. Yes, sir.
Q. And you in your career have never had to use deadly force with your firearm, correct?
A. Correct.
Q. You had to use it I'm sure to make arrests in certain situations, correct?
A. Yes, sir.
Q. But with respect to a car and getting calls and responding to it, that's a much more common occurrence, correct?
A. Yes, sir.
Q. All right. And again, in those training blocks we didn't see anything -- you understand the difference

between when you were in training you were trained how to actually shoot with marksmanship, correct?
A. Yes, sir.
Q. And then you received substantial training on when to use deadly force, correct?
A. Yes, sir.
Q. You didn't have that type of training with respect to when you engage in an emergency vehicle operational pursuit; would that be fair?
A. Ask me that question one more time?
Q. All right. You understand with respect to the use of firearms there's two components; one is marksmanship, do you agree with that?
A. Yes.
Q. You have to be able to shoot the weapon and hit what you're trying to shoot, correct?
A. Yes, sir.
Q. The other aspect is when you're entitled to use deadly force, correct?
A. Yes, sir.
Q. And you received substantial training on your marksmanship, correct?
A. Yes, sir.
Q. And substantial training on when you can use deadly force, correct?

A. Yes, sir.
Q. With respect to EVOC or emergency vehicle operations or pursuits, we went through the lesson plan, and it appeared that there was a significant amount of the physical operation of a vehicle, correct?
A. Yes, sir.
Q. And no topics that directly addressed when to engage in a pursuit or an emergency vehicle operation, correct?
A. Not in this lesson, no, sir.
Q. Do you recall it at any other lesson?
A. Not off the top of my head, no, sir.
Q. And we have more documents that we can get to that. Let's go back to Exhibit Number 8. It looks like if you go to page 966. You went through and this looks like these are scorings on your 15 test. Do you see that?
A. Yes, sir.
Q. And do you remember there's certain different topics. One is called precision moving, serpentine forward, serpentine reverse, PIT and performance driving. Do you see those five documents?
A. Yes, sir.
Q. All right. And according to these, if you look at them, you have to do a certain amount of time and a

certain amount of cones. Do you see that up at the top?
A. Yes, sir.
Q. All right. Now, let's just talk about your -- before we get into further training, I wanted to go through the academy. Do you remember anything else in your academy training -- well, let me ask you this. Were you tested that you're aware of on whether or not you understood the EVOC training, did you have written tests?
A. I don't know on that specific course. I know some courses we did. I don't remember on that specific course.
Q. Some courses you did, some courses you didn't?
A. Or some courses they may take one or two questions out of it and do a weekly test.
Q. Okay.
A. On that particular course I don't remember.
Q. Okay. Obviously you had tests with respect to your driving performance, correct?
A. I would feel like that's what this here is.
Q. Right. Okay. Then let's go through a little bit about your career as a trooper. Based on my understanding, you were put out in the field with an FTO officer in June of 2011. Does that sound correct?
A. Sounds about correct, yes, sir.

Q. Okay. And were you assigned to a specific FTO officer or did they change?
A. They changed.
Q. Do you know how long the FTO program was?
A. I'm going to say 10 or 11 or 12 weeks or something like that.
Q. Okay. And tell me a little bit, what is FTO, that's a field training officer, right?
A. Yes, sir. You work alongside or with another officer that has been through a training course as to how to train other officers.
Q. Okay. Is it kind of like on the job learning with a more experienced officer?
A. We start out, I don't remember the time frame, but the first couple of weeks I would just kind of ride and observe the way he did things. And then we transitioned into me doing it.
Q. All right.
A. And him being there with me. And then we transitioned into where I did it and he stayed in the car and observed from the car.
Q. Okay. So I'm just going to generalize it. There was a period of time where you were just an observer?
A. Yes, sir.
Q. There was a period of time where you watched what

he did, the first period of time you watched what he did to learn how to do certain things like traffic stops, correct?

A. Yes, sir.

Q. Then there was a period of time where he let you start doing some of it, correct?

A. Yes, sir.

Q. And then there was a final period of time where you kind of ran the car and did everything while he was watching to make sure it was done correctly?

A. Yes, sir.

Q. Tell me the names of any of the field training officers that you remember?

A. I had Mac Davis, I think his name is Shannon Davis, he goes by Mac. I had Ricky Denton, Charlie Edmondson, I think Chris Waters for a few days. I want to say I rode with Dwight Lee for a few days.

Q. All right. And when you were going through field training and FTO training, were you assigned to a particular troop?

A. That was all in my troop, yes, sir.

Q. What troop was that?

A. Troop H.

Q. And what does Troop H cover?

A. That's up there at Fort Smith. It covers

Sebastian County, Crawford County, Scott County, Logan County and Franklin County.

Q. All right. And how many different troops are there throughout the state, do you know?

A. 12.

Q. 12?

A. Yes, sir.

Q. Did you stay at Troop H until like 2014?

A. I believe it was '14 we moved, yes, sir.

Q. And then where did you move to?

A. To Hot Springs.

Q. And what troop is that?

A. That's Troop K.

Q. When you were at -- I'm sorry. Troop H was the first one?

A. Yes, sir.

Q. Who was your commander, tell me who your -- take me through your chain of command while you were there?

A. From my sergeant and above?

Q. I want to know --

A. My sergeant was Randall Dias. The lieutenant was Bryan Davis. My captain was Steve Coleman.

Q. And is there a commander of each troop?

A. That could be the captain, yes, sir.

Q. So the captain runs the troop?

A. Yes, sir. During my time there Steve Coleman retired. And Bryan Davis become our captain. And we did not have a lieutenant.
Q. When you went to Hot Springs what troop was that again?
A. Troop K.
Q. Troop K. Who was your -- what was your chain of command?
A. When I first moved there my sergeant was Scott Joe. We did not have a lieutenant. And my captain was Mark Allen.
Q. All right.
A. Mark retired. And we got Forrest Marks was my captain. And he transferred or promoted to Little Rock. And then we got Ron Casey. Somewhere during that time we got Lieutenant David Cooper.
Q. Now, when you're hired what is your title?
A. You're a trooper.
Q. And did you ever receive any promotion?
A. I was promoted to trooper 1st class.
Q. Is that after four and a half years of service?
A. I believe so, yes, sir.
Q. And is that what your rank was at the time of the wreck?
A. Yes, sir.

Q. How many officers are in a trooper, do you know, do you have any idea?
A. I don't know.
Q. Did you work a particular shift or were you all different shifts?
A. We rotated shifts.
Q. During the course of your career did you ever have anybody make a complaint against you?
A. Yes, sir.
Q. Tell me about that?
A. That was a citizen complaint. He thought I mistreated him on a traffic stop.
Q. Was that [redacted]?
A. That sounds about right, yes, sir.
Q. And that was investigated and found to be unfounded, correct?
A. That's correct.
Q. All right. Any other complaints that you're aware of?
A. Not that I'm aware of, no, sir.
Q. Any verbal or written discipline?
A. No, sir.
Q. Okay.
A. Other than just normal day-to-day.
Q. Do better on this or --

A. Yes, sir.
Q. Nothing formal?
A. No, sir.
Q. Now, what's an officer's primary job function, to protect and serve?
A. Well, yes, sir.
Q. It's not just to catch criminals, correct?
A. No, sir.
Q. Are you trained that there are certain requirements or limitations to your authority as a police officer?
A. Yes, sir.
Q. For example, you can't just go up to anybody and pat them down for no reason, correct?
A. Correct.
Q. As a law enforcement officer, as you get more and more experienced you come to know your beat, correct, know your area?
A. Yes, sir.
Q. You know certain areas are more high crime than other areas, correct?
A. Yes, sir.
Q. And a good law enforcement officer can go by certain places and know that drugs are being sold there, but can't take any law enforcement action unless you see

something that gives you reasonable suspicion or probable cause to believe that a crime is committed, correct?
A. Correct.
Q. So while you know 100 percent that something may be -- that something may be going on, there are restrictions to what you can do, correct?
A. Sure.
Q. Part of what your obligations and your duties are is to protect the public, correct?
A. That's correct.
Q. And sometimes you have to stop doing things even when you're trying to catch a criminal or stop criminal action in the interest of protecting the public, correct?
A. Yes, sir.
Q. Now, do you recall having any other EVOC training or pursuit training other than basic troop school?
A. I don't know about any classes. I know I don't recall any 15 courses or anything like that. But as far as classes, I can't answer that. I don't know.
Q. Once you become a trooper, is it your understanding that you have to take a certain number of courses per year to maintain your certification?
A. I'm not aware of that. I know we do some firearm

training, but I don't know.
Q. Well, with firearms you have to train quarterly, correct?
A. We train quarterly, yes, sir. I don't know what the requirements are, but we train quarterly.
Q. So you have to go and qualify every three months, correct?
A. No, sir. We qualify once a year. We train quarterly.
Q. Okay. Tell me what the difference between qualification and training is?
A. Qualification you're shooting, you got to shoot a certain percentage on a target, a score target, I guess. When you're training you don't that. You're just training in different scenarios of shooting and transition weapons and things like that.
Q. All right. Again does that training tell you both how to actually encounter a situation and when it's appropriate to use deadly force?
A. I don't recall that, no, sir. It's more just training on shooting a firearm. You'll have scenarios and stuff like that, but it's mainly for shooting.
Q. But what I'm trying to get at is are there shoot and don't shoot scenarios?
A. There may be some in there, yes, sir.

Q. Firearms qualification you got to score X amount on targets at different positions, correct?
A. Correct.
Q. All right. When you had firearms training quarterly, did you go through -- were they how to handle your firearm, how to draw your firearm, or were they when do you shoot or not shoot a firearm?
A. I don't remember. They may say or have a scenario where it would be a don't shoot scenario based off of doesn't have a weapon or has a weapon. But as far as the whole training, no, sir, it's more just towards shooting.
Q. While they concentrated a lot of training on firearms, do you remember them putting that type of emphasis on EVOC or pursuits? You didn't have quarterly training on EVOC or pursuits, did you?
A. No, sir.
Q. Do you even recall any particular training that you had on EVOC or pursuits after the troop academy?
A. I don't recall. I'm not saying there's not, but I don't recall.
Q. And we have some documents that we're going to go through. Let's talk about your FTO training for a second. You went through your FTO training, to the best of your recollection, do you recall ever going on an

emergency call during your FTO training?
A. I cannot tell you that. I'm sure we did, but I can't say that we did.
Q. Well, I'm not trying to trick you. I'm trying to get an understanding of what your understanding of the training was and your requirements were?
A. I can't remember a specific time that we did, if that's what you're asking.
Q. Do you ever remember having a discussion with your FTO officer about how the appropriate way is to respond to an emergency call?
A. No, sir.
Q. Were you trained what is an emergency call?
A. Not that I know of, no, sir.
Q. Okay.
A. Through the FTO?
Q. Through your FTO?
A. I don't recall that, no, sir.
Q. How about in trooper school?
A. To my recollection, no.
Q. Do you recall getting in a pursuit with your FTO officer?
A. No, sir.
Q. Do you recall going over either the vehicle use or the pursuit policy with your FTO officer?

A. I don't recall, no, sir.
Q. When you went through FTO training, did you have to sign any documents that indicated what you had accomplished in FTO training?
A. I don't remember. We signed documents. I know they would generally go over on a weekly basis kind of how we did it. I don't recall if we signed those or not.
Q. Okay. So it's your understanding there was documentation of FTO training?
A. Yes, sir.

MR. CLARKE: Jennifer, I hadn't seen any FTO training documents. Do you know if you produced them?

MS. MERRIT: You have what we produced. We can talk about that off the record.

MR. CLARKE: Just for my record, to the extent they exist, I'm going to mark as late filed Exhibit 11 Burke's FTO training documents, if they exist.

(Deposition Exhibit 11 was marked.)

BY MR. CLARKE:
Q. Now, are you looking for something in there? I'll let you look.
A. I was just seeing if they was in my file. That's

all I was looking for.
Q. Why don't you look through your file and see if you see anything?
A. I don't see any.
Q. Okay. Keep that exhibit out. We're going to go through your personnel file right there.
A. Okay.
Q. Now, is that Exhibit 7?
A. Yes.
Q. Do you understand that there are two separate policies; a vehicle use policy and a pursuit policy?
A. Yes, sir.
Q. All right. It looks like if we go to ASP 15.
A. Okay.
Q. It looks like there were certain type of reading assignments that you had to do while you were in the academy. Do you remember those?
A. Yes, sir.
Q. Okay. I don't see on the reading assignments on the second page. The pursuit policy is LE 13. Do you see where you had any assignments on the pursuit policy?
A. LE section 13?
Q. Yeah.
A. Yes, sir.
Q. You do. Where?

A. ASP 16, page 16.
Q. It's not on my highlight. I'm sorry. It looks like you had two assignments on LE or general -- you had one assignment on the general section 23 policy, vehicle use, correct?
A. Yes, sir.
Q. Go to ASP 19. If you look through the traffic stops policy, this looks like it was your lesson plan when you were in troop school. Can you look through that and tell me from ASP 19 through basically 37 whether or not any traffic stops dealt with emergency vehicle operations or pursuits?
A. You said through 23?
Q. The training plan goes on -- the actual lesson plan goes on through 30.
A. What was your question again?
Q. Was there any training on pursuits or emergency vehicle operations during traffic -- during traffic stops based on the lesson plan?
A. No, sir.
Q. All right. It does have some information if you go to ASP 23, objective number 1 says, demonstrate officer safety skills while conducting traffic stops.
Is it your understanding that traffic stops dealt with primarily how to perform, where to perform and how

to conduct a traffic stop with respect to officer safety?
A. Yes, sir.
Q. Where you park your car, how you park your car, how you approach a car, correct?
A. Yes, sir.
Q. What to -- how to instruct somebody to get out of the car, correct?
A. Yes, sir.
Q. It also dealt with some certain type of stops when you have what's called a high risk stop or a felony stop, correct?
A. Yes.
Q. And I'm sure they explained to you numerous times that more officers are killed during traffic stops than a lot of other things, correct?
A. I don't recall that.
Q. You don't. Is it your understanding then that you were trained when you make a traffic stop that you don't turn on your blue lights until you have made -- until you have caught up to a vehicle and you have selected a place to make the safe traffic stop?
A. That's correct.
Q. All right. So if you have to exceed the speed limit to catch up to somebody before you perform a

traffic stop, was it your understanding, based on your training, that you didn't have to have your lights and siren on?

A. That would be correct.

Q. So throughout your career was it your custom that if you were going to engage in a traffic stop, that you would pull out and drive -- pull out to try to make it and then get up right behind the vehicle before you put your blue lights on siren on?

A. The majority of the time, yes, sir.

Q. All right. Is that the way that you observe most other troopers do it?

A. Yes, sir.

Q. Is that the way you were taught to do it?

A. Yes, sir.

Q. All right. And a lot of those times when you're trying to engage in a traffic stop you would have to get in a position to catch up -- well, let's just talk about a speeder. Okay?

A. Yes, sir.

Q. Somebody speeding in order to catch back up with them you have to exceed the speed limit, correct?

A. Yes, sir.

Q. And it was your training and the way that you observed other officers do this, that you would catch up

with them without activating your lights and siren until you got behind them and were actually ready to make the traffic stop, correct?

A. Correct.

Q. Were you told that you -- well, I'll leave it at that.

Let's go to ASP 38. I think we've already gone through the lesson plan on EVOC. At the end of it there's a PowerPoint. We've gone through the EVOC lesson plan, but let's go to ASP 45.

Trooper Burke, if you ever need a break or something, I didn't say that at the beginning, let me know. This isn't an endurance contest. I'll just keep going.

A. Yes, sir.

Q. Okay. And this appears to be a PowerPoint that must have accompanied your lesson plan. Do you remember seeing PowerPoints and training materials in the classroom?

A. Yes, sir.

Q. All right. And the title of this PowerPoint is Defensive 15. Do you see that?

A. Yes, sir.

Q. Okay. They talk to you about different types of physiological effects that occur to you when you're

engaged in emergency vehicle operations or high speed 15?

A. Was that a question?

Q. Yeah. Did they -- did you receive any training in your EVOC that indicates that certain physiological things happen within your body when you engage in high speed 15?

A. Are you talking about like tunnel vision, is that what you're referring to?

Q. Yes, sir.

A. Yes, sir.

Q. And what other things or is that the only thing?

A. I don't see anything in here yet. Are you talking about all this stuff in here, is that what you're referring to?

Q. My question is really not based on this training. It looks like, according to these PowerPoints, 45 to 48, they all dealt with the physical operation of a vehicle, correct?

A. Yes, sir.

Q. Do these training slides indicate anything with respect to the physiological effects of high speed 15 like getting tunnel vision, auditory occlusion and making bad decisions?

A. I'll be honest with you. I can't half read some

of this stuff.
Q. Again these really deal with the physical aspects of 15, correct?
A. Yes, sir.
Q. Okay. You had heard of tunnel vision. Were you trained or provided information with respect to any other physiological characteristics of high speed 15 that officers may experience when engaged in high speed 15?
A. I don't guess I'm understanding what you're asking.
Q. That's fine. Please make sure you tell me that.
Okay. When you were training with a gun, did they train you with respect to how to do things under high stress conditions?
A. Yes, sir.
Q. Did they talk to you about certain types of stress responses that you have to combat when you're using your firearm so that you don't inappropriately use it?
A. Yes, sir.
Q. All right. Did they train you -- and those are that you train a lot to get muscle memory, correct?
A. Yes, sir.
Q. So that it becomes instinctual, correct?
A. Correct.

Q. And they try to provide you information about the type of things your body will experience when you're in a high stress situation with a firearm, so that you can better understand it, correct?
A. Yes, sir.
Q. And you do that four times a year, correct, as part of the firearms training, correct?
A. Well, not necessarily. Not every time.
Q. Okay. But you had firearms classes that dealt with different aspects of that four times a year, correct?
A. Well, sometimes it's just shooting. It's not just --
Q. Okay.
A. I'm trying to think how to explain this to you. Sometimes you're just shooting different scenarios. And sometimes they may put the stress level in there. Sometime it may not be.
Q. All right. I understand that. That happened on a somewhat frequent basis, correct? Qualification -- let me make sure. I thought you said you qualified one time a year, correct?
A. That's correct.
Q. You had firearms training four times a year, correct?

A. Well, three counting qualification. It would be four.
Q. Four firearms training; one is straight qualification, the other ones deal with other aspects, correct, you could be shooting, correct?
A. You're shooting, but it's more target shooting than it is --
Q. Okay. I think I understand. Let me try to ask a better question.
All right. When you have firearms training four times a year in all the training are you using a gun?
A. Yes, sir.
Q. Okay. So you're shooting?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. There's state mandated qualifications that you have to score a specific thing with respect to certain shooting distances and conditions, correct?
A. Yes, sir.
Q. And you do that once a year for a score to make sure you maintain your firearms qualification, correct?
A. Yes, sir.
Q. The other three times, are they all done at the range?

A. Yes, sir.
Q. Okay. The other times you're actually still physically shooting, correct?
A. Yes, sir.
Q. Do they put in -- does the Arkansas State Police have a shoot/don't shoot range or a computer simulator, a FATS machine?
A. I can't answer that question. I can tell you I trained on a FATS machine one time during troop school.
Q. Okay.
A. But I can't tell you if they still have that FATS machine or not.
Q. Okay.
A. I've never been on it since.
Q. Okay. So you did it. And in the FATS machine there's a computer screen with different scenarios where they take you through things, how to make a stop or how to deal with a citizen, correct?
A. Yes.
Q. And the scenarios can change where somebody comes at you with a knife out of nowhere and you have to use deadly force, correct?
A. Yes, sir.
Q. All right. When you did your firearms training, did you have any -- that's what I call a shoot/don't

shoot scenario?
A. Correct.
Q. Did you have that shoot/don't shoot scenario when you were doing your quarterly firearms training?
A. You may have, you may not have.
Q. Okay.
A. They may incorporate some of that in there.
Q. All right.
A. The lesson plan, I don't know where it comes from, if they get direction from someone else or if they just come up with it on their own. There may be a shoot/don't shoot scenario and there may not be.
Q. At the shooting range do they have moving targets?
A. We didn't, no, sir.
Q. Were you ever told to shoot a certain object or shape or number and not shoot a certain object, shape or number?
A. Well, to a degree, yes, sir.
Q. They told you. Okay. So according to this lesson plan it didn't deal with the actual -- it dealt with on EVOC it dealt with again the physical operation of the vehicle, correct?
A. Correct.
Q. All right. Let's go to ASP 51. And in this lesson plan it was two hours. And did you actually have

to -- it says, Review the pursuit policy specifically concerning hollow spike strips.

Did you go over the pursuit policy with respect to when it was appropriate to deploy those strips and how to deploy them?

A. I don't remember. I remember going over using the strips, but I don't know.

Q. Okay. All right. If you go to ASP 56. It came with a PowerPoint. Is there anything in the PowerPoint pertaining to emergency vehicle operation or pursuits?

A. This talks about how the strips increase the safety of pursuits.

Q. All right. Which is a method of terminating a pursuit, correct?

A. Correct.

Q. Anything else about pursuits?

A. I don't see anything.

Q. Let's go to ASP 63. Do you recall having training on use of force and use of deadly force?

A. Yes, sir.

Q. All right. What is deadly force?

A. When a life is taken or can be taken, when you use force for that or it could end in death.

Q. Does it have to be with a gun?

A. No, sir.

Q. Are there certain deadly force areas if you use a baton?
A. Yes, sir.
Q. If you look at page ASP 66. Do you recall being trained that a motor vehicle can be the use of deadly force?
A. Yes, sir.
Q. Are you allowed to use deadly force on somebody if they're just trying to escape?
A. No, sir.
Q. You have to be in immediate physical harm to yourself or another officer or another person, correct?
A. Correct.
Q. If you go to page 81, ASP 81.
A. Yes, sir.
Q. Do you recall getting training on vehicles and the standard they're supposed to be evaluated on for using them as a force option?
A. Yes, sir.
Q. And you have to apply the same standards if you're using your vehicle in a force scenario as you would with any other police weapon, correct?
A. Correct.
Q. All right. Let's go to page ASP 101. Do you recall getting any understanding that the 15 in the

wreck that you were involved in on October 10th was being investigated?
A. Yes, sir.
Q. Do you know if that investigation came to any conclusion or were you told any conclusion?
A. Not that I'm aware of, sir.
Q. My understanding is you medically retired --
A. That's correct.
Q. -- in March; is that correct?
A. Yes, sir.
Q. Were you off work from October 10th until the time you medically retired?
A. Yes, sir.
Q. Excuse me?
A. Yes, sir.
Q. And what type of -- did you have to fill out -- what type of injuries did you sustain in the car wreck?
A. I had my head injury, received a foot injury and a leg injury and a hip injury.
Q. Did you have to have surgery?
A. Yes, sir.
Q. Just tell me in general what --
A. I really don't know. I'm knocked out during this whole time pretty much.
Q. But you're alive now. You know what happened to

you?
A. I don't know exactly what all happened. I know I broke my foot. And they obviously had to do surgery on that. I broke my leg. And they had to do surgery on that. I don't know if they were done at the same time or different times. The same thing with my head. And then my hip was done on a different date.
Q. Did you have surgery on your head?
A. On my head?
Q. On your head.
A. I don't know what all they done to it, sir. I really don't.
Q. Did you then have medical treatment continuous? How long were you in the hospital?
A. I was in the hospital 10 or 11 days.
Q. All right. And did you receive followup care after that?
A. After that I went to inpatient rehab for 10 or 11 days, 21 days total.
Q. Okay.
A. Between the hospital and the rehab.
Q. Okay. And after you got out of the -- after you got out of the rehab hospital or the rehab place did you then follow up with a doctor?
A. I followed up. I had outpatient rehab as well.

Q. Okay. And what happened in March that you put in for medical retirement?
A. It was obvious that I wasn't going to be able to return back to work due to my injuries. The doctor told me that from day one. I thought I'd beat the odds. It's not there, so.
Q. Okay. And what type of limitations or restrictions did you sustain in this wreck that you believe precluded you from being able to go back as a trooper?
A. The way my foot was put back together, I know I can't do the job that I'd have to do.
Q. Okay.
A. That foot is pieced together at best.
Q. Okay.
A. And so I know it's not worth the risk.
Q. So you couldn't run appropriately?
A. The doctor told me no running, no jumping, anything of that nature, no twisting on that leg and stuff like that.
Q. What doctor was that?
A. Dr. Robert Olive.
Q. Is he an orthopedic doctor?
A. Yes, sir.
Q. Okay. In March of 2017, was that about the time

that you realized that you were not going to make enough improvement to be able to perform the job duties of a law enforcement officer?

A. That's correct.

Q. All right. Let's look at page 155.

A. Okay.

Q. This looks like you signed on 8/14/13. It's an acknowledgment that you received the revised provisions, and one of them was general section 23 on vehicle use. Do you see that?

A. Yes, sir.

Q. Were you just given a copy of this policy to put in the book, or did you receive any training or undergo any testing?

A. I don't really know, sir.

Q. It says it's an acknowledgment that you received it. Do you recall when you got policy updates that you had to have testing or training on them?

A. Sometimes, no. I can't remember if we would go to a class. I don't remember that.

Q. Okay. All right.

A. Usually we'd get it and sometimes even electronically we'd get it and just make an acknowledgment of it and put it in our binder.

Q. Do you know what the changes were?

A. I have no idea.
Q. Throughout your whole time of working as a trooper, was it your understanding under the vehicle use policy that you were allowed to exceed the speed limit while you were trying to catch up with somebody to perform a traffic stop?
A. Yes, sir.
Q. Nobody told you any differently, correct?
A. That's correct.
Q. All right. If you can go to page 156. It looks like on 8/14/2012 you signed an acknowledgment that you received an updated pursuit policy. Well, it doesn't say updated. Well, it does, it says revisions. Do you see that?
A. Yes, sir.
Q. Do you recall whether you received any testing or training on your understanding or knowledge of the pursuit policy?
A. No, sir.
Q. Do you know what the changes were?
A. No, sir.
Q. It didn't change your understanding of your training that you could, if you were going to try to -- I guess every pursuit starts, unless you're called into an active pursuit, as some type of traffic stop or some

type of stop, correct?
A. Well --
Q. Or some type of law enforcement action?
A. Correct.
Q. Okay. And again, were you told that if you were going to engage in a pursuit, you catch up to them before you put on your blue lights and siren?
A. It's not a pursuit until you do put on your blue lights and siren.
Q. Is it your training that when you were going to engage in a pursuit, you caught up to them just like you did in a traffic stop, before you put on your blue lights and siren?
A. I don't think I'm following your question.
Q. Okay. My understanding, based on your testimony --
A. Are you talking about an existing pursuit?
Q. No. Let's take out the scenario where you get called into a pursuit that's already been initiated or is already on-going. Okay?
A. Okay.
Q. Let me try to preface my question with some background. It's my understanding, based on your testimony here today, that when you performed a traffic stop, if you saw a speeder, that you were trained and

allowed to then try to catch up to the speeder before you put on your blue lights and siren, correct?
A. Correct.
Q. And in so doing, if they're speeding and they don't slow down immediately, you have to exceed the speed limit to catch up to them, correct?
A. That's correct.
Q. Many traffic stops then become pursuits, correct?
A. Yes, sir.
Q. And that's one of the circumstances by which a pursuit is initiated, correct?
A. Yes, sir.
Q. So if a pursuit -- so a traffic stop can turn into a pursuit once a suspect or a citizen fails to comply or fails to pull over once you put on your blue lights and siren, correct?
A. Correct.
Q. And takes evasive action, correct?
A. Correct.
Q. So again, with respect to pursuits, was it your understanding that you are allowed, based on your training, to exceed the speed limit while attempting to catch up to the suspected violator before putting your blue lights and siren on?
A. As a traffic stop, yes.

Q. Well, a traffic stop, that could turn into a pursuit based on the actions of the person you're trying to stop, correct?
A. It could, yes, sir.
Q. All right. You're performing the same function either way before you get -- before it turns into a pursuit, correct?
A. Correct.
Q. That decision is made by the suspect?
A. Yes, sir.
Q. Okay. You are performing the same function up to that point, and what they do determines whether or not it becomes a pursuit, correct?
A. Yes, sir.
Q. And have you throughout your career had to catch up to a speeder by exceeding the speed limit?
A. Every day.
Q. Every day. All right. And every day that you do that did you follow what we talked about as being your training, that being that you caught up to them before you put on and found a place where you wanted to pull them over before you put your blue lights and siren on?
A. That's correct.
Q. All right. How many pursuits do you think you were ever engaged in?

A. I don't have any idea.
Q. All right. More than five?
A. I'd say more than five. Probably 10 or so. I don't know for sure.
Q. All right. So when you engaged in a pursuit most of these things were traffic stops that had turned into pursuits once the violator refused to stop, after you put on your blue lights and siren?
A. Most of them, yes, sir.
Q. Okay. And did your understanding of how those were dealt with change at any time while you were at the Arkansas State Police?
A. In what way?
Q. As to how to perform a traffic stop and what to do once in pursuit?
A. No, sir.
MR. CLARKE: Let's take a break.
(A recess was had.)
BY MR. CLARKE:
Q. Trooper Burke, we just took a break. Is there anything else that you recall about training on emergency vehicle operations or pursuits other than what we've covered today?
A. No, sir.
Q. Do you remember having any training out on the

track again after your initial troop school?
A. No, sir.
Q. Do you recall any tests on emergency vehicles or pursuits after troop school?
A. No, sir.
Q. Do you recall any emails or other memos coming out pertaining to a change in policies or practice with respect to vehicle use, emergency vehicle operations or pursuits after the troop school, other than those acknowledgments that we went through?
A. Just the revision in the policy.
Q. Let's talk about the events of October 10, 2016.
All right?
A. Yes, sir.
Q. What was your assigned shift?
A. I don't know.
Q. Do you recall around what time the accident happened?
A. It was that evening. I don't remember what time.
(Deposition Exhibit 10 was marked.)
Q. I'll mark the accident report Exhibit Number 10 just for the purposes of discussion.
And you didn't fill out the accident report because you went to the hospital, correct?
A. Correct.

Q. It looks like according to this it happened on Monday, 10/10/16 at 9:23 p.m. Does that sound about right?
A. I'll have to take your word on it, sir.
Q. Okay. Is that nighttime on that day?
A. Yes, sir.
Q. I'm trying to do this in a way where we don't have to sit down and go over the whole tape.
A. Yes, sir.
Q. So if you're going to testify that it's some other time this is my opportunity to find out?
A. Sir, I can't tell you one way or the other.
Q. I understand that. I appreciate that. I'm just trying to go through that. Tell me a little bit about that particular day; did anything unusual happen on your shift?
A. No, sir, not that I remember.
Q. All right. When you're working on a particular day or on a particular shift like this Monday at 9 o'clock, how many other troopers are on-call with your troop?
A. I really can't answer that. I don't know. Also it's going to vary. You may have -- we're divided into posts inside the troop. And our post consisted strictly of Garland County. And that was the only troopers that

I really worked with on a normal basis. You may have something that someone else comes over and works with you or you go work with them. You could be out by yourself.

Q. Okay. That's what I'm trying to get at.

A. Or you could be five or six or seven people.

Q. So from one to six or seven?

A. On a good day maybe depending on what time of the day and stuff like that, yes, sir.

Q. I'm just trying to get an idea of what type of law enforcement resources that your troop had available to you?

A. On this particular day?

Q. Yes.

A. There was one other trooper working.

Q. And sometimes that were more?

A. Yes, sir.

Q. Okay. And you say you had two troopers for all of Garland County?

A. That would have been in our post, yes, sir.

Q. And how many posts did you have within your troop?

A. Three.

Q. All right. And you just kind of work with the people who kind of work your particular post?

A. Well, you're assigned to a county.

Q. All right.
A. You know, different counties, you may have three or four counties in a post.
Q. Okay.
A. And so in our particular post we only had one county in our post.
Q. Okay.
A. And those were the people that I worked with were people who were assigned to that on a normal basis.
Q. And who were the people in 2016 that you normally worked with at your post?
A. On my particular shift was James Avant, Brandon Margis, Kevin Steed, Jorge Oseguera, Jorge was on our shift then, and Brandon Cook.
Q. And tell me what a trooper does on a normal basis?
A. Well, we work accidents. And then we work traffic, you know, make traffic stops and stuff. We would also assist Garland County agencies, Sheriff's Office there if need be, and then take calls for whatever else.
Q. Well, I'm just trying to get at when you go on-duty do you have to check in at troop headquarters?
A. Yes, sir. We get on the radio and check in.
Q. Okay. You have a take home car, right?
A. Yes, sir.

Q. So before you go out in the field do you have to go to a physical location to check in first?
A. No, sir.
Q. So you're assigned a particular shift, and if you have your car you check in and say I'm on-duty or something, correct?
A. Correct.
Q. Is there a 10 code for that?
A. 10-8.
Q. Okay. And what's the 10 code for pursuit?
A. I don't even remember to be honest with you.
Q. Is there a 10 code for emergency response?
A. It's been about two years since I used them 10 codes. I don't remember. If you don't use it you lose it.
Q. I'll mark this as Exhibit Number 11. It's the radio procedures policy.
(Deposition Exhibit 11 was marked.)
Q. What's the 10 code for pursuits?
A. Pursuit in progress is 10-37.
Q. Is there a pursuit -- is there a 10 code for when you are involved in emergency response that you're aware of?
A. I don't understand your question.
Q. Okay. What is your understanding of what an

emergency call is or an emergency response?
A. Well, it requires you to get there in a timely manner. There may be that someone's in harm or facing harm or something of that nature, life or death situation. And some of them may not even be life or death, but it would still be an emergency situation.
Q. Is there a -- what I'm trying to get at is, you know, I asked you before how many times were you involved in an emergency response and you said I don't know.
A. Right.
Q. Is there something that you're supposed to do to inform dispatch that you're involved in an emergency response so that they would know that?
A. If there's a -- a lot of that is probably going to come from them anyway.
Q. Okay.
A. You're going to be dispatched to it usually. In case that they weren't aware and if something happened, and if you wanted to -- if you had emergency traffic that you needed to tell them that you were wanting to radio for more help, there's a 10 code for that.
Q. And what's that 10 code?
A. 10-33.
Q. That's when you're asking other people to not get

on the radio because you need the dispatcher's undivided attention, correct?
A. Then you would direct that, which is 10-63, which is telling everyone to stay off the radio for emergency traffic only.
Q. Okay. So if you were involved in a pursuit you're supposed to say 10-37, correct?
A. Correct.
Q. And if you want no traffic to come during the course of that pursuit, then you would tell them and you would say -- what would you say then?
A. Well, at that point every time I've ever been in that situation, the dispatcher was actually directing that and call for emergency traffic only.
Q. Okay.
A. We didn't do that. Well, I didn't anyway.
Q. And that was kind of part of the communications when a pursuit was in progress the dispatcher would clear the channel?
A. Correct.
Q. Okay.
A. Or someone would, yes.
Q. Right. And that's just so you don't have talk-over, correct?
A. Correct.

Q. All right. Now, when you go on-duty are there -- a lot of departments and troopers are set up a lot different than like municipal police departments. So there's so kind of roll call that you have before every shift, correct?
A. No, sir.
Q. Do you have -- how do you know where you're going, are you given any direction as to where you're going to be patroling on a particular day?
A. Normally, no.
Q. All right.
A. There may be times that your sergeant has had a request for something or he wants to do a saturation in a particular area, and he says, I want you to go here. But generally you go where you want to go.
Q. On a normal basis you have Garland County, you get in your car, you're in Garland County, and you say 10-8 I'm here, and you just start doing your law enforcement duties?
A. Yes, sir.
Q. When a trooper -- when you're out in the field are your trooper cars set up to listen to dispatch from local agencies?
A. I assume you're talking about my particular car, because I can't speak for everybody's else car.

Q. And everyone has -- do they all have lights and siren?
A. Well --
Q. I'll just strike that.
A. I can't answer what all of them have.
Q. Okay. You were 15 a marked police car, correct?
A. Yes.
Q. And it was a Charger, right?
A. Yes, sir.
Q. And it had lights and siren?
A. Yes, sir.
Q. Was your car set up to where you could listen to dispatch from other agencies?
A. I could listen to the Garland County Sheriff's Office. I could listen to Hot Springs PD. I couldn't talk to them or communicate with them, but I could with the county.
Q. All right. And if the county -- your radio, do you have to set it to the county, or are you listening to the county and the Arkansas State Police dispatch at the same time?
A. I actually have two different radios. But I generally kept the county turned down. They weren't signing my paycheck. So that's what I tried to concentrate on. Sometimes I wouldn't even have the

Garland County radio on.
Q. Okay. Sometimes you say you go out and a good officer knows his beat and knows what's going on. I'm sure you tried to cover the whole county and concentrate on places where you knew there were problems, correct?
A. Correct.
Q. Sometimes -- I thought you said that sometimes you respond to calls for assistance from other agencies, correct?
A. Correct.
Q. All right. If you got -- if you were listening to the Garland County Sheriff's Department radio, and they had a call for a shooting or a robbery in progress, what was the criteria as to whether or not you responded to that?
A. I guess first and foremost is what else I was engaged in. Second would be the criteria of the call or what the call was for. Sometimes they could be short on manpower and couldn't take a simple call. They would call us and ask us to respond.
Q. Would they call you directly on the radio?
A. No, sir. If I heard them and I heard that they were needing help I would go ahead and acknowledge that and try to respond. If not, they would contract our dispatch and then dispatch would contact us.

Q. So there are times it came directly from the county and times that the county contacted Arkansas State Police dispatch to see if they could get manpower, correct?
A. Correct.
Q. And whether you respond would be based on what you were currently doing, correct?
A. Correct.
Q. I guess in your location?
A. Correct.
Q. Whether or not you could get there?
A. Correct.
Q. All right. Throughout your career have you heard calls over the radio where you then attempted to go to that location at high speeds?
A. A few of them, yes, sir.
Q. Okay. And were you required to have your lights and siren on for that?
A. Yes, sir.
Q. Okay.
A. Under most circumstances, yes, sir.
Q. And it's my understanding, in looking at the policy, officers had discretion as to whether or not to put on their lights and siren depending on whether a silent approach was deemed necessary by the trooper,

correct?
A. That's correct.
Q. Were you trained, do you recall, on any of the state statutes in Arkansas pertaining to the use of lights and siren?
A. I don't recall.
Q. We went through the lesson plans. It didn't appear to be in that, did it?
A. I don't remember. I don't recall seeing them in that, no, sir.
Q. And what would be a circumstance where there was a call where you may want to get there quickly, but not utilize your lights and siren?
A. Do you want one I actually went on or just a scenario?
Q. I want to know how you make that decision?
A. I think a lot of that is going to come into safety of other people and the officer. If I had a call where someone was robbing someone or something like an armed robbery, I wouldn't want to go in there with my lights and siren on because that could cause harm or danger to the person that they're robbing. And also I want to have the element of surprise on that person. I don't want them to know I'm there until I'm ready for them to know that I'm there.

Q. All right. And sort of similar to the traffic stops, you want to get there and pick your location before you put on your blue lights to make sure they don't run or you're in the most tactically advantageous position, correct?
A. Correct.
Q. All right. I would imagine a lot of emergency calls that you would responding to that weren't dispatched would be the calls that appear that more serious, correct?
A. Would you repeat that?
Q. I mean, you have certain calls where there's a traffic accident that you want to get there fairly quickly, correct?
A. That would be dispatched.
Q. All right. If you hear a call that you need to engage in emergency response that's not dispatched that's heard from Garland County, the ones that you would go to would be probably the more serious; a robbery or domestic or officer needs help, correct?
A. Not in Garland County. They're short-staffed and sometimes they have a high call volume a lot of times. And they simply wouldn't have the manpower to cover some calls.
Q. All right.

A. And we'd go. Some of them could be domestic issues and stuff like that, and some of them could just be simple stuff.
Q. What I'm trying to get at is if it's to take a report that's not an emergency response, correct?
A. That would be correct. But we might still respond to that if they don't have an officer available.
Q. All right. What I'm trying to get at is trying to figure out what calls require emergency response. Somebody needs to take some type of report and you get there and you don't have to go into emergency mode, correct?
A. That's correct.
Q. Depending on the nature of the report?
A. Even go back to the nature of the call. It's the circumstances that you're given at the time.
Q. You're trained that that's officer discretion as to how quickly you have to respond to that, correct?
A. Yes, sir. And it's based off of the totality of the call and what information you have available to you at the time.
Q. And as far as you know in discussing matters with your supervisor and your chain of command, they all understood or they agreed with -- let me take that back.
We talked about traffic stops and pursuits and how

they're started, and whether you have to use your blue lights and siren. Do you remember those questions?
A. Yes, sir.
Q. It's your understanding the supervisors, your sergeant and your supervisors handle traffic stops and pursuits in the same manner?
A. Yes, sir.
Q. All right. With respect to emergency calls, did you ever have any discussions with your supervisors or your chain of command as to what type of calls require emergency responses?
A. No, sir.
Q. You just kind of use your common sense?
A. Yes, sir.
Q. All right. So on this particular date on October 10, 2016, do you recall any of the stops or any type of enforcement activities that you were doing on that day?
A. No, sir.
Q. And apparently prior to the 15 which ended up in the crash you were on some type of stop. Do you recall what that stop was?
A. That was a call to a hit and run accident.
Q. All right.
A. I don't remember if it was a male or female. They

had pulled in there to the parking lot there. And I went to investigate the accident.

Q. Let me just stop you there for a second. Who dispatched it?

A. The State Police.

Q. And did you run there in emergency mode?

A. I really don't remember. But I wouldn't think so.

Q. That wasn't the type of thing that required an emergency response, correct?

A. No, sir.

Q. I guess the nature of the call was that it was a hit and run?

A. No injury.

Q. All right. And we have a tape or we have tapes of certain things. Let me ask you this. How does your camera, your in-car camera in your car operate; do you have to flick it on, does it automatically go on if you put on your lights and siren, tell me how it physically is operated?

A. How does it activate?

Q. Yeah.

A. It is activated through you could turn it on manually, or if you activated your lights and siren it would automatically come on, and I believe at speeds reached at 100 miles an hour it would come on.

Q. Okay.
A. Any of those three triggers.
Q. Okay. Had you ever had to review a tape with a supervisor when your camera went on when you were exceeding speeds of over 100 miles an hour?
A. I don't recall. They're supposed to review video footage. As far as being talked to about it, no, sir.
Q. In your chain of command who was supposed to review video?
A. My sergeant.
Q. What was his name again?
A. Here at Troop K?
Q. Yes.
A. Scott Joe.
Q. Scott Joe?
A. Yes, sir.
Q. And was he your sergeant the whole time?
A. The whole time I was at Troop K, yes, sir. Yes, sir, I think so.
Q. Are you aware of whether he ever reviewed any of your tapes?
A. I cannot answer that.
Q. Do you know or do you have any understanding as to when he was supposed to review your tapes?
A. I think it's once a month.

Q. Do you know whether or not there were any reports or anything generated from his review of your tapes?
A. I have no idea.
Q. I understand. I'm just trying to figure that out. But you don't recall him ever talking to you about any particular tape during your time at Troop K, correct?
A. No.
Q. All right. We have a video of -- tell me what you did when you got to the call of the hit and run with no injuries?
A. I spoke with the driver of that vehicle.
Q. Okay.
A. There was very minimal damage to the vehicle. I believe they only had liability insurance. And they did not have a license plate or anything of the vehicle that hit them. And so we did not do a report on the accident.
Q. Okay. Do you know how long your encounter with that person was?
A. I do not know, no, sir.
Q. Excuse me?
A. No, sir, I don't.
Q. Okay. Would you dispute it's about four minutes? We can look at all the tapes.
A. I don't think that's in question, no, sir.

Q. It wasn't a long stop, was it?
A. No, sir.
Q. Now, apparently at some point during that stop you observed a car. Well, let me ask you this. Where was the stop?
A. This was at the Pearcy Post Office on Highway 70.
Q. All right. And that's kind of east of Hot Springs?
A. It would be west of Hot Springs.
Q. Yeah. I'm sorry. And tell me what you observed or what drew your attention away from the stop?
A. I heard the wind noise of a vehicle coming. And I observed the vehicle come by. It was running flashers. And in my opinion, it was speeding, based off my experience of working traffic and running radar and stuff, I estimated this car to be going 90 to 95 miles an hour.
Q. All right. You didn't hit them with your radar though, did you?
A. No, sir.
Q. The car had its flashers on, correct?
A. Correct. It actually was a sport utility vehicle.
Q. That particular vehicle?
A. Yes, sir.
Q. Dark colored, you had very little information

about the car other than it was a newer model, dark colored SUV with its flashers on, correct?

A. I advised them it was a GMC or a GM product like a Tahoe or Yukon or something of that nature.

Q. Okay. It's a common car, correct?

A. I don't know what an uncommon car would be.

Q. An uncommon car would be like a Lamborghini.

A. I wouldn't even know what that looked like.

Q. Well, I'm trying to say is your description was very general, correct?

A. Well, I gave the best I could at the time of what I had.

Q. We can listen to dispatch. Did that description meet a bunch of cars?

A. I guess any description can meet the criteria of a bunch of cars.

Q. Well, not if you had a license plate number or if it had some unique characteristic; damage on the front, damage on the side, a broken window. If you saw -- if you saw another dark model GMC car down the road, that wouldn't give you probable cause or reasonable suspicion to stop it unless you observed it engaged in an actual crime, correct?

A. That would be correct.

Q. Okay. So in law enforcement we have to have a

certain quantum of evidence before we can do certain things, correct?

A. That's correct.

Q. You were giving out the best description that you could give out on the vehicle in the very short time that you saw it, correct?

A. That's correct.

Q. And that description was general with no specifically identifying characteristics of the vehicle, correct?

A. I would think that the hazard flashers running would be some type of specific characteristic.

Q. Okay. I'm just talking about the car itself. If somebody saw it with hazards on that's what also made it stick out to you, correct?

A. Correct.

Q. Because where you were was dark, correct?

A. Correct.

Q. All right. And it appears that after the car went by and we have you on videotape, how far down the road or how many seconds did you see this vehicle and observe this vehicle?

A. I would say two or three or four seconds maybe somewhere.

Q. All right. So you have a belief, based on your

training and your experience, that it's speeding, correct?
A. Yes, sir.
Q. A general description of the car, correct, of the SUV?
A. If that's what you call it. You got some defining characteristics.
Q. Let's just look at the dispatch tape.
(The video was played.)
Q. That's all on videotape, correct?
A. That sounds like me, yes, sir.
Q. And you said it was a what?
A. Suburban or Escalade.
Q. Do you even give a color?
A. I don't recall.
(The video was played.)
Q. All right. Who were you talking to?
A. That's one of the deputy sheriffs. I don't know who it is, sir.
Q. That wasn't a trooper?
A. No, sir, that's a deputy sheriff.
Q. Did the deputy sheriffs listen to the trooper channel?
A. I was on their radio.
Q. You were on their radio?

A. Yes, sir.
Q. Did you advise your dispatch of what you saw?
A. No, sir, I did not.
Q. Why not?
A. As I stated earlier, there was one other trooper working. We generally know where each other is at. And he's on Highway 70 East. He's nowhere near my vicinity.
Q. Okay.
A. So there's really no reason for me to call him. The county was going to be more help to me on this than he could have been.
Q. According to your description, the reason I say it's general, you gave out four or five different models; you said Escalade, GMC, Tahoe or something like that, correct?
A. Usually a Suburban and Tahoe and Yukon all look the same.
Q. You couldn't get a warrant with that information, could you?
A. I agree with that.
Q. That's what I call a general description, one that you cannot when you find the vehicle identify it as the particular car, you could not do that unless you actually observed it in --
A. That was the intentions of the call was for them

to try and observe and find that vehicle that I was talking about. And if they were still violating the law, observe that violation and then stop them. We would be looking for the same car.

Q. All right. You saw a vehicle that you thought was speeding. And you were advising other law enforcement people who may be in the area of this violation, correct?

A. Correct.

Q. If somebody saw a black Escalade, Suburban, Tahoe down the road that was going within the speed limit and didn't have its flashers on, they could not stop it based on your description, correct?

A. That's correct.

Q. Because you have to have a basis to make a stop, correct.

A. Correct.

Q. All right. So after this car went by you did not immediately stop your call and run to your car, correct?

A. There was a little bit of time there.

Q. It was over a minute, correct?

A. I've got less than a minute when I watched the video.

Q. Around a minute?

A. 45 seconds from the time I dealt with them and

then --
Q. When you watched the video you didn't run, did you?
A. I don't recall running, no, sir.
Q. All right. You walked to your car, correct?
A. I don't remember running.
Q. You got in your car?
A. Yes, sir.
Q. Were you done with your stop at that time?
A. I finished up.
Q. You got in your car and you put on your lights and siren as you were getting ready to go on Highway 70, correct?
A. Correct.
Q. And that's because there were cars that passed by your location before you got onto Highway 70, correct?
A. Correct.
Q. And you passed them with your lights. Did you have your lights and siren on or just your lights?
A. I don't really know. I know I had my lights on. I don't know about the siren.
Q. And after those cars went passed you put on your lights and siren and you passed them across a double yellow line on Highway 70, correct?
A. I don't remember double yellow. I didn't pass

them per se, I went around them. They pulled over and let me by.
Q. You were in the opposite lane of traffic?
A. Somewhat, yes, sir.
Q. All right. And then when you got passed them you turned your lights off for sure, and if you had your siren on you turned your siren off, correct?
A. Correct.
Q. And is that because the way that you were trained and understood the way the policies work, that you were going to try to catch up to this car to engage in a traffic stop?
A. Yes, sir.
Q. Okay. And based on the way your understanding of the training and the policies, is that until you got up to it where you can see it, you didn't want to put on your lights and siren, correct?
A. Until I was ready to make a stop.
Q. All right. Highway 70, describe Highway 70 before you get into Hot Springs, what type of roadway is it?
A. It's an asphalt highway. Some of it is two lane and some of it is five lane.
Q. Where it started is pretty much all two lane, isn't it?
A. Where it started, yes, sir.

Q. And do you dispute that from the post office to where the wreck happened was 8.1 miles?
A. That sounds probably about right. I don't remember the exact number. That's pretty close, yes, sir.
Q. All right. And the speed limit on Highway 70 is 55, correct?
A. Yes, sir.
Q. Okay. Do you dispute that your average speed throughout this whole encounter was 98 miles an hour?
A. I won't dispute that.
Q. Do you agree that during the course of this, what do you call this, a catch-up?
A. Yes, sir. I'm trying to catch up and locate a vehicle.
Q. And until you catch up to them there's no pursuit, correct?
A. There's no pursuit until you turn your blue lights on and they begin to flee.
Q. So as you're trying to catch up to them this is not a pursuit, it's just an attempted traffic stop, correct?
A. Correct.
Q. Would you agree that during the course of this 15 from the post office you passed numerous cars on the

left-hand side, you passed them going in your direction and you went around them?
A. There's some, yes, sir, I went around.
Q. Would you dispute that you did that 22 times?
A. I would have to watch the video and count it, sir. I don't know.
Q. Do you agree it was a lot?
A. I guess a lot of that depends on what your definition of a lot is.
Q. Well --
A. And the other thing is -- like I said, I would have to watch the video and count the cars before I could answer.
Q. I'm not trying to do that.
A. I did go around some cars, yes, sir. As to how many I cannot tell you.
Q. Well, every time you passed a car that was an opportunity for you to think of the danger of your driving to the public, correct?
A. I disagree with that.
Q. Why do you disagree with that?
A. I don't think I'm 15 to endanger the public, sir.
Q. Well, you're driving the way you were trained, correct?
A. That's correct.

Q. Do you understand that state law requires you to either be in pursuit of a vehicle or on an actual emergency call before you can violate any rules of the road?
A. Here's the thing. I realize we exceed the posted speed limits or I exceeded the posted speed limit. I did that and I realize that violates the statute. But in the course of my training and the way the policy is written, I was exempt from that.
Q. I understand that. My question is you said I don't believe I was driving dangerously. All right. You averaged 98 miles an hour.
A. How do you get that average?
Q. If you look at the videotape and you count the miles and you do a calculation.
A. That's what I did and I got 87 miles an hour. It's almost 6 minutes, 5.9.1 minutes.
Q. Did you do some kind of calculations?
A. I did.
Q. What are the papers that you keep pulling out?
A. This is your complaint that y'all filed. I just wrote some notes on there last night when I was reviewing the video.
Q. Is that when you were preparing?
A. Yes.

Q. Let me see those? So when you did your speed calculations --

MR. CLARKE: Can we get a copy of that, Jennifer?

MS. MERRIT: All right.

A. I had 5 minutes and 55 seconds I believe it was.

(Off the record.)

(Deposition Exhibit 12 was marked.)

BY MR. CLARKE:

Q. I'll hand you Exhibit Number 12. It's the Hot Springs Police Department investigation of this matter. If you go to page -- have you seen what we marked as Exhibit Number 12 before?

A. I don't recall this, no, sir.

Q. Okay. Go to page 12 of 26. Let's mark this as Exhibit 13.

(Deposition Exhibit 13 was marked.)

Q. I'll mark this as Exhibit Number 13. Exhibit Number 13 is going to be your calculations.

A. Okay.

Q. All right. According to that the way that they start their calculation they showed the first time your GPS came up you were going 85 miles an hour. And they have the coordinates. But on the tape it was at 21.16.54. Is it your understanding that once you turn

on your lights and siren the audio doesn't tape for a period of time?
A. Yes, sir.
Q. All right. On Highway 70 do you recall getting -- do you dispute you got up to 101 miles an hour?
A. I have no idea on that.
Q. Did you see the videotape on WatchGuard with your speeds?
A. Probably. It's been a while since I've seen it.
Q. What is the highest speed that you believe you attained?
A. I don't remember.
Q. You don't remember seeing 117 miles an hour?
A. No, sir.
Q. And when you did your calculations how many minutes did you use as the amount of time -- you had to do a calculation, you have to have a time and a distance?
A. That's correct.
Q. Okay. What is the distance you used?
A. I used 8.7 miles, which I believe was in your complaint. I did not look all that up last night.
Q. All right. If you look at page 13 of 26, it says 8.1 miles. The longer the distance and the time that would make your speed lower, correct?

A. The time period that I had was from the time that I pulled out to the time the video cut out was 5.9.1 minutes.
Q. All right. And they're starting this from the time that you first reported at 85 miles an hour. Do you see that?
A. Yes.
Q. And that gives an actual latitude and longitude and then we know where it came to rest. Do you reason to dispute it's 8.1 miles?
A. No, sir, I'll go with that.
Q. Okay. And according to that on this clock, according to their calculations, they show you -- let's just go through this thing at page 12. At 21:18:34 Burke travels through the intersection of Airport Road and Wolf Street. Is that on Highway 70?
A. What page?
Q. I'm on 12 of 26, the last paragraph.
A. Okay.
Q. About midway through it.
A. Okay.
Q. Where is Airport Road and Wolf Street?
A. I don't know where Wolf Street is.
Q. What?
A. I'm not sure where Wolf Street is.

Q. Do you dispute at that point you were going 93 miles an hour?
A. I don't know where it is, so I can't answer that question.
Q. Do you recall passing a car on the left in the inside lane of traffic at 96 miles an hour?
A. Rephrase that?
Q. I'm reading right here. At 21:19:40 passes a car on the left while in the inside lane of traffic traveling 96 miles an hour.
A. Okay.
Q. Do you dispute that?
A. I can't answer that question. I don't know.
Q. Are you going come into court and say you weren't doing that at that time?
A. I don't know if I was doing that at that time or not.
Q. Then you can say you can't dispute it, right?
A. I don't know if it was or not.
Q. Okay. If I ask you how fast -- what the fastest speed was that you were going during this 15 that ended in the wreck, what are you going to testify to at trial?
A. I'll have to review the video again before that.
Q. Did you not review the video last night?
A. I did not have a video that has speed and stuff on

it.
Q. We'll watch all this in a second. Here is my review of the video. I'm just going to cut right to it. Based on my review of the video, during your 15 from the post office to the crash site you passed 89 cars that were going in the opposite direction of you. Do you dispute that?
A. I would think it's not that high.
Q. Okay. We can go through it. Would you agree it was -- well, if I asked you at trial how many cars were going in the opposite direction, what is your testimony going to be?
A. Again, I'm going to have to review the video and look for that specifically. I didn't count cars when I was --
Q. All right. Cars that you passed in the same direction I have 23. Do you remember passing cars going in your same direction 23 times?
A. No, sir.
Q. Is the reason why you can't remember this because you had tunnel vision?
A. No, sir.
Q. Would you agree that every time you're out there your job is to protect and serve, correct?
A. That's correct.

Q. Do you agree that the potential crime that you were investigating was solely a traffic offense?
A. I don't have enough knowledge to know that, sir. That's what sparked it.
Q. Excuse me?
A. That's what sparked the whole thing, yes, sir.
Q. I understand. How many dead bodies have you found in the back of a car when you pulled over somebody for speeding?
A. There's other crimes that go along with that. I hadn't found any dead bodies.
Q. Okay. What I'm trying to get at is were you trained that you're supposed to police on the basis of hunches or speculation, or based on reasonable suspicion and probable cause?
A. You have to use all that.
Q. But you can't do anything based on a hunch, correct?
A. That's correct.
Q. All right. So as far as what you had any type of reasonable suspicion or probable cause of was of a potential speeding violation, correct?
A. At that time, correct, yes, sir.
Q. And you couldn't put down a number because you didn't have it on radar, correct?

A. The number I gave is 90 or 95 miles an hour.
Q. Can you go to court and say I think it was going 90 or 95 miles an hour?
A. I believe you can based --
Q. Have you?
A. I've never had to.
Q. Because we don't do law enforcement that way, you go in when you have an actual documented --
A. But you observe that first through visual observation of that vehicle, and then you confirm that with the radar.
Q. Never happened in this case, right?
A. Not this time, no, sir.
Q. What I'm getting at is we have the spectrum of criminal activity on the lower end to the high end; murder, rape, violent crimes are on the serious side, correct?
A. Okay.
Q. Do you agree with that?
A. Yes, sir.
Q. And you have traffic offenses and other things on the lowest side, correct?
A. Yes, sir.
Q. A good law enforcement officer may take law enforcement action based on a potential traffic offense,

you could find evidence of other crimes, correct?
A. That's correct.
Q. But it could just be a traffic offense, correct?
A. Could be.
Q. So you're supposed to perform your law enforcement duties based on what you can prove, correct?
A. Yes, sir.
Q. All right. And at this time you were trying to investigate a potential crime, which would be, what is a speeding ticket, a class C misdemeanor?
A. I don't remember.
Q. Is it even a misdemeanor or is it just a traffic offense?
A. I don't remember. I think it's just a traffic offense, but I'm not sure. Well, actually that speed I think would be a class C misdemeanor.
Q. All right. That's assuming you confirmed the speed, correct?
A. Correct.
Q. But you couldn't testify to that and that's just an estimate based on two to three seconds of observation, correct?
A. That's correct.
Q. All right. Would you agree that every time you saw a car, that gave you an opportunity to consider the

danger of your driving to the public?
A. Ask me that again?
Q. Would you agree that every time you encountered a car on the road while you were 15 in excess of the speed limit without your lights and siren on, in an effort to catch up to the car you observed, presented an opportunity for you to consider the dangerousness of your driving to the public?
A. Are you saying that every car --
Q. What I'm saying is if you were 15 out on a road by yourself and you encountered no cars, you could reasonably assume that the speed that you're 15 represents no danger to anybody. Do you agree with that?
A. Other than myself, yes, sir.
Q. All right. And every time you see a car when you're driving at a speed in excess of the speed limit, that gives you the opportunity to evaluate what your driving needs to be, at that time, based on the danger to the public?
A. I agree with that.
Q. All right. You were trained with vehicle dynamics and stuff that the faster the speed, the more likely there is to be an adverse effect, correct?
A. Possibly, yes, sir.

Q. All right. How you drive and what you drive and your conduct of 15 is also dependent on what you experience in the road, correct?
A. Correct.
Q. If there are more cars you have to be more careful, correct?
A. Correct.
Q. We're going to watch the video at some point. Do you agree that you passed cars on the left 15 in the same lane of traffic?
A. Yes, sir.
Q. Without lights and siren, correct?
A. Yes, sir.
Q. Would you agree that you passed cars on the right without lights and siren?
A. Yes, sir.
Q. Would you agree that you drove into the opposite lane of traffic at times when you were passing vehicles?
A. I don't recall the opposite lane, no, sir.
Q. Do you recall seeing cars coming in the other direction when you were driving?
A. I recall seeing other cars, yes, sir, meeting cars, yes, sir.
Q. All right. And then it goes from kind of a dark two lane road and then you made it into the city,

correct?
A. I never made it into the city, no, sir.
Q. You never made it into Hot Springs?
A. No, sir.
Q. You came to where on the part of 70 where it started there's no real traffic devices, correct, until you get closer to the city, correct?
A. What do you mean traffic devices?
Q. Stop signs, road lights.
A. Correct.
Q. Okay. When you get closer to where it's more populated you experienced more cars, correct?
A. Yes, sir.
Q. It became more dangerous, didn't it?
A. Well, with more traffic there is increased risk, yes, sir.
Q. When you're 15 you can't anticipate what other people are going to do, correct?
A. Correct.
Q. And is one of the reasons why you don't put on your lights and siren is you were trained that sometimes when you do that it spooks the people in front of you?
A. Yes, sir.
Q. Even though they're supposed to pull to the right, were you taught that if you do that sometimes you're

going to risk an accident?
A. Yes, sir.
Q. Now, did you run through any red lights?
A. No, sir.
Q. Tell me about where the crash happened; do you dispute that 5 seconds before the crash you were going 98 miles an hour?
A. I've seen the video. It's probably been a year since I've seen the video with speeds on it.
Q. If I ask you, at the time of the crash, how fast were you going, what are you going to testify to?
A. I don't know.
Q. You did some calculations before to come up with an average speed. You agree that it's just a mathematical calculation, you just need to know the distance and time, correct?
A. That's correct.
Q. All right. And you used 8.7 miles and 5.9.1 minutes, correct?
A. Correct.
Q. According to Hot Springs, when they tracked it they used 8.1 miles and 4 minutes and 58 seconds. Where did you get your 5.9.1 minutes?
A. I took the time that I left the parking lot off the video time where it's 3 minutes into the video, 3

minutes and 12 seconds, I took that time until the time the video cut out. And that's where I got my minutes and seconds. I think it come up to 5 minutes and 55 seconds.

Q. All right.

A. That's 5.9.1 minutes if you divide by 60.

Q. Do you ever recall going 117 miles an hour while you were -- and maybe I'm getting this wrong. You were never in Hot Springs?

A. I was never in the city limits, no, sir.

Q. Are you coming from -- you're coming from more the Memphis side of Hot Springs or the Mt. Ida side?

A. Mt. Ida. That's on a different highway, but yes, sir.

Q. Tell me where the wreck happened the speed limit was 45, correct?

A. Yes, sir.

Q. And you were exceeding that speed substantially, correct?

A. Yes, sir.

Q. Tell me the geography, you were kind of coming up over a hill and on a turn, correct?

A. I wasn't on a turn. I was on a straight stretch.

Q. You're trained to understand the environmental conditions of the roadway, correct?

A. That's correct.
Q. How would you describe it?
A. There was a slight little hill there. I had already passed the hill.
Q. Okay.
A. Then it went into a straight stretch and then you get into the bridge over Lake Hamilton. I think there's a slight curve in that, a curve to the left from my direction of travel, slight curve, not much, but a slight curve.
Q. You didn't have your lights and siren on, correct?
A. That's correct.
Q. You weren't warning anybody of your impending high speed 15, correct?
A. Correct.
Q. And tell me what happens in the crash, what you remember?
A. Just prior to the crash I located that vehicle or a vehicle SUV running with flashers on. I radared that vehicle. And at that point I was catching up to it. I had the vehicle in sight and was catching up to the vehicle.
Q. Where did you first see the vehicle?
A. I was around John Gibson, I believe it is. It was maybe just west of John Gibson, right there in the John

Gibson cars.
Q. And you got a speed or you didn't get a speed?
A. I did get a speed.
Q. Do you have some kind of printout of it?
A. How do I get a printout of it?
Q. I don't know. Is there any documentation that you actually engaged the radar and --
A. You can hear the radar on the video.
Q. Okay. And what happens with that, does the speed show up on your computer?
A. It shows up on the radar.
Q. If you were going to go to court for a traffic ticket do you print that out?
A. There's no way to print it out, no, sir.
Q. All right. And when you saw the car it was around other cars too, wasn't it?
A. I don't think so, no, sir.
Q. And tell me how the radar works; how far away was it?
A. Honestly I don't remember that.
Q. To be fair, Officer, you say I know speeds and distances. I thought the car was going 90 to 95 miles an hour, and now you're saying I don't know distance. Was it a mile away from you?
A. I say at most maybe a quarter.

Q. You think you got within a quarter mile of it?
A. I think so, yes, sir.
Q. And tell me what happened in the crash?
A. I don't understand your question.
Q. Tell me what happened in the crash?
A. A vehicle turned in front of me and I hit the car. And that's all I can tell you about that. I don't know anything else.
Q. In your answer at some point you blame the driver of the car. What did the driver of the car do wrong?
A. The driver made a left turn in front of me.
Q. And you were going how fast?
A. I don't know that.
Q. All right. You also blamed the fact that the driver was drinking. Do you have any basis, in fact, to determine whether or not drinking played any role in the accident?
A. I can tell you, based on my experience -- first off, I'm going off the basis of a lab technician as far as the BAC and stuff like that. I'm going off the premise of the police report that they had been drinking. The police report stated a contributing factor was alcohol.
Q. Listen to my question. You can be drunk and you can have a .4 sitting at a traffic light and get hit

from behind, and it has no effect on whether or not there was a crash that occurred. Do you agree with that?

A. I agree with that.

Q. All right. What I'm trying to say is there was a blood alcohol run on the driver and the passenger. Okay. You understand how to observe signs of intoxication, right?

A. Yes, sir.

Q. Signs of drunk 15, correct?

A. Yes.

Q. Did you observe any signs of drunk 15?

A. Unfortunately the only thing I observed is them pulling in front of me.

Q. All right. They were turning left at an intersection, correct?

A. We know that alcohol contributes to poor judgment.

Q. Were you drunk that night?

A. I was not.

Q. Okay. You don't have to be drunk to use poor judgment, do you?

A. I didn't say you had to be. I'm just saying we know that alcohol does contribute to that.

Q. I'm trying to say -- I don't need your theory or philosophy on what drinking does. What I need is

observable facts that made you indicate that this car and this wreck was caused in any way by somebody having alcohol? If you want to look at the accident report that your lawyer just put in front of you that's fine.

A. I don't know how to answer your question. Because most of the DWI stops -- I've never stopped a car -- probably 99 percent of the cars you stop there's impaired drivers. They're not waving a flag saying I'm impaired and I've been drinking. They're not exhibiting textbook signs of impaired 15. It could be as simple as a broken taillight.

Q. Did you observe a broken taillight on this car? You're a law enforcement officer. You're supposed to investigate stuff. From what you observed on that car when you were coming up at 98 miles an hour, what did you observe of that made you think that that car was being operated by an intoxicated person?

A. I didn't say there was anything that made me think that.

Q. That's my question. My question is what facts do you have that made you indicate that this wreck was caused by alcohol?

A. You're wanting me to go back to my training and stuff of that nature. I'm trying to do that and you're not letting me do it.

Q. I know you're trained to observe signs of alcohol and drunk 15, right?
A. Yes, sir.
Q. What were you trained that you observed on that day from this vehicle you smashed into?
A. I didn't get to observe it long enough to determine --
Q. Right. The speed limit is 45, right?
A. Yes, sir.
Q. People have a right -- do you understand that people have a right to believe that other people will be following the traffic laws?
A. Yes, sir.
Q. And somebody who's making a left-hand turn into that intersection from there would not expect a car going 98 miles an hour, over twice the speed limit, correct?
A. Correct.
Q. I'm just going to be honest with you. I find it offensive that there's an answer in here blaming the car in any way. And I'm trying to explore factually why you think that. Because had you been going 45 miles an hour this car would have had sufficient time to turn, correct?
A. I have not seen a reconstruction on that to know

that.
Q. Well, based on your law enforcement training, where did you hit the car, you hit it with your front, what lane were you in?
A. I don't know.
Q. I just want in this deposition I want you to tell me every fact that you know of to blame the driver or Lori Braun or Cassandra Braun for this accident; I want you to tell the jury these facts?
A. Like I tried to state before, we know that alcohol impedes judgment and makes you make poor decisions or could make you make poor decisions. Let me rephrase it that way. And you don't have the best judgment. Your judgment is impaired. And the BAC being, according to the lab report, above the legal limit --
Q. What was it?
A. I believe his was a .10, if I remember correctly.
Q. Just above it, right?
A. Correct. .08 states the you're impaired enough that you shouldn't be 15.
Q. State law says you shouldn't be 1598 miles an hour without your lights and sirens on, correct?
A. Correct.
Q. All right. I just don't like the blame game here. Do you not agree that had you not been going 98 miles an

hour in a 45 mile an hour zone, this wreck wouldn't have happened?

A. Like I stated, sir, I have not seen a reconstruction on this. I don't know that it could or couldn't have still happened.

Q. Well, you would be closing the distance twice as fast going double the speed limit, right?

A. Correct.

Q. All right. Do you think any reasonable driver on the highway, at that time, should have been prepared for an officer going close to a hundred miles an hour without lights and sirens on on that street?

A. I think they should be aware of their surroundings and be able to judge distances. I can look at a car and tell they're going a little faster than what they should be.

Q. You're asking a lot actually. The person who was fleeing from you provided more warning to the public than you did. Would you agree with that?

A. Fair enough.

Q. You're putting all the -- and listen, part of my claim against -- of my client's claim against you is punitive damages, which is to punish you.

A. Yes, sir.

Q. And if you're going to sit here and still blame my

client, I need to explore that. My client was actually a passenger. You agree that she did nothing wrong, correct?

A. Yes, sir.

Q. The driver, while he turned did he have his blinker on?

A. I don't remember.

Q. If he had his blinker on, that would be what he's required to do, correct?

A. Yes, sir.

Q. Do you not believe that when they are performing their 15 activities that they have a right to expect a sworn officer of the law to obey the traffic laws?

A. Yes, sir.

Q. And to not anticipate a cop 15 without lights and sirens at more than twice the speed limit. Did they have a right to expect that a car coming there, if it's a law enforcement officer, it's going to be complying with the law?

A. Yes, sir.

Q. And you weren't, right?

A. Correct.

Q. You were complying with the way that you were taught and trained to catch up with people for traffic stops, correct?

A. Correct.
Q. All right.
MR. CLARKE: Let's take a break for a second. I may be done.
(A recess was had.)
BY MR. CLARKE:
Q. We're back on the record. Trooper Burke, what we're going to do is go over this tape. I'm going to ask you some questions. I'm going to stop it and may ask you some questions about some things going through those. It's very hard to rewind on this. So we're going to try to get it in one take because it doesn't go back.
What I'm going to do is start this tape that was produced by the Arkansas State Police. And it's being played on their WatchGuard software. Have you seen a videotape with this type of information on it before?
A. Yes, sir.
Q. Okay. You understand it has the date, time, the latitude and longitude and the speed, correct?
A. Yes, sir.
Q. And it will show certain things like braking at times, correct?
A. Yes, sir.
Q. All right. And what I'm going to do is start this

video at 21:11:17.

(The video was played.)

Q. I'm going to stop it at 21:11:55. Is that when you pulled into the post office?

A. Yes, sir.

Q. And this is when you started your encounter with the people at the post office, correct?

A. Yes, sir.

Q. And that's 21:11:55.

(The video was played.)

Q. The next thing I'm trying to look for is when the car goes by.

A. Okay.

Q. At this time during the stop, are you just talking to the lady and checking damage to her car?

A. Yes, sir. And trying to figure out what happened. Maybe if she had a description of the other car.

Q. Okay.

A. And stuff of that nature.

Q. And did she have a description of the other car?

A. Not enough to -- I don't think she even knew which direction the car went, to the best of my memory.

(The video was played.)

Q. Did you just see the car --

A. Yes, sir.

Q. -- go by?
A. Yes, sir.
Q. That was roughly around 21:15:05. Does that sound about right, based on what you're seeing?
A. Yes, sir.
Q. Now, once the car got out of the vision of the video with the hazard lights on, is that the last that you could see it from where you were?
A. Yes, sir. As best as I can answer that question, yes.
Q. All right.
A. I can't give you two different perspectives from that angle, if that's what you're asking.
Q. What I'm saying is what we just saw on the videotape with that car going by, that is the full extent of any conduct that you saw engaged in by that vehicle, correct?
A. At that point yes, sir.
Q. Until you saw it at the very end, correct?
A. Correct.
Q. You never saw it again until then?
A. That's correct.
Q. All right.
(The video was played.)
Q. Now, 21:15:54, that's when you walked back to your

car, correct?
A. Walked back to my car, yes, sir.
Q. And that's at 21:15:54.
(The video was played.)
Q. And when you are getting ready to go back on the road to get behind that car is 21:16:09, right?
A. Yes, sir.
Q. And as you're getting on the highway two cars were going passed you, correct?
A. That's correct.
Q. And you put on your lights, correct?
A. Correct.
Q. At 21:16:30 you passed the second car with your blue lights, but it's on a two lane road, correct?
A. Correct.
Q. There are two cars coming in the opposite direction, correct?
A. Correct.
Q. You just passed two cars, correct?
A. Correct.
Q. With your lights and sirens the cars moved to the right side of the road, correct?
A. Correct.
Q. And allowed you to go in between them in the middle of the road, correct?

A. Correct.
Q. And you're going between these cars at 52 miles an hour, correct?
A. Correct.
(The video was played.)
Q. At 21:17:19 you passed your second car on the left, correct?
MR. RAY: Object to the form of the question.
Q. You passed two cars coming -- the second car coming in the opposite direction?
A. I met the second, yes.
Q. Okay. And at this time you have no lights and sirens on, correct?
A. Correct.
Q. And your speeds, you got up to at this point it's 91 miles an hour, correct?
A. Yes, sir.
Q. Two lane, unlit, winding road, correct?
A. Correct.
Q. With hills on it too, correct?
MR. RAY: Object to the form of the question. It's flat.
A. That's flat.
Q. Okay. You haven't seen hills yet. We'll get to

them.

(The video was played.)

Q. Why is there no sound for a period of time, do you know?

A. No, sir.

Q. At 21:17:57 you're going 103 miles an hour, correct?

A. Correct.

Q. You see cars approaching in the opposite direction?

A. I see one car.

Q. All right.

(The video was played.)

Q. And it's 21:18:18 and you're going 106 miles an hour, and you passed three other cars that were coming in the opposite direction, correct?

A. Yes, sir.

Q. And if lose control of your car they're in danger, correct?

A. Possibly, yes, sir.

Q. It's not straight, there are curves in the road, correct?

A. Curves, yes, sir.

(The video was played.)

Q. You passed a light. Do you know what intersection

that was?
A. That would be on at Highway 227, Lake Hamilton School. Some of them call it Sunshine Highway. It's 70 West.
Q. Was that light green?
A. It was green.
Q. All right. At this point at 21:18:36 you're going 95 miles an hour, and another car is approaching in the opposite direction, correct?
A. Yes.
(The video was played.)
Q. From the time we just stopped it your speed was 105. You saw that?
A. Yes, sir.
Q. And there were including the first two that we counted there were four cars coming in the opposite direction; is that right?
MR. RAY: Object to the form of the question.
A. I thought there was three.
Q. Okay.
A. I'm just trying to watch everything at once.
Q. I understand. If there's a better way to do it to help me.
A. No, it's --

Q. Okay.

(The video was played.)

Q. At 21:19:14 you passed two other cars coming in the opposite direction, correct?

A. Correct.

Q. And there seems to be some businesses or some buildings on here. Is that Mount Ida?

A. No, sir. This is the middle of nowhere really. It's between Pearcy and Hot Springs.

Q. Okay. People could be at these businesses, correct?

A. I think that's a storage building place is what that is.

Q. All right. When you passed these people that were going in the opposite direction up until now, did you consider that your 15 could be a danger?

A. No, sir.

Q. All right. Did you consider that people may be coming in or out of any of the businesses that you're coming up on?

A. That's what I'm watching for when I'm 15.

Q. Were you considering them so you didn't crash into them, were you considering that so you could determine whether or not your 15 should be stopped?

A. Well, if a situation became unsafe I would have

stopped.
Q. Well, you're going 90 miles an hour. Do you know what the speed limit is here?
A. 55.
Q. Do you think that's appropriate?
A. I think it's within my training.
Q. Okay.
(The video was played.)
Q. We're at 21:19:37 and you passed three cars that were coming in the opposite direction?
A. Yes, sir.
Q. At speeds above 90 miles an hour, correct?
A. Showing 91 there, yes, sir.
Q. All right. It was higher earlier, was it not?
A. I was watching cars.
Q. All right. And you're coming up to a car that's going in the same direction in the right-hand lane, correct?
A. Correct.
(The video was played.)
Q. And at 21:19:56 the last time we stopped it you passed one car going in the same direction on the left, correct?
A. Yes, sir.
Q. And then you're passing an 18-wheeler on the left,

correct?
A. Correct.
Q. And there were other cars on the other side of the road, correct, that you passed, from the time we last stopped it until now?
MR. RAY: Object to the form of the question.
Q. I'll move on. And as you're passing this tractor-trailer you're going 100 miles an hour, correct?
A. Correct.
(The video was played.)
Q. Just before 21:20:01 you went through another traffic signal. Do you know what that was?
A. It should be the intersection of North Moore Road and --
Q. And you go through that intersection going 107 miles an hour, correct?
A. Correct.
Q. Do you dispute any of these times that are shown on this video?
A. I don't have no way to dispute them, no, sir.
Q. Okay.
(The video was played.)
Q. From the time we last stopped it to 21:20:17 there were cars on the opposite side of the road, correct?

A. Yes, sir.
Q. And then you passed a car at 105 miles an hour on the right-hand side, correct?
A. Correct.
Q. And are we in any type of city? There's more buildings and stuff here. Do you know what this is?
A. It's still between -- it's between North Moore Road and the City of Hot Springs.
Q. All right. Do you know from being a trooper, that the closer you get to Hot Springs the more traffic you may encounter?
A. Yes, sir.
Q. All right. Do you know that people could be coming out or leaving or going into these buildings or businesses along the road?
A. Yes, sir.
Q. And 15105 miles an hour poses a danger to them, right?
MR. RAY: Object to the form of the question.
Q. You can answer.
A. Ask me again.
Q. 15105 miles an hour in these conditions poses a danger to people who are driving on the road?
A. It could pose a danger, yes, sir.

Q. Trying to keep it in control, correct?
A. Correct.
Q. But the fast you go the more danger there is, correct?
MR. RAY: Object to the form of the question.
Q. When he says, object to the form, you can still answer.
A. The faster you go the likelihood of maintaining control is less.
Q. Right. And the other people who are 15 on the road have a right to assume that somebody 15 on the opposite or in the same lane of traffic would be going the speed limit, correct?
A. I would disagree with that.
Q. Well --
A. How many violations every day do we write tickets to for speeding.
Q. Well, you're a cop, right?
A. Yes, sir.
Q. You have some kind of training, correct?
A. Yes, sir.
Q. You got trained on motion and inertia and skidding, correct?
A. Yes.

Q. The faster you go the less control you have of your vehicle, correct?
A. Yes, sir.
Q. And the greater the stopping distance?
A. Correct.
Q. People who are 15 on the road would expect an officer not to be going 105 miles an hour without their lights and sirens on, correct?
MR. RAY: Object to the form of the question.
A. I agree.
Q. All right. And we went from kind of a two lane road to a four lane road at some point here, correct?
A. It's a five lane road.
Q. It's got a turn lane in the middle?
A. Yes, sir.
Q. And what's the speed limit here, has the speed limit gone down?
A. I think it's 50 there, I think.
Q. And you're doing double the speed limit?
A. Correct.
Q. Okay.
(The video was played.)
Q. At 21:20:35 you passed some additional cars going in the opposite direction, correct?

MR. RAY: Object to form.
A. Correct.
Q. I counted three. How many did you count?
A. Two or three.
Q. All right. For passing the car going in the same direction as you were going at 113 miles an hour, correct?
A. Correct.
Q. What were you thinking?
A. As far as what?
Q. Going 113 miles an hour -- let me take that back. As we've started the tape is traffic increasing?
MR. RAY: Object to form.
Q. Are you encountering more cars?
MR. RAY: Object to form.
A. Not really. There's one or two here and two or three there, that's the way I see it.
Q. All right. You're passing cars at 113 miles an hour without lights and sirens, correct?
A. Correct.
(The video was played.)
Q. We're at 21:20:50. Do you see that now traffic is increasing?
A. I've seen a few more cars, yes.
Q. Right around 21:20:50 you passed a car on the

right, correct?
A. Correct.
Q. And you're seeing more of a steady flow of cars of the traffic coming at you or coming in the opposite direction is increasing, correct?
A. It's the same for everybody.
MR. RAY: Object to form.
Q. All right.
(The video was played.)
Q. At 21:20:00 where are we now? There's a lot more businesses, correct?
A. It's coming up of the intersection of Marion Anderson and Highway 70.
Q. And is that as you're getting into Hot Springs or approaching?
A. It's approaching it, yes, sir.
Q. Okay. And there's businesses there, correct?
A. Correct.
Q. Did you consider that there may be people from businesses going to and from and coming in or off the highway?
A. Yes, sir.
Q. All right. And you felt that at 21:20:00 109 miles an hour was safe?
A. Yes, sir.

(The video was played.)

Q. At 20:21:18 you're passing another car or a truck pulling something on the right at 64 miles an hour, correct?

A. Correct.

Q. There's a McDonald's there, right?

A. Right.

Q. Is the McDonald's open?

A. I would think so.

Q. You're supposed to be thinking of the dangers, correct?

A. Correct.

Q. Every time you pass one of these businesses is another opportunity for you to reconsider your actions, correct?

A. There's no car there at McDonald's. That's what I'm watching for as I'm 15.

Q. It only takes one, right?

A. That's correct.

Q. Are you supposed to pass on the right?

A. There are times that you can pass on the right.

Q. Is there a law that says you pass on the left?

A. That doesn't apply on these roads. Like if there's slower traffic in the left lane you can pass on the right.

Q. Okay. Just good 15, right?
A. Correct.
MR. RAY: Object to form.
(The video was played.)
Q. We'll stop it at 21:21:45. Are you still maintaining it's the same amount of traffic?
A. They are a few more cars, but it's still light traffic for the area.
Q. And at this particular time you're driving in the center lane, correct?
A. Partially.
Q. Primarily?
A. Partially.
Q. Okay. So if you saw somebody 15 in that lane at night like that would you think it's a violation of the law?
A. Yes, sir.
Q. All right. But you can do it at 95 miles an hour and you're okay, right?
A. Yes, sir.
(The video was played.)
Q. All right. You saw where you're up to 117 miles an hour, correct?
A. I didn't see that. I was watching the road.
Q. You see it right before, and we don't have the

crash on video, correct?
A. Not that I've seen.
Q. Okay.
(The video was played.)
Q. We're at 21:20:40 and at that time you're going 114 miles an hour, correct?
A. Correct.
Q. All right. At some point you can see that a car with flashers on in front of you, correct?
A. Correct.
Q. All right. And we're going to play that. I want you to tell me when you see that?
A. Okay.
Q. And I'm going to try to pause it there.
A. I will tell you, and I don't know if it's on the computer screen or not, but when you start hearing radar I've got them in sight. I don't know if the camera depicts that or not or in this video you can see that or not.
Q. Well, we're going to talk about that, because there's other cars on the road. I want to talk to you about how you think your radar works.
A. What I'm telling you is at the point that that radar is going off, I've got that car in sight.
Q. Well, we can look out the window of your car,

correct?
A. What I'm saying is what I see and what the camera sees is not necessarily always the same thing.
Q. Do you have super eagle vision?
A. I do not.
MR. RAY: Object to the form of the question.
Q. Okay.
A. But the camera can't see the way that I see. So there's times that I can see that may not be depicted on this video.
Q. Okay. Well, we're just going to go with the video.
A. Yes, sir.
Q. If there's some time where you sense that you can tell on this video where you say that you first observed the car let me know?
A. Okay.
(The video was played.)
A. Right there I see it.
Q. 21:20:45 somewhere around there?
A. 21:21:45.
Q. 21:21:45. All right. And it's your belief or it's your testimony that running at 95 miles an hour, there's cars on both sides of the road before it,

correct?
A. Correct.
Q. How do you know what car you're getting a radar on?
A. It goes back to the visual observation of the vehicles. As I'm watching them cars you can tell which car is doing what. It goes back to the observation of those cars and confirming that with radar.
Q. All right. You can't make out how fast that car is going that far ahead of you, can you?
A. If I can see the car and I can see the travel, then yes, I can make a good observation of that.
Q. Okay. And when you see that there you think that's about a quarter mile?
A. I'd say somewhere in there.
Q. All right. And the car that you saw, the only thing you saw that makes you believe that it's the car is that it had flashers on, correct?
A. I can tell it's a larger vehicle and stuff like that running their flashers. At this point on radar I'm getting a speed that's in excess of the speed limit.
Q. You could pull them over for that --
A. It doesn't matter if it's the car that I initially saw or not. It's a car that matches that description that is now violating the law.

Q. You're throwing out the 6 minutes in between while you're 15 like a maniac, correct?

MR. RAY: Object to the form of the question. You're just arguing with him. These are not questions.

BY MR. CLARKE:

Q. From the point you first saw him you cannot -- you don't have reasonable suspicion or probable cause to believe that the car that you observed up there with its flashers on is the same car that passed you, correct?

MR. RAY: Object to form.

A. I believe it is. Now, can I say for certain that it is, no, sir, I cannot.

Q. Could you go get a warrant for it?

A. No, sir.

Q. Okay. You understand the level of suspicion you have to have, correct?

A. I'm just saying at this point I'm seeing a car that still matched that description that is violating the law. I have a legal right to go stop that car.

Q. All right. Did you have a legal right to drive from the post office until you saw them again?

MR. RAY: Object to form.

A. I believe I did.

Q. And that's based on your training, correct?

A. Correct.
Q. All right. I'm going to play this up until the screen goes black or white. And I'm going to stop and I want you to watch the video. And I'm going to ask you this question. I'm going to ask you when did you see the car, what lane that you crashed into, what lane was it in?
A. It does not show in the video.
Q. You don't believe that you can see the car that you ultimately hit in the video?
A. I can see the video. I don't know what lane we hit in. That's not shown in the video.
Q. Okay. I want you to tell me what lane that car was in, whether it had its blinkers on, and the last speed that you can speed before it blacks out?
A. Okay.
Q. All right.
(The video was played.)
Q. All right.
A. I don't know about blinkers. The car was in the center left turn lane.
Q. And what was your speed?
A. 115.
Q. 115. The speed limit is 45?
A. Yes, sir.

Q. You're going more than two times and less than three times the speed limit, right?
A. Correct.
Q. And you actually as you come up to it you have to crest the hill, a slight hill before you can see the car, correct?
A. Yes, sir.
Q. It's on a slight curve?
A. Well, you can see kind of back from the hill from where I'm going. But yes, sir, there's a slight hill there.
Q. All right. Do you not agree that if you had your lights on that that would have given your car more visibility to the driver of the other car?
A. I can't speculate to that.
MR. RAY: Object to form.
Q. Okay. Why can't you speculate to that?
A. I don't know whether it would have helped them or not.
Q. What's lights and sirens for?
A. I'm not saying it would hurt it, but I don't know that it would help it.
Q. Well, you can speculate that alcohol played a role in the wreck, correct?
MR. RAY: Object to the form of the

question.
A. What I'm saying is the person who investigated the accident stated that alcohol was a factor in the accident.
Q. All right. Did you observe anything that made you believe alcohol was a factor in the accident?
A. That would be a question you're going to have to call --
Q. Well --
MR. RAY: Let him answer the question.
MR. CLARKE: He's not answering my question.
BY MR. CLARKE:
Q. Here's my question. Are you basing your allegation that somebody in the car with my client in it that alcohol played a role in the wreck, is based on what somebody else investigated?
A. That's what all this is about is what someone else investigated.
Q. That's not an answer to my question. Did you observe anything they led you to believe that that driver of the car that you crashed into was drunk?
A. The accident report. I observed the accident report that notated --
Q. Listen to my question. I'm not asking you about

the accident report. I'm asking you what happened while you were 15.
A. Okay.
Q. When you came up upon that car, did you observe any conduct from them that led you to believe that they were 15 in an intoxicated state?
A. I've already tried to answer this question. I don't know how else to answer it. I don't know what else to tell you.
Q. I don't know what your answer is.
A. If my answer isn't sufficient for you, so be it, but that's my answer.
Q. I need you to answer.
A. I have answered it.
Q. Well, you're going to answer it again.
A. I'm not.
MR. RAY: Object to the form.
Q. You're going to answer the question.
MR. RAY: You keep asking the same question over and over. It's asked and answered. It's come to the point where it's not probably legitimate discovery, but it becomes instead harassment.
MR. CLARKE: You make that call when you want to.

MR. RAY: I'm still objecting to the form of the question.

MR. CLARKE: Okay. And I'm objecting to speaking objections. Are you going to terminate the deposition?

MR. RAY: When is my turn to talk, you just tell me?

MR. CLARKE: All right. You can say object to the form.

MR. RAY: I have.

MR. CLARKE: That's all you need to say.

MR. RAY: He's told you that he answered the question. And he answered it again.

MR. CLARKE: I don't believe he's answered the question. So I'm going to ask it again.

MR. RAY: He's told you all this before.

MR. CLARKE: I'm going to ask the question again.

MR. RAY: It's asked and answered.

MR. CLARKE: That's not a proper objection. You can say object to form.

MR. RAY: Object to form.

BY MR. CLARKE:

Q. I'm going to ask you this question. Did you

observe, while you were 15 before the crash, any conduct from the driver of the car that you crashed into that made you conclude or believe that they were intoxicated?

MR. RAY: Object to the form.

A. I don't know why we -- like I stated before, you have impaired judgment when you've be drinking. He's above the level, according to the lab report, the investigator at the lab, he's above the level to be safe to be 15.

Q. You're above the level of the speed to be safe to be driving, right?

MR. RAY: Object to the form of the question.

Q. Listen to my question.

A. I'm trying to answer your question.

Q. You're answering my question by saying -- I'm asking you whether you observed anything.

A. I'm trying to explain that to you and you won't let me.

Q. Just answer that question.

A. I'm trying to.

Q. Did you know he had a .10 blood alcohol before you crashed into him?

A. The failure to yield would be -- could be an indicator. That's what I'm trying to say.

Q. That's all you had to say and not talk about the other stuff.

So failure to yield to a car that was going 115 miles an hour without lights and sirens, correct?

A. That would be correct, yes, sir.

Q. All right. How much fault do you think they have for this accident?

MR. RAY: Object to form.

A. I don't know.

Q. This is my opportunity to ask you questions about what you're going to say at trial. So I want to know if you have to assign 100 percent fault for the accident, what percentage of fault will you assign to the driver of the car that did something wrong?

A. I don't know that I can put a percentage on it, but I'll tell you a large percentage.

Q. And that's because they should have been anticipated a car coming in the other direction at almost three times the legal speed limit before they made a turn, correct?

MR. RAY: Objection to form.

A. It's the totality of the circumstances which makes -- you asked me a percentage and I told a large percentage. It's not based off of one single thing.

Q. What amount -- you don't think it's a large

percentage and that it's your fault for going almost three times the speed limit?

A. Ask me that again?

Q. I'll move on.

A. Okay. Can I take a restroom break?

Q. Yeah.

(A recess was had.)

BY MR. CLARKE:

Q. We've gone through the tape up to the wreck. After looking at that tape, do you believe that you did everything appropriately?

MR. RAY: Object to form.

A. I believe I did everything as I was trained to do.

Q. According to your training policies as they were taught to you, correct?

A. I believe I was within those, yes, sir.

Q. Okay. After this wreck did you ever see Ms. Braun or Mr. Jenkins, the people that were killed in the car wreck, did you ever see them?

A. No, sir.

Q. Were you trapped in your car?

A. Yes, sir.

Q. Do you have -- do you personally have any information to believe whether or not these people who were killed in the wreck would have been saved had they

had their seatbelts on?

MR. RAY: Object to the form of the question.

A. The only thing I've got is the investigative report.

Q. And where is that?

A. It's from the Little Rock Police Department.

Q. Let's mark this as 14.

(Deposition Exhibit 14 was marked.)

Q. Is it your contention that this document shows that they would have lived had they had their seatbelt on?

MR. RAY: Object to the form.

A. I believe that's basically the way it's worded, yes, sir.

Q. Where do you see that?

A. Page 3, I think it is. It's down here toward the bottom. It says, Failure to wear the seatbelts resulted in both subjects being ejected from the vehicle, and ultimately resulted in their deaths.

Q. Do you know whether they would have survived the impact had they them them on?

MR. RAY: Object to form.

A. I don't have any idea. I didn't even see their car or anything.

Q. You didn't see it before you hit it?
A. I saw it before I hit it. I didn't see where I hit it or anything like that.
Q. Okay. Were you taken to the hospital by ambulance?
A. Yes, sir.
Q. And I believe we went through your medical treatment. You were in the hospital and rehab hospital for some 21 days?
A. Yes, sir.
Q. After this wreck did you -- you had to give a statement to the Hot Springs Police Department, correct?
A. Correct.
Q. And you also gave a statement to the Arkansas State Police, correct?
A. Correct.
Q. In either one of those statements did you ask anything about -- did you tell anybody you were sorry for what you did?
MR. RAY: Object to the form.
A. No, sir. I didn't talk to any family or anything.
Q. Did you express, to your understanding, any remorse about the wreck during either of those interviews?
MR. RAY: Object to the form.

A. Do I wish we could go back in time, yes, sir, I do. I don't know. I don't guess I really understand your question who I would show remorse to.

Q. If they asked you or if you were in questioning you could say, I can't believe I did this, I'm sorry I killed these people, anything like that, or did you just answer the questions asked?

MR. RAY: Object to form.

A. I think I just answered the questions they asked.

Q. Okay. Did you have any -- did you have any psychological counseling or anything stemming from this to deal with the tragic event?

A. No, sir.

Q. All right. Did you find out anything about any type of investigation that was on-going pertaining to the Arkansas State Police of your actions?

A. As far as?

Q. You gave a statement, correct?

A. Correct.

Q. In that were you told you were being brought up on any charges?

A. Just on the initial complaint, which is what stemmed the investigation. And after the investigation a couple of months whenever I took my medical retirement, and I never heard anything about else it.

Q. Is the only thing you heard from the Arkansas State Police is the time that you went in and gave a statement, or did you have other communications with people from the Arkansas State Police before you retired?
A. I talked to my captain and stuff but nothing that --
Q. Did he talk to you about -- did he review the video, did you talk to him about the events?
A. I'm sure he reviewed it. I don't know that though. I would think he did.
Q. My question is did you talk to anybody about what happened in this event other than your official statement to the Arkansas State Police and the Hot Springs Police Department?
A. Like my wife and stuff?
Q. No. You gave a statement to the Hot Springs Police Department, correct?
A. Correct.
Q. You gave a statement to the Arkansas State Police, correct?
A. Correct.
Q. And both of those involved what happened that night, correct?
A. Correct.

Q. Did you talk to anybody else from the Arkansas State Police about your driving or your conduct on that night?
A. Like other troopers or supervisors?
Q. Anybody.
A. I'm sure I discussed it with some other troopers.
Q. Do you recall who you did?
A. I talked to a lot of people. I couldn't tell you exact names.
Q. Was that kind of just informally?
A. Yes, sir.
Q. Did anybody tell you you did anything wrong?
A. No, sir.
Q. Did anybody formally tell you you did anything wrong?
A. No, sir.
Q. Tell me what you do or what the process is to go on medical retirement?
A. I had to submit a letter of resignation. And I don't remember how it started. I ended up I had to have a note from my doctor. And he told me from day one I couldn't go back to work. I had to go see a doctor from the State Police or I was told to go see this doctor. I was taken to that doctor. He told me I couldn't go back to work. And then I don't know what the process is

after that. The board's got to approve it or something of that nature.

Q. Is it like somebody in human services that you turned in this paperwork to?

A. I really don't remember. I think I turned it into my captain or sergeant or somebody and they sent it up to wherever it goes.

Q. Did you talk to anybody at the Arkansas State Police about other jobs like a dispatcher or administration?

A. No, sir.

Q. Did they talk to you about any other positions that you could potentially apply for?

A. No, sir.

MR. CLARKE: That's all I have.

MR. RAY: I probably should go last.

MR. CLARKE: Let's go off the record.

(Off the record.)

MR. CLARKE: On the we apparently had two Exhibit 10s. One was the pursuit policy law enforcement section 13, and one was the accident report or motor vehicle crash report. I have made the pursuit policy Exhibit Number 10, and the motor vehicle crash report 10A. And then to compound the errors, I had two

number 11s. And what I'm marking as 11 is the FTO training documents, if they exist. And then Exhibit 11A would be the radio procedure policy.

(Deposition Exhibits 10, 10A, 11 and 11A were marked.)

EXAMINATION

BY MR. SULLIVAN:

Q. Mr. Burke, my name is Gary Sullivan. I'm an assistant attorney general. And today I'm representing one of the defendants, Colonel Bryant in this case.

Can you hear me?

A. Yes, sir.

Q. I can't always hear you. So I'm going to ask you to try to speak up when you're answering questions. I'll probably if I don't hear you I'm going to ask you to speak up. Please don't think I'm being disrespectful, it just means I can't hear you.

A. Yes, sir.

Q. And you can do the same with me if you don't hear me or understand a question. Is that agreeable?

A. Fair enough.

Q. Okay. I'm going to show you what I have marked as Exhibit 15 to this deposition.

(Deposition Exhibit 15 was marked.)

Q. Is that your signature on this letter, Brian Burke?
A. Yes, sir.
Q. Did you sign this letter March 1, 2017.
A. Yes.
Q. And is this your resignation letter? It says you respectfully submit your medical retirement from the State Police effective April 1, 1217; is that correct?
A. Correct.
Q. And do you remember when you submitted this letter?
A. It's dated March 1st.
Q. Was it shortly after that that you would have submitted it?
A. I would say so, yes, sir.
Q. Okay. I'm going to show you what will be Exhibit 16 to the deposition.
(Deposition Exhibit 16 was marked.)
Q. Do you recognize this document?
A. Yes, sir.
Q. Is this a certificate showing that you received training on the Dodge Charger training in April of 2011?
A. Yes, sir.
(Deposition Exhibit 17 was marked.)
Q. I'm going to show you Exhibit 17 to your

deposition. Is this also a training certificate that you received?
A. I guess. It's got my name on there.
Q. You're Brian Ray Burke, correct?
A. Correct.
Q. And according to this document, you completed emergency 15 decision-making in March of 2012, correct?
A. Correct.
Q. Do you remember taking that training?
A. Not really.
Q. You don't dispute that you had that training, do you?
A. I'm not disputing that. I just don't remember.
Q. I'm going to show you Exhibit 18 to your deposition.
(Deposition Exhibit 18 was marked.)
Q. This is also a training certificate. Do you recognize this one?
A. That's been three years ago. To be honest, I don't. I'm not going to dispute it.
Q. Well, let's go through it. This is an Arkansas State Police training unit certificate, correct?
A. Correct.
Q. And it says that Brian Burke successfully completed the course of 2015 in-service, correct?

A. Yes, sir.
Q. And under that it says, Meeting with Colonel one hour, correct?
A. Yes, sir.
Q. Healthy lifestyle/fitness post troop school, one hour, correct?
A. Yes, sir.
Q. PT test two hours, correct?
A. Yes, sir.
Q. Legal updates, traffic stop safety, one hour, correct?
A. Yes, sir.
Q. EVOC classroom, three hours, correct?
A. Yes, sir.
Q. EVOC training, eight hours, correct?
A. Correct.
Q. Tactical emergency medicine, eight hours, correct?
A. Yes, sir.
Q. And this appears to be dated April the 18th through 20th of 2016, correct?
A. Yes, sir.
Q. And don't dispute that you had all of this training, do you?
A. No, sir.
(Deposition Exhibit 19 was marked.)

Q. I'm going to show you Exhibit 19 to our deposition.

MR. CLARKE: It's the same one.

MR. SULLIVAN: Let's go off the record.

(Off the record.)

BY MR. SULLIVAN:

Q. I have shown you what I marked as Exhibit 19, which we'll no longer be using. This deposition will not have an Exhibit 19 because it was duplicative.

I'm going to show you Exhibit Number 20 to our deposition.

(Deposition Exhibit 20 was marked.)

Q. There's an employee signature line on this form. Does that appear to be your signature, Mr. Burke?

A. Yes, sir.

Q. And does it appear that you signed this in May of 2012?

A. Yes, sir.

Q. The title of this document is Acknowledgment of receipt of ASP policies and procedures revisions; is that correct?

A. Yes, sir.

Q. Do you recall while you were working as a trooper that from time-to-time you would receive policy and procedure revisions documents like this one?

A. Yes, sir.
Q. And you had a policy manual in your car, correct?
A. Correct.
Q. And you were to actually take these revisions and insert them into that book in your car, correct?
A. Correct.
Q. You probably don't recognize this specific one, do you?
A. Well, that's my signature on there.
Q. So you don't deny that you received this particular one?
A. On the electronic control device, yes, sir.
Q. So you don't dispute that, do you?
A. No, sir.
(Deposition Exhibit 21 was marked.)
Q. I'm going to show you Exhibit 21 to our deposition. Do you see your signature on that form?
A. Yes, sir.
Q. This is another form just like the last exhibit we looked at. It's a policy procedures manual acknowledgment that you received a policy and procedures manual. This is your original one, July 1, 2008, correct? I'm sorry. July 1, 2008 is the date of the manual that you received in 2011, correct?
A. Correct.

Q. And you don't deny that you got that book, and it's the one that you kept in the car, right?
A. Correct.
(Deposition Exhibit 22 was marked.)
Q. I'm going to show you Exhibit 22 to the deposition. And is that your signature on this form?
A. Yes, sir.
Q. And this is another policy and procedures revision form that you received, correct?
A. Correct.
Q. This one in 2012, correct?
A. Correct.
Q. On this one you see a list of the provisions that were revised; rules of conduct, external public communications, transfers and promotions, disciplinary matters, reporting and investigating use of force, pursuits, physical fitness and wellness, athletic events, security, law enforcement policy, table of contents. Did I read that correctly?
A. Yes, sir.
Q. And you don't deny that you received these in 2012, do you?
A. No, sir.
(Deposition Exhibit 23 was marked.)
Q. I'm going to show you Exhibit 23 to our

deposition, which is actually a part of a previous exhibit that Mr. Clarke went through today. This is titled, Troop school 2011 basic curriculum. Do you agree with that?

A. Yes.

Q. And that's when you went to troop school in 2011, correct?

A. Correct.

Q. And as you see on this chart, which is five pages, I think, there's a list for the course, the number of hours, who the instructors were and the dates you attended. Do you agree with that?

A. Yes, sir.

Q. And let's go through those. First of all you had a welcome. Then you had a study skills, independent studies and policy issues segment for one hour, correct?

A. Yes, sir.

Q. Then you had six hours to go over State Police forms, correct?

A. Yes, sir.

Q. Next you had three hours for State Police mission, correct?

A. Yes, sir.

Q. Then you had an hour for State Police organization, correct?

A. Yes, sir.
Q. Then you had three hours of State Police history, correct?
A. Correct.
Q. Then you had 20 hours going over State Police policies and directives, correct?
A. Yes, sir.
Q. You had four hours of computer issue and setup policy, correct?
A. Yes.
Q. And 12 hours of report writing, correct?
A. Yes.
Q. Four hours of preventing sexual harassment, correct?
A. Correct.
Q. 10 hours of interpersonal communications, correct?
A. Correct.

MR. CLARKE: I'll stipulate he had all this training.

MR. SULLIVAN: I appreciate that. We're going to go through some of these though.

BY MR. SULLIVAN:
Q. The total on the first page for general administrative courses was 105 hours, correct?
A. Yes, sir.

Q. And you were present for all of those training hours in 2011, weren't you?
A. I didn't miss any troop school.
Q. That was troop school?
A. If that's what they gave, yes, sir.
Q. At the top of the second page you'll see legal and judicial courses?
A. Correct.
Q. Looks like there's seven categories there. Constitutional law and liabilities is the second one. 24 hours for that, correct?
A. Correct.
Q. Were y'all doing eight hour days, roughly?
A. We wish.
Q. Was it more than that?
A. I don't know what it was. A lot of classroom and PT and stuff. They're long days.
Q. If you had 24 hours of constitutional liabilities, that was more than two days, wasn't it?
A. Probably. It was probably eight hours in the classroom.
Q. So that was three days' worth of constitutional law and liabilities, correct?
A. Probably.
Q. And that section, legal and judicial courses was a

total of 70 hours, correct?
A. Correct.
Q. Do you remember what your trooper school, how many days you were there, how many weeks you were there?
A. I think it was 20, but I'm not real certain of that.
Q. 20 what?
A. 20 weeks.
Q. Okay. The next section is criminal investigation courses. You see that you had 42 hours in those courses?
A. Yes, sir.
Q. On the next page you had a section of patrol courses. Do you see that there were 223 hours for patrol courses?
A. Yes, sir.
Q. The first one is crash investigations 120 hours, correct?
A. Yes, sir.
Q. If you'll go down to about the second from the last you see patrol procedures and stops, 24 hours of training, correct?
A. Correct.
Q. The bottom section of that page there's force courses. You had 184 hours in force courses, correct?

A. Correct.
Q. The top of the next page, it's specialized in unit courses. You see that 205 hours of training in specialized and unit courses?
A. Yes.
Q. Do you see a large section down there EVOC 40 hours?
A. Yes.
Q. EVOC, what does that stand for?
A. It's emergency vehicle driver. I don't know what it actually stands for but --
Q. So if you went eight hours a day it's 40 hours. That's one whole week of EVOC training, correct?
A. Correct.
Q. And the bottom section is physical fitness, drill courses and testing, total of 212 hours, correct?
A. Correct.
Q. And on the last page, Other activities there were eight hours, correct?
A. Yes.
Q. So you had a total of 1,049 hours of training total in trooper school, correct?
A. Correct.
Q. Let me show you Exhibit 24 to our deposition.
(Deposition Exhibit 24 was marked.)

Q. Would you agree with me that the first four pages of this exhibit are a PowerPoint on defensive 15?
A. Yes.
Q. And the date on this is April 3, 2017, correct?
A. Yes, sir.
Q. You were not working in April of 2017, were you?
A. That's correct.
Q. You were already on medical leave?
A. I took -- I didn't work after October the 10th of '16.
Q. Okay. Had you seen another defensive 15 PowerPoint presentation similar to this one?
A. I can't deny or confirm it.
Q. Is it possible?
A. I guess it is, but I don't recall one.
Q. Okay. And I'll tell you now I'm probably going to ask some questions that you may have answered, but I'm wanting to get them cleared up and that's why I'm doing it.

I'm going to give you back Exhibit 10 from earlier today. Do you agree with me that the effective date of this pursuit policy was July 14, 2008, do you see that in the upper right-hand corner?
A. Yes, sir.
Q. And it was revised October 15, 2014, correct?

A. Correct.
Q. And you have seen this policy before when you were working as a trooper, correct?
A. Yes, sir.
Q. Let's look at the definition.
MR. CLARKE: Can you hold off while I find a copy?
MR. SULLIVAN: Sure.
BY MR. SULLIVAN:
Q. I'm starting at the sentence, Vehicle pursuit and pursuit means an attempt by an ASP officer in an official vehicle to stop a moving vehicle when the driver of such vehicle is aware the officer is signaling for the vehicle to stop and disregards the officer's attempt to stop the vehicle.
Did I read that correctly?
A. Yes, sir.
Q. And you testified about this earlier today. A pursuit is defined by the person being pursued as being aware that you're pursuing them, correct?
A. That's correct.
Q. And one of the easiest ways would be if you had lights and sirens on, correct?
A. Correct.
Q. Okay. Do you see the next bold section, Pursuit

guidelines?
A. Yes, sir.
Q. The fourth point down I'm going to read. Only official vehicles shall engage in pursuits. Emergency lighting equipment and sirens shall be in operation throughout the pursuit.
Did I read that correctly?
A. Yes, sir.
Q. And did you understand that to be the policy in 2016?
A. Yes, sir.
Q. Back up to the first point in that section. It says, When involved in a pursuit the officer has the duty to drive his emergency vehicle with due regard for the safety of all persons using the highway.
Did I read that correctly?
A. Yes, sir.
Q. Did you understand that to be the policy in 2016?
A. Yes, sir.
Q. I'm going to have you look at Exhibit 9 again.
A. Okay.
Q. This is the vehicle use policy. If you look in the first bold section, Use and operation of Arkansas State Police vehicles. Do you see that?
A. Yes, sir.

Q. Let's back up. The top right-hand corner, this was effective July 14, 2008, correct?
A. Correct.
Q. And it was revised in August of 2013 and again in April of 2016, correct?
A. Correct.
Q. If you look at the last sentence of the first paragraph I'm going to read. All commissioned officers and civilian employees shall exercise ordinary care. Ordinary care is defined as the care a reasonably prudent person would exercise for the safety of others on the road.
Did I read that correctly?
A. Yes, sir.
Q. Did you understand that to be the policy for vehicle use while you were a trooper?
A. Yes, sir.
Q. If you'll go down to the fourth paragraph. I'm going to read starting at the second sentence. It says, Immediate pursuit means the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary.
Did I read that correctly?
A. Yes, sir.

Q. And when you were testifying earlier I think you or Mr. Clarke or both used those words, silent response.

Is this what you were talking about at that time?

A. I don't guess I understand. Can you rephrase that question?

Q. Okay.

A. I think I understand what you're saying, but I'm not real sure.

Q. Tell me what a silent response means to you?

A. Silent response would be when you need to respond to a situation that you did not to warn the others about.

Q. Would that be the same thing as not turning on your lights until you get close to in this situation a speeder?

A. I think that would be more immediate pursuit as opposed to silent response.

Q. And in that same paragraph there's a statute referenced, Arkansas Code Annotated 27-51-204. Do you see that?

A. Yes, sir.

Q. And that's something y'all went over in training, isn't it?

A. I don't recall that.

Q. Did you understand this to be the policy when you

were a trooper?
A. Yes, sir.
Q. Okay. I'm going to hand you Exhibit 7 to the deposition. And hopefully yours at the bottom has red numbers in the bottom center starting with the letters ASP. Do they?
A. They're black.
Q. Those are the copies. Would you turn to ASP 0038, please. The title at the top of that page is, Lesson plan, correct?
A. Correct.
Q. And these were in this particular section do you see the section titled, Purpose?
A. Yes, sir.
Q. It says, The purpose of this course is to acclimate drivers of the specific characteristics of police vehicles that are used on a daily basis.
Did I read that correctly?
A. Yes, sir.
Q. And right above that the time frame on this was 36 hours, correct?
A. Correct.
Q. The training title at the top is, Basic EVOC, correct?
A. Correct.

Q. I believe you testified to some of this earlier. The date on this is October 2009, correct?
A. Correct.
Q. And I believe you remembered that Captain Eremea was part of this training, correct?
A. Correct.
Q. Is that Keith Eremea?
A. Yes.
Q. Down on the left do you see the section titled, Objectives?
A. Yes, sir.
Q. Let's go through those. The first one is, Explain the department policy pertaining to vehicle maintenance. Two, Explain the laws of physics as they pertain to vehicle operations. Three, Describe the techniques used to maximize performance in high speed operation of the police vehicle. Four, Demonstrate correct techniques associated with 15 the vehicle. Next, Operate the vehicle on the approved course under the allotted time. Next, Explain and perform the PIT maneuver. Next, Deploy and retrieve spike strips. Next, Understand liability issues in the operation of a police vehicle.
Did I read those correctly?
A. Yes, sir.
Q. And I you don't remember everything from training.

But do you remember generally that these topics were brought up in your training?
A. Yes, sir. Some of them, yes, sir.
Q. If you'll turn back to ASP 0035, please. Is this a traffic stop performance evaluation?
A. Yes, sir.
Q. Have you ever seen one of these before?
A. Not really.
Q. You don't recall ever getting graded on your performance in these evaluations?
A. I've seen these. I don't know if we reviewed them in general or not.
Q. So you've never seen your scores on this particular evaluation or any --
A. I don't recall, sir. Not during troop school I didn't see it. I saw my test scores when we took a test, but I don't recall seeing this stuff here.
Q. Okay. Well, this purports to be your performance evaluation. Do you deny that this is correct or an accurate representation of your evaluation on April 20, 2011?
A. I've never seen it that I know of, sir. So I can't deny it or confirm it.
Q. Okay. The instructor name is Kennedy. Do you know who that is?

A. Probably Mike Kennedy.
Q. Okay. Do you see at the top it says your score between 1 and 5 in each area?
A. Yes.
Q. 5 being the strongest in the area. If you look down the scores it looks like you got a whole lot of 5s, correct?
A. Yes, sir.
Q. Okay. Turn to page 36, please. Am I to assume if you didn't recognize the last one you don't recognize this one either?
A. Correct.
Q. Do you deny that this is your performance evaluation?
A. No, sir.
Q. Turn to the next page 37. The same question. Do you deny that this is your performance evaluation?
A. I don't know. I don't know how to answer a question. I've never seen it.
Q. You don't think I made this document up?
A. I don't think that, no, sir.
Q. This came out of your personnel file. Do you think anybody made it up and put it in your personnel file?
A. I wouldn't think so.

Q. Okay. Do you still have Exhibit 7? Is that what that one is?
A. Yes, sir.
Q. Turn to ASP 26, please. Some of these read the same. If I'm going over one we've already gone over I apologize. If you'll look at objective 3 on that page.
A. Okay.
Q. It says, Recruits will demonstrate their ability to properly utilize the equipment, emergency lights and sirens, flashlight, spotlight, baton, OC spray, radio, radar, PA system, vehicle, weapons, et cetera required to perform their duties.
Did I read that correctly?
A. Yes, sir.
Q. Do you agree that was one of the objectives of training troopers?
A. Yes, sir.
Q. And you were taught how to do all of those items, correct?
A. Yes, sir.
Q. Under that it says, Troopers shall wear seatbelts while operating or occupying an ASP vehicle, correct?
A. Correct.
Q. It says, Explain the importance of using the emergency lights on every stop, correct?

A. Correct.
Q. It says, Blue lights and siren on ASP vehicles, correct?
A. Correct.
Q. You received training on all of that, didn't you?
A. Correct.
Q. I didn't finish that last portion. It's blue lights and siren on ASP vehicles must be activated during emergency operation of the vehicle, correct?
A. Correct.
Q. Demonstrate different techniques of holding the flashlight, ticket book and miscellaneous paperwork, correct?
A. Correct.
Q. And the rest of those are not applicable to what we're talking about today.
If you'll look on page 29, please. You see the section titled, Practical exercises?
A. Yes, sir.
Q. I'm going to read from that. It says, Recruits will rotate through scenarios using simmunition weapons, protective gear and the basic equipment required for highway patrol duties. Scenarios will start off very slow and methodical and will progress to dynamic and complex scenarios. The scenarios will range from

motorist assists, accident investigations, hitchhikers, high volume traffic stops, and progressing to the escalation of force, the transportation of prisoners, search and seizure, evidence, chain of custody, dealing with disabled persons, multiple occupants and felony high risk traffic stops. All traffic stop scenarios will be based on actual traffic stops instructors have encountered throughout their career. Attached are the different scenarios recruits will rotate through. Each scenario will have a list of variables that will dictate the complexity.

Do you recall participating in these different types of scenarios in your training?

A. Yes, sir. Let me reanswer that real quick. I remember doing scenarios. I don't remember specific scenarios.

Q. That's what I meant.

A. I remember doing some scenarios, yes.

Q. Okay. I'm going to back up just a little bit to Exhibit 9. I didn't ask you. You said that you are aware of these policies. Do you remember that you have actually seen this particular policy?

A. I can't deny that.

Q. This one should have been in your book, correct?

A. Correct.

Q. And the same questions for number 10?
A. Yes, sir.
Q. Those are two of the main things that apply to someone that 15es a patrol vehicle, correct?
A. Correct.
Q. Okay. I'm going to give you Exhibit 8. If you'll turn to page 966. This purports to be a 15 performance evaluation. Is this one of the ones you have seen before?
A. I don't think we saw these. Most of that we didn't see, that I recall.
Q. Okay. This is again from your personnel file. It lists you as the student. Do you have any reason to believe that this is not your driving performance evaluation?
A. No, sir.
Q. The overall performance says, [redacted] correct?
A. Correct.
Q. And the next page 967 is another 15 performance evaluation. This one is April 26, 2011. It says, [redacted] correct?
A. Correct.
Q. Do you have any reason to believe this is not your 15 performance evaluation?

A. No, sir.
Q. The next page is April 26, 2011. You have an evaluation, the overall performance says, [redacted]. Do you have any reason to believe this is not your performance evaluation?
A. No, sir.
Q. Page 969. 15 performance evaluation on precision immobilization technique. And that's a PIT maneuver, correct?
A. Correct.
Q. And your performance says, [redacted]. Do you have any reason to believe this is not your performance evaluation?
A. No.
Q. The next page is a 15 performance evaluation, performance 15. This says, [redacted] Do you see that?
A. Yes, sir.
Q. If you see lap 3 the person grading this said, [redacted] Do you see that?
A. Yes, sir.
Q. Do you have any reason to believe this is not your performance evaluation?
A. No, sir.
Q. Now, the next page after that 971 appears to be

another PowerPoint presentation, correct?
A. Correct.
Q. Now, when you were in classes and people put these PowerPoint slides up, did they just put them up there and click through them or did they talk to you?
A. Well, they went through them and we talked about them.
Q. Okay. So normally in a PowerPoint presentation the presenter puts the slide up and then talks about it and puts the next slide up, correct?
A. Correct.
Q. So what we see here is not everything you learned in the class, is it?
A. Well, it would be a good focus of what we learned.
Q. It's more like an outline, isn't it? What I'm asking you is did the presenter explain the things that are on these slides to you?
A. I would assume they explained it. You're talking about --
Q. It's not a trick question.
A. I want to answer you fairly. But that's been six or seven or eight years ago, seven years ago.
Q. Okay.
A. I can't tell you what this particular instructor talked about.

Q. That's not what I'm asking you. Did this instructor put these slides up and just click through them or did he actually talk to you?
A. That's what I'm saying, I can't remember what this exact instructor did.
Q. Would you remember it if anybody in any class did a PowerPoint presentation and just sat there and clicked through the slides and didn't talk?
A. That wasn't your question.
Q. That's a new question.
A. Well, that wasn't --
Q. Would that stand out in your mind if I went to a class and the presenter just put slides up and didn't say anything?
A. That would stand out.
Q. Okay. So do you think that ever happened to you?
A. No, sir.
Q. Okay. This page this PowerPoint presentation is entitled, Arkansas State Police EVOC in-service 2012, correct?
A. Yes, sir.
Q. And if we go down the left side there's a slide titled, Skill training, correct?
A. Correct.
Q. And to the right of that another slide titled,

Skill training, correct?
A. Yes, sir.
Q. Let's start with the first one. It says, Extremely important for troop school. Many recruits have never driven a vehicle at high speeds. They are unfamiliar with 15 techniques associated with EVOC.
Did I read that correctly?
A. Yes, sir.
MR. CLARKE: Is that a question?
MR. SULLIVAN: It is indeed.
MR. CLARKE: Are we going to just read everything. I'll stipulate you can read.
MR. SULLIVAN: I appreciate that.
BY MR. SULLIVAN:
Q. Now, were these items explained to you in this course?
A. I would say that these slides were explained, yes, sir.
Q. Okay. And then after the skill training there are slides on firearms, correct?
A. Correct.
Q. And the next page, Critical incidents?
A. Yes, sir.
Q. Do you see that?
A. Yes, sir.

Q. There's one titled, Muscle memory. That's a term that's come up in your testimony today. Tell me what that means?
A. Well, through repetition you develop a natural inclination like drawing your weapon. I don't have to look at my weapon to draw that weapon, because I know right where it's at every time, because I've done it so many times, you go for that weapon. It's just repetitive action that your body becomes accustomed to that action.
Q. Okay. The bottom right slide is titled, EVOC, correct?
A. Correct.
Q. It says, Operating an emergency vehicle during critical incidents is no different, correct?
A. Correct.
Q. So you received training on that topic right there, correct?
A. Correct.
Q. The next page there's several slides about EVOC, correct?
A. Correct.
Q. And some of these look like they're going through some specific fact situations. Do you see that?
A. Correct.

Q. And the same for the next page 974, correct?
A. Yeah.
Q. There's some specific fact situations given as well as some statistics, correct?
A. Correct.
Q. If you go to 976 there's several slides -- well, there's a few slides on seatbelts, correct?
A. What page?
Q. 976.
A. Yes, sir.
Q. And at the top the titles they went over with you were Speed versus reaction time, correct?
A. Correct.
Q. If you'll turn to page 979. The two slides at the bottom of the page are titled, ASP policy change. Do you see those?
A. Yes, sir.
Q. And you agree on each one of those slides there's several points there, correct?
A. Yes, sir.
Q. If you'll turn to the next page 980. It has six slides with more policy changes, correct?
A. Correct.
Q. Turn to page 981. There's six more slides dealing with policy changes, correct?

A. Correct.
Q. And if you turn to page 982. There's a slide for policy, correct?
A. Correct.
Q. So the instructor went over a number of policy changes with you in this presentation, correct?
A. Correct.
Q. Turn to page 984, please. This is titled, In-service training April 18th to 20th. Tuesday EVOC, Wednesday tactical medicine.
Did I read that correctly?
A. Yes, sir.
Q. And Tuesday a whole day was dedicated to EVOC, correct?
A. Yes, sir.
Q. And if you'll look at line number 11, is that your signature?
A. That's me.
Q. And did you attend that EVOC training?
A. I would say so.
Q. I should have started with that question.
If you'll turn to page 985. There is yet another PowerPoint presentation. This one is titled, Emergency vehicle operations. Do you see that?
A. Yes, sir.

Q. Do you see that on that page are three slides dedicated to criminal code?
A. Correct.
Q. And this is fine print. I can see it. We're going to look at the names of these cases if you can see that. If you'll look at the second slide on the right-hand side. There's a reference to Statute 27-51-202, correct?
A. Yes, sir.
Q. And if you'll see the underlined bold in white words it talks about reckless disregard of the safety of others, correct?
A. Yes, sir.
Q. And then the next slide in the bottom left is criminal code. And the first point talks about the City of Little Rock versus Weber, City of Caddo Valley versus George. Do you see that at the very first point?
A. Yes, sir.
Q. Okay. And if you look to the third point, Statute 27-51-901 is referenced, correct?
A. Yes, sir.
Q. And the slide on the bottom right references Statute 27-49-109, Drivers of authorized emergency vehicles, correct?
A. Correct.

Q. Turn to page 986. The top left slide, Criminal code. It says, Criminal code, and then bold in white and underlined, Does not exempt us from negligent action on our part.

Do you see that?

A. Yes, sir.

Q. Then the remainder of the slides on that page are titled, Civil liability, correct?

A. Yes, sir.

Q. On the top right the case Graham versus Connor is cited. It says it was a landmark case for law enforcement. Do you see that?

A. Yes, sir.

Q. Now, when we start saying these names are they coming back to you that you heard those in training before?

A. Not really, no, sir.

Q. Okay. You don't deny that you were instructed about these cases though, were you?

A. No, sir.

Q. On the second slide on the right do you see the case Lewis versus Sacramento County cited?

A. Yes, sir.

Q. On the bottom right do you see the case Plumhoff versus Rickard?

A. Yes, sir.
Q. Turn to the next page 987. And all of these slides on this page deal with civil liability, correct?
A. Yes, sir.
Q. The bottom left you see the case of Scott versus Harris cited?
A. Yes, sir.
MR. CLARKE: For the record, I lost that case.
BY MR. SULLIVAN:
Q. In the bottom right the slide in the last point it says, the Statute 42 USC 1983 is cited, correct?
A. Yes.
Q. Turn to page 988. All six slides on this page are titled, Civil liability, correct?
A. Yes, sir.
Q. The top left case is discussing PIT maneuvers, correct?
A. Do what now?
Q. The top left slide is discussing liability related to PIT maneuvers, correct?
A. Are you still on 988?
Q. Yes.
A. Okay. Yes, sir, I see it.
Q. On page 989 the bottom four slides deal with

vehicle dynamics, correct?
A. Yes, sir.
Q. The bottom left one is talking about Newton's second law, correct?
A. Yes, sir.
Q. And this is talking about force equals mass times acceleration, correct?
A. Yes, sir.
Q. Why is that important to a trooper?
A. The faster you go the more force you have in mass acceleration and the longer the stopping distance.
Q. Very good. If you'll turn to page 990. All of these slides deal with vehicle dynamics, correct?
A. Yes, sir.
Q. Turn to page 991. You've got four slides -- excuse me -- you've got two slides dealing with vehicle dynamics, correct?
A. Yes, sir.
Q. Remainder of the slides on that page deal with performance 15, correct?
A. Yes, sir.
Q. The second slide on the left starts out in bold, The number one rule is to drive within your ability; is that correct?
A. Correct.

Q. Page 992. All the slides are dedicated to performance 15, correct?
A. Yes, sir.
Q. Go to page 996. There are several pages there with the presentation of dealing with braking and braking techniques, correct?
A. Yes, sir.
Q. Do you recall being taught about all these braking techniques?
A. Yes, sir.
Q. And why they're important to a trooper?
A. Correct.
Q. Who is the head of the State Police?
A. Colonel Bryant.
Q. Do you know him?
A. I've met him, yes.
Q. When was the last time you saw him?
A. Today.
Q. Is he here today in this room?
A. Yes, sir.
Q. Have you ever spoken with him personally other than to say hello?
A. I don't recall.
Q. That's a big deal in a big state agency meeting the director, isn't it?

A. Not really. You see them when you go to Little Rock and stuff. It's not uncommon.
Q. But you don't recall if you've ever had a conversation with him?
A. I'm not saying I didn't, but I don't recall it.
Q. Do you know who sets policy for the State Police?
A. I would assume that the Colonel approves the policy. I'm sure there's someone that helps make that. I don't really know.
Q. And who has the authority to change that policy?
A. The Colonel.
Q. Can anyone else supercede the Colonel's policies?
A. I don't know.
Q. Did anyone in your chain of command ever instruct you that you could drive 98 or 100 miles an hour in a high traffic area with no lights or sirens?
MR. RAY: Objection to form.
A. I was never told otherwise.
Q. Have you ever seen a written policy that said it was okay to drive in excess of 100 miles an hour with no lights or sirens?
A. The policy states that -- the immediate pursuit policy states you can drive without lights and siren in catching up to a vehicle.
Q. And that you can do that in a high traffic area?

MR. RAY: Object to form.

A. It doesn't say any situation. It says that you can exceed the posted speed limit. I think it's Exhibit Number 9, The vehicle use policy. Officer 15 an authorized emergency vehicle in immediate pursuit is exempt from posted speed limits. Immediate pursuit means the initial approach to a violator for the purposes of initiating a traffic stop or situations where a silent response is appropriate or necessary.

Q. And based on that, do you believe it was necessary to drive 100 miles an hour in the area that we viewed on the video today?

A. I believe I was within that policy.

Q. Do you believe that it authorized that?

A. Yes, sir. There's no limitations in the policy or anything of that nature.

Q. On the exhibit where you have written on the amended complaint your calculations of your speed.

A. Yes, sir.

MR. CLARKE: 14.

BY MR. SULLIVAN:

Q. 14. Did anyone assist you in making those calculations?

A. No, sir. I just used the video.

Q. Did you use a calculator?

A. Yes, sir.
Q. And that's the average speed that you believe you were going?
A. Based off the distance in the complaint or the -- I didn't do a -- obviously if we change the distance it's going to change things. But based off the distance that was from my recollection and in the complaint, which was 8.7 miles, and the time on the video.
Q. And in watching this video today you testified at several stop points to the speed that you were going. Do you dispute any of those speeds that are on that video?
A. I don't have any way to dispute that.
Q. Do you have any reason to believe you weren't going over 100 miles per hour where it indicates that?
A. I'm not saying that, no, sir.
Q. Okay.
MR. SULLIVAN: Let's take a short break.
MR. CLARKE: All right.
(A recess was had.)
BY MR. SULLIVAN (CONT.):
Q. Mr. Burke, you testified while watching a video earlier today, and you may have answered part of my questions, the vehicle that you crashed into we've referred to sometimes as the Braun vehicle because the

passenger's name was Braun, and that's the name of the plaintiff in this case.

You know which vehicle I'm talking about, correct?

A. Yes, sir.

Q. That is not the vehicle that you were trying to catch up to because you thought they were speeding, is it?

A. No, sir.

Q. And at no point were you trying to stop the Braun vehicle, were you?

A. No, sir.

Q. And you did not certainly didn't intentionally crash into the Braun vehicle, did you?

A. Absolutely not.

Q. And you weren't trying to stop them in any way, were you?

A. No, sir.

Q. Okay. Now, you also testified that you believed that Ms. Braun and the driver of her vehicle were largely at fault here. Do you remember saying that just a few minutes ago?

MR. RAY: Object to the form of the question.

A. Yes, sir.

Q. Do you believe that you were in any way at fault

for this incident?
A. I think you could say speed was a factor in the accident. There again, I'm not a reconstructionist. I haven't seen a reconstruction on it. I think to be able to say that we're going to say that had I been going the speed limit the accident would not have happened before we can say I'm at fault or had any fault or no fault at all. Because the accident could have still happened even if I was going the speed limit.
Q. Do you believe you were at fault at all?
A. I think I just answered your question.
Q. Well, I'm not clear on that. Do you think you were at fault at all no matter what percentage?
A. I think speed could be a factor.
Q. I didn't ask you that.
A. Okay. At the time of the accident the only state law I violated is speed. So that would be my only contributing factor to the accident.
Q. So are you saying if you weren't speeding the accident might not have happened?
A. I'm saying if a reconstruction was done on there, and it was determined that the accident would have still happened, even with my speed being the speed limit, then I'm going to say I'm not at fault at all.
Q. So you don't -- go ahead. I'm sorry.

A. If speed is a factor, and if the accident would not have happened, then I would say that -- I would just have to see a reconstruction before I could answer your question, a reconstruction of the accident.
Q. So are you saying you believe it's possible that you were not at fault at all?
A. That's correct.
Q. That's correct?
A. That's correct.
Q. You're trained to work crashes, aren't you?
A. I work crashes, yes, sir.
Q. You did work crashes?
A. Yes, sir.
Q. So if you had worked this accident, say you weren't involved in it, but you got called to work this very same accident, do you think you would have determined that speed was a factor?
A. I do not have the qualifications for that, sir.
Q. You've never worked a crash where you determined that speed was a factor?
A. Not an accident like this.
Q. You were trained on measuring skid marks, right?
A. I was not trained in the reconstruction of an accident.
Q. That's not my question. You were trained to

measure skid marks, weren't you?
A. I can measure skid marks.
Q. And the size and length of a skid mark can help you draw conclusions about an accident, correct?
A. When you start taking drag factors and all that stuff, which is mainly done through a reconstructionist.
Q. Well, the state doesn't hire reconstruction experts for every road accident that a trooper works, correct?
A. That's correct.
Q. Because a trooper is trained to evaluate an accident, isn't he?
A. They investigate accidents, yes, sir.
Q. So if you came -- if you were the first person called to this incident, would you have determined that speed was a factor?
A. I would have requested additional resources.
Q. Why?
A. Because I don't have the training to investigate an accident like this. I was taught how to use drag factor. And drag factor goes a lot into what skid marks are.
Q. This crash occurred when, according to you, a car turned left in front of you?
A. That's correct.

Q. And you hit it and you were going approximately 100 miles per hour, correct?
A. Correct.
Q. Where is the difficulty in evaluating this situation that would require an accident reconstructionist?
A. To determine that speed is a factor in the accident.
Q. Well, we know you were going approximately 100 miles per hour, don't we?
A. That's correct.
Q. Okay. Before the crash did you see the Braun vehicle start to turn?
A. Yes, sir.
Q. Did you see their turn signal was on?
A. I do not remember the turn signal.
Q. So you don't know either way?
A. No, sir.
Q. But you saw them start to turn?
A. Yes, sir.
Q. Did you brake?
A. I'm sure I did.
Q. As I was watching the video I saw the word brake come on and off sometimes. What does that indicate on your video?

A. That your brake has been applied.
Q. Okay. Did you notice if your brake was applied right prior to the crash?
A. It cut out prior to the crash.
Q. Okay.
A. The video did.
Q. But you believe you applied your brake?
A. I think that's the reason I received the damage to my leg that I did because I was on the brake.
Q. Just a few minutes ago we took a short break and we've had other breaks today. Have you thought of anything that you want to change about your answers that you've given in this deposition today?
A. No, sir.

MR. SULLIVAN: That's all I have.

A. Yes, sir.

EXAMINATION

BY MR. RAY:

Q. Let me ask you a few things. I'm not going to go on. This accident you were involved in that's the subject of this case, who investigated it?
A. Hot Springs Police Department.
Q. During the course of the investigation did anyone from the Hot Springs Police Department talk to you about it?

A. Yes, sir.
Q. And did they tell you what their conclusions were about the accident?
A. No, sir. Let me back up. I did a statement to the Hot Springs Police Department. It was a detective or investigator. We discussed the accident. But no one actually discussed that I recall that we actually discussed the details of the accident. It was just him asking me questions.
Q. All right. So if you're asked questions about what facts are there to lead the investigating officer from the Hot Springs Police Department to describe, for example, alcohol as a contributing factor, who would know more about that; the investigating officer or you?
A. The investigating officer.
Q. And these same questions about apparently another investigator was called in to analyze the data, crash data or the data on the Braun vehicle. And you spoke about that officer associated with the Little Rock Police Department?
A. Yes, sir.
Q. In his report did you have any input or make any conclusions that are included within that report?
A. He just notes that -- and I don't remember what the -- it had that if both the subjects in the car,

if they had had their seatbelts on they might not have been killed.

Q. And is that your conclusion or is that one that the officer made?

A. That's one of the statements from that officer.

Q. And so between you and this officer at the Little Rock Police Department that's Exhibit 14, who would know more about how he reached his conclusions between you and him?

A. He would.

Q. All right.

MR. RAY: I'm going to reserve the remainder of my questions for trial. Pass the witness.

RE-EXAMINATION

BY MR. CLARKE:

Q. Let's talk about a couple of things.

Exhibit 14, how fast, according to the black box recorder, was the vehicle containing Cassandra Braun going? I believe it's on the first page.

A. 16 miles per hour at impact.

Q. All right. Is that consistent with your observations?

A. Sir, I don't recall.

Q. Okay. That's within the speed limit, right?

A. Yes, sir.
Q. Okay. Now, all your driving, up until the time of the crash, you were 15 intentionally, correct?
A. I was 15 what?
Q. You made a decision to leave the parking lot and to try to catch up with the car with the hazards, correct?
A. Yes, sir.
Q. You made that decision, and it was part of the training that you had was that you have to use ordinary care, correct?
A. Correct.
Q. And part of a law enforcement officer's job is to constantly evaluate the circumstances based on what they're doing, correct?
A. Correct.
Q. And you intentionally put that calculus in your mind as you were 15 up until the crash, correct?
A. Correct.
Q. Every car you passed, every business you passed you intentionally thought it was okay to do, correct?
A. Correct.
Q. All right. Now, they asked you some stuff about training. Get Exhibit Number 8 out. Well, first let's go to Exhibit Number 9, the policy. We have a vehicle

use policy. And I believe it's your testimony that you were given this policy, correct?

A. Yes, sir.

Q. And that you were asked some questions about this policy. If you look at the second paragraph. You're allowed, according to the policy, are exempt from the traffic laws when responding to an emergency call or in the immediate pursuit of an actual or suspected violator, correct? Second paragraph.

A. Correct.

Q. All right. The policy in that situation does not talk about whether or not you have to have your lights or sirens on, does it?

A. Correct.

Q. The next paragraph talks about you're allowed to -- if you're not in an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and you go outside the speed limit, then you're supposed to have your lights and sirens on, correct?

A. Correct.

Q. And the third paragraph basically says, and this is what the policy is that you understood and you were trained on, said if you're trying to perform a traffic stop or catch up to somebody or do a silent response, you don't have to have your lights and sirens on,

correct?
A. Correct.
Q. So it's your understanding that even though there are laws that require lights and sirens to exceed the speed limit, that the training that you were provided allowed you some leeway with those laws if you determine the silent response to an emergency call was necessary, or if you were in the process of catching up to somebody to perform a traffic stop, correct?
A. Correct.
Q. All right. And you've been asked a lot of questions about fault and things of that nature. You know, it got a little testy and I apologize for that.
Is it your testimony that what you did was appropriate, based on the training and the policies of the Arkansas State Police?
A. That is my belief, yes, sir.
Q. And if you complied with what they told you to do, you would expect that you weren't at fault because that's what they told you, correct?
A. Correct.
Q. All right. So whether you feel morally responsible, you feel like you complied with the training that was provided and the policy that was provided, correct?

A. Correct.
Q. And if they wanted you to have your lights and sirens on any time you exceed the speed limit for anything, they should have trained you that, correct?
A. Correct.
Q. They did not train you that, correct?
A. Correct.
Q. They actually trained you the opposite of that, correct?
A. Correct.
Q. And you were a trooper for some six years, five and a half years?
A. Six years.
Q. And it's your understanding, based on conversations with other troopers, that they had the same interpretation?
A. Correct.
Q. Your supervisors, correct?
A. Correct.
Q. They're supposed to be reviewing your tapes, right?
A. Correct.
Q. And nobody told you that you were going too fast, correct?
A. Correct.

Q. If this is somebody's fault, and your conduct was ultimately found to be at fault, would you not then say the people who trained you should be the ones who are responsible?
A. Correct.
Q. Now, if you get Exhibit 8 out. He went through a number of PowerPoints, and you couldn't remember, and we went through these lesson plans and some of the PowerPoints, correct?
A. Yes, sir.
Q. Do any of them, if you go through it and if you just look at the lesson plan at the beginning, none of that says anything on page 959 to 960 anything about using lights and sirens whenever you're going over the speed limit, correct?
A. No, sir. That would be correct.
Q. And then we have these objectives. There's 10 objectives. None of them deal -- none of those objectives deal with using lights and sirens any time you exceed the speed limit, correct?
A. Correct.
Q. It looks like the way that I look at this is page 971 there's a PowerPoint slide that you went over, and based on the first pages if you look at the slides, they were basically telling you that it involved a heck of a

lot more in 15 cars than using firearms, correct?
A. Yes, sir.
Q. If you go to page 973, in most of your training that we talked about and we went over with your trooper training you had 30 hours out on the track, correct?
A. That seems right. It says 36 hours of EVOC.
Q. Right. If you go -- if you go back to that for a second. When you go through the objectives and stuff -- let's go back to that.
A. Driving track 30 hours.
Q. All right. So of the 36 hours, 30 involved the physical operation of a vehicle, correct?
A. Well, this is dated '09.
Q. This is what the state produced.
A. That's the same time frame that we used in '11.
Q. All right. This has been produced to me as your training from the Police Academy. That might have been one that was used and it may not have been updated.
A. Yes, sir.
Q. Okay. All right. You didn't have any classes on -- well, we'll just move on.
Then it looks like if you go to the PowerPoints, and I'll tell you that there's 68 slides total. Do you see any that interpret Exhibit 9, the policy about catching up to speeders without your lights and sirens

or silent response?
A. No, sir.
Q. And if you look at 973. Do you see at the bottom there Captain Travis Yates?
A. Yes, sir.
Q. In the bottom part on the left it says he did research results of the way we train. And 75 percent was on skill sets and only 25 percent was on decision-making. Do you see that?
A. Yes, sir.
Q. And his conclusion is that type of training is not working, correct?
A. Correct.
Q. The next training says, the next slide to the right says, We are not crashing ASP units because of how we drive, we are crashing because of the decisions that are made that put us in the situation to begin with, correct?
A. Yes, sir.
Q. And according to the next slide on the next page, you need to reverse the priorities to 75 percent training on decision-making and just 25 percent on skill sets, correct?
A. Correct.
Q. Did you ever -- did they ever give you 75 percent

training on the decision-making as opposed to going out on the track?

A. No, sir.

Q. The training you received is not consistent with what they say should be the way it's done, correct?

A. Correct.

MR. CLARKE: That's all.

RE-EXAMINATION

BY MR. SULLIVAN:

Q. Mr. Burke, were you thought by the State Police to use ordinary care at all times when 15?

A. Yes, sir.

Q. Were you ever taught not to use ordinary care when 15?

A. No, sir.

Q. You testified, and correct me if I'm wrong, reading the report that the Braun vehicle was going 16 miles per hour when you crashed; is that correct?

A. Correct.

Q. Why did you apply your brakes?

A. Because I saw them coming into my path.

Q. Is there anything else you could have done to avoid hitting them?

A. I tried and tried to look back and see if there's a way that it could not have happened that way, based on

the circumstances, as far as me avoiding the crash. And I don't know. A lot of that is blurry to me. I don't remember. I remember that car cutting in front of me and that's all I really remember. So I really don't have an answer for your question because I don't know.

Q. What is the law regarding civilians 15 when they see an emergency vehicle with its lights flashing and sirens on?

A. They're supposed to yield to the right.

Q. So if you had had your lights and sirens on, do you agree with me the Brauns might not have turned in front of you? If they had obeyed the law they would not have turned in front of you, would they?

A. Repeat that?

Q. If they had obeyed the law, this is a hypothetical question, if they had obeyed the law and seen you with lights and sirens on, they would not have turned in front of you, would they?

MR. RAY: Object to the form of the question.

A. I can't say they would have turned. If they had obeyed the law they wouldn't have turned to begin with.

Q. They wouldn't have what?

A. Regardless of whether the lights and sirens were on, they wouldn't have turned if they would have obeyed

the law.
Q. Certainly if they saw lights and sirens coming they would have been alerted not to turn, correct, that's the law, isn't it?
A. That's the law whether there's lights and sirens on or not.
Q. Would you agree with me that it's more likely --
MR. RAY: Object to form.
Q. -- if they had hired a siren, they're more likely to have noticed you and not turned than if you didn't have a siren on?
MR. RAY: Object to the form.
A. A lot of times you outrun those sirens at those speeds anyway.
Q. That's not my question.
A. I can't say they would have heard it. I can't say --
Q. I know you can't say what they would have done. My question is isn't it possible they wouldn't have turned?
MR. RAY: Object to the form of the question.
A. Anything is possible.
Q. And so if you had had your siren on they might still be alive, correct?

MR. RAY: Object to the form of the questions.

A. I can't answer that, sir.

Q. It's a hypothetical. They might still be alive, correct?

MR. RAY: Object to the form of the question.

A. Maybe, maybe not. I can't say.

MR. SULLIVAN: That's all I have.

MR. CLARKE: Nothing further.

MR. RAY: We'll reserve the rest of our questions.

(WHEREUPON, the deposition was concluded at 3:43 p.m.)

C E R T I F I C A T E

STATE OF ARKANSAS*
ss *
COUNTY OF SALINE *

I, JEFF BENNETT, Certified Court Reporter, a Notary Public in and for the aforesaid county and state, do hereby certify that the witness, BRIAN RAY BURKE, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me in machine shorthand notes and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

In accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was requested by the deponent or a party thereto.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

GIVEN UNDER MY HAND and SEAL OF OFFICE on this 27th day of November, 2018.

_____
Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

ERRATA SHEET OF BRIAN RAY BURKE

PAGE #	LINE #	ERROR	CORRECTION & REASON

WITNESS SIGNATURE PAGE

I, BRIAN RAY BURKE, the witness, hereby certify that I have thoroughly read the transcript of my deposition taken on the 8th day of November, 2018, and have made any necessary changes or corrections to make the transcript a true and accurate accounting of my testimony given on that day.

Signature

Date

****

STATE OF *
* ss.
COUNTY OF *

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for County, .
Given under my hand and seal of office on this day of , 2018.

My commission expires .

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, JEFF BENNETT, LS No. 19, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 214 constitute a true and correct copy of the original deposition of BRIAN RAY BURKE taken on November 8, 2018.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 27th day of November, 2018.

_____

Jeff Bennett, CCR, LS No. 19, Notary Public in and for Saline County, Arkansas

My Commission expires November 29, 2020.

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT J

Transcript of the Testimony of William J. Bryant

Transcript of the Testimony of

William J. Bryant

Date: January 9, 2019

Case: Braun v. Burke, et al

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN, DECEASED, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF CASSANDRA BRAUN,
Plaintiff,

vs CASE NO 4:18-cv-334 BRW

TROOPER BRIAN RAY BURKE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE ARKANSAS STATE POLICE, COLONEL BILL BRYANT, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS THE CHIEF EXECUTIVE OFFICER OF THE ARKANSAS STATE POLICE,
Defendants

ORAL DEPOSITION OF WILLIAM J BRYANT

TAKEN BEFORE Garold W Pritsch, Certified Court Reporter, LS Certificate No 329, Bushman Court Reporting, 620 West Third Street, Suite 302, Little Rock, Arkansas 72201 on January 9th, 2019 at the Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas commencing at 9:05 a m

APPEARANCES:
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*** For Mr. Burke ***

ALSO PRESENT:
Mr. Downs, Mr. Burke

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ANSWERS AND DEPOSITION OF WILLIAM J BRYANT, a witness produced at the request of Plaintiff, taken in the above styled and numbered cause on the 9th of January, 2019, before Garold W Pritsch, Certified Court Reporter, LS Certificate No 329, a Notary Public in and for Garland County, Arkansas, taken at the Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas at 9:05 a m

WILLIAM J BRYANT

The witness hereinbefore named, having been duly cautioned and sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CLARKE:

Q. Please state your full name.

A. William J. Bryant.

Q. And who are you employed by?

A. By the Arkansas State Police.

Q. And you are the head of the Arkansas State Police?

A. Yes, sir, the director of the Arkansas State Police.

Q. Okay. And you go by the title Colonel?

A. Yes, sir.

Q. Okay. And I'm just trying to do that so I can talk to you and give you the appropriate acknowledgment of what your title is during this deposition. Have you every given one before?

A. Yes, sir.

Q. All right. So you know something about the rules of it. What -- what type of case did you give a deposition in before?

A. Different civil cases in my employment with the State Police and when I was a Drug Enforcement Administration special agent.

Q. Okay. Did you ever give a deposition in a case involving emergency vehicle operations or pursuits?

A. No, sir.

Q. Well, let's just go over some ground rules. I know you've probably spoken to your counsel. Any of my questions that I ask you, we're not trying to invade any communications you had directly with your counsel, but I'm going to go over some ground rules just so we have good communication and a good record. Okay?

A. Yes, sir.

Q. Obviously, your testimony here is under oath, subject to the penalty of perjury. You understand that; correct?

A. Yes, sir.

Q. You've had classes on testifying in court; correct?

A. Yes, sir.

Q. You know the importance of creating a good record; correct?

A. Yes, sir.

Q. Obviously, sometimes when people get in a communication, they kind of anticipate where somebody is going, and they try to start answering before a question is asked or more importantly sometimes I ask another question before you're finished. Let's both be cognizant of that and try to let the answer come out and the question come out before we respond. Okay?

A. Yes, sir.

Q. We're not here to trick you. There's a lot of

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documents in this case. If I ask you a question, you need to refer to something, please let me know, and depending on the nature of the question, I'll -- I'll see if I can give it to you. Okay?
A. Yes, sir.
Q. And, also, a lot of times normally more towards the end of the deposition some really bad questions come out that you don't understand. If I ask you a question that you're unclear in any manner, just please ask me to rephrase it. Okay?
A. Yes, sir.
Q. If you answer a question, I'm going to assume that you understood that. Is that fair?
A. Yes, sir.
Q. Okay. In preparation for your deposition, other than meeting with your attorney, what documents did you review?
A. I reviewed the complaints filed by you in this case --
Q. Okay.
A. -- and some of the discovery materials and some of the State Police policies.
Q. Okay. Did you review the pursuit policy?
A. Yes, sir.
Q. Did you review the general use policy?

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A. Vehicle use policy.
Q. Vehicle use policy?
A. Yes, sir.
Q. Why is the vehicle use policy in the general section as opposed to the law enforcement section?
A. I don't think I can answer that. It was that way when I took over as director, sir.
Q. Okay. All right.
All right. And let's just kind of go through your background a little bit before we get into the facts of the case. What's your educational background?
A. I have a bachelor of science in criminal justice, and then I have a master's degree in police science and administration.
Q. Where were they from and when did you get them?
A. I graduated with my bachelor's in 1978 from Sam Houston State University and then a master's degree in 1982 at Sam Houston State University.
Q. All right. Is that obviously in Texas?
A. Yes, sir. Huntsville, Texas.
Q. Is that where you're from?
A. That's where I went to college at, sir.
Q. Okay. All right. And did you have any other education, not police training?
A. I believe I have six hours towards my doctorate.

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Q. Okay.
A. But then I went to work for the Drug Enforcement Administration.
Q. Okay. And so you'd have to start over if you wanted to go for a doctorate; correct?
A. Pretty much, sir, but --
Q. You have to get your doctorate in seven years; correct?
A. I'm not sure how long the Ph.D. programs are now.
Q. Okay. Okay. All right. But -- so when did you start working for the DEA?
A. 1984, but I was a policeman before that, sir.
Q. Okay. Well, let's -- let's go through -- you know, you've been in law enforcement a number of years. I don't care about your little jobs that you may have had growing up. Take me through your law enforcement career up until where you are today. I'm just going to let you go through it, and I may come back with some follow up.
A. Yes, sir. I began my law enforcement career in 1976 with the Sam Houston State University Police Department. I was there for two years. During my tenure there at the Sam Houston State University, I rose to the rank of lieutenant. Then I worked -- went to work for the City of Huntsville Police Department in 1978, and I worked there until 1984 while I worked my way through

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college and -- undergraduate school and graduate school, and then went to work for the Drug Enforcement Administration in May of 1984.
Q. All right.
A. And I worked for the Drug Enforcement Administration for 30 years, various assignments around the U.S., and rose to the rank of assistant special agent in charge.
Q. Okay.
A. After retiring from the Drug Enforcement Administration, for one year I worked as the state director for the Gulf Coast HIDTA, which is responsible for the HIDTA initiatives in Arkansas and Memphis, Tennessee.
Q. How do you spell HIDTA?
A. H-I-D-T-A. It stands for High Intensity Drug Trafficking Area. It's part of the office of National Drug Control Policy.
Q. And that was in 2000 --
A. That would be 2014.
Q. All right.
A. And then in -- January 12th, 2015, I was sworn in as the director of the Arkansas State Police.
Q. Okay. Let me just ask a couple of questions about that. Your first law enforcement was with Sam -- San

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Jose State?
A. Sam Houston State University.
Q. Sam Houston State. Okay. So you were -- for lack of a better term, you were a -- a law enforcement officer on that campus?
A. Yes, sir. We had co-jurisdiction in the city.
Q. Okay. All right. And did you have to get certified to be a police officer before you served as a law enforcement at that time?
A. Back at that time you could work up to a year. I did go to the -- it was -- the certification school, it was put on by Texas A&M University, but it was held in Huntsville, Texas.
Q. So we call it post or, you know, today you have to go through an authorized training academy before -- you have certain periods of time before you have to -- have to -- well, I'm starting off with bad questions for you. It's going to be a long time. I apologize.
Nowadays -- were the certification processes in Texas similar to what we have today in Arkansas other than the particular training that you receive?
A. Well, I think the length of the training, and this is just going from memory, I think back in 1976 training was like 12 weeks.
Q. Okay.

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A. You know, law enforcement back then, it's changed a lot since then.
Q. Right. And, you know, obviously, in 1976, you were allowed to shoot a fleeing felon in the back; correct?
A. If you had justification, I believe so. Well, I do remember I was 19 years old. I had to get my parents to buy the bullets because you had to be 21 to buy bullets.
Q. Well, Tennessee v. Garner came out in 1994 which -- which made it a defense of life standard; correct?
A. Yes, sir, I believe so.
Q. Okay. So your -- your initial police training was with Sam Houston State in -- somewhere in 1976, 1977; correct?
A. Yes, sir.
Q. And then were you ever -- did you ever receive any discipline or have any internal affair complaints when you were at Sam Houston State?
A. No, sir.
Q. Okay. And then you went in '78 to Huntsville Police Department. Is that in Texas?
A. Yes, sir, that's the same location as Sam Houston State University.
Q. Okay. And that's -- so you moved to the municipal police force at that time?
A. Yes, sir.

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Q. Did you have to go through any additional certification or did your certification from Sam Houston State transfer?
A. The certification transferred.
Q. Okay. And then in 1984, you worked at the -- you started with the DEA. Did the DEA at any time during your career have a pursuit policy?
A. Drug Enforcement Administration does not have a uniform division. We were plain clothes. We received driver's training, but we did not engage in pursuits.
Q. Were you there when they had the big pursuit in Temecula, Arizona?
A. No, sir, I have no knowledge of that.
Q. Okay. All right.
All right. Ever receive any discipline or internal affairs complaints with the DEA?
A. I received a -- had an internal investigation over an employee who was disgruntled, and it was investigated and I was cleared.
Q. Okay. And was that like in a, you know, harassment supposedly?
A. Yes, sir.
Q. Was it a female employee?
A. White male.
Q. Okay.

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A. And then some EEO complaints also.
Q. Okay. And --
A. And I was cleared on all EEO complaints.
Q. Do you know if the DEA settled any of those case?
A. They were all dismissed.
Q. Okay. Do you know how many times you -- were you sued?
A. One individual sued me three times, and we won every case. It was here in Little Rock, a diversion investigator, and then another time, EEO case, and it was dismissed.
Q. Okay. All right. When did you start working in Arkansas?
A. I transferred from Dallas, Texas to Little Rock, Arkansas in 1991.
Q. And have you remained in Arkansas for the DEA up until the time you became director?
A. No, sir, I did not. Do you want me to walk you through the process?
Q. Yeah, yeah. I'm trying to find --
A. Yes, sir.
Q. Trying to figure out your relationship to Arkansas and what you know about the --
A. I was stationed here in Arkansas. I came in 1991. 1996 I went into management with DEA, became a group

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supervisor. 1998, I was promoted to the resident agent in charge, which is the same grade level. It's just a different title. Then 1999, I was transferred to Washington, D.C. It's a normal rotation policy for supervisors in the DEA. When I was -- when I first arrived at DEA headquarters, I was an inspector, and we did office audits, investigated shootings, things of that nature. And then in 2000, I was assigned to the House Judiciary Committee. I reported to the U.S. House of Representatives and worked there for almost the -- close to a year. Then I was promoted to special assistant to the chief of domestic operations on the enforcement side of the house. I did that several months, and then I was transferred over to be the chief of Congressional Affairs for the Drug Enforcement Administration.

Q. All right. And how much of that was in Arkansas?

A. All that was in Washington that I just described.

Q. Okay. Right.

A. From 1999 to 2001 -- or end of '99 to really 2002, I was in Washington, D.C.

Q. Okay.

A. And I came to Arkansas as the assistant special agent in charge in 2002 and served there until I retired.

Q. Okay. And I don't know the hierarchy of the DEA. Did you have certain supervisory responsibilities for a

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certain region or area or just the state?

A. Yes, sir, in the positions of group supervisor and resident agent in charge, I was responsible for the -- area of responsibility for the Little Rock office. At that time we really only had three offices in Arkansas. Ft. Smith and Fayetteville, but that was not under my responsibility, but when I came back in 2002, then I was responsible for the whole state.

Q. Okay. Tell me a little bit about what you did -- well, let me ask you this. Have you ever been involved in a pursuit?

A. Yes, sir. In my career, yes, sir, I have.

Q. Okay. As a DEA officer?

A. Usually we -- if we anticipate any type of trouble, we would have marked units for arrests, things like that, but, again, we would not engage in high speed pursuits.

Q. All right. So when did you engage in a high speed pursuit?

A. During my law enforcement uniform career.

Q. Okay. In '76?

A. '76.

Q. To?

A. '84.

Q. Okay. Somewhere around there?

A. Yes, sir.

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Q. And, obviously, we'll go -- we're going to go through the training and stuff later on obviously. The training that you receive today is much more substantial than you did when -- on EVOC when you were a uniformed officer; correct?

A. Yes, sir.

Q. All right. Now, as -- as the assistant special agent in charge, were you the highest person for the DEA in Arkansas?

A. Yes, sir.

Q. All right. Did you have any type of working relationship with the Arkansas State Police?

A. Yes, sir, I did.

Q. And just tell me, you know, other than being different law enforcement agencies, just tell me about that relationship from the time -- I'm going to talk about from the time you came back and became assistant special agent in charge to the present.

A. The majority of it was investigative assistance. If they had an investigation or made a large seizure, they would invite us in. We had the resources and manpower to expand those investigations. In addition, at the Drug Enforcement Administration, we have wiretap authority. We were able to do wiretaps, assist on their cases versus the State of Arkansas does not have a

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wiretap statute. We worked with their interdiction team or if we had information a vehicle had a load of stuff -- a load of drugs, then we would contact the Arkansas State Police and have them stop that vehicle.

Q. All right. And what directors -- did you have a personal relationship with any of the directors?

A. Not when I first came here. I believe, if my memory serves me right, Tommy Goodwin was the director in '91. Winford Phillips, I had some interaction with him when he was here. When I went to Washington, D.C , I believe Tom Mars was the director. And then J. R. Howard, I knew J. R. a long time. J. R. Howard was the director. I knew him, use to work cases with him before he became the director. And then same thing with Stan Witt. I knew Stan when -- he was made director after J. R. Howard left.

Q. Are you a member of any organizations or -- you know, law enforcement organizations?

A. Yes, sir. I'm a member of the International Association of Chiefs of Police, the S&P, State and Provincial section.

Q. Are you a member of the Arkansas Association of Chiefs of Police?

A. I joined last year, but I had not been previous, no, sir.

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Q. Okay. Do you know that they maintain model policies?
A. Yes, sir.
Q. Have you reviewed their model policies?
A. No, sir, I have not.
Q. You know that the IACP has a sample policy on pursuits?
A. They have policies for guidance, yes, sir, but I have never reviewed theirs.
Q. And -- but you can do it for free; right?
A. It's my understanding if you join, that's what you get when you pay your dues and become a member.
Q. Okay. Do you know whether the sample policy had -- for IACP or the Arkansas Association of Chiefs of Police require lights and sirens any time an officer is exceeding the speed limit?
A. I have not seen their policy, sir.
Q. Do you believe that those are good organizations?
A. Yes, sir.
Q. Okay. That they are a -- a resource that administrators or officers can go to on particular topics to get guidance; correct?
A. Yes, sir, for guidance.
Q. Tell me -- you know, obviously, you worked -- you described some of the work that you did with the Arkansas

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State Police and other law enforcement officers -- departments here in Arkansas when you were with the DEA. When you came in in January of 2015, what did you do to try to apprise yourself of, you know, how the Arkansas State Police is functioning?
A. I was briefed by the command staff. I also got a copy of their policy manual, reviewed their policy manual.
Q. Did you agree with their policy manual when you came in?
A. Yes, sir, I did.
Q. Okay. Is Captain Eremea -- Eremea, was he on the command staff?
A. No, sir, he's a troop commander. Command staff is mostly division commanders composed of majors and lieutenant colonels.
Q. Okay. Okay. And did you look at the training that was provided?
A. Yes, sir, I did when I first came, and, also, I instituted in-service training because in the past it didn't appear they had in-service training yearly.
Q. Okay. We've gone through trooper -- so from -- from your perspective, when you came in in 2015, now there is a yearly in-service?
A. Yes, sir.

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Q. You know that it wasn't prior to that; correct?
A. I think in the past they have. I'm not sure exactly what years, but when I came in, I don't think they had held a mandatory in-service training.
Q. Is in-service training required to maintain your law enforcement certification under Arkansas law?
A. Not that I'm aware of. You have to have so many amount of hours of in-service, like racial profiling and that. I'm not sure the exact number of hours, but we looked at it just prior -- our agency that we wanted in-service training.
Q. Well, I'm trying to figure out whether it was something you did above and beyond what you're required to do by law or whether it was something that was mandated by the state?
A. With my 43 years of experience, you know, training is very important. I mean, you're only as good as you're trained and that's my theory behind establishing in-service training.
Q. And I appreciate that answer. My question is, did you institute training that was -- meet the minimum requirements of what's required under in-service -- under law to maintain law enforcement certification or did you give additional training?
A. I stick to my same answer. We did it because of

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the law, and then also I felt it's very important that we train our officers.
Q. Okay. And let's talk kind of in general about running a police department. Obviously, the -- to run a police department, you would have to be -- you'd have to have some understanding of the laws that apply to police officers; correct?
A. Yes, sir.
Q. You'd have to -- in order to properly run it, you'd have to have certain policies that you want your officers to comply with; correct?
A. Yes, sir.
Q. Then once you have the policies, you want to train them to make them understand the policies and what you expect of them as law enforcement officers; correct?
A. Yes, sir, policy is always an ongoing.
Q. Right. I mean, you know, the policies we had in '76 are nowhere near what we have today; correct?
A. Yes, sir.
Q. And so you have -- you have to know the legal requirements. You draft written policies. You train them on them. Then you've got to supervise them; correct?
A. Yes, sir.
Q. Make sure that they are complying with the policies

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and the training; correct?
A. Yes, sir.
Q. And then if they do something wrong, you have to discipline them; correct?
A. Yes, sir.
Q. If you don't discipline somebody for a policy violation, does that send a message that they're allowed to violate that policy?
A. Generally, yes.
Q. Okay. Let's talk a little bit about what the laws were that are applicable to police officers on October 10th, 2016. All right. Is it your understanding that under Arkansas law officers were not entitled to exceed the speed limit unless they had their lights and sirens on?
A. It depends which statute you look at, sir.
Q. I'm just talking about -- you look at any statute. Here's my question. Okay. And I have all the statutes here, and we can refer to them if you want. I'm saying you're the head of the Arkansas State Police. Can an officer violate the rules of the road -- well, let me just take that back.
Can an officer exceed the speed limit without using their lights and sirens?
A. Yes, there are exceptions.

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Q. Okay. And what exceptions are there?
A. If it's an emergency call or you're in immediate pursuit.
Q. Okay. And where do you get that from?
A. I believe it's in -- or if you're on duty. I believe it's 202 and 204.
Q. Okay.
All right. You know the laws were changed in August of 2017; correct?
A. Yes, sir.
Q. Did you have any -- did you do any -- did you testify before the House or did you have a lobbyist testify before the House to have that law changed?
A. No, sir, I did not testify. We don't have a lobbyist.
Q. All right. All right. I'm going to give you a copy of 27-51-202 and -- what did you say, 204?
A. Yes, sir.
Can I go back to your last question, sir?
Q. Yes.
A. We did meet with some representatives and other -- like the police chief association and the sheriffs, but I don't recall testifying, but I do remember meeting with Representative Tosh.
Q. Tosh?

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A. Yes, sir.
Q. And you wanted to change the law to allow officers not to use lights and sirens while they were trying to catch up to a speeder; correct?
A. We just wanted some clarity because the current law was not clarity. There's not clarity between these two sections in my mind.
Q. Okay. Well, what did you do -- I mean -- okay. If you're saying there's kind of a decision or it's unclear, let's look at 202. Okay. And let's go ahead and mark one.
A. You want to mark them, sir?
Q. Yeah. Let's mark 202 76 -- or 77 and 204 78.
(Exhibits 77 and 78 were marked.)
BY MR. CLARKE (CONT.):
Q. Under Rule 202, it says, the speed limit set forth in this chapter shall not apply to authorized emergency vehicles when responding to emergency calls when the driver is operating the lights and sirens; correct?
A. Yes, sir.
Q. So under that -- under 27-51-202(a), it says you have to have your lights and sirens activated to violate the -- violate the speed limitations; correct?
A. Yes, sir.
Q. And what is an emergency call?

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A. An emergency situation I would say is like an accident with someone trapped inside or, you know, life or death situation or somebody is in serious or imminent danger of death or serious bodily injury.
Q. Okay. Would you agree that trying to stop a speeder is not an emergency call?
A. I would agree with that, yes, sir.
Q. Okay. And it also says even though you're allowed to exceed the speed limits while you're using your lights and sirens, it still doesn't relieve a driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons using the streets; correct?
A. Yes, sir.
Q. Okay. And it does say what -- so according to this statute, which is -- which only deals with speed limitations, you would have to have your lights and sirens on to violate the law; correct?
A. Say that again, sir.
Q. According to 57 -- 27-51-202, you have to have your lights and sirens on for the prima facie speed limits not to apply; correct?
A. Yes, sir, in this section.
Q. Okay. And if you want to look at 204.
All right. Where -- where is the -- where is -- where's -- is this what you're saying creates confusion?

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A. That and I believe there's another statute. Our policy refers to three different statutes in it.
Q. I've got them all. Do you want to look at the policy?
A. Yes, sir, please.
Q. Sorry. I didn't want to sneeze on you.
Which statute do you want? Vehicle use?
A. Yes, sir, please.
(Exhibits 9 and 10 were previously marked.)
BY MR. CLARKE (CONT.):
Q. These were previously marked as Exhibits 9 and 10.
A. It's on Exhibit 9, the second paragraph, Arkansas State Police vehicles should operate in compliance with all traffic laws. The officer driving an authorized emergency vehicle is only exempt from traffic laws when, one, responding to an emergency call or, two, in the immediate pursuit of an actual or suspected violator of the law, and it quotes Arkansas Code Annotated 27-49-109.
Q. I happen to have that for you. Let's mark this as the next exhibit.
(Exhibit 79 was marked.)
MR. CLARKE: I'm missing something here real quick.
BY MR. CLARKE (CONT.):

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Q. What statute are you referring to? What section and what policy are you referring?
A. Okay. We're -- the policy is General Section 23, Vehicle Use.
Q. Right.
A. If you look at the second paragraph.
Q. Right.
A. Okay. It refers to 27-49-109, and then Exhibit 79 you handed me, it says in paragraph (b), no driver of any authorized emergency vehicle shall assume any special privilege under this act except when the vehicle is operated in response to an emergency call or the immediate pursuit of an actual or suspected violator of the law.
Q. Okay. Well, let's look at 27-49-109, which we just marked as Exhibit 79. Do you have it in front of you?
A. Yes, sir.
Q. This statute only allows somebody to go through a red light or a stop sign; correct?
A. Yes, sir, it does.
Q. Okay. So 27-49-109 allows somebody to go through a stop sign or a signal when they slow down necessary for safety. All right. When they're -- and according to section (b) when on an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

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Do you see that?
A. Yes, sir.
Q. So this privilege or immunity only applies to intersections; correct?
A. Yes, sir. This reading of this statute, that's correct.
Q. Okay. If you go to 27-51-202, this applies to speed limits; correct?
A. Yes, sir.
Q. So in order to violate the prima facie speed limitation set forth in the chapter, you have to have your lights and sirens on; correct?
A. Yes, sir, in 202, that's correct.
Q. All right. These are not -- there's no -- there's no conflict between these statutes. They're dealing with different topics, correct, or different privileges?
A. I made reference to 204 below the other statute we discussed.
Q. All right.
A. Okay. In there it just -- it describes police vehicles on duty, which is very broad, except emergency -- maximum and minimum speed limits posted shall apply for all vehicles using the facility except authorized emergency vehicles on emergency trips such as police vehicles on duty.

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Q. Okay. What's an emergency -- that still doesn't -- an emergency trip, is that -- that's not catching up to a speeder, is it?
A. No, sir.
Q. Okay. So even under -- even under all these statutes, you would have to have your lights and sirens on when you're violating the law to catch up to a speeder; correct?
A. Or the immediate pursuit.
Q. Right. Well, in order to have a pursuit, you have to have somebody actually trying to run away from you; correct?
A. I think semantics on that pursuit means to turn around --
Q. It's not semantics.
A. Yes, sir.
Q. I mean, it's in your policy, you have to have --
A. Immediate pursuit. To me, I interpret that as -- an example, if you're going down the interstate and you meet somebody and you turn around, that's immediate. I mean, if you see an accident --
Q. That's not a --
A. In this case, it's not immediate.
Q. Okay. Let me ask you this.
A. Yes, sir.

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Q. It's not a pursuit. It's a traffic stop.
A. Yes, sir.
Q. You understand -- you're a law enforcement agent. You've been -- you've been a law enforcement officer longer than I've been a lawyer. You understand terms of art; correct?
A. Yes, sir.
Q. Okay. A pursuit is a particular definition; correct? Has a definition under the IACP, Arkansas Association of Chiefs of Police and by your own policy.
A. Well --
Q. Yes?
A. My definition of pursuit, just like I told you, the legal definition of police pursuit is when you have lights and siren when someone is fleeing from you and that is not the case in this case.
Q. Okay. All right. But any traffic stop -- every traffic stop is not a pursuit, would you agree?
A. Yes, sir.
Q. A traffic stop becomes a pursuit when the conduct of the person attempting to be pulled over changes and he tries to avoid apprehension; correct?
A. Yes, sir, attempts to flee.
Q. Okay. And then once he attempts to flee and the officer then attempts to follow him that becomes a

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pursuit; correct?
A. Vehicle pursuant, yes, sir.
Q. Okay. So the immediate pursuit would have to have the elements of a suspect who then takes action to avoid the police once they've been signaled to pull over; correct?
A. Yes, sir. Under that definition, yes, sir.
Q. Okay. What definition -- is that the definition that --
A. I think we're -- you and I are playing semantics. I agreed vehicle pursuit when someone attempts to flee. My saying if you turn around immediately on somebody to try to stop them for speeding, you're pursuing them, but it is not a pursuit.
Q. Right. It's -- it's an attempted traffic stop?
A. Correct.
Q. Okay. And attempted traffic stop is not a pursuit; correct?
A. Yes, sir.
Q. It is?
A. Attempted?
Q. Attempted traffic stop is not a pursuit?
A. Yes, sir, we agree on that.
Q. Okay. All right. So -- so you have these three statutes. One -- again, you still have to have -- under

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204, you have to have an emergency call or emergency trip; correct?
A. Yes, sir.
Q. And, again, none of these -- all these statutes don't relieve the authorized -- the driver of a vehicle from driving with due regard or protected from the reckless disregard of the safety of others; correct?
A. Yes, sir. These statutes and our policies state that, yes, sir.
Q. All right. Now -- so I'm going to ask it again. Under Arkansas law in October -- under Arkansas -- under your command in October 10th, 2010, could an officer violate the speed limitations without using his lights and sirens?
MR. JAMES: 2016.
MS. MERRITT: Object to form.
MR. JAMES: 2016.
BY MR. CLARKE (CONT.):
Q. I'm sorry. Let me ask that question. I gave the wrong thing.
On October 10th, 2016, could an officer of the Arkansas State Police exceed the speed limit while not utilizing his lights and sirens?
A. Only if they follow the exceptions.
Q. Okay. And tell me what those exceptions are.

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A. Again, emergency call or immediate pursuit of a violator.
Q. What -- what statute or section allows you to not engage your lights and sirens when you're on an emergency call exceeding the speed limit?
A. Repeat the question, sir.
Q. What exception allows an officer to exceed the speed limitation without lights and sirens?
A. Again, I believe it was the confusion or the general broad statement of the 204.
Q. Okay.
All right. You understand that in trials, there are -- jury instructions are given to give -- to give the jury an understanding of the law that they have to apply in any case; correct?
A. Yes, sir.
Q. Have you ever looked at the Arkansas Model Jury Instructions pertaining to emergency vehicles?
A. No, sir, I have not.
Q. It's AMI.
MR. CLARKE: Do you have extra copies?
MR. JAMES: Yeah.
MR. CLARKE: I need one to mark.
Do you have a stapler?
MR. JAMES: Does he have the book?

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MR. CLARKE: He has it. I'm sorry.
BY MR. CLARKE (CONT.):
Q. Let's go through -- this is the Arkansas Model Jury Instructions 2019 Edition, AMI 913, and we're going to mark -- here we go.
We're going to mark this as the next exhibit. What number is that?
MR. PRITSCH: 80.
(Exhibit 80 was marked.)
BY MR. CLARKE (CONT.):
Q. And this is entitled Emergency Vehicles - Special Privileges. Do you see that?
A. Yes, sir.
Q. It says under paragraph (2), One issue you must decide is whether an ambulance -- let's just use our stuff -- a police car was an authorized emergency vehicle at the time and place of occurrence. And it says, if you find that the officer was responding to an emergency call or in the immediate -- or in the immediate pursuit of an actual or suspected law violator and was operating the siren, bell, whistle and a red or blue rotating lights on a car that he was driving, then the authorized emergency vehicle -- was an authorized emergency vehicle and these particular exceptions apply.
Do you see that?

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A. Yes, sir.
Q. So according to this, even in the immediate pursuit or responding to an emergency call, you'd have to have on your lights and sirens; correct?
A. Yes, sir. It appears what that jury instruction says, yes, sir.
Q. And then it -- then it goes on through and it says there are certain things that they can -- privileges that they can be relieved of the obligation to obey the speed limit; correct?
A. Yes, sir.
Q. The requirement to -- not required to stop in an intersection; correct?
A. Yes, sir.
Q. Go to the next page, not required to stop at a railroad crossing; correct?
A. Yes, sir.
Q. And then the emergency vehicle has the right of way?
A. Over other vehicles, yes, sir.
Q. Yes, sir. Again, even if you comply with all these things, have your lights and sirens and you have these privileges, you still have to exercise ordinary care for the safety of others using the highway; correct?
A. Yes, sir.

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Q. Okay. So if this was the law -- if this is an accurate representation of the law, and there aren't any exceptions to exceeding the speed limit without lights and sirens; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: Could you rephrase the question, sir, or ask it again just to make sure I understand you?
BY MR. CLARKE (CONT.):
Q. Yeah. According to this, you have to have your lights and sirens on to exceed the speed limit; correct?
A. This jury instruction, yes, sir.
Q. Okay. What did you do -- if you thought there was some type of confusion between the law when you became director, what did you do to -- to make a determination as to what you were going to allow your officers to do?
A. I believe at the time I wasn't in depth in all the legal terminology. I depended on the policy when I took over as director, but once this came to our attention, that's when we decided to -- this came to the forefront to work with the legislature or something to get more guidance, more clearance.
Q. Well, you could -- there's two things you can do. You can ask the legislature to give you more ability to drive without lights and sirens or you can just flat out

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preclude your officers from doing it; correct?
A. I believe the way our policy is written, sir, ordinary care, no matter what -- any policy you look at concerning our vehicles, it's always ordinary care. That's the overriding factor.
Q. I understand. What are the purpose of lights and sirens?
A. As a warning device.
Q. To the public?
A. Yes, sir.
Q. Okay. Under what circumstances would it be ordinary care not to utilize those devices in your car when you're driving at a speed in excess of the speed limit or violating the rules of the road?
A. There would be certain circumstances. For example, a kidnapping. You get a report of a kidnapping, the vehicle passes you, and you don't want to alert the people. There are certain, I think, circumstances that do, but not in this case. I think I've made it clear or -- that this was not acceptable what Mr. Burke did.
Q. Okay. We'll get to that.
A. Yes, sir.
Q. All right. So under your example to catch a rapist or a kidnapper, you will allow your officers to not use lights and sirens to somehow not alert the person that

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you're trying to get to them?
A. Yes, sir, but, again, with the caveat the ordinary care is the ace of spades. If you don't drive with ordinary care, it doesn't matter what the exceptions are.
Q. Well, what I'm trying to get at, and we may just have a difference of opinion, is I don't think the law allows you to make that decision. Do you understand that? There are certain issues -- there are certain issues under the law that you have to follow, comply with; correct?
A. Yes, sir.
Q. And those are the laws that -- the laws that apply to emergency vehicles and emergency vehicle operations; correct?
A. Yes, sir.
Q. There may be circumstances where you want to violate that law for a greater good. Is that what you're saying?
A. No, sir. I think there's exceptions to the law that cover every single circumstance.
Q. Well, if you don't have your lights and sirens on and you're not going the A -- according to the AMI instruction, it doesn't matter. You can't -- you can't exceed the speed limit without having -- without violating the law; correct?

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MS. MERRITT: Object to the form of the question.
BY MR. CLARKE (CONT.):
Q. That's all right. When she objects to the form, you still have to answer.
A. All right. Yes, sir.
Again, you know, the answers I told you before, these are model jury instructions and in my experience in law enforcement, judges change the instructions. That's just a model jury instruction.
Q. All right. Well, it's also what 202 says; correct? That you can't exceed the speed limit unless you have your lights and sirens on; correct?
A. Yes, sir.
Q. And where you reference 40 -- 27-49-109 in your pursuit policy, that's -- that's just not an accurate statement of 27-49-109, would you agree?
A. This is the first time I've noticed it ever said the -- just for red lights/stop sign.
Q. Okay. So could you see how somebody could look at this and think that as long as they're responding to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, that they don't have to operate -- that they don't have to be in compliance with Arkansas traffic law?

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A. No, sir. In our policy, it says, the driver must determine whether the emergency equipment should be activated based on the totality of the circumstances while always exercising ordinary care for the safety of all persons.
Q. Listen, immediate pursuit of an actual or suspected violator of the law only -- I mean, are you suggesting that they should go back and read these statutes themselves to determine whether or not it's appropriate or they should rely on the policy as written?
A. That's -- we train them, sir.
Q. Okay. We'll get into the training.
A. Yes, sir.
Q. Do you contend there's any training in any of the materials that have been produced that talk about using the lights and sirens when going through intersections?
A. I know during the training from the PowerPoints, they discuss the statutes and ordinary care. Ordinary care is always stressed.
Q. Any of them discuss 27-49-109? We're going to --
A. I'd have to --
Q. We'll go through them all a little later.
A. Okay.
Q. I'll withdraw that question.
What I'm saying is the second paragraph of the

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vehicle use policy, which isn't even in the pursuit policy, does not say that that only applies to intersections; correct?
A. No, sir, it does not in this policy.
Q. Then it says that the officer deems it necessary to operate outside any traffic law, he must activate his lights and sirens?
A. Yes, sir, pertaining to the statute 202.
Q. No, it's not cited to the statute. That's the first line; correct?
A. Right. That's just -- if you're just taking the one sentence, yes, sir, that's correct, but if you finish the paragraph, the following sentence, that's where it refers to 202.
Q. Let's see what it says about 204. There's no -- there's no language of immediate pursuit in 204, is there?
A. I think the 204 refers to the last sentence must -- where it's based on totality of the circumstances while always exercising ordinary care.
Q. Okay. The officer driving an authorized emergency vehicle in the immediate pursuit is exempt from the posted speed limits. Is that referencing 27-51-204?
A. No, sir, I don't think it does.
Q. Okay.

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A. I think -- what I just told you, it's the last sentence.
Q. All right. So let's go back to the paragraph above it. If an officer deems it necessary to operate outside of any traffic law while operating an ASP vehicle, the officer must activate lights and sirens?
A. Yes, sir.
Q. Okay. Is that referring to 202?
A. Yes, sir.
Q. Okay. Why is the first line of the fourth paragraph not supposedly referencing 27-51-204?
A. I don't know, sir.
Q. Okay. Do you -- do you -- in looking at these and looking at the statute, do you see how this policy on vehicle use is not very clear?
A. It could be more clear, yes, sir.
Q. Have you made it more clear?
A. This never came to my attention until this situation.
Q. All right.
A. And if it was an issue that did not agree with it, we would have addressed it, but --
Q. All right. Do you think officers -- well, where is the exemption in any of the statute for the immediate approach of a violator for the purposes of initiating a

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traffic stop or situations where a silent response is appropriate or necessary? Where is that exemption given in the statutes?
A. I think it, again, being with an immediate pursuit.
Q. Okay. That's 40 -- 27-49-109; correct? There's no reference to immediate pursuit except in that statute, do you agree?
A. Yes, sir.
Q. Okay. So you're defining in general what the immediate pursuit is and that only gives you the authorization to proceed past a traffic signal or a stop sign; correct?
A. Paragraph (a) refers to the red -- or the stop signal, but the bottom it just says, in response to an emergency call, their immediate pursuit of an actual or suspected violator of the law.
Q. Right, but the only privilege it gives you in this statute is going through a red light or a stop sign; correct?
MS. MERRITT: Object to the form. Asked and answered three times now.
MR. CLARKE: I don't care.
MR. BRYANT: It would be my same response, sir.
BY MR. CLARKE (CONT.):

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Q. Excuse me?
A. I said same response, same way I answered your question before that this is the first time I became aware of this separate distinction.
Q. Okay. Well, let me ask you this in general. Of the investigations that you have to review, what are the majority of the types of complaints or investigations you have to do?
A. We have different kinds. We have what we call A files, B files and C files, and some of them are crashes. C files are crashes. You have misconduct violations and then citizen complaints, and then we have racial profiling complaints.
Q. Okay. Which is -- in general, what is the one that you have to deal with the most?
A. Probably motor vehicle accidents, yes, sir.
Q. Emergency vehicle operations; correct?
A. No, sir.
Q. You're talking about citizen crashes?
A. Any type of accident. If it's an avoidable accident and a trooper has a crash, it could be as simple as backing into his garage or doing something like that, then that's a policy violation, and we conduct an accident -- an OPS investigation.
Q. And there are no 10 codes that require somebody to

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call into dispatch and let them know they're operating above the speed limit; correct?
A. They're required to notify if they are in -- pursuing a fleeing vehicle.
Q. Right. My question is, there are no 10 codes that let the dispatch know that somebody is operating above the speed limits other than if they're in a pursuit?
A. Not that I'm aware of, sir, but I don't know all of our 10 codes.
(Exhibit 43 was previously marked.)
BY MR. CLARKE (CONT.):
Q. Okay. All right. Now, have you ever reviewed the in camera policy -- in camera -- this is previously marked as Exhibit 43. The in camera car policy?
A. Yes, sir.
What do you want me to do with these, sir?
Q. Okay. Let me see what we got. Let's put the new ones here. These are old ones. Is that okay?
What's the exhibit number at the bottom of that?
A. That would be Exhibit 43.
Q. Do you know -- according to the policy, the policy -- the cameras are supposed to be set up in a -- in a manner that the cameras automatically go on when the speed of the units exceed 99 miles per hour. Do you see that?

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A. Yes, sir.
Q. Do you know if the cameras are actually set up that way?
A. Yes, sir, I believe so to my knowledge.
Q. Do you -- do you review all -- all videos of troopers who have a video camera that's been activated for going over 99 miles an hour?
A. Our policy is our supervisors review three random videos per month for each officer and that's how we determine if the proper driving, things of that nature. If -- if they have their blue lights and siren on or in a pursuit, then all pursuits are reviewed, critiqued by the sergeant, the lieutenant, captain and division commanders.
Q. Okay. All right. And they only have to take out -- when they do an in camera -- when they do the three reviews per month, they just review one interaction with the citizen, not one whole tape of a shift; correct?
A. I'm not sure. I think they're random. I'm not sure exactly how each supervisor does it, but I know it's a random.
Q. Okay. Well, we have some audits, and we'll look at those later, but, obviously, according to the in camera -- in camera policy, it's important enough to set the camera to automatically record once an officer

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exceeds 99 miles an hour; correct?
A. Yes, sir, if no blue lights or sirens are on the vehicle -- or not activated.
Q. Well, it doesn't even say that, does it? I'm looking at the policy. The in car camera unit should be wired, and it says should be wired. Are you positive that they are wired that way?
A. To my knowledge, they are, sir, but, again, I'm not there when they install them or expert on the video system.
Q. They should be wired so the unit is automatically -- activated automatically when the emergency lights are turned on, that's one thing that the camera should go on, or, two, when the speed exceeds 99 miles per hour; correct?
A. Correct, or if the vehicle is involved in an accident, it activates automatically.
Q. Okay. Well, it was important when you had this video equipment to make sure that there was an actual tape of any officer going a hundred miles an hour or more; correct?
A. The policy -- again, this is when I took over as director, this was the policy.
Q. Okay. Well --
A. Repeat your question.

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Q. My question is, I mean, we write -- we write policies for things that are important to the department; correct?
A. Yes, sir.
Q. It's one of the reasons; correct?
A. Yes, sir.
Q. All right. It was important according to the in camera policy that the videos -- the video equipment went on whenever an officer with the Arkansas State Police department traveled at a hundred miles an hour; correct?
A. Correct, or without blue lights and siren, yes, sir.
Q. All right. And if it's important for the videotape to go on when that, wouldn't you agree that it's important to actually review every one of those tapes where an officer is driving at 99 miles -- over 99 miles an hour?
A. I don't think a supervisor would know that unless he reviews the tape. There's not an alarm or a tickler that shows. Just the tape automatically does that.
Q. Well, you acknowledge that traveling a hundred miles an hour is dangerous?
A. Yes, sir.
Q. Right. Would you also acknowledge there's no 10 code for calling in when somebody is driving not in a

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pursuit above the speed limit, and it's hard to make a determination as to how many times an officer is violating the speed limit. Would you agree with that?
A. We don't have a 10 code. No, sir, we do not.
Q. Okay. You don't have any way to check it other than looking at various -- looking at accidents or events that occur at a later time in making that determination; correct?
A. That's correct.
Q. All right.
A. At this time.
Q. All right. Did you -- when you came -- when you came in, were you -- were you made aware of any previous litigation or litigation concerns involving the Arkansas State Police?
A. Yes, sir. I was aware of one case, the Rhew case.
Q. Okay. And the Rhew case, that was somebody who was traveling at an excessive speed without lights and sirens; correct?
A. Without ordinary care, yes, sir.
Q. He didn't have on his lights and sirens?
A. Yes, sir.
Q. Are you defining ordinary care to require lights and sirens?
A. Again, just the exceptions, but the bottom line is

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the ordinary care is the ace of space.
Q. There are privileges in the law -- an officer has to obey all laws unless he's given some type of exemption; correct?
A. Correct.
Q. And then he's -- an officer can not just drive fast because they want to drive fast?
A. Yes, sir, absolutely.
Q. Okay. So when you say ordinary care, I'm not -- you know, everything requires ordinary care even when an exemption is applicable; correct?
A. Absolutely.
Q. Okay. I'm talking about the exemptions which give an officer the right to violate certain provisions of the law that would normally apply to them. Okay. So do you agree that -- well, I forgot where I was going. So let me just strike that.
All right. So --
Oh, the Rhew case. All right. So in the -- in the Rhew case, did you ever receive -- did you ever review the transcript of the Rhew case?
A. No, sir, I have not.
Q. Have you received -- reviewed the transcript of the Rhew case since this -- you haven't reviewed it since this litigation?

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A. No, sir, I did not. Not the transcript.
Q. All right. Do you understand what happened in the Rhew case?
A. I believe I'm aware of the facts of the Rhew case, yes, sir.
Q. Are you aware that a judgment was entered against the Arkansas -- State of Arkansas for his conduct for $3.3 million minus 10 percent comparative fault for a total amount of $2,970,000?
A. Yes, sir.
Q. All right. That's a big deal; right?
A. Absolutely, yes, sir.
Q. All right.
(Exhibit 40 was previously marked.)
BY MR. CLARKE (CONT.):
Q. Let me show you Exhibit 40. Are you aware that numerous -- well, let me -- all right. Did you talk to Hoyt about his deposition?
A. Hoyt?
Q. Hoyt, H-O-Y-T?
Hoyt was your training --
A. Oh, Ben?
Q. Yeah.
A. He is a sergeant in training, yes, sir.
Q. Well, he was the corporate representative.

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A. Yes, sir.
Q. Okay. Did you talk to him after his deposition?
A. No, sir.
Q. Did you talk to Mr. Downs after his deposition?
A. Yes, sir.
Q. Okay. Do you not understand that the transcript was a -- that Mr. Downs was questioned about the transcript?
A. Yes, sir.
Q. Did you read any of the depositions?
A. No, sir.
Q. Okay. If you look at -- we're going to go through the Rhew transcript. It's your understanding that the Arkansas State Police tried to terminate him, but his termination was reversed by the police commission?
A. Yes, sir. Let's make sure we're on the same page, that I was not the director at this time, and I'm aware of some of the facts, but the answer to your question is yes.
Q. Okay. Well, you became the director in 2015. You took over an organization?
A. Yes, sir.
Q. Okay. And you have to figure out something about the organization moving forward; correct?
A. Yes, sir.

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Q. You are aware of the Rhew case?
A. Yes, sir.
Q. And the Rhew case involved the improper operation of an emergency vehicle, would you agree?
A. Yes, sir.
Q. Now, there were numerous people who testified in this. If you go to page 100 -- 149, and the pages are kind of in between. You're going to have to -- this is Exhibit 40.
A. Are they in numerical order or not?
Q. They are, but, I mean, the page numbers are -- you see what I'm saying?
A. Yes, sir. Give me a second here.
What number did you want, sir?
Q. 149.
A. All right.
Okay. I'm there, sir.
Q. Did you know -- do you know who Colonel J. R. Howard was?
A. Yes, sir.
Q. Is he still employed by the Arkansas State Police?
A. No, sir. He's retired.
Q. All right. He said if Rhew was responding without lights and sirens on page 149, and he didn't have an accident, Rhew wouldn't have been terminated. Do you see

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that?
A. Yes, sir.
Q. Do you agree with that? That if officers are driving at a hundred miles an hour without lights and sirens that that's ordinary care and allowed under the law?
A. I would not agree with it, no, sir.
Q. Okay. If you look at page 150, Colonel Howard, who is the commander of three ASP divisions, testified he's exceeded the speed limit without lights and sirens. Do you see that?
A. Yes, sir.
Q. Is that improper?
A. It just depends on the amount of speed, sir. I mean, if --
Q. Okay.
A. Technically, if it's one mile an hour over, no, but, I mean, again, it all boils down to ordinary care.
Q. Does it also boil down to lights and sirens?
A. It depends on the speed. If it's two, three, five miles an hour, I would say no.
Q. Okay. Well, let's -- let's just deal with -- when I'm talking about speeds, let's say 90 and above for the purpose of my questions. All right?
A. Yes, sir.

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Q. All right. He said if he had 50 officers who responded to emergency calls without lights and sirens, he wouldn't fire them all. Do you agree with that?
A. Again, each situation is different, but my opinion, if it's not ordinary care, then they would probably be terminated or disciplined depending on the issue. Each separate case is -- you have to look at the totality of the circumstances.
Q. Okay. Let's look at page 178 -- or page 181. Troop -- ASP captain and troop commander Tommy Wicker, is he still with the department?
A. No, sir.
I'm sorry, sir. Did you say 178 or 181?
Q. 181.
A. 181.
Q. In that he said he found out Rhew did not have on lights and sirens, but he was not concerned. Do you agree with that?
A. No, sir.
Q. Page 182, troopers can exceed the speed limit without light -- troopers exceed the speed limit without lights and sirens every day. Do you see that?
A. Yes, sir.
Q. Do you know if your officers are still doing that today?

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A. No, sir. They should not be.
Q. Okay. But it -- they shouldn't have been doing this at that time; correct? It's the same policies?
A. Well, I think the -- let me rephrase that. Since taking over as director, I've implemented or met with each of the troopers and discussed this very issue if that helps you, but --
Q. All right. And this is a captain with the department. If you look at page 183, he recommended no discipline against Rhew; correct?
A. Yes, sir, he's the captain, but he's not responsible for the policies, no, sir.
Q. Right. Page 186, this captain testified that every trooper has driven at excessive speeds without lights and sirens. Do you see that?
A. What line are you referring to, sir? I see 186, but what --
MR. CLARKE: Do you have 186?
MR. JAMES: Right here.
BY MR. CLARKE (CONT.):
Q. Line at the bottom of -- lines like 10 through 15.
Hang on. I may have my cite wrong.
Let's just -- let me withdraw that question because I don't see where my cite. I must have written this down.

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If you go to page 186, line 18 through 20, we see that according to his testimony, everybody -- everybody -- every trooper has driven at excessive speeds without lights and sirens. Do you see that?
A. Yes, sir. I'm trying to determine who --
Q. It's Tommy Wicker.
A. All right.
Q. Where's my Rhew documents?
You see where he testified everyone he's known has driven at an excessive speed without lights and sirens?
A. Yes, sir, I see that.
Q. Is that proper?
A. No, sir.
Q. All right. And he testified that he would have -- everybody would have to be fired if they fired -- there probably wouldn't be anybody left if you have to fire everyone for traveling at an excessive speed without lights and sirens. Do you see that?
A. Yes, sir. That's Mr. Wicker's opinion, yes, sir.
Q. I understand, but this is the culture of the department that you took over. At least this was the culture in 2011; correct?
A. I would say that would be the testimony. I don't know about the culture, but that's Mr. Wicker's opinion, yes, sir.

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Q. Okay. We're having troop commanders, captains, colonels testify so far; correct?
A. Yes, sir.
Q. They would know the culture of the department, of the officers in the field; correct?
A. I'm reluctant on culture.
Q. You don't know what a culture is in all your training?
A. Well, I mean culture has different definitions, but I --
Q. Well, let's -- I'll give you a definition.
A. Yes, sir.
Q. Do you agree that certain departments develop a certain custom and practice of how things are done over time?
A. If it's not addressed, yes, sir.
Q. Okay. Well, I mean, we have policies here. I mean, you can have a custom and practice that is in violation of a written policy. Do you understand that?
A. Yes, sir.
Q. Okay.
A. But as a leader, it should be addressed.
Q. Okay. Well, you never addressed this?
A. Yes, I have. Yes, sir.
Q. Okay. We'll get to how you say you addressed it,

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but --
A. Yes, sir.
Q. At this time according to a captain and troop commander, you wouldn't have anybody left if you fired everybody who drove -- who drove at excessive speed without lights and sirens; correct?
A. Yes, sir, according to the transcript.
Q. All right. Captain Eremea -- Eremea, if you go to page 192 -- I'm sorry. Let's go back to 190.
A. All right.
Q. This is Sergeant Benny Cox. If you look at page 190, he said, if you fired troopers for driving over the speed limit, there would be a lot of openings. Do you see that?
A. Yes, sir.
Q. If they're driving above light -- the speed limit without light and sirens and not in conjunction with the exemptions here, if that's what they're doing, you need to have a lot of openings then; correct?
A. Back at that time, yes, sir. Again, that's Mr. Cox's opinion.
Q. Consistent with Captain Wicker and Colonel Howard, correct, so far?
A. Yes, sir, in certain aspects.
Q. All right. And then if you go to page 190 -- 192,

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Captain Eremea, do you know that he was an actual training officer on EVOC?
A. I was aware he was a driving instructor. At what time, I'm not sure what timeframe.
Q. Well, he was when -- we'll go through the lesson plans, but he was when Burke was there. That's an important position; correct?
A. Driving instructors, yes, sir.
Q. Okay.
A. Any instructor is.
Q. Right. And his -- is he still with the department, Eremea?
A. Yes, sir, he is.
Q. Okay. And -- and page 192, he says his top speed driving without lights and sirens would be 145 to 150 miles an hour. Do you see that?
A. Yes, sir.
Q. That's ridiculous, isn't it?
A. I do not approve of that, that's correct.
Q. And this is a man that was training the officers that you took over. Do you understand that?
A. At that time, yes, sir. He's not in that position any more.
Q. Well, I understand. He was the driving instructor. There are a number of officers who were instructed by him

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who have -- were instructed by somebody with incredibly cavalier attitude towards the responsibilities during emergency vehicle operations, wouldn't you agree?
A. Again, I wasn't there, but by reading this transcript, yes, sir.
Q. Okay. Let's go to Captain Rick Dickinson, page 203. He said if he had to fire every officer driving twice the speed limits without his lights and sirens, he'd have to fire himself and then every -- he would have to fire all troopers under his command. Do you see that?
A. Give me just one second and let me read it, sir.
Q. That's fine. If I'm moving too fast or if you need to take a break at any time, just let me know.
A. No, I'm just -- I'm just trying to catch up to you.
Q. Lines 13 through 19.
A. Okay.
Yes, sir, I see that.
Q. All right. Is that appropriate?
A. No, sir.
Q. Okay.
Let's go to assistant troop commander Robert Spears, page 218.
He agrees you wouldn't have any officers in his troop if you fire everyone who drove in excess of the speed limit without lights and sirens. Do you see that?

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A. Yes, sir.
Q. Again, that's not appropriate; correct?
A. No, sir.
Q. And if you had to fire everybody because they were violating that, that's what you have to do; correct?
A. State that again, sir.
Q. Okay. I mean, we're seeing a number of people in high levels of the Arkansas State Police who provided testimony pertaining to emergency vehicle operations in the Rhew hearing; correct?
A. Yes, sir, that's correct.
Q. Okay. And the ones that I'm showing you all seem to indicate that it's fine to drive in excess of the speed limit despite whatever policies are; correct?
A. That's their opinion, yes, sir.
Q. And that people would have to be -- we'd have to get rid of a lot, most, all of the troopers if we had to terminate people for that type of conduct; correct?
A. According to their opinion, yes, sir.
Q. Okay. And according -- do you have anything to dispute that their opinion about the practice of Arkansas State Troopers at this time is incorrect?
A. Again, sir, I wasn't there. I can't answer that question.
Q. I understand. A lot of these people were good

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officers, good troopers; correct?
A. I think some of them had disciplinary issues.
Q. We know air -- whatever his name is.
MR. JAMES: Eremea.
BY MR. CLARKE (CONT.):
Q. Eremea did; correct?
A. Yes, sir.
Q. All right. You go to Sergeant Lance Euley, page 230. Common practice for troopers to exceed the speed limit without lights and sirens. Do you see that?
A. Yes, sir.
Q. Got to be a reason to violate any speed limit, correct, or you have to have your lights and sirens on?
A. Okay. Ask your question pertaining to the transcript again.
Q. Well, let me just -- I apologize. I moved on, but with respect to the transcript, he -- he testified that it was common practice for troopers to exceed the speed limit without lights and sirens; correct?
A. Yes, sir.
Q. Again, that's not appropriate; correct?
A. That's correct.
Q. Okay. And if we go to pages 234 and -- 233 and 234, with respect to the testimony of Officer Philip Hydron, he was a training officer, and his testimony in

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233 to 234 is that the training was with respect to traffic stops that officers can speed to catch up to the violator, call in tags and find a safe location to stop and then put on your lights and sirens. Do you see the -- review those pages.
A. Okay, sir. Go ahead.
Q. I mean, he testified that he trains them that they don't have to put on their lights and sirens while trying to catch up to a violator and exceeding the speed of -- speed limit until they catch up to them and decide where they're going to pull them over; correct?
A. Some of the stuff I read -- do you have a specific line number you're referring to because some of this is --
Q. Let me see if I can.
At 233 starting at line -- line 10 and going on there, going down, saying they don't put on their lights and sirens to catch up with somebody, you know, trying to pull over somebody for a speeder until they pick a safe location prior to activating their lights. It goes down to 234, line one.
A. Yes, sir.
Q. Again, is that authorized under any of the statutes that we looked at?
MS. MERRITT: Object to the form.

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Object to the form.
MR. BRYANT: Generally, yes. I mean, I can't speak to the specific -- when those statutes were enacted and all that, but yes, sir.
BY MR. CLARKE (CONT.):
Q. So when I'm talking about a custom what I'm talking about is a practice that happens on a regular -- on a regular occurrence that is understood and looked at by supervisors. That's my definition of a custom or practice. Okay?
A. Yes, sir.
Q. Based on this, would you agree that there was a custom or practice at least at the time according to the opinion of the people who testified at the Rhew hearing that Arkansas State Police officers routinely drove above the posted speed limit without their lights and sirens and were not disciplined unless they were involved in some type of wreck?
A. Again, I was not the director, but reading the transcript, during that timeframe, yes, sir, it appears to be.
Q. Okay. And you agree that regardless of whether there's a wreck or not, the practice of driving above the speed limit without lights and sirens is dangerous?

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A. Yes, sir. Falls under ordinary care, yes, sir.
Q. All right. Well, when we get to the -- when we get to the policies and training, would you agree that there's -- it's -- emergency vehicle operations and pursuits, there's an obvious need to provide training on that?
A. And we have, yes, sir.
Q. Okay. And you can't train with respect to everything; correct?
A. It would be impossible.
Q. Right. But -- so you use your resources and funds to look at the things that can result in the most amount of liability or things that officers do on a daily basis; correct?
A. Yes, sir. And I have done that I believe.
Q. Right. And, you know, for firearms, you have four training sessions a year and a qualifying course; correct?
A. Yes, sir, that's correct.
Q. All right. There was no -- prior to you coming in -- you don't have to put that all together. I'll just put a thing on it.
A. I don't want to make a mess.
Q. That's okay.
A. Keep it organized for you. Are we through with it,

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sir?
Q. Yes. I was going to get -- I was going to get that out of the way for you.
All right. Now, what I was trying to get at is it appeared that according to the opinion of these officers who testified at the Rhew case, unless you were involved in an accident, it was fairly acceptable for officers to violate the law -- to violate the speed limit without using their lights and sirens; correct?
A. Just based on what I read on the transcript.
Q. Okay.
A. And, again, just a reminder, I was not the director then.
Q. Right. All right. Well, during the course of your OPS investigations, you found out that people testified that they didn't believe that they had to have their lights and sirens on when they were exceeding the speed limit; correct?
A. I'm not sure which OPS investigation.
Q. I've got them all. We'll go through them all.
A. Yes, sir, be glad to. I just -- one doesn't come to mind, but if I see that they violated policy in these driving violations, then I would do the appropriate discipline.
Q. What did you do to -- I think you said when you

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came in you looked over the policies; correct?
A. Yes, sir, all the policies of the State Police.
Q. You talked to the commander, the command staff; correct?
A. Yes, sir.
Q. And you talked to the training direct -- whoever does the training; correct?
A. We'd have a major over that, yes, sir.
Q. And he'd be part of the command staff?
A. Yes, sir, we have five divisions in the Arkansas State Police.
Q. Okay. Do you agree -- do you have any reason to dispute that officers were trained and serving still under your command that it was acceptable in an effort to catch up to a speeder to violate the rules of the road without lights and sirens?
A. Ask me that one more time.
Q. Okay. We took the deposition of Sergeant Hoyt that officers can exceed the speed limit while trying to catch up to a speeder without utilizing their lights and sirens?
A. As long as they do it with ordinary care, yes, sir.
Q. I understand that. Everything requires ordinary care?
A. Yes, sir.

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Q. Okay. I'm not trying to limit you. For every further question, you can put ordinary care at the end of everything. Okay. I'm not -- I'm just specific to that.
Do you know -- do you know why they trained them that it was acceptable to exceed the speed limits without lights and sirens which provide a warning to the public when they're trying to catch up to a speeder?
A. The only way I know to answer that is at the time when we did our first in-service training, I was not really aware of that, but I knew that we had the Rhew case, and when I took over, they said the appropriate training, they've gone troop to troop going over the policies, and -- but, again, as we go through the deposition, you'll see where I addressed every -- every member of -- commissioned officer in the State Police on several occasions about using lights and sirens.
Q. What did you -- what did you tell them?
A. I told them that if you exceed the speed limit, use your lights and siren. You must drive with ordinary care. First of all, a speeding ticket is not worth dying over yourself or killing an innocent citizen, but if you ever want to call off anything, you will never be challenged by the command staff. It's always ordinary care.
Q. Right. I understand that. Did you tell them that

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there is any times when they can drive without their lights and sirens prior to the enactment of the new law when exceeding the speed limit?
A. Again, I wasn't really aware of it until after the first of the training session of driving. And I made it clear -- to me, I made it clear coming from the colonel of the State Police that you are going to use your lights and siren.
Q. Okay. Did you -- my question is did you say there are any exceptions or exemptions from utilizing your lights and sirens when exceeding the speed limit?
A. Just the exceptions in the policy. I mean, I didn't tell them that. They know what the policy is.
Q. Right. Well, the policy says immediate pursuit and that's not what the statutes say; correct?
A. To the clarity today --
MS. MERRITT: Object to the form.
MR. BRYANT: To the clarity today, I always thought that it was immediate pursuit.
BY MR. CLARKE (CONT.):
Q. That only applies to intersections. Do you agree with that?
MS. MERRITT: Object to the form.
STPHAOF: I think it was red lights or stop signs. Yes, sir.

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BY MR. CLARKE (CONT.):
Q. Right. Now, how much do you -- well, are you ready to take a break for a second because I think I'm going to move on or do you want to go?
A. You got five minutes for a bathroom break?
MR. CLARKE: Yeah, yeah, yeah.
MR. BRYANT: All right. Thank you.
(The deposition recessed at 10:35 a.m. and reconvened at 10:49 a.m.)
BY MR. CLARKE (CONT.):
Q. We took a little break there, and, again, if we need to take a break at any time, let me know.
A. Yes, sir.
Q. Before we kind of move to the next section, which is going to be policy, when you came in, you knew about the Rhew case; correct?
A. Basic knowledge, yes, sir.
Q. Okay. And when you talked to your command staff, you discussed the issue of emergency vehicles; correct? Was that an important topic for you?
A. Well, they -- they said they had taken measures after the Rhew case, and just general knowledge even when I was with DEA and then taking over the State Police, I would see the troopers, and if they were exceeding the speed limit, if I obviously saw them, they had their

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lights and sirens on, yes, sir.
Q. Okay. Well, I mean, you're not going to testify in court --
A. I can't be -- I can't be everywhere, no, sir. I'm just telling you from what I observed, yes, sir.
Q. And what you observed is different from what the commanders and captains and sergeants testified to at the Rhew hearing; correct?
A. That was back in 2011, yes, sir.
Q. In 2011, but do you have anything to dispel that that was the custom and practice of how troopers operated at the time that you came in in 2015?
A. If you're basing it --
MS. MERRITT: Object to the form.
MR. BRYANT: Again, I answered it before. It was 2011. That was where the captains who testified, yes, sir.
BY MR. CLARKE (CONT.):
Q. But here's my question. My question is, we've gone through the Rhew transcript; correct?
A. Certain parts, yes, sir.
Q. Right. We've gone through their testimony about the conduct of officers violating the speed limit without lights and sirens; correct?
A. The ones that testified, certain officers did, yes,

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sir.
Q. Right. That what they testified to you don't think is appropriate; correct?
A. That's correct.
Q. Do you have anything to say that that was not the custom and practice in 2011 when they testified?
MS. MERRITT: Object to form.
MR. BRYANT: Again, I wasn't there. That would be a difficult question to answer.
BY MR. CLARKE (CONT.):
Q. Well, I'm here. If you're going to testify that I know something, there was some change that happened, I need to know that now before you testify at court.
A. Right. I know that after the Rhew case, just being on the outside, I would see troopers with lights and sirens on if they were exceeding the speed limit. That's -- that's what I personally observed.
Q. Okay.
A. After the Rhew case.
Q. Okay.
A. Before -- prior coming to being the director.
Q. Okay. When you became the director in January of 2015, other than your general observations of troopers when you saw them, do you have anything -- any evidence or facts to support that the custom and practice

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testified to by the captains and sergeants in the Rhew hearing was not the custom and the practice at the time you took over?

A. From the commanders and counsel, they said the issues of lights and siren were addressed pertaining to the Rhew case, and -- and if they were exceeding the speed limit, they -- they were using their lights and sirens.

Q. And what did you tell them would happen if -- you know, the Rhew case was a significant case; correct?

A. Yes, sir.

Q. It resulted in the death of a citizen; correct?

A. Yes, sir.

Q. Are you aware of any Arkansas -- are you aware of any other incidents other than traffic where Arkansas has killed somebody and been sued?

A. No, sir, that's the only one I'm familiar with.

Q. Okay. And this one. We have another one that occurred in this case where somebody was killed during an emergency vehicle operation; correct?

A. Yes, sir, 2016.

Q. Right. And so as far as the litigation history, this is the most important litigation problem for the Arkansas State Police, correct, at least by what's been filed?

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A. Are you talking about this current case here or are you talking about the Rhew case or --

Q. I'm talking about any of your knowledge of the -- I'm trying to figure out, you come in, what are you trying to prioritize? I mean, you find out what we've been -- I would figure litigation was something you wanted to find out about; correct?

A. Yes, sir.

Q. And the litigation -- the death cases involved emergency vehicle operations. Were there any shoot cases that you're aware of where you were sued?

A. No, sir, not that I'm aware of.

Q. Okay. All right. So I'm trying to --

MS. MERRITT: I'm sorry. Let me just interpose an objection. You are consistently saying emergency vehicle operation which has a very specific legal definition.

MR. CLARKE: You can object to the form. You can object to the form and answer the question.

MS. MERRITT: I'm going to object to the form of you characterizing these cases as emergency vehicle operations because they're not.

MR. CLARKE: All you have to say is form.

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It's a speaking objection. You know that's not appropriate.

BY MR. CLARKE (CONT.):

Q. But -- so you knew it was an issue. You were told that they tried to address it after Rhew; correct?

A. It had been addressed, yes, sir.

Q. All right. Did you do anything else to find out that the situation with the largest litigation, largest case against the Arkansas State Police were police driving, did you do anything else to confirm that it was addressed?

A. Met with my command staff and I took their word at it.

Q. Have you ever gone to the Arkansas State Police emergency vehicle operations training yourself?

A. Yes, sir, I have.

Q. When did you go?

A. I believe it was April, 2016.

Q. All right. Was that by yourself or was that with a class?

A. No, sir. Again, when I took over, we started in-service training. My first training was on driving. It started in December of 2015 and went through, I think, late April or May of 2016. That's the first of three driving trainings in service we've had since I've been

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the director of the State Police. It happened to be the first one I attended.

Q. Okay. So you actually went to that. Was that training appropriate to you?

A. Yes, sir, I believe so. That we -- we -- again, I believe you have the PowerPoints in discovery, went through that and actual -- went out and did the emergency driving at the Stuttgart airport.

Q. Okay. Well, most of that in-service training dealt with the actual physical operation of the vehicle and not classroom training; correct?

A. We had classroom training.

Q. Of three hours and eight hours on the track; correct?

A. Yes, sir.

Q. Okay. Let's -- let's go through policies here. I put Exhibit 10 and 11 --

A. Did you need 43 back, sir?

Q. Yeah, put that at the bottom.

A. Okay.

Q. Would you agree that any department to be adequately run needs to have some type of policy on emergency vehicle operations and pursuits?

A. Yes, sir.

Q. Okay. And what are the difference between law

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enforcement section policies and general section policies?
A. That is the setup prior to my becoming director, but --
Q. I just want to know the distinction.
A. I think a general can apply to all employees, both law enforcement -- again, this is the -- a novice kind of definition, but general applies to both commission and civilian, where law enforcement applies strictly to law enforcement.
Q. Okay. And when you discipline somebody or you do an investigation, you cite the sections of the policy that you're looking at; correct?
A. Yes, sir.
Q. Okay. So we have General Section 23 called Vehicle Use, which applies to all Arkansas State Police employees; correct?
A. Yes, sir, that's correct.
Q. And we've gone -- we've gone through this some, but the first paragraph -- well, the first paragraph deals with everybody should use ordinary care; correct?
A. Yes, sir.
Q. All right. Then we talked about -- the second paragraph, it looks like the first four paragraphs deal more with emergency vehicles; correct?

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A. Yes, sir, that's correct.
Q. All right. And have you ever looked at a -- when you were reviewing the policies, did you ever look at any other type of policies to see whether or not these policies were adequate?
A. No, sir, I did not. I felt -- I had confidence in command staff and our counsel that they were the appropriate policies. If I saw any -- during the review or any incident occurred, you know, policies are always changing, but, initially, we got there, I did not review other policies.
Q. Do you know any -- DEA didn't have a pursuit policy; correct?
A. Yes, sir, that's correct.
Q. All right. You were a member of the Arkansas Association of Chiefs of Police and International Association of Chiefs of Police; correct?
A. Only for the last two to three years, yes, sir.
Q. Were you at the time of the events? At the -- of the accident?
A. Yes, sir.
Q. All right. I want to mark --
A. I had just joined.
Q. I'm going to mark as the next exhibit, 82 --
MR. PRITSCH: 81.

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MR. CLARKE: 81. I'm sorry. I saw --
(Exhibit 81 was marked.)
BY MR. CLARKE (CONT.):
Q. What I'm going to show you, you can print off the -- I just never -- you had -- you had no experience at the time that you came in in dealing with an emergency vehicle operation or pursuit policy; correct?
A. As far as with DEA, it did not apply. We were mostly undercover agents, things like that. I did have some -- my initial uniform service in 1976 to '84, but, again, that was a different time, decades ago.
Q. I would venture to say they didn't have a pursuit policy or an EVOC policy back at that time?
A. I think you're correct.
Q. All right. So do you know of any department anywhere that has two separate sections on emergency vehicles and pursuits as part of their policies as opposed to having them all in one section?
A. I have not really looked at other departments. I know each agency has different policies and the way they set up. Some call general orders, some of them call different things.
Q. Okay. But here is -- this is -- this is a model policy put together by the Arkansas Association of Chiefs of Police that also complies with the CALEA standards.

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Do you know what CALEA is?
A. Yes, sir.
Q. And according to this, this has a whole bunch of definitions in it. Do you know why your vehicle use policy has no definitions in it?
A. No, sir. I do not know why it does not.
Q. Do you think it would be better?
A. It depends on what area.
Q. Okay. Like what is an immediate pursuit, what is an emergency call, things like that?
A. Policies can always use more clarity. I agree with that, yes, sir.
Q. All right. I mean, according to -- according to these ones, we have -- we have definitions for emergency operation. We have definitions for what -- do you have codes -- codes on your emergency calls like severity?
A. You have different 10 codes, like accidents with injuries or blocking traffic. There are different 10 codes, yes, sir.
Q. What would you consider an emergency call under your policies under the 10 codes?
A. I'm not that familiar with the 10 -- I can't sit here and cite you every -- what every 10 code is.
Q. Do you know what the code -- do you go by code three, code two, code one, anything like that?

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A. I've never heard code two, code threes or anything like that.
Q. Do you see the way that this is set up, it has a number of definitions that would pertain to emergency vehicles and pursuits, that that would be helpful to officers to understand the policy?
A. In this model policy, yes, sir, but some of these things are addressed in other policies of the State Police, but it's not all under one section.
Q. Okay. Well, this is vehicle pursuits and emergency operations. Are you saying that there's other policies other than your two policies that deal with pursuits and emergency vehicle operation?
A. No, sir, but you -- some definitions here were deadly force, precision -- or PITs, secondary unit -- PITs. We have our own section for that, different sections address different things. It's not all included in one policy.
Q. Okay. Well, that's in the use of force policy; correct?
A. Yes, sir, I think. I'd have to look at the policy to refresh my memory.
Q. But PITs are also in the pursuit policy; correct?
A. I believe so. Let me double check before I answer that, sir.

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Q. Look at the last page.
A. Yes, sir.
Q. All right.
All right. And this -- this model policy has a bunch of different -- a bunch of different ways where you can put in what's important for your department, for example, less restrictive or more restrictive policy. Do you see that?
A. Yes, sir.
Q. Is there any reason why you wouldn't when you came over and had really no experience with pursuits, why you wouldn't look to agencies or resources like the Arkansas Association of Chiefs of Police or International Association of Chiefs of Police to get you an understanding of what is required in modern policies?
MS. MERRITT: Object to the form.
MR. BRYANT: At that time, again, the command staff and our counsel, and we had a policy person at that time that dealt with these issues, and I would have to defer to them if they did contact. I don't know if they did contact IACP or what their procedure was.
BY MR. CLARKE (CONT.):
Q. Okay. We've gone through the rest of the vehicle -- vehicle use policy already at the beginning.

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Just the first page applies to emergency vehicle operations; correct? The rest deals with other aspects of vehicles?
A. Yes, sir, that's correct.
Q. Okay. The pursuit policy, if you go to the next policy, there's a definition of pursuit; correct? Vehicle pursuit?
A. Yes, sir.
Q. Or pursuit?
A. Yes, sir, second paragraph.
Q. And a pursuit only happens once an officer is signaling the vehicle to stop and then the suspect disregards the attempt to stop the vehicle; correct?
A. Yes, sir.
Q. You can not be involved in a pursuit if you can't see the car; is that correct?
A. According to the definition of vehicle pursuit, if someone is fleeing and you're signaling them to stop, yes, sir, that's correct.
Q. Well, that's your definition; correct? That's the definition you adopted?
A. Yes, sir.
Q. Okay. Anything in -- in the pursuit policy that allows you to be involved in a pursuit without lights and sirens?

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A. No, sir, not in this definition of a vehicle pursuit.
Q. All right. And I think the last -- the last policy that we dealt with is in car cameras, and despite the fact -- let me move that one out of the way.
A. Yes, sir.
Q. Despite the fact that the policy requires the camera to go on automatically at 99 miles an hour, there is no policy provision that any time that is activated that a tape is reviewed; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: Again, sir, we have no tickler, no alarm system that the supervisor will know that.
BY MR. CLARKE (CONT.):
Q. You could -- you could have a policy that says you must report when you exceed the speeds of a hundred miles an hour without your lights and sirens; correct?
A. You could, yes, sir.
Q. And it's important enough to set your video equipment that way; correct?
A. Yes, sir.
Q. Why is not important enough that once you set the video equipment in that manner to actually review what you set it for?

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A. That would be a change in policy we could make and determine or other things that we're looking at also could be able to address. For example, GPS on our modems that if a vehicle exceeds a certain speed limit, it will alert the supervisor. So we are exploring those ideas.
Q. Okay. Well, and you could do it with -- I mean, you don't need technology to do it. You can make the people have to actually fill out some type of report; correct?
A. You could. It's a possibility, yes, sir.
Q. You'd want to know all the circumstances where your troopers are traveling at a hundred miles an hour without lights and sirens; correct?
A. It would be helpful just as any other violation of policy. I mean, we would want to know what those policy violations are.
Q. Well, this violation of policy -- somebody driving at a hundred miles an hour without lights and sirens, which were designed to warn the public, that type of policy violation if you don't enforce it could result in very significant injuries; correct?
A. Well, we would enforce it if we were aware of it.
Q. Right, but what I'm trying to get at is you can make a choice. You look -- you looked at the policies. You saw that we have a camera that's set up to

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automatically go on at 98 or a 100 miles an hour; correct?
A. Yes, sir.
Q. Did you then say, well, what do we do with that?
A. We did the reviews by the supervisors.
Q. The reviews don't require them to look at -- the reviews require them to look at three events per month. They don't require them to look at or even be reported when they exceed the hundred miles an hour without lights and sirens, which is important enough that it's placed in the in camera use policy; correct?
A. Yes, sir. Again, this was set before I got there, but I agree with that, yes, sir.
Q. Okay.
A. We could improve our policy.
Q. I mean, the thing is, when there's a crash, it's hard to get away -- you're going to be notified when there's a crash; correct?
A. Yes, sir.
Q. It's hard to cover up a crash; correct?
A. Yes, sir.
Q. It's a lot easier to cover up your improper driving because you can't be out there all the time following each officer around; correct?
A. Yes, sir, I have 500 and something officers, 500

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plus officers. I can't be in the car with them every --
Q. How many are on the -- how many officers are on the road?
A. Usually general area depending on retirements and different things around 383 uniformed patrol officers.
Q. Troopers?
A. Yes, sir.
Q. Now that you look at this now, is that something you're going to institute?
A. Yes, sir, you brought that up. Again, we -- things we've explored concerning our driving is the GPS where it would send a signal if the trooper car exceeded a certain speed limit where we determined. We said 85. Then their supervisor and division commander would receive an E-mail. So that way we're able to inquire about the speed.
The other things that we've done is some would come in there, we -- we're building a driving track. We have acquired over a hundred acres at Camp Robinson. We have built a skills pad, and we are getting bids now for the asphalt for the driving track. So there's things I've implemented here, again, because driving is an important part of our job.
Q. Well, driving -- hitting the track doesn't help them one way or the other as to whether or not it's

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appropriate to drive a hundred miles an hour without lights and sirens; correct?
A. I think it does teach judgments on how to take corners, do different things, but, again, we have classrooms for that. We'll have a classroom at the driving track, yes, sir.
Q. We are going to go through all that.
A. Okay.
Q. I don't believe that the training is -- I'll just withdraw that.
You said -- I asked you before if you got involved with the lobbying or, you know, the passage of 27-51-905 that occurred in August of 2017, and first you said no, and then you said at some point you did have some conversations with certain representatives of people; correct?
A. Yes, sir, I took your lobbying by like do we have a lobby firm that we contract with and that's why I came back and corrected it.
Q. Right. And I ask bad questions, so I appreciate that.
A. All right.
Q. Why did you get involved?
A. I think it's as far as clarity, the issues we discussed before, and we see what other states did. And

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it was pretty much modeled after the State of Oklahoma. You've seen other states who enacted legislation that's proper, that's -- that's what we used or looked at.
Q. Okay. Were you involved in any of the specific language? Did you discuss it, review it, have comments on it? For example, you don't have to have your lights and sirens on to obtain evidence of a speeding violation?
A. Again, I think it was just modeled after the Oklahoma law.
Q. I don't know the Oklahoma law, but if --
A. If you pull it, it's the same exact language I believe.
Q. Okay. Oklahoma doesn't, I believe, allow liability for high speed pursuits at all, but was there -- was there a reason why you wanted the law to be changed to allow officers to not have to have their lights and sirens on to obtain evidence of a speeding violation?
A. Again, it was strictly basis of Oklahoma law --
Q. Okay.
A. -- to give -- to give more clarity to an officer to address those issues when there might be a kidnapping or different things of that nature. There were several elements to that.
Q. All right. Let's go to training.
A. Are we through with these? Do you want to take

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these or you want me to hold on to it?
Q. I'll get rid of them for you.
A. All right.
Q. I apologize. There are so many documents in this case.
Have you gone through the training that Trooper Burke received in this case?
A. Yes, sir.
(Exhibit 23 was previously marked.)
BY MR. CLARKE (CONT.):
Q. Okay. What I'm going to show you has been marked as Exhibit Number 8. The first thing is Exhibit Number 23. Did you attend the Arkansas chief -- State Police training program?
A. No, sir, not in 2011 I did not.
Q. Okay. Have you been through the whole training academy at any time?
A. No, sir, I have not.
Q. Okay. So you don't -- if I ask you -- if you looked through that exhibit, can you tell me how much training was provided on emergency vehicle operations?
A. I could look through it, but, again, sir, I wasn't director then.
Q. This Exhibit 23.
A. Okay.

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According to the syllabus here, it would be 40 hours it appears.
Q. Okay. And is that enough?
A. You never get enough training no matter.
Q. Based on everything that you know now is it enough?
A. Depending on what the curriculum was and then plus we drive every day. So I equival that -- you know, every day we're behind the wheel.
Q. We're talking about emergency vehicle operations. We're not talking about defensive driving.
A. I'm talking about just operation of a vehicle, but yes, sir, 40 hours, we can always use more I would think.
Q. Okay.
A. This is just the initial in the academy, yes, sir.
Q. All right. Have you -- do you still have -- have you done any changes to require additional training with respect to EVOC since you've been chief?
A. I know when I first came they had sent the driver instructors to Georgia, but, again, depending on the command staff, the ones who oversee training that do the curriculum, but it is reviewed by our counsel to make sure we're in compliance with -- with our policies and laws.
(Exhibit 8 was previously marked.)
BY MR. CLARKE (CONT.):

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Q. Okay. All right. Well, this is the basic curriculum. If you then look at Exhibit Number 8, this is the lesson plan. And this was actually what was produced in discovery that said this was Burke's EVOC file. So if you look at the -- the lesson plan is two pages. The first page it has objections -- objectives; correct?
A. Yes, sir.
Q. Does anything talk about when to use lights and sirens in the objectives?
A. Not specifically that. It talks about understanding liability issues.
Q. Would you agree that any reasonable officer would know that improper conduct during the course of driving to -- could result in liability?
A. Ask me that one more time, sir. Repeat your question.
Q. Do you believe that any reasonable officer in Arkansas should know that conduct during the course of driving could result in liability issues for him or the department?
A. Yes, sir.
Q. All right. So the first two pages out of the lesson plan and then starting -- there's numbers at the bottom, ASP961. This is kind of a more specific

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syllabus. Do you see that?
A. Yes, sir.
Q. If you look at it, it looks like we have 10 objectives, and almost all of these deal with the proper manner in driving a vehicle; correct?
A. Objection number 10 addresses the consequences of civil liability.
Q. Okay. All right. Other -- okay. So the one through nine. Now, you understand with respect to training, there are two aspects of training with respect to emergency vehicle driving, one being the physical operation of the vehicle, the handling of the car, that type of thing, and then the philosophy of being involved in emergency vehicles, when to use it, how to use it, what you -- what are you required to do?
A. Yes, sir.
Q. Do you agree with that?
MS. MERRITT: Object to form.
MR. BRYANT: Yes, sir.
BY MR. CLARKE (CONT.):
Q. Kind of like shooting a gun, we have qualifications where you have to hit a target every -- every -- you know, once a year, and then you have additional training on when it's appropriate to use deadly force; correct?
A. Yes, sir.

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Q. Okay. And with respect to -- there's never been a shooting under your command; correct? Or --
A. That's not correct, no, sir. We've had.
Q. Let me rephrase my question. It was a bad question.
There's never been an unjustified shooting or shooting that you were sued about?
A. That's correct, sir.
Q. Okay. You have been sued under your command for emergency vehicle operations; correct?
MS. MERRITT: Object to form.
MR. BRYANT: To my knowledge, it would be this one case, yes, sir.
BY MR. CLARKE (CONT.):
Q. And you are aware of a previous one that resulted in a significant judgment when you came on; correct?
A. Yes, sir, that occurred before me. Yes, sir.
Q. Were you aware of any other police shootings that resulted in any type of liability with the Arkansas State Police prior to your command?
A. Not that I'm aware of. It might have occurred. I don't know that.
Q. And I understand. That's fair.
Now, with respect to shooting, you require your officers to train quarterly; correct?

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A. Yes, sir, and qualify. You've got to qualify once a year annually by statute.
Q. Well, that's by statute, and you also have to -- you have to go to other quarterly training sessions; correct?
A. Yes, sir, to do different types of shooting.
Q. Right. Prior to -- you don't know what -- well, you were told before -- or when you came in, you started making annual in-service training; correct?
A. Yes, sir, on different topics. Yes, sir.
Q. You don't require any type of training on a quarterly or yearly basis with respect to emergency vehicle operations or pursuits; correct?
A. The only way I know to answer that is three of my four years here, we've had driver training, yes, sir.
Q. When did it start?
A. The first one would have been -- we talked about in December of 2015 through April or May of 2016. The second one was in September for the command staff. We had -- at Camp Robinson we had some driver training there where we had a lady come in from Chicago. Her two daughters were killed by an Illinois state trooper. We discussed those issues, and then again recently, we just had another driver training for the corporals and below.
Q. Okay. All right. So if we go through this real

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quick, objective one, objective two, objective three, objective four all deal with the physical operation of a vehicle; correct?
A. Yes, sir.
Q. And if you look at that, there were an hour and 30, two hours and 30 minutes of training; correct?
A. Yes, sir.
Q. Then objective five, they had a classroom instruction for 30 minutes on the use of the PIT maneuver and another objective six, 30 minutes on the use of spike strips; correct?
A. According to the syllabus, yes, the lesson plan.
Q. So an hour -- 30 minutes on PIT. 30 minutes on spike strips. And then objective number seven, it looks like that's, again, being on the driving track for 30 hours doing various operations to show that you know how to handle your car; correct?
A. Yes, sir.
Q. Then it looks like there's another hour on demonstrating the PIT and another half hour on demonstrating the spike strips; correct?
A. Yes, sir.
Q. So according to this -- and then you have one hour on recent court cases concerning police crashes?
A. Yes, sir, under objective number 10.

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Q. Okay. So in the academy according to this syllabus, you only have one hour of the 40 on EVOC that deals with the consequences of improperly engaging in pursuits or emergency vehicle operations; correct?
A. It refers to civil liability in the operation of police vehicles, yes, sir.
Q. Okay. We just go through this. Part of this deals with on the track stuff. We're looking at page 966 through 968. Those are the various courses that they have to go to to show their driving skills; correct?
A. It appears to be. Again, I wasn't here, sir, but, yes, sir, that's what it appears to be.
Q. All right. Then it looks like there was an in-service done according to this in 2012. When you instituted EVOC training, was that recommended to you or did you think that having the last in-service in 2012 was -- was not sufficient?
A. I felt, again, that we should have mandatory in-service training to address issues. You're only as good as you're trained and that's why I implemented it, for driving and for other -- active shooter, different subjects that we've had to address.
Q. Well, do you give more training on active shooting than EVOC?
A. No, sir.

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Q. Okay. Well, we'll see.
Is it your understanding when you came on the last in service they had was in 2012?
A. I understand it had been several years. I'm not sure of the exact date.
Q. Do you have any reason to dispute that?
A. I have no knowledge. I have no reason not to dispute it.
Q. Okay. If you look at page 917, they make a comparison. I'm sorry.
This is the PowerPoint from -- from that in-service training. Have you ever heard of the comparisons between emergency vehicle operations and firearms and what's more dangerous?
A. Yes, sir.
Q. Emergency vehicle operations are more likely to cause harm or injury if done properly -- improperly; correct?
A. I think emergency vehicle or just pure accidents or being hit and struck by a car. We lose a lot of law enforcement officers to car accidents or being struck by vehicles, yes, sir.
Q. You understand this is an EVOC in service?
A. Yes, sir.
Q. Okay. We're not talking about defensive driving

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and car wrecks. Are you aware of any analysis or comparisons between injuries and deaths and damage caused by improper use of emergency vehicle operations or pursuits versus firearms?
A. Yes, sir.
Q. And there are more people injured or killed in emergency vehicle operations than the use -- by the use of police firearms; correct?
A. I know the numbers are high. I'm not sure if they exceed. It depends if you look at the stuff -- the Web sites or information I've seen, it divides it with they were shot by fire in the line of duty or killed in a -- by a motor vehicle accident, but the numbers are high.
Q. Okay. What I'm trying -- and I'm not -- I'm not trying to hide things.
A. Right.
Q. What I'm -- here's what I'm getting to. All right. Here's where the rubber meets the road. Based on everything we know about emergency vehicle operations and pursuits, don't you think that a substantial amount of training, policy, writing and supervision has to be done with respect to EVOC higher than any -- almost any other law enforcement activity?
A. It's an important critical area I would say, yes, sir.

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Q. What is more important?
A. Again, you've got firearms training and things of that. Again, legal training. I mean, it's so much being a law enforcement officer that you're responsible for, but I would consider that a critical area and that's why I implemented driving training when I came.
Q. Right. And you took over what you had, so you had -- was that a priority to you?
A. The safety of my employees and the public is always a priority.
Q. Okay. What I'm trying to get at is did you make any distinction, differentiation, I need to do more fire arms training first, EVOC has to be the most important? I'm trying to figure out what you prioritized as a chief.
A. Again, safety of my officers, safety of the public. We do a lot of driving, so that's why I went with driving first.
Q. Okay. And, again, if you look at the last two slides on it, it says, when is the last time you fired your weapon in the line of duty? When is the last time you had firearms training? If we -- if we deal with that with the Arkansas state pursuit, that would be at least three months ago; correct?
A. Ask me that again, sir.
Q. All right. They're talking about -- I'm looking at

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the slide of 971, the bottom left.
A. Okay.
Q. All right. It's making a comparison of the need of EVOC versus firearms. Do you see that?
A. Yes, sir.
Q. And they're making the point that most officers hopefully don't have to shoot their gun in the line of duty; correct?
A. Yes, sir.
Q. And -- but they then note that despite the fact that you may not have fired your gun in the line of duty, there was training, according to the Arkansas policies that you took over, that they had it four times a year. Three times a year and qualifying; correct?
A. Yes, sir.
Q. Okay. And then -- and then they -- the next slide shows when the last time you've driven your -- your vehicle in the line of duty and when is the last time you had EVOC training.
A. Yes, sir.
Q. You see that?
Does that kind of indicate that the disparity in training seems to -- that EVOC needs more training?
A. During this frame, I mean, that's the purpose, I guess, the State Police back then had the in service.

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Q. And do you know when they had it prior to 2012?
A. No, sir, I do not.
Q. And they didn't have it after 2012 till you implemented it; correct?
A. Not the way -- not that I'm aware of, sir. No, sir.
Q. Okay. If we go to page 973, you understand that with emergency vehicle operations, kind of like critical incidents where at the top the very first slide, that, you know, with critical incidents, you have split second decision making?
A. Yes, sir.
Q. You know, just like use of firearms; correct?
A. Yes, sir.
Q. And that's why you train; correct?
A. Yes, sir.
Q. And then we go down and they look at the bottom two slides, it's -- according to the trainers in 2012, they noted that Captain Travis Yates from the Tulsa Police Department talked about the percentage of training that's done to driving skill set versus decision making. Do you see that?
A. Yes, sir.
Q. And he said in the past that the training was 75 percent skill sets and 25 percent decision making;

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correct?
A. Yes, sir.
Q. And the next slide says that these kind of -- and he says according to this slide that that type of training is not working.
I'm sorry. Go back to -- go back to this slide.
A. Yes, sir.
Q. It says, according to Travis -- Travis Yates, 75 percent skill set, 25 percent decision making is not working; correct?
A. Yes, sir. According to Travis Yates, yes, sir.
Q. And according to the EVOC policy, the EVOC lesson plan that you had, more than 32 hours was out on the track, and you only had, what, one -- one hour of, you know, liability issues; correct?
MS. MERRITT: Object to the form.
BY MR. CLARKE (CONT.):
Q. On the lesson plan?
A. Yes, sir, according to the lesson plan.
Q. And then the next slide said, we are not crashing the units because of how we drive. We are crashing because of decisions that are made that put us in the decision -- put us in that situation to begin with. Do you see that?
A. Yes, sir.

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Q. And he said the Arkansas incidents of the Arkansas State Police reinforce that policy. Do you see that?
A. Yes, sir.
Q. Do you have any reason to dispute that that is still what the Arkansas accident incident reports show today?
A. I agree with some of it, but I don't agree with -- because we do crash. We're not driving safe or using ordinary care and crash, then -- or negligent, then we're -- you know, that's a bad decision, but, also, you can be involved in a crash just because of the way you're driving. If you're driving reckless, you could -- you can be involved in an accident.
Q. The slide says EVOC training.
A. Yes, sir.
Q. It says the accident incidence of the Arkansas State reinforce this theory of Travis Yates; correct? That it's not working?
A. Yes, sir, this is what the slide says from that timeframe.
Q. All right. And then go to the next page, 974, and it says, EVOC training, we need to reverse the priority, especially as it relates to in-service training for incumbents. You need 75 percent on decision making versus 25 percent the skill -- the skill set. Do you see

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that?
A. Yes, sir.
Q. Do you agree with that?
A. Again, my prior statements, we could always use more training, yes, sir.
Q. Well, this is a different evaluation of the resources that are provided in training. For example, in the lesson plan, you'd have 30 hours in the classroom on decision making, and 20 -- and 10 hours out on the track; correct?
A. Yes, sir, that's correct --
Q. Okay.
A. -- according to this.
Q. Do you have any reason to dispute that that is the proper way to train or should be the proper way to train?
A. Again, I go back to my statements, you can always use more training. Whether it's on track or judgment, you have to make those determinations.
Q. All right. Well, this is what the Arkansas is training people; correct?
A. Yes, sir.
Q. And they --
A. And prior to me being director, yes, sir.
Q. And since you've become director, you haven't made this change that was identified in and trained to

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officers in 2012 since you've been chief?
A. I have made changes, yes, sir.
Q. You haven't made a change to train them 75 percent on decision making and 25 percent on skill sets, have you?
A. Again, this is the first time I've ever seen this syllabus today. I was not aware of this, but we implemented our driving training. We implemented what I thought would be the proper amount of training to make us better drivers.
Q. You don't really have a resource or a backing to make these determinations about pursuit training because you didn't have a pursuit policy?
A. We have a pursuit policy, sir.
Q. No, I'm talking about when you came in. This information was available to you when you were director, correct, what we're going through, if you wanted to look at it?
A. I've never seen it, but I had never had -- have seen this document.
Q. Well, I understand. I mean, you can either look at the stuff or you can delegate the responsibility; correct?
A. I depend on our command staff, yes, sir.
Q. Right. And did anybody tell you that back in 2012,

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we identified a need to make a switch in our EVOC training to more decision making?
A. No, sir, I was never advised of that.
Q. Okay. That's what these slides say though; right?
A. These slides, yes, sir, that you show me.
Q. Should you have been told that?
A. Any improvements in training I should have been told, but I was not made aware of it.
Q. Okay. But -- and you have no backing in EVOC policies prior to becoming a director. You have no -- you have no pursuit policy or EVOC policy when you were with the DEA; correct?
A. We did not engage in pursuits with DEA, that's correct, sir.
Q. Okay. So, I mean, when you come in, this is why it's not a brand new topic to you. I mean, you were not in a position to have to draft them, interpret them and implement them with your officers; correct?
A. That's correct, sir.
Q. So -- but you didn't do anything other than rely on the people; correct?
A. Yes, sir. They're -- they're experts. They've been here the longest and I depend on them.
Q. Well, they were experts in 2012, and they told -- but they said the training needs to be different, and

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they talked about when's the last time you had EVOC training and when's the last time you had shoot training, and they talk about Travis Yates' analysis that shows the way that EVOC's been done is not working; correct?
A. According to this document, yes, sir.
Q. Okay.
A. Again, it was never brought to my attention. This is the first time I've seen this.
Q. And the slides then say this is -- this is the experience of the Arkansas State Police, too; correct?
A. Yes, sir.
Q. And then so -- the EVOC portion is the first one, two, three, four, five -- five pages of this PowerPoint; correct?
A. Can you tell me what page number you're looking at, sir?
Q. 971 to 975.
MS. MERRITT: I have a question. So the date in the upper right corner says May 25, 2018, but what is your -- the date that this was provided?
MR. CLARKE: It says -- the first slide says Arkansas State Police EVOC In-service 2012.
MS. MERRITT: 2012. Thank you.

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MR. CLARKE: This is all part of a combination of documents that was produced as the EVOC file.

MS. MERRITT: Yes, sir. Thank you.

MR. BRYANT: Okay. You're saying from 971 to 975?

BY MR. CLARKE (CONT.):

Q. 974, yeah.

A. I think it includes some on 976 talking about speed and reaction time I would think, but, yes, sir, I pretty much agree with that.

Q. Okay. Who did you rely on with respect to the analysis that EVOC training was appropriate and fixed after the Rhew incident? What people in particular in case I need to depose them?

A. I think the command staff or counsel.

Q. Mr. Downs?

A. Yes, sir.

Q. Do you know anybody who was in charge of training or who on the command staff that would have been?

A. I knew Captain Kenny was in training when I was there, when I first came there. I'm trying to remember who the major was at that time. I believe it was Stan Witt was the major.

Q. What?

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A. I believe Stan Witt was the major over training and the division commander.

Q. All right. Let me look -- going back to the beginning of Exhibit 8, do you see who the trainers were for Officer Burke's class?

A. Yes, sir.

Q. Okay. Captain Eremea?

A. Eremea, yes, sir.

Q. Eremea. He was on it, and you saw his testimony in the Rhew hearing; correct?

A. Yes, sir. You showed that to me today.

Q. Does that trouble you that in 2011 when he gave that testimony he was actually a trainer, a driving trainer?

A. Yes, sir, that would trouble me as the director.

Q. Would you -- would that make you question whether they received appropriate training?

A. Hindsight, yes, sir, I would.

Q. Okay. 977 to 978 to the top of 979, that deals with spike strips and PIT maneuvers; correct?

A. And pursuit tactics, yes, sir, and policy.

Q. Okay. Anything in this policy -- and this is how they produced it. I know it's hard to read. Anything in this training that you can look at that says you have to engage your lights and sirens when exceeding the speed limit?

A. I can't -- I can't read it.

Q. Well --

A. Do you have a better copy or --

Q. This is what they produced to me.

We'll just go on. It says what it says.

I mean, you didn't see that training, but looking at this training now, does it cause you any concern about whether or not when you came in you were fully apprised of the -- of the training and circumstances -- well, let me take that back.

Now that we've looked at Burke's training, the 2012 in-service training PowerPoint, and you've seen the Rhew hearing testimony, does that cause you any concern about whether or not officers were properly engaging in emergency vehicle operations, pursuits? That's my question.

MS. MERRITT: Object to the form of the question.

MR. BRYANT: Again, the people who testified in the Rhew thing that I looked at were captains. The only one I saw above the rank of captain was Colonel Howard, and he addressed it himself that he -- you know, that was his decision not to do that. But, again,

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those people -- and these trainings are no longer at the State Police or have been removed from any -- any managerial decision making policy of the State Police since I've been become director.

BY MR. CLARKE (CONT.):

Q. That's not my question. Does it cause you concern?

A. Yes, sir, it would have.

Q. Okay.

A. If these people were still here in those positions when I took over.

Q. Well, they were in positions there. I mean, if -- if Captain Eremea --

A. You're getting better at it.

Q. If Captain Eremea -- all his training is suspect based on his testimony; correct?

A. I don't think it's in line with the State Police, especially my lines as director since I took over.

Q. And that -- and if you remove him from his training position and put him in administration stuff, you still have to take the next step and make sure that the people he trained were properly trained; correct?

A. Yes, sir, I believe they were from what I've been advised by my command stuff and reviewing the policies and the training curriculum.

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Q. Well, in the Rhew case, they said it -- there's nothing in here that says you have to drive with your lights and sirens when exceeding the speed limit, does it, in any of the training?
A. I can't -- I can't read it in this one, no, sir.
Q. Okay. And to be fair from 985 to 986, it's very -- well, I'm sorry. That's a different -- there's policy change things that are hard to read --
A. Uh-huh.
Q. -- from 979 to 982.
Did you see any in this in-service any discussion on liability?
A. I think you've got me confused. Which PowerPoint are we on?
Q. I'm sorry. I apologize. The 2012 one starting at 971.
MS. MERRITT: You want to take break, and you can try to read the whole thing so you can answer his questions?
MR. BRYANT: I'm fine. Just repeat your question for me one more time.
BY MR. CLARKE (CONT.):
Q. My question is, do you see anything in here that talks about liability for driving without lights and sirens?

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A. Not on the slides that I can read. Again, I can't --
Q. Okay. And I understand that, and to be fair for the record, it looks like 979 to 982 that we have some policy change issues that are hard to read.
Do you have -- is there a way to get a copy of this in different slides?
A. I don't know. We'd have to check.
MR. DOWNS: It's not used any more, so I don't know. I think that -- that was what I was given, so --
MR. CLARKE: Okay. Well --
MR. DOWNS: I don't know.
MR. CLARKE: If you could look into that just so we can read it.
MS. MERRITT: I mean, I wonder if I got a magnifier -- I have a little magnifier in my office.
MR. CLARKE: Okay. Why don't we --
MS. MERRITT: Take a quick break.
MR. CLARKE: -- take a -- take a quick break? Now, you can review it. I don't want you to discuss it with your lawyer.
MR. BRYANT: Oh, no, sir, I just want to be able to read it.

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MR. CLARKE: I agree with it.
MR. BRYANT: In all the interest of fairness, I want to be able to read it.
MR. CLARKE: I'm trying to be fair to you, too. I was trying to tell you what you couldn't read, but if you have a magnifier.
MR. BRYANT: I guess we're all getting old and can't read, so --
MS. MERRITT: Well, and then a whole -- I mean, really he told you he has not seen this before, and there are pages --
MR. CLARKE: He also said he reviewed the Burke's training. So, I mean, I'm not -- did you not say you reviewed -- this is what's produced as Burke's training.
MR. BRYANT: I'm talking about since I've been director that we -- that I went through the course in 2016, not this. No, sir, this is the first time I've ever seen this document.
MR. CLARKE: Okay.
MS. MERRITT: Let me go get my magnifying glass.
MR. CLARKE: All right.
MS. MERRITT: Take a break.
(The deposition recessed at 11:46 a m. and

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reconvened at 11:53 a m.)
MR. CLARKE: We can go back on.
BY MR. CLARKE (CONT.):
Q. What I'm asking you to see if there's anything in those PowerPoints that deals with lights and sirens or civil liability?
A. No, sir. From the ones I can read, I didn't see any of that.
Q. To be fair, we'll try to get -- we'll try to get better copies if we can.
But those deal with the policy changes, and we've gone through the policy; correct?
A. Certain aspects of it, yes, sir.
Q. Well, the policy --
A. Are you talking about vehicle use or pursuit policy? Which?
Q. Both policies, but what are the policy changes they're trying to say in that PowerPoint?
A. Well, the ones I could read, it talks about definition of vehicle pursuit, official vehicle, and that's about all I can make out of it.
Q. Okay.
A. Primary units, secondary units.
Q. Okay. Well, let's -- we'll go on. If you need to take a break, let me know.

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A. No, I -- just looking through this, you kind of get your head hurting a little bit.
Q. It looks like a Magic 8-Ball.
A. It does.
Q. All right. And then if we go to -- and I think I can -- I can do better for you. There's got -- nobody picked up a big stack of documents and moved them, did they?
Then it looks like -- no. All right.
All right. If you -- if you look at Exhibit 8 and we go -- I want to try to talk about the Exhibit 8. It should be in there.
A. All right.
Q. At the end there's some training certificates if you go to the last page.
A. All right.
Q. And I know this, again, is hard to read. Is this the -- this is in service -- 2015 in service, and it was apparently -- according to -- I have better copies somewhere, it was April 18th to the 20th of 2016 is when Brian Burke went. Is this the in service that you initiated?
A. Yes, sir.
Q. And according to that, there were a number of different topics from meeting the colonel, healthy

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life-style, and it has three hours of EVOC training; correct? EVOC classroom --
A. From what I can read. Well, EVOC training eight hours. It looks like class -- I can see room.
Q. It's EVOC class.
A. EVOC classroom three hours.
Q. Okay. Again, that's not using -- that's not reversing -- it's doing better, but it's not reversing the percentages recommended by the 2015 -- 2012 in service; correct?
A. According to the Captain Yates, yes, sir.
Q. And according to what Arkansas State Police trained its officers pertaining to Captain Yates; correct?
A. Correct. We improved about 300 percent, but it still -- you can still need more training.
(Exhibit 37 was previously marked.)
BY MR. CLARKE (CONT.):
Q. Okay. And it -- you looked at -- this was identified as the PowerPoint that went with that. It's Exhibit 37. And what I want you to do is look at -- does that one have -- let me see this for a second.
A. Number 37.
Q. Yeah. Mine has -- actually, let me give you this one.
Again, it starts off with the same type of stuff

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comparing guns to emergency vehicles; correct? The first four or five slides?
A. Yes, sir.
Q. It talks about how accidents can be avoided, takes training and awareness on the next slide; correct?
A. Yes, sir.
Q. The objection -- the objectives talks about being familiar with the policies on pursuit and vehicle use and civil liability in pursuits and regarding U.S. Supreme Court decisions. Do you see that?
A. Yes, sir, I'm on that page.
Q. Okay. You went through this training yourself?
A. Yes, sir, I did.
Q. Okay. Then the objections is -- the next page deals with a lot of the driving things and the PIT maneuver; correct?
A. Yes, sir.
Q. All right. Then it goes through 27-51-202, and it looks like according to this, you're supposed to operate your lights and siren; correct?
A. Yes, sir.
Q. According to this training?
A. Yes, sir.
Q. And then it talks about 109, the statute that we dealt with that allows you to go past stop signs and

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red -- stop signs and red lights, correct, pertaining to just that aspect?
A. Yes, sir.
Q. It says -- what are my --
A. 37.
Q. All right. It goes through civil liability pertaining to -- do you know what Graham v. Connor is -- deals with?
A. Is that the case in West Memphis? I'm not sure which case that is off the top of my head.
Q. Do you know what the Fourth Amendment is?
A. Yes, sir.
Q. What is the Fourth Amendment?
A. Unreasonable search and seizures.
Q. What's the Fourteenth Amendment?
A. It could be a lot of things I think.
Q. It's right there, but --
A. Yeah.
Q. Civil rights?
A. Different things I believe.
Q. Due process.
A. Violating someone's civil rights, due process, yes, sir.
Q. Okay. What's the Eighth Amendment?
MS. MERRITT: Object to the form. Come

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on.
MR. BRYANT: Off the top of my head, I don't -- I don't know.
BY MR. CLARKE (CONT.):
Q. Okay.
A. Excessive violence. I don't know. I'd have to review.
Q. You're not aware what Graham v. Connor? Was that a use of force case?
A. I believe it was.
Q. Okay. Lewis v. Sacramento, do you know what it is?
A. Not off the top of my head, no, sir.
Q. Okay. It's civil liability for constitutional violations under the Fourteenth Amendment.
Then if you go a couple slides down to the slide on decision making.
Next one.
Were you aware that prior to taking this training, the physiological changes that a body experiences during the course of emergency vehicle operations?
A. Yes, sir. Being a former police officer, I'm aware of your adrenalin.
Q. Okay. Those -- when you have those things without proper training and supervision, you can make bad decisions; correct?

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A. You could with training and experience, yes, sir.
Q. All right. And so there's a section in this PowerPoint on civil liability and decision making. Then we get back into vehicle dynamics; correct?
A. Yes, sir.
Q. The remainder of this PowerPoint other than the use of -- well, from -- these are pages -- these aren't numbered. Most of the remainder other than use of forcible stops and PIT maneuvers deals with vehicle dynamics and the actual driving of a car; correct?
A. Yes, sir, I believe so.
Q. Anything in here talk about -- other than just parroting the statute, which I believe you thought was unclear, any kind of information about using lights and sirens other than just pointing to the statutes?
A. If you notice on the driving certificate, meeting with the colonel, that was the very first hour, and I believe in discovery we turned over my notes to you on exact --
Q. I have those.
A. -- exactly I covered, and that's where I address lights and sirens to every class to begin the class to make it clear that if you exceed the speed limit, use your lights and siren.
Q. Okay. I have those.

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A. Yes, sir.
Q. We're kind of going through them in a timeframe.
A. Yes, sir.
Q. Anything in this other than just the actual language of the statute that talks about -- in this particular in-service PowerPoint about when to use light and sirens?
A. These -- I think these are like -- lack of better words, it's not an actual transcript of what the instructor did. These were talking points, and they expounded on each of these points.
Q. What did they say? You were at the class. What did they say about 202?
A. They talked about lights and siren.
Q. Okay. What did they say?
A. When you're on a emergency call, and they talked about reckless disregard or ordinary care.
Q. Right. So according to this, do you have to have your lights and sirens on every time you exceed the speed limit?
A. On this slide, yes, sir.
Q. Well, is that -- according to the whole training?
A. Let me see if you have the part.
They talk about 109.
Q. Okay. That allows you to go through intersections.

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A. Right.
Q. Did you not, when you went through that training, realize when they put that slide up there that the immediate pursuit of a emergency call that's referenced in the policy only applies to intersections or --
A. No, sir, I didn't get it at the time. No, sir, I didn't realize that at the time.
Q. All right. So would you say that it wasn't adequate or the distinctions and the differentiations between -- between when you have to use lights and sirens and what the -- what the policies say, were they discussed?
A. Again, I refer to, you know, my first hour there. I think it made it clear coming straight from the director that we'll use lights and siren. I mean, I didn't -- the two didn't connect at the time, no, sir.
Q. Did you -- did they go over the policy there?
A. Yes, sir.
Q. In this training?
A. Yes, sir, they did.
Q. Okay. Was there any discussion of what an immediate pursuit means or what a silent response is?
A. I remember that, yes, sir. No, sir, not that I recall. I mean, nothing specific sticks out in my mind --

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Q. Okay. So you can't have --
A. -- that we -- we talked about it.
Q. You can't have a silent response if what you told them is they have to have their lights and sirens on every time?
A. But there -- again, there are certain -- there was no -- that's why we made it an effort to clarify because there are certain situations you just can't cut your lights and siren on everything.
Q. I mean, what you're saying is you want more exemptions from the law. There is a law that you have to comply with; correct?
A. We want clarity.
Q. Okay.
A. And I think our troopers know that this is not a free ticket to drive as fast as you want.
Q. Well, according to the way that the testimony was in the Rhew case, it was.
A. Well -- but that was back in 2011. That's not back when I was the director of the Arkansas State Police in 2015.
Q. You've gone over numerous -- we're going to get to the OPS files.
A. Yes, sir.
Q. But what I'm trying to get at is did you change

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your policy once you told them to say that there is no immediate -- there is no immediate pursuit that allows you to exceed the speed limit just going through the -- going through the red lights or stop signs?
A. Today is the first day I realized the difference sitting here with you.
Q. And that's a problem, isn't it?
A. Well, I depended on my command staff. If I knew that and aware, we would have corrected it.
Q. All right. Well, Eremea is with -- was the training person for Burke and that's who you had out in the field. Did you know if there was anything that was given to Burke when he was out in the field that would dispel any of the fact that you have to use lights and sirens every time you're exceeding the speed limit?
A. I addressed every trooper, went to every troop at headquarters and everybody in this in service that Mr. Burke participated, so he was aware of -- of my statements.
(Exhibit 36 was previously marked.)
BY MR. CLARKE (CONT.):
Q. Let me show you what's been marked as late Exhibit 36.
This is a portion of -- I don't have another copy.
This is a portion of what was late filed

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Exhibit 36, which is a supervisory training material where supervisors went to training school. Did you go to this training?
A. No, sir, I did not.
Q. Okay. And as we review the ASP crash and pursuit statistics and review the current training on pursuits, you see that? I'm on the second page.
Does it discuss future training?
A. Yes, sir.
Q. You never went to any of this?
A. No, sir, I believe this was -- I want to say for first line supervisors, but I'm not positive.
Q. Well, don't you think maybe everything we know about pursuits, you should have gone to this?
A. Again --
Q. Or emergency vehicle operations?
A. I believe our training staff and command staff is responsible for doing this. I can not attend every -- every training, but I depend on my command staff to make sure this is appropriate.
Q. Well, they didn't -- they didn't tell you about the need to flip flop the percentage of training from 2012 to the present, have they?
A. No, sir. Again, we could always use more training on different things and we're looking at things,

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purchasing driving simulators, different things.
Q. If you go through these, I mean, are patrol accidents, whether emergency vehicle operations, pursuit or routine driving, one of the biggest liabilities that you have?
A. Driving is a liability, yes, sir.
Q. Okay. It looks like, you know, they go through with the supervisors the numbers of patrol accidents, and it looks like in 2016, roughly about 25 percent the officers were at fault?
A. Which slide are you on, sir?
Q. I'm on 2051. 2016 there were, you know, between 100 and 120 -- about 110 accidents?
A. Yes, sir.
Q. About 20 -- 20-something percent were at fault?
A. Yes, sir.
Q. In 2017, there were between 120 and 140 and still about a little over 20 percent at fault.
A. Yes, sir.
Q. And it looks like 2018, they're doing better at 141 accidents, but less than 20 percent -- less than 20 at fault; correct?
A. Yes, sir.
Q. All right.
Okay. If you go to page 2057, again, this tells

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you what -- it's the same slide, just the language of 27-51-202, then 27-49-109. Do you see that?
A. Yes, sir.
Q. I mean, the language is just flat out out there. Anybody could see the way the policy was written is -- is not in complete compliance with these statutes; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: I would have to answer for myself, I did not make that connection of the red light versus the speed.
BY MR. CLARKE (CONT.):
Q. All right. And -- but this was given in the 2012 and the 2015/16 training and supervisors; correct? A lot of people that could have seen it?
A. Correct.
Q. All right.
Then they talk about civil liability. You understand there's different type of civil liability, one under the Constitution and one under state law; correct?
A. Yes, sir.
Q. You understand that the standards are much higher to prove a constitutional violation than a -- than an incident involving a vehicle under state law; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: I'm not experienced enough to

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answer that question unless you want to ask it again. Maybe I can understand what you're saying.
BY MR. CLARKE (CONT.):
Q. Is it your understanding of the constitutional law that the same standard applies to an Arkansas negligence action?
A. Yes.
Q. Okay. So was Trooper Burke negligent in his driving on that day?
MS. MERRITT: Object to the form.
MR. BRYANT: Yes, sir, I believe he did not drive with ordinary care and he was negligent.
BY MR. CLARKE (CONT.):
Q. All right. Do you think that his driving at roughly 117 miles an hour moments before the crash in a 45 mile an hour zone was a cause of the accident and death to Miss Braun?
MS. MERRITT: Object to the form.
MR. BRYANT: As any accident, there's fault on both sides, but, again, my answer would be he did not use ordinary care and was negligent.
BY MR. CLARKE (CONT.):

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Q. Well, is your answer also going to be that his negligence was a factor in the wreck?
A. It was one of the contributing factors, yes, sir.
Q. Would you say it's the primary factor?
A. It's what I say, it would be a contributing factor.
Q. Okay. Well, if you come to court and you're not going to testify that -- that it was -- it was a primary or secondary factor. You're just going to say a factor; is that correct?
A. Yes, sir. I think that's what the purpose of the trial is is to determine what the comparative fault is.
Q. There's no comparative fault in constitutional violations, but --
Did you see -- you reviewed the tapes, didn't you?
A. Yes, sir, I have.
Q. Did you see anything based on your review of the tape what little is shown of the vehicle that Miss Braun was in that showed that she was negligent?
A. Just from the tape alone, no.
Q. Right.
A. But I've reviewed the Hot Springs Police Department report also, yes, sir.
Q. All right. Did you review the -- well, we'll get to that.
That's all we got on that.

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(Exhibit 33 was previously marked.)
BY MR. CLARKE (CONT.):
Q. I'll give you late filed Exhibit 33. This was a -- materials that were contained within the Arkansas Driving School with respect to emergency vehicle operation. If you look at the numbers at the bottom, do you know why in emergency response driving they don't even discuss -- it's on 1465 and 1466 -- 27-51-202?
A. This is the first time I've seen this.
Q. All right. If you go to 1467, according to this training document, when an officer is driving 35 miles an hour in a 25 mile an hour zone and strikes a bicycle, a finding of negligence would properly result since a reasonable person would not have been exceeding -- driving in excess of the speed limit. Do you see that?
A. Yes, sir.
Q. Was Burke at any time engaged in emergency driving under your policy?
A. No, sir.
Q. So part of your training deals with the different type of people -- go to 1471 -- that could be drivers. They talk about the egotist, the over emotional, the rationalizer, the show off hotdog. Do you see all that?
A. Yes, sir.
Q. Would you agree that the testimony in the Rhew

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thing indicated that these officers were not driving as -- well, I'll just move that. I'll move on.
Go to 475.
Up at the top, it says, traffic collision experience by law enforcement drivers is almost three times greater than the collision experience by non-law enforcement drivers. Do you agree with that?
A. Generally, yes, sir.
Q. All right. And, again, when you're trying to put together your -- you know, use your funds in a way to deal with the most important things, emergency vehicle driving and pursuits is up at the top of the list; correct?
A. Yes, sir, if the funding's available.
Q. All right. Let's get off training. I think we're done with that.
A. Give these back also, sir?
Q. Yeah.
All right. Let's talk about the Burke incident, the Burke driving.
Give me those requests for admissions.
All right. Would you agree at all times that Officer Burke was acting under his authority as a law enforcement officer?
A. Trooper Burke -- Trooper Burke was on duty, but he

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was -- in my opinion, was acting out of the scope of his employment.
Q. Okay.
A. Of his official duties, but he was on duty that night.
Q. He was -- did you read his deposition?
A. No, sir.
Q. Did you watch his interview with either the Hot Springs Police Department or the Arkansas State Police?
A. No, sir.
Q. Why not?
A. Because the case is still open. It's still ongoing. It hasn't been adjudicated.
Q. So is it your testimony here today that at some point you may conclude the investigation?
A. Eventually the case will probably be administratively closed because he's no longer an employee of the Arkansas State Police.
Q. Well, there's nothing that prevented you -- you had all the information prior to his submitting his medical retirement to make a determination and discipline him on March 1st, 2017, didn't you?
A. No, sir, I did not. We have a set procedure. You have to hold a command staff review board. Mr. Burke if he's able to to attend that command staff review board,

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so it's part of the due process. And then it's reviewed by one of the lieutenant colonels and it comes to me for final action. It's an administrative proceeding.
Q. So, you know, when did you then review it, the tape? After the lawsuit was filed?
A. No. No, sir, I reviewed it before. I think before -- it was shortly before the prosecutor made the ruling.
Q. All right.
A. Interacted with the command staff. They said they looked at it and said he was not driving with ordinary care and did not have his lights and siren on.
Q. All right.
A. We have a process that we follow.
Q. Okay. There's nothing about his medical retirement that allows you to complete that process; correct?
A. First and foremost, we have no jurisdiction over his medical retirement. That's not considered. It's a separate entity. They have an Arkansas State Police Retirement Board. I have nothing to do with his medical retirement.
Q. You congratulated him on it.
A. That's a form letter I send to all retirees and all medical retired personnel. My secretary types those up and I sign them.

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Q. Well, here's my question.
A. Yes, sir.
Q. Is there anything that prevents you from completing an investigation if somebody retires?
A. We can finally come to a final conclusion, administratively close, but if I don't follow the procedure and give him his due process rights, I can not take any disciplinary action against Mr. Burke.
Q. Part of reviewing it is to discipline, correct, if there's a violation?
A. That's one part of the process after -- after we go through the command staff review board. He was on workman's comp. I could not bring him in to complete the investigation.
Q. Well, we already gave a statement to the Arkansas State Police. They got it. They were able to bring him in.
A. Well, I think it was -- he happened to be in the building, they grabbed him. That was not to my knowledge. That should have not been done at that time because he's on workman's comp. He was -- we're not allowed to bring in people on workman's comp or if in the military, we have to wait to -- the process and follow the administrative process the State Police has.
Q. Did you call him up and ask him if he'd come in?

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A. No, sir, I did not because he's on workman comp.
Q. Part of the investigation is to find out if there's a policy violation; correct?
A. Yes, sir.
Q. Part of the investigation is to find out if there is anything improper going on that we may need to address in training or with policy; correct?
A. Review those, yes, sir.
Q. Okay. So completing an investigation would allow you -- you can also, if the conduct was inappropriate, you can seek to decertify an officer; correct?
A. At one point, yes, sir.
Q. Okay. You could have done that -- there was nothing that prevented you from trying to decertify Trooper Burke; correct?
A. With Mr. Burke's injuries, he's not medically fit to be a law enforcement officer, so --
Q. Two different questions.
A. Well --
Q. I mean, you don't know. He could be -- he could be a desk sergeant; correct?
A. I can't speak for other agencies. I'm just telling you that with his injuries, he would not be a law enforcement officer because his medical report and the doctor says he can not perform the duties of a law

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enforcement officer.
Q. Okay. Well, what else did you need other than reviewing the tape to make a determination that his conduct was improper?
A. We have to have a command staff review board. They're entitled to have witnesses. They could have called the Hot Springs Police Department, and Trooper Burke would have to come testify. It's a process that we go through.
Q. I'm -- you know, do you need to look -- you, yourself, do you need to evaluate anything other than the tape for you to make a determination that Burke -- Trooper Burke did not act appropriately?
A. In my mind, there's no doubt I was going to terminate Trooper Burke. However, people have due process rights set up through our procedures, and we had to follow due process. Just like you could charge somebody criminally. You have to do the same thing. Just because what I believe, he should go to prison on a murder case, you know, that's -- you still have the process, and he has the right to appear before that board and give his side of the story.
Q. So did you make up your mind that he needed to be terminated when you saw --
A. After I saw the tape, it was clear to me he did not

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use ordinary care and -- and he was outside the scope of his duties.
Q. Well, he was -- I'm not going to get into that legal argument with you.
So did you see -- was -- would you agree that nothing he did that -- that night during his driving was an emergency call?
A. I agree to that, yes, sir.
Q. Will you agree that nothing that he did that night with respect to his driving was a pursuit?
A. A vehicle pursuit, that's correct, it did not.
Q. What would you say his driving was?
A. I belief it was reckless, negligent, and he did not drive with ordinary care and excessive speed.
Q. Well, there's different levels of conduct. Would you find his conduct shocking?
A. I think it -- it could be shocking, the speeds he was driving, yes, sir.
Q. I mean, he was driving 117 miles an hour on a 45 mile an hour zone; correct?
A. Yes, sir, and that's why I would have terminated him.
Q. All right.
MR. CLARKE: Let's take a break for a second.

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(The deposition recessed at 12:28 p m. and reconvened at 1:05 p m.)
(Exhibit 82 was marked.)
BY MR. CLARKE (CONT.):
Q. We just took a lunch break, and I believe that you had stated that you believe that the statute that was enacted in Arkansas was based on the Oklahoma statute. What I want to do is mark as the next exhibit, 82, a copy of the Oklahoma statute. See if you've seen this before. I need that.
MR. JAMES: Yeah.
MR. BRYANT: This is the first time I've seen the actual statute, but that was my understanding, it was based on the Oklahoma.
BY MR. CLARKE (CONT.):
Q. Okay. It doesn't say anything -- it actually gives exemptions from using lights and sirens solely when there's knowledge of the presence of the officer will cause the suspect to destroy or lose evidence of a suspected felony and the suspected continuing felony before the officer obtains sufficient grounds to establish arrest or evade apprehension or identification of the suspect or the vehicle of the suspect.
Do you see that?
A. Yes, sir.

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Q. It doesn't have anything to do with traffic laws. These are all dealing with felonies; correct?
A. That is the Oklahoma statute, yes, sir.
Q. All right. Would you agree that there's a greater need to provide law enforcement action against somebody who is accused of a felony as opposed to a traffic offense?
A. Generally speaking, yes, sir.
Q. Right.
MS. MERRITT: Excuse me, Andy. Do you have a copy of 106? You handed me something else. 218.
MR. CLARKE: I guess they're -- yeah, that's -- this is a different one that doesn't apply.
MS. MERRITT: That's what I was thinking when I reviewed it, and I -- and he was talking about something different, so okay.
MR. CLARKE: You need to look at it?
MS. MERRITT: I just --
MR. CLARKE: Okay.
MS. MERRITT: You handed me something different than you handed the Colonel.
MR. CLARKE: I apologize.
MS. MERRITT: Okay.

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MR. CLARKE: Paul, you had one job.
MR. JAMES: I did it. I got it.
MS. MERRITT: Is this my copy or do you need this one back?
MR. CLARKE: You can have it.
MS. MERRITT: And that was which exhibit? I'm sorry.
MR. CLARKE: 82.
All right. So let's -- before I get to some other things --
MS. MERRITT: Now that I have this in front of me, I need to object to the form of your question about it.
MR. CLARKE: That's fine.
MS. MERRITT: Because I don't believe you accurately read what part A says, so --
MR. CLARKE: That's fine. That's fine.
(Exhibit 12 was previously marked.)
BY MR. CLARKE (CONT.):
Q. All right. Now, during the course of your investigation -- this has been previously marked as an exhibit. I'm not going to remark it, but have you seen the HSPD investigation of the incident? Have you seen this document?
A. I've seen this where you attached -- I think it's

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Exhibit A in one of your filings.
Q. Right.
A. Yes, sir, I don't know if this is the complete --
Q. Okay.
A. -- file, but I've seen this as your Exhibit A.
Q. It was previously marked as Exhibit Number 12.
Let's go to page -- page 12 of 26.
You see down at the bottom there's an analysis of the pursuit and speeds and distances and things of that nature?
A. Yes, sir.
Q. Do you have any reason to dispute any of those calculations pulled off the videotape through the Guard Watch System?
A. Two part answer on that. The first being that this analysis here does not include the analysis of the recovered. This is --
Q. Right. This is just the driving.
A. The driving, but I believe this analysis by Hot Springs Police Department does not include the recover -- when they did the recovery or does it?
Q. No, I'm just -- if you look at the paragraph, this is kind of a summary. The last paragraph on page 12 to the top of page 13 --
A. Uh-huh.

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Q. -- this is kind of a summary of what was observed on the tape not at the time of the crash.
A. Have you --
Q. Correct?
A. I guess my point I'm trying to make, and maybe I'm not making myself clear, the summary here does not include once Watch Guard recovered the other part of the tape. If you refer later in the report, it shows once they recovered the tape, then he did a small synopsis, but just here in 12 and 13, it doesn't include once the entire tape is the way I read it.
Q. Okay.
A. You see what I'm saying?
Q. Is this -- in this document?
A. Yes, sir, I think you -- let me look for it and I can point it out to you where they --
If you go to page 24.
Q. Okay.
A. It talks about they discovered a discrepancy in where -- actually, because the first tape they had, the analysis of that did not cover what they recovered where it shows he's on the scene of the hit and run accident.
Q. Okay. I gotcha.
A. You see what I'm saying?
Q. Okay. But here's the point of these questions. Do

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you dispute any of the -- the speeds that are set forth in paragraph -- the last paragraph of page 12 or 13?
A. I would answer that with clarity is I'm not sure of all the camera -- the speeds retracted, the accuracy, how accurate they are, but if you view the video, I agree that's from the video. I'm not sure the accuracy of the camera system, you know, how it is with exact speeds and things like that, how accurate. I'm not an expert in that, so --
Q. Okay. Do you intend to present any proof to your knowledge that the speeds are going to be different or lower speed or higher speed?
A. That would be up to the counsel.
Q. Okay. You, yourself, have not done any independent analysis of the speed or speed distance calculation?
A. No, sir.
Q. Is that correct?
All right. Did you rely upon this -- did you review this when you -- did you ever review this in reviewing the -- Trooper Burke's OPS or the investigation?
A. After the fact, after the 50 was filed and the prosecutor declined pros -- prosecution, this is the first -- when I first observed this document.
Q. You almost -- you almost had to pick that up.

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A. It almost -- it almost slipped out. Note on the record that --
Q. Hey, listen, I don't know how many almost slips I've made, so I'll throw you that mulligan for sure. I'm not --
All right. Now, did you get -- did you review a copy of the letter from the DA of Hot Springs?
A. I don't believe I ever actually saw the letter, no, sir. I saw the -- some press releases, but I did not actually see the letter I don't believe.
Q. Did you agree with it or do you think he should have been charged?
A. That's totally a prosecutor's decision. We gather -- I mean, this case we were totally independent. Hot Springs did the report. They present the facts and evidence to the prosecutor and then she makes -- he or she makes the decision.
Q. Okay. Now -- the Arkansas State -- you could have ordered the Arkansas State Police to conduct their own investigation during their OPS investigation with respect to speed and things like that; correct?
A. We could have, but -- yes, sir, we depended on the independent investigation. I thought was the fair and transparent method to pursue.
Q. Right. And that was gathered as part of the OPS

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investigation; correct?
A. That would have been a part of the file, yes, sir.
Q. Okay. Let's go -- you were talking some about your materials. Let's mark this as the next exhibit, 83.
(Exhibit 83 was marked.)
MR. CLARKE: I've got another one.
BY MR. CLARKE (CONT.):
Q. Okay. This was produced as Arkansas ASP-1011 to Arkansas 1067. Is this a -- a note that -- is this first page something you -- you wrote?
A. Yes, sir, I think to respond. I think it was to some of your interrogatories or something that you -- these were my notes to the counsel here at the Attorney General's.
Q. Okay.
All right. It says -- going down these bullet points -- but why does it say deliberate indifference at the top?
A. I think that -- to me, the facts that -- that I was concerned over driving, what steps I took on training requirement. I did not turn my head to the issues of driving and what steps I took to improve our driving.
Q. Okay. But you have deliberate indifference in quotation marks at the top of this page.
A. I think I gave my notes to counsel and counsel

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typed it up.
Q. Okay. All right. Would you also agree that as part of your job, I mean, it's incumbent on you to -- I mean, the buck stops with you with respect to the Arkansas State Police; correct?
A. Yes, sir. Final policy maker and decision maker.
Q. Right. And you have the authority to put more funds to EVOC training if you felt it was necessary; correct?
A. It depends if they have the funding available. Right now 88 percent of my budget goes to salaries. I have 12 percent to operate for -- for the operation of the State Police. So the majority of my funding is for salaries.
Q. Okay. What percentage is it for training?
A. I'd have to break that down. I wouldn't know.
Q. It's less than 12 percent; correct?
A. Yes, sir. Somewhere in the 12 percent.
Q. Well, I thought you said 88 was for salaries?
A. Salaries. And then you've got 12 percent to run the agency. That includes rent, electricity, water for 12 headquarters, different things.
Q. And training?
A. And training, yes, sir, that's included in that.
Q. So it's --

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A. I don't know what exact percent.
Q. Okay. It says, Colonel Bryant has instituted in-service training requirement prior to the Burke accident which emphasized compliance with Arkansas law, especially the activation of lights and sirens and driving with due regard. That's -- did you -- did you explain to them the differences in the policy of what -- what immediate pursuit of a violator is and what a silent response is or did you -- did you get rid of that?
A. If you look at -- can I go to page two, the next one?
Q. Okay.
A. These are my notes that I addressed during the in-service training from December, 2015, through May of 2016. Meeting with the colonel, every morning I met with each commission trooper and those are the topics that I held. Again, the talking points, but what I discussed was blue lights and siren, ordinary care, that if you exceed the speed limit, you need your blue lights and siren on.
I talked about pursuits. Pursuits, what I talked about is, again, a speeding ticket is not worth dying over or an innocent citizen being hurt. Those are the -- my little talking points I used to make sure that I told every class the same thing that I did.

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Q. Okay. Did you tell them whether it's ever appropriate to drive above the speed limit without blue lights or sirens?
A. In my talking points, no, sir, I did not.
Q. Okay. Did you say it's prohibited from -- the policy has something different in it; correct?
A. Yes, but what I told them, if you exceed the speed limit, you will use blue lights and siren. That's what I told them.
Q. Did you tell them if you don't do that, you will be terminated or disciplined?
A. I think they know that.
Q. Right. Well, you wouldn't know when you first got there if you're emphasizing it. Did you say this is going to be in conjunction with the disciplinary process?
A. I think mentioned, you know, we had an incident with the Rhew case, and if you're going to exceed the speed limit, you're going to have your blue lights and siren on. I do -- I do believe I mentioned that.
Q. Okay. Do you have anything other than these one page notes?
A. Just for this training session, no, but I also -- becoming the new director, I toured all the headquarters for troop meetings. And, again, I emphasized the same -- the same points as far as speeding, blue lights and siren, pursuits, and the fact that a speeding ticket is not worth dying over. If you call off a pursuit, you will never hear anything from the command staff, no objection.

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Q. Okay. And I guess the first note there, I'm just -- why wasn't the policy changed then? When you're going out saying this, why wasn't the policy changed to take out that there's ever any situation where you can drive without blue lights and sirens?
A. Again, today is the first day I realized the statute said red light or stop sign. At that time I thought that we were in complete compliance with state law.
Q. Okay. You understand that while you were deliberately indifferent, you had been to training sessions that actually had the statute written up there where if you actually read it, you would know that it only applied to intersections or stop signs; correct?
A. If I read it, but I did not make that connection with our policy. No, sir, I did not.
Q. Okay. I mean --
A. But, again, I made it clear to these troopers, they heard it straight from the director's mouth, that if you exceed the speed limit, you will have your lights and siren on.

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Q. And it looks like -- how long was your meet the -- you know, these notes that are on like 1012 through 1014, like the 1012 and 1013, are these just two of the meetings you had? How many meetings did you have?
A. This is -- when they came in for in service at headquarters, the very first one here on 1012, that was in 2015/2016, and then if you look at ASP-1013 --
Q. That was December.
A. -- that was December 5th when we did active shooter, different type of in-service training, and that's when, again, I addressed the points of lights and siren, ordinary care and negligence.
Q. Okay. And that was after Miss Braun was killed?
A. Yes, sir, that would have been about a month or two after.
Q. Did you send anything immediately after the Bruan incident to troops to say we had this incident, please make sure that you're complying with the training I provided you?
A. I think we revised the policy when we -- in 2017. I don't have a copy of that, the date, but, again, emphasizing ordinary care and the different statutes with the new legislature.
(Exhibit 84 was identified, but not marked.)

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BY MR. CLARKE (CONT.):
Q. Okay. What I'd like to do is make as Exhibit Number 84 late filed the new policy that was not produced.
Did you modify the pursuit and vehicle use policy?
A. I'll have to look at the policies to see. I know General Section 23 was revised.
Q. Okay. Well, we'll ask that you provide that to your counsel, the current policy on pursuits and vehicle use policy, and we will mark -- mark that as a late filed exhibit.
So does your policy now say that -- well, I guess the law has changed?
A. Yes, sir, that's correct.
Q. But do you -- do you allow them today to catch up to speeders without lights and sirens?
A. They have to abide by the state law for those exempt -- but now -- no, sir, it's clear that I require them to have their lights and siren on, but if those exceptions under the new law, then we follow what the law says.
Q. Okay. So are you telling them to do something different than the law?
A. Absolutely not.
Q. Okay. The new law says that you don't have to have

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your lights and sirens on when you're trying to catch up to a speeder; correct?
A. And ordinary care, if you display ordinary care. I'd have to look at the policy, the new one. I don't have it here in front of me.
Q. Well, I mean, the new statutes allows you to do things that would be in excess of the speed limit without lights and sirens; correct?
A. Yes, with ordinary care.
Q. Right. Now -- so today can somebody exceed the speed limit while trying to catch up to a speed -- to a speeder?
A. If the ordinary care and meet the elements of that statute.
Q. Okay. So the answer is -- I need a yes or no. I mean, you know, the issue -- I can give you the statute. I'll give you whatever you want. I mean, saying you have to use blue lights and siren except for the exceptions is not a preclusion from exceeding the speed limit without blue lights and sirens on. Do you understand that?
A. Yes, sir, but, again, it's a two prong thing. It's ordinary care. If you don't do ordinary care, you can't do any of that.
Q. Ordinary care, I told you, ordinary care applies to everything. Okay. We're talking about the specific

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exemption from the road that you gain by using lights and sirens.
A. Say that one more time.
Q. Okay. When you use blue lights and sirens --
A. Uh-huh.
Q. -- the statutes give you exemptions from certain conduct.
A. Correct.
Q. Okay. You can exceed the speed limit or you can go through intersections, the law at the time of this incident; correct?
A. Correct.
Q. Okay. And you went out prior to this time and then after the -- prior to the Braun incident and after the Braun incident, and you emphasized the use of blue lights and sirens; correct?
A. Yes, sir.
Q. And that was prior to the change in the law in August of 2017; correct?
A. Yes, sir.
Q. Now, when you were saying blue lights and sirens, did you say -- did you tell them you can not try to catch up to a speeder and exceed the speed limit in any fashion without your blue lights and sirens?
A. My statements were if you exceed the speed limit,

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use your blue lights and siren.
Q. Okay. Did you tell them -- did you consider that to be because -- you know, this is the first time where you're meeting everybody; right?
A. I had done troop visits prior to that. This is for in service.
Q. Okay. So you were providing the training?
A. No, I was -- to me, I was letting them know those were priorities of us -- of the State Police, that if you -- because of the Rhew case, we've had a prior history of that, I wanted to make sure that if they exceed the speed limit, use your lights and siren.
Q. Okay. And then today, we had the change in the law in August of 2017. Now they're allowed to exceed the speed limit trying to track -- catch a traffic offender without lights and sirens?
MS. MERRITT: Object to form.
MR. BRYANT: Same response, that's what the law says, but it also says ordinary care, and I know your response, but if you don't have ordinary care, then you're out the window. That's the ace of spades.
BY MR. CLARKE (CONT.):
Q. You understand that a police department can have policies that are more restrictive than the law; correct?

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A. Yes, sir.
Q. Okay. Is your policy now more restrictive than the law or just complying with the law?
A. I think it provides clarity and it's restrictive. I don't think you ever write out policy that can cover every situation.
Q. Well, I mean, you haven't looked at a bunch of pursuit policies. That's why we have these law enforcement groups that put together all the best practices; correct?
A. I've looked at other agencies.
Q. Okay. Which ones?
A. North Little Rock.
Q. Okay.
A. Pulaski County.
Q. And what do they say about lights and sirens?
A. I'd have to review, but I have seen their policy.
Q. All right. Let's go to 1014. This says other. What does this mean?
A. These are incidents that occurred before the accident on October, '16 -- excuse me, 10/10 of '16. These are actions that I addressed with -- concerning driving before this accident occurred. We had a recruit, Kenya Campbell. She was in the academy. She failed to pass the driving test during the academy, and she was

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terminated from the Arkansas State Police.
Another incident --
Q. There's nothing -- there's nothing big about that. She failed the test; right?
A. But I addressed driving. I do not condone poor driving. I think that makes it --
Q. You would have failed the shooting test, you would have fired them; correct?
A. If they failed the academics, yes, sir, but I think it's important that I take driving seriously. That's why that was noted.
Q. That means one person was unable to pass the test; correct?
A. She did not possess the skills to drive.
Q. Okay. Was that based on her history or based on her performance on the track?
A. Her performance in the academy.
Q. Okay.
A. And then Heath Nelson, this is more of a use of force. He struck a fleeing suspect with his vehicle. He was given a five day suspension. Again, what we talked about before, troop meetings. We covered speed, blue lights, siren, ordinary care, also an in service.
Q. What in service are you talking about? The 2000 -- the in service that we went over?

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A. Prior to the accident and after the accident, the Burke accident.
Q. All right.
A. Again, what we talked about is traffic tickets is what I told them, they're not worth dying over. Again, with DEA where it says Verizon Arena, what I use to use the example if -- I'd tell people at DEA, if the Verizon Arena was full of cocaine, it's not worth dying over. So, you know, instead of going and kick a door down, sometimes you can sit on surveillance for three or four hours, and when he goes out to the store, you can arrest him outside the house. You don't go inside the house.
Q. All right.
A. Again, the part, no command staff will ever second guess you calling off a pursuit. Safety of the public and the trooper comes first. Those were some of the points of emphasis.
Q. All right. All right. Let's get to where the rubber meets the road. Let's look at the OPS files here.
I'm going to need a bunch of exhibits as we go.
(Exhibit 85 was marked.)
BY MR. CLARKE (CONT.):
Q. I'll mark as Exhibit 85 -- what I've done, everybody, here, and I'm going to give everybody copies. I'm going to give everybody copies. Is we have

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previously made all the exhibits -- all the OPS files exhibits, but what I've tried to do was cull them. What these are are going to be portions of OPS files. If you need to review the whole OPS file, you let me know. I have them all here.
A. Okay.
Q. And they're just kind of in newest to oldest. This is Exhibit Number 85.
All right. Do you remember anything about [redacted]
A. Yes, sir. I have general knowledge of this one. Yes, sir.
Q. Okay. Well, this was an incident that occurred on 5/5/18, and he was looked at for violation of the general use policy. Do you see that on the first page?
A. Yes, sir.
Q. And he got a letter of reprimand; correct?
A. Yes, sir, in this instance.
Q. In this case. Tell me -- tell me what you remember about this case. He observed somebody speeding; correct?
A. Yes, I remember he made a U-turn and was struck.
Q. Okay. Did he have his lights and siren on?
A. I think he was parked. I'd have to look at the thing, but I think -- if I may, I think since becoming director and what I've established is progressive

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discipline, and this is usually normally if it's a minor accident, no severe issues, they get a letter of warning. If it's another accident, again, depending on the circumstances, they would get a letter of reprimand which they will lose their merit pay, and then it progresses from that if they have more accidents.

Q. Right. Whether they have an accident or not, they're still violating -- you know, I mean, what if you violate the lights and siren policy and you don't have an accident, do you not enforce that?

A. Repeat the question.

Q. Right. You instituted progressive discipline. It's in one of these things, and I'm sorry, it's in the order that they're boxed up, but you said, you know, if there was an accident, you have progressive discipline; correct?

A. Yes, sir.

Q. What about if you violate the policy and there's no accident?

A. I have done discipline with that.

Q. You don't discipline for that?

A. No, I do.

Q. Okay.

A. If they're not driving ordinary care.

Q. All right. So none of the statutes at -- gave them

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the right to do a U-turn without lights and sirens; correct?

A. No, sir. Again, I believe he was parked at this time. I could have these wrong, but -- I see a lot of these, but --

Q. Okay. I understand. What I'm trying to get at, we went through the statutes. No statute allows somebody to just do a U-turn. Was a U-turn appropriate?

A. I believe it was, but I don't think he looked for the vehicle behind him according to my notes here.

Q. Okay. Let's go to 86.

(Exhibit 86 was marked.)

BY MR. CLARKE (CONT.):

Q. [redacted]. This incident happened March 17th, 2018, violation of General Section 23. Do you see that?

A. Yes, sir.

Q. And in this case, there -- there was -- he was suspended for two days and signed a disciplinary agreement; correct?

A. Yes, sir.

Q. All right. You go through your notes. I guess when we get down to like the handwritten notes, are these -- is this your handwriting?

A. Yes, sir, it is.

Q. All right. [redacted] was going 90

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plus miles an hour with no lights or sirens while attempting to catch up to a vehicle. Do you see that?

A. Yes, sir.

Q. That's a violation of policy; correct?

A. It was on the interstate, yes, sir. He was still -- he was 20 miles per hour above the speed limit, yes, sir.

Q. He reached speeds of 113 miles an hour in a 35 mile an hour zone according to your notes; correct?

A. Yes, sir, with lights and siren on, he did, yes, sir. That's why he was suspended for not using ordinary care.

Q. Two days was enough?

A. Yes, sir, I believe so. He was a young trooper. This is his -- really his first -- I think it's one of his very first pursuits, and I also made him sit down with the driving instructor, and they critiqued the pursuit with him to where he could learn.

Q. Okay. Well, was it because of the failure to use ordinary care during the pursuit or was it for not having lights and sirens on when he was trying to catch up to him achieving speeds of 90 plus miles an hour?

A. I think a combination of both.

Q. Are you aware that officers engaged in emergency vehicle driving experience tunnel vision and have a lack

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of understanding of their speeds?

A. Are you talking about in this specific or just generally are you talking?

Q. In general.

A. Yes, sir. Tunnel vision occurs, especially young -- in my opinion in young officers who first become a law -- in law enforcement.

Q. Okay. Did you do anything to address tunnel vision in training?

A. I believe that's what -- I left it up for the driving instructors when he meets to explain it. It was -- you know, until I sit down and thoroughly debrief him on the matter, but I'll leave that up to the driving instructors to sit and listen and make corrective actions.

MR. CLARKE: Are we at 87?

MR. PRITSCH: Yes.

(Exhibit 87 was marked.)

BY MR. CLARKE (CONT.):

Q. This is an investigation involving [redacted] that occurred on 1/11/18. Again, the violation that you're looking at is vehicle use; correct?

A. Yes, sir.

Q. He received a letter of reprimand; correct?

A. Yes, sir, he did.

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Q. And why is -- why are you looking -- a lot of these it seems like you looked under General Section 23 and not the pursuit policy. Is there a reason?
A. It depends how the commander files the complaint. I have no -- generally that just starts the process, but, again, once you get into the investigation, OPS and the command staff review board, then they can add or take away charges.
Q. Okay. You go to your notes, you -- you gave him a letter of reprimand. According to your notes, he reached a top speed of 140 miles an hour. Do you see that?
A. Yes, sir.
Q. Did he have his lights and sirens on?
A. Yes, sir.
Q. And even though he had his lights and sirens on, you believe that he wasn't -- you note here, I believe, General Section 23 vehicle would be more appropriate than Law Enforcement Section 13. Why did you say that?
A. Because I believe pursuits -- it's referring to intentional intervention.
Q. He didn't PIT him. He crashed; is that correct?
A. I remember he ran into the back of -- I think -- maybe in the reports, he said he might have tried a PIT, but possibly performed a PIT maneuver, but after looking at it, he crashed into him.

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Q. You noted in here, he had been involved in two previous pursuits which required verbal counseling and a letter of warning. Do you see that? The next page.
A. May 14th and then November 22nd, is that what you're referring to?
Q. I'm referring to the next page.
A. All right. Let me look.
Again, that's -- yes, sir, it says that. Again, that's why I required him to sit down with a EVOC instructor to do a review and his critique of pursuit driving.
Q. Look, he's had two -- two other pursuits that required verbal counseling and a letter of warning, and he's involved in another wreck, improper pursuit, and you give him a letter of reprimand?
A. Yes, sir. Again, that takes away his merit pay.
MR. CLARKE: 88.
(Exhibit 88 was marked.)
MR. BURKE: What number is that?
MR. CLARKE: 88.
BY MR. CLARKE (CONT.):
Q. This is an incident that occurred on 12 -- 12/11/17. This is [redacted]s. He was looked at for violation of the General Section 23, and he was issued a letter of reprimand; correct?

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A. Yes, sir. I believe he was on a dirt road doing 45 and lost control of it and struck a concrete support.
Q. Was he -- was he reprimanded because there was damage to the vehicle? Is that --
A. I think he admitted inattentive to his driving and his surroundings, and he was traveling at a speed on a gravel road. He should have used better judgment.
(Exhibit 89 was marked.)
BY MR. CLARKE (CONT.):
Q. 89 was a [redacted]. This is an incident that happened on July 1st, 2017, where they looked at a violation of General Section 23; correct?
A. Yes, sir.
Q. [redacted] was given a letter of reprimand?
A. Yes, sir.
Q. Again, he was -- he performed a U-turn. He performed a U-turn. Did he have his lights and sirens on?
If you look at your second page.
A. Yes, I'm looking here, sir. Pulled a right, made a U-turn, no signal, and he turned in front of a vehicle. He pulled over to the shoulder and made a U-turn.
Q. With no blue lights?
A. With no blue lights, yes, sir, that's correct.
Q. There's no provisions under the law where you can

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do a U-turn here unless it's authorized under the traffic laws; correct?
A. Situations you can make U-turn as long as -- I'm not sure of the road location, but I think a U-turn was permissible there.
Q. Okay.
A. He just failed to see the other vehicle.
Q. All right.
A. And he got a letter of reprimand.
(Exhibit 90 was marked.)
BY MR. CLARKE (CONT.):
Q. Exhibit 90 is going to be [redacted]. This is an incident that happened on June 22nd, 2017, involving the investigation of [redacted] for the violation of General Section 23; correct?
A. Yes, sir.
Q. He was issued a letter of reprimand?
A. Yes, sir.
Q. I have your form letter, then we go to your notes. Was he using his light and sirens?
A. Lights only at first, then he -- initially, then he turned his siren on.
Q. And he was traveling a hundred miles an hour on a rural road, correct, coming to a T intersection?
A. Yes, sir, that's correct.

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Q. Okay. Did he have his lights and siren on then?
A. From memory, I believe he did, yes, sir. He hit the gravel and slid into a vehicle at a T intersection.
Q. Okay. But he -- he had his -- he only had his lights -- did he have lights and sirens on at the time of the wreck?
A. I have to pull the video, but I think he did. He had his lights and siren on.
Q. Okay. If he's going a hundred miles an hour with only his lights on, that would be a violation of the state law; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: Yes. Yes, sir, but initially he had his lights on, and then a short time later he cut on the siren. I mean, it wasn't a prolong distance before adding the siren. He did it soon after the lights were on to the best of my knowledge.
BY MR. CLARKE (CONT.):
Q. And then let's go to the last two pages of this. There's a pursuit report form.
Do you know why you don't ask on the pursuit report form whether they had their lights and siren on?
A. It's kind of hard to read this one. I'm not that -- very familiar.

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Q. Well, what are you having problems reading?
A. Well, some of it is blacked out. I can't tell if --
Q. Okay. It says name, division, officer, years of service, date of pursuit, did you initiate the pursuit, name of the department assisting, ASP, name of department requesting assistance, supervisor notification, weather conditions, road conditions, traffic conditions, locale, road type, how many ASU units, pursued vehicle, marked, unmarked, LPV. Video activated, yes. It has the distance of the pursuit, the miles. The highest speed achieved. It doesn't have anything about whether or not you require them to show whether they had their lights or sirens on; is that correct?
A. I don't see that on the form, that's correct.
Q. Do you know of anybody who uses a pursuit report form that doesn't have the requirement to indicate whether the lights and sirens were activated?
A. I know these are -- pursuit things are critiqued all the way from first line supervisor to division commander. If they were not, they would be noted on the form in the narrative.
Q. Okay. Well, that's what you would expect; right?
A. Yes, sir.
(Exhibit 91 was marked.)

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BY MR. CLARKE (CONT.):
Q. Exhibit 91, [redacted].
Again, he's investigated for an incident that happened the day after our incident, 10/11/16, for violation of General Section 23; correct?
Correct?
A. I'm looking for the date, sir.
Q. If you look on the front page, it's easier.
A. Yes, sir. It would be one day after.
Q. Okay. And then he was given a letter of reprimand?
A. Yes, sir.
Q. Correct?
You wrote a letter on March 29th, 2017, and this investigation started after the Braun investigation. It was concluded by March 29th, 2017; correct?
A. Yes, sir.
Q. He did not activate his lights and sirens when he pursued a vehicle at speeds up to 136 miles an hour; correct?
A. Yes, sir, I think it was on Interstate 30.
Q. And then he struck the rear of the violator's car; correct?
A. That was after they exited the interstate and were on a city street.
Q. Okay. I mean, is this shocking?

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A. There wasn't good judgment in that. He was on the interstate. Speed limit's 70 miles an hour. He's been a good trooper, really never displayed anything, so received a letter of reprimand and lost his merit pay, which could be several thousand dollars.
Q. Well, if the accident was worse and somebody was killed, would he have been terminated?
A. Depending on the circumstances, yes, sir.
Q. Same circumstances, killed --
A. Yes, sir, I would, same. If it was Burke, if he was doing that in a 40 mile an hour zone, yes.
Q. Okay. What I'm trying to get at is do you base your discipline based on the result or based on the conduct?
A. More on conduct, but the result could be the same.
Q. Okay. Well, 136 miles an hour with no lights and siren is ridiculous, would you not agree?
A. I think it's excessive, yes, sir, that's why he received a letter of reprimand and was disciplined.
Q. Okay. We go through this. Go through a little bit.
Go to the 11th page. He was attempting to catch up to a vehicle traveling at speeds --
A. I'm sorry, sir. What page are you on?
Q. The first page -- the first page of the

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investigative summary.
A. Okay. I'm with you.
Q. Okay. First of all, he had a -- he had a previous accident and collision that was avoidable; correct?
A. Yes, sir.
Q. Then he -- he talks about how he was trying to catch up to a vehicle at extremely high -- extremely high rate of speed without his emergency equipment; correct?
A. Yes, sir.
Q. He noted that he received an E-mail from Darran Austin. Have you seen that E-mail?
A. No, sir. Is it in this package?
Q. It is. It's towards the back.
It says at the top, Tiffany Dycus.
A. Pretty close to the end.
Q. Next thing page I think.
A. Okay.
Q. Did you ever see this E-mail?
A. I remember the -- exactly -- honestly, I can't say if it's the exact one, but I remember, you know, we talked about exceeding the posted speed limit, use your lights and siren. That's what I've testified to in this thing, but the exact E-mail, I don't remember if I saw that or not. I could have, but I'm not positive.
Q. Okay. Again, according to -- who is Darran Austin?

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Was he like the commander?
A. He is a lieutenant in the highway patrol Troop A.
Q. It says, it's been mentioned in the past about speeds when operating your vehicle using emergency equipment and driving appropriate speeds for the situation you are responding to. Then he goes through, if you must exceed the posted speed limit, use your lights and siren; correct?
A. Yes, sir.
Q. And he says do not drive distracted. He says later on in that, just because you're a trooper, doesn't mean you can drive as fast as you want. And even if you have your blue lights and sirens on, it still doesn't give you the right to go as fast as you want; correct?
A. Yes, sir.
Q. He notes if there isn't a need to respond with lights and sirens, you must drive the normal speed. Do you see that? The second to the last paragraph.
A. Yes.
Q. Okay. Couldn't you have one of your co-men just change your policy that just said that? It's that simple.
A. Yes, sir, as I testified before today, I didn't make that link between the thing, but this is what I've been preaching. They heard it, otherwise, if I haven't

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told them this, Lieutenant Austin wouldn't have known.
Q. Well, we don't know what Lieutenant Austin -- I mean, you can't say that Lieutenant Austin did that because you said it. You don't have any idea?
A. It's the same exact topics. I mean, my opinion, these are the same exact topics that I covered in the in service.
Q. But it's also the same exact problems that were exhibited based on the transcript of the Rhew trial; correct?
A. Back in 2011.
Q. Right. And you don't know what happened up until your time, and we're going through these files here, but why couldn't you have just -- if you felt it was important and you went out and preached it to the troops, why would you have a policy that allows some type of immediate pursuit or silent response without lights and sirens if you're preaching if you exceed the speed limit, use blue lights and sirens?
A. The -- again, I thought our policy covered it at that point until this point came today. You know, we would have changed it then if I understood it that way.
Q. Well, I know, but --
A. It's not my understanding back then that -- again, I depended on my command staff that they made corrections

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with the Rhew case.
Q. You reviewed the policy. The policy allowed for driving in excess of the speed limit without lights and sirens in certain circumstances; correct? The immediate pursuit and when a silent response is required; correct?
A. Yes, sir.
Q. That is not -- that is the written policy that they're expected to comply with; correct?
A. Again, we discussed 204 that's mentioned in the policy.
Q. Did you expect them to look at your policy and comply with the policy or to do further investigation by looking at the laws themselves and making their own opinion on the laws?
A. I think we briefed them on the laws.
Q. All right. But your policy is inconsistent with the law because it allows exceeding the speed limit when you're in immediate pursuit or when a silent response, whatever that is, is required?
MS. MERRITT: Object to the form.
BY MR. CLARKE (CONT.):
Q. You see -- you see the problem?
A. Yes, sir. Again, we go back, I mean, we're hashing old ground here, but in -- the one is if you're on duty, the broad statute that you can exceed the speed limit.

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Q. There's a specific statute that deals with -- I'm not going over that. What I'm trying to get at is do you understand the tension between you preaching if you exceed the speed limit, you must use blue lights and sirens, and a written policy that says there are circumstances where you don't have to use your lights and sirens when you exceed the speed limit?
A. I think we can do a better job, yes, in our policy.
Q. Okay.
A. Yes, since that's been pointed out.
Q. All right. Let's go to 92.
(Exhibit 92 was marked.)
BY MR. CLARKE (CONT.):
Q. [redacted].
The first page, this happened on 9/23/16. He got a two day -- two day suspension, and you have your notes. Did he have his lights and sirens on during this?
A. Yes, sir, I believe he did.
Q. But he drove at excessive speeds and struck a fire hydrant; correct?
A. Correct, yes, sir. He was not driving with ordinary care.
Q. And he -- he did not even call in at first that he was involved in an accident; is that correct?
A. I think he said his vehicle was disabled if I

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remember. Let me look.
Q. Well, integrity and truthfulness is important; correct?
A. Oh, yes, sir.
Q. In this case, if we look down, we have a commander's -- towards the end, Arkansas State Police commander's report.
A. I see -- are you talking about a 21A or what are you referring to, sir?
Q. 21A.
A. Okay. I've got 21.
Q. That might be it. It may just be a bad copy. It's right before his statement.
A. Is it a form you're looking at, sir?
Q. Yeah.
A. Here we go.
Q. All right. It notes here -- the narrative does not accurately depict the suspect vehicle actions as shown on the video. Is it important that they accurately report stuff for law enforcement activities?
A. Yes, sir.
Q. Okay. He reached speeds -- if you go further down to his pursuit report, he reached speeds of 105 miles an hour for a speeding violation; correct?
A. Yes, sir. I think he was pursuing the vehicle. It

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was a motorcycle if I remember right. He was in pursuit.
Q. And then if you look at the last page of this file, it shows all the -- do you know who did this Attachment A on the very last page of the file?
A. Just on the form, sir?
Q. No, on the last page of the whole file.
A. No, sir. I would imagine it would be a supervisor.
Q. Okay. You know, and this -- this gets you a two day suspension when you run a stop sign at 58 miles an hour and then another stop sign at 60 miles an hour when you go 149 -- 104 miles an hour on North Street. 179 -- 107 miles on an off ramp. His back end broke loose. Do you see all that?
A. I'm not sure about his back end part, but, yes, sir, he received a two day suspension for this. Again, a very young trooper.
Q. Young, does -- does age of a trooper factor into your discipline, whether they violated policy?
A. No, sir. I think with training and experience you become wiser, just like any profession.
Q. 93.
(Exhibit 93 was marked.)
BY MR. CLARKE (CONT.):
Q. Again, he had two crashes in three years and was looked at for violation of General Section 20 -- 23. He

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received a letter of reprimand; correct?
A. Yes, sir.
Q. Pursuing a -- according to your notes, he was pursuing a motorcycle, struck a road sign. He did have his lights and sirens on; correct?
A. Yes, sir.
Q. But he was traveling at a high rate of speed, such a high rate of speed, he couldn't negotiate a turn; correct?
A. Yes, sir, he attempted to turn, but he was traveling too fast.
(Exhibit 94 was marked.)
BY MR. CLARKE (CONT.):
Q. [redacted], this will be Exhibit 94. Sorry.
He was looked at for violation for the use of force policy?
A. Yes, sir.
Q. All right. He received a letter of reprimand for an incident that occurred on March 25th, 2016; correct?
A. Yes, sir.
Q. He did not have his lights or sirens on; correct?
A. Yes, sir, that's correct.
Q. According to your notes, he pursued at speeds up to 123 miles an hour; correct?

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A. Yes, sir.
Q. Ran a stop sign at 67 miles an hour?
A. Yes, sir.
Q. And went into oncoming traffic at 110 or 119 miles an hour?
A. Yes, sir.
Q. His justification for not using lights or sirens based on him remember Major Witt testifying between -- before the Arkansas commission; correct?
A. Yes, sir, that was his testimony.
Q. All right. Did you question Major Witt about what he testified to before the Arkansas commission?
A. I'm not sure Major Witt was still with us then. I'm not sure, but, no, I did not talk to him. I don't know if Major Witt was still with us then.
Q. All right. Did you try to figure out was -- was it his argument that he didn't violate any policy or training because he was -- he was told or he learned from Major Witt that you don't have to use lights and sirens?
A. That was his argument, but he knew clearly what my policy was.
Q. All right. You have in here immediate pursuit paragraph, silent response. What does that mean?
A. I think that referred to the policy where it talked about silent response is really -- I noted that a silent

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response, but it really didn't apply in that situation like -- again, we talked about a kidnapping, something to that effect. So, I mean, I think he was found unfounded on the use of force, but after viewing the video, I disciplined him because of ordinary care. He did not display ordinary care.
Q. If you go to the second page of your notes, you say, in regards to traveling over the posted speed limit without emergency equipment, lights and siren, my thoughts would be to initiate progressive discipline and be consistent across the board depending on the circumstances.
Is this where you started -- made the decision to institute some type of progressive discipline?
A. We had talked about it before, but these are my notes to our counsel, yes.
Q. All right. And you said, you know, first time is a written warning, second time is a written reprimand, third time is a suspension, fourth time is a suspension to termination; correct?
A. Depending on the facts of the case.
Q. Okay. And there's a sticky note on this. It says violation of state law, massive potential liability. Whose handwriting is that?
A. That would be I believe Mr. Downs.

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Q. Okay. Did you have any discussion about what the massive potential liability would be? And it's on this -- it's on this sheet based on your -- at the same point where you have your progressive discipline chart.
A. I think that would be referring to the Rhew case.
Q. All right.
A. And the liability.
Q. Okay. So why would you -- why would you -- if you have massive potential liability, why is this -- why do you need three times before you're suspended?
A. Well, it depend on the circumstances.
Q. Okay. But the circumstances -- the way I'm looking at this and looking over all these tings --
A. Uh-huh.
Q. -- is the only circumstance that gets you to termination is if you kill somebody?
A. No, sir, that's not correct.
Q. You hadn't terminated anybody for -- or effectively terminated anybody for not using lights and siren, have you?
A. Not termination, but moved them out of the highway uniform patrol division.
Q. Okay. Well --
A. Into a non -- if they do not use good judgment.
Q. But you understand -- I don't know if I'm making

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this point correctly, any time anybody drives 130, 140 miles an hour without lights and sirens, the potential for catastrophic injury is there; correct?
A. Yes, sir.
Q. So it's the conduct --
A. And that's why they're disciplined.
Q. It's the conduct that needs to be disciplined, not result driven. Do you follow me?
A. I understand that, and, yes, sir, that's what I told you. It's not all conduct.
Q. Okay. Well, what is more important, the end result and whether or not somebody escapes serious injury or the the determining factor whether there was serious injury?
A. I think it's the conduct.
Q. Okay.
Okay. Go to his statement.
All right. On page two of the statement, whoever the question is, Paulette something, Paulette Ward, says you're not -- you realize you're not an emergency vehicle when you're traveling at a speed -- at that speed without your lights and sirens on?
A. Sir, I don't think I'm on the same page you are.
Q. On his statement.
A. Okay. On page two?
Q. Yeah.

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A. Yes, sir.
Q. All right. Do you understand -- did you do anything once he said he didn't know that you're not acting as an emergency vehicle without lights -- when you're driving without lights and sirens in excess of the speed, the fact that he didn't know what the policy says about that, did you do anything about it?
A. Yes, sir, with the OPS, she's a captain. She explained the policy to him and, again, when he was disciplined, we covered it again.
Q. Did you make any decision that other officers might need to be retrained or this needed to be reinforced to officers?
A. Again, we held driver training, in-service driving training.
Q. We've gone through the driver training stuff, and I think you agreed that there wasn't really much in the way of when you had to put your lights and sirens on other than the actual language of the statute.
MS. MERRITT: Object to the form.
BY MR. CLARKE (CONT.):
Q. Which is inconsistent with the language of the policy; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: We can -- as I answered

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before, we can make improvements on our policy.
BY MR. CLARKE (CONT.):
Q. Okay. And then further through this, according to at the bottom of page two to the top of page three, he -- after he doesn't know he's violating policy, he says, I remember sitting in the commission room, and it was Major Witt that said that once you turn around on a violator, if you're in immediate pursuit, you didn't have to have your blue -- blue lights or sirens activated.
A. Yes, sir, I see that.
Q. Did you do anything to dispel -- I mean, that's not -- that's not correct?
A. No, sir. Again, I answered. Captain Ward and then when he came to me for discipline, we discussed it.
Q. All right. And -- but this shows a bigger problem in that he's getting his information from a major about a particular aspect of what he thought the requirements were; correct?
A. I believe that what he's referring to is prior to I got there, I was not aware of that conversation.
Q. I understand. You had this -- you had this piece of paper to look at; correct?
A. Yes, sir.
Q. Okay. When you're finding out that people are relying on other stuff, do you do anything to dispel any

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incorrect assumption based on what somebody's been told?
A. Yes, we did that in our driving in-service prior to this incident.
Q. Okay. So you're saying the driver in-service stuff, that we did all this stuff, you're saying it was covered in there?
A. In my notes where I discuss if you exceed the speed limit, you will wear -- have your blue lights and siren activated.
Q. How long was that -- your in-service training when you went out there that was in those notes?
MS. MERRITT: Object to the form.
MR. BRYANT: I had an hour with the colonel in a classroom setting.
BY MR. CLARKE (CONT.):
Q. That's one hour where you covered all six or seven of those topics?
A. Yes, sir.
Q. Okay.
A. Then I asked if anybody had any questions, and I opened it up for questions.
Q. Okay.
A. At no time was it ever -- this ever brought up.
Q. Well, but you saw it here. Did you review it?
A. Again, this was after the in-service, and then I

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reviewed it here.
Q. Okay.
A. And it was corrected by Paulette Ward and then myself when he came in for his discipline.
Q. Okay. You understand that this is him testifying that he saw a major testify in a commission room about -- and to justify his actions; correct?
A. That was his -- to me his excuse for doing what he did.
Q. Okay. So you disregarded it or did you look into it?
A. Again, I think it went back to the -- my understanding of the Rhew case, and then, again, all I can say is when I took over director, I laid down the law and what the law was.
Q. Okay. If you -- if you have knowledge that people are doing something outside of what you want them to do, do you think it's your obligation or duty to act?
A. Yes, and the supervisors, and that's evident by Lieutenant Austin's E-mails to the troops.
Q. All right.
(Exhibit 95 was marked.)
BY MR. CLARKE (CONT.):
Q. 95. [redacted].
Apparently she was involved -- she was looked at

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for a violation of General Section 23 on 2/18/16, and she received a one day suspension. And in this case, she was responding to a call; correct?
A. She was going to assist an officer call.
Q. But the call was taken care of; correct?
A. Eventually, yes, sir, prior to her arriving on the scene.
Q. And she was traveling at speeds of 120 miles an hour with her lights and sirens on; correct?
A. Yes, sir, on the 167/67 I believe.
Q. All right. And that's because it wasn't an emergency; correct?
A. Once -- once the Bald Knob officer helped the trooper, he was in custody, but she continued at a speed, which I considered was not ordinary care. She had her lights and siren on, but she continued. The speed was not ordinary care.
Q. Right. And why did she receive a suspension?
A. For not using ordinary care.
Q. Okay. Is that different than the -- I mean, that seems like a more drastic discipline based on the progressive discipline you noted in the -- the other file, the Bost file.
A. I take each one of these OPS cases individually and look at that, plus she was a supervisor.

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Q. All right.
(Exhibit 96 was marked.)
BY MR. CLARKE (CONT.):
Q. 96. [redacted].
He was looked at -- even though he was involved in a traffic collision at a controlled intersection during the course of a pursuit, he was looked at for violation of General Section 23. Do you see that?
A. Yes, sir.
Q. Why was that?
A. That was filled out by the captain. That's what he started -- again, that was the initial report.
Q. All right. And during this case, he ran a stop sign and hit a van. Was he entered into a disciplinary agreement because of the result that there was damage?
A. Basically, the disciplinary agreement is left up to the trooper, whether he wants to say I do not want to appeal this, I want my punishment or we have a regular letter where he has an opportunity to appeal within 10 days, but he chose the disciplinary agreement. He was in violation of the policy.
Q. Well, he was suspended for two days without pay; correct?
A. Yes, sir.
Q. He was -- the person was positively ID'd, and he

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was traveling at speeds in excess of 90 miles an hour in a 35 mile an hour zone; correct?
A. I believe they had a tag. I'm not sure. Let me look at my notes here.
Q. I'm reading your notes. Driver was positively ID.
A. Okay.
Q. Speeds up to 90 in a 35 mile an hour zone. Do you see that?
A. Let me find it, sir.
Q. First page of your notes.
A. I think suspect, they thought they knew who it was.
Q. I'm just reading your words.
A. Yes, sir. That's what I'm responding back to you. Yes, sir.
Q. All right. Which means no need to pursue; correct?
A. If you use good judgment, I would pull off. Yes, sir, I would terminate it.
Q. All right.
(Exhibit 97 was marked.)
BY MR. CLARKE (CONT.):
Q. Okay. 97 will be the investigation of [redacted] for violation of vehicle use policy. He was issued a letter of reprimand for conduct that occurred on January 1st, 2013. This one he just -- this was just a basic car wreck, correct, during the course of a -- well

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let me take that back.
In this case, he was involved in a pursuit. Did he have his lights and sirens on?
A. If you'll give me a second, sir.
Yes, sir, I believe he did. If not, I would have noted it in my notes.
Q. And he was given a letter of reprimand even though it's his second avoidable accident; correct?
A. Yes, sir. Again, depending on the type of accident and what the factors for each incident.
Q. Well, it's not supposed to matter whether there's an accident; correct? It's the conduct.
A. I mean, we look at all accidents. This is a C file, so that's all it's going to cover is accidents here, but in investigating accidents, if we see that they failed to drive with ordinary care, then it's addressed.
Q. Right. And if we -- if we required the review of cam videotapes that were activated when an officer was driving over a hundred miles an hour without his blue lights and sirens, we could probably evaluate just the conduct itself; correct?
A. If there's a way to do that successfully, yes.
Q. Well, didn't you say that they did that? That the cameras were set up to do that?
A. Not just the cameras alone, but we're talking about

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other -- I mean, they review, but, again, we don't have a written policy as you suggested for 99. But they review the things, and that's how they catch any discrepancies.
Q. Well, that would be the most important way to find out if your people are complying with your -- with what you told them to comply with the speed limit without lights and sirens to require a simple report; correct?
A. We can make that change, yes, sir, but --
(Exhibit 98 was marked.)
BY MR. CLARKE (CONT.):
Q. Okay. This is number 98. This is [redacted] I think he just -- he was involved in a pursuit, but he was a probationary officer; correct? You terminated him.
Did he have his lights and sirens on?
A. This is another U-turn. Let me see if I can find my notes here, sir.
Q. I don't really have any questions about that one. He was a probationary officer, and you didn't -- you could terminate him without cause?
A. Yes, sir.
Q. For no reason; right?
A. Yes.
Q. And you did that; correct?
A. Yes, sir.

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Q. Is that because he exposed the public to a danger?
A. That, and I believe he was having trouble performing the duties of a state trooper.
(Exhibit 99 was marked.)
BY MR. CLARKE (CONT.):
Q. Okay. Let's do Exhibit 99, [redacted].
He was looked at for violation of General Section 23 and pursuit policy Section 13 for an incident that happened on 9/27/15; correct?
A. Yes, sir.
Q. And he received -- he signed a disciplinary agreement, and he was transferred to regulatory and building services; correct?
A. Yes, sir, he was. A desk job in the front lobby of the State Police.
Q. And when you went through this, did you -- if you look at the memorandum a couple pages in, he was chasing a motorcycle at speeds that exceeded 140 miles an hour. He passed on the right shoulder 12 times during the pursuit. Do you see that?
A. Yes, sir.
Q. He was -- was he using his lights and sirens?
A. Yes, sir.
Q. All right. He noted he did not think he violated policy; correct?

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A. Yes, sir, that's what he stated.
Q. All right. You go to the investigative summary, both himself and his immediate supervisor said that they don't believe he violated Arkansas policy; correct?
A. Yes, sir.
Q. Did you -- did you counsel the supervisor?
A. Yes, sir. We brought in the supervisor and the troop commander.
Q. And according to the investigative summary, it says, absent a felony, I don't think -- well, that's his conduct.
MS. MERRITT: Can we take a five minute break?
MR. CLARKE: Yeah.
(The deposition recessed at 2:24 p m. and reconvened at 2:28 p m.)
(Exhibit 100 was marked.)
BY MR. CLARKE (CONT.):
Q. Show you Exhibit 100. This is an investigation of [redacted] for violation of the general use -- General Section 23, vehicle use. An incident that happened on July 23rd, 2015. He received a written reprimand. Again, this is -- he made a U-turn while initiating a traffic stop and turned into a path of another vehicle.

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Did he have his lights and sirens on?
A. Give me one second. I'm just trying to find my notes here, sir.
Q. I don't see your notes.
A. I want to say he slowed down to make a U-turn or crossed the median or something. He turned into the path of another vehicle coming.
Q. All right. A number of U-turn things, do you think ordinary care requires somebody to put their lights and sirens when they're attempting a U-turn?
A. Not in every instance. If you can safely make a U-turn, I would say no. I think in these instances, I'm sure he wouldn't turn in front of the vehicle if he knew it was there.
Q. And that's -- that's the point. So if you don't see him and ordinary care would -- if you put your lights and sirens on, that would provide notice to somebody even if you don't see them; correct?
A. Yes, sir, but we can't drive around 24/7 with our lights and siren on.
Q. You can every time you're violating the law doing something dangerous; correct?
A. Well, this is not necessarily violating the law. He made a U-turn and was struck by a vehicle. It could happen to anyone, but --

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Q. It seems to happen to troopers frequently; correct?
A. We have, again, 516 troopers. We drive about 13 to 15 million miles a year.
Q. Okay. Well, what does that statistic mean?
A. It means we drive.
Q. Okay. What I'm talking --
A. And when you drive, you have accidents. Anybody can have an accident.
Q. Okay. And because you know that, you should give them just a significant amount of training; correct?
A. That can apply to the average citizen and this instance here was U-turn.
Q. According to the notes, officers have three times -- according to something that we read, they have three times more traffic collisions than the ordinary public?
A. Yes, sir, because we drive eight hours a days than a normal citizen.
Q. Do you know like a force of Memphis, do you know anything about the MPD?
A. No, sir.
Q. You know, they have 2200 -- I'll tell you, they have 2200 officers. Do you think they have even half of the amount of accidents or emergency vehicle wrecks that the troopers have?

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A. I think municipal law --
MS. MERRITT: Object to the form.
MR. BRYANT: Go ahead. I'm sorry, ma'am.
Municipal law enforcement is different from being a trooper. We cover urban and rural areas.
(Exhibit 101 was marked.)
BY MR. CLARKE (CONT.):
Q. Okay. Let's go to Exhibit 101, [redacted]. He was investigation -- investigated for force, prisoners and vehicle use.
MS. MERRITT: Can I have a copy, please?
MR. CLARKE: I'm sorry.
BY MR. CLARKE (CONT.):
Q. He got a one day suspension. Do you remember him driving at over a hundred miles an hour without his lights and sirens with an un-seatbelted prisoner in his car?
A. Let me find my notes, sir.
Q. They're towards the back.
A. I believe he had a suspect in the car. The juvenile was not in the car when he was driving, but, again, he exceeded a hundred miles --
Q. He dropped the juvenile off in the middle of the road close to --

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A. Well, close to home. He didn't take him all the way to the driveway. It's a very rural area.
Q. That doesn't -- you don't leave --
A. Oh, yes, sir.
Q. -- a juvenile -- that's just wrong; correct?
A. Yes, sir. That's why we addressed it.
Q. All right. What does a green folder mean?
A. It's the color of our OPS.
Q. All right.
A. If it's an OPS investigation, they use a green folder.
Q. Okay. The discipline that we're looking in these OPS files seems to go from a letter of reprimand up to termination. Is there some lesser level of reprimand or discipline that is given without an OPS, like a letter of -- we've --
A. We do letter of warnings also.
Q. The letter of warnings, do you get rid of them after a certain number of years or certain period of time?
A. I'm not sure that -- the status of how long we keep that, but, I mean, an OPS investigation can be a letter of warning.
Q. Okay. Do you know how many -- I just asked for OPS investigations. Well, never mind.

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Again, driving at over a hundred miles an hour without lights and sirens actually with a prisoner that was -- and he got -- for that he got a one day suspension?
A. Yes, sir.
Just, you know, on any suspension, you're not -- you lose your merit pay and you're not eligible for promotion.
Q. Well, I understand, but they don't --
A. That's -- I want to make you aware of the discipline.
Q. Well, and any time that somebody exceeds the speed limit, they could have somebody result in the death like Miss Braun; correct? I just want to make sure.
A. That's true in any case.
Q. I do want to make you aware of the -- of the possible consequence.
A. Yes, sir. I think that applies to every citizen.
Q. Well, you are cops trying to enforce the law by in a lot of cases violating the law with respect to the driving, do you agree?
MS. MERRITT: Object to the form.
BY MR. CLARKE (CONT.):
Q. We're noting a number of violations of the law in all these folders; correct?

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A. Violation of speeding and ordinary care, yes, sir.
Q. Right.
A. And that's why we address it.
Q. All right. Well, you don't -- I mean, you could address it. You know how you could make it stop? Terminate everybody who does it; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: That's one option, but --
BY MR. CLARKE (CONT.):
Q. Right. It would have been a good option if it was done before Cassandra Braun was killed for my client's family, just to make you aware of that.
(Exhibit 102 was marked.)
BY MR. CLARKE (CONT.):
Q. Okay. Now, this one is [redacted]. He was investigated for an incident that happened on January 2nd, 2015, for general use. Did he have lights and sirens on?
A. Yes, sir.
Q. Okay. This is his fourth crash, and he got a what? He got a three day suspension. Okay. He had four crashes in the last three years, five total; correct?
A. Yes, sir.
Q. He was given a written reprimand after his fourth accident; correct?

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I'm looking at the first two lines of your -- of your notes. So he's had five crashes in three years, first line; correct?
A. Yes, sir.
Q. He gave him a reprimand -- written reprimand after the last accident; correct?
A. Yes, sir, that's correct. That's right after I took over as director. The accident occurred on the 14th, a year -- 5/7 of 2014, and I became the director in -- January 12th of '15. So these other wrecks were under a director -- another director.
Q. I understand, but you can look. You're coming in here. You go I've got a guy with five wrecks. He got a letter of reprimand last time. Did you ever consider maybe this guy don't need to be a trooper?
A. Entered my mind, yes, sir, but we gave him a suspension and driving -- driver training to try to correct the issue.
Q. And you compared him to [redacted]. What does that mean?
A. I think by the number of accidents. [redacted] had a number of accidents before I came director.
Q. You know that it was -- that it was his position that he didn't have to have his lights and sirens on while trying to catch up to somebody who -- well, let me

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get this back.
Are you going to dispute the corporate representative's testimony, Sergeant Hoyt, that he trained officers that it was appropriate to exceed the speed limits when attempting to catch up to a traffic offender before pulling them over?
A. If they -- and you have to exercise ordinary care.
Q. Okay. I don't -- I'm not talking about ordinary care in any of my questions. I'm talking about lights and sirens. Can we please just answer that question?
A. Yes, sir, but I -- I didn't see the deposition, so I'm just taking --
Q. I mean, are you -- is this like a -- is this like a -- you know, just a burden on you? I mean, do you not want to try to proactively look at this case to learn from it?
A. I think we have. I think we are.
Q. Okay. 90 percent of what we've gone through -- well, I wouldn't -- I don't know the number -- whatever.
All right. What I'm trying to get at is Hoyt testified that officers were trained that it was appropriate to exceed the speed limit while trying to catch up to a speaker -- a speeder. Is it your -- are you going to refute that testimony in any way that that was the way Burke was trained or that's still the way

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they're trained today?
MS. MERRITT: Object to the form.
MR. BRYANT: I don't know. I don't know what year Hoyt was talking about.
BY MR. CLARKE (CONT.):
Q. Hoyt was the corporate representative, the person identified by the Arkansas State Police to speak on training.
A. Yes, sir, I understand that.
Q. You have not provided training; correct?
A. What do you mean I have not provided training?
Q. You have not provided EVOC training?
A. Myself?
Q. Right.
A. As a director, yes, we've implemented EVOC training.
Q. Oh, you haven't. You're not a trained -- you didn't provide the training?
A. No, sir. No, sir. I'm not an instructor.
Q. Are you -- are you even certified as an instructor?
A. No, sir, I am not.
Q. Okay.
A. I misunderstood your question.
Q. Okay. So in a lot of these cases, you understand during the Burke OPS investigation, he said he talked

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about it was acceptable to try to catch up to a speeder before you initiated your blue lights and sirens and you could exceed the speed limit?
A. Yes, he did, but I'm not sure what timeframe he received that training he was referring to.
Q. Well, he was trained in 2011.
A. Yes, sir.
Q. So it was in-service training in 2012. There was in-service training in 2015/16 that I think you implemented?
A. Yes, sir.
Q. And Hoyt was the person who was designated by the Arkansas State Police to testify as to what people were trained. Do you understand that?
A. I understand that, sir.
Q. All right.
And even today -- I took his deposition on November 9th, 2018. At the 2015 -- even at the 2015 class, he testified that they are trained -- officers are trained for officer and public safety, if they're going to initiate a traffic stop, they can exceed the speed limits without their lights and sirens on until they catch up to the suspected speeder to pull them over in an appropriate spot. That's his testimony. He said you have to still use ordinary care, but yes.

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A. What timeframe was he referring to, sir?
Q. This is all the pursuit training that was provided by the Arkansas State Police.
A. In what year?
Q. In all the years. He was -- he was talking about everything. It's trained today.
A. Okay. I was not aware of that. That would go against what I told the troopers to do.
Q. You don't know any facts to the different, do you?
A. Verify your question.
Q. Any training that you went to didn't say you can't -- you're -- you can't attempt to catch up to a -- did you have training on traffic stops?
A. In this?
Q. At the Arkansas State Police?
A. Did I?
Q. Yes.
A. No, sir, not since becoming the director.
Q. Okay. Did you look into any of the training -- after you were individually sued here, did you talk to somebody like Hoyt to figure out what the actual training was?
A. Yes, sir, I believe so. We talked about it in some of the improvements and some of the changes we made.
Q. Right. But still, up until the time of the law

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that changed, Arkansas State troopers were trained that it was appropriate to exceed the speed limit when attempting to catch up to somebody for a traffic stop. Are you going to dispute that?
A. The only thing I would dispute is I made it clear that you should use your lights and siren. I was not aware that was the way we were still being trained because I have not sat in, but that's your corporate representative, but --
Q. All right. Is that troubling to you?
A. Yes, sir. I thought my message was clear.
Q. Well, your message was one aspect of a one hour training -- training seminar that covered something like nine topics.
Can I see that right there? 83?
If I can reach, if that will be okay?
A. Yes, sir.
Q. Like the notes on 1012, this was one hour; correct?
A. Yes, sir.
Q. And in one hour, you covered -- I guess you went over the previous 11 months. You had three goals. You went through the green folders, which are, I guess, issues that you had -- the green folders would be OPS investigations; correct?
A. Yes, sir.

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Q. So based on the green folders, you had issues with seatbelt prisoners, speeds and blue lights and sirens, deadly force using the vehicle, pursuits, lying. What does that say?
A. I said if you're lying -- a lot of these things are small, and you try to lie about it, you're turning a misdemeanor into a felony.
Q. All right. So of the whole one hour, then you covered weapons and vehicles; correct?
A. Yes, sir.
Q. Then you covered reorganization?
A. Uh-huh.
Q. Then you covered building project?
A. Yes, sir.
Q. And then you covered goals, which are?
A. Pay, promotional systems and troop schools.
Q. And then questions?
A. Yes, sir.
Q. All in one hour?
A. Yes, sir.
Q. So what did you spend, like two minutes on blue lights?
A. No, sir. I think it was probably five or 10 minutes in that instant. Again, that's on that one specific thing, and I did go to each troop headquarters.

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Q. All right. Then on December 15th, you went to -- you covered -- this is one hour again?
A. Yes, sir.
Q. You covered 11 topics, active shooting, legislative session, emergency vehicles, vehicles, promotional testing, troop school, Fentanyl, begging lawsuit. What does begging lawsuit mean?
A. We were sued over the begging statute.
Q. Accountability. It's what it says. Accountability, residency requirement, CSRB all in an hour?
A. Yes, sir.
Q. And you say if somebody went through a training seminar with various slides just on EVOC and they were trained a particular way that your one mention that you should use lights and siren when you exceed the speed limit may not be effective?
A. Possibly, but I think coming from the director's month, it sends the message.
Q. All right. What do you have in front of you?
A. 102. That's the one that we terminated. I think we've already talked about that one.
Q. What's the trooper's name?
A. Not terminated. [redacted].
Q. He had a three day suspension for --

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A. Yes, sir.
Q. I've got a whole bunch of other ones. Is it fair to say that you didn't review any -- let's look at -- you can't pass up [redacted].
A. All right.
Q. I'm sorry.
MS. MERRITT: We all agree.
(Exhibit 103 was marked.)
BY MR. CLARKE (CONT.):
Q. The next one is going to be Exhibit 103, and this is [redacted], another OPS investigation where he was looked at for an incident that occurred on May 23rd, 2014, including violations of the General Section 23, and he was terminated, but reinstated; correct?
A. Yes, sir. Colonel Stan Witt terminated him.
Q. Now, when you reviewed his subsequent incidents, did you find out information about his previous incidents?
A. Yes, sir.
Q. All right. Why was -- was there an actual hearing where he was reinstated?
A. Yes, sir, there was.
Q. All right. Have you ever seen a transcript of that?
A. No, sir. I was -- I believe I was present in the

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hearing. I had just taken over. I sat in the -- I sat there in the audience or at the table.
Q. Were there a bunch of witnesses that testified?
A. Yes, sir, I remember a couple of witnesses. I believe Keith Eremea was one, and then I can't remember the other ones right off the top of my head.
(Exhibit 104 was identified, but not marked.)
MR. CLARKE: What I'd like to do is ask that Trooper Berry's termination hearing be produced as a late filed Exhibit 104.
BY MR. CLARKE (CONT.):
Q. Did Keith Eremea testify at that hearing that it was acceptable to drive without lights and sirens to your knowledge?
A. I don't think lights and sirens were the issue in this. I believe it was a PIT maneuver to the best of my knowledge, and then he struck the defendant on -- they went a short distance, maybe a block, and the guy got out of the car and took off running, and Trooper Berry struck him with a vehicle or made contact with him with his vehicle.
Q. Okay. Well, there were no lights and sirens on in this case. So you think he was --
A. I think there was if I remember. I remember

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testimony, but it would be easier -- I mean, lights and sirens, you do it with one switch, because you might have lights first and then siren, but that's -- that's what I remember from my knowledge. I'd have to review a transcript.
Q. All right. Well, my notes say he didn't have his lights and sirens. Was he found to have violate that?
A. He had his lights on, but he didn't the siren for -- I'm reading here in the letter for a short period. It was like a block from the parking lot where he made contact with the vehicle, struck the vehicle with his vehicle.
Q. All right.
We'll do a couple other ones. [redacted].
(Exhibit 105 was marked.)
BY MR. CLARKE (CONT.):
Q. 105. This was obviously before your time, but according to this, he was looked at for violation of the General Use Section 23 policy. He was given a letter of reprimand. Again, it's noted that he had tunnel vision and -- well, he was -- he was chasing a motorcycle and reached speed of 140 miles an hour. First page of the investigative.
A. Yes, sir, I've looked at it. Again, this is the first time I've seen this.

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Q. All right. And he was given a letter of reprimand. Let's get [redacted] -- whatever the dude's name is.
MR. JAMES: [redacted]
(Exhibit 106 was marked.)
BY MR. CLARKE (CONT.):
Q. Let's look at a OPS investigation of one of your driving instructors. That's Exhibit 106.
All right. [redacted] has had a lot of problems; correct?
A. He's been -- had several disciplinary actions.
Q. You wouldn't trust him to do training today, would you?
A. No, sir, I would not.
Q. Okay. He didn't do any -- did you find -- did you know he was a training captain at some point?
A. No, sir. I thought always -- he was always in interdiction or patrol.
Q. All right. He was -- he had a female civilian in his car. Did he have any problems with complaints about females calling him up?
A. Not that I'm aware of, sir.
Q. Okay. He had a uncommissioned person in his car, and he reached speeds of 156 to 157 miles an hour. Are you aware of that?
A. From reading this, yes, sir.

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Q. No lights and sirens?
A. I'm not -- I know he was disciplined because it is a violation to have a noncommissioned person and be involved in a pursuit, but I'm not sure. I mean, give me time, I'll be glad to look to see if there were lights or sirens, but I -- again, this is prior to me getting there and I have not --
Q. Well, it's in there. It's -- do you ever think of any circumstance where an officer should have a civilian in his car and go 156 or 155 miles an hour?
A. No, sir.
Q. Should that person be terminated based on that conduct?
A. Today as me director, yes, sir.
Q. Do you know why he was not terminated?
A. I have no idea.
Q. Let's go to another [redacted] one. Let's go [redacted].
(Exhibit 107 was marked.)
BY MR. CLARKE (CONT.):
Q. 107, [redacted]. This was an incident that happened on November 20th, 2012, violation of General Section 3 and vehicle use. He had a three day suspension. So this occurred a year after the Rhew hearing.
He went through an intersection. He didn't have

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his lights and sirens on; correct?
A. Sir, I've never seen this before. You've got to give me time to look at that or if you can point out a page number, I'll be glad to go to it.
Q. If you go to the second page of the -- of the investigative summary.
A. All right.
Q. He was approaching -- he flipped on his blue lights barely and turned -- turned them off again. Do you see that?
A. Yes, sir, I do.
Q. All right. And he was involved in a -- in a wreck, and he received a three day suspension. Do you see that?
A. Yes, sir.
(Exhibit 108 was marked.)
BY MR. CLARKE (CONT.):
Q. Okay. Here's our [redacted]. 108 is going to be [redacted].
All right. This happened on 8/15/11. He was looked at for violation of General Section 3 and LE Section 23 Vehicle Use. I think that's suppose to be General Section 23. He was responding to a call without using his emergency equipment, and he was involved in an accident when he struck another citizen; correct?
A. Yes, sir. It appears what it is.

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Q. [redacted] -- let's go -- turn to the -- to this. I don't know what you call this page.
A. All right.
Q. With respect to every officer, is it your understanding we can print out a crash history, a pursuit history, a use of force history?
A. We keep a database, a spreadsheet containing these -- the issues, certain amount of use of force or pursuits or crash history.
I don't know if this is done manual or from the database. I have no idea because I wasn't here at that time.
Q. Right. According to this file, he was -- didn't have his emergency equipment activated was going 105 in a 45 mile an hour zone before crashing into another vehicle?
A. Yes, sir, that's what it says and a disciplinary agreement.
Q. It noted in the disciplinary agreement that this exposed the ASP to significant liability as a consequence; correct?
Paragraph three?
A. Yes, sir.
Q. The 11th page of this in the investigative summary. Again --

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A. What page are you on, sir?
Q. The first page of the investigative summary.
A. Okay.
Q. If you look down, they interviewed [redacted] in the second paragraph. He actually -- he reached speeds of 105 miles an hour and impacted a Cadillac Deville at 97 miles an hour. He said that he wanted to use the element of surprise, so he decided not to turn his lights on. Do you see that?
A. I see the part about the speeds. Where are you at as far as --
Q. The last paragraph on that page, last line.
A. Yes, sir, I see that.
Q. Okay. What is a silent response under your policy?
A. I believe it just says silence response. That would be no lights or siren I believe, but I would have to look at the policy. I think I had it over here. Give me a second.
Q. It's not defined in the policy; correct?
A. No, sir. I don't believe there's a definition. It's just silence response.
Q. After we went through the law, it's not authorized by any statute, is it?
MS. MERRITT: Object to the form.
MR. BRYANT: Again, the same answer as I

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had before.
BY MR. CLARKE (CONT.):
Q. Which is no?
A. No, sir, with the exception --
Q. Your answer is due regard, but, I mean, what I'm saying is there are no silence response mentioned in any statute; correct?
A. Not that I'm aware of, no, sir.
Q. All right. If you want the element of surprise, you need to -- you're just not allowed to have that unless you're going the speed limit; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: Again, we addressed the issue of kidnapping, different things.
BY MR. CLARKE (CONT.):
Q. Well, I mean, you can do something and violate the law. I mean, if you have a kidnapping and you have -- what -- what law in October 10th, 2016, authorized somebody to act differently because it's a kidnapping?
A. I'd have to look at the law again to see what the exceptions are.
Q. I'll give them to you.
A. Yes, sir.
Q. You think there's one that addresses kidnapping?
A. No, sir, I'd just like to refresh my memory. Not

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kidnapping, but I think it -- I think it talks about felonies or things of that nature. The Oklahoma you showed me, but I need to refresh my memory on the other.
Q. Yeah.
I'll even give you my highlighted ones if you want.
A. All right. I'll look here.
MS. MERRITT: If you'll give him his back, I found mine.
MR. BRYANT: Is that the same one?
MS. MERRITT: Well, I think I gave you the same three. I think there are three statutes.
BY MR. CLARKE (CONT.):
Q. Mine all have highlights on them and they're stapled.
A. I'm not sure we have the same ones.
Q. Why don't you give me mine back?
A. All right.
Q. And you call out what you have.
All right. We've got 27-49-109?
A. Yes, sir, I'm looking at that, but I'm just seeing where the exceptions are under the new law. This is -- I think this is the law prior, the 109.
Q. Yeah. My question --
A. I don't have the newly enacted.
Q. I'm not -- I'm not asking --

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A. Okay. I thought you were referring to the new law, sir.
Q. No, no.
A. I'm sorry. I'm sorry.
Q. Any law in October 10th, 2016, that allowed for a silent response in any of the statutes?
A. Not necessarily addressed in a silent response. All it talks about, again, as we discussed on 204 is police vehicles on duty.
Q. Okay. But 202 says lights and sirens; correct?
A. Yes.
Q. Okay. You understand using terms like silent response and immediate pursuit without definitions is problematic?
A. We could have done a better job defining, I believe so, yes, sir.
Q. Are you going to do anything about it now that you know it?
A. Oh, absolutely, yes, sir. We'll address that.
Q. All right. Okay. We've done [redacted]. Let's do [redacted] What I'm trying to do is show you the circumstances of the department before you got there because that's what you -- that's what you were given; correct?
A. Yes, sir.

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(Exhibit 109 was marked.)
BY MR. CLARKE (CONT.):
Q. It's going to be Exhibit 103, [redacted].
MS. MERRITT: I think we've already got 103. We should be at 109 now.
MR. BRYANT: This is 10 -- I think that's a nine you're reading as a three I think.
MR. CLARKE: Oh, I'm sorry.
MR. BRYANT: [redacted]?
BY MR. CLARKE (CONT.):
Q. Yeah.
A. Yes, sir.
Q. All right. He was -- on October 5th, 2010, he was traveling above the speed limit without using his emergency equipment and was involved in a traffic accident when he slid through a stop sign. Do you see that?
I'm looking at the first page.
A. Yes, sir.
Q. All right. He got a letter of reprimand; correct?
A. Had a suspension. It's checked suspension in this file.
Q. It says both checked, doesn't it?
A. Letter of reprimand and a suspension.
Q. Let's see what Colonel Howard did. He did give him

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a one day suspension.
A. Yes, sir.
Q. And, again, he's driving up at speeds of 116 miles an hour during a pursuit without his lights and sirens; correct?
A. It appears that in the report, yes, sir.
Q. Let's look at the CRSB memo.
Actually, let's look at the memorandum from K'Nuckles. He says -- you're at the right thing. You were at the right thing.
A. You kind of lost me when you said by K'Nuckles.
Q. The memo. Anyway, [redacted], let's just -- that's what I'm talking about.
A. Okay. It was to. I thought you meant it was from.
Q. No. All right. So they talked to -- he indicates his top speed was -- going to the section regarding [redacted], the next page, top speed was 116 miles an hour, and then Corporal Paulette Ward asked to speak to the CRSB, and she noted that he does not always activate his lights and sirens when responding to injury accidents for fear of causing an accident. Do you know where somebody would get that --
A. No, sir.
Q. -- type of justification?
A. No, sir.

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Q. That's -- you know, you put on your lights and sirens to try to avoid an accident; correct?
A. Yes, sir. In most instances, yes, sir.
Q. All right.
I'm sorry. We've got to go to [redacted]. This involves our good friend [redacted]
MR. JAMES [redacted]
MR. CLARKE: Yeah, [redacted].
(Exhibit 110 was marked.)
BY MR. CLARKE (CONT.):
Q. This is an investigation of [redacted] for an incident that occurred on 4/9/10, and this is one where if you go to about the fourth page in, it talks about captain -- they interviewed Captain Eremea.
Look at -- read what Captain Eremea said, then I'm going to ask you some questions.
A. Yes, sir.
Q. All right. And if you look at the summary of events, this is a pursuit that was for speeding where speeds were reached up to 140 miles an hour with both vehicles darting in and out of heavy traffic, and the pursuit was only terminated when the motorcycle crashed; correct?
A. It appears to say that, yes, sir.
Q. Okay. And Eremea is concerned about -- is about

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anger and cussing shown on the videotape and the tunnel vision of the officer; correct?
A. Yes, sir.
Q. He only thought there should be a letter of reprimand, but [redacted] was given some type of suspension I believe.
A. He was suspended for three days. If you look at the letter, second page, suspended for a period of 24 hours.
Q. All right.
MR. CLARKE: Let's take a little break because I may be almost done.
(The deposition recessed at 3:13 p m. and reconvened at 3:24 p m.)
BY MR. CLARKE (CONT.):
Q. There was one other training that I don't think we talked about, and I tried to ask Sergeant Hoyt about it. I don't want to get out my computer, but, apparently, there was some type of presentation provided by a [redacted]?
A. Yes, sir.
Q. Just about 13 days before this wreck?
A. At a commanders conference, yes, sir.
Q. And what is -- tell me -- tell me what a commanders conference is.

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A. That's where we get like the captains and lieutenants and the majors together.
Q. Okay.
A. And it's strictly upper management.
Q. Okay. And did you go to that?
A. Yes, sir.
Q. And that was somebody responding to?
A. Well, it was a mother of two daughters who were killed.
Q. Right.
A. We brought her in, paid her way down to address our commanders. It was videotaped, and I believe that you were given that in discovery. The captains were instructed to go back once they received the videos and play it for the troopers to see, you know, these things can happen, the consequences.
Q. But that was -- it wasn't a pursuit. It was a simple emergency vehicle driving to a scene that was cleared; correct?
A. I'm trying to remember the circumstances. I remember he was on his phone doing different things. It was -- I don't know if he was going to an accident or what he was doing, but, again, it focused on the speed of the trooper.
Q. All right. And why wasn't that provided to all

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troopers?
A. That was the instructions given. Once the DVDs were made of the presentation, they were supposed to sit down with the troops and play that video.
Q. Do you know if it happened?
A. They were instructed to. I assume it did happen, but I'm not sure -- this was close to the time before the Burke accident. I don't know if they had the videos in their hands at that time.
Q. All right. We've gone through the policies and the OPS and the law. Would you agree that a more coherent and simpler policy with definition is required for officers to properly comply with their obligations?
A. I think we'll look at any policies, training to make sure it's easy and understandable. If we need to make those adjustments, we will, yes, sir.
Q. I mean, you have access to those. All you've got to do is -- I mean, I got the Arkansas Chief of Police ones as a member of the public.
A. Yes, sir, every agency has -- use model policies. Some do and some don't and some have their own policy. So we'll be glad to look at that, and where we deem appropriate, you know, we can make those changes.
Q. Well --
A. I think it would, you know, ensure the safety of

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the public and also our troopers.
Q. Okay. Would you agree that the fact that you addressed emergency vehicle operations in your meet the trooper -- meet the colonel seminar meant that you felt that there was an issue of importance that needed to be addressed with your troopers?
A. Yes, sir, that's why I did it.
Q. All right. And, apparently, do you -- do you have any other type of investigation on any other particular policy that results in more injuries or death than violation of the general -- the vehicle use policy or the pursuit policy?
A. I'd have to look at the numbers. I know we have shootings that result in deaths and different things. I'd just have to look at the numbers, but we really haven't had that many death investigations since I've been the director involving a motor vehicle with us.
Q. Well, every time somebody drives 140, 150 miles an hour without lights and sirens, the potential for serious injury or death to the public is there?
A. Yes, sir, I agree with that. Yes, sir.
Q. All right. Since the filing of the lawsuit, have you actually done any -- have you changed anything?
A. I believe we continue to implement through -- they meet with -- if we see a pattern, any type of pattern,

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that they meet with the -- driver instructors critique that. We -- the driving track. We've explored driving simulators. We talked about putting GPSes in the vehicle that if it exceeds 85, then the supervisor will receive a tone.
Q. You already had a policy on that, but you just don't look into it; correct?
A. Excuse me, sir?
Q. I mean, deliberate indifference to -- in my understanding is having a choice and not doing something about it. Okay. So you have a policy that says every time you reach a hundred miles an hour, your camera should go on, but the Arkansas State Police, even though they have that policy, they don't actually look at those tapes; correct?
A. We look at random --
MS. MERRITT: Object to the form.
MR. BRYANT: As I answered before, we do random checks, but there's no way, as I testified before, that specifically we can monitor that tape if it exceeds a hundred miles an hour. We have no system in place.
BY MR. CLARKE (CONT.):
Q. No, you -- you don't need a system. You just need a policy that says if you go over a hundred miles an

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hour -- if your camera was activated due to speed, you are to write a memo?
A. If --
Q. You don't need technology, do you?
A. I think technology is a better system because if a trooper chose not to write the memo, we would never know.
Q. Well, I understand, but the acknowledgment is in the policy that over a hundred miles an hour, we need video evidence; correct?
A. That's what we set our cameras at, yes, sir.
Q. Okay. So that's the policy. Why do you do that? Because you want to know; correct?
A. Yes, sir. And we're looking to turn that threshold back.
Q. Right, but I'm trying to give you an option to do this without even spending a nickel. Okay. You can require your officers to write a memo when that happens; correct?
A. We can, and we'll look at that, yes, sir.
Q. Okay. And you didn't; correct?
A. Not at this point.
Q. Okay. What's preventing you from doing that?
A. We felt that the random reviews would address it or if the lights or sirens came on, it's going to activate the camera.

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Q. Let's look at the random reviews. Have you ever looked at the camera audits?
A. No, sir, I have not.
Q. The random reviews?
A. No, sir.
Q. I don't think they're going to be what you think they are.
Let me show you Burke's camera audit. I don't have a -- let's mark this. This is late filed Exhibit 42.
(Exhibit 111 was marked.)
BY MR. CLARKE (CONT.):
Q. Have you ever even looked at an audit report?
A. No, sir. I depend on the supervisors to do that.
Q. Okay. It looks like on each particular day, they look at one interaction that's on the tape; correct?
A. It looks like they -- a date and time they reviewed the tape per incident, yes, sir.
Q. Right. But it only goes over one incident on the day?
A. I don't think I understand your question. Here he's got it looks like three dates, the review date was 4/20, but it was three incidents on 4/19 that he looked at the way I read this.
Q. Every month they have to do an audit of three videos; correct?

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A. Yes, sir.
Q. So in that month, they looked at three videos from one particular day; correct?
A. In this instance, it is, but I don't know if they -- how each supervisor does it. This one is three different -- two different days. It's three dates, but two of them are on the same date and one was another date.
Q. Okay. Here's my point, what's the purpose -- what's the value of those if you don't know what -- what a supervisor is supposed to be doing, what they're supposed to be looking at and what they're supposed to be documenting?
A. They are random reviews. I believe that's the way the policy states.
Q. Okay. Every one of those is a traffic stop. You can go through them, and the form itself actually has certain things to check off; correct?
A. Yes, sir.
Q. How you approach the vehicle. I mean, it's written for a traffic stop, would you not agree?
A. On this review, yes, sir.
Q. On every form is what I'm saying. You have all different reviews from different dates in there; correct?
A. Yes, sir.

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Q. The form itself deal is written in a way to evaluate the way an officer deals with a traffic stop and how he approaches the car, which side, things of that nature; correct?
A. Yes, sir.
Q. There's obviously a narrative where they can -- there's a couple lines at the end where they can do something. Wouldn't you think it would be more effective for liability and public safety to actually require the audits of the car driving over a hundred miles an hour rather than do a random audit?
A. Yes, sir, in a certain context, but, again, the pursuits are reviewed, but the random -- to me, the random reviews not only traffic stop, but they're watching up to the traffic stops, and they would see if the trooper was not driving with ordinary care.
Q. Okay.
A. And it's up to the supervisor if it was not to take the appropriate action.
Q. Well, the reason I focus on forms like the pursuit form and things of that nature, you can tell what a department thinks is important based on what they put on the forms. Would you agree?
A. Generally, yes, but -- generally I would, yes, sir.
Q. All right. Those -- those forms are written in a

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way to evaluate how somebody performs and complies with the traffic stop policy; correct?
A. It appears the interaction with a citizen, yes, sir.
Q. Okay. The pursuit reports that you have, they don't have any indication as to whether or not -- on the form that has to be completed by the officer whether he had his blue lights and sirens activated; correct?
MS. MERRITT: Object to the form.
MR. BRYANT: The form does not, but, again, I'll repeat my answer, that the levels are reviewed, the supervisors from first line all the way to division commander would note that if it was any violation of ordinary care.
BY MR. CLARKE (CONT.):
Q. All right. That's all I have.
Have I -- have I allowed you to answer all your questions and have I been cordial to you?
A. Except for the prostitute thing, yes, sir.
Q. I believe that was self-inflicted --
A. Good point.
Q. -- in my defense. I didn't say anything that required the response of prostitution, but I just -- you know, I appreciate it. I know there are a lot of difficult things that we talk about in cases like this,

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and sometimes it gets, you know, a little heated. I tried my best to act in an appropriate fashion to go over the facts. Do you feel that I've done that to you or treated you inappropriately in any way?
A. You're fairly, but, also, I mean, I would like to say, you know, I've been doing this for 43 years, and I've dedicated my life to this, and to me, law enforcement is a calling, and I believe in protecting the citizens and the troopers. I mean, nothing is more important to me. You know, 43 years is a long time. It's four and a half decades almost that I've been doing this job.
Q. Okay.
A. And if there's an issue, we'll address it.
Q. Well, I've got my masters in criminal justice, and I did studies at training academies in Miami, and I've been working on pursuits litigation, policies and training for the last 26 years.
A. Uh-huh.
Q. I believe while law enforcement is important and I respect you and actually it is National Law Enforcement Appreciation Day.
A. I wasn't going to bring that up. I saw that on the news today.
Q. Probably --

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A. It's ironic though to give a deposition on National Law Enforcement Day.
Q. I will give you appreciation for that.
A. Yes, sir.
Q. You know, things can be done better; correct?
A. Yes, sir.
Q. I mean --
A. Always. I learn something new every day, yes, sir.
Q. -- there's good departments and bad departments, would you agree?
A. Yes, sir.
Q. You, as running the Arkansas State Police, want to try to run it as effectively as you can; correct?
A. Yes, sir.
Q. You came in on the job with some information I think was provided to you today that you were not fully aware of, would you agree?
A. Yes, sir, in certain context, yes, sir.
Q. I mean, the issue here is, you know -- and I do a lot of work with different types of departments, state troopers office and municipalities. They're kind of a -- they're different animals, would you agree?
A. Yes, sir, different type of policing.
Q. Right. And -- and with respect to my pursuit and EVOC stuff, I encounter the most issues with the trooper

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departments because they have a different terrain than municipalities. You're aware of other type of policies that are enacted that are completely restrictive?
A. I would say that city policing is totally -- just like a county deputy is different than city police, municipal policing, from a trooper. It's three different animals.
Q. All right. Well, we can -- we can talk, but we all want to go.
MR. CLARKE: I'm done.
MR. FRENCH: We'll reserve.
MS. MERRITT: I'll reserve my questions. Thank you.
(The taking of the above-styled deposition concluded at 3:38 p.m.)

CERTIFICATE

STATE OF ARKANSAS*
* ss
COUNTY OF GARLAND*

I, GAROLD W PRITSCH, Certified Court Reporter, a Notary Public in and for the aforesaid county and state, do hereby certify that the witness, WILLIAM J BRYANT, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me in machine shorthand notes and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability

In accordance with Rule 30(e) of the Rules of Civil Procedure, review of the transcript was not requested by the deponent or any party thereto

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action

GIVEN UNDER MY HAND and SEAL OF OFFICE on this 16th day of January, 2019

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Garold W Pritsch, CCR, LS No 329, Notary Public in and for Garland County, Arkansas

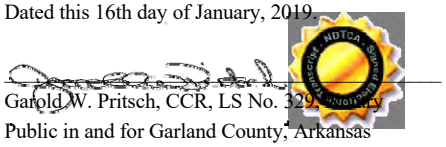
My Commission expires February 27, 2020

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, GAROLD W. PRITSCH, LS No. 329, Certified Court Reporter in the State of Arkansas, certify that the foregoing pages 1 through 241 constitute a true and correct copy of the original deposition of WILLIAM J. BRYANT taken on January 9th, 2019.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 16th day of January, 2019.



Garold W. Pritsch, CCR, LS No. 329, Notary Public in and for Garland County, Arkansas

My Commission expires February 27, 2020.

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30 12:6 100:5,6 100:9,10,13,13 100:15 109:8 175:20
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IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE — RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT K

Black Box Crash Data Download

LITTLE ROCK POLICE DEPARTMENT

501-371-4605
rbreshears@littlerock.gov

700 W. Markham Street
Little Rock, AR
72201

December 10, 2016

Officer Phillip DeFoor
Hot Springs Police Department
641 Malvern Ave,
Hot Springs National Park, AR 71901

Dear Officer DeFoor,

I was contacted by your department on October 12, 2016 to assist you with a crash data download of two vehicles that were involved in a fatal crash on October 10, 2016 (Incident number 16L032154).

On October 18, 2016 I arrived at your department and we traveled to the airport in Hot Springs. The two vehicles were secured in an airplane hanger, and were in the same condition that you recovered them in at the collision scene. Both vehicles were completely disabled and unable to be driven. Due to the damage of the vehicles I requested that we remove the Air Bag Control Modules (ACM) of both vehicles. A search warrant was obtained for both vehicles and signed by a magistrate prior to downloading the data.

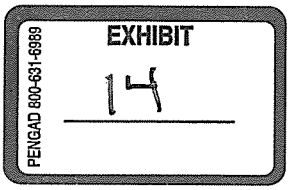
The ACM in the 2016 Dodge Charger was in the center console near the dash of the vehicle, and could be seen without removing much of the interior. The ACM was undamaged and was removed with very little effort. I photographed the ACM before and after (see photo 1 and 2).

The ACM in the 2011 Chevrolet Malibu was in the center console just in front of the front seats. The ACM was also visible, and was not damaged. I removed it with minimal effort. This ACM was also photographed during the process (see photo 3 and 4).

We then transported the ACMs to your office where I proceeded to download the data in both modules. Once the data was secured I converted it to a PDF file and I was able to read the information.

The data in the 2016 Dodge Charger was complete and contained the following information.

1. The vehicle was involved in a deployed event. This means that the collision caused the airbag(s) to deploy, and 43 pages of data were downloaded.
2. The vehicle had a sole occupant and that driver did not have a seatbelt on (confirmed by page 6 of 43). The lack of a front seat passenger can be



confirmed by the data on page 5 of 43 when it explains that the seatbelt pretensioner did not deploy for the passenger side.

3. This was the only collision that this vehicle was in, and this can be confirmed by the Ignition cycle count. The count shows that the vehicle was started 693 times, and at 694 is when this download occurred (pages 5-6 out of 43).

4. This vehicle has 2 events recorded. The first one was caused by the initial impact with the other vehicle (see pages 19-31), and the second (8-18) was caused during a "slap" of the two vehicles after the initial impact. The vehicles speed was 113 mph five seconds before impact, and 98 mph at impact with the other vehicle (page 28).

5. The brakes are either on or off in the data. The driver perceived the other vehicle at .8 seconds before the impact, and at 143 feet per second the vehicle could not stop before impact. The driver applied the brakes and held them until the vehicle ground to a halt. This is evident in the data and by the injury the driver sustained during the collision.

6. The steering input data shows where the steering wheel is in relation to the front of the vehicle. In this case the steering shows + or -. The data is in degrees and it is out of 360. The data will show the positive numbers toward the driver's side and the negative toward the passenger side. The driver saw the other vehicle at 1 second before impact and applied the brake. In addition the driver appears to have been in a slight right hand curve, or changing lanes. After impact the driver attempted to turn into the slide that the vehicle was in, and turned the wheel toward the driver's door.

The data in the 2011 Chevrolet Malibu was completed and contained the following information.

1. The vehicle was involved in a deployed event. This means that collision caused the airbag(s) to deploy, and 10 pages of data were downloaded.

2. The vehicle had two occupants and neither had a seatbelt on during the collision(see page 5). However, nothing in the data can determine who the driver or the passenger was. During the removal of the ACM I suggested that the driver's front airbag be removed and submitted to the Arkansas State Crime Lab to be tested for touch DNA. Failure to wear the seatbelts resulted in both subjects being ejected from the vehicle, and ultimately resulted in their deaths.

3. This vehicle appears to have been involved in a recorded event prior to this one. This is evident by the ignition cycle count on page 5 of 10. The count shows that this collision occurred 254 cycles after an event that was erased.

There is no way to recover this data unless it was archived by a police collision report.
This could be why the passenger side airbag failed to inflate.

4. The vehicle was going 40 mph five seconds before the collision, and 16 mph at impact.

5. The brakes were applied during the 5 second data download. This shows that the driver was slowing the vehicle, and coupled with the steering data shows that the driver was making a left hand turn.

This concludes my report, and I am available to explain any of this information.

Sincerely yours,

Ralph Breshears

Vehicle Homicide Investigator

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT L

Disc Containing 9 Video Animations
(To be sent to the Commission under separate cover)

MAYS
BYRD

Arkansas
State Claims Commission

MAR 25 2022

RECEIVED

March 25, 2022

HAND DELIVERED

Arkansas State Claims Commission
101 E Capitol Ave # 410
Little Rock, AR 72201

RE: Exhibit L to Claimants Joint Response and Incorporated Brief in Support of Claimants' Response in Opposition to Respondent's Cross Motion for Summary Judgment
Claim No. 190497 and Claim No. 200290

Dear Sir or Madam:

Enclosed please find Exhibit L-Matthew Jackson Animations on a disc for your review in regard to the Claimants' Joint Response to Respondent's Cross Motion for Summary Judgment filed on today's date.

Sincerely,

MAYS, BYRD & ASSOCIATES, P.A.

Tiffany Mays O'Guinn

TMO:dj-lets03.25

Enclosure

cc: Attorney Andrew Clarke (via email to aclarke@cochranfirmmidsouth.com)
Attorney Paul James (via email to pjj@jamescarterlaw.com)
Attorney Jennifer Merritt (via email to jennifer.merritt@arkansasag.gov)

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ARKIE BYRD
ABYRD@MAYSBYRDLAW.COM

TIFFANY MAYS O'GUINN**
TMAYS@MAYSBYRDLAW.COM

RICHARD L. MAYS, JR. (OF COUNSEL)
RMAYSJRPLLC@GMAIL.COM

*ALSO LICENSED IN WASHINGTON, D.C. **ALSO LICENSED IN TEXAS

Arkansas
State Claims Commission
MAR 25 2022

IN THE ARKANSAS CLAIMS COMMISSION

RECEIVED

LORI BRAUN, as Administratrix of the Estate of Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Brown — CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

LAVON PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased, Individually and on behalf of all wrongful death Beneficiaries of Tavon Jenkins — CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS, ARKANSAS STATE POLICE — RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT L

Disc Containing 9 Video Animations
(To be sent to the Commission under separate cover)

From:	Kesia Morrison
To:	ASCC Pleadings; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarker@cochranfirmmidsouth.com
Cc:	Johanna Hinkle; Jennifer Merritt
Subject:	RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC
Date:	Tuesday, March 29, 2022 10:05:27 AM
Attachments:	2022-03-29 - noa and sub.pdf

Attached please find my notice of appearance and motion to substitute counsel in the above-referenced case. Thank you.

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.5310 | Fax: 501.682.8118
Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

MOTION TO SUBSTITUTE AND ENTRY OF APPEARANCE

Assistant Attorney General Kesia Morrison moves the Court for leave to substitute her appearance as counsel on behalf of Respondent Arkansas State Police, and requests that all future service and correspondence be sent accordingly.

Senior Assistant Attorney General Jennifer Merritt previously entered her appearance in this matter, but she is leaving her employment with this office and this matter has been reassigned to undersigned counsel. As such, the undersigned respectfully requests that she be granted leave to be substituted for Ms. Merritt as counsel for the Respondent in this matter.

WHEREFORE, the undersigned respectfully requests the Commission grant her leave to be substituted as counsel for the Respondent in this claim and to remove Jennifer Merritt as attorney of record for the Respondent.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3676
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 29th day of March, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

From:	Donna Johnson
To:	ASCC Pleadings
Cc:	Tiffany Mays; Andrew Clarke; pjj@jamescarterlaw.com; kesia.morrison@arkansasag.gov
Subject:	Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 2002
Date:	Thursday, April 21, 2022 11:06:48 AM
Attachments:	Claimants Joint Response Exhibit M.pdf Tavon.Jenkins Exhibit M.pdf

---

Attached for filing on today's date, please find:

Claimants' Joint Response and Incorporated Brief in Support of Claimants' Response in Opposition to Respondent's Cross-Motion for Summary Judgment Supplemental Exhibit M, attached.

Please confirm receipt of same.

Thank you.

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
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Beneficiaries of Tavon Jenkins CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT SUPPLEMENTAL "EXHIBIT M"

COMES NOW the Claimants, Lori Braun and Lavon Perry in their stated capacities, by and through their attorneys of records and in opposition to the Respondent's Cross Motion for Summary Judgment and hereby files the Supplemental "Exhibit M" in support of their response:

1. That on or about March 25, 2022, Claimants filed their Joint Response and Incorporated Brief in Support of Claimants' Response in Opposition to Respondent's Cross-Motion for Summary Judgment with included Exhibits.

2. That on or about March 29, 2022, Claimants agreed to extend the time for Respondent to reply to Claimants' Joint Response in Opposition to Respondent's Cross Motion for Summary Judgment. In addition, Respondent agreed to allow Claimants to amend and/or supplement Exhibits to their previously filed said Joint Response and Incorporated Brief.

3. That Claimants are hereby filing the following Declaration of Kendall Von Crowns, M.D. with included Curriculum Vitae and Summary Report as "Exhibit M" in support of their previously filed Joint Response.

WHEREFORE, PREMISES CONSIDERED, Claimants, Cassandra Braun and Lavon Perry in their state capacities, jointly move the Arkansas Claims Commission to consider the supplemental "Exhibit M" in support of their said Joint Response and request for the Commission to deny Respondent's Cross Motion for Summary Judgment and for all such further relief, both general and specific, to which they may be entitled under the premises.

RESPECTFULLY SUBMITTED,

/s/ Tiffany Mays O'Guinn

Tiffany Mays O'Guinn, (Ark. Bar 200605)
MAYS, BYRD & ASSOCIATES, P.A.
Centre Place
212 Center Street, 7th Floor
Little Rock, AR 72201-3801
tmays@maysbyrdlaw.com
Attorney for Lavon Perry

AND

/s/ Paul J. James

Paul J. James (Ark. Bar 83091)
JAMES & CARTER, PLC
500 Broadway, Suite 400

Little Rock, Arkansas, 72201
(501) 372-1414 (Telephone)
(501) 372-1659 (Facsimile)
pjj@jamescarterlaw.com

/s/ Andrew C. Clarke
ANDREW C. CLARKE (Ark. Bar 95070)
THE COCHRAN FIRM - MIDSOUTH
One Commerce Square, Suite 1700
Memphis, TN 38103
(901) 523-1222 (Telephone)
(901) 523-1999 (Facsimile)
aclarke@cochranfirmmidsouth.com

Attorneys for Lori Braun

CERTIFICATE OF SERVICE

I, Tiffany Mays O'Guinn, on this 21st day of April 2022, hereby certify that a true and correct copy of the foregoing was served via electronic mail to the following:

Kesia Morrison
Assistant Attorney General
Catlett-Prien Tower Building
323 Center Street, Suite 200
Little Rock, AR 72201-2610
jennifer.merritt@arkansasag.gov

Attorney for Arkansas State Police

/s/ Tiffany Mays O'Guinn
Tiffany Mays O'Guinn

IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Brown — CLAIMANT

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CLAIMANTS' JOINT RESPONSE AND INCORPORATED BRIEF IN SUPPORT OF CLAIMANTS' RESPONSE IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

EXHIBIT M

Declaration of Dr. Kendall Von Crowns with included Curriculum Vitae and Summary Report

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LAVON TISHETTE PERRY, as the Personal Representative of the Estate OF TAVON JENKINS, deceased	)	**CLAIMANT**
	)	**CLAIM NO. 200290**
V.	)	
STATE OF ARKANSAS, ARKANSAS STATE POLICE	)	**RESPONDENT**

DECLARATION OF DR. KENDALL VON-CROWNS

I, Dr. Kendall Von-Crowns, hereby declare as follows:

1. That I am over the age of twenty-one (21) years, competent to make this Declaration, and with personal knowledge of the facts and opinions contained herein or attached hereto.

2. I am a Forensic Pathologist and I am licensed to practice in the State of Texas. I have been engaged to review documentation and render expert opinions concerning the death of Tavon Jenkins in a motor vehicle collision on US Highway 70/Airport Rad at the intersection of Kleinshore Road, in Hot Springs, Garland County, Arkansas on October 10, 2016.

3. Attached to this Declaration is a true, correct and complete copy of the Report that I prepared, that is dated April 6, 2022, and was signed by me. Also, attached to this Declaration is a true, correct and complete copy of my curriculum vitae, which sets forth my education training, experience and other qualifications to conduct the review and render the observations, findings, and opinions set forth in the attached Report.

KENDALL VON-CROWNS, M.D.

STATE OF TEXAS)
COUNTY OF Tarrant)

The foregoing affidavit was acknowledged before me, and officer duly authorized in the State and County aforesaid, to take acknowledgments, on this 19th day of April, 2022, Kendall Von-Crowns, M.D., who is personally known to me or who has produced identification and who has hereby taken oath.

WITNESS my hand and official seal this 19th day of April, 2022.

CAROL ANN WALKER
Notary Public, State of Texas
Notary ID 193662-2
My Commission Exp. 01-17-2026

(Notary Seal)

Notary Public

Carol Ann Walker
(Printed Name)

Notary Public, State of:
Texas

My Commission expires:
01-17-2026

Tiffany Mays O'Guinn, Esq.
Mays, Byrd & O'Guinn, PLLC.
CENTRE PLACE
212 Center Street, Suite 700-A
Little Rock, Arkansas 72201-3801

RE: TAVON JENKINS

Ms. Mays O'Guinn,

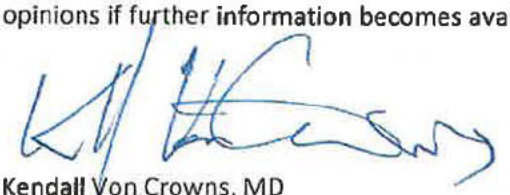
I have reviewed the information provided to me. From my review Tavon Jenkins along with his passenger were involved in a high-speed car accident in which their vehicle was struck by an Arkansas State Trooper Vehicle. The Arkansas State Trooper Vehicle was traveling at 98 mph when it struck Mr. Jenkins' car. Mr. Jenkins and his passenger were ejected.

I have reviewed the external examination of Mr. Jenkins prepared by the Little Rock Arkansas State Crime Laboratory Medical Examiners Division. Doctor Adam F. Craig, MD associate medical examiner determined Mr. Jenkins cause of death to be multiple blunt force injuries and manner of death to be accident. I agree with the cause and manner of death determined by Doctor Craig.

From the external examination that was performed on October 12th, 2016, it appeared that Mr. Jenkins



I reach my opinions with a reasonable degree of medical certainty and reserve the right to change my opinions if further information becomes available



Kendall Von Crowns, MD

Forensic Consultant

Dated this 6th day of April, 2022.

KENDALL VON CROWNS, M.D.

CURRENT POSITION

- **2009 – Present** Deputy Medical Examiner
  Travis County Medical Examiner's Office, Austin, Texas

WORK EXPERIENCE

- **2000 – 2009** Deputy Medical Examiner
  Office of the Medical Examiner, Chicago, Illinois

  Performed 2,070 Autopsies (514 homicides) 2,061 Inspections (External Examinations Only)

  Duties: Performed autopsies and inspections on individuals who died within Cook County and generated autopsy protocols. Determined cause and manner of deaths. Determined which cases need a complete autopsy versus an inspection. Determined if case was a medical examiner's case. Worked with Gift of Hope (Organ Donation). Worked with Chicago Police department, Cook County Sherriff's Office and other city police agencies within Cook County. Testified in court on criminal and civil cases. Attended certain scenes (predominately deaths in custody). Gave lectures to fellows, residents, colleagues and law enforcement. Supervised fellows and residents in the performance of autopsies.

- **2004 – 2009** Forensic Pathologist (Weekend and Holidays)
  2007 – 2009 Managing Forensic Pathologist
  DuPage County Coroner's office, DuPage County Illinois

  Performed 138 autopsies (Nine Homicides).

  Duties: Performed autopsies and obtained evidence at the request of the DuPage County Coroner. Determined cause of death. Generated reports and discussed manner of death with corner and his staff. Worked with DuPage County Sherriff's Office and police agencies of cities within DuPage County. Trained autopsy technicians in proper autopsy procedures. As Managing Forensic Pathologist created schedules and recommended other forensic pathologists to be hired by the corner and dealt with complaints/grievances by the coroner or the pathologists.

- **1997 – 2000** Managing Prosector
  Lab Corp of Mississippi

  Duties: Created monthly schedule for prosectors, hired and trained new prosectors and turned in time for billing. Processed all specimens and dictated descriptions.

- **1996 – 2000** Assistant Medical Examiner
  Shelby County, TN

  Duties: Performed inspections (external examinations only) for the medical examiner and reported findings to the on call medical examiner via phone. Performed supervised autopsies on an as needed basis.

- **1999 – 2000** Autopsy Technician,
  Desoto County Corner, Desoto County Mississippi

  Duties: Assisted Coroner's Pathologist in the performance of autopsies and Performed specific procedures at their direction. Cleaned and maintained morgue and morgue equipment.

- **1987 – 1991** Autopsy Technician,
  St. Francis Medical Center, Pathology Department, Wichita, Kansas

  Duties: Assisted doctors in performance of autopsies and Performed specific duties at their direction. Cleaned and maintained morgue and morgue equipment. Trained new technicians and new residents in autopsy procedures. Disposed of chemical and biohazardous waste for the hospital.

MASS FATALITY EXPERIENCE

- **2000 – 2009** Yearly mass disaster training at O'Hare International Airport or Midway Airport, Chicago Illinois.

  Duties: Participated in mock airplane disaster scenes. Interacted with law enforcement, emergency medical personnel, fire department and airport personnel.

- **February 17, 2003** E2 Nightclub Stampede

  21 Deaths

  Duties: Performed autopsies on individuals who died in this small disaster. Determined cause and manner of death. The consequence of these deaths resulted in increased safety inspections of city night clubs.

- **October 17, 2003** 69 W. Washington Building Fire

  6 Deaths

  Duties: Performed all autopsies on individuals who perished in the fire. Determined cause and manner of death. Participated in subsequent investigations and committees associated with the fire. The consequence of these deaths resulted in changes in building codes in Cook County, changes in the handling of large building fires by the Chicago Fire Department and changes in how buildings are secured.

WORKPLACE SHOOTINGS

- **February 5, 2001** Navistar International Corporation diesel engine plant shootings, Melrose Park Illinois.

  5 Deaths

  Duties: Distributed cases between Dr. Scott Denton and myself. Performed autopsies and determined cause and manner of death.

- **August 27, 2003** Windy City Core Supply warehouse shootings

  7 Deaths

  Duties: Distributed cases between Dr. Lawrence Cogan, Dr. Ponni Arunkumar and myself. Performed autopsies and determined cause and manner of death.

COURT EXPERIENCE

- Testified over 250 times.
- Certified as an expert in forensic pathology every time.
- Testified in both criminal and civil cases in court and in depositions.
- Criminal Cases include: Gunshot/Shotgun wounds, stabbings, blunt force injuries, strangulations, and child abuse.
- Civil cases include: Officer involved shootings, product failures, fires, medical misadventures, Norian Bone Cement related deaths, motor vehicle accidents, electrocutions and industrial accidents
- **2014** Testified in front of the House Select Committee on Child Protection. Texas House of Representatives.

MEDICAL SPECIALTY TRAINING

- **2000 – 2002** Office of the Medical Examiner of Cook County, Forensic Pathology Fellow

  Duties: As part of subspecialty training in forensics Performed autopsies and inspections while supervised on individuals who died within Cook County and generated autopsy protocols. Determined causes and manners of death. Testified in court on criminal cases on behalf of pathologists who no longer worked for Cook County. Attended certain scenes (predominately deaths in custody). Rotated through Illinois State Crime Lab, Chicago police department crime scene investigation unit, and rotated through the following departments at the Cook County Medical Examiner's Office: Investigations, Toxicology and Photography.

- **1996 - 2000** University of Tennessee/Baptist Memorial Hospitals, Memphis Tennessee, Residency in Anatomic and Clinical Pathology.

  Duties: As a resident rotated through the various subspecialties of pathology and had progressing responsibilities and duties. Rotated for four years through the Various Memphis/Shelby County area hospitals which include the following: Baptist Memorial Hospital Main and East, the Regional Medical Center of Memphis (The Med), Veteran's Hospital Memphis, University of Tennessee Hospital (UT-Bowld), Shelby County Medical Examiner's Office and Saint Jude's Research Hospital. Taught medical and nursing students and helped train junior residents in the performance of autopsies and processing of surgical specimens. Spent extra elective rotations as a senior resident at the medical examiner's office and at Saint Jude's Research Hospital.

EDUCATION

- **1991-1996** University of Kansas School of Medicine
  Degree in Medicine, Kansas City, and Wichita, Kansas, M.D.

- **1987-1991** Wichita State University, Wichita, Kansas
  B.S., Chemistry

- **1983-1987** Southeast High School Wichita, Kansas

HONORS

- **2006** President's Council on Integrity and Efficiency (PCIE) Investigations Award for Excellence

  Awarded for case work and testimony in the Federal case of the U.S. vs. Ronald Mikos ("The Medicare Murderer") which resulted in only the 2nd person to be condemned to death by a federal jury in the City of Chicago.

- **2006** Office of Inspector General Integrity Award

  Awarded for case work and testimony in the Federal case of the U.S. vs. Ronald Mikos

- **2000** The Sonia Masoud award for Academic Excellence (Resident of the Year Award).

  Awarded for excellence in academic and work performance during the year at the University of Tennessee Baptist Memorial

- **1991** Graduated Cum Laude Wichita State University

- **1988-1991** Dean's Honor Roll at Wichita State University

- **1987-1990** Emory Lindquist Honors Society at Wichita State University
- **1987-1991** Wichita State University Academic Scholarships

PROFESSIONAL ASSOCIATIONS

- **2002-Present** American Academy of Forensic Sciences
- **2000-Present** National Association of Medical Examiners
- **1998-Present** College of American Pathologist
- **1998-2004, 2009-Present** American Society of Clinical Pathologists
- **1991-2002** American Medical Association

MEDICAL LICENSES

- **2009-present** Texas medical license
- **Inactive** Illinois Medical License
- **Inactive** Tennessee Medical License

SPECIALTY BOARDS

- Board certified in Anatomic and Forensic Pathology Recertified 2016

PROFESSIONAL APPOINTMENTS

- **2012** – Present Travis County Child Death Review Team

  Duties: Represent Medical Examiner's Office and Multi-disciplinary meeting to include child protective services, states attorney, representatives from Austin police department, Travis County Sherriff's Office, Texas Department of Public Safety, Austin Fire Department, and pediatricians from area hospitals. Presented cases to the group, answered questions in regards to findings and participated in ensuing discussions as to what actions and recommendations can be made to prevent pediatric deaths.

Currently participating in efforts to disseminate safety information in regards to car seat safety and safe swimming practices to the public to increase awareness of what services are available throughout Travis County.

- **2006 – 2009** Illinois Department of Children and Family Services Child Death Review Team (Cook Area Team B).

  Duties: Represented Medical Examiner's Office in a multi-disciplinary meeting to include child protective services, Health department, States attorney, representatives from Chicago police department, Representative from the Illinois State Police, pediatricians, emergency room physicians and psychiatrists from area hospitals and a Cook County judge. Presented cases to the group, answered questions in regards to findings and participated in ensuing discussions as to what actions and recommendations can be made to prevent pediatric deaths.

- **2007 – 2009** Organizer/Moderator of Cook County Educational Conference Lectures.

  Duties: Organized conference schedule. Obtained multiple guest speakers on a variety of topics (Including involvement of local religious leaders for discussions of the different ways the various religions deal with death, autopsies and burials). Introduced speakers and participated in moderating question and answer sessions after completion of lectures.

- **2005 – 2009** Chairman, Autopsy Report Quality Assurance Committee for Cook County Medical Examiner's Office

  Duties: Reviewed autopsy protocols for comprehensive content and accuracy to ensure NAME standards were met which aided in reaccreditation with NAME in 2006. Recruited four other doctors to aid in the review process, delegated responsibilities and compiled the data. Worked with medical records department to get proper material for review. Every month presented findings to Chief Medical Examiner and discussed deficiencies directly with pathologist responsible for them.

- **2005 – 2006** Member of the Pathology – Biology Scientific Program Abstract Review Committee for the American Academy of Forensic Sciences.

  Duties: Reviewed abstracts submitted for the American Academy of Forensic Sciences (AAFS) and determined with other members of the committee if they were worthy for submission to the AAFS annual meeting.

TEACHING APPOINTMENTS

- **2009** – Present Clinical assistant professor, University of Texas Medical Branch-Galveston, Austin, Texas

  Duties: Teach medical students about forensic pathology, autopsy procedures, general pathology and the proper way to fill out death certificates.

- **2009** – Present Adjunct Assistant Professor, Texas A&M Health Science Center College of Medicine. Austin, Texas

  Duties: Teach residents about forensic pathology supervise them in performance of autopsies and perform comprehensive reviews of autopsy protocols that are generated.

- **2002 – 2009** Attending Cook County Medical Examiner's Office Forensic Fellowship Program. Chicago Illinois

  Duties: Supervised and taught Fellows in forensic pathology. Taught lectures in specific topics of forensics. Reviewed and corrected autopsy protocols generated by the fellows. Participated in the maintenance of accreditation with the Accreditation Council for Graduate Medical Education (ACGME) by organizing a lecture series with guest lectures and aiding in determining and meeting requirements.

- **2007 – 2009** Adjunct Clinical faculty at Loyola University Medical Center EMT-Paramedic Program, Chicago Illinois

  Duties: Gave lectures in forensic pathology combined with emergency medical procedures to Paramedics and Emergency Medical Technicians.

- **2007 – 2009** Lecturer, Northwestern University Forensics Professional Development Program, Chicago Illinois

  Duties: Gave lectures to 40 – 50 students in Forensic sciences on natural disease processes and motor vehicle accidents.

- **1998 – 2000** Pathology Lab Instructor, the University of Tennessee Health Science Center College of Medicine – Memphis, Memphis Tennessee

  Duties: Taught 30 medical students weekly general pathology labs.

- **1997 - 1998** Lecturer, School of Allied Health Pathology Course Instructor, UT/BMH, Memphis Tennessee

  Duties: Gave lectures on tuberculosis and infectious disease to nursing and physician assistant students.

PUBLICATIONS

1) K. Crowns, W. Gunther: A crack pipe in the hospital: Chronic cocaine addiction and dilated cardiomyopathy. American Academy of Forensic Sciences Proceedings, 1998, Vol. 4, page 149.

2) K. Crowns, T. Deering: A case study of cocaine toxicity in a decomposed body, American Academy of Forensic Sciences Proceedings, 1999, Vol. 5, page 186.

3) K. Crowns, W. Gunther: Soap Bubble Skull: Multiple osteosclerotic lesions in the skull of an 18 year old. American Academy of Forensic Sciences Proceedings, 2000, Vol. 6, page 177-178.

4) K.Crowns, E. Donoghue: Pulmonary thromboembolism in Cook County Medical Examiner cases from 1998-2000, Abstracts of the National Association of Medical Examiners, 2001, Page 29.

5) M. Kalekar, K. Crowns, E. Donoghue: Venous air embolism - A difficult postmortem diagnosis. American Academy of Forensic Sciences Proceedings, 2002, Vol. 8, page 178-179.

6) D. Mark Courtney and Kendall V Crowns: Are African American females at increased risk of sudden death from pulmonary embolism? Acad Emerg Med Volume 9, Number 5, Pages 458-459.

7) K. Crowns, A. Segovia: Isolated noncompaction of the left ventricle: A rare cause of sudden death. American Academy of Forensic Sciences Proceedings, 2003, Page 226.

8) K. Crowns, A. Segovia: Death by Defibrillator: A unique homicide by electrocution. American Academy of Forensic Sciences Proceedings, 2004, Page 229.

9) K.Crowns, B. Roberts, M. Montonera, J. Beaman: Fatal Launch: Fireworks Fatality and the Determination of Generated Recoil Force. American Academy of Forensic Sciences Proceedings, 2017, Page 627

10) K. Addison, T. Vanek, K. Crowns, A. Segovia, Ta'Kena Stewart-Muhammad: A comparison of Accidental Self-Inflicted Gunshot Wounds Occuring in Rural vs. Urban Settings. American Academy of Forensic Sciences Proceedings, 2017, Page 745

11) K. Crowns, A. Segovia, S. Powers, E. Zakariya, L. Watkins, Z. Michalicek, M. Montonera, S. Andrews, G. Karim: The RIP Bullet: Presentation of cases and discussion of this new novel ammunition. Forensic Science Internationol 277, 2017, Page 206

12) K. V. Crowns, M. Montonera: Determination of Manner of Death in Snake Bite Related Fatalities: A Comparison of Accident vs. Suicide. Abstracts of the National Association of Medical Examiners, 2017, Page 55.

13) K. V. Crowns, Michelle S. Montonera, MS, and Adrienne Segovia, MD: A Review of Multiple Dog-Mauling Fatalities of Infants Less Than Six Months of Age and Neonates in Travis. American Academy of Forensic Sciences Proceedings, 2018, Page 775

PRESENTED LECTURES

- **2013 - Present** Texas Rangers Advanced Crime Scene Investigations Course Audience: Texas Rangers, State Police Officers and Crime Scene Investigators
  - Scene Documentation of Post Mortem Changes
  - Autopsy Protocol
- **2009 – 2014** Travis County Medical Examiner's Office Educational Lectures

  Audience: Investigators, autopsy technicians, toxicologists and forensic pathologists.
  - Inhalants: Case studies and review of literature.
  - Envenomation: Case studies and review of literature.
  - Dog Mauling: Case Studies and review of literature.
- **2009 - 2014** Death Investigation for Law Enforcement: Travis County Medical Examiner's Office Annual Winter Conference

  Audience: Local and out of county police officers and sheriff's officers, crime scene investigators, justices of the peace and fire investigators.
  - Sharp force injuries.
  - Decompositional changes.
  - "What the heck happened" A discussion of unusual causes and manners of death with review of literature

- **2013 - Present** Saint Edwards University Forensic Science Program

  Audience: Forensic science students.

  - Forensic Pathology (Case studies)

- **2010 - Present** Lake Travis Middle School and Bee Cave Elementary School Career Days

  Audience: Middle school and grade school students.

  - Forensic pathology as a career.

- **2015 Texas Division of the International Association for Identification, 78th Annual Educational Conference**

  Audience: Law Enforcement, Lawyers, Crime Scene Personnel

  - Death Investigation with the Travis County Medical Examiner's Office

- **2007 – 2009** Loyola University Medical Center EMT-Paramedic Program Lecture

  Audience: Paramedics and emergency medical technicians.

  - Sharp force injuries.

- **2000 -2009** Cook County Educational Conference Lectures

  Audience: Investigators, toxicologists and forensic pathologists.

  - Heat stroke: A case study and review of literature.
  - Buzzkill: A midsummer's day tragedy. (Case report of a fatal bee sting and a review of literature).
  - A fatal failure: A case report of MRI interaction with a pacemaker.
  - Workplace Homicide: Discussion of Navistar and Windy City warehouse auto shop mass shootings with review of other work related shootings and literature.
  - Full Moon Madness: Does the full moon effect case load at Cook County Medical Examiner's Office? (Review of the effects of full moon on cases over a one year period).

- Magic Mushrooms: Review of literature.
- Narcotizing Fasciitis: Case report and review of literature
- Isolated noncompactation of the left ventricle: Case report and review of literature.
- Death by Defibrillator: Case report and review of literature.
- Death from Gastric Bypass: Discussion of case, procedures and review of literature.

❖ **2007 – 2009** Northwestern University Death and Death Scene Investigation Course Lectures

Audience: Forensic science students.

- Death from natural disease.
- Forensic aspects of motor vehicle accidents

❖ DePaul University Forensics Seminar
- Moot Court Participant with law students.

❖ **2003 - 2009** Cook County Medical Examiner's Office Core Curriculum Lecture Series
Audience: Forensic pathology fellows and pathology residents.

- Sharp Force Wounds

From:	Kesia Morrison
To:	ASCC Pleadings
Cc:	tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com; Johanna Hinkle
Subject:	Braun/Perry v. Arkansas State Police, Claim Nos. 190497 and 200290
Date:	Friday, April 29, 2022 10:27:30 AM
Attachments:	2022-04-29 - Amended Answer Braun.pdf 2022-04-29 - Amended Answer Perry.pdf 2022-04-29 - Amended Cross MSJ Braun Perry.pdf Respondent Exhibit 13.pdf Respondent Exhibit 14.pdf

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Good morning,

Attached please find the following:

1. Amended Answer in Braun, 190497-CC
2. Amended Answer in Perry, 200290-CC
3. Amended Cross-Motion for Summary Judgment in Braun/Perry, with Respondent's Exhibits 13 and 14.

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

AMENDED ANSWER

COMES NOW Respondent, Arkansas State Police, by and through its attorneys, Arkansas Attorney General Leslie Rutledge and Assistant Attorney General Kesia Morrison, and for its Amended Answer to the Claim states the following:

1. Pursuant to Rule 15 of the Arkansas Rules of Civil Procedure, Respondent, Arkansas State Police, submits this Amended Answer to the Claim.

2. Respondent, Arkansas State Police, denies all allegations of the Complaint not admitted herein and denies that Claimant is entitled to any relief from the Arkansas State Police.

3. Respondent states affirmatively that it has not engaged in any conduct that violated the Claimant's legal rights.

4. Claimant's damage and injuries, if any, were not proximately caused by any acts or omissions of the Arkansas State Police.

5. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in a willfully reckless or negligent manner in violation of Respondent's policies and procedures. Mr. Burke acted outside the scope

of his authority as an Arkansas State Police Trooper and his conduct should not be imputed to the Arkansas State Police.

6. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were also proximately caused by the contributory negligence and fault of Cassandra Braun and the driver of her vehicle, Tavon Desean Jenkins, which fault or negligence should bar or significantly reduce the Claimant's recovery in this case.

7. This Claim should be held in abeyance until a related federal lawsuit styled *Braun v. Burke et al.*, U.S. District Court, E.D. Ark., Case No. 4:18-cv-334-BRW, is concluded through the entry of a valid and unappealable final judgment.

8. Affirmatively pleading, this action is barred by the doctrine of *res judicata*, including claim preclusion and issue preclusion.

9. Respondent reserves the right to further amend its Amended Answer herein and to assert additional defenses or affirmative defenses available at law or equity as may be appropriate.

WHEREFORE, Respondent Arkansas State Police prays for dismissal of the Claim with prejudice and for all other relief to which it may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3676
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 29th day of April, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON JENKINS, DECEASED **CLAIMANT**

v. **CLAIM NO. 200290**

ARKANSAS STATE POLICE **RESPONDENT**

AMENDED ANSWER

COMES NOW Respondent, Arkansas State Police, by and through its attorneys, Arkansas Attorney General Leslie Rutledge and Assistant Attorney General Kesia Morrison, and for its Amended Answer to the Claim states the following:

1. Pursuant to Rule 15 of the Arkansas Rules of Civil Procedure, Respondent, Arkansas State Police, submits this Amended Answer to the Claim.

2. Respondent, Arkansas State Police, denies all allegations of the Complaint not admitted herein and denies that Claimant is entitled to any relief from the Arkansas State Police.

3. Respondent states affirmatively that it has not engaged in any conduct that violated the Claimant's legal rights.

4. Claimant's damages and injuries, if any, were not proximately caused by any acts or omissions of the Arkansas State Police.

5. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were proximately caused by the negligence of Brian Ray Burke, who operated his trooper unit in a willfully reckless or negligent manner in

violation of Respondent's policies and procedures and in contravention of his training. Mr. Burke acted outside the scope of his authority as an Arkansas State Police Trooper and his conduct should not be imputed to the Arkansas State Police.

6. Affirmatively pleading, Respondent states that any injuries or damages sustained by the Claimant were also proximately caused by the contributory negligence and fault of Tavon Desean Jenkins, who was the driver of the Braun vehicle and whose fault or negligence should bar or significantly reduce the Claimant's recovery in this case.

7. This Claim should be consolidated with a related claim arising out of the same car accident styled *Lori Braun, as Administratrix of the Estate of Cassandra Braun v. State of Arkansas*, Claim No. 190497, and held in abeyance until a related federal lawsuit styled *Braun v. Burke et al.*, U.S. District Court, E.D. Ark., Case No. 4:18-cv-334-BRW, is concluded through the entry of a valid and unappealable final judgment.

8. Per the request of the Commission, Respondent provides the following information in the event the claim is approved for payment: Agency Code: 0960; Fund Code: SMP8800; Cost Center: 456607; Appropriation Code: 519; and Internal Order: I0960248.

9. Affirmatively pleading, this action is barred by the doctrine of *res judicata*, including claim preclusion and issue preclusion.

10. Respondent reserves the right to further amend its Amended Answer herein and to assert additional defenses or affirmative defenses available at law or equity as may be appropriate.

WHEREFORE, Respondent Arkansas State Police prays for dismissal of the Claim with prejudice and for all other relief to which it may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3676
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 29th day of April, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

RESPONDENT'S AMENDED CROSS-MOTION FOR SUMMARY JUDGMENT AND INCORPORATED BRIEF IN SUPPORT

The Commission should enter summary judgment in favor of the Arkansas State Police. First, as stated in ASP's response to Claimants' motion for summary judgment, the claims are barred by the applicable law of contributory and comparative fault and for lack of proximate cause. Even if the claims were not thus barred, ASP would still be entitled to summary judgment under the doctrine of *res judicata*. The claims before the Commission in this matter either were already litigated in federal court, or could have been litigated at that time, and are now barred.

STATEMENT OF UNDISPUTED MATERIAL FACTS

The ASP adopts, as if set forth word for word, the Statement of Undisputed Material Facts provided in its Response to Claimants' Motion for Summary Judgment and Cross-Motion for Summary Judgment.

Procedural Background

Claimant Lori Braun, as Administratrix of the Estate of Cassandra Braun, filed a federal lawsuit on May 18, 2018, seeking to recover compensatory and punitive damages purportedly caused when former Arkansas State Police Trooper Brian Ray Burke allegedly drove his patrol car at excessive speeds, without his blue lights or siren activated, and crashed into a car in which Cassandra Braun was a passenger, killing her. *See Lori Braun, Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun v. Trooper Brian Ray Burke and Colonel Bill Bryant*, U.S. District Court, E.D. of Ark., No. 4:18-cv-334-BRW, Doc. 1. Braun filed an Amended Complaint on June 5, 2018. *Id.* Doc. 2. In her Amended Complaint, Braun alleged that Trooper Burke violated Cassandra Braun's Fourth Amendment and substantive due process rights and that Colonel Bryant violated Cassandra Braun's substantive due process rights "by using his position as a final policymaker with authority to allow troopers to drive patrol vehicles at a high rate of speed when there was no underlying emergency, failing to train, and failing to impose necessary discipline (all of which illustrate his unconstitutional customs which both ratified and approved of the plainly unconstitutional conduct of Defendant Trooper Burke)." Am. Compl. ¶ 3. Braun maintained that Colonel Bryant "has been deliberately indifferent to his affirmative duty to not be deliberately indifferent to [] necessary training and supervisory obligations." Am. Compl. ¶ 126. Plaintiff sued Colonel Bryant in his individual capacity under 42 U.S.C. § 1983 "and applicable state law per 42 U.S.C. Section

1988." Am. Compl. ¶¶ 8, 27, 144. Plaintiff also alleged that Colonel Bryant was personally liable for the alleged Fourth Amendment violation committed by Trooper Burke. Am. Compl. ¶ 134. The Amended Complaint included official capacity claims against Colonel Bryant, as well. *See* Caption, Am. Compl. Braun sought to recover compensatory damages, punitive damages, a declaratory judgment, injunctive relief, attorneys' fees, and costs. Am. Compl. ¶ 147.

Braun did not include any supplemental or pendent state law claims in her amended complaint. Perry did not file a federal lawsuit or join Braun's federal litigation in any way.

Both Colonel Bryant and Trooper Burke filed motions for summary judgment in the federal case. Docs. 54, 58. Braun filed a motion for partial summary judgment arguing, as she does here, that "the Malibu would have cleared the intersection had Trooper Burke been traveling the 45 miles per hour speed limit or 15 miles per hour over the 45 miles per hour speed limit" according to plaintiff's expert. Doc. 51 at 1-2. Braun also moved for partial summary judgment "with respect to the fact that it is undisputed that Defendant Burke was not responding to an emergency and, therefore, was not performing a discretionary law enforcement function by driving at excessive speeds in violation of the speed limits without utilizing his lights and sirens." *Id.* at 2. Finally, as relevant here, Braun argued that "Defendant Bryant's policy of allowing officers to exceed the speed limit in non-emergency situations without activating emergency rotating blue lights and siren is unconstitutional as a

matter of law." *Id.* Voluminous evidence was submitted by the parties in support of their respective positions.

The district court granted summary judgment in favor of the separate defendants, and denied Braun's motion. Doc. 90. Braun failed to establish that Burke violated her constitutional rights and, as a result, the claims against Colonel Bryant in his individual and official capacities had to be dismissed. *Id.* (citing *White v. Jackson*, 865 F.3d 1064, 1076 (8th Cir. 2017)). The court therefore entered judgment against Braun and in favor of Bryant and Burke. Doc. 91.

Braun appealed the district court's order to the U.S. Court of Appeals for the Eighth Circuit, which unanimously affirmed the decision. *Braun v. Burke*, 983 F.3d 999 (8th Cir. 2020). Braun asked the U.S. Supreme Court to hear the case, but her petition for a writ of certiorari was denied. *Braun v. Burke*, 142 S. Ct. 215 (2021).

On October 19, 2018, Lori Braun of Fort Myers, Florida, filed a claim before the State Claims Commission seeking $10 million in damages for Trooper Burke's alleged negligence in driving his Trooper unit in the manner he did during the high-speed pursuit. *See* Claim Ex. B. Braun alleges that Burke was driving his patrol car in a negligent and reckless manner within the course and scope of his employment for the ASP and that, as such, his actions are imputed to Respondent under the doctrine of respondeat superior and vicarious liability. *Id.* Braun also alleges that the ASP is guilty of institutional negligence for failing to properly train and supervise troopers like Burke and to maintain and enforce safe driving practices. *Id.* On September 20, 2019, Lavon Perry of Sunrise, Florida, filed a similar Claim against

Respondent seeking in excess of $100,000 in damages as the Personal Representative of the Estate of Tavon Jenkins, Deceased. The Claims were held in abeyance pending the final resolution of Braun's federal lawsuit. Upon the Supreme Court's denial of her writ petition, the federal lawsuit was finally resolved in ASP's favor. On or about December 17, 2021, Braun filed a motion for partial summary judgment on the issue of causation before this Commission. ASP responded and filed a cross-motion, and now submits this amended cross-motion for summary judgment.

STANDARD OF REVIEW

Pursuant to Claims Commission Rule 8.1, the Arkansas Rules of Civil Procedure govern summary judgment proceedings before the Commission. Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion." Ark. R. Civ. P. 56 (c)(2). Summary judgment should be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to summary judgment as a matter of law. *Wilcox v. Wooley*, 2015 Ark. App. 56, 454 S.W. 3d 792 (quoting *Harvest Rice, Inc. v. Fritz & Mertice Lehman Elevator & Dryer, Inc.*, 365 Ark. 573, 575—76, 231 S.W. 3d 720 (2006)). The purpose of summary judgment is not to try the issues, but to determine whether there are any issues to be tried. *Id*. Once the moving party has established a *prima facie* entitlement

to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id.*

As the federal courts, which have a similar summary-judgment rule, have explained, a genuine dispute of material fact exists only if the evidence is sufficient to allow a reasonable jury to return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Dulany v. Carnahan*, 132 F.3d 1234, 1237 (8th Cir. 1997) (quoting *Anderson,* 477 U.S. at 248). "A mere scintilla of evidence is insufficient to defeat summary judgment, and if a nonmoving party who has the burden of persuasion at trial does not present sufficient evidence as to any element of the cause of action, then summary judgment is appropriate." *Brunsting v. Lusten Mountains Corp.*, 601 F.3d 813, 820 (8th Cir. 2010) (internal quotation marks and citations omitted).

ARGUMENT

I. The claims are barred by res judicata.

Res judicata has two facets: claim preclusion and issue preclusion. *Hardy v. Hardy*, 2011 Ark. 82, 380 S.W.3d 354. *Res judicata* is applicable when the party against whom an earlier decision is being asserted had a full and fair ***opportunity*** to litigate the issue in question. *Huffman v. Alderson*, 335 Ark. 411, 983 S.W.2d 899 (1998). *Res judicata* "does not bar a subsequent action where ... a party was prohibited from asserting its claim." *Coleman's Serv. Ctr. v. FDIC*, 55 Ark. App. 275, 295, 935 S.W.2d 289, 300 (1996).

A. Claimant Braun's claims are barred by claim preclusion.

A subsequent lawsuit is barred by claim preclusion when: (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) the first suit was fully contested in good faith; (4) both suits involve the same claim or cause of action; and (5) both suits involve the same parties or their privies. *Jayel Corp. v. Cochran*, 366 Ark. 175, 178, 234 S.W.3d 278, 281 (2006). *Res judicata* bars not only claims that were actually litigated, but also any claims that could have been litigated in the previous lawsuit. *Barclay v. Waters*, 357 Ark. 386, 394, 182 S.W.3d 91, 96-97 (2004). "Where a case is based on the same events as the subject matter of a previous lawsuit, *res judicata* will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies." *Jayel Corp.*, 366 Ark. at 178, 234 S.W.3d at 281.

Claimant Braun filed suit in federal court raising claims concerning the same facts at issue in this matter. In that suit, she alleged Colonel Bryant—in his individual and official capacities—was deliberately indifferent in the training, hiring, supervision, and discipline of Trooper Burke. A suit against Colonel Bryant in his official capacity is a suit against the Arkansas State Police. *Arkansas Dep't of Hum. Servs. v. Fort Smith Sch. Dist.*, 2015 Ark. 81, 6, 455 S.W.3d 294, 299. The federal courts dismissed Claimant Braun's claims against Colonel Bryant with prejudice, and she cannot relitigate them here.

Claimant Braun attempts to repackage her claims as state-law negligence or recklessness claims, but this does not save the claims. Because this claim arises from

the same events as the federal lawsuit, *res judicata* bars these claims even if Claimant Braun asserts new legal issues. *See Jayel Corp.*, 366 Ark. at 178, 234 S.W.3d at 281.

Further, Claimant Braun should have asked the federal court to take supplemental jurisdiction over her state law claims, which the federal court is authorized to do under 28 U.S.C. § 1367(a). Section 1367 provides in part that "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Claims within the action are part of the same case or controversy if they "derive from a common nucleus of operative fact." *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 165, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997) (quoting *United Mine Workers v. Gibbs,* 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966)). Thus, Claimant Braun should have brought her state law claims in the federal action and *res judicata* bars her from now raising them here. *Barclay*, 357 Ark. at 394, 182 S.W.3d at 96-97.

B. Claimant Perry's claims are barred by issue preclusion.

Issue preclusion bars relitigation of issues of law or fact. *Bradley Ventures, Inc. v. Farm Bureau Mut. Ins. Co.*, 371 Ark. 229, 264 S.W.3d 485 (2007). Claimant Perry could have raised his claims in federal court at the same time Claimant Braun did—he had the ***opportunity*** to litigate his claims, he just chose not to do so.

If a party is prohibited from asserting his claim, he does not have the opportunity to litigate. For instance, the court of appeals found a lessor did not have an opportunity to litigate an unlawful detainer claim against a lessee. *See D & T Pure Tr. v. DWB, LLC*, 2019 Ark. App. 122, 572 S.W.3d 451. The lessor and lessee had a contract concerning the property, which included a venue provision that required all disputes under the contract to be resolved in Pulaski County. *Id.* at 2, 572 S.W.3d at 454. But, the property for which the lessor was bringing an unlawful detainer action was in Crawford County. *Id.* The lessor was prohibited by statute from asserting the unlawful detainer action in Pulaski County, and he was prohibited by contract from asserting the contract action in Crawford County. *Id.* at 7-8, 572 S.W.3d at 456-57. Thus, although the lawsuits concerned the same issues of law or fact, the subsequent lawsuit was not barred because the lessor did not have the ***opportunity*** to litigate both claims in the first suit.

Claimant Perry was not prohibited from joining the federal litigation. He simply chose not to. He should not be permitted to relitigate already-settled claims now. Thus, the Commission should dismiss Claimant Perry's claims.

II. The claims are barred by the doctrines of comparative fault and intervening cause.

Finally, as stated in ASP's original response and cross-motion for summary judgment, the negligence claims against the ASP are barred by the doctrines of comparative fault and intervening cause. As a result, the Commission should enter summary judgment in favor of the ASP and dismiss the claims as asserted against it with prejudice.

According to Arkansas law, in all actions for damages for personal injuries or wrongful death in which recovery is predicated upon fault, the fault of all of the parties is compared, and if a person seeking damages is 50% or more at fault, then that person is not entitled to damages. *See* Ark. Code Ann. §16-64-122(b)(2). The word "fault" as used in the statute "includes any act, omission, conduct, risk assumed, breach of warranty, or breach of any legal duty which is a proximate cause of the any damages sustained by any party." Ark. Code Ann. § 16-64-122(c). Here, given the undisputed facts surrounding the accident, Lori Braun is not entitled to damages because no reasonable finder of fact could find that Cassandra Braun is less than 50% at fault for her own injuries. Ms. Braun assumed the risk of riding in a car with a drunk driver, and she did so without wearing her seat belt. She thus assumed the risk of any injuries she may suffer as a result of any accident. The Chief Medical Examiner's report demonstrates that it is more likely than not that she would not have suffered life-threatening injuries had she been wearing her seat belt. Because she is at least 50% at fault, Ms. Braun's claim fails as a matter of law and must be rejected. *See* Ark. Code Ann. §16-64-122(b)(2).

Moreover, as discussed in more detail below, Ms. Braun's Claim fails for lack of proximate cause. The accident would not have happened at all but for the intervening negligence of Cassandra Braun's friend, Tavon Jenkins, who was driving the Malibu and attempted an illegal left turn straight into the path of the oncoming Trooper. This bars Ms. Braun's recovery entirely. *See Barriga v. Ark. & Mo. R. Co.*, 79 Ark. App. 358, 87 S.W.3d 808 (2002) (affirming summary judgment to defendant

railroad in negligence action brought by injured motorist and his wife after finding that the proximate cause of collision between automobile and train was motorist's failure to stop before reaching tracks rather than the presence of parked boxcars close to intersection on side track). "Proximate cause" is defined, for negligence purposes, "as that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." *Barriga*, 79 Ark. App. at 361, 87 S.W.3d at 810. Proximate cause is a question of law appropriate for resolution on summary judgment if reasonable minds could not differ regarding the causal connection between the negligence of the defendant and the damage to the plaintiff. *Id.* Here, reasonable minds cannot differ on the issue of proximate causation because, as the Eighth Circuit has already affirmed, the accident would not have happened but for Mr. Jenkins's conduct in attempting the illegal left turn. As in *Barriga*, this Commission should conclude that reasonable minds could not differ that the proximate cause of the collision was Jenkins's failure to yield the right of way to the Trooper despite having a statutory duty to do so.

Similarly, on the undisputed facts, reasonable minds cannot differ that Tavon Jenkins is *at least* 50% at fault for his own injuries. He chose to drive while legally intoxicated and without wearing his seatbelt. He then attempted to make a left turn into the path of an oncoming State Trooper, who was in active high-speed pursuit of an alleged offender. This was in violation of Arkansas state law, which required him to yield the right of way to the oncoming Trooper. *See* Ark. Code Ann. § 27-51-502

("The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard."). Black box data from the Malibu shows that Mr. Jenkins did not apply his brakes or attempt to avoid the collision in any way. The accident was, to put it plainly, entirely his fault, rendering his actions the sole proximate cause of the collision. It would not have occurred but for his tragic choice to attempt a left turn in front of the Trooper. Thus, for both of these reasons, the Commission should enter summary judgment in favor of the ASP on Ms. Perry's negligence claim, as well.

CONCLUSION

The Commission should grant summary judgment in favor of the Arkansas State Police and dismiss Claimant Braun's and Claimant Perry's claims with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 29th day of April, 2022:

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LORI BRAUN, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on Behalf of all Wrongful Death Beneficiaries of Cassandra Braun **PLAINTIFF**

VS. **4:18-cv-00334-BRW**

TROOPER BRIAN RAY BURKE, *ET AL.* **DEFENDANTS**

ORDER

Pending are Plaintiff's Motion for Summary Judgment (Doc. No. 51), Defendant's Motions for Summary Judgment (Doc. Nos. 54, 58). Responses and replies have been filed.[1] For the reasons set out below, Defendants' Motions for Summary Judgment (Doc. No. 54, 58) are GRANTED. Plaintiff's Motion for Summary Judgment (Doc. No. 51) is DENIED.

I. BACKGROUND[2]

After dark on October 10, 2016, Arkansas State Trooper Brian Burke was working a hit-and-run accident when a dark SUV with flashing hazard lights passed him heading traveling at what appeared to be a high rate of speed. Trooper Burke finished the hit-and-run investigation, he pursued the speeding SUV in his patrol car. During the pursuit, Trooper Burke intermittently activated his sirens or lights and reached a top speed over 113 miles per hour. Cassandra Braun was on the same road as the SUV that Trooper Burke was pursuing. Her boyfriend, who was driving the car, was attempting to make a left hand turn when Trooper Burke collided with their vehicle. Ms. Braun and her boyfriend were killed from the collision.

[1]Doc. Nos. 65, 67, 71, 72, 76, 81, 82, 88, 89.

[2]Unless otherwise noted, the background is from the parties' statements of undisputed material facts. Doc. Nos. 53, 56, 60, 66.

On May 18, 2018, Plaintiff filed this case against Trooper Burke under 42 U.S.C. § 1983 and § 1988 for unreasonable seizure, excessive force, and violations of due process. Plaintiff also alleges that Defendant Bill Bryant, Director of the Arkansas State Police, was deliberately indifferent regarding the training, hiring, supervision, and discipline of Trooper Burke.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided on purely legal grounds.[3] The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

> The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.[4]

The Court of Appeals for the Eighth Circuit has cautioned that summary judgment is an extreme remedy that should be granted only when the movant has established a right to the judgment beyond controversy.[5] Nevertheless, summary judgment promotes judicial economy by preventing trial when no genuine issue of fact remains.[6] A court must view the facts in the light most favorable to the party opposing the motion.[7] The Eighth Circuit has also set out the burden of the parties in connection with a summary judgment motion:

> [T]he burden on the party moving for summary judgment is only to demonstrate, *i.e.*,"[to point] out to the District Court," that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the

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[3] *Holloway v. Lockhart*, 813 F.2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56.

[4] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

[5] *Inland Oil & Transport Co. v. United States*, 600 F.2d 725, 727 (8th Cir. 1979).

[6] *Id.* at 728.

[7] *Id.* at 727-28.

> record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, his burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.[8]

Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment.[9]

III. DISCUSSION

A. Defendant Brian Burke's Motion for Summary Judgment

Plaintiff's Fourth Amendment claim must fail because there is no allegation, or evidence, that Trooper Burke intended to seize Ms. Braun with his patrol car.[10] With no intent to seize, there was no seizure, which means there was no Fourth Amendment violation.

The Fourteenth Amendment claim must also fail. Even assuming, as Plaintiff contends, that there was not an emergency warranting Trooper Burke's high-speed pursuit, Plaintiff cannot establish a violation of due process. Plaintiff asserts that Trooper Burke's "driving in violation of the law in a non-emergency situation without lights and sirens" renders the intent-to-harm standard inapplicable. However, according to the Eighth Circuit, "'the intent-to-harm standard . . . applies to all § 1983 substantive due process claims based upon the conduct of public officials engaged in a high-speed automobile chase aimed at apprehending a suspected offender,'

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[8]*Counts v. MK-Ferguson Co.*, 862 F.2d 1338, 1339 (8th Cir. 1988) (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F.2d 268, 273-74 (8th Cir. 1988) (citations omitted)).

[9]*Anderson*, 477 U.S. at 248.

[10]*Moore v. Indehar*, 514 F.3d 756, 760 (8th Cir. 2008) ("Moore must show that Officer Indehar intended to seize Moore through the means of firing his weapon at Moore to establish a Fourth Amendment claim.").

regardless of whether the chase conditions arguably afforded pursuing officers time to deliberate."[11] The Eighth Circuit has rejected an argument nearly identical to Plaintiff's:

> First, we must reject plaintiffs' primary argument, which bases liability on the situation at Wal–Mart not being a "true" emergency. *Terrell* forecloses inquiry into the objective nature of the emergency, as substantive due process liability turns on the intent of the government actor. Thus, the fact that the situation at the Wal–Mart was not as serious as those presented in *Helseth* or *Terrell*, or that it might not qualify as an "emergency" under the WMPD Policy and Procedure manual, is not determinative of the appropriate level of scrutiny.[12]

Trooper Burke's affidavit asserts that he "believed that the SUV traveling at a high rate of speed with a likely untrained driver posed a serious risk to the motoring public, thus creating a dangerous situation . . . [he] believed at the time that [he] was responding to a dangerous situation and that [he] needed to drive in the manner that [he] was driving."[13] His belief that the SUV was traveling at a high rate of speed is also supported by videos from surveillance cameras along the road.[14] A self-serving affidavit does not always insulate an officer from liability. However, a Court is required to take "at face value an officer's characterization of a situation as an emergency in all but the most egregious cases."[15] The only evidence Plaintiff presented to question Trooper Burke's subjective belief is the fact that he spent nearly an extra minute wrapping up with this hit-and-run and walked, rather than ran, to his patrol car before pursuing the SUV.[16] Without more, Plaintiff is unable to establish that Trooper Burke's subjective belief

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[11]*Terrell v. Larson*, 396 F.3d 975, 977 (quoting *Helseth v. Burch*, 258 F.3d 867, 871 (8th Cir. 2001) (emphasis added)).

[12]*Sitzes v. City of W. Memphis Ark.*, 606 F.3d 461, 468 (8th Cir. 2010).

[13]Doc. No. 58-6.

[14]Doc. No. 58-9.

[15]*Sitzes*, 606 F.3d 469.

[16]Doc. No. 58-1.

"is so preposterous as to reflect bad faith."[17] The intent-to-harm standard applies, and there is no evidence that Trooper Burke intended to harm the decedents. Accordingly, Trooper Burke is entitled to summary judgment.

B. Defendant Bill Bryant's Motion for Summary Judgment

Because Plaintiff cannot establish an underlying constitutional violation, the causes of actions against Defendant Bryant must also be dismissed.[18]

CONCLUSION

Based on the findings of fact and conclusions of law above, Defendants' Motions for Summary Judgment (Doc. No. 54, 58) are GRANTED. Plaintiff's Motion for Summary Judgment (Doc. No. 51) is DENIED.

IT IS SO ORDERED this 30th day of August, 2019.

Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

[17] *Id.*

[18] *White v. Jackson*, 865 F.3d 1064, 1076 (8th Cir. 2017) (affirming "dismissal of [the plaintiff's] § 1983 claim for failure to train, supervise, and discipline because he lacks an underlying substantive claim against the individual defendants.").

United States Court of Appeals
For the Eighth Circuit

No. 19-2961

Lori Braun, As Administratrix of the Estate of Cassandra Braun, deceased, Individually and on Behalf of all Wrongful Death Beneficiaries of, Cassandra Braun

Plaintiff - Appellant

v.

Brian Ray Burke, Trooper, Individually as an Officer of the Arkansas State Police; Bill Bryant, Colonel, Individually as the Chief Executive Officer of the Arkansas State Police

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: September 22, 2020
Filed: December 23, 2020

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

GRUENDER, Circuit Judge.

The high-speed police pursuit of a speeding vehicle tragically ended with a car crash killing Cassandra Braun. Her mother (and estate administrator), Appellant Lori Braun ("Braun"), brought this case, alleging constitutional violations against

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the officer involved in the accident (Appellee Arkansas State Police Trooper Brian Burke) and his supervisor (Appellee Director of Arkansas State Police Bill Bryant). The district court[1] granted summary judgment for the Appellees on all claims. For the following reasons, we affirm.

I.

On the night of October 10, 2016, Trooper Burke was working a hit-and-run accident in a parking lot along Highway 70. While there, he saw a dark-colored sport utility vehicle ("SUV"), with flashing hazard lights, speed past. Trooper Burke estimated the SUV was traveling at ninety to ninety-five miles per hour in a fifty-five mile-per-hour zone. Less than two minutes later, Trooper Burke wrapped up the hit-and-run investigation, got into his police cruiser, and turned onto Highway 70 to pursue the SUV.

Although Trooper Burke initially activated his emergency lights and sirens, he turned them off roughly twenty seconds later. During the pursuit, his speed averaged over ninety miles per hour, peaking at more than 110 miles per hour. In a later affidavit, Trooper Burke stated that he believed the SUV "posed a serious risk to the motoring public, thus creating a dangerous situation." "Believing that there was an emergently dangerous situation, [he] decided to try and stop the vehicle in order to end the risk to the public."

As Trooper Burke headed east on Highway 70 searching for the SUV, Cassandra Braun was a passenger in a car driving west on the same highway. Roughly eight miles from where Trooper Burke started, Cassandra Braun's car turned left, entering Burke's lane. Although Trooper Burke tried to stop his car, he was unable. The resulting crash killed Cassandra Braun and seriously injured Trooper Burke.

[1]The Honorable Billy Roy Wilson, United States District Judge for the Eastern District of Arkansas.

Braun brought this case under 42 U.S.C. § 1983, arguing Trooper Burke violated Cassandra Braun's substantive due process right to life under the Fourteenth Amendment. Braun further claimed that Director Bryant violated Cassandra Braun's rights by failing to properly train, supervise, or discipline Trooper Burke. The district court granted summary judgment for Appellees on all claims, finding no constitutional violations. Braun appeals.

II.

We review the district court's grant of summary judgment *de novo*, viewing the record in the light most favorable to, and drawing all reasonable inferences for, the nonmovant. *Jones v. Frost*, 770 F.3d 1183, 1185 (8th Cir. 2014). "Summary judgment is proper when there is no genuine dispute of material fact and the prevailing party is entitled to judgment as a matter of law." *Id.*

To establish a substantive due process violation under the Fourteenth Amendment, Braun must show that Trooper Burke's conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *See Terrell v. Larson*, 396 F.3d 975, 978 (8th Cir. 2005) (en banc).[2] In evaluating her substantive due process claim, we first must determine what level of culpability Braun must prove to demonstrate Burke's behavior was conscience shocking. *See id.* Negligence is never enough. *Id.* Deliberate indifference makes sense "only when actual deliberation is practical." *Id.* (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 851 (1998)). But, typically—and especially in "rapidly evolving, fluid, and dangerous situations"—the plaintiff must show an intent to harm. *Id.* Here, Braun argues we should apply the deliberate indifference standard and implicitly concedes she cannot satisfy a higher standard. Conversely, Appellees argue we should require an intent to harm.

[2]Braun must also show the conduct violated a fundamental right, but we need not address that part of the inquiry here. *See Terrell*, 396 F.3d at 978 n.1.

In *Lewis*, the Supreme Court held that the intent-to-harm standard applies when an officer is engaged in a high-speed chase of a suspect. 523 U.S. at 854. Expounding on this principle in *Terrell*, we extended the intent-to-harm standard "to an officer's decision to engage in high-speed driving in response to other types of emergencies." 396 F.3d at 979. Whether an officer was responding to an "emergency" is a subjective, not objective, inquiry. *Id.* at 980. Accordingly, we will accept an officer's statement that he believed he was responding to an emergency unless it is "so preposterous as to reflect bad faith." *Sitzes v. City of W. Memphis*, 606 F.3d 461, 469 (8th Cir. 2010).

Here, Trooper Burke was pursuing an SUV traveling at night at a high speed with its hazard lights flashing. He estimated the SUV was traveling nearly 100 miles per hour, almost twice the fifty-five mile-per-hour speed limit. Crucially, Trooper Burke's affidavit states that he believed this was an "emergently dangerous" situation that "posed a serious risk to the motoring public." The affidavit further states that Trooper Burke believed his pursuit was necessary to end this dangerous situation. He thus believed he was responding to an emergency, triggering the intent-to-harm standard.

Braun's contrary arguments miss the mark. First, pointing to *Terrell* and *Sitzes*, she seems to suggest that our prior decisions extend the intent-to-harm standard only to situations where officers respond to an emergency *call*, not (presumably) emergencies officers witness themselves. Not so. Although the officers in *Terrell*, 396 F.3d at 977, and *Sitzes*, 606 F.3d at 464, were responding to emergency calls, we never suggested the way an officer learns of an emergency is crucial. Rather, and as the Supreme Court has explained, the determining factor is the unavailability of "actual deliberation." *See Lewis*, 523 U.S. at 851. This might be present when an officer responds to an emergency call or when, as here, an officer witnesses an emergency firsthand.

Second, Braun asks us to reject as preposterous Trooper Burke's belief that the speeding SUV constituted an emergency because he finished his hit-and-run investigation and "saunter[ed]" to his car before pursuing the SUV. For one, Braun overstates the delay. Trooper Burke pursued the SUV less than two minutes after it raced past. *Cf. Terrell*, 396 F.3d at 977, 980 (applying the intent-to-harm standard to officers who received an emergency call while eating dinner, were ten miles from the emergency, and were twice told they were not needed). Regardless, we rejected this precise argument in *Sitzes*. 606 F.3d at 468 ("[T]he amount of time [an officer] had to deliberate on his actions is not, by itself, sufficient to render the intent-to-harm standard inapplicable."). Braun also claims that Trooper Burke's failure to use his emergency lights or siren for most of the pursuit shows he did not really believe this was an emergency. But, again, Braun's argument runs headlong into *Sitzes*. There, we held that an officer's failure to activate emergency lights or siren, while "arguably incompatible with a belief that he was responding to an emergency," was insufficient to overcome the officer's contrary affidavit. 606 F.3d at 469. So too here.

Indeed, our decision in *Sitzes* is generally instructive. There, an officer learned from a police dispatcher that someone had been assaulted and robbed of $55 in a Wal-Mart parking lot. *Id.* at 464. The officer responded (even though another officer was already en route), driving at speeds of at least eighty miles per hour in a thirty mile-per-hour zone on the wrong side of the road. *Id.* We seriously doubted the parking lot heist constituted an actual emergency. *Id.* at 469. Still, we held that the officer's affidavit stating he believed he was responding to an emergency was not so preposterous as to reflect bad faith. *Id.* Even more so here, where the officer was facing an active threat to public safety, we are unwilling to find Trooper Burke's belief preposterous.

Finally, Braun insists that speeding does not constitute an actual emergency. This argument goes nowhere. Again, the emergency inquiry is a subjective, not objective, one.

In sum, Trooper Burke believed he was responding to an emergency, and thus we apply the intent-to-harm standard. This resolves Braun's claim against him, as she does not even argue, much less present any evidence, that he intended to harm anyone. Therefore, the district court correctly granted summary judgment for Trooper Burke on Braun's substantive due process claim because she failed to establish a constitutional violation.

Consequently, the district court also rightly granted summary judgment for Director Bryant. Braun's failure-to-train-or-supervise claim against Director Bryant requires an underlying constitutional violation. *White v. Jackson*, 865 F.3d 1064, 1076 (8th Cir. 2017); *Brockinton v. City of Sherwood*, 503 F.3d 667, 673 (8th Cir. 2007). Because Braun's claim against Trooper Burke fails, so does her claim against Director Bryant.

For the foregoing reasons, we affirm.

COLLOTON, Circuit Judge, concurring.

I join the opinion of the court and submit these observations regarding the separate concurring opinion that follows.

In *Terrell v. Larson*, 396 F.3d 975 (8th Cir. 2005) (en banc), this court held that in determining the requisite level of culpability to prove a substantive due process claim against a law enforcement officer, there is no legally significant distinction between high-speed driving in pursuit of a suspect and high-speed driving in response to other types of emergencies. *Id*. at 978-979. The court rejected the use of an objective standard to determine whether a particular situation constitutes an emergency that triggers the "intent-to-harm" standard of fault that applies to high-speed pursuits under *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). Because "substantive due process liability is grounded on a government official's subjective intent, and because the intent-to-harm standard applies 'when unforeseen circumstances demand an officer's instant judgment' and 'decisions have to be made

in haste, under pressure, and frequently without the luxury of a second chance,'" the court ruled that "this issue turns on whether the deputies subjectively believed that they were responding to an emergency." *Id*. at 980 (quoting *Lewis*, 523 U.S. at 853). The "intent-to-harm" standard thus applies to a substantive due process claim both when an officer believes that he is pursuing a suspect and when an officer believes that he is responding to another type of emergency. The suggestion of the concurrence, *post*, at 8, that there is a "legally significant" distinction between the two types of cases runs counter to *Terrell*.

More significantly, the concurrence asserts that our decision in this case "helps illustrate a growing circuit split" on the level of culpability required to establish a substantive due process claim. *Post*, at 9. The suggested conflict in authority, however, is illusory. In *Dean v. McKinney*, 976 F.3d 407 (4th Cir. 2020), the defendant officer acknowledged that an "emergency" call had been cancelled, and stated affirmatively that he was "backing down" to a non-emergency response. *Id*. at 415-16. At a minimum, there was a factual dispute about whether the officer believed in good faith that he was responding to an emergency. In *Sauers v. Borough of Nesquehoning*, 905 F.3d 711 (3d Cir. 2018), which involved a motion to dismiss a complaint, the officer allegedly observed only a "summary" or "minor" traffic offense, and then pursued the violator at over 100 miles per hour. *Id*. at 715-16. The complaint alleged that there was no emergency, and there was no allegation that the officer believed he was responding to an emergency. *Id*. at 718. Neither of the cited cases, therefore, applied a "deliberate indifference" standard of fault in a case where it was undisputed that the officer believed he was responding to an emergency.

As for whether the outcome in this appeal "seems unjust," *post*, at 8, it is important to bear in mind the limited issue before this court. This case concerns only whether the plaintiff's evidence is sufficient to establish liability for a constitutional tort under the concept of substantive due process. We do not address whether the state trooper's actions were prudent as a matter of policy or whether such an officer should be liable for harm caused by reckless driving under traditional state tort law. The State of Arkansas is free to create a system of tort liability for

law enforcement officers that could encompass the conduct at issue here, but the Fourteenth Amendment is not "a font of tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis*, 424 U.S. 693, 701 (1976).

GRASZ, Circuit Judge, concurring.

I concur with the court's opinion. Precedent requires it. But if the outcome also seems unjust, I can understand why. Two people tragically died after a state trooper sped and endangered the public in order to try to locate a car previously seen speeding.

I write separately to address two points. One is a point of factual emphasis and the other is simply an observation related to the need for clarity in the interest of public understanding as well as the preservation of respect for the rule of law.

First the point of factual emphasis. This is not a case involving a high-speed pursuit of a fleeing suspect. *Cf. Helseth v. Burch*, 258 F.3d 867, 871 (8th Cir. 2001) (en banc) ("We hold that the intent-to-harm standard of [*County of Sacramento v. Lewis*, 523 U.S. 833, 847–49 (1998)] applies to all § 1983 substantive due process claims based upon the conduct of public officials engaged in a high-speed automobile chase aimed at apprehending a suspected offender."). The facts, when viewed in the light most favorable to Braun, show that this was instead a hunt for a suspect whose whereabouts were unclear. That distinction is legally significant. It matters because when an officer is not in pursuit of a fleeing suspect, our precedent requires the district court to engage in an additional step: determining whether the officer subjectively believed he was responding to an "emergency." *See Terrell v. Larson*, 396 F.3d 975, 980 (8th Cir. 2005) (en banc) ("Under *Lewis*, the intent-to-harm culpability standard applies if they believed they were responding to an emergency call."). While that difference is important for future cases, the result here is the same. That is because no facts were presented to create a triable fact on the trooper's subjective belief under *Sitzes v. City of West Memphis*. *See Sitzes*, 606

F.3d 461, 469–70 (8th Cir. 2010) ("We do not understand this case to establish a per se rule that an officer's self-serving affidavit will always insulate that officer from substantive due process liability."). As a consequence, in this case we must accept the trooper's affidavit stating he believed there was an emergency that required him, after concluding his work at the scene of a hit and run accident, to drive ninety-eight miles per hour on a public highway without emergency lights or sirens to try to locate a car he had earlier seen . . . speeding.

Now to the observation. This case helps illustrate a growing circuit split on when and how to apply the requisite level of culpability under *County of Sacramento v. Lewis*, 523 U.S. 833, 847–49 (1998). *Compare Dean v. McKinney*, 976 F.3d 407, 414–16 (4th Cir. 2020) (en banc) (looking at objective facts beyond the officer's subjective arguments to decide that deliberate indifference applied), *and Sauers v. Borough of Nesquehoning*, 905 F.3d 711, 715, 717–18 (3d Cir. 2018) (deciding that deliberate indifference applied after using objective factors to determine that no emergency existed), *with Bingue v. Prunchak*, 512 F.3d 1169 1176–78 (9th Cir. 2008) (applying an intent-to-harm standard), *and Terrell*, 396 F.3d at 980 ("[T]his issue turns on whether the deputies subjectively believed that they were responding to an emergency."). A uniform standard, or at least more clarity on when each standard applies, would advance respect for the rule of law in this area. This is especially true when, as here, there was time to deliberate before engaging in the high-speed driving that caused the accident and it was not a situation where the circumstances demanded an officer's instant judgment or a decision under pressure.

From:	Cydni Arterbury
To:	Kesia Morrison; ASCC Pleadings; Paul James
Cc:	tmays@maysbyrdlaw.com; Paul James; aclarke@cochranfirmmidsouth.com; Johanna Hinkle
Subject:	RE: Braun/Perry v. Arkansas State Police, Claim Nos. 190497 and 200290
Date:	Thursday, May 5, 2022 9:23:48 AM
Attachments:	image001.jpg

Please be sure to add me to the service list for all correspondence going to Paul James.

Paul's email gets bogged down and I try to keep him on track.

Thanks so much!

Cydni Arterbury



Legal Assistant to Paul J. James
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, AR 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

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From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Friday, April 29, 2022 10:27 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; aclarke@cochranfirmmidsouth.com; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: Braun/Perry v. Arkansas State Police, Claim Nos. 190497 and 200290

Good morning,

Attached please find the following:

1. Amended Answer in Braun, 190497-CC
2. Amended Answer in Perry, 200290-CC
3. Amended Cross-Motion for Summary Judgment in Braun/Perry, with Respondent's Exhibits 13 and 14.

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov| ArkansasAG.gov

From:	Cydni Arterbury
To:	ASCC Pleadings
Cc:	Paul James; Tiffany Mays O"Guinn; Andrew Clarke; Kesia Morrison
Subject:	Braun/Perry v. Arkansas State Police
Date:	Friday, May 13, 2022 10:51:55 AM
Attachments:	image001.gif image002.jpg 2022 05 13 Response to Amended Cross Motion for Summary Judgment.pdf

Dear Clerk:

Attached is Claimants' Joint Response to Respondent's Amended Cross-Motion for Summary Judgment in Claim No. 190497 (Lori Braun) and Claim No. 200290 (Lavon Perry).

Please return a file-marked copy to me at your convenience.

Thank you.

Cydni Arterbury

Legal Assistant to Paul J. James
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, AR 72201
Telephone: 501.372.1414
Facsimile: 501.372.1659

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IN THE ARKANSAS CLAIMS COMMISSION

LORI BRAUN, as Administratrix of the
Estate of Estate of Cassandra Braun, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Cassandra Braun CLAIMANT

vs. Claim No. 190497

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

LAVON PERRY, as the Personal Representative
of the Estate of Tavon Jenkins, deceased,
Individually and on behalf of all wrongful death
Beneficiaries of Tavon Jenkins CLAIMANT

vs. Claim No. 200290

STATE OF ARKANSAS,
ARKANSAS STATE POLICE RESPONDENT

CLAIMANTS' JOINT RESPONSE TO RESPONDENT'S AMENDED CROSS-MOTION FOR SUMMARY JUDGMENT

COMES NOW the Claimants pursuant to Rule 56 of the Arkansas Rules of Civil Procedure, for their Joint Response to Respondent's Amended Cross-Motion for Summary Judgment, state as follows:

The Arkansas State Police requested additional time to reply to the Claimants' Response to the Cross Motion for Summary Judgment. Instead of filing a reply, the Arkansas State Police amended its Cross Motion for Summary Judgment to raise issue and claim preclusion as a defense and to also assert that it is entitled to summary judgment on the issue of comparative fault and intervening cause. The

argument advanced for claim/issue preclusion fails as a matter of law. And the issues of comparative fault and intervening cause (previously briefed in the Claimants' March 25, 2022 Joint Response to Cross Motion for Summary Judgment) fail based upon the Arkansas State Police's repeated admission of fault coupled with the existing hotly contested material facts surrounding the issues of comparative fault and intervening cause.

In support of this Joint Response to Respondent's Amended Cross-Motion for Summary Judgment, the Claimants adopt and reallege the legal arguments and exhibits set forth in their previous pleadings filed in this proceeding. For brevity purposes, the legal arguments will not be repeated in this response. However, for convenience, a summation of the exhibits are set forth below as follows:

Exhibit A – Trooper Brian Burke's Dash Cam Video
Exhibit B – Matthew Jackson's Rule 26 Report
Exhibit C – Brian Burke's Responses to Plaintiff's Requests for Admission
Exhibit D – Dr. Kris Sperry's Report
Exhibit E – Bill Bryant's Responses to Plaintiff's Requests for Admission
Exhibit F – Report of Dr. Geoffrey P. Alpert
Exhibit G – Deposition of Greg Downs
Exhibit H – Deposition of Ben Hoyt
Exhibit I – Deposition of Brian Burke
Exhibit J – Deposition of William J. Bryant
Exhibit K – Black Box Crash Data Download
Exhibit L – Matthew Jackson Animations
Exhibit M – Declaration of Kendall Von Crowns, M.D.

I. THE ARKANSAS CLAIMS COMMISSION HAS EXCLUSIVE JURISDICTION OF THE NEGLIGENCE CLAIMS WHICH ARE NOT BARRED BY COLLATERAL ESTOPPEL OR RES JUDICATA AS A MATTER OF LAW.

The Arkansas State Police set forth a novel theory in its Amended Cross-Motion for Summary Judgment and asserts that the Claimants could have included

negligence claims against the Arkansas State Police in the federal court 42 U.S.C. § 1983 lawsuit styled *Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun v. Trooper Brian Ray Burke, Individually and in his Official Capacity as an officer of the Arkansas State Police; and Colonel Bill Bryant, Individually and in his Official Capacity as the chief executive officer of the Arkansas State Police,* Case No. 6:17-CV-06008-PKH, U.S. District Court, E.D. of Arkansas, Little Rock Division. This argument is in direct contradiction to both the Eleventh Amendment of the United States Constitution and Article 5, § 20 of the Arkansas Constitution.

The Eleventh Amendment prevents suits against a state in federal court. See *John R. Pagan, Eleventh Amendment Analysis*, 39 Ark. L. Rev. 447, 452 (1986). Article 5, § 20 of the Arkansas Constitution likewise bars suits against the State of Arkansas and specific provides it sovereign immunity as follows: "The State of Arkansas shall never be made defendant in any of her courts."

Therefore, these claims for negligence and reckless driving, training and policy advanced in this proceeding could not have been included in the federal court lawsuit and are not barred by res judicata or collateral estoppel. Each of these claim/issue preclusion theories is based upon the premise that the claims could have been asserted in the federal court civil rights lawsuit as a 28 U.S.C. § 1367 supplemental claim. They could not be asserted in any manner in that proceeding and, as a result, are not barred in this proceeding.

In regard to the federal lawsuit, any claim that has the direct or indirect purpose of coercing the state is barred by sovereign immunity. *Watson v. Dodge*, 187

Ark. 1055, 63 S.W.2d 993 (1933). Claimants could not have asserted their negligence claims in the federal court proceeding. Sovereign immunity is a jurisdictional issue that may be raised at any time by a party or by the court. *Cross v. Arkansas Livestock & Poultry Commission*, 328 Ark. 233, 12 S.W.2d 230, 232 (1997); *Arkansas Public Defender Commission v. Burnett,* 340 Ark. 233, 12 S.W.3d 191 (2000); *Carson v. Weiss*, 333 Ark. 561, 972 S.W.2d 933 (1998). If the pleadings reveal that the action is against the state, the trial court lacks jurisdiction to hear the matter. *Clowers v. Lassiter,* 363 Ark. 241, 213 S.W.3d 6 (2005); and *Dermott Special School Dist. V. Johnson,* 343 Ark. 90, 32 S.W.3d 477 (2000).

In addition, the 1981 state legislature enacted Ark. Code Ann. § 19-10-305 which further specifically grants officers and employees of the state immunity for damages occasioned by acts or omissions occurring within the course and scope of their employment. As a result of the foregoing, the sole and exclusive forum for the remedy sought against the Arkansas State Police for the negligent and reckless driving of its employee; its negligent and reckless training by its staff; and the negligent and reckless policy practiced by the Arkansas State Police is in this proceeding before the Arkansas Claims Commission.

The Arkansas Claims Commission was created pursuant to Ark. Code Ann. § 19-10-204 and it has sole and exclusive jurisdiction of all claims against the State of Arkansas and its agencies, departments and institutions. The Eighth Circuit Court of Appeals has held that the principles of res judicata do not apply to a claimant's adverse claims commission finding to preclude a subsequent civil rights case. *Smith v. Johnson,* 779 F.3d 867 (8th Cir. 2015). The Court reasoned that a common law

negligence claim in Arkansas is not the same issue as a deliberate indifference constitutional claim. *Smith v. Johnson, supra* at 871. Claimant Braun in this proceeding litigated the deliberate indifference claim in the federal court proceeding. and specifically alleged in that Complaint that the negligence claim in this proceeding should be held in abeyance. This allegation was echoed by the Arkansas State Police in its November 30, 2018 Answer filed in the Braun claim in this proceeding. (Answer Paragraph 6).

Furthermore, the Arkansas State Police and the other named Defendants specifically agreed with the Estate of Tavon Jenkins to allow it to stay its federal proceeding pending the outcome of the federal lawsuit appeal filed by Claimant Braun. Thus, the Respondent's assertion that Claimant Perry chose to not join the federal litigation is false and unsubstantiated.

The State of Arkansas routinely files motions in federal civil rights proceedings to dismiss negligence claims based upon the application of the Eleventh Amendment and Arkansas sovereign immunity. The course the Arkansas State Police has chosen in its amended motion is novel, interesting and contrary to longstanding legal caselaw, the United States Constitution, the Arkansas Constitution and Arkansas statutes. Therefore, amended cross-motion for summary judgment on the basis of issue/claim preclusion should be denied as a matter of law.

II. THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING COMPARATIVE FAULT AND INTERVENING CAUSE THAT PRECLUDE SUMMARY JUDGMENT IN FAVOR OF THE ARKANSAS STATE POLICE.

The comparative fault and intervening cause arguments advanced by the Arkansas State Police in its amended cross motion were all fully briefed by the Claimants in their March 25, 2022 Claimants' Joint Response and Incorporated Brief in Support of Claimants' Response in Opposition to Respondent's Cross-Motion for Summary Judgment. Exhibits have been attached to the Claimants' prior pleadings which are incorporated by reference to this response. (Exhibit A - Trooper Brian Burke's Dash Cam Video; Exhibit B - Matthew Jackson's Rule 26 Report; Exhibit K – Black Box Crash Data Download; and Exhibit L – Matthew Jackson Animations) These exhibits support the theory that Claimant Jenkins' driving and alcohol consumption did not contribute to the collision. Of course, Claimant Braun was a passenger and the Arkansas State Police cannot not seriously argue that she contributed to the collision.

In addition, proof from qualified forensic pathologists has also previously been provided to corroborate the material fact that the lack of seat belt use did not contribute to either of the Claimants' deaths. (Exhibit D – Report of Kris Sperry, M.D. and Exhibit M – Declaration of Kendall Von Crown, M.D.)

The Arkansas State Police has repeatedly admitted that its employee was driving in a negligent and reckless manner (11/30/2018 Answer-Braun ¶4; 10/28/2019 Answer-Perry ¶4; 4/29/2022 Amended Answer-Braun ¶5; and 4/29/2022 Amended Answer-Perry ¶5). The Claimants have previously briefed the issue that as a result,

his actions are attributable to the Arkansas State Police. (Claimant's Motion for Partial Summary Judgment pp. 9-11). In addition, the Claimants have previously submitted material facts supporting its case that the Arkansas State Police trained its employees and had a policy and practice of allowing the exact method driving that caused the Claimants deaths. (Exhibit C – Trooper Burke's Responses to Requests for Admission; Exhibit D – Report of Kris Sperry, M.D.; Exhibit E – Colonel Bryant's Responses to Requests for Admission; Exhibit F – Report of Dr. Geoffrey P. Alpert; and Exhibit G – Deposition of Greg Downs; Exhibit H – Deposition of Ben Hoyt; Exhibit I – Deposition of Brian Burke; Exhibit J – Deposition of William J. Bryant; Exhibit K – Black Box Crash Data Download; and Exhibit L – Matthew Jackson Animations).

Based on the genuine issues of material fact previously raised and the authority previously briefed that the Claimants adopt and reallege in this joint response, the Arkansas State Police's Cross-Motion for Summary Judgment should be denied. In fact, based on the Arkansas State Police admission of Trooper Burke's negligent and reckless driving, the Claimants' Joint Motion for Partial Summary Judgment filed on December 17, 2021, should be granted.

CONCLUSION

For the foregoing reasons, the Claimants requests that the Arkansas State Police's Amended Cross-Motion for Summary Judgment be denied and the Claimants Motion for Partial Summary Judgment should be granted.

RESPECTFULLY SUBMITTED,

/s/ Paul J. James

Paul J. James (Ark. Bar 83091)
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, Arkansas, 72201
(501) 372-1414 (Telephone)
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Attorneys for Lori Braun

-and-

Tiffany Mays O'Guinn (Ark. Bar 200605)
MAYS, BYRD & ASSOCIATES, P.A.
Centre Place
212 Center Street, 7th Floor
Little Rock, AR 72201-3801
tmays@maysbyrdlaw.com

Attorney for Tavon Jenkins

CERTIFICATE OF SERVICE

I, Paul J. James, on this 13th day of May 2022, hereby certify that a true and correct copy of the foregoing was served via electronic mail to the following:

Arkansas Claims Commission
101 E. Capitol Ave., #410
Little Rock, AR 72201
asccpleadings@arkansas.gov

Kesia Morrison
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201-2610
Kesia.Morrison@arkansasag.gov
Attorney for Arkansas State Police

/s/ Paul J. James
Paul J. James

From:	Kesia Morrison
To:	ASCC Pleadings; Kathryn Irby
Cc:	Cydni Arterbury; Johanna Hinkle; Paul James; Tiffany Mays O"Guinn; Andrew Clarke
Subject:	Braun/Perry - Motion to Extend Reply Deadline 7 Days
Date:	Friday, May 20, 2022 2:05:25 PM
Attachments:	2022-05-20 - motion extend reply.pdf

Attached please find Respondent's motion for a 7-day extension of the reply deadline in this matter. As noted in the motion, Claimants do not oppose the extension of the reply deadline, but asked that I indicate they would object to any other papers or pleadings being filed.

Thank you,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov| ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

MOTION TO EXTEND TIME

For its Motion to Extend Time, Respondent Arkansas State Police states:

1. The deadline to reply to Claimants' Joint Response to Respondent's Cross-Motion for Summary Judgment is May 20, 2022.

2. Respondent respectfully requests an additional 7 days in which to file the reply, setting the new deadline on May 27, 2022.

3. There is good cause to grant the extension. Due to a personal matter, undersigned counsel has been unable to finalize Respondent's Reply and requires additional time to finalize the Respondent's Reply.

4. Claimants Braun and Perry do not oppose to the extension of the deadline to file the reply. Claimants requested that Respondent clarify that Claimants indicated they would oppose the extension for the filing of any other papers or pleadings. Respondent plans to file only a reply.

5. This extension is sought in good faith and not for purposes of delay.

WHEREFORE, Respondent Arkansas State Police prays the Commission will grant its motion to extend time, setting the new Reply deadline on May 27, 2022, and for all other relief to which it may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3676
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 20th day of May, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

From: Kesia Morrison
To: Paul James; ASCC Pleadings; Kathryn Irby
Cc: Cydni Arterbury; Johanna Hinkle; Tiffany Mays O"Guinn; Andrew Clarke
Subject: RE: Braun/Perry - Motion to Extend Reply Deadline 7 Days
Date: Friday, May 20, 2022 3:47:11 PM
Attachments: image001.jpg

Thank you for clarifying, Mr. James.

From: Paul James <pjj@jamescarterlaw.com>
Sent: Friday, May 20, 2022 2:45 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; kathryn.irby@arkansas.gov
Cc: Cydni Arterbury <CA@jamescarterlaw.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Subject: RE: Braun/Perry - Motion to Extend Reply Deadline 7 Days

EXTERNAL EMAIL

Thank you Ms. Morrison.

As a minor point of clarification, the Claimants do agree to Respondent's request for an extension to file its Reply. The Respondent's previous extension request to file a Reply was also agreed to by Claimants, but was met with an Amended Cross-Motion for Summary Judgment instead of a Reply. Claimants qualification to your request today is merely an effort to bring finality and conclude the briefing on the arguments set forth in the pending motions for summary judgment...certainly not to limit any unrelated filings that may arise in the future.

All, have a good weekend!

Paul J. James

500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
(501) 607-4090 – Cell
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

From: Kesia Morrison <kesia.morrison@arkansasag.gov>

Sent: Friday, May 20, 2022 2:05 PM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>; kathryn.irby@arkansas.gov
Cc: Cydni Arterbury <CA@jamescarterlaw.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Subject: Braun/Perry - Motion to Extend Reply Deadline 7 Days

Attached please find Respondent's motion for a 7-day extension of the reply deadline in this matter. As noted in the motion, Claimants do not oppose the extension of the reply deadline, but asked that I indicate they would object to any other papers or pleadings being filed.

Thank you,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

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Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased **CLAIM NO. 200290**

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIM NO. 190497**

CLAIMANTS

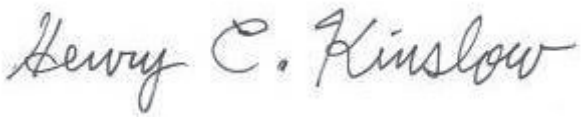
V.

ARKANSAS STATE POLICE **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the unopposed extension motion filed by counsel for Arkansas State Police (the "Respondent"). Respondent seeks an extension up to and including May 27, 2022, in which to file a reply to the response to Respondent's cross-motion for summary judgment. The Claims Commission GRANTS Respondent's motion and will extend the deadline to file the reply to May 27, 2022.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: May 20, 2022

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From: Kathryn Irby
To: Kesia Morrison; Paul James; ASCC Pleadings
Cc: Cydni Arterbury; Johanna Hinkle; Tiffany Mays O"Guinn; Andrew Clarke
Subject: ORDER: Braun/Perry - Motion to Extend Reply Deadline 7 Days
Date: Monday, May 23, 2022 8:08:00 AM
Attachments: Perry and Braun v. ASP -- order granting motion for extension to file reply.pdf
image001.jpg

Counselors, please see attached order entered by the Claims Commission on May 20, 2022.

Thanks,
Kathryn Irby

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Friday, May 20, 2022 3:47 PM
To: Paul James <pjj@jamescarterlaw.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <kathryn.irby@arkansas.gov>
Cc: Cydni Arterbury <CA@jamescarterlaw.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Tiffany Mays O'Guinn <tmays@maysbyrdlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>
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From: Paul James <pjj@jamescarterlaw.com>
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Subject: Braun/Perry - Motion to Extend Reply Deadline 7 Days

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Thank you,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

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Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

From:	Kathryn Irby
To:	Tiffany Mays O"Guinn; Paul James; Andrew Clarke; Kesia Morrison
Subject:	INFO NEEDED: Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 200290
Date:	Tuesday, May 24, 2022 11:34:00 AM
Attachments:	Motion for Pro Hac Vice.pdf Perry-Executed Affidavit LW.pdf

Ms. Mays-O'Guinn, can you confirm whether Mr. Williams has paid the $200 fee to the Clerk of the Arkansas Supreme Court, in accordance with Rule XIV(b) of the Rules Governing Admission to the Bar ("Except as otherwise provided by this rule, the non-resident attorney fee is a mandatory initial requirement"). Also, it does not appear that the motion or the affidavit includes "a list of all cases, including case number and caption, in Arkansas courts in which the non-resident attorney has participated or served as counsel or sought leave to appear or participate within the two years preceding the filing" of the pro hac motion.

I am setting out the full text of Rule XIV(b) below with all of the pro hac motion requirements.

Thanks,
Kathryn Irby

(b) A non-resident attorney requesting permission to participate in proceedings in a court in this State shall pay a fee of $200 for each case in which the attorney is requesting to participate. Fees under this Rule shall be collected in the same manner as the annual attorney license fee collected by the Clerk of the Arkansas Supreme Court. The Clerk shall cause the fees received pursuant to this Rule to be allocated to the Bar of Arkansas. A nonresident attorney who files a motion requesting permission to participate in proceedings in a court in this State shall provide to that court accompanying proof of payment of the fee required herein. Proof shall be provided to the non-resident attorney by the Clerk of the Arkansas Supreme Court. Except as otherwise provided by this rule, the non-resident attorney fee is a mandatory initial requirement. Upon completion of this requirement and receipt of payment issued by the Clerk of the Supreme Court, the non-resident attorney shall file with the applicable Arkansas court a written, sworn motion requesting permission to participate in a particular case. The motion shall contain: (1) the office address, telephone number, fax number, and email address of the non-resident attorney movant; (2) the name and Arkansas Bar ID number of an attorney licensed in Arkansas, with whom the non-resident attorney will be associated in the Arkansas proceedings, and that attorney's office address, telephone number, fax number, and email address; (3) a list of all cases, including case number and caption, in Arkansas courts in which the non-resident attorney has participated or served as counsel or sought leave to appear or participate within the two years preceding the filing of the Motion; (4) a list of jurisdictions in which the non-resident attorney is licensed, including federal courts, and a statement that the non-resident attorney is or is not an active member in good standing in each of those jurisdictions; (5) a statement that the non-resident attorney has or has not been the subject of disciplinary action by the Bar or courts of any jurisdiction in which the attorney is licensed and a description of any such disciplinary actions; (6) a statement that the non-resident attorney has or has not been denied admission, including admission pro hac vice, to the courts of any State or to any federal court; (7) a statement that the non-resident attorney is familiar with the Arkansas Supreme Court Rules of Professional

Conduct governing the conduct of members of the Bar of Arkansas, and will at all times abide by and comply with the same so long as such Arkansas proceeding is pending and said Applicant has not withdrawn as counsel therein.

From: Donna Johnson <djohnson@maysbyrdlaw.com>
Sent: Friday, March 4, 2022 11:45 AM
To: ASCC Pleadings <asccpleadings@arkansas.gov>
Cc: Tiffany Mays <tmays@maysbyrdlaw.com>; pjj@jamescarterlaw.com; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; jennifer.merritt@arkansasag.gov
Subject: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 200290

Attached for filing please find the following:

1. Motion for Admission to Practice Pro Hac Vice by Lorenzo Williams with Certificate of Good Standing attached
2. Executed Affidavit of Lorenzo Williams

--
Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

From:	Kesia Morrison
To:	ASCC Pleadings
Cc:	Paul James; Cydni Arterbury; Johanna Hinkle; Tiffany Mays O"Guinn; Andrew Clarke
Subject:	Braun/Perry - Reply
Date:	Friday, May 27, 2022 1:50:19 PM
Attachments:	reply.pdf

Attached please find ASP's Reply in the above-captioned matter.

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

REPLY SUPPORT OF RESPONDENT'S AMENDED CROSS-MOTION FOR SUMMARY JUDGMENT

I. The claims are barred by res judicata and collateral estoppel.

The Claims Commission's statutory scheme specifically addresses res judicata and collateral estoppel. It provides that the Commission, "***shall recognize*** any final judgment or order rendered in [a] civil action as a bar to further consideration of [a] claim in accordance with the principles of res judicata and collateral estoppel." Ark. Code Ann. § 19-10-306 (emphasis added). This obligation is triggered when a claim before the Commission is also presented to a court of law, and the action "***arises out of the same subject matter or occurrence*** that is the subject matter of a complaint before the [Commission]." *Id*. (emphasis added).

Despite this statute, and the general principles of res judicata and collateral estoppel outlined in ASP's principal brief in support of its cross-motion for summary judgment, Claimants nonetheless assert that res judicata and collateral estoppel do

not apply to them. Claimants incorrectly argue that they could not have asserted the state law claims they raise here in federal court. But, this case presents a textbook example of res judicata and collateral estoppel. It is undisputed that these claims arise out of the same subject matter and occurrences as those presented to the federal court. Fundamentally, Claimants arguments here are no different from their claims in federal court that Colonel Bryant failed to adequately train or supervise. Claimants merely seek a second bite at the apple here by claiming the State itself was negligent or reckless, rather than by claiming Colonel Bryant acted unconstitutionally. The packaging of the claims and manner of identifying the parties does not change the facts presented to the tribunal. Claimants could have raised their recklessness and negligence claims against the individual-capacity defendants in federal court. They could even have raised their state-court claims against the defendants in their official-capacities—there is no requirement that they be likely to *succeed* on their claims, only that they *litigate* them. *See Barclay v. Waters*, 357 Ark. 386, 394, 182 S.W.3d 91, 96-97 (2004) (*Res judicata* bars not only claims that were actually litigated, but also any claims that *could have been litigated* in the previous lawsuit.). And, because sovereign immunity is an affirmative defense that *could* be waived by some error or mishap, there is at least *some* chance of success in an official capacity claim against a state entity in federal court, however marginal—though again, chance of success is not required. Further, it matters not that this claim asserts new claims and seeks money damages from the ASP. *See Jayel Corp. v. Cochran*, 366 Ark. 175, 178, 234 S.W.3d 278, 281 (2006) ("Where a case is based on the same events

as the subject matter of a previous lawsuit, *res judicata* will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies."). It is immaterial that sovereign immunity bars suits against the State because the inquiry is not whether the claim could have been successful, but whether the claims are based on the same events as the subject matter of the previous lawsuit.

Claimants assert that sovereign immunity can be raised at any time, even by the court, and deprives the Court of jurisdiction to hear a claim. But in Arkansas courts, sovereign immunity is not an issue of subject-matter jurisdiction and failure to raise it as an affirmative defense amounts to a waiver. *See Walther v. FLIS Enterprises, Inc.*, 2018 Ark. 64, 540 S.W.3d 264. Likewise, a state can waive Eleventh Amendment immunity by failing to raise it as an affirmative defense. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 389, 118 S. Ct. 2047, 2052, 141 L. Ed. 2d 364 (1998). Thus, Claimants' arguments that sovereign immunity is an absolute bar to their claims is unavailing.

Claimants rely on an Eighth Circuit case for the principle that a federal action is not a bar to a subsequent Claims Commission action. But, that case stands for the proposition that an action against the State in the Claims Commission does not preclude a subsequent action against an individual officer. *See Smith v. Johnson*, 77n F.3d 867 (8th Cir. 2015). While the Claims Commission does not have jurisdiction over an individual officer, federal courts may acquire jurisdiction over the State or its agencies if the State fails to assert its Eleventh Amendment immunity defense. Additionally, the Claims Commission has a specific statute that says it will not

consider civil claims that have already been litigated in courts of law. Thus, *Smith v. Johnson* does not support Claimants' arguments.

Undersigned counsel is unaware of any agreement to stay a federal proceeding on behalf of the estate of Tavon Jenkins pending the outcome of the federal lawsuit filed by Claimant Braun. The fact remains that Claimant Perry's claims should have been brought in federal litigation, and the claims are now statutorily barred by res judicata and collateral estoppel.

ASP has provided the Commission with copies of the Federal District Court Order and the Eighth Circuit opinion concerning the federal litigation of this matter. These documents conclusively demonstrate that the claims brought here arise out of the same subject matter and occurrences as the federal litigation, that a final judgment was rendered, and that these claims are barred. Thus, ASP is entitled to judgment as a matter of law.

II. The claims are barred by the doctrines of comparative fault and intervening cause.

ASP incorporates and reasserts its arguments regarding the doctrines of comparative fault and intervening cause.

III. The Commission should not consider "Supplemental Exhibit M."

On or about April 21, 2022, Claimants submitted Supplemental Exhibit M. The Commission should not consider Supplemental Exhibit M because it is an entirely new, previously undisclosed expert report. Indeed, the report was notarized on April 19, 2022, well after summary judgment briefing commenced in this matter. Thus, it could hardly have been exchanged in any kind of discovery process or otherwise

subjected to the adversarial litigation process. As a result, ASP respectfully requests that the Commission not consider the report or, alternatively, provide ASP an opportunity to depose the declarant and cross-examine the declarant about his findings and conclusions. Further, the ASP should have the opportunity to move to exclude the declarant if ASP determines it believes he is not a properly qualified expert.

Claimants noted in their corresponding pleading that ASP agreed to allow Claimants to amend and/or supplement their Exhibits, and undersigned counsel does not dispute that there was a request to submit a supplemental exhibit and that undersigned counsel indicated she would not object to the supplement—as untimely. Undersigned counsel, freshly assigned to this long-litigated matter, believed that the supplemental exhibit would be a preexisting exhibit that was mistakenly omitted. Undersigned counsel's agreement to allow the untimely supplementation was not a waiver of any and all possible objections.

For the foregoing reasons, ASP prays the Commission will either not consider the supplemental exhibit or hold the motions in abeyance until ASP can complete discovery and file any possible motions related to the supplemental exhibit.

CONCLUSION

The Commission should grant summary judgment in favor of the Arkansas State Police and dismiss Claimant Braun's and Claimant Perry's claims with prejudice.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-1080
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 27th day of May, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

From:	Kesia Morrison
To:	ASCC Pleadings
Cc:	Johanna Hinkle; tmays@maysbyrdlaw.com; Paul James; Andrew Clarke; Cydni Arterbury; Kathryn Irby
Subject:	Braun 190497-CC/Perry 200290-CC - Motion for Continuance
Date:	Wednesday, June 29, 2022 11:34:05 AM
Attachments:	2022-06-29 - motion for continuance.pdf

Attached please find Respondent's motion for continuance in the above-referenced matter. Please confirm receipt.

Additionally, could you please let us know the next available dates for a hearing?

Respectfully,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov| ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

MOTION FOR CONTINUANCE

For its Motion for Continuance, Respondent Arkansas State Police states:

1. The hearing in this matter is set August 18, 2022.

2. Undersigned counsel will be in a federal jury trial that week, with no way of knowing whether it will conclude before the date on which this hearing is set. Therefore, Respondent respectfully prays the Commission will continue the hearing in this matter and set it for a new date.

3. Claimant Braun and Claimant Perry do not oppose this motion.

4. This continuance is sought in good faith and not for purposes of delay.

5. The continuance will not prejudice any party.

WHEREFORE, Respondent Arkansas State Police prays the Commission will grant its motion for continuance, and for all other relief to which it may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-1080
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 29th day of June, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

From:	Kathryn Irby
To:	Kesia Morrison; ASCC Pleadings
Cc:	Johanna Hinkle; tmays@maysbyrdlaw.com; Paul James; Andrew Clarke; Cydni Arterbury
Subject:	ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance
Date:	Wednesday, June 29, 2022 12:33:41 PM
Attachments:	Braun and Perry v. ASP -- hearing rescheduling ltr, trans order granting continuance.pdf Perry and Braun v. ASP -- order granting continuance motion.pdf

Counselors, please see attached. Let me know if there is any conflict with the rescheduled hearing date.

Kathryn Irby

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Wednesday, June 29, 2022 11:34 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Kathryn Irby <kathryn.irby@arkansas.gov>
Subject: Braun 190497-CC/Perry 200290-CC - Motion for Continuance

Attached please find Respondent's motion for continuance in the above-referenced matter. Please confirm receipt.

Additionally, could you please let us know the next available dates for a hearing?

Respectfully,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

June 29, 2022

Mr. Paul J. James *(via email)*
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

Mr. Andy Clarke *(via email)*
Law Offices of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119

Ms. Tiffany Mays-O'Guinn *(via email)*
Mays, Byrd & Associates, P.A.
212 Center Street
Little Rock, Arkansas 72201

Ms. Kesia Morrison *(via email)*
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun v. Arkansas State Police***
Claim No. 190497

Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police
Claim No. 200290

Dear Counselors,

Attached please find the order entered today by the Claims Commission.

The Claims Commission has rescheduled the hearing on the pending motions for **Friday, November 18, 2022**, beginning at 9:00 a.m. All parties will attend virtually via Zoom. The Zoom invite is set out below.

As this is a motion hearing, no prehearing materials are requested.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings
Time: Nov 18, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/82859795080?pwd=djdadU5xazlXUkFHaDlodXN0M1dkUT09

Meeting ID: 828 5979 5080
Passcode: rE4SNN
One tap mobile
+19294362866,,82859795080#,,,,*536041# US (New York)
+13017158592,,82859795080#,,,,*536041# US (Washington DC)

Dial by your location
+1 929 436 2866 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
Meeting ID: 828 5979 5080
Passcode: 536041
Find your local number: https://us06web.zoom.us/u/kRB1VOxJG

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased **CLAIM NO. 200290**

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIM NO. 190497**

CLAIMANTS

V.

ARKANSAS STATE POLICE **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the unopposed motion for continuance filed by the Arkansas State Police (the "Respondent"). The Claims Commission finds that Respondent's motion should be GRANTED.

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: June 29, 2022

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Paul James
To:	Kathryn Irby; Kesia Morrison; ASCC Pleadings
Cc:	Johanna Hinkle; tmays@maysbyrdlaw.com; Andrew Clarke; Cydni Arterbury
Subject:	RE: ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance
Date:	Friday, July 1, 2022 1:59:50 PM
Attachments:	image001.jpg

Ms. Irby,

Thank you. On behalf of the Braun claim, Andy Clarke and I are both available for proposed November 18 setting.

All,

Have a great 4th of July weekend!

Paul J. James



500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
(501) 607-4090 – Cell
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Wednesday, June 29, 2022 12:34 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance

Counselors, please see attached. Let me know if there is any conflict with the rescheduled hearing date.

Kathryn Irby

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Wednesday, June 29, 2022 11:34 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Kathryn Irby <kathryn.irby@arkansas.gov>
Subject: Braun 190497-CC/Perry 200290-CC - Motion for Continuance

Attached please find Respondent's motion for continuance in the above-referenced matter. Please confirm receipt.

Additionally, could you please let us know the next available dates for a hearing?

Respectfully,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov| ArkansasAG.gov

From: Kesia Morrison
To: Paul James; Kathryn Irby; ASCC Pleadings
Cc: Johanna Hinkle; tmays@maysbyrdlaw.com; Andrew Clarke; Cydni Arterbury
Subject: RE: ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance
Date: Tuesday, July 5, 2022 11:14:59 AM
Attachments: image001.jpg

I am available for the November 18 setting.
Thank you,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

From: Paul James <pjj@jamescarterlaw.com>
Sent: Friday, July 1, 2022 2:00 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: [Possible Phish Fraud]RE: ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance

EXTERNAL EMAIL

WARNING: Your email security system has determined the message below may be a potential threat.

It may pose as a legitimate company, tricking victims into revealing personal information.

If you do not know the sender or cannot verify the integrity of the message, please do not respond or click on links in the message. Depending on the security settings, clickable URLs may have been modified to provide additional security.

Ms. Irby,
Thank you. On behalf of the Braun claim, Andy Clarke and I are both available for proposed November 18 setting.
All,

Have a great 4th of July weekend!

Paul J. James



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Little Rock, AR 72201
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Sent: Wednesday, June 29, 2022 12:34 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance

Counselors, please see attached. Let me know if there is any conflict with the rescheduled hearing date.
Kathryn Irby

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Sent: Wednesday, June 29, 2022 11:34 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Kathryn Irby <kathryn.irby@arkansas.gov>
Subject: Braun 190497-CC/Perry 200290-CC - Motion for Continuance

Attached please find Respondent's motion for continuance in the above-referenced matter. Please confirm receipt.
Additionally, could you please let us know the next available dates for a hearing?
Respectfully,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov| ArkansasAG.gov

From:	Tiffany Mays O"Guinn
To:	Kathryn Irby
Cc:	Kesia Morrison; ASCC Pleadings; Johanna Hinkle; Paul James; Andrew Clarke; Cydni Arterbury
Subject:	Re: ORDER AND HEARING RESCHEDULING LTR: Braun 190497-CC/Perry 200290-CC - Motion for Continuance
Date:	Tuesday, July 5, 2022 11:46:33 AM

I am available for the November 18th hearing date.

Thanks.

Tiffany Mays O'Guinn, Esq.

MAYS, BYRD & ASSOCIATES, P.A.

CENTRE PLACE

212 Center Street, 7th Floor

Little Rock, Arkansas 72201-3801

tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529

www.maysbyrdlaw.com

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On Wed, Jun 29, 2022 at 12:33 PM Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:

> Counselors, please see attached. Let me know if there is any conflict with the rescheduled hearing date.
>
> Kathryn Irby
>
> **From:** Kesia Morrison <kesia.morrison@arkansasag.gov>
> **Sent:** Wednesday, June 29, 2022 11:34 AM
> **To:** ASCC Pleadings <ASCCPleadings@arkansas.gov>
> **Cc:** Johanna Hinkle <johanna.hinkle@arkansasag.gov>; tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Cydni Arterbury <CA@jamescarterlaw.com>; Kathryn Irby <kathryn.irby@arkansas.gov>
> **Subject:** Braun 190497-CC/Perry 200290-CC - Motion for Continuance

Attached please find Respondent's motion for continuance in the above-referenced matter. Please confirm receipt.

Additionally, could you please let us know the next available dates for a hearing?

Respectfully,

Kesia Morrison

Assistant Attorney General

Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200

Little Rock, Arkansas 72201

Office: 501.682.1080 | Fax: 501.682.2591

Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

From:	Vincent France
To:	ASCC Pleadings; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Cc:	Johanna Hinkle; Kesia Morrison
Subject:	RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC
Date:	Tuesday, September 6, 2022 1:31:44 PM
Attachments:	Braun-Perry EOA VPF.pdf

To all,

Please find attached my Notice of Appearance for the consolidated claims of *Braun v. ASP*, 19-0497-CC, and *Perry v. ASP*, 20-0290-CC.

Sincerely,

Vincent P. France
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas, 72201
Office: 501.682.1314 | Fax: 501.682.2000
vincent.france@arkansasag.gov | ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

NOTICE OF APPEARANCE

Assistant Attorney General Vincent P. France, hereby enters his appearance as counsel for Respondent, Arkansas State Police, and requests that all future service and correspondence be sent accordingly.

I hereby certify that I am admitted to practice in this Court and respectfully place the Clerk of the Court and all parties of record on notice of my appearance.

Respectfully submitted
LESLIE RUTLEDGE
Attorney General

By: */s/ Vincent P. France*

Vincent P. France
Ark Bar No. 2010063
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-1314
Fax: (501) 682-2591
Email: vincent.france@arkansasag.gov
Attorney for Respondent

CERTIFICATE OF SERVICE

I, Vincent P. France, Assistant Attorney General, do hereby certify that on September 6, 2022, a copy of the foregoing document has been sent to the following via electronic mail:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Vincent P. France
Vincent P. France

From:	Misty Scott on behalf of ASCC Pleadings
To:	Kathryn Irby
Subject:	FW: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC
Date:	Tuesday, September 13, 2022 8:34:00 AM
Attachments:	2022-09-06 MTW (Braun & Perry).pdf

Please see below. This is set for hearing in November.

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Sunday, September 11, 2022 11:50 AM
To: Vincent France <vincent.france@arkansasag.gov>; ASCC Pleadings <ASCCpleadings@arkansas.gov>; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: RE: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC

Attached please find my motion to withdraw from the Braun & Perry matters.

Thank you,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov| ArkansasAG.gov

From: Vincent France <vincent.france@arkansasag.gov>
Sent: Tuesday, September 6, 2022 1:32 PM
To: ASCCpleadings@arkansas.gov; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC

To all,

Please find attached my Notice of Appearance for the consolidated claims of *Braun v. ASP*, 19-0497-CC, and *Perry v. ASP*, 20-0290-CC.

Sincerely,

Vincent P. France
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas, 72201
Office: 501.682.1314 | Fax: 501.682.2000
vincent.france@arkansasag.gov | ArkansasAG.gov

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

MOTION TO WITHDRAW AS COUNSEL

COMES NOW Kesia Morrison and respectfully requests that the Court permit her to withdraw as counsel for Respondent Arkansas State Police. Attorney Morrison is leaving her employment with the Attorney General's Office, and will no longer be involved in this case. Defendants will continue to be represented by their remaining counsel of record.

WHEREFORE, Kesia Morrison respectfully requests that the Court grant her motion to withdraw as counsel in this case.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark. Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3676
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Kesia Morrison, Assistant Attorney General, do hereby certify that a copy of the foregoing document has been sent to the following via electronic mail on this 11th day of September, 2022:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased **CLAIM NO. 200290**

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIM NO. 190497**

CLAIMANTS

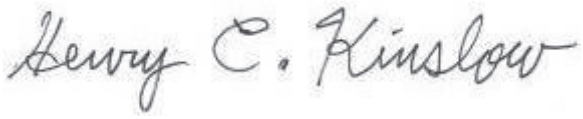
V.

ARKANSAS STATE POLICE **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion filed by Kesia Morrison to withdraw as counsel for the Arkansas State Police (the "Respondent") in the claims filed by Lavon Tishette Perry, as the personal representative of the Estate of Tavon Jenkins, deceased, and Lori Braun, as the administratrix of the Estate of Cassandra Braun. For good cause shown, Ms. Morrison's motion is hereby GRANTED. The Claims Commission notes that Vincent P. France remains as counsel of record for Respondent in these claims.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: September 26, 2022

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Kesia Morrison; Vincent France; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Cc:	Johanna Hinkle
Subject:	ORDER: Braun v. ASP, 190497; Perry v. ASP, 200290
Date:	Monday, September 26, 2022 2:28:00 PM
Attachments:	Braun and Perry v. ASP -- 190497 and 200290 -- order re motion to withdraw.pdf

Counselors, please see attached order.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Sunday, September 11, 2022 11:50 AM
To: Vincent France <vincent.france@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: RE: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC

Attached please find my motion to withdraw from the Braun & Perry matters.

Thank you,

Kesia Morrison
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1080 | Fax: 501.682.2591
Kesia.Morrison@ArkansasAG.gov | ArkansasAG.gov

From: Vincent France <vincent.france@arkansasag.gov>
Sent: Tuesday, September 6, 2022 1:32 PM

To: ASCCpleadings@arkansas.gov; tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC

To all,

Please find attached my Notice of Appearance for the consolidated claims of *Braun v. ASP*, 19-0497-CC, and *Perry v. ASP*, 20-0290-CC.

Sincerely,

Vincent P. France
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge
323 Center Street, Suite 200
Little Rock, Arkansas, 72201
Office: 501.682.1314 | Fax: 501.682.2000
vincent.france@arkansasag.gov | ArkansasAG.gov

From: Andrew Clarke
To: Kathryn Irby
Cc: Paul James; Alicia Haymon
Subject: Re: Braun 190497-CC/Perry 200290-CC - MSJ Haring 11/18/22 9:00 a.m.
Date: Friday, November 11, 2022 9:00:16 AM

Thank you!!!

Sent from my iPhone

> On Nov 11, 2022, at 8:56 AM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:
>
> Mr. Clarke, our office is closed for Veterans Day today, but you are welcome to forward the Zoom invite to your clients. The hearing is open to the public. Please note that there are several matters set for hearing on Nov 18, and I'm not sure what order the Commission will hear them.
>
> Let me know if you need anything else.
>
> Kathryn Irby
>
> Get Outlook for iOS
>
> ---
>
> **From:** Andrew Clarke <aclarke@cochranfirmmidsouth.com>
> **Sent:** Friday, November 11, 2022 8:52:09 AM
> **To:** Kathryn Irby <Kathryn.Irby@arkansas.gov>
> **Cc:** Paul James <pjj@jamescarterlaw.com>; Alicia Haymon <ahaymon@cochranfirmmidsouth.com>
> **Subject:** Braun 190497-CC/Perry 200290-CC - MSJ Haring 11/18/22 9:00 a.m.
>
> > Ms. Irby:
> >
> > I called and left a message. We have the above referenced case scheduled for a hearing on the competing Motions for Summary Judgment on November 18, 2022, at 9:00 a.m. via Zoom. I was trying to determine if this hearing is open to the public and whether my clients can attend the hearing via Zoom. You have previously provided the Zoom link to utilize, but I did not want to forward to my clients until I was advised whether this was acceptable. Thank you in advance for your prompt attention to this inquiry.
>
> Andrew C. Clarke
> The Cochran Firm - Midsouth
> One Commerce Square
> Suite 1700
> Memphis, Tennessee 38103

(o)(901) 523-1222
(f) (901) 523-1999
(d)(901) 415-1142
(c) (901) 351-5446
aclarke@cochranfirmmidsouth.com

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From:	ASCC New Claims
To:	"johanna.hinkle@arkansasag.gov"
Subject:	FW: Lori Braun, as Administratrix of the Estate of Cassandra Braun, Deceased v. Arkansas State Police, Claim No. 190497 and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased v. Arkansas State Police, Claim No. 2002
Date:	Thursday, November 17, 2022 9:16:00 AM
Attachments:	Claimants Joint Response Exhibit M.pdf Tavon.Jenkins Exhibit M.pdf

Dear Ms. Hinkle,

Per our conversation, please see attached.

Thank you,
Caitlin

Caitlin McDaniel
Administrative Specialist II
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-1619

From:	Tiffany Mays O"Guinn
To:	Kathryn Irby; ASCC Pleadings
Cc:	Donna Johnson
Subject:	Exhibit to Motion for Summary Judgment Hearing
Date:	Monday, November 21, 2022 9:54:31 AM
Attachments:	Perry.Lavon Exhibit Hearing Oct 8-2019-Email from Jennifer.pdf

Mrs Irby

The Commissioners asked that I send this to you to mark as an Exhibit to our Motion for Summary Judgment Hearing in regards to the Estate of Tavon Jenkins matter. Thus, please see attached.

LAVON TISHETTE PERRY, as the
Personal Representative of the Estate of
Tavon Jenkins, deceased, CLAIM NO. 200290 and
LORI BRAUN, as the Administratrix of the
Estate of Cassandra Braun CLAIM NO. 190497 are the relevant matters.

Thanks.

Tiffany Mays O'Guinn, Esq.

MAYS, BYRD & ASSOCIATES, P.A.

CENTRE PLACE

212 Center Street, 7th Floor

Little Rock, Arkansas 72201-3801

tel.: (501) 372-6303 | fax: (501) 399-9280 | toll free: (800) 227-1529

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On Tue, Oct 8, 2019 at 12:39 PM Jennifer Merritt <jennifer.merritt@arkansasag.gov<mailto:jennifer.merritt@arkansasag.gov>> wrote:
Ms. Mays O'Guinn,

Thank you for your email. I have conferred with counsel for separate defendant Brian Ray Burke as well as Arkansas State Police General Counsel Greg Downs with regard to this matter. The Arkansas State Police is agreeable to your request with the following conditions: (1) If the Eighth Circuit affirms summary judgment to the defendants in Braun v. Burke (4:18-cv-334-BRW), then you will respect the Court's ruling and not file a federal lawsuit against the Arkansas State Police or any of its agents, employees, or former employees arising out of or related to the October 10, 2016, accident; and (2) if the Eighth Circuit reverses the grant of summary judgment to the defendants in Braun v. Burke, then you will file your client's federal lawsuit within seven (7) calendar days of that order. If the Jenkins Estate does not file a federal lawsuit within seven (7) days of the Eighth Circuit's order reinstating Ms. Braun's federal claims, then the state defendants reserve the right to raise the statute of limitations as a defense in the Jenkins matter. Per your email below and my discussions with counsel for Trooper Burke, I understand these terms are agreeable to all parties. Please confirm in writing.

On a related note, I intend to move to consolidate the Jenkins and Braun claims before the Claims Commission and to seek a stay of the Jenkins claim pending the outcome of the Braun v. Burke appeal (the Braun claim is already stayed before the Claims Commission). Any objection?

I look forward to working with you on this matter.

Cordially,

Jennifer L. Merritt
Senior Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: 501.682.1319 | Fax: 501.682.2591
jennifer.merritt@arkansasag.gov<mailto:jennifer.merritt@arkansasag.gov> | ArkansasAG.gov

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From: Kathryn Irby
To: Vincent France
Cc: Johanna Hinkle
Subject: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC
Date: Monday, November 21, 2022 10:18:00 AM

Vincent, I inadvertently failed to save this recording to the cloud, so we have it saved to our network. Unfortunately, the recording is too big to email as an attachment, so I have uploaded the recording to Dropbox. You'll want to download the recording and save it to your system, as I will need to delete the Dropbox link in the next week or two.

Apologies for any inconvenience.

https://www.dropbox.com/scl/fo/1nvezx3ul1qwbs1gh31kq/h?dl=0&rlkey=guv1pdldmitug73dtdztne0bt

Thanks,
Kathryn Irby

From: Vincent France <vincent.france@arkansasag.gov>
Sent: Monday, November 21, 2022 9:41 AM
To: Kathryn Irby <kathryn.irby@arkansas.gov>
Cc: Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police (LEAD) 190497-CC
Importance: High

Kathryn,

Can I please get a copy of the zoom recording of the Claims Commission hearings from Friday, November 18, 2022, please?

Thanks,

Vincent P. France
Assistant Attorney General
Office of Arkansas Attorney General Leslie Rutledge

323 Center Street, Suite 200
Little Rock, Arkansas, 72201
Office: 501.682.1314 | Fax: 501.682.2000
vincent.france@arkansasag.gov | ArkansasAG.gov

From:	Kesia Morrison
To:	ASCC Pleadings; Johanna Hinkle; Vincent France
Cc:	tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject:	Braun/Perry v. ASP, 190497-CC and 200290-CC
Date:	Thursday, February 23, 2023 12:57:23 PM
Attachments:	image001.jpg 2023-02-21 - NOA and Sub for VPF.pdf

Good afternoon,

Attached please find a notice of appearance and motion to substitute counsel in the above-referenced matter.

Thank you,

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

NO. 190497-CC

and

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON JENKINS, DECEASED **CLAIMANT**

NO. 200290-CC

v.

ARKANSAS STATE POLICE **RESPONDENT**

MOTION TO SUBSTITUTE AND ENTRY OF APPEARANCE

Assistant Attorney General Kesia Morrison moves the Court for leave to substitute her appearance as counsel on behalf of Respondent Arkansas State Police, and requests that all future service and correspondence be sent accordingly.

Assistant Attorney General Vincent France previously entered his appearance in this matter, but he is leaving her employment with this office and this matter has been reassigned to undersigned counsel. As such, the undersigned respectfully requests that she be granted leave to be substituted for Mr. France as counsel for the Respondent in this matter.

WHEREFORE, the undersigned respectfully requests the Commission grant her leave to be substituted as counsel for the Respondent in this claim and to remove Vincent France as attorney of record for the Respondent.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark Bar No. 2015244
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3997
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that on February 23, 2023, I electronically filed the foregoing by submitting it to ASCCpleadings@arkansas.gov, and served it upon the following participants:

Tiffany Mays O'Guinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clarke, Esq.
aclarke@cochranfirmmidsouth.com

/s/ Kesia Morrison
Kesia Morrison

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased

and

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIMANTS**

V. **CONSOLIDATED CLAIM NO. 190497**

ARKANSAS STATE POLICE **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is a motion filed Lori Braun, as the Administratrix of the Estate of Cassandra Braun (collectively referred to herein as "Administratrix Braun"), for partial summary judgment as to Braun's claim against the Arkansas State Police (the "Respondent"). Lavon Tishette Perry, as the Personal Representative of the Estate of Tavon Jenkins (collectively referred to herein as "Perry"), joined in Braun's motion. Also pending is Respondent's amended cross-motion for summary judgment. At the November 18, 2022, hearing on these motions, Tiffany Mays O'Guinn appeared on behalf of Braun, Paul J. James and Andrew C. Clarke appeared on behalf of Perry, and Vincent P. France appeared on behalf of Respondent. Based upon a review of the motions, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. A motor vehicle accident occurred on October 10, 2016, involving one of Respondent's vehicles, which was operated by Trooper Brian Ray Burke, and a vehicle driven by Tavon Jenkins ("Decedent Jenkins") with Cassandra Braun ("Decedent Braun") as passenger. Decedent Jenkins and Decedent Braun both died as a result of the accident.

2. Administratrix Braun filed her claim on October 19, 2018, seeking $10,000.000.00 in damages related to the death of Decedent Braun. Perry filed his claim on September 24, 2019, seeking an unspecified amount of damages related to the death of Decedent Jenkins.

3. Following discovery, Administratrix Braun filed a motion for partial summary judgment, asserting that (1) Respondent is vicariously liable for the actions of Trooper Burke, as he was acting within the scope of his employment; (2) Trooper Burke's actions were the sole and proximate cause of the accident; (3) the conduct of Decedent Braun and Decedent Jenkins did not contribute to their fatal injuries, and (4) Respondent's policy allowing officers to operate in an emergency status without using the siren and emergency lights is negligence as a matter of law. Perry thereafter joined in Administratrix Braun's motion.

4. Respondent responded to the motion for partial summary judgment, arguing that the accident was caused by Decedent Braun's and Decedent Jenkins' intentional and negligent acts, which bar their claims under state law.

5. Respondent also filed a cross-motion for summary judgment, which was later amended. In the amended cross-motion, Respondent argued that (1) Administratrix Braun's claims are barred by claim preclusion; (2) Perry's claims are barred by issue preclusion; and (3) Administratrix Braun's and Perry's claims are barred by the doctrines of comparative fault and intervening cause.

6. Administratrix Braun and Perry jointly responded to the amended cross-motion for summary judgment, and Respondent filed a reply brief.

7. At the hearing, Respondent argued its amended cross-motion for summary judgment, asserting that Trooper Burke was acting outside the scope of his employment and not following Respondent's policy.

8. In response to a question from a commissioner as to whether an employee who violates policy is acting outside the scope of employment, Respondent stated that it was not taking that global position. However, Respondent argued that this was the first instance where it was aware of Trooper Burke's actions and that Respondent's policy is clear regarding the use of emergency lights and sirens.

9. In response to a question from a commissioner as to whether Trooper Burke would have been outside the scope of his employment —or whether the suspect would have been released because Trooper Burke violated policy in pulling him over—if the accident had not happened and if Trooper Burke had caught the suspect he was pursuing, Respondent stated that it could not speak to the criminal implications but that Respondent has disciplined individuals for violating this policy.

10. In response to a question from a commissioner as to whether Administratrix Braun and Perry could have brought a § 1983 civil lawsuit against Respondent in federal court despite sovereign immunity, Respondent argued that Administratrix Braun and Perry could have done so through supplemental jurisdiction.

11. In response to a question from a commissioner as to whether Administratrix Braun and Perry could bring a negligent hiring claim in federal court against Respondent, Respondent stated that such a claim may not be successful but that *res judicata* depends on whether claims are raised, not whether they are successful.

12. In response to a question from a commissioner as to whether Perry's claim is barred because Perry did not join the lawsuit brought by Administratrix Braun, Respondent conceded that this was its weakest argument.

13. In response to a question from a commissioner as to the reference in Respondent's amended cross-motion to an Eighth Circuit finding regarding the cause of the accident, Respondent

stated that the language in the amended cross-motion was not a quote from the Eighth Circuit opinion.

14. In response to a question from a commissioner regarding whether an employee is outside the scope of his or her employment the moment that he or she violates policy, Respondent stated that this case is "egregious" and involved the violation of multiple policies.

15. In response to a question from a commissioner as to whether Trooper Burke was terminated, Respondent stated that he was medically retired, as his injuries prevented him going through the termination process.

16. In response to Respondent's amended cross-motion, and on behalf of both Administratrix Braun and Perry, Perry argued that Perry could not have sued Respondent in a civil rights lawsuit. Perry also argued that Respondent could not be made a party to the federal lawsuit against Trooper Burke, such that *res judicata* and collateral estoppel do not apply. Perry noted that Respondent's own expert downloaded the black boxes in both vehicles and did not mention anything about alcohol being an issue in this accident. Perry also stated that the Claims Commission ruled against Respondent ten years ago in nearly identical facts (*Freemyer v. Arkansas State Police*, Claim No. LE-0018-CC).

17. In reply, Respondent pointed to a change in Respondent's leadership in 2015 and resulting change in policy and discipline. Respondent also argued that alcohol played a significant role in the accident.

18. Pursuant to Rule 56(c)(2), summary judgment is appropriate when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Hisaw v. State Farm Mut. Auto Ins. Co.*, 353 Ark. 668, 122 S.W. 3d 1 (2003). Summary judgment motions are subject to a shifting burden, in that once the moving party has made a *prima facie* showing of entitlement to summary judgment, "the burden then shifts to the nonmoving party

to show that material questions of fact remain." *Flentje v. First Nat'l Bank of Wynne*, 340 Ark. 563, 569, 11 S.W. 3d 531, 536 (2000). Summary judgment is useful "when there is no real issue of fact to be decided." *Hughes W. World, Inc. v. Westmore Mfg. Co.*, 269 Ark. 300, 301, 601 S.W. 2d 826, 826 (1980).

19. The Claims Commission finds Respondent's arguments in its amended cross-motion for summary judgment to be unpersuasive, such that the amended cross-motion must be denied. The Claims Commission agrees with the argument in Administratrix Braun and Perry's joint response that the negligence claims against Respondent could not have been asserted in the underlying federal court lawsuit against Trooper Burke. Respondent cited no precedent for its proposition that, through an exercise of supplemental jurisdiction, a federal court could acquire jurisdiction over a state law claim for which a state agency enjoys sovereign immunity. As such, Respondent's *res judicata* and collateral estoppel arguments must fail. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993) ("…res judicata and collateral estoppel are only applicable when the party against whom the earlier decision is being asserted had a fair and full opportunity to litigate the issue in question").

20. Regarding Braun's motion for partial summary judgment (joined by Perry), the Claims Commission agrees with Braun and Perry that Trooper Burke was acting within the scope of his employment, such that Respondent is vicariously liable for Trooper Burke's actions. As stated by the Arkansas Supreme Court in *J.B. Hunt Transp., Inc. v. Doss*, a *respondeat superior* analysis is dependent on "whether the individual is carrying out the object and purpose of the enterprise, as opposed to acting exclusively in his own interest." 320 Ark. 660, 668, 899 S.W.2d 464, 468–69 (1995). In *Orkin Exterminating Co. v. Wheeling Pipeline, Inc.*, the Arkansas Supreme Court found that if an employee "was acting in furtherance of his employer's interest at the time of the accident, and was not . . . engaged in an exclusively personal act, then he was within the

scope of his employment." 263 Ark. 711, 716, 567 S.W.2d 117, 119 (1978). In the instant claim, it is uncontested that Trooper Burke was on duty, in his patrol vehicle owned by Respondent, and chasing a potential speeder when the collision occurred. As argued by Braun in the motion for partial summary judgment, it is not unexpected that troopers will drive at high rates when pursuing traffic violators. As such, the Claims Commission finds that Braun and Perry are entitled to judgment as a matter of law on this issue.

21. As to the remaining issues outlined in Braun's motion for partial summary judgment, the Claims Commission finds that Braun and Perry are not entitled to judgment as a matter of law.

22. While the Claims Commission previously entered an order (on November 5, 2019) consolidating these two claims, the order did not assign one claim number to the consolidated claim. At the November 18, 2022, hearing, the Claims Commission confirmed that Claim No. 190497 will be the claim number for this consolidated claim, and that this claim number should be used by the parties on any future filings.

23. The Claims Commission DENIES Respondent's amended cross-motion for summary judgment and GRANTS Claimant's motion for partial summary judgment IN PART, as stated more specifically herein.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: April 21, 2023

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	"Kesia Morrison"; Johanna Hinkle
Cc:	tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject:	ORDER: Braun/Perry v. ASP, Claim No. 190497
Date:	Saturday, April 22, 2023 10:00:00 AM
Attachments:	Perry and Braun v. ASP -- order.pdf

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From:	Kathryn Irby
To:	Kesia Morrison; Johanna Hinkle
Cc:	tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject:	INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497
Date:	Friday, May 5, 2023 4:41:00 PM

Counselors, am I correct that this claim is ready to be set for hearing? If so, can the parties please confer and let me know how long the parties expect will be needed to present the claim to the Commission?

Thanks,
Kathryn Irby

From: Kathryn Irby
Sent: Saturday, April 22, 2023 10:01 AM
To: 'Kesia Morrison' <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject: ORDER: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From:	Andrew Clarke
To:	Kathryn Irby; Kesia Morrison; Johanna Hinkle
Cc:	tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com
Subject:	RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497
Date:	Tuesday, May 9, 2023 12:25:41 PM

Ms. Irby:

Thank you for your email. We will get with opposing counsel to determine the amount time needed for presentation of this claim to the commission.

Andrew C. Clarke
The Cochran Firm - Midsouth
85 Union Avenue
Suite 200
Memphis, Tennessee 38103
(o)(901) 523-1222
(f) (901) 523-1999
(d)(901) 415-1142
(c) (901) 351-5446
aclarke@cochranfirmmidsouth.com

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From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Friday, May 05, 2023 4:41 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Subject: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Counselors, am I correct that this claim is ready to be set for hearing? If so, can the parties please confer and let me know how long the parties expect will be needed to present the claim to the Commission?

Thanks,
Kathryn Irby

From: Kathryn Irby
Sent: Saturday, April 22, 2023 10:01 AM
To: 'Kesia Morrison' <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject: ORDER: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased

and

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIMANTS**

V. **CONSOLIDATED CLAIM NO. 190497**

ARKANSAS STATE POLICE **RESPONDENT**

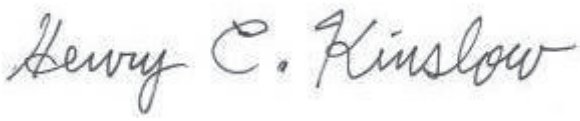
ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is a motion filed by the Arkansas State Police (the "Respondent") to substitute Kesia Morrison for Vincent France as counsel for Respondent. Based upon a review of the motion, the Claims Commission GRANTS the motion.

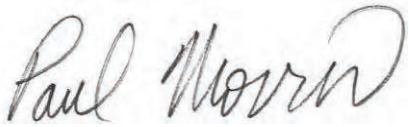
IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Solomon Graves



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: May 19, 2023

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Kesia Morrison; Johanna Hinkle
Cc:	tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject:	ORDER: Braun/Perry v. ASP, Claim No. 190497
Date:	Tuesday, May 23, 2023 11:58:00 AM
Attachments:	6--KI--Braun and Perry v. ASP, 190497.pdf

Counselors, please see attached order re Ms. Morrison's motion to substitute as counsel.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Andrew Clarke
To: Kesia Morrison; Johanna Hinkle; ASCC Pleadings; "Paul James"; "Tiffany Mays O"Guinn"
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC
Date: Wednesday, May 24, 2023 2:43:34 PM
Attachments: image004.jpg
image002.jpg
Plaintiff"s Responses to Seperate Defendant Colonel Bill Bryant"s First Requests for Production of Documents.pdf
Plaintiff"s Responses to Seperate Defendant Colonel Bill Bryant"s First Set of Interrogatories.pdf

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You don't often get email from aclarke@cochranfirmmidsouth.com. Learn why this is important

Kesia:

Attached are Lori Braun's previous discovery responses. I was unable to find a specific email concerning discovery was closed. Only emails saying ready to be set for Summary Judgment hearings and/or trial which may imply that discovery was closed. But nothing stating that. However, I will take you up on your offer to confer about minimizing duplication. Please review these response and contact me at your earliest convenience to discuss.

Andy
Andrew C. Clarke
The Cochran Firm - Midsouth
85 Union Avenue
Suite 200
Memphis, Tennessee 38103
(o)(901) 523-1222
(f) (901) 523-1999
(d)(901) 415-1142
(c) (901) 351-5446
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From: Kesia Morrison <kesia.morrison@arkansasag.gov>

Sent: Wednesday, May 24, 2023 1:59 PM
To: Andrew Clarke <aclarke@cochranfirmmidsouth.com>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Paul James' <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Good afternoon,

Do you happen to have an email memorializing the closure of discovery? I am not aware of this representation and I am not finding a record of it. In any event, the State needs the requested information to effectively prepare for any mediation the parties may agree to attend, or for a final hearing if mediation is unsuccessful. I understand that many of the Braun estate's responses may be identical to the federal discovery responses, and I am certainly not trying to duplicate production. I am happy to confer about minimizing duplication of efforts.

Respectfully,

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov

From: Andrew Clarke <aclarke@cochranfirmmidsouth.com>
Sent: Wednesday, May 24, 2023 11:47 AM
To: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Paul James' <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

EXTERNAL EMAIL

Counsel:

It is my understanding based on numerous representations throughout this case to Ms. Irby that discovery is closed. These representations were made when scheduling hearing on motions.

Further, discovery pertaining to Braun was fully completed in the federal case. If anyone disagrees with this assessment, please so advise so we may discuss and determine whether this discovery needs to be completed. Thank you.

Andrew C. Clarke
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(f) (901) 523-1999
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(c) (901) 351-5446
aclarke@cochranfirmmidsouth.com

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.

Andy

From: Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Sent: Wednesday, May 24, 2023 10:30 AM
To: 'ASCC Pleadings' <asccpleadings@arkansas.gov>; Andrew Clarke <aclarke@cochranfirmmidsouth.com>; 'Paul James' <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Good afternoon,

The attached Respondent's First Set of Interrogatories and Requests for Production of Documents to Claimants Lavon Perry and Lori Braun are being sent to you on behalf of AAG Kesia Morrison.

Thank you.

Johanna Hinkle, Paralegal

Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov
johanna.hinkle@arkansasag.gov

(501) 682-2007 (Main)
(501) 682-2590 (Direct)



IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LORI BRAUN, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun — PLAINTIFF

v. — CASE NO. 4:18-CV-0334-BRW

TROOPER BRIAN RAY BURKE, Individually and in his Official Capacity as an officer of the Arkansas State Police; and COLONEL BILL BRYANT, Individually and in his Official Capacity as the chief executive officer of the Arkansas State Police

DEFENDANTS

PLAINTIFF'S RESPONSES TO SEPARATE DEFENDANT COLONEL BILL BRYANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS PROUNDED TO PLAINTIFF

COMES NOW, the Plaintiff, Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun and in response to the Defendant Bryant's First Request for Production of Documents would respectfully state as follows:

OVERVIEW AND GENERAL OBJECTIONS

These responses are not intended to, nor should they be construed as affecting waivers regarding any objection the Plaintiff may have in relation to the relevance, materiality, admissibility, privilege or competency of the various discovery propounded, or of the information and documents identified herein. On

the contrary, these responses are intended to preserve and do, in fact, preserve all of the Plaintiff's rights to object on any grounds at any time to the discovery itself, or to the use of information gained through this discovery.

The Plaintiff further reserves the right to object to additional discovery addressed to matters covered by these discovery requests, whether or not answers are furnished herein. The Plaintiff expressly reserves the right to supplement, revise, add to, clarify, or correct any answers or responses herein pursuant to the *Federal Rules of Civil Procedure* 26e(l), 33(b)(4) and 34(2)(c).

The Plaintiff objects to the extent this discovery requests any information that constitutes information protected by the attorney/client privilege, or the attorney work-product and anticipation of litigation doctrines. Pursuant to *Federal Rules of Civil Procedure* 26(e)(1), the Plaintiff states that she has withheld the following information:

a. Information pertaining to experts consulted in anticipation of litigation;
b. Correspondence between the Plaintiff and her attorneys; and
c. Notes prepared by Plaintiff's attorneys in the course of their investigation.

Further, Plaintiff objects to these discovery requests to the extent that they request Plaintiff to obtain personal and financial information from persons not parties to this litigation, which includes but is not limited, the heirs of the Estate of Cassandra Braun. Such information is neither relevant to the issues in this case nor proportional to the needs of the case.

Finally, Plaintiff would state this case involved the death of Cassandra

Braun who was 26 years old. Plaintiff is the mother of Cassandra Braun and the duly appointed Administrator of her Estate. In this capacity, Plaintiff will attempt to respond to all discovery requests to the best of her knowledge and belief, but would state that she may not possess full or complete responses to all of Defendant's discovery requests.

Plaintiff further incorporates by reference into these discovery responses Plaintiff's Rule 26(a) Disclosures, and all supplemental and amended Rule 26(a) Disclosures, Defendant's Rule 26(a) Disclosures and documents produced, Defendants' Responses to Plaintiffs' first discovery requests and documents produced.

REQUEST FOR PRODUCTION NO. 1: Produce each document and thing that Plaintiff intends to introduce as an exhibit or otherwise use during the trial of this action.

RESPONSE: Objection. At the present time, discovery is still on-going and Plaintiff has not made a decision with respect to evidence that she will attempt to introduce at trial. Without waiving these objections, Plaintiff would state that all of the following documents may be used as evidence at trial: 1) all documents and things produced in response to Plaintiff's public records requests (previously produced to Defendants; 2) all documents and things produced during discovery in this case which includes all documents previously produced in Plaintiff's Initial and Supplemental Disclosures, Defendant Brian Burke's Initial Disclosures, Defendant Brian Burke's Responses to Plaintiff's First Set of Interrogatories and Requests for

Production of Documents and Defendant Bill Bryant's Objections and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents; and 3) all documents and things attached as Exhibits to the deposition testimony of any witness.

REQUEST FOR PRODUCTION NO. 2: Produce all documents in Plaintiff's possession related to the October 10, 2016, automobile collision and events related thereto, including documents related to Plaintiff's insurance claim on Cassandra Braun's vehicle.

RESPONSE: Please see Answer to Interrogatory No. 8 for information relating to Plaintiff's insurance claim on Cassandra Braun's vehicle. For further response, please see: 1) documents and things attached to Plaintiff's Rule 26(a) Disclosures and Supplemental Rule 26(a) Disclosures; 2) documents and things attached to Plaintiff's Interrogatory Responses; and 3) documents and things attached to Plaintiff's Complaint in the Claims Commission filed on October 18, 2018, and produced to the Defendants.

REQUEST FOR PRODUCTION NO. 3: Produce any witness statements related to the events of October 10, 2016, or otherwise relevant to this action.

RESPONSE: Objection. Statements obtained by Plaintiff's counsel is not discoverable and protected as attorney work-product. Without waiving this objection, Plaintiff would state that the only documents responsive to this discovery request would be contained in the HSPD investigative file; the ASP OPS investigation of this incident and the depositions taken in this case.

REQUEST FOR PRODUCTION NO. 4: Produce an executed copy of the attached Release of Medical Records Authorization for Use and Disclosure of Protected Health Information with regard to Cassandra Braun.

RESPONSE: See attached as Exhibit A.

REQUEST FOR PRODUCTION NO. 5: Produce all medical records and bills related to Cassandra Braun for the period January 1, 2011, to present. (This request includes all records, clinic notes, surgical reports, imaging reports, bills, and other medial documents pertaining to medical care, counseling, or any other type of treatment or examination).

RESPONSE: Plaintiff does not have any such medical records and has signed a medical release to allow the Defendants to obtain these documents if necessary.

REQUEST FOR PRODUCTION NO. 6: Produce decedent's employment contracts, if any, for the years 2012 through 2016 and applicable pay scales with regard to those years and future years.

RESPONSE: Please see Personnel file of Cassandra Braun from her employer, Spreading Our Wings, Inc. d/b/a Buffalo Wild Wings attached as Exhibit C and time sheets and tax returns of Cassandra Braun attached as Exhibit D to Plaintiff's Supplemental Rule 26(a) Disclosures served on October 16, 2018.

REQUEST FOR PRODUCTION NO. 7: Produce Cassandra Braun's remuneration statements for all employment during the years 2012 through 2016.

RESPONSE: Please see Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 8: Provide copies of Cassandra Braun's federal and state income tax returns for the years 2012 through 2016.

RESPONSE: Please see Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 9: Provide documents sufficient to show Cassandra Braun's assets and liabilities at the time of her death.

RESPONSE: Plaintiff does not have access to any other documents other than what has been produced in discovery responsive to this request.

REQUEST FOR PRODUCTION NO. 10: Produce all documents related to the contributions referenced in response to the preceding interrogatory.

RESPONSE: Please see response to Interrogatory No. 7.

REQUEST FOR PRODUCTION NO. 11: Produce all documents and communications regarding an insurance company's payment, potential payment, or refusal to pay on an insurance policy in connection with the events of October 10, 2016.

RESPONSE: Objection. The information constitutes a collateral source and is outside the scope of discovery because it is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving Plaintiff's objection, please see Answer to Interrogatory No. 8 and documents produced in Plaintiff's Rule 26(a) Disclosures, Supplemental Rule 26(a) Disclosures and documents attached to the Claims Commission case filed on October 18, 2018, and produced to the Defendants.

REQUEST FOR PRODUCTION NO. 12: Produce all documents related to your response to the preceding interrogatory.

RESPONSE: Objection. The information constitutes a collateral source and is outside the scope of discovery because it is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving Plaintiff's objection, please see response to Interrogatory No. 9.

REQUEST FOR PRODUCTION NO. 13: Produce all documents that support or relate to Plaintiff's claim under Ark. Code Ann. § 16-62-101.

RESPONSE: Please see Answer to Interrogatory No. 9.

REQUEST FOR PRODUCTION NO. 14: Produce all of Lori Braun's federal and state tax returns for each of the past five years.

RESPONSE: Objection. Please see Answer to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 15: Produce Lori Braun's and her spouse's 2018 wage statements.

RESPONSE: Objection. Please see Answer to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 16: Produce an executed copy of the attached Release of Medical Records Authorization for Use and Disclosure of Protected Health Information with regard to Lori Braun and any other spouse, heir, or next of kin of Cassandra Braun.

RESPONSE: Objection. Please see Answer to Interrogatory No. 12.

REQUEST FOR PRODUCTION NO. 17: Produce all documents that support or relate to Plaintiff's claim on behalf of Ms. Braun's minor child or children under Ark. Code Ann. § 16-62-102 (wrongful death).

RESPONSE: Please see response to Interrogatory No. 9, 14 and 15.

REQUEST FOR PRODUCTION NO. 18: For each individual named in your answer to the previous interrogatory, produce all of each individual's federal and state tax returns for each of the past five years.

RESPONSE: Objection. Please see Answer to Interrogatory No. 16.

REQUEST FOR PRODUCTION NO. 19: Produce the most recent wage statement for each individual and each individual's spouse named in your answer to Interrogatory No. 16.

RESPONSE: Objection. Please see Answer to Interrogatory No. 16.

REQUEST FOR PRODUCTION NO. 20: Produce all documents that support or relate to Plaintiff's claim for damages to the extent not produced in connection with one of the preceding discovery requests.

RESPONSE: Please see all documents produced in discovery and deposition. For further response, Plaintiff would state that she may rely on personal documents and family photographs at the trial of this matter and will supplement this discovery request once a decision is made as to the particular photographs or other evidence that will be used at the trial of this matter.

REQUEST FOR PRODUCTION NO. 21: Produce a copy of the curriculum vitae and reports, including drafts, of each expert witness that Plaintiff intends to call at the trial of this matter, including a list of all publications.

RESPONSE: Objection. Plaintiff will produce the material required to be produced with respect to expert witnesses pursuant to the Scheduling Order and F.R.C.P. 26 which includes: 1) a complete statement of all opinions and the factual

basis for the same; 2) the facts and/or date relied upon by the expert in formulating his opinions; 3) any exhibits to be utilized by the witness; 4) the expert's CV including a list of publications over the past 10 years; 5) a list of case where the expert testified by deposition or at trial over the past 4 years; and 6) the fee schedule of the expert witness. Plaintiff objects to producing any documents or things not specifically authorized under F.R.C.P. 26, including draft reports or other communications pursuant to F.R.C.P. 26(b)(4)(C).

REQUEST FOR PRODUCTION NO. 22: Produce all communications and documents that each of your experts has used or relied upon in the course of his or her work in this matter.

RESPONSE: Objection. Plaintiff will produce the material required to be produced with respect to expert witnesses pursuant to the Scheduling Order and F.R.C.P. 26 which includes: 1) a complete statement of all opinions and the factual basis for the same; 2) the facts and/or date relied upon by the expert in formulating his opinions; 3) any exhibits to be utilized by the witness; 4) the expert's CV including a list of publications over the past 10 years; 5) a list of case where the expert testified by deposition or at trial over the past 4 years; and 6) the fee schedule of the expert witness. Plaintiff objects to producing any documents or things not specifically authorized under F.R.C.P. 26, including draft reports or other communications pursuant to F.R.C.P. 26(b)(4)(C).

REQUEST FOR PRODUCTION NO. 23: Produce all communications that Plaintiff or her counsel has sent to any experts.

RESPONSE: Objection. Plaintiff will produce the material required to be produced with respect to expert witnesses pursuant to the Scheduling Order and F.R.C.P. 26 which includes: 1) a complete statement of all opinions and the factual basis for the same; 2) the facts and/or date relied upon by the expert in formulating his opinions; 3) any exhibits to be utilized by the witness; 4) the expert's CV including a list of publications over the past 10 years; 5) a list of case where the expert testified by deposition or at trial over the past 4 years; and 6) the fee schedule of the expert witness. Plaintiff objects to producing any documents or things not specifically authorized under F.R.C.P. 26, including draft reports or other communications pursuant to F.R.C.P. 26(b)(4)(C).

REQUEST FOR PRODUCTION NO. 24: Produce all communications that Plaintiff or her counsel has received from any experts.

RESPONSE: Objection. Plaintiff will produce the material required to be produced with respect to expert witnesses pursuant to the Scheduling Order and F.R.C.P. 26 which includes: 1) a complete statement of all opinions and the factual basis for the same; 2) the facts and/or date relied upon by the expert in formulating his opinions; 3) any exhibits to be utilized by the witness; 4) the expert's CV including a list of publications over the past 10 years; 5) a list of case where the expert testified by deposition or at trial over the past 4 years; and 6) the fee schedule of the expert witness. Plaintiff objects to producing any documents or

things not specifically authorized under F.R.C.P. 26, including draft reports or other communications pursuant to F.R.C.P. 26(b)(4)(C).

REQUEST FOR PRODUCTION NO. 25: Please sign the attached Employment Records Authorization for Cassandra Braun and return it with your responses.

RESPONSE: See attached as Exhibit B.

REQUEST FOR PRODUCTION NO. 26: Please complete, sign and notarize the attached Identification Bureau Individual Record Check Form for Cassandra Braun and return it with your responses.

RESPONSE: See attached as Exhibit C.

REQUEST FOR PRODUCTION NO. 27: Please sign the attached Employment Records Authorization for Lori Braun and return it with your responses.

RESPONSE: Objection. Plaintiff objects to signing an authorization which allows Defendant to obtain her personnel records as Lori Braun's employment records are not relevant to any issues in this case and not proportional to the needs of this case.

REQUEST FOR PRODUCTION NO. 28: Please complete, sign and notarize the attached Identification Bureau Individual Record Check Form for Lori Braun and return it with your responses.

RESPONSE: Objection. Plaintiff objects to signing an authorization which allows Defendants to obtain her criminal record as these are not relevant to any

issues in this case and not proportional to the needs of this case. Plaintiff will sign such an authorization as it pertains to Cassandra Braun.

REQUEST FOR PRODUCTION NO. 29: Please provide a copy of all documents not specifically requested above but which were used to answer these interrogatories or that will support your claim for liability and damages against Colonel Bryant in this action.

RESPONSE: Objection. This discovery request is overbroad and not proportional to the needs of this case. Without waiving this objection, please see all documents produced in discovery or at deposition.

RESPECTFULLY SUBMITTED,

/s/ Andrew C. Clarke
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CERTIFICATE OF SERVICE

I, Andrew C. Clarke, do hereby that I have served on copy of the following discovery requests via electronic mail in both PDF and Word Version to the following persons:

Jennifer Merrit - jennifer.merritt@arkansasag.gov
Gary Sullivan – gary.sullivan@arkansasag.gov
323 Center Street
Suite 200
Little Rock, Arkansas 72201

Brian W. Way – brian@ccrlaw.com
912 West 4th Street
Little Rock, Arkansas 72201

On this the 19th day of November, 2018.

/s/ Andrew C. Clarke
ANDREW C. CLARKE (AR BPR No. 95070)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LORI BRAUN, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun — PLAINTIFF

v. — CASE NO. 4:18-CV-0334-BRW

TROOPER BRIAN RAY BURKE, Individually and in his Official Capacity as an officer of the Arkansas State Police; and COLONEL BILL BRYANT, Individually and in his Official Capacity as the chief executive officer of the Arkansas State Police

DEFENDANTS

PLAINTIFF'S RESPONSES TO SEPARATE DEFENDANT COLONEL BILL BRYANT'S FIRST SET OF INTERROGATORIES PROUNDED TO PLAINTIFF

COMES NOW, the Plaintiff, Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun and in response to the Defendant Bryant's First Set of Interrogatories would respectfully state as follows:

OVERVIEW AND GENERAL OBJECTIONS

These responses are not intended to, nor should they be construed as affecting waivers regarding any objection the Plaintiff may have in relation to the relevance, materiality, admissibility, privilege or competency of the various discovery propounded, or of the information and documents identified herein. On

the contrary, these responses are intended to preserve and do, in fact, preserve all of the Plaintiff's rights to object on any grounds at any time to the discovery itself, or to the use of information gained through this discovery.

The Plaintiff further reserves the right to object to additional discovery addressed to matters covered by these discovery requests, whether or not answers are furnished herein. The Plaintiff expressly reserves the right to supplement, revise, add to, clarify, or correct any answers or responses herein pursuant to the *Federal Rules of Civil Procedure* 26e(l), 33(b)(4) and 34(2)(c).

The Plaintiff objects to the extent this discovery requests any information that constitutes information protected by the attorney/client privilege, or the attorney work-product and anticipation of litigation doctrines. Pursuant to *Federal Rules of Civil Procedure* 26(e)(1), the Plaintiff states that she has withheld the following information:

a. Information pertaining to experts consulted in anticipation of litigation;
b. Correspondence between the Plaintiff and her attorneys; and
c. Notes prepared by Plaintiff's attorneys in the course of their investigation.

Further, Plaintiff objects to these discovery requests to the extent that they request Plaintiff to obtain personal and financial information from persons not parties to this litigation, which includes but is not limited, the heirs of the Estate of Cassandra Braun. Such information is neither relevant to the issues in this case nor proportional to the needs of the case.

Finally, Plaintiff would state this case involved the death of Cassandra Braun who was 26 years old. Plaintiff is the mother of Cassandra Braun and the duly appointed Administrator of her Estate. In this capacity, Plaintiff will attempt to respond to all discovery requests to the best of her knowledge and belief, but would state that she may not possess full or complete responses to all of Defendant's discovery requests.

Plaintiff further incorporates by reference into these discovery responses Plaintiff's Rule 26(a) Disclosures, and all supplemental and amended Rule 26(a) Disclosures, Defendant's Rule 26(a) Disclosures and documents produced, Defendants' Responses to Plaintiffs' first discovery requests and documents produced.

INTERROGATORY NO. 1: Identify each person that Plaintiff intends to call as a witness in this matter—including their name, home address, telephone numbers; occupation; the name, address, and telephone number of their place of employment; and their relationship to Plaintiff.

RESPONSE: See Plaintiff's Initial Disclosures served on August 17, 2018 and Plaintiff's Supplemental Rule 26(a) Disclosures served on October 16, 2018, and Defendants Initial Disclosures and discovery responses. In addition to those persons listed therein, the following persons may have relevant knowledge:

Lucas Gordon, Regional Manager, Buffalo Wild Wings.
Address unknown.
Telephone Number – [redacted]

INTERROGATORY NO. 2: State following regarding Cassandra Braun: (1) her date of birth, social security number, and address as of October 10, 2016; (2) her educational background following high school, including all degrees earned, institutions granting the degrees, and post-degree course work; (3) her occupation at the time of her death, identifying her employer(s) by name and address; (4) identify any pay grades, years of experience, time of service, or similar factors that might be used to determine decedent's pay under a pay scale; and (5) state the full name, date of birth, occupation, business address, and home address of each spouse, heir, or next of kin (including the administratrix) on whose behalf this action has been commenced, and set forth the relationship of each individual to the decedent.

RESPONSE: To the extent known, Plaintiff responds as follows:

(1) Date of birth: [redacted] Social Security Number: will be produced under separate cover; Address as of October 10, 2016: [redacted];

(2) Plaintiff would state that Cassandra Braun graduated from Estero High School in June of 2008 in Estero, Florida and attended Florida Gulf Coast University for approximately one semester but does not recall any further information.

(3) At the time of her death, Cassandra Braun was employed as a general manager with Buffalo Wild Wings, 4104 Central Ave., Hot Springs, AR 71913;

(4) Cassandra Braun began working for Buffalo Wild Wings on June 2, 2015 in Bonita Springs, Florida as a server/bartender. She received several promotions and transfers to different locations. As of June 18, 2016, she was promoted to general manager and paid an annual salary of $42,000.

(5) Plaintiff objects to subsection (5) of this Interrogatory to the extent it requests personal information from the heirs of the Estate of Cassandra Braun which is neither relevant nor proportional to the needs of this case. Without waiving this objection, Plaintiff would state:

(a) Lori Braun; [redacted]; Registered Nurse; [redacted] decedent's mother and Administratix of the Estate of Cassandra Braun; [redacted]

(b) [redacted]

(c) Michael Braun; Father; [redacted] 64 years old;

(d) Joel Michael Braun; Brother; 9[redacted]; 23 years old.

(e) Raquel Braun; Sister; [redacted] 19 years old.

(f) [redacted]

INTERROGATORY NO. 3: For the period January 1, 2011, to present, provide the name, address, and telephone number of each physician, counselor, psychiatrist, psychologist, chiropractor, physical therapist, mental health professional, or other practitioner of the healing arts who has examined or treated decedent, as well as the name, address, and telephone number of each treatment facility from which the decedent has received an examination or treatment.

RESPONSE: Objection. The requested information is overly broad, irrelevant and unduly burdensome as the Plaintiff may not recall all health care providers Cassandra Braun has seen since January 1, 2011 nor may she have knowledge of all health care providers her daughter Cassandra Braun received treatment from since January 1, 2011. Without waving said objection, the Plaintiff submits the following information and expressly reserves the right to supplement this answer upon the discovery or recollection of additional information.

[redacted]

[redacted]

INTERROGATORY NO. 4: Identify (by name, address, and phone number) each pharmacy that Cassandra Braun used during the five (5) years prior to October 10, 2016.

RESPONSE: Objection. The requested information is overly broad, irrelevant and unduly burdensome as the Plaintiff may not recall all pharmacies used by Cassandra Braun for the five (5) years prior to October 10, 2016 nor may she have knowledge of all pharmacies her daughter Cassandra Braun used for the five (5) years prior to October 10, 2016. Without waving said objection, the Plaintiff submits the following and expressly reserves the right to supplement this answer upon the discovery or recollection of additional information: To the best of Plaintiff's knowledge and belief, Cassandra Braun had her prescriptions filled at [redacted]

INTERROGATORY NO. 5: Identify each of Cassandra Braun's fringe benefits during 2015 and 2016; state the monetary value of each benefit; and explain your basis for determining the benefit's monetary value.

RESPONSE: At the present time, Plaintiff is attempting to obtain all information from Cassandra Braun's employment and have provided a copy of all documents received from her employer to the Defendants in Plaintiff's

Supplemental Rule 26(a) Disclosures. Based on the records received to date, it appears that Cassandra Braun chose not to participate in the Retirement Plan or Health/Dental/Vision Insurance offered through her employment with Buffalo Wild Wings. However, Cassandra Braun did enroll in the employer provided life insurance policy in the amount of $50,000.00 with MetLife Insurance, listing her son, minor [redacted], as the designated beneficiary.

Please see Plaintiff's personnel file attached as Exhibit C to Plaintiff's Supplemental Rule 26(a) Disclosures served on October 16, 2018. For further response, please see:

1. October 19, 2018 letter to Paul James from Buffalo Wild Wings. (Exhibit A).
2. May 17, 2017 documents received from Robert G. Donnan regarding life insurance. (Exhibit B)
3. Anthem Enrollment Application for Life Insurance dated 2/10/16. (Exhibit C)

INTERROGATORY NO. 6: If Cassandra Braun was self-employed for any period of time during the ten-year period immediately preceding her death, provide (1) the inclusive dates of the self-employment; (2) a description of the nature of the self-employment; (3) the business name and address under which the decedent operated; and (4) the decedent's earnings from the self-employment.

RESPONSE: Objection. The requested information is overly broad, irrelevant and unduly burdensome as the Plaintiff may not recall any/all self-

employment during the ten (10) years prior to her death nor may she have knowledge of any/all self-employment by her daughter Cassandra Braun. Without waving said objection, the Plaintiff submits the following and expressly reserves the right to supplement this answer upon the discovery or recollection of additional information:

To the best of Plaintiff's knowledge, Cassandra Braun has never been self-employed during the ten-year period preceding her death.

INTERROGATORY NO. 7: Did Cassandra Braun make any contributions of money, property, service, or other items toward the support, maintenance, or well-being of any heir or next of kin? If so, please itemize the following:

a. The amount and nature of the contribution;

b. The date(s) upon which each contribution was made;

c. The person(s) receiving each contribution;

d. The period of time over which the contributions were made;

e. The regularity or irregularity of the contributions;

f. Identify by date, author, type, recipient, and present custodian each and every document or custodian referring to or otherwise evidencing each contribution.

RESPONSE: Plaintiff would state that Cassandra Braun provided financial and emotional support for her son, [redacted], throughout his lifetime. Plaintiff would state that Cassandra Braun and her son's father, Joseph Whalen, shared

custody of [redacted]. During the time that [redacted] was in Cassandra Braun's custody, Cassandra Braun provided for all of [redacted] needs including housing, food, clothing and any other needs that would arise. Plaintiff is not aware if Mr. Whalen provided any contributions to Cassandra Braun for the care of [redacted] but would state that Mr. Whalen provided for [redacted] needs when [redacted] was in Mr. Whalen's custody.

INTERROGATORY NO. 8: State how much money has been claimed or received from any insurance policies in connection with the events of October 10, 2016; state when the insurance company made the payment and to whom; identify the insurance company that made the payment or denial; state the reason for the payment or denial; and identify the owner of the insurance policy.

RESPONSE: Objection. The information requested constitutes a collateral source and is outside the scope of discovery because it is not reasonably calculated to lead to the discovery of relevant, admissible evidence. Without waiving Plaintiff's objection, Plaintiff responds as follows:

A. Cassandra Braun was the owner of an employer provided life insurance policy in the amount of $50,000.00 with MetLife Insurance, listing her son, minor [redacted], as the designated beneficiary. MetLife Insurance processed the claim made on behalf of [redacted], placing the funds into an interest-bearing account called a "MetLife Total Control Account" until he reaches legal age. Joseph J. Whalen, father/guardian of [redacted] made the claim with

MetLife on February 21, 2017 but it is unknown when the payment was made by MetLife.

B. On approximately October 28, 2016, a Death Benefit payment from Progressive Insurance in the amount of $5,000.00 was made to the Estate of Cassandra Braun. A copy of the check is attached as Exhibit D.

C. On approximately December 6, 2017, a net settlement of $8,591.72 less $500.00 deductible for a total payment of $8,091.72 was issued by Progressive Insurance to Ally Financial for the loss of Cassandra Braun's 2011 Chevrolet Malibu. Please see document attached as Exhibit D to Plaintiff's Initial Disclosures served on August 17, 2018 for further information.

INTERROGATORY NO. 9: State how much money Plaintiff seeks under Ark. Code Ann. § 16-62-101 (survival/loss of life); describe the methodology used to make the calculation; and state the factual basis for claiming this element of damages. (This request also includes any claim for pre-death pain and suffering and property damage).

RESPONSE: Plaintiff seeks to recover all damages to which she may be entitled under both state and federal law for the violation of Cassandra Braun's constitutional rights and her wrongful death as set forth in the Amended Complaint in an amount to be determined by the jury as reasonable. The factual basis for these damages is set forth in the Amended Complaint. Plaintiff further seeks recovery from the Defendants, both jointly and severally, of all damages to which of the Estate of Cassandra Braun and the heirs of the Estate of Cassandra Braun,

Individually, may be entitled under both state and federal law in all capacities for the injuries and death of Cassandra Braun and which include, but are not limited to, the following:

a. Physical Pain and Suffering;
b. Emotional Pain and Suffering;
c. Funeral Expenses;
d. Loss of Enjoyment of Life;
e. Loss of Wages;
f. Loss of Earning Capacity;
g. Hedonic Damages;
h. The full pecuniary value of the life of Cassandra Braun as defined by Arkansas law;
i. Punitive damages against the applicable Defendants;
j. Statutory and Discretionary Costs;
k. Attorney's fees and costs;
l. A declaratory judgment that the acts and conduct herein was unconstitutional;
m. Injunctive relief precluding the Defendants from engaging in the conduct complained of herein in the future and requiring the Defendants to provide proper policy, training, supervision and discipline of its employees and holding them accountable for their misconduct;
n. All such further relief, both general and specific, to which she may be entitled under the premises.

Plaintiff also seeks to recover damages to the heirs of the Estate of Cassandra Braun for their loss of love, society, companionship and familial association in an amount to be determined by the jury as fair and reasonable based on the evidence presented. Plaintiff submits that the amount of damages is left to the sound discretion of the jury. *See* Williams v. Trader Pub. Co., 218 F.3d 481, 487 n.3 (5th Cir. 2000) ("[c]ompensatory damages for emotional distress are necessarily vague and are generally considered a fact issue for the jury."); Burrell v. Crown Cent. Petroleum, 177 F.R.D. 376, 386 (D. Tex. 1997) (Calculation of these damages are not susceptible to the type of calculation contemplated by Rule 26(a)(1)).

With respect to economic damages for lost wage and loss of earning capacity, Plaintiff intends to rely on the opinion of an economist and will produce this information in compliance with the scheduling order pertaining to expert witnesses.

INTERROGATORY NO. 10: Provide the following information regarding Plaintiff Lori Braun:

a. date of birth;

b. social security number;

c. home address;

d. occupation;

e. name and address of employer;

f. spouse's full name and address;

g. number of children and their names and ages;

h. annual income for each of the past five years and the sources of the income;

i. spouse's annual income for each of the past five years and the sources of the income; and

j. educational background (secondary, college, and post-graduate), including all degrees obtained; institutions that granted the degrees; and date the degrees were granted.

RESPONSE:

a. [redacted]

b. Social security number will be provided under separate cover

c. [redacted]

d. Registered Nurse

e. Bayfront Health Punta Gorda, 809 E. Marion Ave., Punta Gorda, FL 33950

f. Michael Andrew Braun, [redacted]

g. Joel Braun, 23; Raquel Braun, 19; [redacted]

h. Objection. The earnings of Lori Braun for the last five years are not relevant to any of the issues in this case and not proportional to the needs of this case.

i. Objection. The earnings of Michael Braun for the last five years are not relevant to any of the issues in this case and not proportional to the needs of this case.

j. Plaintiff attended Youngtown State University where she received her Bachelor of Science in Nursing in June 1995

INTERROGATORY NO. 11: State Lori Braun's net worth (assets minus liabilities) and identify all documents that related to this calculation.

RESPONSE: Objection. Plaintiff submits that Lori Braun's net worth in not relevant to the issues in this case and not proportional to the needs of this case.

INTERROGATORY NO. 12: For the period January 1, 2011, to present, provide the name, address, and telephone number of each physician, counselor, psychiatrist, psychologist, chiropractor, physical therapist, mental health

professional, or other practitioner of the healing arts who has examined or treated Lori Braun or any other spouse, heir, or next of kin of Cassandra Braun, as well as the name, address, and telephone number of each treatment facility from which she or they has/have received an examination or treatment.

RESPONSE: Objection. To the extent that his discovery request seeks personal medical information from Lori Braun and/or the heirs of the Estate of Cassandra Braun, Plaintiff would state this this request is not relevant to any of the issues in this case and/or proportional to the needs of this case. To the extent this Interrogatory requests personal medical information from Cassandra Braun, please see response to Interrogatory No. 3.

INTERROGATORY NO. 13: Identify (by name, address, and phone number) each pharmacy that Lori Braun or any other spouse, heir, or next of kin of Cassandra Braun used during the 3 years prior to October 10, 2016.

RESPONSE: Objection. To the extent that his discovery request seeks personal medical information and pharmacy records from Lori Braun and/or the heirs of the Estate of Cassandra Braun, Plaintiff would state this this request is not relevant to any of the issues in this case and/or proportional to the needs of this case.

INTERROGATORY NO. 14: State how much money Plaintiff seeks for any minor child of Cassandra Braun under Ark. Code Ann. § 16-62-102 (wrongful death) for service-related contributions and other contributions the child would have received from decedent as well as how much money Plaintiff seeks for mental

anguish; describe the methodology used to make the calculations; and state the factual basis for claiming these elements of damages.

RESPONSE: Please see Answer to Interrogatory No. 9.

INTERROGATORY NO. 15: To the extent that Plaintiff seeks, on behalf of Ms. Braun's minor child or children, damages that are not reflected in any of the preceding interrogatories, state the amount that she seeks and the basis for seeking it; describe the methodology used to make the calculation; and state the factual basis for claiming each element of damages.

RESPONSE: Please see Answer to Interrogatory No. 9.

INTERROGATORY NO. 16: Provide the following information regarding each heir at law of Lori Braun:

a. date of birth;

b. social security number;

c. home address;

d. occupation;

e. name and address of employer;

f. spouse's full name and address;

g. number of children and their names and ages;

h. annual income for each of the past five years and the sources of the income;

i. spouse's annual income for each of the past five years and the sources of the income; and

j. educational background (secondary, college, and post-graduate), including all degrees obtained; institutions that granted the degrees; and date the degrees were granted.

RESPONSE: Objection. To the extent that his discovery request seeks personal information from the heirs of the Estate of Cassandra Braun, Plaintiff would state this this request is not relevant to any of the issues in this case and/or proportional to the needs of this case.

INTERROGATORY NO. 17: State the net worth (assets minus liabilities) and identify all documents related to this calculation for each individual named in your answer to Interrogatory No. 16.

RESPONSE: Objection. To the extent that his discovery request seeks personal information from the heirs of the Estate of Cassandra Braun, Plaintiff would state this this request is not relevant to any of the issues in this case and/or proportional to the needs of this case.

INTERROGATORY NO. 18: To the extent that Plaintiff seeks damages in this case that are not covered by one of the preceding interrogatories, please state the amount that Plaintiff seeks and the basis for seeking it; describe the methodology used to make the calculation; and state the factual basis for claiming each element of damages.

RESPONSE: Please see Answer to Interrogatory No. 9.

INTERROGATORY NO. 19: If your response to any Request for Admission was anything other than an unqualified admission, state the factual

basis for your response and identify all witness testimony, documents, and other evidence that support your response.

RESPONSE: Please see Plaintiff's Responses to Defendant Colonel Bryant First Request for Admissions.

INTERROGATORY NO. 20: Identify all lawsuits or claims for recovery made by or against Plaintiff or any heir of Cassandra Braun, including bankruptcy filings, and for each such lawsuit, claim, or charge identify the date such claim or charge was made; the person or entity against whom the claim or charge was asserted; the person or entity asserting a claim or charge against you or the heir; the type of claim or charge and the type of injury, if any, involved; the attorney who assisted you; the court or tribunal in which the action was filed; the docket or claim number; opposing counsel; and the resolution of the lawsuit, claim, or charge.

RESPONSE: Objection. Plaintiff submits that the litigation history of each and every heir of the Estate of Cassandra Braun is not relevant to any issue in this case and not proportional to the needs of this case. Without waiving this objection and responding to this question on behalf of Lori Braun, Plaintiff would state:

A. In the Matter of the Estate of Cassandra Braun, Deceased, Circuit Court of Garland County, Arkansas, Probate Division, No. 26PR-16-650;

B. Lori Braun, as Administratix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun v. State of Arkansas, Arkansas State Police, Arkansas Claims Commission, Claim No. 190497

C. Please see Answer to Interrogatory No. 8 for information regarding the life insurance claims, claim for death benefit and property damage claim.

D. U.S. Bank Trust National Association v. Lori Braun, et al., Lee County, Florida, Docket 18-CA-004093.

E. [redacted]

F. Plaintiff is unaware of any lawsuits or claims of recovery made by Cassandra Braun prior to her death.

VERIFICATION

Pursuant to 28 U.S.C. Section 1746, I, Lori Braun, declare under the penalty of perjury under the laws of the United States of America that the foregoing answers to Interrogatories are true and correct to the best of my knowledge, information and belief.

Lori Braun

Lori Braun

RESPECTFULLY SUBMITTED,

/s/ Andrew C. Clarke
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pjj@jamescarterlaw.com

CERTIFICATE OF SERVICE

I, Andrew C. Clarke, do hereby that I have served on copy of the following discovery requests via electronic mail in both PDF and Word Version to the following persons:

Jennifer Merrit - jennifer.merritt@arkansasag.gov
Gary Sullivan – gary.sullivan@arkansasag.gov
323 Center Street
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Little Rock, Arkansas 72201

Brian W. Way – brian@ccrlaw.com
912 West 4th Street
Little Rock, Arkansas 72201

On this the 19th day of November, 2018.

/s/ Andrew C. Clarke
ANDREW C. CLARKE (AR BPR No. 95070)

From:	Johanna Hinkle
To:	ASCC Pleadings; "Andrew Clarke"; "Paul James"; "Tiffany Mays O"Guinn"
Cc:	Kesia Morrison
Subject:	RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC
Date:	Wednesday, May 24, 2023 10:30:21 AM
Attachments:	2023-05-24 OUT ASP ROGS and RFPD to Claimant Perry.pdf 2023-05-24 OUT ASP ROGS and RFPD for Claimant Braun.pdf image001.jpg

Good afternoon,

The attached Respondent's First Set of Interrogatories and Requests for Production of Documents to Claimants Lavon Perry and Lori Braun are being sent to you on behalf of AAG Kesia Morrison.

Thank you.

Johanna Hinkle, Paralegal

Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov
johanna.hinkle@arkansasag.gov

(501) 682-2007 (Main)
(501) 682-2590 (Direct)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO THE CLAIMANT LAVON PERRY

COMES NOW the Respondent, Arkansas State Police, by and through its attorneys, Attorney General Tim Griffin and Assistant Attorney General Kesia Morrison, and propounds the following First Set of Interrogatories and Requests for Production of Documents on the Claimant Lavon Perry pursuant to Rule 8.1 of the Claims Commission and Rules 33 and 34 of the Arkansas Rules of Civil Procedure:

I. INTERROGATORIES

INTERROGATORY NO. 1: Set forth in complete detail the facts surrounding your allegations of negligence you alleged in paragraph 13 of the Complaint.

INTERROGATORY NO. 2: Identify each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claim of "negligence", and for each person who has information or knowledge regarding your claim of the alleged

"negligence", set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

INTERROGATORY NO. 3: Set forth in complete detail the facts surrounding your allegations of "willful, wanton, callous, reckless and depraved indifference" in paragraph 17 of the Complaint.

INTERROGATORY NO. 4: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims "willful, wanton, callous, reckless and . . . depraved indifference", and for each person who has information or knowledge regarding your claim of "willful, wanton, callous, reckless and . . . depraved indifference", set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

INTERROGATORY NO. 5: Set forth in complete detail the facts surrounding your allegations of liability that you alleged in paragraphs 19 through 22 of the Complaint.

INTERROGATORY NO. 6: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims of liability, and for each person who has information or knowledge regarding your claim of liability, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

INTERROGATORY NO. 7: Specify, by category, the economic damages you claim to have sustained as a result of the conduct alleged in the Complaint, stating in detail the method by which you have computed those economic damages.

INTERROGATORY NO. 8: Specify, by category, the non-economic damages you claim to have sustained as a result of the conduct alleged in the Complaint, stating in detail the method by which you have computed those non-economic damages, including but not limited to pain and suffering alleged in paragraph 15 of the Complaint.

INTERROGATORY NO. 9: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims for economic and non-economic damages, and for each person who has information or knowledge regarding your claim for damages, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim for damages.

INTERROGATORY NO. 10: State the facts upon which you base your claim for statutory damages sustained as a result of the conduct alleged in the Complaint, stating in detail the method by which you have computed the statutory damages.

INTERROGATORY NO. 11: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims for statutory damages, and for each person who has information or knowledge regarding your claim for damages, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim for damages.

INTERROGATORY NO. 12: Please indicate the names of all witnesses you might call at the hearing of this matter. For each witness provide their name, address, and telephone number.

INTERROGATORY NO. 13: Please state the name and address of each expert consulted whose report or work product will be relied upon in whole or in part by a testifying expert in this case.

INTERROGATORY NO. 14: Please state the name and address of each consulting expert whose report or work product was reviewed by a testifying expert in this case.

INTERROGATORY NO. 15: Identify all beneficiaries who claim entitlement to damages because of "pain and suffering".

INTERROGATORY NO. 16: For each beneficiary who claims "pain and suffering", please identify the name, address, and telephone number of each physician, counselor, psychiatrist, psychologist, mental health professional, or other practitioner of the healing arts who has examined or treated each beneficiary, as well as the name, address, and telephone number of each treatment facility since October 10, 2016.

INTERROGATORY NO. 17: Please identify the name, address, and phone number of each pharmacy each beneficiary who claims pain and suffering has used since October 10, 2016.

INTERROGATORY NO. 18: Identify each and every document which you have used or referred to in answering the Respondent's First Set of Interrogatories.

INTERROGATORY NO. 19: Identify each and every exhibit which you will or may introduce at the hearing of this claim, or which you will or may provide to the commission as proof of your claim.

II. DOCUMENT PRODUCTION REQUESTS

REQUEST FOR PRODUCTION NO. 1: Please produce all documents used in answering or relating to your answers to the Respondent's First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents relating to the contentions or allegations made in your Claim.

REQUEST FOR PRODUCTION NO. 3: Please produce all reports by experts that have been prepared in connection with this claim or the incidents giving rise to this claim.

REQUEST FOR PRODUCTION NO. 4: Please produce all analyses, statistics or other documents or things that have been or will be reviewed by an expert in this case.

REQUEST FOR PRODUCTION NO. 5: Please produce a curriculum vitae and any other documents pertaining to the credentials and qualifications of any experts retained by you, including, but not limited to, a list of publications or other writings authored by each expert and a list of any other cases in which each expert has testified or been retained.

REQUEST FOR PRODUCTION NO. 6: For each expert retained by you, please provide all correspondence between you and retained expert(s). contracts, drafts of all reports invoices, and payments.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents or other materials that support your allegations of "negligence" contained in paragraph 13 of the Complaint.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents or other materials which support your allegations of "willful, wanton, callous, reckless and . . . depraved indifference" contained in paragraph 17 of the Complaint.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents or other materials which support your allegations of liability that you alleged in paragraphs 19 through 22 of the Complaint.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents or other materials which support your allegations of pain and suffering alleged in paragraphs 15 of the Complaint.

REQUEST FOR PRODUCTION NO. 11: Please list and produce all exhibits which you will or may introduce at the hearing of this claim, or which you will or may provide to the commission as proof of your claim.

REQUEST FOR PRODUCTION NO. 12: Please complete and return the attached Release of Medical Records Authorization for Use and Disclosure of Protected Health Information for each beneficiary who has a claim for pain and suffering.

REQUEST FOR PRODUCTION NO. 13: Please produce for, inspection and copying, the phone records for decedent, Tavon Jenkins on October 10, 2016.

REQUEST FOR PRODUCTION NO. 14: Please produce for, inspection and copying, any bank and credit card records for decedent, Tavon Jenkins for transactions that cleared on or after October 10, 2016.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: */s/ Kesia Morrison*
Kesia Morrison
Ark Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3997
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2023, I electronically filed the foregoing by submitting it to ASCCpleadings@arkansas.gov, and served it upon the following participants:

Tiffany Mays O'Quinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clark, Esq.
aclarke@cochranfirmmidsouth.com

/s/Kesia Morrison
Kesia Morrison

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO THE CLAIMANT LORI BRAUN

COMES NOW the Respondent, Arkansas State Police, by and through its attorneys, Attorney General Tim Griffin and Assistant Attorney General Kesia Morrison, and propounds the following First Set of Interrogatories and Requests for Production of Documents on the Claimant Lori Braun pursuant to Rule 8.1 of the Claims Commission and Rules 33 and 34 of the Arkansas Rules of Civil Procedure:

I. INTERROGATORIES

INTERROGATORY NO. 1: Set forth in complete detail the facts surrounding your allegations of "institutional negligence" you alleged in paragraph 14 of the Claim Narrative and Statement of Facts.

INTERROGATORY NO. 2: Identify by name, address and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove

or disprove, your claims of "institutional negligence", and for each person who has information or knowledge regarding your claims of "institutional negligence", set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

INTERROGATORY NO. 3: Specify, by category, the economic damages you claim to have sustained as a result of the conduct alleged in the Claim Narrative and Statement of Facts, stating in detail the method by which you have computed those economic damages, including but not limited to the damages referred to in paragraph 18 of your Claim Narrative and Statement of Facts.

INTERROGATORY NO. 4: Specify, by category, the non-economic damages you claim to have sustained as a result of the conduct alleged in Claim Narrative and Statement of Facts, stating in detail the method by which you have computed those non-economic damages.

INTERROGATORY NO. 5: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims for economic and non-economic damages, and for each person who has information or knowledge regarding your claim for damages, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim for damages.

INTERROGATORY NO. 6: Identify all beneficiaries who claim entitlement to damages because of "pain and suffering".

INTERROGATORY NO. 7: Please indicate the names of all witnesses, including their name, home address, telephone number, occupation and their relationship to you and Cassandra Braun, that you might call at the hearing of this matter.

INTERROGATORY NO. 8: Please state the name and address of each expert consulted whose report or work product will be relied upon in whole or in part by a testifying expert in this case.

INTERROGATORY NO. 9: Please state the name and address of each consulting expert whose report or work product was reviewed by a testifying expert in this case.

INTERROGATORY NO. 10: For each beneficiary who claims entitlement to damages because of "pain and suffering", please identify the name, address, and telephone number of each physician, counselor, psychiatrist, psychologist, mental health professional, or other practitioner of the healing arts who has examined or treated the beneficiary, as well as the name, address and telephone number of each treatment facility since October 10, 2016.

INTERROGATORY NO. 11: As to each beneficiary claiming pain and suffering, please identify the name, address and phone number of each pharmacy the beneficiary has used since October 10, 2016.

INTERROGATORY NO. 12: Identify each and every document which you have used or referred to in answering the Respondent's First Set of Interrogatories.

INTERROGATORY NO. 13: Identify each and every exhibit which you will or may introduce at the hearing of this claim, or which you may provide to the commission as proof of your claim.

II. DOCUMENT PRODUCTION REQUESTS

REQUEST FOR PRODUCTION NO. 1: Please produce all documents used in answering or relating to your answers to the Respondent's First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents relating to the contentions or allegations made in your Claim Narrative and Statement of Facts.

REQUEST FOR PRODUCTION NO. 3: Please produce all reports by experts that have been prepared in connection with this claim.

REQUEST FOR PRODUCTION NO. 4: Please produce all analyses, statistics or other documents or things that have been or will be reviewed by an expert in this case.

REQUEST FOR PRODUCTION NO. 5: Please produce a curriculum vitae and any other documents pertaining to the credentials and qualifications of any experts retained by you, including, but not limited to, a list of publications or other writings authored by each expert and a list of any other cases in which each expert has testified or been retained.

REQUEST FOR PRODUCTION NO. 6: For each expert retained by you, please provide all correspondence between you and retained expert(s), contracts, drafts of all reports invoices, and payments.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents or other materials, to include any voice recordings, that support your allegations of the "institutional negligence" contained in paragraph 14 of the Claim Narrative and Statement of Facts.

REQUEST FOR PRODUCTION NO. 8: Please list and produce all exhibits that you will or may introduce at the hearing of this claim, or which you may provide to the commission as proof of your claim..

REQUEST FOR PRODUCTION NO. 9: Please complete and return the attached Release of Medical Records Authorization for Use and Disclosure of Protected Health Information for each beneficiary who asserts a claim for pain and suffering.

REQUEST FOR PRODUCTION NO. 10: Please produce, for inspection and copying, the phone records for decedent, Cassandra Braun on October 10, 2016.

REQUEST FOR PRODUCTION NO. 11: Please produce for, inspection and copying, any bank and credit card records for decedent, Cassandra Braun for transactions clearing on or after October 10, 2016.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: */s/ Kesia Morrison*

Kesia Morrison
Ark Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3997
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2023, I electronically filed the foregoing by submitting it to ASCCpleadings@arkansas.gov, and served it upon the following participants:

Tiffany Mays O'Quinn
tmays@maysbyrdlaw.com

Paul J. James, Esq.
pjj@jamescarterlaw.com

Andrew C. Clark, Esq.
aclarke@cochranfirmmidsouth.com

/s/Kesia Morrison
Kesia Morrison

From: Cydni Arterbury
To: Johanna Hinkle; ASCC Pleadings; "Andrew Clarke"; Paul James; "Tiffany Mays O"Guinn"
Cc: Kesia Morrison
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC
Date: Wednesday, June 28, 2023 3:22:15 PM
Attachments: image002.jpg
image003.jpg

You don't often get email from ca@jamescarterlaw.com. Learn why this is important

Good afternoon!

Please be sure to include me on all correspondence emails that are sent to Paul James so that I can assist him with keeping everything on track.

With that said, I am currently working to help finalize Lori Braun's discovery responses. In Request for Production No. 9, you ask for Claimant to complete and return the attached Release of Medical Records Authorization, however, there was no Release attached.

Do you have a specific release that you'd like to send for me to have Lori Braun sign or do you want me to prepare our standard Release in favor of the Office of the AG?

Just let me know.

Thanks so much!

Have a great day!
Cydni Arterbury

Legal Assistant
JAMES & CARTER, PLC
500 Broadway, suite 400
Little Rock, AR 72201
Main Office: 501.372.1414
Direct Dial: 501.492.3872
Facsimile: 501.372.1659

Important Confidentiality statement – The information contained in this electronic communication from James & Carter, PLC may be confidential attorney-client privilege and protected by law. If you are not the intended recipient, please immediately delete the e-mail and be aware that any disclosure, copying, distribution, or use of the e-mail or

any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender or calling our office at 501.372.1414 and delete this copy and the reply from your computer and network system.

From: Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Sent: Wednesday, May 24, 2023 10:30 AM
To: 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Good afternoon,

The attached Respondent's First Set of Interrogatories and Requests for Production of Documents to Claimants Lavon Perry and Lori Braun are being sent to you on behalf of AAG Kesia Morrison.

Thank you.

Johanna Hinkle, Paralegal

Office of Attorney General Tim Griffin
323 Center s treet, s uite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov
johanna.hinkle@arkansasag.gov

(501) 682-2007 (Main)
(501) 682-2590 (Direct)

From: Kesia Morrison
To: Cydni Arterbury; ASCC Pleadings; "Andrew Clarke"; Paul James; "Tiffany Mays O"Guinn"
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC
Date: Friday, June 30, 2023 10:18:44 AM
Attachments: image001.jpg
image002.jpg

Good morning,

Apologies for my slow response, and for the oversight regarding the Release. Thank you for bringing that to my attention. We will send over a Release.

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov

From: Cydni Arterbury <CA@jamescarterlaw.com>
Sent: Wednesday, June 28, 2023 3:22 PM
To: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

EXTERNAL EMAIL

Good afternoon!

Please be sure to include me on all correspondence emails that are sent to Paul James so that I can assist him with keeping everything on track.

With that said, I am currently working to help finalize Lori Braun's discovery responses. In Request for Production No. 9, you ask for Claimant to complete and return the attached Release of Medical Records Authorization, however, there was no Release attached.

Do you have a specific release that you'd like to send for me to have Lori

Braun sign or do you want me to prepare our standard Release in favor of the Office of the AG?

Just let me know.

Thanks so much!

Have a great day!
Cydni Arterbury

Legal Assistant
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, AR 72201
Main Office: 501.372.1414
Direct Dial: 501.492.3872
Facsimile: 501.372.1659

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Sent: Wednesday, May 24, 2023 10:30 AM
To: 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

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The attached Respondent's First Set of Interrogatories and Requests for Production of Documents to Claimants Lavon Perry and Lori Braun are being sent to you on behalf of AAG Kesia Morrison.

Thank you.

Johanna Hinkle, Paralegal

Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov
johanna.hinkle@arkansasag.gov

(501) 682-2007 (Main)
(501) 682-2590 (Direct)



From: Lisa Wiedower
To: Misty Scott; CA@jamescarterlaw.com; ASCC Pleadings; aclarke@cochranfirmmidsouth.com; pjj@jamescarterlaw.com; tmays@maysbyrdlaw.com
Cc: Kesia Morrison; Gabrielle Mays
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC
Date: Friday, June 30, 2023 4:31:40 PM
Attachments: [redacted]

You don't often get email from lisa.wilkins@arkansasag.gov. Learn why this is important

Good afternoon,

Please find attached the medical authorizations for Lori Braun, Michael Braun, [redacted] Joel Michael Braun, [redacted], and Raquel Braun. If you have any questions, please contact Assistant Attorney General Kesia Morrison or me.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Friday, June 30, 2023 11:47 AM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Subject: FW: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov



From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Friday, June 30, 2023 10:27 AM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Cydni Arterbury <CA@jamescarterlaw.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

EXTERNAL EMAIL

Received.

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Friday, June 30, 2023 10:19 AM
To: Cydni Arterbury <CA@jamescarterlaw.com>; ASCC Pleadings <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
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Kesia Morrison
Assistant Attorney General – Civil Litigation Division

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Thanks so much!

Have a great day!
Cydni Arterbury

Legal Assistant
JAMES & CARTER, PLC

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Little Rock, AR 72201
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Thank you.

Johanna Hinkle, Paralegal

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION

I, [redacted], hereby expressly authorize that the designated record custodian of all covered entities under HIPAA, including any medical or psychiatry physician, or other medical practitioner, healthcare provider, or any other healthcare facility, disclose the full and complete medical and mental healthcare records of [redacted], whose date of birth is _____, and social security number is _____ for the following period:

October 1, 2015, to Present

I understand that the specific types of information to be disclosed includes every page of the medical and mental healthcare records, and any other information including treatment records, diagnosis/prognosis, narrative reports, nurse's notes, and photographs. This authorization also permits my medical providers to discuss, in person, by telephone, facsimile, electronically, or by mail, medical options, opinions, conclusions, treatment plans, and other information.

I hereby authorize the use or disclosure of the Protected Health Information described above to be provided to the following:

Kesia Morrison
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

I understand the following:

- I may revoke this authorization at any time, in writing, except the revocation will not apply to information already used or disclosed in response to this authorization. A photocopy of this release will have the same force and effect as the original signed copy.
- Authorizing the disclosure of this health information is voluntary. I need not sign this form in order to assure treatment. I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524.
- I release the disclosing individual or entity listed above, their agents and employees from any and all liability in connection with the use or disclosure of the protected health information covered by this authorization.
- Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by federal law. The recipient, however, may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements. If I have questions above disclosure of my health information, I can contact a privacy officer.
- I agree I waive my right to object to the release of such information by reason of it being personal, privileged, or any other grounds, and release the health care providers from any and all liability as a result of providing information pursuant to this authorization.

Unless otherwise revoked, this authorization will expire ***at the conclusion of the above-identified litigation pending between claimant and the respondent***.

_____ _____

PATIENT **DATE**

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION

I, **Raquel Braun,** hereby expressly authorize that the designated record custodian of all covered entities under HIPAA, including any medical or psychiatry physician, or other medical practitioner, healthcare provider, or any other healthcare facility, disclose the full and complete medical and mental healthcare records of **Raquel Braun,** whose date of birth is **_____,** and social security number is _____ for the following period:

October 1, 2015, to Present

I understand that the specific types of information to be disclosed includes every page of the medical and mental healthcare records, and any other information including treatment records, diagnosis/prognosis, narrative reports, nurse's notes, and photographs. This authorization also permits my medical providers to discuss, in person, by telephone, facsimile, electronically, or by mail, medical options, opinions, conclusions, treatment plans, and other information.

I hereby authorize the use or disclosure of the Protected Health Information described above to be provided to the following:

Kesia Morrison
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

I understand the following:

- I may revoke this authorization at any time, in writing, except the revocation will not apply to information already used or disclosed in response to this authorization. A photocopy of this release will have the same force and effect as the original signed copy.
- Authorizing the disclosure of this health information is voluntary. I need not sign this form in order to assure treatment. I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524.
- I release the disclosing individual or entity listed above, their agents and employees from any and all liability in connection with the use or disclosure of the protected health information covered by this authorization.
- Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by federal law. The recipient, however, may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements. If I have questions above disclosure of my health information, I can contact a privacy officer.
- I agree I waive my right to object to the release of such information by reason of it being personal, privileged, or any other grounds, and release the health care providers from any and all liability as a result of providing information pursuant to this authorization.

Unless otherwise revoked, this authorization will expire ***at the conclusion of the above-identified litigation pending between claimant and the respondent***.

_____ _____

PATIENT **DATE**

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN — **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE — **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY — **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE — **RESPONDENT**

AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION

I, **Joel Michael Braun,** hereby expressly authorize that the designated record custodian of all covered entities under HIPAA, including any medical or psychiatry physician, or other medical practitioner, healthcare provider, or any other healthcare facility, disclose the full and complete medical and mental healthcare records of **Joel Michael Braun,** whose date of birth is **_____,** and social security number is _____ for the following period:

October 1, 2015, to Present

I understand that the specific types of information to be disclosed includes every page of the medical and mental healthcare records, and any other information including treatment records, diagnosis/prognosis, narrative reports, nurse's notes, and photographs. This authorization also permits my medical providers to discuss, in person, by telephone, facsimile, electronically, or by mail, medical options, opinions, conclusions, treatment plans, and other information.

I hereby authorize the use or disclosure of the Protected Health Information described above to be provided to the following:

Kesia Morrison
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

I understand the following:

- I may revoke this authorization at any time, in writing, except the revocation will not apply to information already used or disclosed in response to this authorization. A photocopy of this release will have the same force and effect as the original signed copy.
- Authorizing the disclosure of this health information is voluntary. I need not sign this form in order to assure treatment. I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524.
- I release the disclosing individual or entity listed above, their agents and employees from any and all liability in connection with the use or disclosure of the protected health information covered by this authorization.
- Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by federal law. The recipient, however, may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements. If I have questions above disclosure of my health information, I can contact a privacy officer.
- I agree I waive my right to object to the release of such information by reason of it being personal, privileged, or any other grounds, and release the health care providers from any and all liability as a result of providing information pursuant to this authorization.

Unless otherwise revoked, this authorization will expire ***at the conclusion of the above-identified litigation pending between claimant and the respondent***.

_____ _____

PATIENT **DATE**

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION

I, [redacted], hereby expressly authorize that the designated record custodian of all covered entities under HIPAA, including any medical or psychiatry physician, or other medical practitioner, healthcare provider, or any other healthcare facility, disclose the full and complete medical and mental healthcare records of [redacted], whose date of birth is [redacted], and social security number is _____ for the following period:

October 1, 2015, to Present

I understand that the specific types of information to be disclosed includes every page of the medical and mental healthcare records, and any other information including treatment records, diagnosis/prognosis, narrative reports, nurse's notes, and photographs. This authorization also permits my medical providers to discuss, in person, by telephone, facsimile, electronically, or by mail, medical options, opinions, conclusions, treatment plans, and other information.

I hereby authorize the use or disclosure of the Protected Health Information described above to be provided to the following:

Kesia Morrison
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

I understand the following:

- I may revoke this authorization at any time, in writing, except the revocation will not apply to information already used or disclosed in response to this authorization. A photocopy of this release will have the same force and effect as the original signed copy.
- Authorizing the disclosure of this health information is voluntary. I need not sign this form in order to assure treatment. I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524.
- I release the disclosing individual or entity listed above, their agents and employees from any and all liability in connection with the use or disclosure of the protected health information covered by this authorization.
- Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by federal law. The recipient, however, may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements. If I have questions above disclosure of my health information, I can contact a privacy officer.
- I agree I waive my right to object to the release of such information by reason of it being personal, privileged, or any other grounds, and release the health care providers from any and all liability as a result of providing information pursuant to this authorization.

Unless otherwise revoked, this authorization will expire ***at the conclusion of the above-identified litigation pending between claimant and the respondent***.

_____ _____

PATIENT **DATE**

From: Lisa Wiedower
To: Misty Scott; CA@jamescarterlaw.com; ASCC Pleadings; aclarke@cochranfirmmidsouth.com; pjj@jamescarterlaw.com; tmays@maysbyrdlaw.com
Cc: Kesia Morrison; Gabrielle Mays
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC
Date: Friday, June 30, 2023 4:35:28 PM
Attachments: [redacted]

You don't often get email from lisa.wilkins@arkansasag.gov. Learn why this is important

Lori Braun's failed to attach properly. Here it is.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)

From: Lisa Wiedower
Sent: Friday, June 30, 2023 4:31 PM
To: misty.scott@arkansas.gov; CA@jamescarterlaw.com; asccpleadings@arkansas.gov; aclarke@cochranfirmmidsouth.com; pjj@jamescarterlaw.com; tmays@maysbyrdlaw.com
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Good afternoon,

Please find attached the medical authorizations for Lori Braun, Michael Braun, [redacted], Joel Michael Braun, [redacted], and Raquel Braun. If you have any questions, please contact Assistant Attorney General Kesia Morrison or me.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)



From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Friday, June 30, 2023 11:47 AM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Subject: FW: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov



From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Friday, June 30, 2023 10:27 AM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Cydni Arterbury <CA@jamescarterlaw.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

EXTERNAL EMAIL

Received.

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Friday, June 30, 2023 10:19 AM
To: Cydni Arterbury <CA@jamescarterlaw.com>; ASCC Pleadings <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Good morning,

Apologies for my slow response, and for the oversight regarding the Release. Thank you for bringing that to my attention. We will send over a Release.

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

From: Cydni Arterbury <CA@jamescarterlaw.com>
Sent: Wednesday, June 28, 2023 3:22 PM
To: Johanna Hinkle <johanna.hinkle@arkansasag.gov>; 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

EXTERNAL EMAIL

Good afternoon!

Please be sure to include me on all correspondence emails that are sent to Paul James so that I can assist him with keeping everything on track.

With that said, I am currently working to help finalize Lori Braun's discovery responses. In Request for Production No. 9, you ask for Claimant to complete and return the attached Release of Medical Records Authorization, however, there was no Release attached.

Do you have a specific release that you'd like to send for me to have Lori Braun sign or do you want me to prepare our standard Release in favor of the Office of the AG?

Just let me know.

Thanks so much!

Have a great day!
Cydni Arterbury

Legal Assistant
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, AR 72201
Main Office: 501.372.1414
Direct Dial: 501.492.3872
Facsimile: 501.372.1659

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From: Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Sent: Wednesday, May 24, 2023 10:30 AM
To: 'ASCC Pleadings' <asccpleadings@arkansas.gov>; 'Andrew Clarke' <aclarke@cochranfirmmidsouth.com>; Paul James <pjj@jamescarterlaw.com>; 'Tiffany Mays O'Guinn' <tmays@maysbyrdlaw.com>
Cc: Kesia Morrison <kesia.morrison@arkansasag.gov>
Subject: RE: Braun, Lori Admin. v. Arkansas State Police 190497-CC

Good afternoon,

The attached Respondent's First Set of Interrogatories and Requests for Production of Documents to Claimants Lavon Perry and Lori Braun are being sent to you on behalf of AAG Kesia Morrison.

Thank you.

Johanna Hinkle, Paralegal

Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov
johanna.hinkle@arkansasag.gov

(501) 682-2007 (Main)
(501) 682-2590 (Direct)



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN — **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE — **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY — **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE — **RESPONDENT**

AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION

I, **Lori Braun,** hereby expressly authorize that the designated record custodian of all covered entities under HIPAA, including any medical or psychiatry physician, or other medical practitioner, healthcare provider, or any other healthcare facility, disclose the full and complete medical and mental healthcare records of **Lori Braun,** whose date of birth is [redacted] and social security number is _____ for the following period:

October 1, 2015, to Present

I understand that the specific types of information to be disclosed includes every page of the medical and mental healthcare records, and any other information including treatment records, diagnosis/prognosis, narrative reports, nurse's notes, and photographs. This authorization also permits my medical providers to discuss, in person, by telephone, facsimile, electronically, or by mail, medical options, opinions, conclusions, treatment plans, and other information.

I hereby authorize the use or disclosure of the Protected Health Information described above to be provided to the following:

Kesia Morrison
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

I understand the following:

- I may revoke this authorization at any time, in writing, except the revocation will not apply to information already used or disclosed in response to this authorization. A photocopy of this release will have the same force and effect as the original signed copy.
- Authorizing the disclosure of this health information is voluntary. I need not sign this form in order to assure treatment. I may inspect or copy the information to be used or disclosed, as provided in CFR 164.524.
- I release the disclosing individual or entity listed above, their agents and employees from any and all liability in connection with the use or disclosure of the protected health information covered by this authorization.
- Information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected by federal law. The recipient, however, may be prohibited from disclosing substance abuse information under the Federal Substance Abuse Confidentiality Requirements. If I have questions above disclosure of my health information, I can contact a privacy officer.
- I agree I waive my right to object to the release of such information by reason of it being personal, privileged, or any other grounds, and release the health care providers from any and all liability as a result of providing information pursuant to this authorization.

Unless otherwise revoked, this authorization will expire ***at the conclusion of the above-identified litigation pending between claimant and the respondent***.

_____ _____

PATIENT **DATE**

From: Lisa Wiedower
To: Paul James; Kathryn Irby; Kesia Morrison; Gabrielle Mays
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497
Date: Friday, July 21, 2023 3:45:50 PM
Attachments: image002.jpg
image003.jpg
image004.jpg

Good afternoon,

I am substituting Gabby Mays in place of Johanna Hinkle to receive correspondence for Assistant Attorney General Kesia Morrison. Thank you for making this change in your records.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)

From: Paul James <pjj@jamescarterlaw.com>
Sent: Friday, July 21, 2023 3:31 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>; Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

EXTERNAL EMAIL

Ms. Irby-

As a matter of follow up and update, this is to confirm that the parties have set this matter for an August 22nd mediation.

In regard to a potential setting in the event mediation is unsuccessful, I understand that the Commission does not set any matter for more than one day. Since there are two claimants (Estate of Braun and the Estate of Jenkins), I would assume that this matter would need a full day setting.

Thank you, and have a great weekend.

Paul J. James



500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
(501) 607-4090 – Cell
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Friday, May 5, 2023 4:41 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; aclarke@cochranfirmmidsouth.com
Subject: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Counselors, am I correct that this claim is ready to be set for hearing? If so, can the parties please confer and let me know how long the parties expect will be needed to present the claim to the Commission?

Thanks,
Kathryn Irby

From: Kathryn Irby
Sent: Saturday, April 22, 2023 10:01 AM
To: 'Kesia Morrison' <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject: ORDER: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From:	Cydni Arterbury
To:	ASCC Pleadings; Kesia Morrison; tmays@maysbyrdlaw.com; john.payne@arkansasag.gov; lisa.wilkins@arkansasag.gov
Cc:	Paul James; Andrew Clarke
Subject:	Braun v. Arkansas State Police
Date:	Thursday, July 27, 2023 10:03:49 AM
Attachments:	image001.gif image002.jpg 2023 07 27 Claimant Responses to Respondent Discovery.pdf

You don't often get email from ca@jamescarterlaw.com. Learn why this is important

Commission & Counsel:

Attached are Claimant Lori Braun's Responses to Respondent's Discovery Requests.

Thank you.

Have a great day!

Cydni Arterbury

Legal Assistant
JAMES & CARTER, PLC
500 Broadway, suite 400
Little Rock, AR 72201
main Office: 501.372.1414
Direct Dial: 501.492.3872
Facsimile: 501.372.1659

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CLAIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **RESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF TAVON PERRY **CLAIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **RESPONDENT**

CLAIMANT LORI BRAUN'S RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

COMES NOW, the Claimant, Lori Braun, as Administratrix of the Estate of Cassandra Braun, deceased, Individually and on behalf of all wrongful death Beneficiaries of Cassandra Braun, pursuant to Rule 8.1 of the Claims Commission and Rules 33 and 34 of the Arkansas Rules of Civil Procedure and in response to Respondent, Arkansas State Police's First Set of Interrogatories and Requests for Production of Documents responds as follows:

OVERVIEW AND GENERAL OBJECTIONS

These responses are not intended to, nor should they be construed as affecting waivers regarding any objection the Claimant may have in relation to the relevance, materiality, admissibility, privilege or competency of the various discovery

propounded, or of the information and documents identified herein. On the contrary, these responses are intended to preserve and do, in fact, preserve all of the Claimant's rights to object on any grounds at any time to the discovery itself, or to the use of information gained through this discovery.

The Claimant further reserves the right to object to additional discovery addressed to matters covered by these discovery requests, whether or not answers are furnished herein. The Claimant expressly reserves the right to supplement, revise, add to, clarify or correct any answers or responses herein pursuant to the *Arkansas Rules of Civil Procedure* 26e(l), 33(b)(4) and 34(2)(c).

The Claimant objects to the extent this discovery requests any information that constitutes information protected by the attorney/client privilege, or the attorney work-product and anticipation of litigation doctrines. Pursuant to *Arkansas Rules of Civil Procedure* 26(e)(1), the Claimant states that she has withheld the following information:

a. Information pertaining to experts consulted in anticipation of litigation;

b. Correspondence between the Claimant and her attorneys; and

c. Notes prepared by Claimant's attorneys in the course of their investigation.

Further, Claimant objects to these discovery requests to the extent that they request Claimant to obtain personal and financial information from persons not parties to this litigation, which includes but is not limited, the heirs of the Estate of Cassandra Braun. Such information is neither relevant to the issues in this case nor proportional to the needs of the case.

Finally, Claimant states that this case involved the death of Cassandra Braun who was 26 years old. Claimant is the mother of Cassandra Braun and the duly appointed Administratrix of her Estate. In this capacity, Claimant will attempt to respond to all discovery requests to the best of her knowledge and belief but would state that she may not possess full or complete responses to all of Respondent's discovery requests.

Claimant further incorporates by reference into these discovery responses Plaintiff's Rule 26(a) Disclosures, and all supplemental and amended Rule 26(a) Disclosures, Defendant's Rule 26(a) Disclosures and documents produced, Defendants' Responses to Plaintiffs' first discovery requests and documents produced.

I. INTERROGATORIES

INTERROGATORY NO. 1: Set forth in complete detail the facts surrounding your allegations of "institutional negligence" you alleged in paragraph 14 of the Claim Narrative and Statement of Facts.

RESPONSE: Trooper Burke's driving at excessive speeds without engaging rotating lights and siren was specifically authorized by the Arkansas State Police Policies, Practices and Customs with respect to emergency vehicle operations. The detailed factual basis for the institutional negligence is set forth in the Expert Report of Criminologist/Criminal Justice Professor Geoffrey Alpert's Report. Alpert's Report has been previously produced between the parties during discovery and depositions in the federal litigation. See Response to Request for Production No. 6.

INTERROGATORY NO. 2: Identify by name, address and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims of "institutional negligence," and for each person who has information or knowledge regarding your claims of "institutional negligence," set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

RESPONSE: All of the Arkansas State Troopers listed in the pursuit files provided by the Arkansas State Police, for the years between 2008 and 2018; Sergeant Ben Hays; Gregory Downs; Former ASP Colonel William Bryant and Brian Burke. For further response, please see Expert Report of Criminologist/Criminal Justice Professor Geoffrey Alpert's Report. Alpert's Report has been previously produced between the parties during discovery and depositions in the federal litigation. See Response to Request for Production No. 6.

INTERROGATORY NO. 3: Specify, by category, the economic damages you claim to have sustained as a result of the conduct alleged in the Claim Narrative and Statement of Facts, stating in detail the method by which you have computed those economic damages, including but not limited to the damages referred to in paragraph 18 of your Claim Narrative and Statement of Facts.

RESPONSE: The economic losses are set forth in the December 3, 2018, Report of Ralph D. Scott, Jr., Ph.D., Economic Consulting Inc., Tables 1-4, which were previously produced between the parties during discovery and depositions in the federal litigation. See Response to Request for Production No. 6. The Estate also

seeks the cost of cremation and urn ($1,722.75), medical bills and property damage expenses ($8,091.72).

INTERROGATORY NO. 4: **S**pecify, by category, the non-economic damages you claim to have sustained as a result of the conduct alleged in Claim Narrative and Statement of Facts, stating in detail the method by which you have computed those non-economic damages.

RESPONSE: In regard to non-economic damages, the Administratrix on behalf of the Estate seeks damages for mental anguish for each of the eight (8) wrongful death beneficiaries. The Estate seeks damages based on loss of life, conscious pain and suffering and disfigurement in amounts also to be determined by the Arkansas State Claims Commission.

INTERROGATORY NO. 5: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims for economic and non-economic damages, and for each person who has information or knowledge regarding your claim for damages, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim for damages.

RESPONSE: Objection. This request is overly broad and unduly burdensome. Claimant cannot possibly know of every person who may have knowledge of Claimant's claims for damages. Without waiving her objection, Claimant states that all persons having knowledge of facts relevant to damages have

been set forth in discovery completed in the federal litigation including: 1) Plaintiff's Initial Disclosures; 2) Plaintiff's Responses to Interrogatories and Requests for Production of Documents; 3) Expert Report of Ralph Scott; 4) Deposition of Lori Braun; and 5) Documents produced in the federal litigation.

Further, as Claimant has made a claim against officers of the Arkansas State Police ("ASP"), there are numerous persons employed by the ASP whose identities are presently unknown who have relevant knowledge regarding: 1) the Individual Defendant's employment, training and disciplinary records; 2) complaints made against members of the ASP; 3) claims and lawsuits alleging civil rights violations against members of the ASP; 4) the written policies of the ASP; 5) the training provided to members of the ASP; 6) supervision of members of the ASP; 7) investigations of members of the ASP for misconduct; 8) disciplinary actions taken against member of the ASP; and 9) the overall policies, practices and customs of the ASP and the ASP relevant to this action. Accordingly, Claimant expressly reserves the right to supplement this disclosure upon the receipt of additional information and the completion of discovery.

With this understanding, Claimant submits the following:

1. Plaintiff Lori Braun
   (Mother and Administratrix of the Estate of Cassandra Braun)
   [redacted]
   Phone Numbers- To be contacted via counsel

2. Defendant Brian Ray Burke

3. Defendant Bill Bryant

4. Family members and friends who may have knowledge of certain relevant facts and facts relevant to damages which include, but are not limited to:

   a. Michael Braun (Father)
   [redacted]
   Phone Numbers- To be contacted through counsel.

   b. [redacted] Minor [redacted]

   c. Joseph J. Whalen (Father of [redacted])
   [redacted]

   d. Joel Michael Braun (Brother of Cassandra Braun)
   [redacted]

   e. Raquel Braun (Sister of Cassandra Braun)
   [redacted]

   f. [redacted] (Sister of Cassandra Braun)
   [redacted]

   g. Lauraine Whalen (Grandmother of [redacted])
   [redacted]

   h. [redacted] (Adoptive Sister)
   [redacted]

   i. [redacted] (Adoptive Sister)
   [redacted]

   j. Robert Donnan (Grandfather of Cassandra Braun)
   [redacted]

   k. Judy Donnan (Grandmother of Cassandra Braun)
   [redacted]

5. Mrs. Perry (Mother of Tavon Jenkins)
   Information Unknown

6. All personnel from the Hot Springs Fire Department which responded to the crash and were involved in extinguishing the wrecked ASP vehicle and those names are presently unknown;

7. All personnel Arkansas State Crime Laboratory involved in performing the autopsy of Cassandra Braun may have information pertaining to Cassandra Braun's injuries and cause of death which include, but is not limited to:

    a. Adam F. Craig, M.D.
    b. Jennifer Forsyth, M.D. FCAP
    c. Charles P. Kokes, M.D.

    State Crime Laboratory
    Medical Examiner Division
    P.O. Box 8500
    3 Natural Resources Drive
    Little Rock, AR 72215

8. All other persons from the Arkansas State Crime Laboratory involved in the investigation which include but are not limited to:

    a. Rachel Ganley - Forensic Serologist who retrieved blood sample from driver's side airbag.

    b. Christopher Glaze - Forensic DNA Examiner who analyzed blood sample to determine driver

    c. Jessica Baley, Property Evidence

    d. Jessica Ault, Property Evidence

    Arkansas State Crime Laboratory
    P.O. Box 8500
    3 Natural Resources Drive
    Little Rock, AR 72215

9. Stewart Smedly
    Garland County Coroner's Office
    220 Ouachita Ave. #407
    Hot Springs, AR 71901

10. Law enforcement officers and personnel from the Hot Springs Police Department who were called to the scene, involved in the subsequent investigation or have been involved in the processing and storage of evidence, etc. have discoverable knowledge. At the present time, the identities of all such persons or entities are unknown. However, they include, but are not limited to, the following:

a. Jennifer Brizo - HSPD Photographer who photographed the scene.

b. Phillip DeFoor T139 - Investigating Officer. Also conducted Measurement log report #1 and #2, Momentum Report and Barrier Equivalent Velocity, etc.

c. Jason Stachey, Police Chief

d. Sgt. Chris Hays, Criminal Investigation Unit

e. Officer S. Stillion #137 - Assisted with Measurement log report #1 and #2.

f. Robert Plyler

g. S. Steed Unit P147, Responding Officer

h. L. Patrick Unit P14, Responding Officer

i. R. Nunez Unit P179, Responding Officer

j. J. Burfeind Unit P24, Responding Officer

k. J. Langford Unit P102, Responding Officer

l. S. Dauberger Unit P110, Responding Officer

m. M. Means Unit P21, Responding Officer

n. J. Tinney Unit P126, Responding Officer

o. Sgt. R. Harkness Unit T18, Responding Officer

p. Detective Paul Allen D148, Responding Officer

q. T137 – T137, Responding Officer

r. S. Stillian K137, Responsible Officer

s. P. Allison T10, Responding Officer

t. S. McDaniel T10, Responding Officer

u. L. Zaner E116, Responding Officer

Hot Springs Police Department
641 Malvern Avenue
Hot Springs, AR 71901

11. Law enforcement officers and personnel from the Little Rock Police Department who provided assistance in the investigation. At the present time, the identities of all such persons or entities are unknown. However, they include, but are not limited to, the following:

    a. Ralph Breshears, Vehicle Homicide Investigator - Removed and collected data from both vehicles Air Bag Control Module.

    b. Kenton Buckner, Police Chief

       Little Rock Police Department
       700 W. Markham Street
       Little Rock, AR 72201

12. Law enforcement officers and personnel from the Arkansas State Police who were called to the scene, involved in the subsequent investigation or have been involved in the processing and storage of evidence have discoverable knowledge. At the present time, the identities of all such persons or entities are unknown. However, they include, but are not limited to, the following:

    a. Sgt. Scott Joe - Removed flash drive from DVR of wrecked ASP vehicle.

    b. Major Forest Marks - Filed an Internal Complaint against Trooper Burke for violation of Department Policy to include, but not limited to, General Section 23 Vehicle Use and escorted HSPD officers to IT department.

    c. Allen Fitzgerald, Arkansas State Police IT Department - Responsible for reviewing flash drive and retrieval of DVR from wrecked ASP vehicle

    d. Kerry Tabor, Arkansas State Police IT Department - Responsible for reviewing flash drive and retrieval of DVR from wrecked ASP vehicle.

13. Members of Garland County Prosecuting Attorney's Office who were involved in reviewing the case file and information related to filing criminal charges against Officer Burke. At the present time, the

identities of all such persons are unknown. However, they include, but are not limited to, the following:

Terri Harris
Prosecuting Attorney
Garland County Prosecuting Attorney's Office
501 Ouachita Avenue, Room 04
Hot Springs, AR 71901

14. Michael Picou, Hardware Reliability Engineer - Watchdog Guard Video
No other information known.

15. Persons who may have witnessed or have knowledge of the events leading up to and/or after the incident that is the subject of this litigation. At the present time, the identities of all such persons are unknown. However, the following have been identified without contact information in the HSPD incident report 16L032154 as having knowledge:

    a. Jesse L. Haak
    b. Jason Daniel Blair
    c. Kelly C. Lavelle
    d. Joel S. Crook
    e. Nicole Marie Whipkey
    f. Rosalie Smith
    g. Jessica Kelly
    h. Teddy Kelly

16. Persons who posted video, comments or exchanged messages on Facebook concerning this incident and are identified in the HSPD Investigative file without contact information and include the following:

    a. Nikki Whipkey
    b. Amanda Shores Parker
    c. Judy A. Donnan
    d. Kristina Pine
    e. Jason Blair Jr.

17. Holcomb's Towing
2281 Airport Rd.
Hot Springs, AR 71913
Towed Officer Burke's vehicle to back lot of police department

18. Ernie's Wrecker Service
312 Lincoln St.
Hot Springs, AR 71901
Towed Cassandra Braun's vehicle

19. Glen Barentine, Manager
Hot Springs Municipal Airport
Both vehicles placed in hanger for storage
No other information known.

20. Chris Gipson
Gipson Auto Sales
Airport Road
No other information known
Video provided to HSPD

21. Larry Douglas
Investigator
No other information known
Assisted in downloading Gipson video

22. Smith Funeral Services, embalmer Bruce Hawley, 1921 Main Street, North Little Rock, 72114, 501-758-1170

23. Kelley Levell
No other information known
Employee Gipson Auto Sales and also witness to the events prior and subsequent to crash.

24. Members of the news media covered this story and may have knowledge of this incident;

25. All other persons identified in the Officer Report for Incident 16L032154 concerning the investigation of this incident not listed above;

26. All persons who were involved in other automobile crashes with the Arkansas State Police and/or the investigation of the same whose identities are presently unknown;

27. All members of the public who have filed complaints against the Individual Defendants and whose identities are currently unknown;

28. All members of the ASP who are/were involved in the drafting and implementation of the policies, practices and customs of the ASP and whose identities are presently unknown;

29. All members of the ASP who are/were involved in the investigation of any complaint against the Individual Defendants and whose identities are presently unknown;

30. All members of the ASP who are/were involved in the training and supervision of the Individual Defendants and whose identities are presently unknown;

31. All other persons identified in any documents produced by the Arkansas State Police in response to the Public Records request and previously provided to Defendants.

32. All persons involved in the case of Melissa Stewart v. ASP, Claim #12-0512-CC may have knowledge of information relevant to Plaintiff's claims;

33. All other persons identified in any documents produced by the Hot Springs Police Department in response to the Public Records request and previously provided to the Defendants;

34. Employer and co-workers of Bruno Enterprise, Inc./Bruno Group whose identities are currently unknown.

35. All persons identified by any Defendant in their Rule 26 Disclosures are incorporated by reference into Plaintiff's Rule 26(a) Disclosures;

36. All persons subsequently identified in written discovery by the parties, documents produced between the parties and during the depositions taken in the case and exhibits thereto are hereby incorporated by reference into Plaintiff's Rule 26(a) Disclosures.

37. Plaintiff reserves the right to call such other witness as may be necessary for impeachment and rebuttal upon the completion of discovery.

Claimant also states that all persons who testified or were involved in the investigation, discipline, litigation and/or any employment hearing regarding Trooper Andrew Rhew may have relevant knowledge of the policies, practices and

customs of the ASP with respect to emergency vehicle driving. Claimant has obtained certain documentation pertaining to this matter including: 1) transcript II of II of Appeal Hearing of TFC Andrew Rhew in Appeal No. A 10-22 dated July 14, 2011; and 2) certain documentation from ASP regarding investigation of this matter.

Further, Claimant submits that decedent's employer and co-workers may have relevant knowledge of Cassandra Braun's lost wages, earning capacity and damages. Claimant has obtained the personnel file of Cassandra Braun from her employer, Spreading Our Wings, Inc. d/b/a Buffalo Wild Wings.

Transcript of Appeal Hearing of TFC Andrew Rhew

The persons identified in this transcript and/or who testified in this hearing may have relevant knowledge and the information contained in the transcript represents Plaintiff's entire knowledge concerning these persons and witnesses including their names, personal information (such as address and telephone if noted) and their relevant knowledge and includes the following:

1. Police Commissioners John Allison, Steve Smith, Jane Christenson, Woody Futrell, Wallace Fowler, Frank Guinn, Lewis Sheppard.

2. Hearing Officer Charlie Moulton.

3. Attorneys Meredith Rebsamen, Warren Readnour, Greg Downs and Robert Newcomb.

4. Witnesses who testified at hearing on July 14, 2011:

    a. Wesley Smithee – Lieutenant (investigated crash)

    b. Bobby Clemence – Corporal, highway patrol and reconstructionist with state police

c. Charles Westerman- Lieutenant, crash reconstructionist, appointed lead investigator

d. Doug Cash – Corporal Highway Patrol, ASP reconstruction team

e. George Joseph Hall, Jr.- Engineer, specialize in traffic accident reconstruction

f. J.R. Howard – Commander

g. Jimmy Evans – Little Rock PD patrol officer

h. Ron Hitt – ASP CID

i. Tommy Wicker – ASP Captain Troop C

j. Benny Cox – Sergeant ASP

k. Keith Eremea – ASP Captain

l. Rick Dickinson - ASP Captain, Hwy patrol Troop C Jonesboro, CID Commander

m. Robert Speer – Lieutenant, ASP assistant troop commander Troop C

n. Lance Huey – former ASP sergeant, former Grant County Sheriff

o. Phillip Hydron – ASP, criminal investigator Company A, Little Rock

p. Dr. Larry Williams – accident investigation- reconstruction

q. Trooper Andrew Rhew

r. George Hall –rebuttal witness to Dr. Williams

Investigative Documents pertaining to TFC Andrew Rhew

The persons identified in these documents may have relevant knowledge and the information contained in these documents represents Claimant's entire knowledge concerning these persons and witnesses including their names, personal

information (such as address and telephone if noted) and their relevant knowledge and includes the following:

1. Vickie Freemyer, deceased
2. Melissa Stewart, Administratrix of Estate of Vicki Freemyer
3. S/A Ron D. Hitt
4. Sgt. Brant Tosh
5. Prosecutors Bart Dickinson and Mike Alden
6. Leigh Ann Banks, [redacted]
7. Jerry Vasser, [redacted]

Personnel File of Cassandra Braun

The persons identified in these documents may have relevant knowledge and the information contained in these documents represents Claimant's entire knowledge concerning these persons and witnesses including their names, personal information (such as address and telephone if noted) and their relevant knowledge and includes the following:

1. Jessica Barnett. [redacted]
2. Lucas R. Gordon
3. Missy Miller

Additional Witnesses

Claimant has obtained documents from the Hot Springs Police Department pursuant to subpoena which have been provided to the Defendants. All persons

identified in these documents may have relevant information and all personal information pertaining to these persons, including name, address, telephone numbers and relevant knowledge is contained within these documents.

INTERROGATORY NO. 6: Identify all beneficiaries who claim entitlement to damages because of "pain and suffering."

RESPONSE:

a. Lori Braun; Mother; [redacted]

b. [redacted], Son, [redacted].

c. Michael Braun; Father; [redacted].

d. Joel Michael Braun; Brother; [redacted]

e. Raquel Braun; Sister; [redacted].

f. [redacted]; Sister; [redacted].

g. [redacted] Adoptive Sister; [redacted].

h. [redacted]; Adoptive Sister; [redacted].

INTERROGATORY NO. 7: Please indicate the names of all witnesses, including their name, home address, telephone number, occupation and their relationship to you and Cassandra Braun, that you might call at the hearing of this matter.

RESPONSE: Claimant states that all individuals identified herein may be called as witnesses at the hearing in this matter, otherwise, a decision has not yet been made as to specific witnesses to be called at the hearing in this matter. However,

any persons identified in Interrogatory No. 6 may be called as a witness. Further, Plaintiff may call his experts designated in the federal litigation including, Dr. Geoffrey P. Alpert, Dr. Kris Sperry, Dr. Ralph Scott and Matthew Jackson whose information in contained in their respective expert reports.

INTERROGATORY NO. 8: Please state the name and address of each expert consulted whose report or work product will be relied upon in whole or in part by a testifying expert in this case.

RESPONSE:

Ralph D. Scott, Jr., Ph.D.
6 Richland Hills Cove
Conway, AR 72034

Kris Sperry, M.D.
302 Watermark Drive
Peachtree City, GA 30269

Matthew S. Jackson, Esq.
Jackson Reconstruction, Inc.
Accident Reconstruction Consultants
P.O. Box 20619
Hot Springs, AR 71903

Geoffrey P. Alpert
Department of Criminology and Criminal Justice
1305 Greene St.
University of South Carolina
Columbia, SC 29208

INTERROGATORY NO. 9: Please state the name and address of each consulting expert whose report or work product was reviewed by a testifying expert in this case.

RESPONSE: Objection. The information requested is privileged. Without waiving her objection, Claimant has no information responsive to this request.

INTERROGATORY NO. 10: For each beneficiary who claims entitlement to damages because of "pain and suffering," please identify the name, address, and telephone number of each physician, counselor, psychiatrist, psychologist, mental health professional, or other practitioner of the healing arts who has examined or treated the beneficiary, as well as the name, address and telephone number of each treatment facility since October 10, 2016.

RESPONSE: The statutory beneficiaries are seeking damages for mental anguish, not pain and suffering.

INTERROGATORY NO. 11: As to each beneficiary claiming pain and suffering, please identify the name, address and phone number of each pharmacy the beneficiary has used since October 10, 2016.

RESPONSE: The statutory beneficiaries are seeking damages for mental anguish, not pain and suffering.

INTERROGATORY NO. 12: Identify each and every document which you have used or referred to in answering the Respondent's First Set of Interrogatories.

RESPONSE: Claimant objects to this Interrogatory as vague and unintelligible. Claimant have engaged in significant discovery during the federal litigation of this claim wherein both Claimant and the Respondent have produced thousands of pages of documents in Initial Disclosures and Responses to

Interrogatories and Requests for Production of Documents. Claimant incorporates by reference these discovery requests and documents exchanged during the discovery process in the federal litigation. All of these documents were utilized in some fashion to produce the responses to these discovery requests.

INTERROGATORY NO. 13: Identify each and every exhibit which you will or may introduce at the hearing of this claim, or which you may provide to the commission as proof of your claim.

RESPONSE: At the present time, Claimant has not identified what exhibits she may introduce at the hearing in this matter and will produce any such documents in compliance with the requirements of the Arkansas State Claims Commission. However, Claimant currently intends to utilize as exhibits to the hearing the following:

1. Dash Cameras of Trooper Burke regarding the stop at the post office and driving prior to the crash;

2. Expert Reports of Dr. Geoffrey P. Alpert, Dr. Kris Sperry, Dr. Ralph Scott and Matthew Jackson.

3. Animations/Reconstructions by Matthew Jackson.

4. Andrew Rhew Transcript and Judgment.

5. Hot Springs Investigative File.

6. Crash Report.

7. Any other documents produced during discovery in the federal litigation.

II. DOCUMENT PRODUCTION REQUESTS

REQUEST FOR PRODUCTION NO. 1: Please produce all documents used in answering or relating to your answers to the Respondent's First Set of Interrogatories.

RESPONSE: All responsive documents have been previously produced between the parties during discovery and depositions in the federal litigation.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents relating to the contentions or allegations made in your Claim Narrative and Statement of Facts.

RESPONSE: All responsive documents have been previously produced between the parties during discovery and depositions in the federal litigation.

REQUEST FOR PRODUCTION NO. 3: Please produce all reports by experts that have been prepared in connection with this claim.

RESPONSE: All responsive documents are attached and have been produced during discovery in the federal litigation. See Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 4: Please produce all analyses, statistics or other documents or things that have been or will be reviewed by an expert in this case.

RESPONSE: Please see the expert reports, CVs, list of materials reviewed and fee schedule of Dr. Geoffrey P. Alpert, Dr. Kris Sperry, Dr. Ralph Scott

and Mathew Jackson which were produced in the federal litigation. See Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 5: Please produce a curriculum vitae and any other documents pertaining to the credentials and qualifications of any experts retained by you, including, but not limited to, a list of publications or other writings authored by each expert and a list of any other cases in which each expert has testified or been retained.

RESPONSE: All responsive documents have been previously produced between the parties during discovery and depositions in the federal litigation. See Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 6: For each expert retained by you, please provide all correspondence between you and retained expert(s), contracts, drafts of all reports invoices, and payments.

RESPONSE: All responsive documents have been previously produced between the parties during discovery and depositions in the federal litigation, and include as follows:

Ralph D. Scott, Jr., Ph.D.

- Report
- CV
- Fee Schedule
- Testimony List
- Invoice
- Payment

Kris Sperry, M.D.

- Declaration/Report
- CV
- Fee Schedule

- Testimony List

Matthew s. Jackson, Esq.

- Report
- CV
- Fee Schedule
- Invoices

Geoffrey P. Alpert

- Report
- CV
- Fee Schedule
- Testimony List
- List of Reviewed Materials

REQUEST FOR PRODUCTION NO. 7: Please produce all documents or other materials, to include any voice recordings, that support your allegations of the "institutional negligence" contained in paragraph 14 of the Claim Narrative and Statement of Facts.

RESPONSE: See Report of Geoffrey P. Alpert, produced in Claimant's Response to Request for Production No. 6.

REQUEST FOR PRODUCTION NO. 8: Please list and produce all exhibits that you will or may introduce at the hearing of this claim, or which you may provide to the commission as proof of your claim.

RESPONSE: Objection. At the present time, discovery is still on-going and Claimant has not made a decision with respect to evidence that she will attempt to introduce at the hearing of this claim. Without waiving these objections, Claimant states that all of the following documents may be used as evidence at the hearing of this claim: (1) all documents and things produced in response to Plaintiff's public records requests (previously produced to Defendants; (2) all documents and things

produced during discovery in this case which includes all documents previously produced in Plaintiff's Initial and Supplemental Disclosures, Defendant Brian Burke's Initial Disclosures, Defendant Brian Burke's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents and Defendant Bill Bryant's Objections and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents; and (3) all documents and things attached as Exhibits to the deposition testimony of any witness. All of which have been previously produced between the parties during discovery and depositions in the federal litigation.

REQUEST FOR PRODUCTION NO. 9: Please complete and return the attached Release of Medical Records Authorization for Use and Disclosure of Protected Health Information for each beneficiary who asserts a claim for pain and suffering.

RESPONSE: See attached Authorization for the Estate of Cassandra Braun. The Authorizations for specific beneficiaries have been forwarded to them. For those who seek damages and have sought treatment for mental anguish resulting from Cassandra Braun's death, their respective Authorizations will be signed and this Response supplemented. However, based on the physician-patient privilege, the Estate objects to the Authorizations to any beneficiaries who has not sought medical or mental health treatment for the sudden loss of Cassandra Braun.

REQUEST FOR PRODUCTION NO. 10: Please produce, for inspection and copying, the phone records for decedent, Cassandra Braun on October 10, 2016.

RESPONSE: Objection. This request is unduly burdensome. Notwithstanding her objection, Claimant is not in possession of any such documents. Claimant will execute a telephone records release in favor of Respondent, should Respondent wish to provide such release.

REQUEST FOR PRODUCTION NO. 11: Please produce for, inspection and copying, any bank and credit card records for decedent, Cassandra Braun for transactions clearing on or after October 10, 2016.

RESPONSE: Objection. This request is unduly burdensome. Notwithstanding her objection, Claimant is not in possession of any such documents. Claimant will execute a financial records release in favor of Respondent, should Respondent wish to provide such release.

RESPECTFULLY SUBMITTED,

/s/ Paul J. James

Paul J. James (Ark. Bar 83091)
JAMES & CARTER, PLC
500 Broadway, Suite 400
Little Rock, Arkansas, 72201
(501) 372-1414 (Telephone)
(501) 372-1659 (Facsimile)
pjj@jamescarterlaw.com

-and-

Andrew C. Clarke (Ark. Bar 95070)
THE COCHRAN FIRM - MIDSOUTH
One Commerce Square, Suite 1700
Memphis, TN 38103
(901) 523-1222 (Telephone)
(901) 523-1999 (Facsimile)
aclarke@cochranfirmmidsouth.com

Attorneys for Claimant Lori Braun

CERTIFICATE OF SERVICE

I, Paul J. James, on this ____ day of July 2023, hereby certify that a true and correct copy of the foregoing was filed by submitting same to ASCCpleadings@arkansas.gov and served via electronic mail to the following:

Kesia Morrison
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201-2610
kesia.morrison@arkansas.gov
Attorney for Arkansas State Police

Tiffany Mays O'Guinn
MAYS, BYRD & ASSOCIATES, P.A.
212 Center Street, 7th Floor
Little Rock, AR 72201-3801
tmays@maysbyrdlaw.com
Attorney for Tavon Jenkins

/s/ Paul J. James
Paul J. James

VERIFICATION

I, Lori Braun, do hereby state that the facts contained in my foregoing Responses to Respondent's First Set of Interrogatories and Requests for Production of Documents are true and correct to the best of my knowledge, information and belief.

Lori Braun
LORI BRAUN

STATE OF FLORIDA)
)
COUNTY OF Charlotte)

Subscribed and sworn before me, a Notary Public, on this 26 day of July, 2023.

Carol M Turelli
NOTARY PUBLIC

My Commission Expires:

Sept 30, 2024

(SEAL)

CAROL M TURELLI
MY COMMISSION # HH 008757
EXPIRES: September 30, 2024
Bonded Thru Notary Public Underwriters

To Medical Care Provider:

Re: Patient Request Letter under HITECH Act of 2009 for Electronic Copy of Medical Records

Patient Name: Cassandra Braun

Patient DOB: [redacted] Period Requested:

I am requesting, pursuant to 45 CFR § 164.524, that you send an electronic copy, in PDF format, to my attorney listed below, of **ANY AND ALL medical & billing records for the period requested**, pursuant to HIPAA regulations as modified by the Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009. If you are unable to email the PHI, you may save in PDF format to a CD or thumb drive and mail the same to:

Arkansas Attorney General's Office, including its agents & employees
323 Center Street, Suite 200
Little Rock, AR 72201-2601
(501) 682-3997 (phone)/(501) 682-2591 (fax)
kesia.morrison@arkansasag.gov (email)

You may bill me, c/o of my attorney, the prescribed cost-based fee for the labor cost of copying my protected health information, paper or electronic media supply costs, and postage costs. I do not want a PHI summary but the full set of records. **PURPOSE OF ACCESS OR RELEASE**: This request is in connection with a legal proceeding instituted by or on behalf of the patient. The applicable regulations provide the following rules for compliance with this request:

1. There is a 30-day deadline to supply the requested PHI.
2. There is no requirement under the HITECH Act for a HIPAA authorization. This letter is sufficient.
3. There is no expiration event or date relating to this patient or the purpose of the use or disclosure of this information.
4. Prohibited charges include access charges, inventory charges, and retrieval fees.
5. Medical records contractors are covered by HIPAA regulations.
6. Noncompliance includes charging more for sending the records to my third party designee, Arkansas Attorney General or any subsequent or additional third party designee.
7. Noncompliance includes claiming the inability to comply with copying to a CD or by email.
8. I have the right to revoke this authorization in writing.
9. You may not condition treatment, payment, enrollment or eligibility for benefits on whether I sign this authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of 45 CFR § 164.508 applies.
10. There is a potential for information disclosed pursuant to this authorization to be subject to redisclosure by my attorney.

Thank you for your prompt response.

Lori Braun 6-30-2023

Signature Date

Lori Braun, Administratrix of the Estate of Cassandra Braun, Deceased

Print Name

From: Caitlin McDaniel
To: Kathryn Irby
Subject: Callback Request from Legislative Auditor (Mr. Mark Speed), Claim No. 190497
Date: Tuesday, August 1, 2023 12:44:00 PM

Mr. Speed called and stated he is doing an audit and wanted to know the status of this claim. I informed Mr. Speed of the claim status (In discovery). He then stated he has documentation regarding an order that was ruled on November 22, 2023. What's in the database, does not correspond with what he stated he has. Also, there are additional orders regarding this claim that I think he is not aware of and I suggested that he spoke with you.

He stated if you would like to confirm that he is Mark Speed working with the Arkansas Legislative Audit, you could call *501-683-8600* and follow the prompts.

If you would like to talk to him directly, his personal number is *870-514-1108*.

Thank you,
Caitlin

Caitlin McDaniel
Administrative Specialist II
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-1619

From:	Kathryn Irby
To:	Lisa Wiedower; Paul James; Kesia Morrison; Gabrielle Mays
Cc:	tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; John.Payne@ArkansasAG.gov; Cydni Arterbury
Subject:	HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497
Date:	Tuesday, August 8, 2023 3:41:00 PM
Attachments:	Braun and Perry v. ASP -- 190497 -- hearing letter.pdf image001.jpg image002.jpg image003.jpg

Resending because Mr. Payne's email was not typed correctly.

Kathryn

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Tuesday, August 8, 2023 3:26 PM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached hearing letter, prehearing material deadline information, and Zoom invitation.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Sent: Friday, July 21, 2023 3:46 PM
To: Paul James <pjj@jamescarterlaw.com>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Good afternoon,

I am substituting Gabby Mays in place of Johanna Hinkle to receive correspondence for Assistant

Attorney General Kesia Morrison. Thank you for making this change in your records.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)

From: Paul James <pjj@jamescarterlaw.com>
Sent: Friday, July 21, 2023 3:31 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>; Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

EXTERNAL EMAIL

Ms. Irby-

As a matter of follow up and update, this is to confirm that the parties have set this matter for an August 22nd mediation.

In regard to a potential setting in the event mediation is unsuccessful, I understand that the Commission does not set any matter for more than one day. Since there are two claimants (Estate of Braun and the Estate of Jenkins), I would assume that this matter would need a full day setting.

Thank you, and have a great weekend.

Paul J. James



500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
[redacted]
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Friday, May 5, 2023 4:41 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; aclarke@cochranfirmmidsouth.com
Subject: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Counselors, am I correct that this claim is ready to be set for hearing? If so, can the parties please confer and let me know how long the parties expect will be needed to present the claim to the

Commission?

Thanks,
Kathryn Irby

From: Kathryn Irby
Sent: Saturday, April 22, 2023 10:01 AM
To: 'Kesia Morrison' <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject: ORDER: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823

KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

August 8, 2023

Mr. Paul J. James *(via email)*
James, Carter & Priebe, LLP
500 Broadway, Suite 400
Little Rock, Arkansas 72201

Mr. Andy Clarke *(via email)*
Law Offices of Andrew C. Clarke
6250 Poplar Avenue
Second Floor
Memphis, Tennessee 38119

Ms. Tiffany Mays-O'Guinn *(via email)*
Mays, Byrd & Associates, P.A.
212 Center Street
Little Rock, Arkansas 72201

Ms. Kesia Morrison *(via email)*
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

RE: ***Lori Braun, as Administratrix of the Estate of Cassandra Braun v. Arkansas State Police, and Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, Deceased***
Consolidated Claim No. 190497

Dear Mr. James, Mr. Clarke, Ms. Mays-O'Guinn, and Ms. Morrison,

The Commission has scheduled this claim for hearing on **Thursday, February 22, 2024**, beginning at 9:00 a.m. All parties will attend via Zoom. If either party objects to the Zoom format, a written objection must be submitted via email (kathryn.irby@arkansas.gov) or mail no later than August 14, 2023. The Zoom invitation is enclosed.

The following prehearing materials are due by January 25, 2024:

- Each party's list of witnesses who will testify live at the hearing or via deposition;
- Each party's list of exhibits that may be introduced at the hearing;
- Deposition transcripts if any deposition testimony will be submitted in lieu of live testimony;
- Prehearing briefs if either party would like to submit for Commission review; and
- Subpoena requests (absent a showing of good cause, the Commission will not issue subpoenas for requests received after the prehearing material deadline).

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed pursuant to the Arkansas Rules of Civil Procedure by January 25, 2024.

Please note that a copy of any filing must be served upon the opposing party in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings
Time: Feb 22, 2024 08:30 AM Central Time (US and Canada)

Join Zoom Meeting
https://us06web.zoom.us/j/86739089258?pwd=ci9zNXNBRk02NE10UHNBOXMzK2RwUT09

Meeting ID: 867 3908 9258
Passcode: LePP9w

Dial by your location
• +1 312 626 6799 US (Chicago)

Meeting ID: 867 3908 9258
Passcode: 041564

Find your local number: https://us06web.zoom.us/u/kfrA8m4pZ

From:	Donna Johnson
To:	ASCC Pleadings
Cc:	Tiffany Mays O"Guinn; Kesia Morrison; gabrielle.mays@arkansasag.gov
Subject:	Braun/Perry Responses to Discovery
Date:	Monday, August 21, 2023 4:30:15 PM
Attachments:	FINAL_Responses to discovery.pdf

Please see attached Claimant's responses to Respondent's First set of Interrogatories and Requests for Production of Documents.

--

Donna Johnson
Assistant to Richard L. Mays and Arkie Byrd
MAYS, BYRD & ASSOCIATES, P.A.
CENTRE PLACE
212 Center St.,7th Floor
LITTLE ROCK, AR 72201
501-372-6303 - OFFICE
501-399-9280 - FAX
501-801-1960 - DIRECT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LORI BRAUN, AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BRAUN **CL AIMANT**

v. **NO. 190497-CC**

ARKANSAS STATE POLICE **R ESPONDENT**

LAVON PERRY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF LAVON PERRY **CL AIMANT**

v. **NO. 200290-CC**

ARKANSAS STATE POLICE **R ESPONDENT**

CLAIMANTS'S RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

COMES NOW the Claimant, Lavon Perry, by and through her attorneys, Mays, Byrd & Associates, P.A. and submits her responses to the Respondent's First Set of Interrogatories and Requests for Production of Documents pursuant to Rule 8.1 of the Claims Commission and Rules 33 and 34 of the Arkansas Rules of Civil Procedure:

I. INTERROGATORIES

INTERROGATORY NO. 1: Set forth in complete detail the facts surrounding your allegations of negligence you alleged in paragraph 13 of the Complaint.

ANSWER: In addition to the allegations/facts set forth in Claimant's previously filed pleadings before the Arkansas State Claims Commission, including, but not limited to, her Complaint and/or First Amended Complaint and Motion for Partial Summary Judgement, any previous filed pleadings by the Co-Claimant, Lori Braun, the Responsive filed pleadings by the Respondent in the Arkansas Claims Commission case or any pleadings filed in the federal court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW, and any discovery submitted by the Respondent (i.e. Trooper Brian Burke, Colonel William Bryant), the Claimant states the following:

> On the evening of October 10, 2016, Arkansas State Police ("ASP") Trooper Brian Burke was working a non-injury, hit and run accident in the parking lot of Pearcy Post Office on Highway 70 near Hot Springs, Arkansas and observed an SUV traveling east with its hazard lights flashing. Thereafter, Trooper Burke finished with the hit and run claimant and walked to his patrol car. Officer Burke did not have sufficient time to accurately estimate the speed of the SUV as: 1) he observed the car while actually working the scene of a non-injury hit and run; 2) it was a dark, unlit area; 3) he only observed the car for a period of 2-4 seconds; and 4) he did not observe any specific, identifying characteristics of the vehicle other general body type and use of hazard

lights. In fact, Trooper Burke admitted that he could not testify under oath that the speed of the vehicle was 90 to 95 miles per hour based on 2 to 3 seconds of observation.

After walking to his patrol car, Trooper Burke engaged in a deadly joyride in a fully marked ASP patrol vehicle that: 1) at most, involved an investigation of a potential speeder traveling with hazard lights on; 2) began over a minute he observed the vehicle and completed his stop of another vehicle; 3) began after Trooper Burke walked to his car; 4) began without being dispatched or requested to apprehend the vehicle (in fact no other city, county or state law enforcement officer joined in Burke's efforts in regard to the unidentified vehicle); 5) covered 8.7 miles; 6) was undertaken without lights and sirens in violation of state law; 7) reached speeds of up to 117 mph in 40-55 mph speed zones with an average speed of 98 mph; 8) passed over 64 cars on the route, including passing 12 travelling in the same direction, 52 on the opposite side of the road and 5 attempting to pull out onto the road; 9) failed to maintain the police vehicle in proper lane of travel due to excessive speeds 29 times, including driving into the opposite lane of traffic 13 times; 10) traveled 113 mph in a 45 mph zone just 5 seconds prior the crash; and 11) crashed into the vehicle containing Mr. TaVon Jenkins and Cassandra Braun at 98 mph in a 45 mph speed zone with multiple Hot Springs, Arkansas businesses in the immediate vicinity.

That after observing the said unknown vehicle, Trooper Burke did not take any immediate law enforcement action to apprehend the suspected unknown speeding motorist nor did he notify ASP dispatch of any criminally activity. There were not any circumstances present which reasonable justified an emergency pursuit by Trooper Burke. As stated above, Trooper Burke drove without lights and sirens for over five minutes at speeds in excess of 100 miles per hour in an area which contained dark, unlit, hilly, two-lane and innocent bystanders. Said conduct was outrageous and with reckless disregard to the public and Tavon Jenkins and warrants a punitive damage award for the Estate.

On the said date of the accident, TaVon was traveling westbound on Airport Road in Hot Springs, Garland County, Arkansas in a 2011 Silver Malibu, along with Cassaundra Braun attempting to return to his place of employment. As TaVon approached the said intersection of Kleinshore Road, his vehicle entered the middle lane and proceeded to make a left turn onto Kleinshore Road. Simultaneously, the ASP vehicle, operated by Trooper Burke, was traveling eastbound on Airport Road not in "hot pursuit" of the unknown motorist and as he approached the Kleinshore Road intersection, he collided with TaVon in the eastbound lane of Airport Road/US 70. Trooper Burke impacted TaVon's vehicle at a high rate of speed and as a result, Trooper Burke's vehicle burst into flames. Tavon and his other occupant, Cassaundra Braun, sustained fatal injuries and died at the scene of the accident.

INTERROGATORY NO. 2: Identify each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claim of "negligence", and for each person who has information or knowledge regarding your claim of the alleged "negligence", set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

ANSWER:

1. Trooper Brian Burke;

2. Mathew Jackson, Accident Reconstructionist (Jackson Reconstruction)-See Rule 26 Expert Report previously provided to establish proof of negligence on behalf of the Respondent.

3. Jesse L. Hank-Witness to the accident;

4, Jason Daniel Blair-Witness to the accident;

5. Kelly C. Lavalle-Witness to the accident;

6. Joel S. Crook-Witness to the accident;

7. Nicole Marie Whipkey-Witness to the accident;

8. Rosalie Smith-Witness to the accident;

9. Teddy Kelly-Witness to the accident;

10. Allen Fitzgerald (Arkansas State Police Employee)-Employee with the IT Department with ASP-reviewed the video footage regarding the Respondent's operation of its vehicle on the time of the accident and could establish negligence through his first hand knowledge.

11. Kerry Tabor-(Arkansas State Police Employee)-Employee with the IT Department with ASP-reviewed the video footage regarding the Respondent's operation of its vehicle on the time of the accident and could establish negligence through his first hand knowledge.

12. Colonel William J. Bryant (Director of Arkansas State Police)-testimony would prove that the Respondent did not properly train and/or supervise the Troopers for the Arkansas State Police including Trooper Brian Burke. Further, said testimony would further establish that the Respondent was negligent in its implementation of policies with respect to matters concerning this pending litigation.

13. Gregory Downs;

14. Ben Holt (Arkansas State Police)-testimony would prove negligence on behalf of the Respondent since Trooper Brian Burke did not receive the adequate training on decision making when engaging in emergency driving and would be able to testify to Trooper Burke's training file.

15. Any and/or all of the Investigating/Responding officers for the Hot Springs Police Department whom participated in the investigation of the subject accident and includes, but is not limited to, the following:

a. L. Patrick, P14-investigated the facts and circumstances regarding the accident.

b. Shawn Lowrey, #133-investigated the facts and circumstances regarding the accident

c. S. Streed, P147-investigated the facts and circumstances regarding the accident

d. R. Nunez, P179-investigated the facts and circumstances regarding the accident

e. J. Burfeind, P24-investigated the facts and circumstances regarding the accident

f. J. Langford, P102-investigated the facts and circumstances regarding the accident

g. S. Dauberger, P110-investigated the facts and circumstances regarding the accident

h. M Means, P21-investigated the facts and circumstances regarding the accident

i. J. Tinney, P126-investigated the facts and circumstances regarding the accident

j. R. Harkness, T18-investigated the facts and circumstances regarding the accident

k. P. DeFoor, T139-investigated the facts and circumstances regarding the accident

l. P. Allen, D148-investigated the facts and circumstances regarding the accident

m. S. Stillian, K137-investigated the facts and circumstances regarding the accident

n. P. Allison, T10-investigated the facts and circumstances regarding the accident

o. S. McDaniel, T10-investigated the facts and circumstances regarding the accident

p. L. Zaner, E116-investigated the facts and circumstances regarding the accident

16. Any and/or all Arkansas State Troopers whom participated in the investigation of the subject accident which forms the basis of Claimant's claim before the Arkansas Claims Commission;

17. Any witnesses identified by the Co-Claimant, Lori Braun, on behalf of Cassandra Braun;

Claimant has not had an opportunity to participate in much discovery with the Respondent before the Claims Commission and thus, asserts that there may be individuals that have such information or knowledge which Claimant is unaware. Thus, Claimant reserves the right to supplement and/or amend this response as such information becomes known to the Claimant.

INTERROGATORY NO. 3: Set forth in complete detail the facts surrounding your allegations of "willful, wanton, callous, reckless and depraved indifference" in paragraph 17 of the Complaint.

ANSWER: Claimant relies on all of the allegations and/or facts plead in her Complaint/Amended Complaint for Wrongful Death and Survival Action and any other pleadings filed before the Arkansas State Claims Commission, as well as the Depositions taken by the Co-Claimant, Lori Braun, and pleadings filed by the Respondent in the previously filed federal court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW. Claimant further relies on the following facts as a basis for establishing the said allegations:

On the evening of October 10, 2016, Arkansas State Police ("ASP") Trooper Brian Burke was working a non-injury, hit and run accident in the parking lot of Pearcy Post Office on Highway 70 near Hot Springs, Arkansas and observed an SUV traveling east with its hazard lights flashing. Thereafter, Trooper Burke finished with the hit and run claimant and walked to his patrol car. Officer Burke did not have sufficient time to accurately estimate the speed of the SUV as: 1) he observed the car while actually working the scene of a non-injury hit and run; 2) it was a dark, unlit area; 3) he only observed the car for a period of 2-4 seconds; and 4) he did not observe any specific, identifying characteristics of the vehicle other general body type and use of hazard lights. In fact, Trooper Burke admitted that he could not testify under oath that the speed of the vehicle was 90 to 95 miles per hour based on 2 to 3 seconds of observation.

After walking to his patrol car, Trooper Burke engaged in a deadly joyride in a fully marked ASP patrol vehicle that: 1) at most, involved an investigation of a potential speeder traveling with hazard lights on; 2) began over a minute he observed the vehicle and completed his stop of another vehicle; 3) began after Trooper Burke walked to his car; 4) began without being dispatched or requested to apprehend the vehicle (in fact no other city, county or state law enforcement officer joined in Burke's efforts in regard to the unidentified vehicle); 5) covered 8.7 miles; 6) was undertaken without lights and sirens in violation of state law; 7) reached speeds of up to 117 mph in 40-55 mph speed zones with an average speed of 98 mph; 8) passed over 64 cars on the route, including passing 12 travelling in the same direction, 52 on the opposite side of the road and 5 attempting to pull out onto the road; 9) failed to maintain the police vehicle in proper lane of travel due to excessive speeds 29 times, including driving into the opposite lane of traffic 13 times; 10) traveled 113 mph in a 45 mph zone just 5 seconds prior the crash; and 11) crashed into the vehicle containing Mr. TaVon Jenkins and Cassandra Braun at 98 mph in a 45 mph speed zone with multiple Hot Springs, Arkansas businesses in the immediate vicinity.

That after observing the said unknown vehicle, Trooper Burke did not take any immediate law enforcement action to apprehend the suspected unknown speeding motorist nor did he notify ASP dispatch of any criminally activity. There were not any circumstances present which reasonable justified

an emergency pursuit by Trooper Burke. As stated above, Trooper Burke drove without lights and sirens for over five minutes at speeds in excess of 100 miles per hour in an area which contained dark, unlit, hilly, two-lane and innocent bystanders. Said conduct was outrageous and with reckless disregard to the public and Tavon Jenkins and warrants a punitive damage award for the Estate.

INTERROGATORY NO. 4: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims "willful, wanton, callous, reckless and . . . depraved indifference", and for each person who has information or knowledge regarding your claim of "willful, wanton, callous, reckless and . . . depraved indifference", set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

ANSWER:

1. Trooper Brian Burke;

2. Mathew Jackson, Accident Reconstructionist (Jackson Reconstruction)-See Rule 26 Expert Report previously provided to establish proof of "willfull, wanton, callous, reckless and ... depraved indifference" on behalf of the Respondent;

3. Any witness identified by Co-Claimant, Lori Braun

Claimant will supplement this response upon further identification of persons believed to have said information or knowledge.

INTERROGATORY NO. 5: Set forth in complete detail the facts surrounding your allegations of liability that you alleged in paragraphs 19 through 22 of the Complaint.

ANSWER: See Claimant's Response to Interrogatory No. 2 and 3. Claimant will supplement this response as necessary.

INTERROGATORY NO. 6: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims of liability, and for each person who has information or knowledge regarding your claim of liability, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim.

ANSWER: See Claimant's Response to Interrogatory No. 2. Claimant will supplement this response as necessary.

INTERROGATORY NO. 7: Specify, by category, the economic damages you claim to have sustained as a result of the conduct alleged in the Complaint, stating in detail the method by which you have computed those economic damages.

ANSWER: Claimant seeks funeral expenses and cost of cremation in the approximate of $2,400.00. Claimant further relies on the economic losses stated and set forth in the Report of Dr. Ralph Scott, Jr. with Economic and Financial Consulting Group, Inc Report dated January 24, 2022. A copy is

attached hereto as a Response to Request for Production No. 3. Claimant will supplement this response upon receipt of any further documentation.

INTERROGATORY NO. 8: Specify, by category, the non-economic damages you claim to have sustained as a result of the conduct alleged in the Complaint, stating in detail the method by which you have computed those non-economic damages, including but not limited to pain and suffering alleged in paragraph 15 of the Complaint.

ANSWER: Claimant, as Personal Representative of the Estate of Tavon Jenkins, deceased, seeks economic damages for extreme mental anguish on behalf of the statutory beneficiaries including Tavon Jenkins' father, mother and three siblings. The Claimant further relies on the Arkansas Model Jury Instructions-Civil AMI 2216 Measure of Damages Wrongful Death and Arkansas Wrongful Death and Survival Statutes § 16-62-101 § 16-62-102, as a basis of the measure of damages for the wrongful death and survival action and seeks damages for conscious pain and suffering and loss of life. Claimant will supplement this response as necessary. Claimant is also seeking damages for funeral and burial costs.

INTERROGATORY NO. 9: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims for economic and non-economic damages, and for each person who has information or knowledge regarding your claim for damages, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim for damages.

ANSWER:

1. Trooper Brian Burke;

2. Dr. Ralph D. Scott, Jr. Economic and Financial Consulting Group, Inc., 6 Richland Hills Cove, Conway, AR 72034, (501) 450-1306;

3. Lavon Perry, Mother of Tavon Jenkins, and Personal Representative of the said Estate, [redacted]

4. Jimmy Clark, Father of Tavon Jenkins; [redacted]

5. [redacted], Brother of Tavon Jenkins; [redacted]

6. [redacted], Brother of Tavon Jenkins; [redacted]

7. [redacted], Sister of Tavon Jenkins; [redacted]

8. Michael Braun, father of Cassandra Braun, [redacted];

9. Lori Braun, mother of Cassandra Braun, [redacted];

10. Dr. Kenall Von Crowns, M.D., 2100 Lakehurst Road, Spicewood, TX 78609.

11. Charles P. Kokes, MD. Arkansas State Crime Laboratory-Chief Medical Examiner, PO Box 8500, 3 Natural Resources Drive, Little Rock, AR 72215, (501) 227-5936.

12. Adam F. Craig, M.D. Associate Medical Examiner-Pathologist of Record: Arkansas State Crime Laboratory-Chief Medical Examiner, PO Box 8500, 3 Natural Resources Drive, Little Rock, AR 72215, (501) 227-5936.

13. Jennifer Forsyth, MD, FCAP; Associate Medical Examiner-Reviewer: Arkansas State Crime Laboratory-Chief Medical Examiner, PO Box 8500, 3 Natural Resources Drive, Little Rock, AR 72215, (501) 227-5936.

14. Officer Phillip DeFoor, #139 Hot Springs Police Department-investigated the accident and prepared the Serology Report of Labatory Analysis; 641 Malvern Avenue, Hot Springs, AR 71901;

15. Jennifer Brizo-photographer of the accident scene;

16. Stewart Smedly, Garland County Coroner's Office, 220 Ouachita Avenue, #407, Hot Springs, AR 71901

16. Fuller Brothers Funeral Home, Inc. 3125 W Atlantic Blvd, Pompano Beach, FL 33069, (954) 366-3758.

17. Any and/or all persons identified in Claimant's Response to Interrogatory No.; 2;

18. Any and/or all responding officers with the Hot Springs Police Department who participated in the investigation of the accident with Tavon Jenkins whom identities are unknown at this time;

18. Any and/or all responding officers with the Little Rock Police Department who participated in the investigation of the accident with Tavon Jenkins whom identities are unknown at this time

Any and/or all responding officers with the Arkansas State Police who participated in the investigation of the accident with Tavon Jenkins whom identities are unknown at this time;

19. Employer, Managers, employees, and/or co-workers from Buffalo Wild Wings where Tavon Jenkins was employed immediately prior to the said accident.

Claimant has not yet identified all of the individuals to whom Respondent has requested but agrees to supplement this response upon her identification.

INTERROGATORY NO. 10: State the facts upon which you base your claim for statutory damages sustained as a result of the conduct alleged in the Complaint, stating in detail the method by which you have computed the statutory damages.

ANSWER: Claimant relies on the Arkansas Wrongful Death and Survival Statutes § 16-62-101 § 16-62-102 as a basis for the estate's wrongful death and survival claim. Tavon Jenkins, deceased, sustained damages as a result of the wrongs committed by the Respondent and further is entitled to pain and suffering as result of the damages he sustained prior to his expiration. Claimant is also entitled to present a claim for punitive damages as a result of Trooper Burke's gross negligence. Further, Claimant refers the Respondent to her Response to Interrogatory No. 8 for further explanation. Claimant agrees to supplement and/or amend this response as required by Arkansas law.

INTERROGATORY NO. 11: Identify by name, address, and telephone number each person who you believe has information or knowledge which proves, disproves, or tends to prove or disprove, your claims for statutory damages, and for each person who has information or knowledge regarding your claim for damages, set forth in detail each and every fact which you contend or believe said person knows, or might know, which in any way tends to prove or disprove your claim for damages.

ANSWER:

1. Lavon Perry, Mother of Tavon Jenkins and Personal Representative of the said Estate; seeking damages for extreme mental anguish which is based on the duration and extent of her relationship with the decedent.
2. Jimmy Clark, Father of Tavon Jenkins; seeking damages for extreme mental anguish.
3 [redacted], Brother of Tavon Jenkins; seeking damages for extreme mental anguish
4. [redacted], Brother of Tavon Jenkins; seeking damages for extreme mental anguish
5. [redacted], Sister of Tavon Jenkins; seeking damages for extreme mental anguish
6. Dr. Kenall Von Crowns, M.D., 2100 Lakehurst Road, Spicewood, TX 78609; pain and suffering of the decedent prior to his death.

Claimant agrees to amend/supplement this response upon receipt of additional information.

INTERROGATORY NO. 12: Please indicate the names of all witnesses you might call at the hearing of this matter. For each witness provide their name, address, and telephone number.

ANSWER: See Claimant's Response to Interrogatories No. 2 and No. 9. Further, Claimant has not identified all of the witnesses she intends to call at a hearing in this matter and will supplement this response upon her identification.

INTERROGATORY NO. 13: Please state the name and address of each expert consulted whose report or work product will be relied upon in whole or in part by a testifying expert in this case.

ANSWER: OBJECTION. Claimant objects to this interrogatory as it is seeking attorney work product and mental impressions, Further, this interrogatory seeks opinions held by consulting experts. Without waiving said objection, Claimant will disclose experts that she expects to testify at trial/hearing in accordance with the Arkansas State Claims Commission's scheduling Order for disclosures of experts and opinions.

INTERROGATORY NO. 14: Please state the name and address of each consulting expert whose report or work product was reviewed by a testifying expert in this case.

ANSWER: OBJECTION. Claimant objects to this interrogatory as it is seeks opinions or documentation held by consulting experts. Without waiving said objection, Claimant will disclose information reviewed by the experts she expects to testify at trial/hearing in accordance with the Arkansas State Claims Commission's scheduling Order for disclosures of experts and opinions. Further, discovery is ongoing and Claimant will supplement this response as required by Arkansas law.

INTERROGATORY NO. 15: Identify all beneficiaries who claim entitlement to damages because of "pain and suffering".

ANSWER: Claimant does not expect to present any damages for pain and suffering on behalf of the statutory beneficiaries of the Estate of Tavon Jenkins, deceased. Claimant will present a claim for extreme mental anguish on behalf of the following statutory beneficiaries:

1. Lavon Perry, Mother of Tavon Jenkins and Personal Representative of the said Estate
2. Jimmy Clark, Father of Tavon Jenkins.
3. [redacted], Brother of Tavon Jenkins.
4. [redacted], Brother of Tavon Jenkins;
5. [redacted], Sister of Tavon Jenkins;

Claimant will present a Survival Claim for pain and suffering on behalf of the decedent, Tavon Jenkins. Claimant agrees to supplement and/or amend this response in the time prescribed by Arkansas law and/or the scheduling Order issued by the Arkansas Claims Commission.

INTERROGATORY NO. 16: For each beneficiary who claims "pain and suffering", please identify the name, address, and telephone number of each physician, counselor, psychiatrist, psychologist, mental health professional, or other practitioner of the healing arts who has examined or treated each beneficiary, as well as the name, address, and telephone number of each treatment facility since October 10, 2016.

ANSWER:

[redacted]

[redacted]

INTERROGATORY NO. 17: Please identify the name, address, and phone number of each pharmacy each beneficiary who claims pain and suffering has used since October 10, 2016.

ANSWER: [redacted]

INTERROGATORY NO. 18: Identify each and every document which you have used or referred to in answering the Respondent's First Set of Interrogatories.

ANSWER: OBJECTION, this Interrogatory is overly broad and unduly burdensome, Additionally, this Interrogatory is vague in its use of "each and every document" which is improper. Subject to and without waiving said objection, Claimant will refer the Respondent to the following documents:

a. Automobile Accident Report for the subject accident;

b. Any and/or all documents, recordings, photographs, etc. received by the Claimant as a result of the FOIA Request sent to the Arkansas State Police regarding the accident;

c. Dr. Ralph Scott Report dated January 24, 2022 regarding damages for Tavon Jenkins, deceased;

d. Dr. Kendall Von Crowns-Curriculum Vitae and Declaration;

e. Fuller Brother's Funeral Home funeral expenses and costs of burial, Tavon Jenkins;

f. Matthew Jackson, Rule 26 Expert Report

g. Any other pleadings/discovery responses filed before the Arkansas State Claims Commission cases;

h. Any depositions, pleadings and/or discovery responses of any party received in the federal court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW.

Claimant agrees to supplement and/or amend this response upon identifcaiton of any further documentation subject to the said Objection.

INTERROGATORY NO. 19: Identify each and every exhibit which you will or may introduce at the hearing of this claim, or which you will or may provide to the commission as proof of your claim.

ANSWER: Discovery is ongoing in this case and Claimant has not identified all of the exhibits she expects to introduce at trial. Claimant directs Respondent to her Response to Interrogatory No. 19. In addition, Claimant states that she may offering the following:

a. Educational Records for Tavon Jenkins;

b. Employment Records from Buffalo Wild Wings regarding employment history of Tavon Jenkins;

c. Funeral Expenses and costs of cremation for Tavon Jenkins;

d. Photographs/Animations created by any designated Expert in this case;

e. Documents offered by the Co-Claimant on behalf of Cassandra Braun which proves any part of the claim for the Estate of Tavon Jenkins;

f. Any other pleadings/discovery responses filed before the Arkansas State Claims Commission cases;

g. Any depositions, pleadings and/or discovery responses of any party received in the federal court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW.

h. Any documents used to rebut any exhibit or evidence presented by the Respondent.

II. RESPONSES TO DOCUMENT PRODUCTION REQUESTS

REQUEST FOR PRODUCTION NO. 1: Please produce all documents used in answering or relating to your answers to the Respondent's First Set of Interrogatories.

RESPONSE: OBJECTION, this Interrogatory is overly broad and unduly burdensome, Additionally, this Interrogatory is vague in its use of "each and every document" which is improper. Subject to and without waiving said objection, see Attached.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents relating to the contentions or allegations made in your Claim.

RESPONSE: OBJECTION, this Interrogatory is overly broad and unduly burdensome, Additionally, this Interrogatory is vague in its use of "contentions or allegations" which is improper. Subject to and without waiving said objection, see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 3: Please produce all reports by experts that have been prepared in connection with this claim or the incidents giving rise to this claim.

RESPONSE: See Attached Rule 26 Report of Matthew Jackson, Jackson Reconstructionist; Report of Dr. Ralph Scott, Jr. with Economic and Financial Consulting Group, Inc dated January 24, 2022, and Declaration of Dr. Kendall Von-Crowns. Further, there are additional experts that have been designated by Co-Claimant, Lori Braun, and to the extent that those have been identified and relate to facts/damages with respect to Claimant's case, Claimant reserves the right to supplement and/or amend this response and adopt therein. All of the experts have not been yet determined in this case and Claimant agrees to supplement this response.

REQUEST FOR PRODUCTION NO. 4: Please produce all analyses, statistics or other documents or things that have been or will be reviewed by an expert in this case.

RESPONSE: Claimant is in the process of gathering requested documentation and will provide upon receipt.

REQUEST FOR PRODUCTION NO. 5: Please produce a curriculum vitae and any other documents pertaining to the credentials and qualifications of any experts retained by you, including, but not limited to, a list of publications or other writings authored by each expert and a list of any other cases in which each expert has testified or been retained.

RESPONSE: See Attached curriculum vitae of Dr. Kendall Von-Crowns. Claimant is in the process gathering additional documentation and will supplement this response.

REQUEST FOR PRODUCTION NO. 6: For each expert retained by you, please provide all correspondence between you and retained expert(s). contracts, drafts of all reports invoices, and payments.

RESPONSE: See Attached Invoice from Dr. Ralph Scott and payment. Claimant is in the process of gathering requested documentation and will supplement/amend this response upon receipt.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents or other materials that support your allegations of "negligence" contained in paragraph 13 of the Complaint.

RESPONSE: OBJECTION, this Interrogatory is overly broad and unduly burdensome. Additionally, this Interrogatory is vague in its use of materials that support Claimant's allegations of negligence, which is improper. Subject to and without waiving said objection, Claimants relies upon any and/or all of the pleadings which have been filed within the Arkansas State Claims Commission case by the parties and the Co-Claimant, Lori Braun; any documents/depositions produced in discovery or pleadings filed via the federal district court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW; any documents acquired through the Freedom of Information Act pertaining to the allegations of the Claimant's cause of action; and any expert reports produced herein which have been previously provided to the Respondent.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents or other materials which support your allegations of "willful, wanton, callous, reckless and . . . depraved indifference" contained in paragraph 17 of the Complaint.

RESPONSE: OBJECTION, this Interrogatory is overly broad and unduly burdensome. Additionally, this Interrogatory is vague in its use of materials that support Claimant's allegations of "willful, wanton, callous, reckless...," which is improper. Subject to and without waiving said objection, Claimants relies upon any and/or all of the pleadings which have been filed within the Arkansas State Claims Commission case by the parties and the Co-Claimant, Lori Braun; any documents/depositions produced in discovery or pleadings filed via the federal district court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW; any documents acquired through the Freedom of Information Act pertaining to the allegations of the Claimant's cause of action; and any expert reports produced herein which been previously provided to the Respondent.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents or other materials which support your allegations of liability that you alleged in paragraphs 19 through 22 of the Complaint.

RESPONSE: OBJECTION, this Interrogatory is overly broad and unduly burdensome. Additionally, this Interrogatory is vague in its use of materials that support Claimant's allegations of "allegations of liability," which is improper. Subject to and without waiving said objection, Claimants relies upon any and/or all of the pleadings which have been filed within the Arkansas State Claims Commission case by the parties and the Co-Claimant, Lori Braun; any documents/depositions produced in discovery or pleadings filed via the federal district court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW; any documents acquired through the Freedom of Information Act pertaining to the allegations of the Claimant's cause of action; and any expert reports produced herein which been previously provided to the Respondent.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents or other materials which support your allegations of pain and suffering alleged in paragraphs 15 of the Complaint.

RESPONSE: OBJECTION, this Interrogatory is overly broad and unduly burdensome.

Additionally, this Interrogatory is vague in its use of materials that support Claimant's allegations of "allegations of pain and suffering," which is improper. Subject to and without waiving said objection, Claimants relies upon any and/or all of the pleadings which have been filed within the Arkansas State Claims Commission case by the parties and the Co-Claimant, Lori Braun; any documents/depositions produced in discovery or pleadings filed via the federal district court case, *In the United States District Court for the Western District of Arkansas*, Case No. 4:18-CV-334 BRW; any documents acquired through the Freedom of Information Act pertaining to the allegations of the Claimant's cause of action; and any expert reports produced herein which been previously provided to the Respondent.

REQUEST FOR PRODUCTION NO. 11: Please list and produce all exhibits which you will or may introduce at the hearing of this claim, or which you will or may provide to the commission as proof of your claim.

RESPONSE: See Attached. Since Claimant has not yet identified all exhibits which she will introduce, Claimant will supplement this response upon her determination.

REQUEST FOR PRODUCTION NO. 12: Please complete and return the attached Release of Medical Records Authorization for Use and Disclosure of Protected Health Information for each beneficiary who has a claim for pain and suffering.

RESPONSE: See Attached. Claimant is in the process of obtaining the remaining medical authorization from the remaining statutory beneficiaries, including the siblings of Tavon Jenkins, and will supplement upon her receipt. Claimant asserts that the authorization for health information shall be limited to treatment sought related to the said statutory beneficiaries' claim for extreme mental anguish; not pain and suffering.

REQUEST FOR PRODUCTION NO. 13: Please produce for, inspection and copying, the phone records for decedent, Tavon Jenkins on October 10, 2016.

RESPONSE: Claimant does not have such records and is not aware that any exist. Claimant agrees to amend this Response shall any of the requested documentation become known or acquired.

REQUEST FOR PRODUCTION NO. 14: Please produce for, inspection and copying, any bank and credit card records for decedent, Tavon Jenkins for transactions that cleared on or after October 10, 2016.

RESPONSE: Claimant does not have such records and is not aware that any exist. Claimant agrees to amend this Response shall any of the requested documentation become known or acquired.

LAVON STEWART

VERIFICATION

I, Lavon Stewart, hereby verify that the foregoing information is true and correct to the best of my knowledge and belief.

LAVON STEWART

STATE OF FLORIDA)
COUNTY OF BROWARD)

SUBSCRIBED AND SWORN to before me this 31st day of July, 2023.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

(SEAL)

DAMION POWELL NOTARY PUBLIC MY COMMISSION EXPIRES 5-3-2026 STATE OF FLORIDA COMMISSION NUMBER HH 280602

Respectfully submitted,

/s/Tiffany Mays O'Guinn, #2006053
MAYS, BYRD & ASSOCIATES, P.A.
212 Center St., Suite 700-A
Little Rock, Arkansas 72201
501-372-6303 - telephone
501-399-9280 - facsimile
Tmays@maysbyrdlaw.com
Attorney for Claimant, Lavon Perry Stewart

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2023, I served it upon the following participants:

Attorney Kesia Morrison
Ark Bar No. 2015244
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3997
Fax: (501) 682-2591
Email: kesia.morrison@arkansasag.gov

/s/Tiffany Mays O'Guinn
Tiffany O'Guinn

From: Cydni Arterbury
To: Kathryn Irby; Lisa Wiedower; Paul James; Kesia Morrison; Gabrielle Mays
Cc: aclarke@cochranfirmmidsouth.com; John.Payne@ArkansasAG.gov
Subject: RE: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497
Date: Wednesday, August 23, 2023 9:17:54 AM
Attachments: image003.jpg
image004.jpg
image005.jpg
Proposed Mediation Settlement Agreement.pdf

You don't often get email from ca@jamescarterlaw.com. Learn why this is important

Ms. Irby:

Please see attached.

Thank you.

Have a great day!
Cydni Arterbury

Legal Assistant
JAMes & CAr Ter , PLC
500 Broadway, s uite 400
Little r ock, Ar 72201
Main Office: 501.372.1414
Direct Dial: 501.492.3872
Facsimile: 501.372.1659

Important Confidentiality s tatement – The information contained in this electronic communication from James & Carter, PLC may be confidential attorney-client privilege and protected by law. If you are not the intended recipient, please immediately delete the e-mail and be aware that any disclosure, copying, distribution, or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender or calling our office at 501.372.1414 and delete this copy and the reply from your computer and network system.

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Tuesday, August 8, 2023 3:41 PM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; John.Payne@ArkansasAG.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497

Resending because Mr. Payne's email was not typed correctly.

Kathryn

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Tuesday, August 8, 2023 3:26 PM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached hearing letter, prehearing material deadline information, and Zoom invitation.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 e ast Capitol Avenue, s uite 410
Little r ock, Arkansas 72201
(501) 682-2822

From: Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Sent: Friday, July 21, 2023 3:46 PM
To: Paul James <pjj@jamescarterlaw.com>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Good afternoon,

I am substituting Gabby Mays in place of Johanna Hinkle to receive correspondence for Assistant Attorney General Kesia Morrison. Thank you for making this change in your records.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center s treet, s uite 200

Little r ock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)

From: Paul James <pjj@jamescarterlaw.com>
Sent: Friday, July 21, 2023 3:31 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>; Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

EXTERNAL EMAIL

Ms. Irby-

As a matter of follow up and update, this is to confirm that the parties have set this matter for an August 22nd mediation.

In regard to a potential setting in the event mediation is unsuccessful, I understand that the Commission does not set any matter for more than one day. Since there are two claimants

(Estate of Braun and the Estate of Jenkins), I would assume that this matter would need a full day setting.

Thank you, and have a great weekend.

Paul J. James

500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
[redacted]
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Friday, May 5, 2023 4:41 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; aclarke@cochranfirmmidsouth.com
Subject: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Counselors, am I correct that this claim is ready to be set for hearing? If so, can the parties please confer and let me know how long the parties expect will be needed to present the claim to the Commission?

Thanks,
Kathryn Irby

From: Kathryn Irby

Sent: Saturday, April 22, 2023 10:01 AM
To: 'Kesia Morrison' <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject: ORDER: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 e ast Capitol Avenue, s uite 410
Little r ock, Arkansas 72201
(501) 682-2822

LORI BRAUN, as Administratrix of the ESTATE OF CASSANDRA BRAUN, deceased **CLAIMANT**

v. **ARKANSAS STATE CLAIMS COMMISSION NO. 190497**

ARKANSAS STATE POLICE **RESPONDENT**

PROPOSED MEDIATION SETTLEMENT AGREEMENT

We have participated in a mediation session on August 22, 2023, and are satisfied that we have reached a fair and reasonable settlement. The settlement agreement is as follows:

The State of Arkansas on behalf of the Arkansas State Police agrees to pay the sum of $1,800,000.00 to Lori Braun, as Administratrix of the Estate of Cassandra Bruan, deceased ("Claimant") as settlement in full of any and all claims arising from the motor vehicle accident that occurred on October 10, 2016 in Hot Springs, Garland County, Arkansas on US Hwy 70, which resulted in the death of Cassandra Braun. This proposed settlement is contingent upon approval of the Arkansas State Claims Commission, the appropriate legislative committee, and the Arkansas General Assembly. The Office of the Arkansas Attorney General supports approval of this settlement.

After this agreement is presented by the parties and considered by the Arkansas State Claims Commission and, if approved, referred for the legislative review process, Claimant agrees to dismiss the pending claim before the Arkansas State Claims Commission with prejudice and sign a release in full and be responsible for payment of any valid subrogation liens. Each party shall be responsible for their own costs and attorney's fees. The cost of the mediation will be paid in full by the State of Arkansas on behalf of the Arkansas State Police to Hamlin Dispute Resolution, LLC.

We acknowledge that neither the mediator nor Hamlin Dispute Resolution, LLC has given us legal advice. We further acknowledge that we have had the right to consult with an attorney at any time and to have an attorney review the terms of this agreement before signing it.

We intend the above agreement to be a legally binding and enforceable contract, subject to approval by the above authorities of the State of Arkansas.

Dated this 22nd day of August 2023.

We intend the above agreement to be a legally binding and enforceable contract, subject to approval by the above authorities of the State of Arkansas.

Dated this 22nd day of August 2023.

Lori Braun

From:	Kesia Morrison
To:	Kathryn Irby; John Payne; Gabrielle Mays; Tiffany Mays O"Guinn; Donna Johnson
Subject:	Braun/Perry, Claim No 190497 - Perry Proposed Mediation Agreement
Date:	Wednesday, August 23, 2023 10:35:14 AM
Attachments:	image001.jpg PERRY proposed settlement.pdf

You don't often get email from kesia.morrison@arkansasag.gov. Learn why this is important

Ms. Irby,

Please see the attached proposed mediation agreement.

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov



LAVON PERRY, as the Personal Representative of the ESTATE OF TAVON JENKINS, deceased — CLAIMANT

v.

ARKANSAS STATE CLAIMS COMMISSION NO. 200290

ARKANSAS STATE POLICE — RESPONDENT

PROPOSED MEDIATION SETTLEMENT AGREEMENT

We have participated in a mediation session on August 22, 2023, and are satisfied that we have reached a fair and reasonable settlement. The settlement agreement is as follows:

The State of Arkansas on behalf of the Arkansas State Police agrees to pay the sum of $1,200,000.00 to Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased ("Claimant") as settlement in full of any and all claims arising from the motor vehicle accident that occurred on October 10, 2016 in Hot Springs, Garland County, Arkansas on US Hwy 70, which resulted in the death of Tavon Jenkins. This proposed settlement is contingent upon approval of the Arkansas State Claims Commission, the appropriate legislative committee, and the Arkansas General Assembly. The Office of the Arkansas Attorney General supports approval of this settlement.

This agreement will be presented by the parties for consideration by the Arkansas State Claims Commission and, if approved, referred for the legislative review process and funding of the above settlement agreement. Each party shall be responsible for their own costs and attorney's fees. The cost of the mediation will be paid in full by the State of Arkansas on behalf of the Arkansas State Police to Hamlin Dispute Resolution, LLC.

We acknowledge that neither the mediator nor Hamlin Dispute Resolution, LLC has given us legal advice. We further acknowledge that we have had the right to consult with an attorney at any time and to have an attorney review the terms of this agreement before signing it.

We intend the above agreement to be a legally binding and enforceable contract, subject to approval by the above authorities of the State of Arkansas.

Dated this 22nd day of August 2023.

LaVon Perry

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased

and

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIMANTS**

V. **CONSOLIDATED CLAIM NO. 190497**

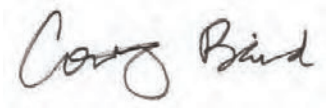
ARKANSAS STATE POLICE **RESPONDENT**

ORDER REGARDING BRAUN SETTLEMENT

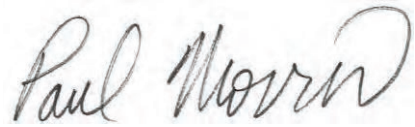
Now before the Arkansas State Claims Commission (the "Commission") is a mediation settlement agreement regarding as to the separate claim filed by Lori Braun, as the Administratrix of the Estate of Cassandra Braun ("Braun") against the Arkansas State Police (the "Respondent"). The mediation settlement agreement was signed by Braun, Braun's attorneys, and Respondent's attorneys. Based upon a review of the pleadings and the mediation settlement agreement, the Commission hereby APPROVES the mediation settlement agreement and REFERS the total award of $1,800,000.00 to the General Assembly for review, approval, and, if approved, placement on an appropriation bill pursuant to Ark. Code Ann. § 19-10-215(b).

Braun's part of the consolidated claim hearing scheduled for February 2024 has been removed from the Commission's docket.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: September 22, 2023

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

LAVON TISHETTE PERRY, as the Personal Representative of the Estate of Tavon Jenkins, deceased

and

LORI BRAUN, as the Administratrix of the Estate of Cassandra Braun **CLAIMANTS**

V. **CONSOLIDATED CLAIM NO. 190497**

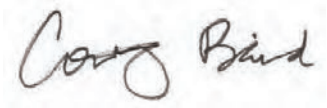
ARKANSAS STATE POLICE **RESPONDENT**

ORDER REGARDING PERRY SETTLEMENT

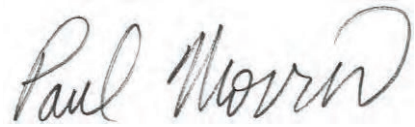
Now before the Arkansas State Claims Commission (the "Commission") is a mediation settlement agreement regarding as to the separate claim filed by Lavon Perry, as the Personal Representative of the Estate of Tavon Jenkins, deceased ("Perry") against the Arkansas State Police (the "Respondent"). The mediation settlement agreement was signed by Perry, Perry's attorneys, and Respondent's attorneys. Based upon a review of the pleadings and the mediation settlement agreement, the Commission hereby APPROVES the mediation settlement agreement and REFERS the total award of $1,200,000.00 to the General Assembly for review, approval, and, if approved, placement on an appropriation bill pursuant to Ark. Code Ann. § 19-10-215(b).

Perry's part of the consolidated claim hearing scheduled for February 2024 has been removed from the Commission's docket.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: September 22, 2023

Notice(s) which may apply to your claim

(1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).

(2) If a Claimant is awarded less than $15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.

(3) Awards or negotiated settlement agreements of $15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From:	Kathryn Irby
To:	Cydni Arterbury; Lisa Wiedower; Paul James; Kesia Morrison; Gabrielle Mays
Cc:	aclarke@cochranfirmmidsouth.com; John.Payne@ArkansasAG.gov
Subject:	ORDER: Braun v. ASP
Date:	Tuesday, September 26, 2023 2:29:00 PM
Attachments:	5--Braun -- 190497 -- settlement agreement GA.pdf image001.jpg image002.jpg image003.jpg

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

From: Cydni Arterbury <CA@jamescarterlaw.com>
Sent: Wednesday, August 23, 2023 9:18 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Lisa Wiedower <lisa.wilkins@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: aclarke@cochranfirmmidsouth.com; John.Payne@ArkansasAG.gov
Subject: RE: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497

> You don't often get email from ca@jamescarterlaw.com. Learn why this is important

Ms. Irby:

Please see attached.

Thank you.

Have a great day!
Cydni Arterbury

Legal Assistant
JAMES & CARTER, PLC
500 Broadway, suite 400
Little rock, AR 72201
Main Office: 501.372.1414
Direct Dial: 501.492.3872
Facsimile: 501.372.1659

Important Confidentiality statement – The information contained in this electronic communication from James &

Carter, PLC may be confidential attorney-client privilege and protected by law. If you are not the intended recipient, please immediately delete the e-mail and be aware that any disclosure, copying, distribution, or use of the e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by replying to the sender or calling our office at 501.372.1414 and delete this copy and the reply from your computer and network system.

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Tuesday, August 8, 2023 3:41 PM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; John.Payne@ArkansasAG.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497

Resending because Mr. Payne's email was not typed correctly.

Kathryn

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Tuesday, August 8, 2023 3:26 PM
To: Lisa Wiedower <lisa.wilkins@arkansasag.gov>; Paul James <pjj@jamescarterlaw.com>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>
Subject: HEARING SCHEDULED: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached hearing letter, prehearing material deadline information, and Zoom invitation.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 east Capitol Avenue, suite 410
Little rock, Arkansas 72201
(501) 682-2822

From: Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Sent: Friday, July 21, 2023 3:46 PM
To: Paul James <pjj@jamescarterlaw.com>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov;

Cydni Arterbury <CA@jamescarterlaw.com>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Good afternoon,

I am substituting Gabby Mays in place of Johanna Hinkle to receive correspondence for Assistant Attorney General Kesia Morrison. Thank you for making this change in your records.

Lisa Wilkins Wiedower
Paralegal / Civil Litigation Department
Office of Attorney General Tim Griffin
323 Center s treet, s uite 200
Little r ock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2503 (Direct)
(501) 682-2591 (Fax)

From: Paul James <pjj@jamescarterlaw.com>
Sent: Friday, July 21, 2023 3:31 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; aclarke@cochranfirmmidsouth.com; john.payne@arkansas.gov; Cydni Arterbury <CA@jamescarterlaw.com>; Lisa Wiedower <lisa.wilkins@arkansasag.gov>
Subject: RE: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

EXTERNAL EMAIL

Ms. Irby-

As a matter of follow up and update, this is to confirm that the parties have set this matter for an August 22nd mediation.

In regard to a potential setting in the event mediation is unsuccessful, I understand that the Commission does not set any matter for more than one day. Since there are two claimants (Estate of Braun and the Estate of Jenkins), I would assume that this matter would need a full day setting.

Thank you, and have a great weekend.

Paul J. James

500 Broadway, Suite 400
Little Rock, AR 72201
(501) 372-1414 – Telephone
(501) 492-3870 – Direct
[redacted]
(501) 372-1659 - Facsimile
www.jamescarterlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Friday, May 5, 2023 4:41 PM
To: Kesia Morrison <kesia.morrison@arkansasag.gov>; Johanna Hinkle

<johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; Paul James <pjj@jamescarterlaw.com>; aclarke@cochranfirmmidsouth.com
Subject: INFO NEEDED: Braun/Perry v. ASP, Claim No. 190497

Counselors, am I correct that this claim is ready to be set for hearing? If so, can the parties please confer and let me know how long the parties expect will be needed to present the claim to the Commission?

Thanks,
Kathryn Irby

From: Kathryn Irby
Sent: Saturday, April 22, 2023 10:01 AM
To: 'Kesia Morrison' <kesia.morrison@arkansasag.gov>; Johanna Hinkle <johanna.hinkle@arkansasag.gov>
Cc: tmays@maysbyrdlaw.com; pjj@jamescarterlaw.com; aclarke@cochranfirmmidsouth.com
Subject: ORDER: Braun/Perry v. ASP, Claim No. 190497

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 east Capitol Avenue, suite 410
Little rock, Arkansas 72201
(501) 682-2822

From:	Kathryn Irby
To:	Kesia Morrison; John Payne; Gabrielle Mays; Tiffany Mays O"Guinn; Donna Johnson
Bcc:	Mika Tucker
Subject:	ORDER: Perry v. ASP
Date:	Tuesday, September 26, 2023 2:31:00 PM
Attachments:	6--Perry -- 190497 -- settlement agreement GA.pdf image001.jpg

Counselors, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

From: Kesia Morrison <kesia.morrison@arkansasag.gov>
Sent: Wednesday, August 23, 2023 10:35 AM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; John Payne <john.payne@arkansasag.gov>; Gabrielle Mays <gabrielle.mays@arkansasag.gov>; Tiffany Mays O'Guinn <toguinn@mbolawgroup.com>; Donna Johnson <djohnson@maysbyrdlaw.com>
Subject: Braun/Perry, Claim No 190497 - Perry Proposed Mediation Agreement

> You don't often get email from kesia.morrison@arkansasag.gov. Learn why this is important

Ms. Irby,

Please see the attached proposed mediation agreement.

Kesia Morrison
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 682-3997 | Fax: (501) 682-2591
Email: kesia morrison@arkansasag.gov

