

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF ARKANSAS
3 WESTERN DIVISION
4
5 SYLVIA PERKINS, as Personal
6 Representative of the Estate of
7 BOBBY MOORE, III, deceased PLAINTIFF
8
9 v. CASE NO.: 4:15-CV-310-BSM
10
11 JOSH HASTINGS, et al. DEFENDANTS

VIDEOTAPED DEPOSITION OF
ASSISTANT CHIEF WAYNE BEWLEY
TAKEN ON BEHALF OF THE PLAINTIFF
ON AUGUST 24, 2016 BEGINNING AT 1:59 P.M.
IN NORTH LITTLE ROCK, ARKANSAS

23 VIDEOTAPED BY JOHN SIMS
24
25 REPORTED BY SUSAN J. PYBAS, CCR

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1 different role.
 2 **Q I know.**
 3 **A But, clearly, from the investigative side --**
 4 **and I know we're not trying to get into**
 5 **circumstances to -- to -- to convolute the issue --**
 6 **but -- but I think that there are -- you have to**
 7 **look at those circumstances sometimes to make those**
 8 **decisions: Is three, four, five shots at a quick,**
 9 **rapid succession objectively reasonable versus only**
 10 **one?**
 11 **Q My question was when you are operating as a**
 12 **deadly force review board member, do you bring the**
 13 **discernment of the subtlety of shots fired into**
 14 **that -- into that analysis?**
 15 **A It -- it is -- it is all discussed in -- from**
 16 **the training aspect.**
 17 **Q So the answer is "yes"?**
 18 **A Yes, sir.**
 19 **Q How many deadly force review boards that**
 20 **have -- you have been on that have been convened, as**
 21 **far as you know, give or take?**
 22 **A Approximately, four -- four or five.**
 23 **Q Do you recall which ones they were?**
 24 **A Not off the top of my head.**
 25 **Q Well, one of them was the shooting of Eugene**

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1 **Allison by Donna Leshar, correct?**
 2 **A Correct.**
 3 **Q And let me just ask you about that.**
 4 **That was a very serious case, wasn't it?**
 5 **A Very serious case.**
 6 **Q Because a -- a white officer shot and killed**
 7 **the father of a black officer, correct?**
 8 **A Yes, sir.**
 9 **Q I mean, it was serious for a bunch of reasons,**
 10 **but that was one element of this case, right?**
 11 **A Yes, sir.**
 12 **Q And -- and you're aware that the husband of the**
 13 **shooter is a -- is the homicide detective at the**
 14 **Little Rock Police Department, right?**
 15 **A A sergeant, yes, sir.**
 16 **Q I'm sorry, the homicide sergeant.**
 17 **And -- and -- and you understand that his**
 18 **subordinates -- strike that.**
 19 **You understand that Stuart Thomas decided to do**
 20 **an -- an in-house investigation of that rather than**
 21 **shipping it to an independent agency, right?**
 22 **A Yes, sir.**
 23 **Q And you understand that that meant that it was**
 24 **going to be investigated by the shooter's husband's**
 25 **subordinates, right?**

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1 **A Yes, sir.**
 2 **Q I mean, do you see a problem with that?**
 3 **A I -- I see the concern, yes, sir.**
 4 **Q Do you see a problem with that?**
 5 **A I see a problem because it -- it created a**
 6 **problem and it -- it created a -- an issue of**
 7 **distrust among, probably, many people in the**
 8 **community.**
 9 **Q Justifiably, wouldn't you agree?**
 10 **A I -- I can see how they got there, yes, sir.**
 11 **Q There is impropriety and there's the image of**
 12 **impropriety, right?**
 13 **A Yes, sir.**
 14 **Q Do you think that it was only the image of**
 15 **impropriety that was a problem, or do you think that**
 16 **there was also a problem with what actually happened**
 17 **in the investigation?**
 18 **A I -- I think it's maybe a little bit of both.**
 19 **I think there was definitely some concerns in the**
 20 **investigation and -- and those were brought out.**
 21 **Q What were those?**
 22 **A I don't remember, specifically. I know there**
 23 **was some concerns about Sergeant Leshar being on the**
 24 **scene for a period of time. There was a concern**
 25 **about him removing his wife from the scene and**

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1 **driving her to headquarters. Some issues over the**
 2 **pepper spray, whether used or not used, and what was**
 3 **collected. Some statements.**
 4 **I definitely remember there being -- but I just**
 5 **-- you know, that's -- that's just off the top my**
 6 **head.**
 7 **Q Are those problems you're describing with the**
 8 **investigation or problems with the appearance of**
 9 **impropriety?**
 10 **A I think every investigation is -- is**
 11 **complicated and complex and -- and generally through**
 12 **the review, there's always things found that could**
 13 **be done better.**
 14 **So I think they did an adequate investigation,**
 15 **and -- and I think it -- but it clearly had the**
 16 **appearance of -- of impropriety.**
 17 **Q So I asked you if the things that you listed**
 18 **were problems with the investigation or problems**
 19 **with appearance of propriety.**
 20 **Is your answer that those were problems of**
 21 **appearance of propriety?**
 22 **A Yes, sir.**
 23 **Q Not problems with the investigation?**
 24 **A I don't think so.**
 25 **Q You think that that was a good investigation?**

1 A I think they did a thorough investigation.
 2 Q You think that Donna Leshner had an objectively
 3 and reasonable basis to shoot Mr. Ellison?
 4 MS. LaFEVER: Objection.
 5 A Based on her statements and from what I know of
 6 it, I -- I believe so.
 7 BY MR. LAUX:
 8 Q Well, you were on the deadly force review
 9 board, so, presumably, you studied the file, at
 10 least, at some point, correct?
 11 A I -- I did.
 12 Q So you think it was a good, justifiable
 13 shooting, not only because of Donna Leshner's
 14 statements but also after reviewing the entire file,
 15 I presume, yes?
 16 A Yes, sir.
 17 Q And -- and so she wasn't disciplined at all for
 18 that shooting, correct?
 19 A Correct.
 20 Q Do you think her entrance into Mr. Ellison's
 21 home comported with the Fourth Amendment?
 22 A Off -- off that -- and I didn't review again
 23 prior to coming here, but if I remember correctly,
 24 it was to check on the condition of Mr. Ellison with
 25 the door open and the temperature. And -- and I

1 think in order to do that, yes.
 2 Q Well, I know what they said. Well, sometimes
 3 what officers say isn't really what happened; you
 4 agree with that, right?
 5 A It -- yes, sir.
 6 Q Okay. So I know what they said.
 7 My question is after reviewing the file, which
 8 I'm -- I'm presuming you took seriously?
 9 A Yes, sir.
 10 Q After reviewing that file -- reviewing that
 11 file, did you reach an opinion on whether their
 12 entrance into Mr. Ellison's house, given the
 13 circumstances, comported with the Fourth Amendment
 14 rule that you need a warrant to enter a person's
 15 home?
 16 A I think it did.
 17 Q Okay. And you think that was based on an
 18 exigent circumstance?
 19 A Yes, sir.
 20 Q Did these officers call for an ambulance when
 21 they entered Mr. Ellison's apartment?
 22 A They did not.
 23 Q Okay. Doesn't that kind of -- isn't that
 24 inconsistent with their concern of exigent
 25 circumstances?

1 A I think you've got to look at -- given enough
 2 time in conversation and determining that he was in
 3 need of medical, then -- then I believe that they
 4 would have.
 5 Q Well, they walked in because -- are -- are you
 6 saying they walked in because they thought he needed
 7 medical attention?
 8 A To check on his condition with the -- the --
 9 the door open --
 10 Q Right.
 11 A -- the cold temperature --
 12 Q Right.
 13 A -- just to make sure he was okay.
 14 Q Well, they could have called for a -- medical
 15 attention for this guy before they walked in his
 16 home, right?
 17 A They could have.
 18 Q Okay. Why didn't they do that, if you know?
 19 MS. LaFEVER: Objection.
 20 A I think they were wanting to investigate.
 21 BY MR. LAUX:
 22 Q So were they wanting to investigate or were
 23 they concerned about his mental -- his -- his
 24 medical health?
 25 A I think both.

1 Q Okay. But the reason that they went in was for
 2 exigent circumstances, right?
 3 A To check on his condition.
 4 Q So, again, my -- my -- my point is, is you
 5 believe that they were concerned about his medical
 6 condition, right?
 7 A Yes, sir.
 8 Q Isn't the failure to call MEMS or an EMS
 9 inconsistent with a concern about a person's medical
 10 condition?
 11 A If it would have been absolutely obvious,
 12 100 percent, that he was in need of immediate
 13 medical attention, it would be.
 14 Q Doesn't it need to be obvious, though, to walk
 15 into his house?
 16 A Sometimes, we -- we do things to -- to get
 17 verification to determine.
 18 I mean, if you see the door open, cold
 19 temperatures, a person sitting in there, just a
 20 communication, we -- we may step in the house with
 21 no intent to -- to do anything other than say, you
 22 know, "Hey, just checking on you."
 23 And -- and -- and with -- depending on the
 24 response, might have stepped right on and went about
 25 their day. I -- I --

1 Q Do you think intent is required to enter
2 someone's home? Do you think there's an element of
3 intent involved in that?
4 A I'm not sure I understand the question.
5 Q Well, you just said you didn't have the intent
6 -- what was it you said? You're not intending to do
7 any harm, right? You don't need an intention to do
8 harm -- strike that.
9 Whether you're looking to do something good or
10 something bad, you need a warrant or a couple of
11 exceptions to the warrant requirement to enter a
12 person's house; do you agree?
13 A I agree.
14 Q One of those exceptions is exigent
15 circumstances, right?
16 A Yes, sir.
17 Q And the other one, do you know what that is?
18 A The consent.
19 Q Well, that's actually a third one. Thank you.
20 The second one -- the third one is?
21 A I'm at a loss.
22 Q "The caretaker exception," is what they call
23 it.
24 Were they entering in a exigent circumstance or
25 caretaker, based on your review of the file?

1 A I -- I think they were doing it exigent
2 circumstances to check and make sure he was okay.
3 Q Okay. They never called for an ambulance for
4 this man until after he was shot, correct?
5 A Correct.
6 Q Is that consistent or inconsistent, in your
7 opinion, with an officer being concerned with
8 someone's medical condition?
9 A It would be inconsistent.
10 Q I'd like to show you what we're going to mark
11 as Plaintiff's Exhibit --
12 MR. LAUX: I guess we'll do one.
13 I'm sorry, guys, I'm switching it
14 up. This is --
15 MS. LaFEVER: Did this get marked?
16 MR. LAUX: That's not going to be
17 marked. It's -- it's already marked as --
18 or as Stevens 27.
19 BY MR. LAUX:
20 Q This is the Ellison Deadly Force Review Board
21 and it's got a few other things on that, a few other
22 items I'm going to ask you about.
23 Please have a look at this, sir.
24 (WHEREUPON, a document was marked for
25 identification as Plaintiff's Exhibit No.

1 1 and is attached hereto.)
2 A (Reviews document.)
3 MS. LaFEVER: So are the other
4 documents in the packet related to the
5 Ellison issue?
6 MR. LAUX: Yes.
7 MS. LaFEVER: It's all
8 Ellison-related in that packet?
9 MR. LAUX: Absolutely.
10 MS. LaFEVER: But not the deadly
11 force review board? That's what you're
12 saying?
13 MR. LAUX: That's on the top.
14 MS. LaFEVER: Okay.
15 MR. FRANCO: And this is Exhibit No.
16 1?
17 MR. LAUX: Yes, sir. I'm going to --
18 actually, is that a color copy?
19 Yeah, this is right. Okay.
20 COURT REPORTER: You want to switch?
21 MR. LAUX: No, but I need a copy for
22 myself.
23 MR. FRANCO: This is my copy. It's
24 one of the others again.
25 MR. LAUX: Yeah. I mean, I can

1 probably do this one.
2 THE WITNESS: Is there one in here?
3 MR. LAUX: Yeah, there is. Oh, yeah.
4 You know, I'm sorry.
5 MR. FRANCO: Yeah, there is one
6 there.
7 THE WITNESS: Let me find it.
8 MR. LAUX: Can I grab those,
9 actually? The reason I wanted that one is
10 because it's got a color copy, so we're
11 all good.
12 BY MR. LAUX:
13 Q Please have look at that document, that group
14 of documents.
15 A (Reviews document.)
16 Q Now, I'm just going to be directing you to a
17 few responses in there.
18 A Sure. Okay.
19 Q If you, maybe, just kind of glean the whole
20 thing and I'll just kind of direct you, if that's
21 okay.
22 A Sure. I -- I'm --
23 Q Do you agree with me that we're looking at --
24 in this group exhibit, which is Exhibit 1 --
25 MS. LaFEVER: Mr. Laux, I think he

1 was still gleaned.
 2 A I -- I think I -- I think I'm comfortable.
 3 MS. LaFEVER: Are you comfortable?
 4 BY MR. LAUX:
 5 Q I'm sorry. Yeah, please take your -- I mean,
 6 you know, don't go corner to corner but, you know,
 7 I'm just going to ask some questions about it, and
 8 I'll give you time if you need it, at that point,
 9 also.
 10 A Okay. I'm good.
 11 Q But do you agree with me that in this Exhibit
 12 1, is the deadly force review board report for -- in
 13 the Ellison case for which you were the chairman?
 14 A Yes.
 15 Q And then there's also a couple of pages of
 16 deposition transcript, right?
 17 A Yes.
 18 Q There's a video still photo of Donna Leshar,
 19 right?
 20 A Yes.
 21 Q And -- and even though that's not Exhibit No. 4
 22 here, it's labeled as Exhibit 4, right?
 23 A Yes.
 24 Q I shouldn't even say that because it's
 25 confusing, so scratch that.

1 And then, finally, there is what purports to be
 2 an affidavit or a declaration, a curriculum vitae,
 3 and some diagrams, right?
 4 A Correct.
 5 Q Okay. So when you reviewed the file and were
 6 preparing to render your professional opinions in
 7 the form of this deadly force review board report,
 8 for which you were the chairman, you understood it
 9 to be a very serious matter that transpired, right?
 10 A Yes, sir.
 11 Q And so you approached this task very soberly,
 12 didn't you?
 13 A Yes, sir.
 14 Q And you took your time and you really analyzed
 15 it to -- to -- to see if this was truly a justified
 16 shooting or not, didn't you?
 17 A We reviewed it based on the criteria of this
 18 policy.
 19 Q If questions in the facts came to you, as you
 20 were involved with the deadly force review board,
 21 and they were important, serious, significant
 22 problems, you would say something about that,
 23 wouldn't you?
 24 A Yes.
 25 Q And so if you look at this deadly force review

1 board, you-all didn't see any problems with the
 2 shooting of Mr. Ellison, correct? Let me ask that
 3 better.
 4 You found -- you -- you agreed with the
 5 internal affairs investigation and the detective
 6 division that Donna Leshar's shooting of Mr. Ellison
 7 was justified and objectively reasonable, right?
 8 A Yes.
 9 Q And -- and that's because she said that he was
 10 threatening her with a walking cane at the time he
 11 was shot; is that true or no? That -- that that was
 12 one of the bases for your decision?
 13 A Yes.
 14 Q And so if Mr. Ellison was not standing, as
 15 Donna Leshar said, but was kneeling, would that have
 16 changed your analysis?
 17 A Very likely.
 18 Q Okay. You read the autopsy report that was in
 19 the file, didn't you.
 20 A I don't -- off the top of my head, I don't
 21 remember exactly reading the autopsy report.
 22 Q Yeah. Well, if it was part of the file, you
 23 would have read it, right?
 24 A Yes. Yes.
 25 Q And so if I represent to you that it was part

1 of the internal affairs file, are you comfortable
 2 saying that you reviewed it?
 3 A Yes, sir.
 4 Q All right. I was the attorney in that case and
 5 I depose Donna Leshar and I asked her some
 6 questions about what happened that day.
 7 And if you look through the deposition
 8 transcript, I asked Donna Leshar to demonstrate for
 9 me on videotape what Mr. Ellison was doing when she
 10 shot him. We had his cane there. We unwrapped it
 11 out of evidence.
 12 I gave it to her, and I said "Take your time.
 13 Please get up and show me what he was doing when you
 14 shot."
 15 Do you agree that that is -- that dialogue is
 16 captured in these two pages of deposition
 17 transcripts that say, "Officer Donna L. Leshar" at
 18 the top?
 19 A Yes.
 20 Q I asked if Mr. Ellison was standing upright
 21 when he swung the cane over his head like a baseball
 22 bat and Donna Leshar said, "Yes," correct?
 23 A Which line is that on?
 24 Q Do you -- question -- page 326:
 25 QUESTION: "You indicate in your statement that

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1 Mr. Ellison was swinging the cane over his head like
 2 a baseball bat, correct?
 3 "Yes." ANSWER.
 4 A Yes.
 5 Q QUESTION: "And he was standing upright when he
 6 did that, correct?"
 7 "Yes," she responded, yes?
 8 A Yes.
 9 Q And then down in the body of this next
 10 paragraph I asked her to demonstrate what he was
 11 doing, correct?
 12 A Correct.
 13 Q She says, "He was holding the cane like this"
 14 and then parenthetically it says "indicating,"
 15 right?
 16 A Right.
 17 Q And then she says, "I know the cane was up in
 18 the air like this," and then again it says
 19 "indicating," right?
 20 A Right.
 21 Q Now, if we turn the page, I'll represent to you
 22 that this is a video still of what Donna Leshar was
 23 demonstrating for me.
 24 Do you accept that representation?
 25 A Yes.

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1 Q She's standing in that photo, right?
 2 A Yes.
 3 Q She told me and, previously you or whomever was
 4 investigating, that Mr. Ellison was standing, right?
 5 A Correct.
 6 Q Let's just fast forward to the diagrams.
 7 Based on the autopsy report, the bullet
 8 trajectory through Mr. Ellison's body was top to
 9 bottom entering around the clavicle and one of the
 10 bullets was removed from his T10 vertebrae and the
 11 other one was removed from his low -- his upper
 12 buttocks.
 13 MS. LaFEVER: Mr. Laux, for the
 14 record, can you identify who created --
 15 MR. LAUX: Sure.
 16 MS. LaFEVER: -- these documents?
 17 MR. LAUX: This is the work --
 18 MS. LaFEVER: Document?
 19 MR. LAUX: Yeah. This is the work of
 20 biomechanical engineer Mark Shattuck. And
 21 his credit -- his credentials and his
 22 opinions are in the declaration which is
 23 attached to this. His curriculum vitae,
 24 which lays the foundation for his -- for
 25 his expertise, is also in this exhibit.

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1 MS. LaFEVER: And Mr. Shattuck was an
 2 expert retained by you for the Ellison --
 3 MR. LAUX: He was a consultant.
 4 MS. LaFEVER: -- for the Ellison
 5 litigation?
 6 MR. LAUX: Absolutely.
 7 MS. LaFEVER: Okay.
 8 BY MR. LAUX:
 9 Q This diagram was based on the autopsy report,
 10 I'm going to represent to you.
 11 Do you dispute that at all?
 12 A I -- I don't dispute what I'm seeing. I -- I
 13 do not remember seeing these pictures in review of
 14 the file. I'll -- I -- I may have, but I don't
 15 remember seeing them.
 16 Q You absolutely did not see these pictures in
 17 the file.
 18 A Okay.
 19 Q This as a consultant who took the autopsy
 20 report and based on what the -- the now-deceased
 21 councilman said, created this diagram.
 22 Now, if you accept this to be factually --
 23 factually accurate as to where the bullets entered
 24 and where they wound up -- well, strike that.
 25 How do you account for the bullets that she

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1 fired being removed from T10 and Mr. Ellison's upper
 2 buttocks?
 3 MS. LaFEVER: Object.
 4 A I don't know how to account for that.
 5 BY MR. LAUX:
 6 Q Did you ever ask Donna Leshar, at any time, "If
 7 this man was standing up when you shot him, how did
 8 the bullets get in his rear end and T10 vertebrae,"
 9 or words to that effect?
 10 A I -- I did not.
 11 Q Did anybody?
 12 A Not on -- the people on this deadly force
 13 review.
 14 Q Did anybody, that you know of, ask her that
 15 question?
 16 A Not off the top of my head.
 17 Q Assuming these diagrams to be correct, isn't
 18 that inconsistent with a person standing up when
 19 they're shot by -- strike that.
 20 Mr. Ellison was 6' 1". Donna Leshar was 5'6"
 21 or 7". She testified that she was standing on the
 22 floor when she shot, and Mr. Ellison was standing on
 23 the floor when he was shot.
 24 The bullet trajectory is inconsistent with
 25 that, isn't it?

1 A It -- it would appear, yes, sir.
 2 Q That's a major, major inconsistency with her
 3 story, isn't it?
 4 A Depending on -- the only thing different could
 5 be depending on what his upper body was doing at the
 6 time. If he was standing and bent over -- but it
 7 does seem -- compared to that.
 8 Q Well, that's -- yeah. That's why I asked her
 9 to show me what he was doing when he was shot.
 10 She doesn't have him bending over, does she?
 11 A She does not.
 12 Q And, in fact, she never said that he was
 13 bending over, at any time, during the detective
 14 division investigation or the internal affairs
 15 investigation; do you agree with that?
 16 A Not to my knowledge.
 17 Q Do you agree with what I'm saying?
 18 A Yes, sir.
 19 Q Okay. And so I guess my question is -- is why
 20 was this shooting, based on these facts, determined
 21 to be justifiable?
 22 A Are -- are we referring to -- the only part I
 23 had was just in the review of the deadly force based
 24 on these certain criteria. I didn't investigate or
 25 evaluate up the chain of command on the decisioning.

1 I didn't -- I didn't make a recommendation on that
 2 aspect of it.
 3 Q You didn't review the autopsy report thoroughly
 4 enough to understand that the bullets traveled the
 5 length of Mr. Ellison's body?
 6 A I'm -- I'm not sure that I'm trained enough to
 7 completely understand everything on an autopsy
 8 report as far as -- as that aspect of it. A
 9 homicide detective may -- may know more than that.
 10 We looked at it based on the criteria of the
 11 avoidability, adequate training, adherence to
 12 training, supervision, and then the adequacy of the
 13 investigation.
 14 Q Well, I mean, you -- you were a homicide
 15 sergeant, weren't you?
 16 A I was not.
 17 Q You were a detective division sergeant, right?
 18 A I -- I was not. I -- I was a detective and
 19 then, ultimately, the -- I ended up as a captain
 20 over the detective division.
 21 Q Are you saying that you lack the expertise to
 22 read an autopsy report and -- and understand the
 23 trajectory of bullets in a person's body?
 24 A I -- I don't know that I "lack" it. I -- I
 25 don't remember, in this particular case, looking at

1 the autopsy report.
 2 If it was in the file that I reviewed to
 3 prepare for the review of the shooting review, I
 4 would have looked at it.
 5 Q Right. We've already established that?
 6 A Yes, sir.
 7 Q So either you didn't look at it carefully
 8 enough, or you think that this trajectory is
 9 consistent with a person standing?
 10 A Do we have the actual autopsy report that would
 11 have had something so that I could look at it to
 12 refresh my memory?
 13 Q I can produce it, if you like.
 14 A I mean, this makes it very clear. It -- it
 15 doesn't take a lot of expertise to understand.
 16 Q Why don't you read -- I mean, if you think that
 17 this is somehow different, you can read the
 18 foundation that Mr. Shattuck lays in terms of how he
 19 got his data.
 20 It comes from the medical examiner's report.
 21 It talks about Mr. Ellison's body's interior upper
 22 chest. It talks about his lower back muscles. I
 23 mean, the foundation is all here.
 24 A Sure.
 25 Q I'm just curious. And, again, we can get the

1 -- the -- the autopsy report if you want.
 2 But I'm just saying, I mean, here's what I -- I
 3 mean, there are people -- in my opinion, there are
 4 people in jail right now, in prison, when they shoot
 5 somebody and they say it happened one way and the
 6 physical evidence refutes that.
 7 Those people, when they're not officers, they
 8 go to jail, don't they?
 9 A They can, yes, sir.
 10 Q Yeah. I mean, if -- when a person -- I mean,
 11 that's the way it should be, shouldn't it?
 12 A If the evidence is there, yes, sir.
 13 Q Yeah. I mean, anyone can say it happened a
 14 certain way but physical evidence doesn't lie, does
 15 it?
 16 A Physical evidence is physical evidence, yes,
 17 sir.
 18 Q Right. So why didn't the physical evidence in
 19 this case overrule Donna Leshner's story that she was
 20 being attacked with a cane while Mr. Ellison was
 21 standing?
 22 A I can't answer that.
 23 Q Would you agree that that's a failure of the
 24 internal affairs to ferret out that inconsistency?
 25 MS. LaFEVER: Objection.

1 A Maybe more than internal affairs. It was
 2 reviewed by the prosecuting attorney's office as
 3 well.
 4 BY MR. LAUX:
 5 Q Well, it was also reviewed by the detective
 6 division, right?
 7 A Correct.
 8 Q So do you think it's any coincidence that the
 9 shooter's husband's subordinates didn't ask these
 10 questions?
 11 A I sure hope that's not the case.
 12 Q What's your professional opinion?
 13 A I think they're very professional and the best
 14 investigators in the state to do this.
 15 Q So this is just kind of a "whoops"?
 16 MS. LaFEVER: Objection.
 17 A It's hard -- I -- I can't explain it.
 18 MR. LAUX: I withdraw that.
 19 BY MR. LAUX:
 20 Q Do you agree that Mr. Ellison was not standing
 21 upright when he was shot by Donna Leshar?
 22 A From that trajectory, at best, he would have
 23 been leaning forward, if he was standing.
 24 Q He might have been kneeling or on the ground,
 25 too, right?

1 A Could be, yes, sir.
 2 Q My expert had the same file that the detective
 3 division had. That file contained the autopsy
 4 report. Did you ever -- strike that.
 5 Did Donna Leshar's story, about what Mr.
 6 Ellison was doing when she shot him, ever raise any
 7 red flags with you?
 8 A Not during the review of the file to prepare
 9 for the deadly force filing.
 10 Q At -- at some other time?
 11 A I didn't review it otherwise.
 12 Q So the answer is "no"?
 13 A No.
 14 Q If Mr. Ellison was not standing when he was
 15 shot, but rather he was kneeling, do you -- assuming
 16 that to be true, just for the sake of this question,
 17 do you have an opinion on whether Donna Leshar's
 18 shooting of him was objectively reasonable?
 19 A No question, it changes.
 20 Q What does it change to?
 21 A It -- well, first of all, it -- it changes the
 22 approaching with the cane and -- and limits the
 23 threat.
 24 Q I mean, is it a fair statement to say that if
 25 Mr. Ellison was not attacking her with a walking

1 cane like a baseball bat that shooting might not
 2 have been justified?
 3 A Correct.
 4 Q I mean, now that I've told you this
 5 information, do you have any thoughts about going
 6 forward with it?
 7 A I -- I do not have any immediate thoughts about
 8 going forward with it.
 9 Q How about long-term or less immediate thoughts
 10 about going forward with it?
 11 A I think there's some questions, yeah, based on
 12 on -- on that.
 13 But Mr. Laux, when -- it -- it has been since
 14 October of '11 when I wrote this so I would've
 15 reviewed the file prior to that. I mean, It would
 16 literally take me having to go back and -- because I
 17 -- I didn't look at this file to prepare for -- for
 18 anything today.
 19 Q Sure.
 20 A I'm just going strictly off a memory from five
 21 -- almost five years ago. And -- and -- and the
 22 only involvement was simply to review, based on the
 23 criteria set forth in the -- in the deadly force
 24 review.
 25 Q I understand all that, sir. But you're --

1 you're an officer. In fact, you're an assistant
 2 chief at the Little Rock -- Little Rock Police
 3 Department, correct?
 4 A Yes.
 5 Q And, I mean, justice, law and order is your
 6 business? Yes?
 7 A Yes.
 8 Q If Donna Leshar broke the law by shooting Mr.
 9 Ellison, what hesitation would you have in moving
 10 forward on that?
 11 A I'm not, by any means, saying she broke the
 12 law. There's definitely some things there that have
 13 the appearance of -- of inconsistency based on the
 14 trajectory of the bullets from that diagram.
 15 Q Would you recommend the prosecuting attorney's
 16 office to take another look at the Ellison shooting
 17 to see if the physical evidence matches the stories
 18 and the anecdotes of Leshar and McCrillis?
 19 MS. LaFEVER: Objection.
 20 A They did review it.
 21 MR. LAUX: Can you read my question
 22 back, please?
 23 (WHEREUPON, the previous question was
 24 read back by the reporter.)
 25 BY MR. LAUX:

1 Q I said "another look."

2 A I -- I think, initially, to do anything, you
3 would have to make a discussion with -- with my
4 boss, which would be my chief, based on -- on this
5 and -- and go from there.

6 Q Is that something you're willing to do?

7 MS. LaFEVER: Objection.

8 MR. LAUX: What's the basis?

9 MS. LaFEVER: I'm not counsel for the
10 City in the Troy Ellison matter and very
11 uncomfortable with some of these
12 questions, considering I don't represent
13 the City or Chief Thomas in the Ellison
14 litigation.

15 MR. LAUX: So your objection is?

16 I'm just -- I want to -- if I need to
17 clear the question, I want to know what
18 the objection is.

19 MS. LaFEVER: I -- I'm -- I don't
20 think it's an appropriate question for the
21 purposes of this deposition.

22 MR. LAUX: Okay.

23 BY MR. LAUX:

24 Q Well, with that objection understood and
25 recorded, can you answer the question, please?

1 A There's just so much that -- that I don't
2 remember. For me to -- to make that decision, Mr.
3 Laux, I think it would be prudent for me to have to
4 completely look at the file again. Fair --

5 Q I think that's -- I think that's reasonable.
6 Are you willing to do that?

7 A I -- I think that's what I will do and then --
8 and then discuss that with -- with my boss at this
9 point.

10 That's -- that's what I'm saying I'm -- based
11 on -- I mean, I -- I know -- the -- the file was
12 investigated. I know we've talked about some of the
13 -- the concerns the prosecutors looked at in the
14 initial time. We've established that. And you're
15 --

16 Q We don't know -- we don't know how thorough
17 their investigation was, do we?

18 A No idea.

19 Q Okay. Continue, please.

20 A So that -- that's what -- what I can say, if
21 that's the question that you're asking.

22 Q Okay. Fair enough, sir, I thank you for that.

23 Have you ever had a situation, either as a
24 patrol officer or a detective or a sergeant, where a
25 homicide suspect says a -- a shooting went a certain

1 way and then you develop physical evidence which
2 refuted that?

3 A I -- I can't think of anything off the top of
4 my head because I -- I've never investigated a
5 homicide, other than from the captain managing the
6 division as a whole.

7 Q I know that there are loyalties in the
8 department and that's natural.

9 But don't you agree with me that if Donna
10 Leshner's shooting of Mr. Ellison was not objectively
11 reasonable, it could have been a crime?

12 A Correct.

13 Q And if it could have been a crime, it should be
14 investigated, correct?

15 A A second time?

16 Q Yeah. "Yes" or "no"?

17 A Correct.

18 Q I mean, I don't understand why these things
19 were overlooked, but it seems to me that they were.

20 And so without pointing fingers, I just am
21 trying to see if you agree with me that it appears
22 that certain key, significant aspects were
23 overlooked in this case. Do you agree with that?

24 A Well, I -- I know that just in talking, some of
25 the things are -- are definitely in -- inconsistent.

1 Things happen rapidly. They evolved rapidly: your
2 perception based on what you saw, what you remember.

3 Q Right.

4 A And how you are perceiving things may be one
5 way. What actually is occurring could be, to a
6 slight degree, different.

7 Q When you're making a charging decision, you're
8 basing it on the facts that occurred, not the
9 perception of a shooter, right?

10 A Right.

11 Q Because perceptions can be anything?

12 A It's a piece of it. I mean, it's -- it's the
13 mindset of the officer at that moment in that
14 rapidly-evolving situation, based on objectively
15 reasonable decisions that another officer in that
16 same situation would make.

17 Q Okay. I'd like to show you what we're going to
18 mark as Plaintiff's Exhibit 2, which is the former
19 1, which is the Jessica Eubanks' packet.

20 MR. LAUX: This is pretty big, so
21 I'll get this back.

22 MS. LaFEVER: Is this the court
23 reporter's copy?

24 COURT REPORTER: Yeah, that's mine.
25 (WHEREUPON, a document was marked for

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF ARKANSAS
3 WESTERN DIVISION
4 SYLVIA PERKINS, as Personal
5 Representative of the Estate of
6 BOBBY MOORE, III, deceased PLAINTIFF
7 v. CASE NO.: 4:15-CV-310-BSM
8 JOSH HASTINGS, et al. DEFENDANTS
9

10 VIDEOTAPED DEPOSITION OF STUART THOMAS
11 TAKEN ON BEHALF OF THE PLAINTIFF
12 ON AUGUST 26, 2016 BEGINNING AT 10:14 A.M.
13 IN NORTH LITTLE ROCK, ARKANSAS

14 REPORTED BY SUSAN J. PYBAS, CCR
15 VIDEOTAPED BY JOHN SIMS
16
17
18
19
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21
22
23
24
25

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1 VIDEOGRAPHER: This begins Disc No.
 2 2. We're back on the record. The time is
 3 approximately 12:23 p.m.
 4 BY MR. LAUX:
 5 Q Sorry. Okay. Chief, we were talking a little
 6 bit about deadly force review boards and the reports
 7 that you received from those boards at the end of
 8 that -- at the end of our last segment, right?
 9 A Yes, sir.
 10 Q I'd like to show you what has been previously
 11 -- well, strike that.
 12 You and I first met when -- in the Ellison
 13 case, correct?
 14 A Yes, sir.
 15 Q And in the Ellison case, it was alleged that
 16 Donna Leshner and Tabitha McCrillis impermissibly
 17 entered Mr. Ellison's home and then shot and killed
 18 him in violation of his civil rights.
 19 Those are the allegations, correct?
 20 A Yes, sir.
 21 Q And -- and, ultimately, the City settled that
 22 case, correct?
 23 A That's my understanding.
 24 Q You were named as a defendant in that case, at
 25 one point, correct?

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1 A Yes, sir.
 2 Q I filed that complaint on October the 17th of
 3 2011.
 4 Do you accept that?
 5 A Yes, sir.
 6 Q In the news that evening, you gave a statement
 7 to the media about the incident, correct?
 8 A I don't know.
 9 Q I'm going to read you statement, and I'd like
 10 you to tell me if this is what you said, okay, on
 11 September -- I'm sorry -- on October 17, 2011.
 12 "The department has received a copy of the
 13 complaint filed today by Troy Ellison, Plaintiff,
 14 against Officer Donna Leshner, Detective Tabitha
 15 McCrillis, myself, and the City of Little Rock" --
 16 I'm sorry -- "the City of Little Rock and Big
 17 Country Chateau -- Chateau, LLC. While the response
 18 on behalf of the City and its named employees will
 19 be filed in the proper venue in a timely manner, I
 20 will say -- I will, at this time, state that this
 21 incident has undergone intense departmental review
 22 and that the actions of the officers were exonerated
 23 by both the prosecuting attorney and the department.
 24 Further, I do not believe that the proof will
 25 ultimately support the allegations of unlawful

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1 customs or practices by this department, and I have
 2 been assured of a vigorous defense by the City
 3 Attorney's office."
 4 Do you dispute that you gave that quote to the
 5 media on or about October 17?
 6 A I wouldn't dispute it.
 7 Q As we sit here today, sir, do you believe that
 8 the incident, which is the shooting of Eugene
 9 Ellison, underwent intense departmental review?
 10 A I don't believe that's unreasonable, no, sir.
 11 Q You sitting here today, you think that the
 12 Ellison shooting received -- underwent intense
 13 departmental review by your detective division; is
 14 that right?
 15 A Yes, sir. I think -- I think it did.
 16 Q And by "intense," you mean, "rigorous"?
 17 MS. LaFEVER: Objection.
 18 BY MR. LAUX:
 19 Q What do you mean by "intense departmental
 20 review"?
 21 Because I'll tell you what I -- what I think it
 22 means -- I tell you what I think it means and you
 23 tell me if I'm right.
 24 I think it means a strenuous, vigorous, and
 25 thorough investigation. That's -- when I hear

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1 "intense," that's what I think.
 2 Is that a fair interpretation by me?
 3 A I would say "thorough" was -- was my thought at
 4 the time. I -- I have subsequently, during the
 5 course of that, seen a few things that didn't get
 6 done but --
 7 Q Well, hold on. I --
 8 A -- but I -- I think it was "thorough."
 9 Q Okay. So as we sit here today, in 2016, you
 10 think that your detective division provided the
 11 Ellison family with a "thorough" review of that
 12 shooting?
 13 MS. LaFEVER: Objection.
 14 A Yes.
 15 BY MR. LAUX:
 16 Q Okay. You wouldn't have made that statement to
 17 the media unless you felt it, right?
 18 A (Nods head up and down.)
 19 Q Is there any reason why you felt compelled to
 20 give your statement the night of the lawsuit rather
 21 than, maybe, kind of taking some time and thinking
 22 about what you wanted to say?
 23 A I have no idea.
 24 Q Do you regret, at all, making the statement
 25 that your -- as to your belief that the incident

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1 underwent intense departmental review? Do you -- do
 2 you regret at all saying that on October 17, 2011?
 3 MS. LaFEVER: Objection.
 4 A Probably, so. I don't know why I made a
 5 statement, other than, typically neutral. I --
 6 BY MR. LAUX:
 7 Q Well, this -- this was a pretty unique
 8 situation, wasn't it?
 9 A Yes.
 10 Q You had a -- a white female shoot and kill a
 11 black colleague's father, right?
 12 A Yes.
 13 Q And then you authorized -- rather than seeking
 14 an independent agency to review it, given the
 15 circumstances, you authorized the LRPD detective
 16 division to do the criminal investigation of Donna
 17 Leshner, right?
 18 A Yes, sir.
 19 Q You knew, at that time, that her husband was
 20 the sergeant in charge of that division, correct?
 21 A In -- yes.
 22 Q And you knew that his subordinates, at the very
 23 least, would be involved in building a criminal case
 24 against his wife?
 25 MS. LaFEVER: Objection.

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1 A Yes.
 2 BY MR. LAUX:
 3 Q You didn't see any problems with that at the
 4 time that you authorized it, did you?
 5 A I thought that he was not a participant in the
 6 investigation, that Lieutenant King was conducting
 7 the investigation, and -- and I didn't see a
 8 problem.
 9 Q And so there -- you didn't see a problem with
 10 it, right?
 11 A Correct.
 12 Q You thought that Donna -- James Leshner's
 13 subordinates wouldn't feel any type of a conflict to
 14 the point where it would interfere with their
 15 investigation. That was your belief at the time,
 16 correct?
 17 A Yes, sir.
 18 Q Do you think, as we sit here today, that that
 19 was an accurate belief by you?
 20 A Yes.
 21 Q Okay. Great. I'd like to show you what we
 22 marked this last -- this week as Wayne Bewley -- not
 23 Brewley -- but Bewley Exhibit No. 1. And I'll
 24 represent to you, sir, that this is the deadly force
 25 -- deadly force review board pertaining to the

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1 Ellison shooting.
 2 It also is a couple of pages of testimony by
 3 Donna Leshner, and you were at that deposition,
 4 remember?
 5 A Yes, sir.
 6 Q And also a still photograph of Donna Leshner
 7 from that deposition. You saw that live, though,
 8 correct?
 9 A Yes, sir.
 10 Q And, then, finally, a declaration and other
 11 materials from a -- a consultant that I retained in
 12 the Ellison case.
 13 Now, you agree with me that Donna Leshner's
 14 justification for shooting Mr. Ellison was that he
 15 was attacking her with a -- a walking cane, right?
 16 A Yes, sir.
 17 Q And if you go to the first page of the
 18 transcripts on here, you'll see on page 326, I ask
 19 the following question of Leshner and she gives the
 20 following answers. I ask the questions; she gives
 21 the answers.
 22 "Question: You indicate in your statement that
 23 Mr. Ellison was swinging the cane over his head like
 24 a baseball bat, correct?"
 25 "Answer: Yes."

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1 "And he was standing upright when he did that,
 2 correct?"
 3 "Answer: Yes."
 4 A little further down, line 18:
 5 "Would you please demonstrate what Mr. Ellison
 6 was doing with the cane at the time that you shot
 7 him?"
 8 Line 25, partially obscured:
 9 "He was holding the cane like this," and then
 10 she indicates, right?
 11 A Yes, sir.
 12 Q Now let's turn the page.
 13 This video still is of the precise moment that
 14 she's making those statements and giving that
 15 testimony.
 16 You don't dispute that, do you?
 17 A (Reviews document.) No, sir.
 18 Q Mr. Ellis -- she -- she's standing upright, is
 19 she not?
 20 A Yes, sir.
 21 Q Okay. Now, if you can turn the page.
 22 You reviewed this file very thoroughly before
 23 these two officers were exonerated for this
 24 shooting, correct?
 25 A Yes, sir.

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1 Q And that was part of the intense departmental
2 review that the case underwent, true?
3 A Yes, sir.
4 Q You wanted to make sure that Leshar was telling
5 the truth, right?
6 A Yes, sir.
7 Q And have you ever had an occasion, in your many
8 years as an officer, particularly when you were a
9 homicide detective, where a -- a homicide suspect
10 gives you an account of what happened which is
11 inconsistent with the physical evidence from the
12 incident? Have you ever had an occasion where
13 that's happened?
14 A Yes, sir.
15 Q Have you ever had an occasion where the
16 statement of the suspect in a homicide investigation
17 is diametrically opposed to the physical evidence?
18 A I -- I don't know. I've had statements --
19 Q Let me ask --
20 A -- that are at odds.
21 Q Have you ever had an occasion to see physical
22 evidence refute a homicide suspect's testimony?
23 A Yes.
24 Q When that happens, and you have to pick a side,
25 which side do you you pick?

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1 A Without any other --
2 Q Right.
3 A -- if it's just that --
4 Q Yes.
5 A -- I tend to support the evidence.
6 Q Right. The physical evidence.
7 A The physical evidence.
8 Q Okay. Because it's objective, right?
9 A Yes, sir.
10 Q It -- it's -- it's not prone to lying, right?
11 Right?
12 A Yes.
13 Q So here's my question for you, sir.
14 Please turn to the first diagram that shows
15 three skeletons standing upright. Now, if -- if --
16 if you need any foundation or if you need any help
17 on where this information comes from, you can most
18 certainly consult the declaration by the expert
19 biomechanical engineer.
20 But I will purport to you that based on the
21 autopsy, which was part of the file that you
22 reviewed during the intense departmental
23 investigation, the autopsy shows that the bullets
24 traveled in Mr. Ellison's body lengthwise. That
25 means they entered his body near the clavicle. But

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1 the bullets, Donna Leshar's hollow point bullets,
2 which bored through his body and lodged in him, were
3 removed from his T10 vertebrate and his buttocks.
4 Since you performed and oversaw an intense
5 departmental review of the Ellison shooting, I'd
6 like to know how the bullets wound up in
7 Mr. Ellison's T10 and his upper buttocks, if he was
8 standing upright when Donna Leshar shot him?
9 MS. LaFEVER: Objection.
10 BY MR. LAUX:
11 Q Can you answer that question, Chief?
12 A No, sir.
13 Q Did anybody, at any time, ask Donna Leshar, "If
14 Mr. Ellison was standing when you shot him, like you
15 say, how do you account for the bullets winding up
16 where they were?"
17 A I don't recall that that was asked, no, sir.
18 Q Do you agree with me that that is a central
19 issue in this case?
20 MS. LaFEVER: Objection.
21 BY MR. LAUX:
22 Q Strike that.
23 If Mr. Ellison wasn't standing upright, he
24 probably wasn't presenting a justifiable threat of
25 death or great bodily harm?

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1 MS. LaFEVER: Objection.
2 BY MR. LAUX:
3 Q Do you agree?
4 A Yes.
5 Q And if he wasn't presenting a reasonably
6 objective fear of death or great bodily harm, then
7 the shooting of him by Donna Leshar was not
8 justified; do you agree?
9 A If he was posing no threat to her, that's
10 correct.
11 Q Well, what I said was "if he was not standing."
12 Do you agree with that?
13 A Yes, and -- under general circumstances, yes.
14 Q But related --
15 A Not -- not all, but in general, yes.
16 Q -- a related but distinct aspect is she's
17 either lying or woefully inaccurate about his body
18 position when she shot him; do you agree with that?
19 MS. LaFEVER: Objection.
20 A Yes. Given this, yes.
21 BY MR. LAUX:
22 Q Can you see why a person who shoots another --
23 can you see why an officer who shoots somebody
24 unjustifiably, can you see how that officer might be
25 tempted to lie about it?

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1 MS. LaFEVER: Objection.
 2 A If -- if an officer perceives it as an
 3 unjustifiable act, yeah, I can -- it -- it would not
 4 be beyond the realm of possibility.
 5 BY MR. LAUX:
 6 **Q Let's put it this way. If an officer shoots**
 7 **somebody who is not presenting an objectively**
 8 **reasonable threat of death or great bodily harm and**
 9 **despite that, the officer shoots that person, can**
 10 **you see how that officer afterward would have an**
 11 **incentive to lie about what happened?**
 12 MS. LaFEVER: Objection.
 13 A Yes.
 14 BY MR. LAUX:
 15 **Q And this particular officer, Donna Leshner, has**
 16 **a prior untruthfulness sustained, doesn't she?**
 17 A I think that's correct, yes.
 18 **Q Since you had the autopsy report that**
 19 **presumably you reviewed during the intense**
 20 **departmental review, and since you had the**
 21 **statements of Donna Leshner, why didn't you ask her**
 22 **to reconcile the physical evidence with her story?**
 23 A I don't necessarily recall specifically that.
 24 **Q You don't recall specifically what?**
 25 A Thinking that I needed to ask her that. I just

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1 don't recall in the -- in the review there. I
 2 recall the statements of the other officers as well.
 3 **Q Yeah. But what I'm -- I'm -- I am sorry.**
 4 A And I -- I don't recall noting that --
 5 **Q You -- you -- you read the autopsy?**
 6 A -- as a follow-up.
 7 **Q You -- you read the autopsy report, right?**
 8 A I'm sure I did.
 9 **Q And the autopsy report is -- is the basis for**
 10 **the information in this.**
 11 **So my question is is if you read the autopsy**
 12 **report -- report and you appreciated it, right, if**
 13 **you read it --**
 14 A Yes.
 15 **Q -- for purpose --**
 16 A Yes.
 17 **Q -- you would know where the bullets wound up in**
 18 **this man, right?**
 19 A Yes, sir.
 20 **Q And -- and my question is is assuming that you**
 21 **did read it purpose -- purposefully and you did come**
 22 **to the conclusion of where the bullets were and then**
 23 **you look at Donna Leshner's statement, my question is**
 24 **is why didn't you ask her to reconcile the**
 25 **differences between the physical evidence, on the**

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1 **one hand, done by an independent medical examiner,**
 2 **and her subjective account, on the other hand, as a**
 3 **person who just shot someone? Why didn't you ask**
 4 **her to reconcile those two things?**
 5 MS. LaFEVER: Objection.
 6 A I don't know.
 7 BY MR. LAUX:
 8 **Q Did you drop the ball on that?**
 9 MS. LaFEVER: Objection.
 10 A I don't know.
 11 BY MR. LAUX:
 12 **Q Is that a flaw in the investigation?**
 13 MS. LaFEVER: Objection.
 14 A I don't know.
 15 BY MR. LAUX:
 16 **Q Don't you think that there are people in prison**
 17 **right now who have been arrested by the LRPD in a**
 18 **homicide investigation and who have said, "It**
 19 **happened a certain way," that is justifiable, but**
 20 **the evidence shows that it happened in a way that**
 21 **wasn't justifiable?**
 22 **You agree with me that when those persons come**
 23 **in that kind of a scenario, those persons, assuming**
 24 **there's an appropriate prosecution, wind up in jail?**
 25 A I -- I don't know. I assume with the

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1 prosecution, yes.
 2 **Q Wayne Bewley looked at this diagram and looked**
 3 **at this Exhibit No. 1 for his deposition, Bewley 1,**
 4 **and he came to the conclusion that it represented a**
 5 **failure of the investigation.**
 6 MS. LaFEVER: Objection.
 7 BY MR. LAUX:
 8 **Q Do you agree with that?**
 9 A I don't know that I necessarily agree that it
 10 -- that is a failure of the investigation. It's
 11 something that -- that probably should've been
 12 addressed.
 13 BY MR. LAUX:
 14 **Q It's central to whether the shooting was**
 15 **justified, isn't it?**
 16 MS. LaFEVER: Objection.
 17 A I don't know that I can necessarily say that.
 18 I don't --
 19 BY MR. LAUX:
 20 **Q You don't think --**
 21 A -- I don't know what his body position would
 22 have been at the time of the discharge of the
 23 weapon.
 24 **Q Yeah. But you know what it wasn't, right? You**
 25 **know he wasn't standing, right?**

<p style="text-align: right;">Page 146</p> <p>1 MS. LaFEVER: Objection.</p> <p>2 A I -- he could have been. He could have been</p> <p>3 pivoted forward at the hip. I -- I don't know.</p> <p>4 BY MR. LAUX:</p> <p>5 Q He wasn't standing upright, was he?</p> <p>6 MS. LaFEVER: I'm going to object.</p> <p>7 A From -- from that diagram, I don't see how he</p> <p>8 could have been.</p> <p>9 BY MR. LAUX:</p> <p>10 Q Based on the autopsy, Mr. Ellison was not</p> <p>11 standing upright when he was shot by Donna Leshner.</p> <p>12 Do you agree with that or do you not agree with</p> <p>13 that?</p> <p>14 A I don't recall.</p> <p>15 Q I'm asking you if you agree with that or not.</p> <p>16 A I don't recall that the -- the autopsy said</p> <p>17 "standing." I just don't recall.</p> <p>18 Q Based on the bullet trajectory and the diagrams</p> <p>19 in the autopsy, which require a little bit of</p> <p>20 reading --</p> <p>21 A Yeah.</p> <p>22 Q -- you agree with me, that Mr. Ellison was not</p> <p>23 standing upright as demonstrated by Donna Leshner at</p> <p>24 her deposition when she shot him, or do you not</p> <p>25 agree with that?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q I'm asking if you think that's pertinent?</p> <p>2 A Yes.</p> <p>3 MS. LaFEVER: I believe he said</p> <p>4 "yes," Mr. Laux.</p> <p>5 A Yes.</p> <p>6 MR. LAUX: Well, no, he didn't.</p> <p>7 BY MR. LAUX:</p> <p>8 Q You agree that it's pertinent -- you said it in</p> <p>9 follow-up. I'm sorry. Thank you. Okay.</p> <p>10 So just so we're sure, as we sit here today,</p> <p>11 now having looked at Bewley Exhibit 1, do you stand</p> <p>12 by your belief that the Ellison shooting underwent</p> <p>13 intense departmental review? You stand by that?</p> <p>14 A I believe -- yes.</p> <p>15 Q Okay. You're aware that the City paid a</p> <p>16 settlement on behalf of the two officers, correct?</p> <p>17 A I'm given to believe that, yes, sir.</p> <p>18 Q And that cost the City money, didn't it,</p> <p>19 ultimately?</p> <p>20 A I don't know where it came from, sir.</p> <p>21 Q Don't know?</p> <p>22 A No.</p> <p>23 Q Okay. So I'd like to talk about John Gilchrist</p> <p>24 or Gilchrist. Do you recall that officer?</p> <p>25 A Yes, sir.</p>
<p style="text-align: right;">Page 147</p> <p>1 MS. LaFEVER: Objection.</p> <p>2 A Standing totally upright, I -- I don't know. I</p> <p>3 -- I don't know how.</p> <p>4 BY MR. LAUX:</p> <p>5 Q Standing upright, sir, it's a really -- it</p> <p>6 means "standing erect." It means "standing in a</p> <p>7 straight line."</p> <p>8 A Standing in a straight line?</p> <p>9 Q Yeah.</p> <p>10 A No, it does not appear so.</p> <p>11 Q She said he was standing upright, correct?</p> <p>12 A Yes, sir.</p> <p>13 Q He -- he was not standing upright when he was</p> <p>14 shot, correct?</p> <p>15 A Yes, sir.</p> <p>16 MS. LaFEVER: Objection.</p> <p>17 BY MR. LAUX:</p> <p>18 Q Do you think that that is pertinent information</p> <p>19 when trying to determine whether her shooting was</p> <p>20 justified?</p> <p>21 A It's -- it is an element that should have been</p> <p>22 considered, yes.</p> <p>23 Q Do you think it's pertinent? If you don't,</p> <p>24 that's okay.</p> <p>25 A Yes, sir.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q I'll show you what we're going to mark as</p> <p>2 Plaintiff's Exhibit 8.</p> <p>3 MR. LAUX: Excuse me.</p> <p>4 (WHEREUPON, a document was marked for</p> <p>5 identification as Exhibit No. 8 and is</p> <p>6 attached hereto.)</p> <p>7 BY MR. LAUX:</p> <p>8 Q So I'm just going to kind of go through this</p> <p>9 quickly. If you need more time, please let me know.</p> <p>10 A (Reviews document.)</p> <p>11 Q You became chief of police in 2005, correct?</p> <p>12 A Yes, sir.</p> <p>13 Q Prior to your becoming chief, John Gilchrist</p> <p>14 here has a -- a sustained violation involving a</p> <p>15 disturbance and domestic battery, correct?</p> <p>16 A Yes, sir.</p> <p>17 Q And -- and what's interesting is it's a --</p> <p>18 it's a domestic battery incident, right?</p> <p>19 A Yes, sir.</p> <p>20 Q And yet the domestic -- domestic battery is not</p> <p>21 sustained, correct?</p> <p>22 A Yes, sir.</p> <p>23 Q But what is sustained is conduct unbecoming,</p> <p>24 right?</p> <p>25 A Yes, sir.</p>

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

SYLVIA PERKINS, as Personal
Representative of the Estate of
BOBBY MOORE, III, deceased

PLAINTIFF

v.

CASE NO.: 4:15-CV-310-BSM

JOSH HASTINGS, et al.

DEFENDANTS

VIDEOTAPED DEPOSITION OF JAMES (JB) STEPHENS
TAKEN ON BEHALF OF THE PLAINTIFF
ON MARCH 25, 2016 BEGINNING AT 1:04 P.M.
IN NORTH LITTLE ROCK, ARKANSAS

REPORTED BY SUSAN J. PYBAS, CCR
VIDEOTAPED BY JOHN PIERSON

ELLISON

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1 A Yes.

2 Q Who complained that the testing was never done?

3 A I have no idea.

4 Q You don't remember?

5 A No.

6 Q Well, then, how do you know it came up?

7 A Here, again, I was told that somebody was

8 complaining it was never tested.

9 Q Okay. Fair enough, but then who told you that?

10 MS. AUSTIN: Object to the form.

11 Asked and answered.

12 A I'm sorry, sir, I don't remember.

13 BY MR. LAUX:

14 Q Okay. Failing to rule in or out that Josh

15 Hastings touched that gear shifter, by virtue of

16 testing, was a flaw in the criminal investigation of

17 him.

18 Do you agree with that statement or do you

19 disagree with that statement?

20 A I agree with that statement.

21 Q Do you think the LRPD detective division did a

22 thorough job of investigating the shooting of Bobby

23 Moore by Josh Hastings?

24 A Yes, sir.

25 Q You think it was up to the standards set by the

1 Little Rock Police Department's detective division?

2 A Yes, sir.

3 Q Were you, at all, involved in the

4 police-involved shooting of Eugene Ellison?

5 A No, sir.

6 Excuse me. I think I was in a deadly force

7 review of that one.

8 Q You don't say.

9 You're familiar, then, with what happened in

10 that case, are you?

11 A Yes, sir. If I remember correctly, I think

12 that's the one I was, yes, sir.

13 Q And Donna Leshar gave a story in that case --

14 or strike that.

15 Donna -- Donna Leshar had a rendition of what

16 happened in that case, in terms of what Mr. Ellison

17 was doing when he was shot, right?

18 MS. AUSTIN: Object to the form.

19 A Yes, sir.

20 BY MR. LAUX:

21 Q And she said, as reflected in that defense --

22 in that deadly force review board report -- she

23 stated that Mr. Ellison was swinging his baseball

24 bat -- swinging his walking cane at her like a

25 baseball bat, right?

1 A Yes, sir.

2 Q And she said that he was standing upright when

3 she shot him, correct.

4 MS. AUSTIN: Objection to form.

5 A Yes, sir.

6 BY MR. LAUX:

7 Q And she was standing upright when she shot him,

8 right?

9 MS. AUSTIN: Objection to form.

10 A Yes, sir.

11 BY MR. LAUX:

12 Q You reviewed, certainly, the internal affairs

13 file related to the Ellison shooting, right?

14 A Yes, sir.

15 MS. AUSTIN: Object to the form.

16 BY MR. LAUX:

17 Q You wouldn't not review it, if you're on the

18 deadly force review board, correct?

19 MS. AUSTIN: Object to the form.

20 A Correct.

21 BY MR. LAUX:

22 Q Did you review the detective division file

23 attendant to the Ellison shooting?

24 A No. The only one I reviewed was the -- the IA

25 file.

1 Q The IA file contained Mr. Ellison's autopsy

2 report, didn't it?

3 A I'm sure it did, yes, sir.

4 Q I have a question for you.

5 A Uh-huh.

6 Q If Mr. Ellison was standing upright when Donna

7 Leshar shot him -- and accepting the fact that she

8 is shorter than he is and accepting the fact that

9 the bullets entered Mr. Ellison in his upper chest

10 near his clavicle -- can you tell me how it was that

11 the autopsy medical examiner removed them from T-10?

12 A You're -- you're pointing to your back here,

13 sir. I --

14 Q Do you know what T-10 is?

15 A No.

16 Q Okay. Yeah, T-10 is -- is -- is the lower

17 portion of the back.

18 Do you know why -- if Mr. Ellison was standing

19 upright when Donna Leshar shot him, do you know why

20 the bullets were removed from his lower back?

21 A No, sir.

22 Q That's information that was in the autopsy

23 report that you received.

24 A Okay.

25 Q Did you ever ask Donna Leshar, "Hey, Officer

Page 214

1 Leshar, you say you were standing and Mr. Ellison
 2 was standing when you shot him. How did the bullets
 3 wind up in his lower back?"
 4 Did you ever ask that question?
 5 A No. I never questioned Donna Leshar.
 6 Q Did you ever have a question, in your mind,
 7 about that?
 8 A No.
 9 Q Did you ask anybody with whom you worked on
 10 this deadly force review board, "Hey, what's up with
 11 the location of the bullets in this man's lower
 12 back?"
 13 A No.
 14 Q Do you agree with me that bullets that travel
 15 the length of a person's body is inconsistent with
 16 that person standing upright if the other person,
 17 the shooter, is upright?
 18 A I have no idea, sir.
 19 Q Did you thoroughly participate in the deadly
 20 force review of the Ellison shooting?
 21 A I was on the panel, yes, sir.
 22 Q Did you take that -- did you take your
 23 responsibility on that panel seriously?
 24 A Yes, sir.
 25 Q Did you see anything in the autopsy report that

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1 was inconsistent with the statement of Donna Leshar?
 2 A Not that I recall.
 3 MR. LAUX: I'd like to mark this as
 4 Exhibit No. 25.
 5 THE WITNESS: This goes over here?
 6 MR. LAUX: Yes, sir. Yes, please.
 7 MS. AUSTIN: This memorandum's 24,
 8 right?
 9 MR. LAUX: Yes.
 10 (WHEREUPON, a document was marked for
 11 identification as Plaintiff's Exhibit No.
 12 25 and is attached hereto.)
 13 BY MR. LAUX:
 14 Q I'd like to show you this two-page document,
 15 which was not drafted by you, but it is from the
 16 incident, the DD investigation of the shooting of
 17 Bobby Moore, and that's incident No. 12-88993.
 18 I want you to take a look at these two sheets,
 19 sir, and tell me if you've ever seen these two
 20 sheets before today.
 21 A (Reviews document.) If they were in the
 22 criminal file, then I probably seen them, but I
 23 don't specifically recall these two sheets.
 24 Q Would it make you comfortable to look through
 25 the file that you brought here to locate this sheet

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1 so that we can be sure that you looked at it?
 2 A Sure. It would be in the back of that. May I
 3 have that other volume?
 4 (Reviews documents.) Sir, I don't see it in
 5 here. However, I -- if it was in the criminal file,
 6 it may be well that I would have seen it.
 7 Q Let me -- let me see that copy. Is that okay
 8 with you?
 9 A Sure.
 10 Q A lot of work and effort from many, many
 11 different people went into this file, correct?
 12 A Yes, sir.
 13 Q And, in fact, the city had to retain an expert
 14 and had to pay that expert to test the rendition
 15 given by Josh Hastings as to what happened that day,
 16 correct?
 17 MS. AUSTIN: Object to the form.
 18 A I have no knowledge of that, sir.
 19 BY MR. LAUX:
 20 Q You don't know anything about an expert being
 21 retained by the city to run tests on the car?
 22 MS. AUSTIN: Objection to form.
 23 A No, sir.
 24 BY MR. LAUX:
 25 Q Okay.

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1 A It was in the bottom.
 2 Q Thank you. Okay. Oops, I'm sorry.
 3 A It's quite all right. It's just a copy.
 4 Q This was the file that you had and what you
 5 used when you went and were involved in the
 6 investigation?
 7 A Yes, sir, it's the file I compiled.
 8 Q Okay. I mean, it's the exact one that you
 9 used?
 10 A You're talking about it's an exact copy of the
 11 criminal file?
 12 Q The -- the exact copy of everything that you
 13 reviewed when you were involved in the
 14 investigation.
 15 A Yes, sir.
 16 Q Okay. And is it your understanding that there
 17 is a complete copy of the detective division file in
 18 this file?
 19 A It's in different places but, yes, sir.
 20 Q Okay. I hate to take the time here, but it's
 21 kind of important.
 22 A That's quite all right, sir.
 23 Q Did Josh Hastings tell you, at some point, that
 24 he held his gun in a specific way or in an odd or
 25 unique way that accounted for bullet -- bullet --

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

SYLVIA PERKINS, as Personal
Representative of the Estate of
BOBBY MOORE, III, deceased

PLAINTIFF

v.

CASE NO. 4:15-CV-310 BSM

JOSHUA HASTINGS, et al.

DEFENDANTS

VIDEOTAPED DEPOSITION OF:

CAPTAIN HEATH A. HELTON

(Taken September 19th, 2016, at 9:04 a.m.)

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1 Q Yeah.
 2 A -- I mean, they're not firing at me or
 3 anything like that --
 4 Q Right, right.
 5 A -- but is it still a perceived threat.
 6 Q Yeah. Well, the -- the -- the policy doesn't
 7 say that you can't fire outside in unless you
 8 perceive a threat, though, does it?
 9 A No, it does not.
 10 Q It says "unless you're drawing fire." It's
 11 very specific; right?
 12 A But then again, you have to --
 13 Q Am I correct?
 14 A -- she has to -- yeah, you're -- you're
 15 correct, you're exactly correct.
 16 Q And she knew that he had a walking cane;
 17 right?
 18 A I'm --
 19 MS. LAFEVER: Objection.
 20 A -- assuming that's what she -- she did.
 21 BY MR. LAUX:
 22 Q So just so we're clear. You don't think that
 23 she violated General Order 303 when she shot from
 24 outside the dwelling inside the dwelling, shooting
 25 Mr. Ellison who had a walking cane, you don't think

Page 247

1 that was a violation of that provision of -- of
 2 General Order 303?
 3 A If you're -- based on that language, the way
 4 you're phrasing it, yes. But the --
 5 Q I mean, I'm just phrasing --
 6 A -- the use of -- the use of why -- her
 7 decision to use force is interp -- I mean, that's a
 8 whole other topic in itself.
 9 Q Exactly. But you can say without equivocation
 10 that she violated General Order 303 by shooting
 11 outside in when she wasn't drawing fire?
 12 A I'm not going to say she --
 13 MS. LAFEVER: Objection.
 14 A -- violated. I can say that she probably
 15 didn't conform to that policy. But --
 16 BY MR. LAUX:
 17 Q What's the difference?
 18 A -- the reason she didn't conform might be
 19 based on what her perception was, a threat that was
 20 confronting her at the time.
 21 Q What's the difference between violating and
 22 not confirming to the policy?
 23 A You can -- again, a violation is clearly I
 24 violate. If I didn't confirm, based on another
 25 factor that was coming into play, you know, I

Page 248

1 mean --
 2 Q That's the difference?
 3 A -- it's -- it's all -- you know, like the
 4 proverbial -- there's a fire in this building, we
 5 don't use the elevator when there's fire, but
 6 there's some people that are going to do it anyway.
 7 I'm going to run down the stairwell. There's going
 8 to be separate issues, what she perceived as that
 9 threat on why she chose to -- to not confirm to that
 10 policy. I'm not going to say she violated --
 11 Q My question is --
 12 A -- she didn't conform to it.
 13 Q -- what -- what's the difference between not
 14 conforming to a policy and not following a policy?
 15 What's the difference?
 16 A Well, it's -- you see, now you've change your
 17 language.
 18 Q Well, yeah, I have.
 19 A Because a minute ago --
 20 Q Let me ask you this way.
 21 A -- you're talking about violating it.
 22 Q Let me ask you this way.
 23 COURT REPORTER: One at a time, please.
 24 BY MR. LAUX:
 25 Q You agree -- you agree with me that Donna

Page 249

1 Leshar did not follow General Order 303 when she
 2 shot from outside the dwelling inside, killing
 3 Mr. Ellison?
 4 A I agree.
 5 Q Was she --
 6 MR. LAUX: All right. We're done for
 7 right now.
 8 VIDEOGRAPHER: We are going off the
 9 record. The time is approximately 12:50 a --
 10 or -- p.m.
 11 (A brief recess is taken.)
 12 VIDEOGRAPHER: This begins Disk No. 3. We
 13 are back on the record. The time is
 14 approximately 1:05 p.m.
 15 BY MR. LAUX:
 16 Q Before you, Captain, is Helton Exhibit No. 6,
 17 which are the City of Little Rock's responses to
 18 interrogatories in a case called Hawkins versus
 19 Christ, Roberts, Thomas, and the City of Little
 20 Rock. I know you didn't prepare this document, but
 21 does that -- does this exhibit purport to be what I
 22 said it was?
 23 (Exhibit 6 was marked for identification.)
 24 A Yes, sir.
 25 Q And if I could direct your attention to

63 (Pages 246 to 249)

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1 A -- swing their weight around.
 2 Q -- the City negotiates with the union and you
 3 guys reach a deal, you reach an agreement?
 4 A They haven't done one yet, sir.
 5 Q What I'm saying is are you saying that
 6 the -- the union controls what goes on at the City?
 7 A Ain't going to say they control, but they --
 8 they -- they -- a lot of things are bargained into
 9 our contract and things like that, so it's a --
 10 Q Well, a lot of things --
 11 A -- lot of red tape in there. I guess, I --
 12 Q -- to your -- to your -- a lot -- a lot of
 13 them are to the officer's benefit, aren't they?
 14 A You know, that, I don't -- I'm -- I'm upper
 15 management now, so a lot of that stuff don't benefit
 16 me.
 17 Q Okay. So -- so just so we're clear. What --
 18 what do -- what did you do when you were involved in
 19 training? What did you do to make sure that your
 20 officers were passing physical fitness tests?
 21 A Well, that was an in-service thing, so I
 22 wasn't in charge of that component. I was -- you
 23 know, recruits, we did physical fitness all the
 24 time, so that was something that I harp on and harp
 25 on in recruit training, that, you know, it's --

1 physical fitness is, you know, important, it's a
 2 direct correlation to be able to keep yourself calm
 3 in high-stress situations, you know, whether you're
 4 practicing tactical breathing, whether you're
 5 learning to keep your adrenaline down and things
 6 like that. I mean, physical fitness is -- it's
 7 important to managing stress, it's important to all
 8 aspects of your life, especially when you do this
 9 line of work.
 10 Q So why is it, then, that officers were allowed
 11 to fail components of their physical fitness exam
 12 but still go on patrolling in the field as though
 13 they had passed it?
 14 A It's not something that's mandated by the
 15 State that is required for officers to pass on a
 16 yearly basis.
 17 Q So why -- that doesn't mean that the
 18 department can't make those mandated.
 19 A The department has not -- it's not a
 20 requirement. They have never required it. And when
 21 we -- we've just recently tried to require it --
 22 Q Uh-huh.
 23 A -- and we met some resistance from the union.
 24 Q Uh-huh. Well, you can see how they would --
 25 you know, they -- so -- so that -- it's a done deal

1 then, I guess, is that it?
 2 A No, it's not a done deal. I think there's
 3 some negotiations that are going to take place in
 4 next year's contract to -- to get that. And I
 5 think, overall, from the union's standpoint, a
 6 majority of the union was for a physical fitness
 7 standard, but there were a handful -- you know, my
 8 understanding, there were seven officers that were
 9 not supportive, and then the union, of course, they
 10 have to represent the voice of those seven, so that
 11 was kind of the deciding issue. But I know --
 12 Q So you're --
 13 A -- my understanding, there's negotiations
 14 ongoing about how to reimplement the physical
 15 fitness testing for ongoing sworn personnel and the
 16 implications for those who do not pass.
 17 Q Okay. So you're saying that the minority of
 18 seven people outweighed the majority who wanted the
 19 physical fitness requirements?
 20 A That's pretty much how it worked, yes, sir.
 21 Q Does that make a lot of sense to you?
 22 A Not really.
 23 Q Okay. But that's -- that's -- that's the
 24 standard operating procedure right now at the Little
 25 Rock Police Department between the FOP and the City

1 as it relates to physical fitness?
 2 MS. LAFAVER: Objection.
 3 A You know, you'd have to get, probably, one of
 4 the FOP board members to address that issue, sir.
 5 BY MR. LAUX:
 6 Q Were you on the Deadly Force Review Board for
 7 the Ellison Iesh -- the el -- Eugene Ellison
 8 shooting?
 9 A Yes, sir, I was.
 10 Q Mr. Ellison was shot twice by Donna Leshner;
 11 right?
 12 A I believe so, yes, sir.
 13 Q And she claims that he was standing when she
 14 shot him; right?
 15 A Yes, sir, I believe so.
 16 Q He was upright and he was threatening her
 17 with -- with a walking cane; right?
 18 A Yes, sir.
 19 Q She was standing; he was standing; right?
 20 A Yes, sir.
 21 Q And the bullets went into Mr. Ellison's chest,
 22 in his upper chest near his clavicle; do you agree?
 23 A I guess that's where I -- I don't -- I don't
 24 remember all the facts on that, but I -- I believe
 25 that's -- I know they were in the upper torso.

1 Q But that was a very serious case; right?

2 A Yes, sir.

3 Q And you -- you reviewed the file thoroughly;

4 correct?

5 A Yes, sir.

6 Q The bullets went the length of his body, so

7 they entered up here by his clavicle, but they were

8 removed from his T10 vertebrae and his upper

9 buttocks, which means they traveled the length of

10 his body. Do you think that's consistent or

11 inconsistent with him standing at the time that

12 Donna Leshar shot him?

13 A You know, I don't know. It depends, you know,

14 what -- bullets can, you know, hit and ricochet

15 down. I mean, I've seen some pretty --

16 Q You think bullets can ricochet down in a

17 person's body?

18 A I've seen -- yeah. If they hit bones, they

19 can hit the right one, they could travel down a

20 distance. I saw a --

21 Q If there's --

22 A -- guy put a gun to his head --

23 Q If there's --

24 A -- one time and circled around and come out

25 the other side and didn't go all the way through.

1 Q If there was no ricochet off bones, you would

2 agree with me that the path of the bullets that I

3 described is inconsistent with a person standing

4 upright when they're shot; wouldn't you agree with

5 that?

6 MS. LAFEVER: Objection.

7 A Possibly.

8 BY MR. LAUX:

9 Q Okay. And -- and if Mr. Ellison wasn't

10 standing upright when he was shot, isn't it

11 conceivable that he wasn't the type of threat that

12 is justifiable to warrant the shooting of him?

13 MS. LAFEVER: Objection.

14 A I don't -- I don't know.

15 BY MR. LAUX:

16 Q Did you ever ask Donna Leshar to explain the

17 physical evidence of the bullet trajectory in

18 Mr. Ellison's body in light of her account?

19 A From -- me individually or the board?

20 Q You first.

21 A No, sir.

22 Q Did the board?

23 A No, sir.

24 Q Did anyone you know ask her, if Mr. Ellison

25 was standing upright the way you say, how did the

1 bullets wind up in his rear end? Or something to

2 that effect. Anyone ever ask Donna Leshar that

3 question?

4 A To my mi -- to my knowledge, no, sir.

5 Q Assuming the bullet trajectory was as I

6 described, was that an oversight of the

7 investigation?

8 MS. LAFEVER: Objection.

9 A I don't know, sir.

10 BY MR. LAUX:

11 Q You don't know?

12 A I don't know if it would be or not. I don't

13 know.

14 Q Well, if the bullets travel the length of his

15 body, he wasn't standing upright; and if he wasn't

16 standing upright, then Donna Leshar's not being

17 truthful about what happened when she shot. Isn't

18 that significant to the investigation?

19 MS. LAFEVER: Objection.

20 A If those facts are proven correct, then it

21 would be significant, yes, sir.

22 BY MR. LAUX:

23 Q Okay. Well, they were proven fact in an

24 autopsy report. So with that being said, you know,

25 based on, I think his name is Dan Consulman, who's

1 no longer with us, the bullets wound up in T10 and

2 the upper buttocks. Mr. Ellison was 6 foot 1; Donna

3 Leshar was 5 foot 6. Given those facts, do you

4 agree with me that he wasn't standing upright when

5 she shot him?

6 MS. LAFEVER: Objection.

7 A I don't know, sir.

8 BY MR. LAUX:

9 Q Isn't that something that you should have

10 determined when you were analyzing this case,

11 though?

12 A I don't know if those were --

13 MS. LAFEVER: Objection.

14 A -- how much of that information was available

15 or not. I don't know. I don't --

16 BY MR. LAUX:

17 Q The autopsy report was available. Did you

18 read it?

19 A I have. But like I say, it's been a while, so

20 I couldn't tell you. I don't recall much --

21 Q Right. I'm not asking you --

22 A -- you know, I don't know.

23 Q -- to recite it. I'm just saying, did you

24 read it?

25 A Yes.

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1 Q If you read it, then you would know the bullet
2 trajectory path; right? You'd know the path of the
3 bullets?
4 A Yeah.
5 Q Okay. So you, at some point -- maybe you
6 don't remember it now, but at some point, you knew
7 the trajectory of bullets in Mr. Ellison's body;
8 right?
9 A If we was there, I'm sure we might have
10 discussed it. I don't -- I don't recall.
11 Q The autopsy report was in the -- in the file
12 that you viewed, wasn't it?
13 A I -- if you're saying it was there, it was
14 there. I don't recall. I mean, I vaguely remember
15 stuff. I mean, there was -- that -- that file
16 was -- you know, it was pretty thick.
17 Q Well, if you -- if there was a police-involved
18 shooting and the victim had undergone an autopsy and
19 there was no autopsy report in the file, you would
20 ask for the autopsy report, wouldn't you?
21 A Oh, yes, sir.
22 Q Okay. So you feel comfortable saying that you
23 reviewed the autopsy report associated with the
24 Ellison shooting; right?
25 A Yes, sir.

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1 Q Do you think the bullet trajectory in
2 Mr. Ellison's body was thoroughly assessed or
3 analyzed to determine whether the shooting was good,
4 bad, or other?
5 A That, I don't know, sir.
6 Q Did you, did you thoroughly review the autopsy
7 report or other physical evidence to try to figure
8 out if Donna Leshner's story was accurate or
9 truthful?
10 A I can't tell you how much I put into that
11 autopsy or how thoroughly I re -- I -- I just don't
12 know. I can't recall that -- during that time. I
13 mean --
14 Q If Donna Leshner had said that Mr. Ellison was
15 shooting upright and that her arms were parallel to
16 the ground when she shot and yet the bullet
17 trajectory went downward in his body and you noticed
18 that during your review, what would you do?
19 A We definitely probably would have brought it
20 up. I mean -- or at least questioned it.
21 Q So if it wasn't brought up and if she wasn't
22 questioned of that, does that mean you didn't catch
23 it?
24 MS. LAFEVER: Objection.
25 A I don't know. I mean, it's -- it's possible.

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1 Q All right. And so if you read that report and
2 you appreciated that report, if you read it
3 meaningfully, if you read it with your investigator
4 hat on trying to really ascertain the truth of what
5 happened here, you would know that the bullets
6 traveled the length of his body.
7 My question to you is is that consistent with
8 Donna Leshner's rendition of what happened?
9 MS. LAFEVER: Objection.
10 A You know, like I said, without having to go
11 back and reread her whole -- I don't -- like I said,
12 I don't recall everything in that -- that particular
13 file, all the officers.
14 BY MR. LAUX:
15 Q I'm telling you what was in the file. I mean,
16 I'm just saying, she said that he was standing when
17 he -- she shot him, and the physical evidence shows
18 that he was not standing upright like she said.
19 Isn't that something that should be analyzed or
20 should be addressed when determining whether the
21 shooting was justifiable?
22 MS. LAFEVER: Objection.
23 A You would think that would come up in the
24 investigative process.
25 BY MR. LAUX:

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1 Or anybody on the bot -- or anybody on that board
2 could have been. I -- I don't know. Like I said,
3 it's been a while ago, so I -- I can't tell you
4 that. I don't know.
5 BY MR. LAUX:
6 Q Now, this is an investigation that was done by
7 her husband's subordinates, wasn't it?
8 A Well, it was -- I -- people that he worked
9 with, yes. I think Sergeant Durham might have been
10 the -- the lead --
11 Q You're right.
12 A -- sergeant on that deal.
13 Q You're right. And -- and -- and -- and Lieutenant
14 King as well. So it was done by his subordinates
15 and -- and people in his -- in his division; right?
16 A Yes, sir.
17 Q And -- and do you think that the Ellison
18 investigation -- having reviewed the detective
19 division file and the internal affairs file, do you
20 think that the Ellison shooting investigation was a
21 thorough investigation?
22 MS. LAFEVER: Objection.
23 A Based on what I saw, there were some things
24 they could have probably done a little bit better
25 that I vaguely remember. But I think, for the most

80 (Pages 314 to 317)

1 part, I think they did the best they could, and I
 2 think it was done, but --
 3 BY MR. LAUX:
 4 Q What were the things that you thought might --
 5 could have been done better?
 6 A You know, I think -- was the -- what -- on the
 7 scene after the shooting happened with him
 8 transporting her, you know, probably not the best.
 9 She should have been isolated by another supervisor,
 10 you know.
 11 Q She should have been separated too; correct?
 12 A Yeah, I agree.
 13 Q Do you -- do you agree that -- that she
 14 shouldn't have been allowed to talk with her husband
 15 before talking to internal affairs?
 16 A Yeah, I -- I agree with that.
 17 Q Do you agree that she should have been
 18 separated from Tabitha McCrillis before they talked
 19 to internal affairs?
 20 A Yes, they should have been separated.
 21 Q You looked at the video that shows everybody
 22 kind of commingling down by the car --
 23 A Uh-huh.
 24 Q -- right? That's a major breach of policy for
 25 a police-involved shooting investigation, isn't it?

1 A You would ideally want to keep them separated,
 2 yes, sir.
 3 Q And it's a breach of policy to have them there
 4 all chatting, not only to each other, but within
 5 earshot of each other; right?
 6 A Yes.
 7 Q Again, this is an investigation that was done
 8 in-house rather than being shipped out. You don't
 9 think that these two enjoyed favors because it was
 10 done in-house that they wouldn't have enjoyed if it
 11 had been done independently?
 12 MS. LAFEVER: Objection.
 13 A That, I don't know.
 14 BY MR. LAUX:
 15 Q Okay. There was also no collecting of their
 16 weapons; correct?
 17 A I -- I don't recall on that. I don't recall.
 18 Q They also failed to collect the pepper spray
 19 canisters; correct?
 20 A I know I vaguely remember something about the
 21 pepper spray, but I don't recall if they collected
 22 canisters or not, sir.
 23 Q They never took their uniforms that day, they
 24 allowed them to take them home and launder them;
 25 correct?

1 A I don't remember, sir.
 2 Q There's a public relations campaign called
 3 "Behind the Badge"; right?
 4 A Yes, sir.
 5 Q And what's the purpose of "Behind the Badge"?
 6 A It's just the -- designed to get people, you
 7 know, supporting law enforcement and things like
 8 that. Those were -- that campaign came out of --
 9 not long after, I think, Ferguson or Baltimore,
 10 those instance where there was a lot of backlash
 11 towards law enforcement, and that was a campa -- a
 12 campaign that was kicked off -- kicked off here
 13 locally in Pulaski County. Involved officers from
 14 Little Rock, North Little Rock, Pulaski County,
 15 sheriff's department.
 16 Q Were you responsible for choosing officers to
 17 participate in the "Behind the Badge" campaign?
 18 A Yeah. I was kind of directed to pick some
 19 officers that were diverse and things like that,
 20 yes.
 21 Q And so diversity was an important thing in
 22 choosing this panel?
 23 A It was -- well, I mean, it wasn't that. I
 24 mean, the -- the marketing firm wanted some
 25 diversity amongst the agencies that were

1 participating.
 2 Q So is my question not correct? Diversity was
 3 something that you wanted to accomplish --
 4 A Yes.
 5 Q -- when choosing your team?
 6 A Yes, yes.
 7 Q Okay. And so -- because there's a number of
 8 African-American and Latino officers on here; right?
 9 A Yes.
 10 Q And -- and, actually, the percentage of
 11 minorities on the "Behind the Badge" campaign is
 12 much greater than in real life at the force;
 13 correct?
 14 MS. LAFEVER: Objection.
 15 A Yeah, yeah. We -- we're making strides to
 16 increase our minority representation.
 17 BY MR. LAUX:
 18 Q And so you were told to choose officers; and
 19 then whomever you chose, that was your choice;
 20 right?
 21 A Yes.
 22 Q Why did you choose Lisa Henderson -- or --
 23 Hernandez?
 24 A She is -- Lisa does a good job, she's
 25 participated in several events in the community

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

SYLVIA PERKINS, as Personal
Representative of the Estate of
BOBBY MOORE III, deceased, PLAINTIFF

vs. CASE NO. 4:15-CV-310 BSM

JOSHUA HASTINGS, et al., DEFENDANTS

VIDEOTAPED DEPOSITION OF
DETECTIVE KEVIN L. SIMPSON

(Taken September 20th, 2016,
at 12:47 p.m.)

<p style="text-align: right;">Page 50</p> <p>1 Q What would it depend on?</p> <p>2 A Whether I was the lead investigator of the case.</p> <p>3 Q Well, we know that you weren't in Ellison, right?</p> <p>4 A Right.</p> <p>5 Q So does that mean you didn't read the autopsy</p> <p>6 report?</p> <p>7 A I don't recall if I did or I didn't.</p> <p>8 Q You might have?</p> <p>9 A It's possible.</p> <p>10 Q Okay. If you read an autopsy report, do you read</p> <p>11 it to appreciate the contents of it?</p> <p>12 A Yes.</p> <p>13 Q I mean, you try to understand what the diagrams</p> <p>14 mean and what the medical examiner's words mean, right?</p> <p>15 A Yes.</p> <p>16 Q You want to make sense of it, right?</p> <p>17 A Yes.</p> <p>18 Q Mr. Ellison was shot in his upper chest twice, up</p> <p>19 near the clavicle. Do you have any reason to doubt</p> <p>20 that?</p> <p>21 A No.</p> <p>22 Q And yet the bullets were removed from Mr. Ellison's</p> <p>23 body at T10 and his upper buttocks. Did you know that</p> <p>24 before today?</p> <p>25 A No. I don't recall if I -- It didn't ring a bell</p>	<p style="text-align: right;">Page 52</p> <p>1 is five-foot-six. Was Mr. Ellison -- removing the</p> <p>2 bullets from that part of his body, is that consistent</p> <p>3 with Mr. Ellison standing erect?</p> <p>4 A No.</p> <p>5 Q Did you ever flesh that out at any time during the</p> <p>6 investigation of the shooting?</p> <p>7 A I did not, no.</p> <p>8 Q Do you know anybody who ever fleshed that out at</p> <p>9 any time on the detective division there?</p> <p>10 A I do not know.</p> <p>11 Q Are you aware of anybody who said to Donna Leshner,</p> <p>12 "Donna, the bullets, where we found them is not</p> <p>13 consistent with your story. Can you reconcile this for</p> <p>14 me?"</p> <p>15 Do you know if anyone ever asked her that</p> <p>16 question?</p> <p>17 MS. LaFEVER: Objection.</p> <p>18 A I do not know.</p> <p>19 BY MR. LAUX:</p> <p>20 Q If the bullets were removed from the parts of his</p> <p>21 body that I just described, and Donna Leshner said that</p> <p>22 he was standing upright when she shot him, do you think</p> <p>23 she's truthful about him standing upright when she shot</p> <p>24 him?</p> <p>25 A Ask the whole question again.</p>
<p style="text-align: right;">Page 51</p> <p>1 to me, no, sir.</p> <p>2 Q If that's true, if what I just told you is true,</p> <p>3 upper buttocks and T10, T10 vertebra, if the bullets</p> <p>4 were removed from those parts of Mr. Ellison's body,</p> <p>5 that's inconsistent with him standing upright, isn't it?</p> <p>6 MS. LaFEVER: Objection.</p> <p>7 A Not necessarily.</p> <p>8 BY MR. LAUX:</p> <p>9 Q How so?</p> <p>10 A Bullets, when they enter, can hit bone, they can</p> <p>11 hit a lot of different things and take a different</p> <p>12 trajectory.</p> <p>13 Q How about if I were to give you this. In this</p> <p>14 hypothetical, which happens to be factual, the bullets</p> <p>15 didn't ricochet off of anything. If the bullets don't</p> <p>16 ricochet off of anything, whether exterior to the body</p> <p>17 or interior of the body, don't the bullets in those</p> <p>18 portions of his body show that he wasn't standing at the</p> <p>19 time that the bullets were fired?</p> <p>20 MS. LaFEVER: Objection.</p> <p>21 A Wasn't standing?</p> <p>22 BY MR. LAUX:</p> <p>23 Q Yeah.</p> <p>24 A Not necessarily.</p> <p>25 Q How about this. He's six-foot-one. Donna Leshner</p>	<p style="text-align: right;">Page 53</p> <p>1 Q I have an exhibit. I'm trying to figure out if I</p> <p>2 should pull it out or not.</p> <p>3 The bottom line is this. If the bullets --</p> <p>4 Donna Leshner said that Mr. Ellison was standing upright</p> <p>5 when she shot him. I depose her. I had her stand up</p> <p>6 with the cane. She showed me. She demonstrated it.</p> <p>7 She said he was standing upright. Her words, "standing</p> <p>8 upright," and she showed me.</p> <p>9 If the bullets were removed from the parts of</p> <p>10 the body that I described, T1 vertebra and the upper</p> <p>11 buttocks, that is reflective of Donna Leshner's account</p> <p>12 of what Mr. Ellison was doing at the time that she shot</p> <p>13 either untruthful or inaccurate; do you agree with that?</p> <p>14 A Yes.</p> <p>15 Q Accepting the facts that I've given you here over</p> <p>16 the past few questions as true, don't you think that's</p> <p>17 something that should have been hammered out by the</p> <p>18 detective division?</p> <p>19 MS. LaFEVER: Objection.</p> <p>20 A I don't know that it wasn't.</p> <p>21 BY MR. LAUX:</p> <p>22 Q Okay. If it wasn't, should it have been?</p> <p>23 MS. LaFEVER: Objection.</p> <p>24 A Yes.</p> <p>25</p>

<p style="text-align: right;">Page 110</p> <p>1 inside of the vehicle --</p> <p>2 A Yes.</p> <p>3 Q -- probing the vehicle with your eyes?</p> <p>4 A Yes.</p> <p>5 Q People who aren't getting into the red crime scene</p> <p>6 area are precluded from seeing the interior of that car</p> <p>7 more so than people who are allowed into the red crime</p> <p>8 scene area?</p> <p>9 A Yes.</p> <p>10 Q And my question is, is that a favor that was</p> <p>11 afforded Josh Hastings?</p> <p>12 A No.</p> <p>13 MS. LaFEVER: Objection.</p> <p>14 BY MR. LAUX:</p> <p>15 Q And yet you can't think of another time that that's</p> <p>16 happened in a police-involved shooting, correct?</p> <p>17 A I just can't think of one.</p> <p>18 Q Do you think that -- well, strike that. Okay.</p> <p>19 Lisa Hernandez had said that she had never</p> <p>20 seen red crime scene tape before, and didn't know what</p> <p>21 it was supposed to -- what it was intended to be for.</p> <p>22 A I believe that.</p> <p>23 Q If you turn the page, there is a paragraph that</p> <p>24 begins with "Officer David Moore."</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 seconds later, or a minute and a half later, but there</p> <p>2 was a period of time where Josh Hastings was alone with</p> <p>3 the body of Bobby Moore, the Honda Civic, in that</p> <p>4 parking lot. Do you agree with that?</p> <p>5 A Yes.</p> <p>6 Q Do you recall whose decision it was -- strike that.</p> <p>7 When you spoke with James Leshar when you</p> <p>8 first arrived and he apprised you of what he knew about</p> <p>9 the scene, did he indicate to you at all his feelings on</p> <p>10 whether the shooting was justified or not?</p> <p>11 A No.</p> <p>12 Q Did he have any comments about the evidence or the</p> <p>13 information that he had gathered at that point and where</p> <p>14 it might be directing you all?</p> <p>15 A Ask that one more time.</p> <p>16 Q You know, did he say something like, you know, this</p> <p>17 doesn't look so good, X, Y and Z?</p> <p>18 MR. FRANCO: I hate to interrupt. Can you</p> <p>19 tell me who you're speaking of?</p> <p>20 MR. LAUX: Sure.</p> <p>21 BY MR. LAUX:</p> <p>22 Q When you arrived, Detective Simpson, at the scene</p> <p>23 and you initially made contact with James Leshar, he</p> <p>24 apprised you of what he knew about the scene at that</p> <p>25 point, right?</p>
<p style="text-align: right;">Page 111</p> <p>1 Q He's indicating his observations of that morning,</p> <p>2 correct?</p> <p>3 A Correct.</p> <p>4 Q And he was among the first to arrive at the scene,</p> <p>5 as far as you know, correct?</p> <p>6 A As far as I know, yes.</p> <p>7 Q He said that when he got there, Josh Hastings was</p> <p>8 sitting on a curb near the Dumpster, right?</p> <p>9 A Yes.</p> <p>10 Q And Officer Moore says that Officer Hastings shined</p> <p>11 his flashlight to an area in front of him and stated,</p> <p>12 "That's where I shot. My casings are right there,"</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q And so at that early point, at that early moment,</p> <p>16 according to Officer Moore, Hastings has indicated where</p> <p>17 the shell casings are from the shooting, correct?</p> <p>18 A Yes.</p> <p>19 Q Is it your understanding that for a while, whether</p> <p>20 it was just a few moments or maybe up to a minute or</p> <p>21 two, do you agree with me that there was a period of</p> <p>22 time after the shooting where Josh Hastings was the only</p> <p>23 police officer there?</p> <p>24 A Yes.</p> <p>25 Q Now, maybe the first arriving officer came 30</p>	<p style="text-align: right;">Page 113</p> <p>1 A Yes.</p> <p>2 Q He apprised you of what he knew about the situation</p> <p>3 at that point?</p> <p>4 A Yes.</p> <p>5 Q Yeah. And my question to you is, at that time --</p> <p>6 well, you all had worked together for several years</p> <p>7 prior to that, right?</p> <p>8 A Yes.</p> <p>9 Q You've got a good working relationship, right?</p> <p>10 A Yes.</p> <p>11 Q You know each other pretty well, I assume?</p> <p>12 A Yes.</p> <p>13 Q You respect James Leshar?</p> <p>14 A I do.</p> <p>15 Q And so was a conversation had where he told you</p> <p>16 something along the lines of here's what happened.</p> <p>17 Hastings claims this, and then something to the effect</p> <p>18 of this one doesn't look good, or, ah, I'm not so sure</p> <p>19 about what Hastings said, or I don't buy this?</p> <p>20 Did he ever articulate to you any skepticism</p> <p>21 in what Josh Hastings had said to him in light of the</p> <p>22 evidence?</p> <p>23 A In my initial contact?</p> <p>24 Q Yes, sir.</p> <p>25 A No.</p>

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