



Young Lawyers of Arizona

November 24, 2015

Dear Mock Trial Teacher and Attorney Coaches:

The Arizona Foundation for Legal Services & Education and the Young Lawyers of Arizona welcome you and your team to the 2015-2016 Arizona High School Mock Trial Program. Please review all of the material carefully. If you have any questions about registration or administration of the program, please contact Susan Nusall with the Arizona Foundation for Legal Services & Education at 602-340-7361. If you have any questions about the case, the Rules of the Program or the legal aspects of the program, please post your question(s) on the Mock Trial website, www.lawforkids.org/mock-trial.

The Regional Tournaments will be held on February 20, 2016. The State Tournament will be held on March 19, 2016, at the Sandra Day O'Connor United States District Courthouse in Phoenix.

Case Materials

As you will see, this year's case is a civil case. The case is fictional, and any similarity or resemblance of any character to an actual person or entity is strictly unintentional and coincidental. This case was adapted from an original case created by Ed Piper in coordination with The Classroom Law Project. We thank our friends at the State of Oregon's Classroom Law Project and Ed Piper for their permission to use the case materials.

Program and Evidence Rules

All team members are expected to know the Mock Trial Rules of Evidence and the Rules of the Program. As a reminder, we are using the Rules of Evidence used by the National High School Mock Trial Championship. The current Rules of Evidence and the Rules of the Program can be found on the Mock Trial website, lawforkids.org/mock-trial.

Trials

This year's case materials include jury instructions to set forth the applicable law. When scoring panels are used, such as at the State Tournament, the trial should be presented as a jury trial with the scoring judges serving as the jury. When single presiding/scoring judges are used, such as at most (if not all) Regional Tournaments, the trial should be presented as a bench trial using the same law and legal principles set forth in the jury instructions.

As you will see, the case materials contain a lot of information--much of which is intended as

background information and not necessarily to be admitted into evidence. As such, teams will have to make strategic decisions regarding what evidence they want to present within the allotted time. It will be impossible for any team to present all of the evidence contained in the materials within the time constraints. Please be advised that the time rules will be strictly enforced.

State Tournament

The State Tournament is scheduled for Saturday, March 19, 2016, at the United States District Courthouse located in downtown Phoenix. Teams that did not compete in the Maricopa County Regional Tournament will be eligible for overnight lodging the evening before the State Finals. More details about the State Tournament will be forthcoming.

National Mock Trial Tournament

The National Mock Trial Tournament will be held May 12-14, 2016 in Boise, Idaho.

Please note that the 2016 National Championship is one week later than the traditional Mother's Day weekend schedule. It is strongly recommended that schools have a fundraising plan in place in the event that they are the State winners and are eligible to travel to the National Tournament.

We hope you enjoy the case. Have fun and good luck with your tournaments!

Susan Nusall
Mock Trial State Coordinator

Dewain Fox
Legal Counsel Coordinator

**ARIZONA HIGH SCHOOL
MOCK TRIAL TOURNAMENT
2015-2016**

AVERY LEON

v.

***BASIN METRO LIGHT RAIL, INC., a non-profit
public corporation; and LINDSEY PALMER***

A program of

Arizona Foundation for
**LEGAL SERVICES
& EDUCATION**
THE ARIZONA BAR FOUNDATION

Young Lawyers of Arizona

AVERY LEON

v.

***BASIN METRO LIGHT RAIL, INC., a non-profit
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AVERY LEON

v.

BASIN METRO LIGHT RAIL, INC., a non-profit public corporation; and LINDSEY PALMER

BRIEF CASE SUMMARY:

On May 16, 2015, Avery Leon rushed to catch a commuter light rail train after a baseball game. At the same time and place, Officer Lindsey Palmer was searching for a fleeing armed robbery suspect. Officer Palmer mistakenly thought Leon was the suspect and tased Leon. In this action, Avery Leon is suing the Basin Metro Light Rail, Inc. (BMLR) and Officer Lindsey Palmer alleging that excessive force was used.

STIPULATIONS:

1. All exhibits included in the case materials are authentic and accurate. No objections to the authenticity of exhibits will be honored.
2. All signatures on witness declarations and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the documents(s) and the date(s) indicated therein. The witness declarations are deemed to be given under penalty of perjury.
3. No objections to the sufficiency of the Complaint or the jury instructions will be entertained.

WITNESSES:

Plaintiff

Avery Leon (plaintiff)

Cary Donatella (witness at the scene)

Taylor Gomez (Citizen Review Committee)

Defendant

Lindsey Palmer (defendant)

Skyler Todd (student)

Sandy Ensign (Internal Affairs Division)

LIST OF EXHIBITS:

1. Areal Image of Mill Avenue Station.
2. Rattlesnakes T-Shirt
3. Stun Gun
4. Cruze Deposition and Incident Report
5. CCTD Police Department Handbook
6. CCTD Police Department Training Records
7. CCTD Police Department Discipline Statistics
8. Cruze/Irsay Incident Report
9. Nguyen Incident Report
10. Bowlen Incident Report.

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6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 Avery Leon, an individual,
10
11 **Plaintiff,**

12 vs.

13 Basin Metro Light Rail, Inc., a non-profit
public corporation existing in the State of
Arizona; BMLR Police Department Officer
14 Lindsey Palmer, an individual
15
16 **Defendants.**

Case No. 2:15-cv-555121-WAL

COMPLAINT

(42 U.S.C. § 1983)

Jury Trial Demanded

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18
19 Plaintiff Avery Leon, by and through the attorneys undersigned, complains and alleges as
20 follows:

21 **Introduction.**

22
23 1. Plaintiff Avery Leon brings this civil rights action against Defendants Basin Metro
24 Light Rail, Inc. ("BMLR") and BMLR Police Department ("BPD") police officer Lindsey Palmer
25 ("Palmer") (collectively, "Defendants") for violating Leon's clearly established constitutional
26 rights. On May 16, 2015, Palmer used excessive and unreasonable force against Leon when
27 Palmer discharged a BPD-issued "stun gun" into Leon during an arrest. Palmer did so without
28 probable cause to believe that Leon had committed a crime.

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Jurisdiction.

2. This Court has jurisdiction over Plaintiff's claims by virtue of 28 U.S.C. §§ 1331 and 1343 because this case involves a violation of Leon's federal civil and constitutional rights.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to Leon's claims against BMLR and Palmer occurred in the judicial district in which this Court is situated.

Parties.

4. Plaintiff Leon is an individual who resides in Tempe, Arizona.

5. Defendant Palmer is an individual employed as a police officer by BPD, and a resident of Glendale, Arizona. At all material times herein, Palmer was acting within the course and scope of Palmer's employment with BPD.

6. Defendant BMLR is an independent public municipal corporation of the State of Arizona. BMLR operates the Phoenix Area Light Rail ("P-Rail") and maintains its own police force. By law, BMLR is responsible for the acts and omissions of its police officers and other employees and agents, including the acts and omissions of Palmer as described herein.

General Allegations.

7. Leon is a high school math teacher at Copper High School in Tempe, Arizona. After work on Friday, May 16, 2015, Leon attended a Rattlesnakes baseball game in downtown Phoenix, Arizona. To get to the stadium, Leon used the P-Rail.

8. To get to the game, Leon boarded a Green Line P-Rail train at the Mill Avenue P-Rail station and rode the rest of the way to the stadium. Leon planned to take the same route home. Leon was carrying a black backpack with textbooks, teaching outlines, and other work materials.

9. After the game, Leon boarded the P-Rail at 9:20 p.m. There were dozens of other Rattlesnakes fans on the train. Like Leon, most of them wore dark red t-shirts with the team's signature "doubleR" logo. Leon was running late, and knew that he would have only a few minutes to get home before his favorite late night show began and he had not set his DVR.

1 10. The same night, Palmer and Palmer's partner, fellow BMLR police officer Courtney
2 Cruze ("Cruze"), were stationed at the Mill Avenue P-Rail station. At approximately 9:37 p.m.,
3 they received a radio dispatch indicating that an armed robbery had occurred at the Center Parkway
4 / Washington P-Rail station, the first station west of the Mill Avenue P-Rail Station. According
5 to the dispatch, the suspect boarded the train bound for the Mill Avenue P-Rail Station after the
6 robbery. The dispatch clearly indicated that the suspect was wearing "an orange t-shirt," "jeans,"
7 and "a white baseball cap," and was carrying "a dark colored backpack." The dispatch gave no
8 other physical description of the suspect and did not mention the suspect's gender.

9 11. Palmer and Cruze exited their BMLR police cruiser and proceeded to the platform
10 where the train carrying Leon and the attacker would soon appear. There they waited for the train
11 to arrive.

12 12. When the train arrived, passengers immediately flooded the station. Leon ran onto
13 the western side of the platform and toward the parking lot.

14 13. A few seconds after the train arrived, Cruze noticed Leon running across the
15 platform. Cruze saw that Leon—like dozens of other game-goers returning home on the P-Rail—
16 was wearing a red Rattlesnakes t-shirt. At that time, Cruze had no reason to believe that Leon
17 posed a threat to anyone in the platform area, including either of the officers. Regardless, Cruze
18 pointed at Leon and shouted to Palmer, "Lindsey, black backpack to your left!"

19 14. Palmer then discharged Palmer's BMLR-issued stun gun into Leon. Before doing
20 so, Palmer neither announced Palmer as a police officer nor warned Leon that Palmer intended to
21 use the stun gun.

22 15. Palmer discharged the stun gun into Leon without any probable cause to believe
23 that Leon was the suspect or had committed any other crime. Contrary to the dispatch's
24 description, Leon was wearing neither an orange t-shirt nor any sort of baseball cap.

25 16. Following Palmer's discharge of the stun gun, Leon fell to the ground and began
26 convulsing. Palmer shocked Leon for between three and five seconds before disengaging the stun
27 gun.

28

1 17. As a direct and proximate result of Palmer's use of the stun gun, Leon suffered
2 physical injuries that required immediate medical attention, including a facial contusion and
3 lacerations on Leon's forehead that Leon sustained as a result of his/her fall. As a direct and
4 proximate result of Palmer's use of the stun gun, Palmer has also suffered severe psychological
5 trauma.

6 18. The BMLR Police Department's policies, practices, and customs allow, encourage,
7 and direct BMLR police officers to use stun guns and other types of force in situations where
8 officers lack a reasonable basis for the use of such force, or in circumstances where the officers
9 should use lesser force.

10 19. Specifically, since 2010, the BMLR Police Department has countenanced at least
11 three reported incidents in which police officers have discharged their BMLR-issued stun guns
12 into suspects without justification or in a manner that violated BMLR protocols. In each case, the
13 BMLR Police Department did not appropriately discipline and, to date, has not appropriately
14 disciplined the offending officer. For example, in December 2010, a BMLR Police Department
15 supervisor determined that Cruze had improperly and illegally directed a fellow officer to
16 discharge a stun gun into a suspect who had already been subdued, which the fellow officer did.
17 Cruze received only superficial discipline and soon returned to duty.

18 20. Following those incidents, the BMLR Police Department knew or should have
19 known that additional measures were necessary to protect the public from its officers' pattern of
20 unlawful conduct. Those measures would have included additional training, discipline, and, where
21 appropriate, terminating the employment of officers who violate the constitutional rights of any
22 member of the public, or who are otherwise deemed to have used excessive force.

23 21. Notwithstanding that knowledge, the BMLR Police Department's existing policies,
24 practices, and customs with regard to the use of force by its officers have persisted without any
25 material change since at least December 2010. The BMLR Police Department's deliberate
26 indifference in the face of known risks associated with its officers' use of force amounts to an
27 official practice of the BMLR Police Department.

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6 **UNITED STATES DISTRICT COURT**
7
8 **DISTRICT OF ARIZONA**

9 Avery Leon, an individual,
10
11 Plaintiff,

Case No. 2:15-cv-555121-WAL

11 vs.

Answer

12 Basin Metro Light Rail, Inc., a non-profit
13 public corporation existing in the State of
14 Arizona; BMLR Police Department Officer
15 Lindsey Palmer, an individual
16
17 Defendants.

17 Defendants Basin Metro Light Rail, Inc. ("BMLR") and Lindsey Palmer respond to
18 Plaintiff's Complaint as follows:

19 **Introduction.**

20 1. Defendants deny the allegations in paragraph 1 of the Complaint.

21 **Jurisdiction.**

22 2. Defendants admit the allegations in paragraph 2 of the Complaint.

23 3. Defendants admit the allegations in paragraph 3 of the Complaint.

24 **Parties.**

25 4. Defendants admit the allegations in paragraph 4 of the Complaint.

26 5. Defendants admit the allegations in paragraph 5 of the Complaint.

27 6. Defendants admit that BMLR is a public municipal corporation of the State of Arizona,
28 that it operates the P-Rail, that it maintains its own police force, and that, in general, it maintains an

1 employer-employee relationship with its police officers. In the context of this action, and without
2 admitting the truth of any of Plaintiff's allegations, Defendant BMLR denies that it is legally
3 responsible for the acts and omissions of Palmer as alleged in Plaintiff's Complain.

4 **General Allegations.**

5 7. Defendants admit the allegations in paragraph 7 of the Complaint.

6 8. Defendants admit the allegations in paragraph 8 of the Complaint.

7 9. Defendants are without sufficient knowledge as to the truth of the allegations in
8 paragraph 9, and therefore deny them.

9 10. Defendants deny the allegations in paragraph 10 of the complaint that the dispatch
10 "clearly" indicated the suspect was wearing "an orange t-shirt." Defendants otherwise admit the
11 allegations in paragraph 10 of the Complaint.

12 11. Defendants admit the allegations in paragraph 11 of the Complaint.

13 12. Defendants admit the allegations in paragraph 12 of the Complaint.

14 13. Defendants admit that BMLR police officer Courtney Cruze ("Cruze") noticed
15 Plaintiff running across the platform, and that Cruze then pointed out Plaintiff to Palmer.
16 Defendants otherwise deny the allegations in paragraph 13 of the Complaint.

17 14. Defendants admit that Palmer discharged Palmer's BLMR-issued stun gun into
18 Plaintiff. Defendants otherwise deny the allegations in paragraph 14 of the Complaint.

19 15. Defendants admit that Plaintiff was not wearing an orange t-shirt or a baseball cap.
20 Defendants otherwise deny the allegations in paragraph 15.

21 16. Defendants admit the allegations in paragraph 16 of the Complaint.

22 17. Defendants are without sufficient knowledge as to the truth of the allegations in
23 paragraph 17 of the Complaint, and therefore deny them.

24 18. Defendants deny the allegations in paragraph 18 of the Complaint.

25 19. Defendants admit that the BMLR Police Department disciplined Cruze following
26 an incident involving a stun gun in December 2010. Defendants otherwise deny the allegations in
27 paragraph 19 of the Complaint.

28 20. Defendants deny the allegations in paragraph 20 of the Complaint.

1 21. Defendants deny the allegations in paragraph 21 of the Complaint.

2 22. Defendants deny the allegations in paragraph 22 of the Complaint.

3 **Count I.**

4 **(42 U.S.C. § 1983—Excessive Force in Violation of Fourth Amendment)**

5 23. Defendants incorporate the prior responses as though fully set forth herein.

6 24. Defendants deny the allegations in paragraph 24 of the Complaint.

7 25. Defendants deny the allegations in paragraph 25 of the Complaint.

8 26. Defendants deny the allegations in paragraph 26 of the Complaint.

9 27. Defendants deny that Plaintiff is entitled to any damages.

10 28. Defendants deny that Plaintiff is entitled an award of any attorneys' fees or costs.

11 **General Denial.**

12 29. Defendants deny each and every allegation in the Plaintiff's Complaint not
13 expressly admitted herein.

14 **Affirmative Defenses.**

15 30. Plaintiff's Complaint fails to allege facts sufficient to state a claim for relief.

16 31. Defendants reserve the right to plead additional affirmative defenses as discovery
17 reveals additional information.

18 WHEREFORE, having answered Plaintiff's Complaint, Defendants pray that Plaintiff's
19 Complaint be dismissed, that judgment be entered in Defendants' favor and that Defendants be
20 awarded their attorney's fees, costs and disbursements incurred herein, in addition to any other
21 relief as may be justified.

22 DATED this 30th day of November, 2015.

23 **GNOTA, PENNI, LLC**

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25 By: /s/ Lidia R. Brown
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ORIGINAL of the foregoing e-filed this
30th day of June, 2015 with the Clerk of the Court
with a COPY mailed to:

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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 Avery Leon, an individual,
10
11 Plaintiff,

Case No. 2:15-cv-555121-WAL

11 vs.

Stipulations

12 Basin Metro Light Rail, Inc., a non-profit
13 public corporation existing in the State of
14 Arizona; BMLR Police Department Officer
15 Lindsey Palmer, an individual
16 Defendants.

17 The Parties, as represented by signature of counsel below, stipulate and agree as follows:

18 1. Leon did not commit the armed robbery to which BMLR Police Department
19 Officers Palmer and Cruze were responding on May 16, 2015. Leon has never been convicted of
20 any crime. The suspect in the May 16, 2015 robbery remains at large.

21 2. Leon was wearing the red shirt shown in **Exhibit 2** at the time of Leon's arrest on
22 May 16, 2015.

23 3. Basin Metro Light Rail, Inc. ("BMLR") is a public entity for the purposes of 42
24 U.S.C. § 1983.

25 4. Palmer was acting under color of law when Palmer discharged Palmer's stun gun
26 into Leon on May 16, 2015.¹

27
28 ¹ "Under color of law" means that the person is using authority given to him or her by local,
state, or federal government.

1 5. The diagram shown in **Exhibit 1** is a fair and accurate representation of the Mill
2 Avenue Street P-Rail stop, though not to scale.

3 6. The photograph shown in pre-marked **Exhibit 3** is a fair and accurate representation
4 of the stun gun that Palmer discharged into Leon on May 16, 2015.

5 7. The BMLR Police Department first issued stun guns to all of its officers in April
6 2007. The only three incidents in which citizens have complained about BMLR police officers'
7 use of their stun guns are detailed in **Exhibits 8, 9, and 10**. Apart from those incidents, the BMLR
8 Police Department received no other complaints related to the use of its officers' stun guns.

9 8. Defendants agree to waive, and not to raise Qualified Immunity as a defense.

10 9. Courtney Cruze was shot and killed in the line of duty on July 17, 2015. Officer
11 Cruze is therefore unavailable. Officer Cruze's deposition testimony, however, is **Exhibit 4**.

12 10. No witness will or may invoke the Fifth Amendment or any other privilege.

13 11. This phase of the trial shall deal with Defendants' liability only. If necessary, a
14 determination as to damages and any other relief to which Plaintiff may be entitled will be made
15 in a separate proceeding.

16 The parties stipulate and agree to the foregoing and respectfully request that, as applicable,
17 the court enter an order to that effect.

18 SO STIPULATED:

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Counsel for Plaintiff

Counsel for Defendants

By: /s/ Mariposa A. Lopez
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By: /s/ Otto W. Lipinski
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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Avery Leon, an individual,

Plaintiff,

vs.

Basin Metro Light Rail, Inc., a non-profit
public corporation existing in the State of
Arizona; BMLR Police Department Officer
Lindsey Palmer, an individual

Defendants.

Case No. 2:15-cv-555121-WAL

Jury Instructions

The Court will now submit the case to the jury; you need to decide, based on the law and the evidence presented to you at trial, whether the Plaintiff has prevailed in proving the Plaintiff's claims against each defendant.

Instruction No. 1: Preponderance of the Evidence.

The Plaintiff must prove all of the Plaintiff's claims by a "preponderance of the evidence." That means that the Plaintiff must persuade you by evidence that makes you believe that Plaintiff's claims are more likely true than not true. After weighing all of the evidence, if you cannot decide that something is more likely true than not true, you must conclude that the plaintiff did not prove it. You should consider all of the evidence in making that determination, no matter who produced it.

Instruction No. 2: Defendant Palmer.

In order to find in favor of the Plaintiff as to Plaintiff's claim against Defendant Palmer, the Plaintiff must prove that the manner in which Defendant Palmer seized the Plaintiff violated the Fourth Amendment. Here, the Plaintiff has alleged that Defendant Palmer violated the Fourth Amendment in two ways: (1) Defendant Palmer arrested Plaintiff without probable cause, and (2) Defendant Palmer used excessive force during the arrest. An arrest is unlawful under the Fourth Amendment if made without probable cause. "Probable cause" exists when, under all of the

1 circumstances known to an officer at the time, an objectively reasonable police officer would
2 conclude there is a fair probability that the person arrested has committed or was committing a
3 crime. The Plaintiff must prove by a preponderance of the evidence that Defendant Palmer arrested
4 him without probable cause.

5 A seizure of a person is unlawful under the Fourth Amendment if a police officer uses
6 excessive force in making an arrest or in defending himself, herself, or others. Thus, the Plaintiff
7 must prove by a preponderance of the evidence that Defendant Palmer used excessive force when
8 Defendant Palmer discharged defendant Palmer's stun gun at the Plaintiff.

9 Under the Fourth Amendment, a police officer may only use such force as is "objectively
10 reasonable" under all of the circumstances. In other words, you must judge the reasonableness of
11 a particular use of force from the perspective of a reasonable officer on the scene and not with the
12 20/20 vision of hindsight.

13 In determining whether Defendant Palmer used excessive force in this case, consider all of
14 the circumstances known to Defendant Palmer on the scene, including:

- 15 1. The severity of the crime or other circumstances to which the Defendant
16 Palmer was responding;
- 17 2. Whether the Plaintiff posed or reasonably appeared to pose an immediate
18 threat to the safety of any officers or to others;
- 19 3. Whether the Plaintiff was or reasonably appeared to be actively resisting
20 arrest or attempting to evade arrest by flight;
- 21 4. The amount of time and any changing circumstances during which
22 Defendant Palmer had to determine the type and amount of force that
23 appeared to be necessary;
- 24 5. The type and amount of force used; and
- 25 6. The availability of alternative methods to subdue the Plaintiff.

26 If, according to these factors, you find the Plaintiff has proved that Defendant Palmer
27 arrested the Plaintiff without probable cause or used excessive force, your verdict should be for
28 the Plaintiff on the Plaintiff's claim against Defendant Palmer. If, on the other hand, the Plaintiff
has failed to prove that Defendant Palmer arrested the Plaintiff without probable cause or used
excessive force, your verdict should be for Defendant Palmer on the Plaintiff's claim against
Defendant Palmer.

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Instruction No. 3: Defendant BMLR.

In order to find in favor of the Plaintiff on the Plaintiff's claim against Defendant Basin Metro Light Rail, Inc. ("BMLR"), you must find that the Plaintiff proved each of the following elements by a preponderance of the evidence:

1. Defendant Palmer acted under color of law;
2. Defendant Palmer acted without probable cause or used excessive force when Defendant Palmer discharged Defendant Palmer's stun gun at the Plaintiff, according to the standards set forth in Instruction No. 2; and
3. Defendant Palmer acted pursuant to an expressly adopted official policy or a longstanding practice or custom of defendant BMLR.

The parties have stipulated that Defendant Palmer acted under color of law, so that element is not in dispute.

"Official policy" means a rule or regulation promulgated, adopted, or ratified by the Defendant BMLR. "Practice or custom" means any permanent, widespread, well-settled practice or custom that constitutes a standard operating procedure of the Defendant BMLR.

If you find the Plaintiff has proved each of these elements, and if you find that the Plaintiff has proved all the elements the Plaintiff is required to prove under Instruction No.2, your verdict should be for the Plaintiff on the Plaintiff's claim against Defendant BMLR. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of these elements or the Plaintiff's claim against Defendant Palmer, your verdict should be for Defendant BMLR.

DATED: _____, 2016.

/s/ Wendy A. Lyttle
United States District Judge

Declaration of Avery Leon

1 I, Avery Leon, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 My name is Avery Leon. I'm 27 years old, and I'm a high school math teacher at Copper
3 High School in Tempe. I grew up here in Tempe, and I've wanted to be a teacher for most of my
4 life. Both of my parents are teachers and, in fact, they met during their first year of teaching at
5 CHS. Suffice to say, teaching is in my DNA.

6 After graduating from CHS, I went to college at the University of Arizona, where I
7 earned a bachelor's degree in math. I thought for a while about going to work in banking and
8 finance, but it hit me pretty quickly that I'd have a really hard time sitting behind a desk all day,
9 even if I got to crunch numbers -one of my favorite things to do- while I was there. I'm one of
10 those people that can't sit still for very long; some people say I'm downright impatient, especially
11 when I'm tired.

12 Anyway, given my love for my college math classes and for the volunteer teaching I did
13 during my college summers, I ultimately decided to follow in my parents' footsteps. A year after
14 graduating from college, I headed north to Northern Arizona University, where I earned a
15 master's degree in education in 2012. I racked up some pretty substantial student debt, which I'm
16 still working to pay off, but it was worth every penny. I loved Flagstaff and learned a lot. Then,
17 just before I graduated, can you imagine how thrilled I was when CHS offered me a job as an
18 entry-level math teacher? I bolted at the opportunity and I've been teaching at CHS ever since.

19 One of the things I love most about being back in Tempe is the Rio Rico Rattlesnakes.
20 I'm a big baseball fan and, while pro teams are great, the minor leagues are almost just as good
21 and waaaay cheaper to attend games. Since I came back from the Flag, I've become a huge
22 Rattlesnakes fan. Whenever I go to a game, I wear my dark red Rattlesnakes t-shirt with the
23 Rattlesnakes' signature "doubleR" logo on the front; a fair and accurate picture of that shirt is
24 shown in Exhibit 2. And I will tell you right now, I don't know why they didn't opt for a tripleR
25 logo. Seems obvious. Oh well, I guess I don't make those calls.

26 To get to the games, at least the ones when the Rattlesnakes get to play in the big league
27 park downtown, I usually take the P-Rail. "P-Rail" is short for Phoenix Area Light Rail, which
28 runs back and forth between Tempe and Phoenix. I hear they are planning to expand the line,

Declaration of Avery Leon

1 which is pretty exciting. It's really convenient and affordable. Typically I'll board a P-Rail train
2 at the Mill Avenue station which is just about a mile from my house and right next to a public
3 parking structure that is really cheap. The Mill Avenue station is always mobbed, especially
4 when there are events in downtown Phoenix or Tempe. It can be tough to navigate your way
5 through the crowds. Plus, I'm really not a fan of crowds; they make me claustrophobic and,
6 whenever I'm in one, my first thought usually is, "How soon until I can get out of here?"

7 A few times, I've even missed my train because the crowds were just too big and I wasn't
8 willing to cram into a train with a million of my "best friends." That is a total pain. One time,
9 because I needed to get back to Tempe, I had to pay \$40 for a taxi back to the parking structure!
10 I should have just driven the whole way. Believe me, especially on a teacher's salary, that's big
11 money for a cab ride.

12 May 16, 2015, is a day I'll never forget. That day, I went to a Rattlesnakes game with
13 some friends. My friends live in Scottsdale- after college, they all decided to move to an uber-
14 trendy neighborhood- so I met them at the stadium. I hopped on a 3:30 p.m. P-Rail train right
15 after work and headed over. Since I was coming from work, I had my usual black backpack with
16 me. I can't imagine how anybody would think I was carrying anything illicit in there. I mean, I
17 just use it to carry around my teaching outlines, textbooks, and yet-to-be-graded tests!

18 Anyway, I got to the game at about 4:15 without a problem. The game was, of course, a
19 ton of fun. The Rattlesnakes were playing the Des Moines Dodgers, who are incredibly good.
20 The Rattlesnakes held their own through the first few innings but things began to deteriorate in
21 the fourth. It looked like it was going to be a pretty decisive loss but then, in the eighth inning,
22 Bernie Rodriguez- he's the face of the Rattlesnakes' franchise and will probably go pro someday-
23 sent a grand slam flying over the left field fence. That tied it up! The game went into two extra
24 innings and, by the time it was done, it was about 9:15 p.m. Happily, the Rattlesnakes had eked
25 out a win but I was pretty tired and couldn't wait to get home. My favorite show, about zombies
26 of course, was supposed to replay at 10:00. I had missed it when it originally aired earlier in the
27 week because cloud cover or something blocked my satellite dish's reception. I had been
28

Declaration of Avery Leon

1 diligent about not visiting any websites that might spoil the episode for me. But despite my
2 effort, I had also forgotten to set my DVR to catch the re-play.

3 Since the game ran long, I missed my usual 8:30 p.m. train. My friends offered me a ride,
4 but I declined. They left around 9:25, so a few minutes after saying goodbye, I boarded a train
5 scheduled to leave at 9:30 to the Mill Avenue station. Already this was a recipe for disaster: the
6 train didn't end up leaving until about 9:35, and it was packed to the brim with Rattlesnakes fans.
7 I knew they were Rattlesnakes fans because most of them were wearing red Rattlesnakes t-shirts
8 and matching red caps. I thought I may have seen someone in a white Rattlesnakes cap, but I
9 can't be sure. Already I was worried that I would miss my show.

10 The train from the stadium arrived at some stop on the way to the Mill Avenue Station—I
11 cannot for the life of me remember which one--at about 9:49. I remember the time because I was
12 staring at my watch and couldn't believe how long the train was taking at the stop. The station
13 was in pandemonium. A huge group—I'm not sure if they were all together—was returning from
14 dinner at some restaurant called "Gourmet Ghetto." Finally, the train departed and made its way
15 to the Mill Avenue station. When the doors opened, I ran headlong, or I guess rattle-long, into a
16 swarm of Rattlesnakes fans also departing the train. Some of them were pushing and jostling
17 each other. Others were just leisurely strolling. And still others seemed to just stop and stand as
18 soon as they cleared the doors—what jerks! Not me, though. I just ran, ducked, and dodged as
19 best I could through the crowds in the direction of the door to the train. Unfortunately, I had
20 gotten on the 3rd or 4th of 5 trains so there were a bunch of people in front of me.

21 The last thing I remember clearly was looking back into the train car from a few feet
22 away on the platform. There were a few teenagers walking inside the car, but they were about 10
23 feet in front of me. Suddenly, I heard a voice behind me that sounded like it was saying
24 something about my "hands." It didn't sound like the voice was yelling or that it was speaking to
25 me in particular. At that point, I was focused entirely on getting through the crowd and to my car
26 as fast as I could. Then I saw some of the teenagers in front of me look up at the voice, I
27 instinctively began to turn around to look over my shoulder. Since the voice had said something
28 about "hands," I also began raising my hands. At that point, I had run from the train car to just

Declaration of Avery Leon

1 about the front and on the opposite side of the station. I was just above and to the right of the red
2 location pin on the map in Exhibit 1, about to turn to head into the parking structure. I am
3 familiar with that structure and station and agree it is a fair and accurate aerial photograph of the
4 Mill Avenue P-Rail station.

5 Next thing I knew-and before I could completely turn around-I felt a searing, unbearable
6 pain in my left shoulder and upper back. I didn't lose consciousness but I wish I had. My muscles
7 froze and I began convulsing uncontrollably. I think I was screaming but the shock was so
8 intense and disorienting that I couldn't really tell. It was the single most painful, terrifying
9 experience I've ever had in my life. I fell, hit the ground hard, and looked up to see a police
10 officer rushing over to me from the eastern side of the station. I remember that I was facing
11 eastward and parallel to the train, and away from the door, because I had started to turn. I was
12 still pretty dazed but I figured the officer would want to see my ID, so I reached with my left
13 hand into my pocket for my wallet where I keep my driver's license, my parking ticket, and my
14 P-Rail pass that I have to swipe every time I get on or off a P-Rail train. Before I could get to it,
15 it felt like I was zapped again. I could be wrong, maybe it was an echo or something. But I do
16 know that the officer then grabbed my hands, flipped me onto my stomach, and handcuffed me.

17 I learned later that the officer, who was a P-Rail police officer named Lindsey Palmer,
18 thought I had just committed some sort of robbery and used a stun gun on me. But how could
19 Officer Palmer think that? After I decided to sue, I learned that the suspect they were after was
20 supposedly wearing a white cap and an orange shirt, which I wasn't. I don't even own a white
21 cap! The red shirt I was wearing is fairly and accurately depicted in Exhibit 2. In any event, there
22 was no need for Officer Palmer to use the stun gun on me. If Officer Palmer had announced
23 Officer Palmer as a police officer and warned me that a stun gun might be used, I absolutely
24 would have complied with everything I was told to do. But, apart from the "hands" comment,
25 which I'm not even sure came from Officer Palmer, I didn't hear a peep from Officer Palmer or
26 any police officer before I got tased.

27 I hereby attest to having read the above statement and declare under penalty of perjury
28 under the laws of the United States that it is true and correct. Before giving this statement, I was

Declaration of Avery Leon

1 told it should contain all relevant testimony, and I followed those instructions. I also understand
2 that I can and must update this affidavit if anything new occurs to me until the moment before I
3 testify in this case.

4 Signed this 9th day of September, 2015.

5 /s/ Avery Leon

Avery Leon

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Declaration of Cary Donatella

1 I, Cary Donatella, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 My name is Cary Donatella. I grew up in Queens, New York, and moved to Arizona when
3 I was ten. Funny story, actually: my dad owned a coffee shop which everybody used to say served
4 the best cappuccino in the tri-state area. But then, one day, he read this article in the New York
5 Times claiming that someplace called "Treetown Coffee" supposedly served the best cappuccino
6 in the universe. Needless to say, he was pretty miffed so he packed up and headed out to Glendale
7 to see if it was the real thing. Problem was, he didn't read the whole article: the Treetown Coffee
8 from the article was in Glendale, *California*, not Glendale, Arizona. He didn't realize that until he
9 got to Arizona. But, he liked Arizona so much that he decided to move here anyway—he must
10 have come during the winter.

11 My dad really did make the best cappuccino in the whole universe and, pretty soon, the
12 coffee shop he opened up in Glendale needed to expand. That's actually how I got into electrical
13 stuff. I helped him do the wiring in the space he moved into and I've been hooked ever since. I
14 worked for Fontana Electric, Inc., here in Scottsdale for years. I've worked on everything; I did
15 everything from wiring new ceiling lights in little old ladies' bathrooms to repairing overhead
16 power lines after a major storm. I know the science, and I know the real-life part of it, too: I've
17 been shocked several times and, believe me, it's never pleasant. I retired in 2012, but I still keep
18 up with the trade.

19 Anyway, they told me they wanted me to talk about what I saw at the Mill Avenue P-Rail
20 station. Before I do, though, there's something I have to get off my chest: from 2002 to 2004, I
21 served time in prison for a theft conviction. The Maricopa County Attorney said I was stealing
22 valuables from the houses and offices of some of my customers and then selling them at pawn
23 shops. It was ridiculous! The only way they got me was by framing me; they put some of the loot
24 in my house when they came to question me, and then said I took it. It was a set-up but, in order
25 to avoid a trial- following which I was sure I'd end up with a stricter prison sentence, I just told the
26 judge and the prosecutor what they wanted to hear and accepted a plea bargain. But believe me,
27 since then, I sure haven't been too hot on police officers.

28

Declaration of Cary Donatella

1 Anyway, on May 16, 2015, I was on my way back from my favorite Italian joint in Tempe's
2 "Gourmet Ghetto" and, as usual, I was taking the P-Rail. I was taking my usual route home. The
3 train was packed and when I got to the Mill Avenue station it was packed too. Obviously the
4 Rattlesnakes played that night, there were RR baseball fans in red shirts everywhere. Some of
5 them were also wearing baseball hats, obviously.

6 I was sort of tuned out, because I was writing a text message on my phone to my cousin
7 Jimbo. All of a sudden, I heard someone yell something about a black backpack and hands. I can't
8 say whether the person said anything else since I wasn't really paying attention. Anyway, in my
9 book when someone yells "hands!" really loudly, like this person did, you look up so that's what I
10 did. I didn't hear the person say anything else, at least that I could make out. I was confused for a
11 second, because the way that person yelled, I thought I would be in the middle of a robbery or
12 something. But at first, I didn't see nothing.

13 After about a second, though, I noticed some person in front of me over near the door to
14 the front of the train, but kind of on the other side of the platform to the south. I was standing a
15 little ways away, about midway across the station in the other direction, looking at the person's
16 back from a little right. The person was, like a lot of other people there, wearing a red Rattlesnakes
17 shirt, which is why I didn't pick the person out at first.

18 Right when I saw the person, the person started turning away from me toward the eastern
19 side of the platform, and began to raise both of his/her hands. The person only got his/her hands
20 to about waist height. All of a sudden, the person began convulsing and fell to the ground. The
21 person was screaming and looked like s/he was in a lot of pain. I didn't see any more of what
22 happened but I learned later that some police officer tased that poor person. Figures, right? I bet
23 that person wasn't doing anything wrong.

24 Right afterward, the police officer who tased the person came running up to him/her. A
25 second later, another police officer who was a little older than the first one also came running up.
26 The first one was sort of panicking and said, "Court, I shouldn't have fired! This is the wrong
27 person!" Then, the other officer said, "Relax, rookie, happens all the time. Just tell IAD that those
28 kids were in danger or something. It'll all blow over. It always does."

Declaration of Taylor Gomez

1 I, Taylor Gomez, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 My name is Taylor Gomez. I'm a former police officer, and I serve as the chair of Maricopa
3 County's Citizen Review Committee, which we call "the CRC." The CRC conducts civilian
4 oversight of city police, including BMLR police officers. We investigate allegations of police
5 misconduct, issue findings on whether misconduct has occurred and, if so, recommend remedial
6 and disciplinary measures. We aren't officially a part of the police department so all we do is make
7 recommendations. That said, BMLR, the BMLR Police Department, and all police departments
8 that I have worked with tend to take our recommendations very seriously. In about 75% of the
9 cases we review, the police department agrees with the recommendations we make.

10 I'd say I have a pretty evenhanded record on the CRC. Like each of my colleagues, I vote
11 to recommend discipline in about one in every ten of the cases that come before us (or maybe
12 slightly fewer). Not every incident is as simple as it seems, and I try to see that in every case I
13 work on. For example, in 2011, I voted against a finding of misconduct in a case involving a police
14 officer who fatally shot a suspected bank robber twice in the chest.

15 A little more about me: I was born and grew up in Tall Tree, Oregon, a small town in rural
16 Willamette County. I went to college at Oregon State, where I earned a degree in human biology
17 and physiology, and began my career as a beat cop with the Rowe Police Department in the early
18 2000s. It was a pretty boring job; my beat included such hot spots as the city's most popular local
19 yoga studio, a few daycare centers, and an old folks' home. Suffice to say, I didn't see much action.
20 A few years later, though, I left the department after learning of several incidents of what I thought
21 was excessive force by "dirty" officers who went unpunished for their misconduct. They told me
22 that I was overreacting and, in retrospect, maybe I was in some cases.

23 Anyway, I decided to move back to Arizona in 2003 after accepting a job as an internal
24 affairs specialist with the Glendale Police Department. A lot of people think of internal affairs as
25 a dead end. That's the movies. In reality, I loved it. My job was to make sure that our public
26 servants were serving the public as effectively as they possibly could which I found really
27 rewarding. I worked as hard as I could and I even got statewide recognition in 2008 for uncovering
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Declaration of Taylor Gomez

1 a major drug ring in which three police officers were key players. It was all over the news and, I
2 have to say, I loved the praise. I mean, who doesn't like getting their picture in the paper?

3 When I was at the Glendale Police Department, I also conducted yearly trainings for
4 Glendale PD officers on the use of lethal and non-lethal force which included lessons on the use
5 and effects of stun guns. I drew on my knowledge of human biology, experience in the field, and
6 the training materials the department had provided in conducting the trainings, the purpose of
7 which was to educate the officers about the risks and effects of using pepper spray, stun guns, and
8 their department-issued sidearms. I should note, though, that I've never used a stun gun in the field.

9 I really enjoyed Glendale but, when my spouse got a job as a software engineer at a new
10 tech company in 2010, we moved to Gilbert. The commute was just a bit too much for me. I
11 applied for jobs with the Gilbert, Chandler, Tempe, and Phoenix Police Departments. No one was
12 hiring. Wanting to stay involved in police work, I asked the Maricopa County Board of Supervisors
13 to appoint me to the CRC, which it did. I worried that my background in more rural area police
14 work in Oregon would make for a difficult adjustment in Maricopa County. I thought urban police
15 work might be different from and more dangerous than rural police work but I quickly found that
16 not to be true.

17 I was asked by Avery Leon's lawyers to review the evidence in the case and give an opinion
18 about the incident on May 16, 2015. Drawing on my background and experience, I examined
19 several different pieces of evidence, including the affidavits of Avery Leon, Cary Donatella,
20 Lindsey Palmer, and Skyler Todd; Courtney Cruze's deposition and an attached report regarding a
21 1997 incident in which Officer Cruze shot a suspected bank robber in the back, all of which is
22 shown in Exhibit 4; the summary of BMLR disciplinary statistics as compared with similar
23 national statistics that was prepared by Sandy Ensign, a fair and accurate copy of which is reflected
24 in Exhibit 7; the BMLR Police Department's handbook, a fair and accurate copy of which is in
25 Exhibit 5; departmental training records concerning the use of stun guns, a fair and accurate copy
26 of which is in Exhibit 6; and three other reports regarding BMLR officers' use of stun guns, fair
27 and accurate copies of which are in Exhibits 8, 9, and 10. Those are the types of materials the CRC
28 normally relies upon in its investigations, and were sufficient for me to arrive at my conclusions.

Declaration of Taylor Gomez

1 I analyzed them using the normal methods I would use when analyzing an act of alleged police
2 misconduct at the CRC, which are reliable and accepted in my field. I applied those methods
3 reliably.

4 Based on my analysis, I reached two conclusions. First, it is possible that Leon would have
5 remained composed enough following the stun gun shock to put Leon's left hand in Leon's pocket.
6 Second, BMLR police officers provoke more citizen complaints and receive less discipline related
7 to the use of force than other police departments across the nation, which has resulted directly from
8 the BMLR's policies and practices regarding the use of force.

9 As to the first conclusion, it's important to understand the normal physiological effects of
10 a stun gun on the human body. In most cases, the suspect is paralyzed when shocked but only
11 while the stun gun is "engaged," meaning while electricity is flowing into the suspect's body. The
12 paralysis occurs because the flow of electricity disrupts the suspect's nervous system by interfering
13 with the electrical signals that originate in a normal human's brain. However, when the stun gun
14 disengages, the flow of electricity ceases and the suspect's nervous system can return to normal
15 which means that, unless there's some sort of injury that's been caused, the suspect can move again.

16 For that reason and, in my opinion, Leon's claim that Leon raised both hands and *then*
17 placed Leon's left hand in Leon's pocket is perfectly plausible. Once the stun gun disengaged, Leon
18 would have regained control of Leon's nervous system which would have allowed hand movement.
19 Sure, the experience of being shocked with a stun gun is extremely painful and leaves many people
20 dazed for a few minutes after the shock. But that's all psychological, and I can't say what the
21 psychological effects of the shock would have been. From a pure physiological perspective,
22 though, I can say with absolute certainty that Leon *could* have put Leon's hand in Leon's pocket.

23 As to my second conclusion, the statistics speak for themselves. Preliminarily, I have no
24 reason to believe, and do not believe, that the statistics Ensign relied on are inaccurate; I believe
25 they accurately reflect the number of complaints the BMLR Police Department has received since
26 2007, and those complaints' respective dispositions. That is not to say that those dispositions were
27 appropriate in every case, though. I also independently verified the statistics Ensign used from the
28 Bureau of Justice Statistics. In other words, the national "averages" that Ensign uses are accurate.

Declaration of Taylor Gomez

1 However, based on the number of officers in BMLR's police force, BMLR generally
2 receives a slightly higher number of yearly complaints regarding the use of force than the national
3 average. The national average for a department of BMLR's size would be 2.85 complaints per year
4 but the BMLR Police Department averages over 3 complaints per year. That might not seem like
5 a big difference but it's very troubling when you consider the rates at which those complaints are
6 sustained--which is almost *never*. In seven years, the BMLR Police Department has only had *two*
7 citizen complaints sustained. While, admittedly, BMLR police officers serve in somewhat unique
8 environments in and around train stations--in which confrontations with suspects generally are
9 more likely--there's nothing "unique" about the way citizen complaints should be processed.

10 The handling of those complaints sent a message to BMLR police officers that they could
11 use as much force as they pleased without consequence. The complaint in Exhibit 8 is a perfect
12 example; there, Officers Cruze and Irsay received a far less severe punishment than was warranted
13 or than the CRC would normally recommend. The normal punishment for that sort of thing would
14 be, at minimum, a weeklong suspension, and possibly other measures. Effectively, the punishment
15 that was actually handed down--a half-day suspension--amounted to a "slap on the wrist."

16 It's also especially concerning that Officer Cruze was involved in two of the three stun gun-
17 related incidents shown in Exhibits 8, 9, and 10, plus the incident on May 16. If anyone at BMLR
18 would have been exposed to its lax policies regarding the use of force, it would have been Officer
19 Cruze. The same is true of his training; the Department's training records in Exhibit 6 show that
20 he was permitted to be more lackadaisical about receiving proper training than any other member
21 of the department. Additionally, Officer Cruze at least partly instigated the incident on May 16 by
22 pointing out Leon to Officer Palmer and indicating that Palmer should subdue Leon. Thus, via
23 Officer Cruze, BMLR's lax policies regarding punishment for the excessive use of force appear to
24 have contributed directly to the incident in which Officer Palmer discharged the stun gun into
25 Leon.

26 Based on my review of the evidence, I believe the BMLR Police Department's policies and
27 practices directly resulted in an excessive use of force on Avery Leon. I hope justice is served.
28 Nobody should have to go through what Leon experienced.

Declaration of Lindsey Palmer

1 I, Lindsey Palmer, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 My name is Lindsey Palmer and I'm 26 years old. I'm a police officer with the BMLR
3 Police Department. I grew up Chicago, on the South Side, so I know what "rough neighborhood"
4 means better than just about anyone. On top of that, I come from a family of police officers; both
5 my father and grandfather served in the Chicago Police Department. I moved to Arizona to go to
6 college--I went to Grand Canyon and transferred to ASU on a full scholarship--and I've been here
7 ever since.

8 Chalk it up to my family, I guess, but I've wanted to be a cop for as long as I can remember.
9 When I graduated from ASU in 2012, I put in applications at the Phoenix PD, Tempe PD, ASU
10 PD, Glendale PD, Scottsdale PD, Tucson PD, Flagstaff PD, and BMLR Police Department. BMLR
11 ended up hiring me (I suspect budgets in the cities were a bit of an issue) and, when I finished my
12 time at the academy in January 2013, I was ready to hit the ground running, and I did. I've had a
13 great career on the BMLR police force so far and I hope to continue for as long as they'll have me.

14 The Chief ended up pairing me with Courtney Cruze, who, as I quickly found out, was a
15 total legend in the nearly fairly-new Department. He was there since BMLR existed; he had a
16 reputation as being eminently fair but, at the same time, he was one of the toughest guys around.
17 He taught me--and I found out for myself on the job--that you need to be tough as nails to make it
18 in the BMLR. Sure, I know Courtney had a few complaints filed against him over the years, but
19 that happens to everybody. I don't know an officer here or at any other Police Department who
20 hasn't had at least one excessive force complaint filed against him or her. Early on, Courtney taught
21 me my most important lesson: when we're reasonably sure someone has committed a crime and is
22 planning to do so again, we're fair but we don't give them the benefit of the doubt in close cases. I
23 can't remember how many times he told me that.

24 Part of the reason for that, Courtney explained, is that policing the P-Rail isn't quite like
25 regular police work. I certainly don't mean to knock my colleagues elsewhere, but things can get
26 much hairier much quicker on the P-Rail. See, unless you're in a bad neighborhood, most regular
27 beats are manageable. Sure, sometimes you'll catch a drunk driver, sometimes you'll respond to a
28 call about someone trying to steal a car but on most days it's pretty uneventful. I know because I

Declaration of Lindsey Palmer

1 used to ride along with my dad along a few different beats in Chicago when I was a kid, and I have
2 a lot of friends at the Phoenix PD.

3 But, when it comes to the P-Rail, it's a little different. Obviously, you've got people without
4 tickets who, when the ticket-checkers catch them, naturally become a little belligerent at the
5 prospect of paying a \$250 fine, or whatever the amount is. Plus, everybody is in closer quarters
6 and--especially during rush hour and especially after folks have been to a ball game and had a
7 drink or two--is usually operating on a shorter fuse. That means more pushing, more shoving, and
8 a few more fights than you'll usually run into on your average street corner. Needless to say, we're
9 always vigilant about whatever sort of threat might come up on the P-Rail, no matter how big or
10 seemingly small it might be.

11 Before May 16, 2015, I had received one and only one complaint against me alleging
12 excessive use of force. Between the time I started in January 2013 and that time, I had arrested or
13 assisted in arresting about two dozen suspects, most on drug-related offenses. The suspect who
14 filed a complaint claimed that I used my pepper spray on him without any good reason. Half of
15 that is true--I sure did use my pepper spray on him but that was only because he came rushing at
16 me with a switchblade while he was high on drugs. He was about 20 feet away from me when I
17 sprayed him. Afterward, Courtney--who, as my partner, was there with me--told me he was
18 amazed I hadn't reached for my gun or at least my taser. At BMLR, we're required to keep our
19 guns on one side of our belt and our tasers on the other side; that requirement exists so, in the heat
20 of the moment, we don't grab the wrong one. I decided to use my pepper spray because I wanted
21 to be cautious. I'm a peaceful person, and my philosophy is that I'm only going to use as much
22 force as is necessary to deal with the threat, and not an iota more. Anyway, the suspect's complaint
23 was found to be frivolous. He was convicted and is now serving 10 years in prison for possession
24 with intent to distribute, so you know his complaint was probably no good from the get-go.

25 That incident, though, reinforced the lesson that Courtney had taught me when I started:
26 there's a reason we don't give known or suspected criminals the benefit of the doubt. If I had
27 hesitated or, if I had second-guessed myself, I believe I might not be alive today. Heck, if the
28 pepper-spray wasn't effective, which happens especially when people are strung out on drugs, I

Declaration of Lindsey Palmer

1 might not be here. It was an eye-opening moment for me and, based on my conversations with
2 my colleagues at the BMLR, I think it's one that all police officers have at one point or another in
3 their careers. Another officer with whom I worked, Paul Bowlen, had a similar experience that I
4 witnessed. That experience is described in Exhibit 10, with which I am familiar and which I agree
5 is an accurate representation of what happened that day.

6 May 16, 2015, was a night I won't forget anytime soon. That night, Courtney and I were
7 stationed in our BMLR cruiser near the Mill Avenue P-Rail stop. A little after 9:30p.m., we
8 received a dispatch saying that an armed robbery had happened on a P-Rail train coming towards
9 Mill Avenue. The robbery happened at the stop prior to the Mill Avenue station. According to the
10 dispatch, a person in their late 20s or early 30s and of Avery Leon's race, height, and weight had
11 approached a pair of teenagers, brandished a small silver revolver, and demanded that they turn
12 over their cash, credit cards and cell phones. The dispatch did not mention the attacker's gender.
13 The attacker was wearing an orange t-shirt, jeans, and a white baseball cap, it said. After grabbing
14 the victims' purses and cell phones, the attacker shoved the contraband and the gun into some sort
15 of dark backpack and ran onto P-Rail train headed for the Mill Avenue station.

16 As soon as Courtney and I heard the dispatch, we looked at each other and grimaced. We
17 knew that a similar attack had happened on the P-Rail a few weeks ago; Courtney was on duty at
18 the time and had responded to the attack. In that case, a person in their late 20s or early 30s and of
19 Avery Leon's gender, race, height, and weight had robbed an elderly couple with a small silver
20 revolver. According to Courtney, the attacker hit one of the victims on the head with the butt of
21 the revolver when she tried to resist. The force of the blow knocked her to the ground and gashed
22 her forehead. She got a concussion and had to get stitches but she ultimately recovered. She was,
23 however, pretty traumatized by the incident. I had not directly dealt with an armed robbery on the
24 P-Rail yet, so Courtney's experience was my baseline.

25 Courtney and I got out of our BMLR cruiser and started walking toward the platform where
26 the train carrying the attacker would arrive. As we ran to the platform, Courtney mentioned the
27 prior attack and said, "This perp got away once and under no circumstances are we going to let
28 that happen again. Remember that we don't give the criminals the benefit of the doubt. You do

Declaration of Lindsey Palmer

1 whatever you need to do to take this person down." But, not unusually, Courtney then added, "but,
2 I mean, don't do anything stupid." The train was supposed to arrive on the northern side of the
3 platform. We each knew that another train would arrive on the southern side of the platform, would
4 open to the north, and it would be mobbed due to the Rattlesnakes' game. To make sure we covered
5 the whole area, I positioned myself at about mid-platform--about where the first or second train
6 car should come to a stop. Courtney was positioned about the same spot but farther west, about
7 where the fourth or fifth car should come to a stop. I would say we were about 75-100 feet apart.

8 All of a sudden the train arrived. A lot of people seemed to be pushing, jostling and running
9 across the platform. Of course, others mobbed together and stood still blocking the way for
10 everyone else. Courtney and I maneuvered as best we could in the crowds--we were
11 simultaneously scanning the crowds and peering into the train itself to look for the attacker.

12 All of a sudden, I heard Courtney shout, "Lindsey, black backpack to your left!" I was
13 facing the back towards the third train car, but I swung around and saw a person whom I later
14 learned to be Avery Leon running across the platform toward the front of the train. Leon seemed
15 to match the attacker's description wearing jeans and a black backpack. Leon also appeared to be
16 running directly toward a group of teenagers who were standing at the door of the train. I saw that
17 Leon was wearing what I thought was an orange or red t-shirt--although, in the split second I had
18 to react, I couldn't tell exactly because it was partly obscured by the backpack. It could have been
19 orange or it could have been red, I couldn't tell at the time. Then again, there were lots of people
20 wearing similar shirts on the platform. Leon didn't seem to be wearing any sort of hat but I
21 remember thinking at the time that, whoever this person was, the person was the attacker and had
22 probably stuffed the cap in the backpack to avoid detection during the escape.

23 Then I noticed something really scary: as Leon was rushing toward the group of teenagers,
24 Leon's left hand was in Leon's left pocket and seemed to be fumbling around for something that
25 Leon couldn't quite get a grip on. My mind immediately flashed back to the attacker's silver
26 revolver, the business end of which another group of teenagers had been looking down just a little
27 while earlier. I wasn't going to let that or, heaven forbid, something worse, happen again.

28

Declaration of Lindsey Palmer

1 I immediately unclipped the safety device securing my taser to my belt. A fair and accurate
2 depiction of my taser is shown in Exhibit 3. I yelled at Leon, "You with the black backpack, stop
3 right where you are and put your hands up!" That is all I remember saying. Leon didn't respond at
4 all. Leon didn't look up. Leon didn't raise Leon's hands. Leon didn't do anything but continue
5 running toward those teenagers while fumbling around for something in Leon's pockets. To me,
6 given the dispatch we had received, that took the situation from "urgent" to "this might be life or
7 death." I was standing about 30 feet away from Leon and, while it was loud on that platform,
8 there's no way that Leon didn't hear me. I mean, some of the *teenagers* even turned around and
9 looked at me when I yelled but Leon just kept running. What if Leon was about to pull out that
10 silver revolver and use it on those teenagers?

11 At that point I had to make a decision. What I had in front of me was a person who partly
12 matched the description of a vicious, violent attacker who kept running toward a group of teenagers
13 after I had called for the person to stop. On one hand, if I did nothing, the consequences could be
14 dire. On the other, if I used my taser, I could stop what would potentially have been a devastating
15 second attack without any permanent physical damage to the attacker. Like I said, I'm a peaceful
16 person and I never want to harm a suspect unless there's no other alternative. I made the only
17 decision I could. I unholstered my taser, pointed it at Leon, and fired. At the time, Leon was
18 approximately 30 feet away from me. The stun gun's two electrified barbs lodged in Leon's left
19 shoulder. Leon screamed, stopped, convulsed, and fell over on Leon's side, parallel to the P-Rail
20 and facing east. Leon's hand was still in Leon's pocket.

21 I know Leon turned out not to be the attacker and I feel really bad about that. But in those
22 circumstances, I had no choice. It's easy to be an armchair quarterback when it comes to these sorts
23 of incidents but, at the end of the day, we police officers have to make split-second decisions based
24 on limited information. If we feel like we need to second-guess ourselves every time we face a
25 dangerous suspect, that could mean we wait an extra second while an armed suspect takes a swipe
26 at us. No police officer does that, and neither should they.

27 I'm really, really sorry for what happened to Avery Leon. But I have no regrets. Leon heard
28 me and Leon should have stopped when I called. If Leon had done so, I might have been able to

Declaration of Lindsey Palmer

1 rule Leon out, might have even caught the attacker, and certainly wouldn't be in this position
2 today.

3 I hereby attest to having read the above statement and declare under penalty of perjury
4 under the laws of the United States that it is true and correct. Before giving this statement, I was
5 told it should contain all relevant testimony, and I followed those instructions. I also understand
6 that I can and must update this affidavit if anything new occurs to me until the moment before I
7 testify in this case.

8 Signed this 8th day of September, 2015.

9 /s/ Lindsey Palmer
10 Lindsey Palmer

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Declaration of Skyler Todd

1 I, Skyler Todd, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 I'm Skyler Todd. I'm 14 years old and I'm a student at Copper High School in Tempe,
3 Arizona. I've lived in Tempe my whole life and I've never really been in any sort of trouble. I
4 mean, people tend to say I'm kind of a "goodie two shoes" but I think that's just because of that
5 one time last year when I caught some of my friends cheating on math tests. I noticed them on the
6 other side of our classroom looking at their cell phones under their desks. I told our teacher about
7 it even though I knew they'd be in big trouble--I mean, what else was I going to do?

8 I'm an okay student, I guess. I get mostly B's and B+'s. My favorite class is art, by far. I
9 really like visual art and I'm thinking about studying it in college. Problem sets, papers, and lab
10 experiments are interesting enough, I guess, but I love trying to capture the world around me in a
11 painting or photograph. My friends say I'm pretty good at it, too, and that I notice things that other
12 people don't. Like in the early fall when my class takes its yearly field trip to the zoo, I'm always
13 the first one to point out some of the more difficult-to-spot wildlife. Owls are my favorite.

14 Anyway, on May 16, 2015, my friends and I were coming home from the Rattlesnakes
15 baseball game. We all go to CHS, but only one of us, my best friend Taylor Pahlke, is in one of
16 Avery Leon's classes which Taylor doesn't like very much. We all had roundtrip P-Rail tickets to
17 travel to and from the game. Since we all live in Tempe, and because it's within walking distance
18 (longer walk, but still walking distance), we catch the P-Rail at the Mill Avenue station, which we
19 then take the rest of the way to the stadium. Because I'm generally pretty forgetful, I gave my ticket
20 to Taylor to hold on to.

21 The game was great. I mean, I don't really care all that much about baseball, but it was
22 really great to hang out with my friends! The game went pretty late so I was a little tired when we
23 all headed out. We took a P-Rail train back to the Mill Avenue station. As we were approaching
24 the station, I stopped and started fumbling for my phone. I think I got a text from my mom asking
25 where I was. I couldn't find my phone in any of my pockets and then Taylor pointed to my left
26 hand--there was the phone. I felt like such a space cadet. But, to be honest, that sort of thing
27 happens to me a lot.

28

Declaration of Skyler Todd

1 At that point, when I realized I had my phone, I was just a few feet out of the door at the
2 Mill Avenue station. I had just sort of walked off the train in a trance like you do when your mind
3 is wandering or focused on something else. The whole Mill Avenue station is accurately reflected
4 in Exhibit 1, with which I am familiar. The rest of my group was walking ahead of me when I
5 looked up and then, suddenly, I heard a voice behind me. The voice yelled something that sounded
6 like, "You with the backpack, stop and put your hands in the air!"

7 I froze for a split-second. I thought I had done something wrong! But then when I got my
8 bearings back, I turned around and saw someone whom I later learned was Avery Leon just a few
9 feet away from me. Leon seemed to be running really fast and straight toward me. Also, Leon's
10 left hand was in Leon's left pocket, and it looked like Leon was trying to grasp at something. Leon's
11 hand was wriggling around in the pocket pretty seriously, like Leon just couldn't get ahold of keys
12 or something. Then again, why would Leon need keys if Leon just got off the P-Rail? I'm sure
13 about all that, because I thought it was kind of weird and, because of how fast Leon was running
14 toward us, a little scary. It looked like Leon was going to run me over so I started to move out of
15 the way.

16 Then, before I knew what was happening, Leon started screaming and fell to the ground.
17 It looked like Leon was running straight toward my friends and me and then, all of a sudden, Leon
18 started twitching and yelling, and then sort of jerked to Leon's left and fell in that same direction.
19 I could see for sure that Leon's left hand was still in Leon's pocket after falling only, when Leon
20 hit the ground, it didn't look like Leon was fumbling around for Leon's keys any more. I couldn't
21 tell what had happened but, like I said, it was all really scary to me and so, except for what Leon
22 was doing, I may not have seen everything else that was going on. I learned later that a police
23 officer behind Leon had shot Leon with a stun gun. I guess that explains what the yellow thing
24 was in the officer's hand. I originally thought that the officer ran up to Leon and shot him when
25 he was already on the ground and shaking. The officer raised a gun looking thing and pointed it
26 like a gun after all.

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Declaration of Sandy Ensign

1 I, Sandy Ensign, pursuant to 28 U.S.C. § 1746, declare and state as follows:

2 I'm Sandy Ensign and I'm 45 years old. I am the director of the Internal Affairs Division--
3 IAD as we call it--at the Phoenix Police Department. PPD handles all IAD issues with BMLR
4 since the BMLR PD isn't large enough to justify its own IAD.

5 I have lived in Phoenix, Arizona, all my life. I grew up in a *very* bad neighborhood; at the
6 time, shootings, robberies, and other crimes were a daily reality. My best friend's parents owned
7 and operated a small convenience store in the neighborhood and, when we were 14, my friend's
8 parents were killed in a holdup at the store. The shooter was never caught. I saw the effect of the
9 shooting on my friend, who eventually turned to drugs and wound up in prison, and so I decided
10 to become a police officer. I went straight from high school to the Police Academy where I
11 graduated first in my class. I became a beat cop in 1988 and a detective in 2001.

12 Toward the end of my tenure, after the Department issued them to its officers, I used my
13 stun gun in the field on several occasions. The stun gun I used was an older version of the same
14 make and model that Lindsey Palmer used on Avery Leon in this case. After my years as a
15 detective, though, I realized that some of the problems facing rough neighborhoods like the one I
16 grew up in can, in rare but important cases, have as much to do with the police officer handling
17 the case as with the criminal he or she is trying to nab. That in mind, in 2010, I decided to become
18 an investigator with the Maricopa County Attorney's Conviction Review Unit, which investigates
19 allegations of police misconduct and recommends that the district attorney vacate convictions that
20 are a product of such misconduct.

21 Right off the bat, I found the job incredibly rewarding and learned two important lessons.
22 First, in my experience, the vast, overwhelming majority of police officers are decent, honest,
23 hardworking people who are genuinely trying to make their communities better places. I also saw
24 how a false complaint--even a frivolous one--can unfairly destroy an officer's reputation. The
25 evidence typically bears that out. Of the 37 cases I reviewed in the Conviction Review Unit, I
26 recommended the vacation of just two convictions. Second, though, I learned that in the rare case
27 in which a police officer tampers with evidence, coerces a suspect into confessing, or commits
28 some other sort of misconduct, the resulting conviction can unfairly destroy the defendant's life

Declaration of Sandy Ensign

1 and family. It is important to remember that even an honest mistake can have that effect. In the
2 two cases in which we recommended vacation of the defendant's conviction, we did not believe
3 that the investigating officers had *intentionally* tampered with evidence or coerced a confession;
4 they seemed to be acting in good faith.

5 Anyway, in early 2015, the Phoenix Police Department's then-current IAD director retired.
6 The Department approached me about taking over the position and I accepted. I began work on
7 May 19, 2015, just days after the incident with Avery Leon and Lindsey Palmer at the Mill Avenue
8 P-Rail station. I had never conducted a formal IAD review before but, given my extensive
9 experience, I had no concerns about the integrity of my investigation.

10 In the course of my investigation I interviewed Avery Leon, Cary Donatella, Lindsey
11 Palmer, and Skyler Todd. Their affidavits, which I have also reviewed, reflect everything that they
12 each told me during those interviews. I also looked into the BMLR Police Department's protocols
13 and procedures for responding to complaints of excessive force, with an emphasis on the use of
14 stun guns. In connection with that part of my investigation, I reviewed the BMLR Police
15 Department's handbook (Exhibit 5); departmental training records concerning the use of stun guns
16 (Exhibit 6); a series of statistics comparing complaints that BMLR police officers receive as
17 compared with similar national statistics (I assembled the results in Exhibit 7); Courtney Cruze's
18 deposition, attached to which was an IAD report regarding a 1997 incident in which Officer Cruze
19 shot a fleeing suspect in the back (all of which is in Exhibit 4); and three recent IAD reports
20 regarding BMLR officers' use of their stun guns (Exhibits 8, 9, and 10).

21 I came to two conclusions: (1) it's incredibly unlikely, although technically not impossible,
22 that Leon moved Leon's hand from outside of Leon's pocket and then into the pocket following
23 the shock from the stun gun, and (2) the BMLR Police Department has responded appropriately to
24 the excessive force complaints it receives.

25 As to my first conclusion, the key is that we consider both the physiological *and*
26 psychological effects of a stun gun on the human body. I have also reviewed Taylor Gomez's
27 affidavit, and I generally agree with Gomez's description of the physiological effects of a stun gun
28 on the human body. As a pure biological matter, Gomez is correct to say that the flow of electricity

Declaration of Sandy Ensign

1 from the stun gun interferes with the electrical signals that come from the brain. In other words,
2 the electricity makes it all but impossible for a normal person to move their muscles while being
3 shocked.

4 The key though--and the reason that Gomez's analysis misses the mark--is that stun gun
5 shocks often produce physiological and psychological effects that can linger for several minutes
6 *after* the shock itself. Those effects--which I witnessed personally several times during my time as
7 a police officer--may include disorientation, muscle tension, temporary paralysis, and potentially
8 others. Generally, only a person with the build and mental toughness of a professional athlete can
9 maintain enough composure following the use of a stun gun to maneuver in the way that Leon
10 would have had to in order to put his/her hand in his/her pocket. Leon, I understand, had neither.
11 For that reason, while I can't say it would be completely impossible, it would have been incredibly
12 difficult for Leon to move his/her hand with enough poise and coordination to get it into his/her
13 pocket in the moments following the shock.

14 As to my second conclusion, the first key thing is understanding how the complaint process
15 typically works and the terminology that accompanies the process. If a complaint is determined to
16 be valid, then the complaint gets "sustained" and disciplinary action generally is taken against the
17 officer. If a complaint is determined to be invalid, then it is "dismissed" and nothing else happens.
18 But, often times, things are not black and white and the standards that IAD professionals use across
19 the country--PPD's IAD Department included--are built to acknowledge that. We regularly found
20 that there is insufficient evidence to determine *either way* whether a complaint is truly meritorious.
21 In that case, the complaint is "not sustained." It's common in the rough and tumble world of
22 policing to have a substantial number of "not sustained" complaints in a department's file. That
23 doesn't mean it's a bad department; that just means that the circumstances of certain incidents make
24 it too difficult to tell what happened one way or the other.

25 When you understand that terminology, BMLR statistics look about average when
26 compared with the national numbers. There are plenty of incidents with police officers across the
27 country--and BMLR is no exception--where there just is not enough evidence to come to a
28 conclusion. And, as with any department, there are always some complaints that are "sustained."

Declaration of Sandy Ensign

1 That doesn't mean the department is necessarily doing anything wrong; the work of a police officer
2 is pretty rough and tumble and sometimes police officers make mistakes. I admit that BMLR's
3 slightly higher-than-average rate of citizen complaints is potentially troubling. However, in my
4 opinion, the higher rate of complaints is attributable the unique environment in which BMLR
5 police officers work: the close quarters, rush-hour tempers, and other factors lead to a higher
6 number of officer-citizen confrontations than usual. I cannot say why so many complaints were
7 found to be "unfounded" or "exonerated" following investigation but it could be because there
8 weren't any cameras on the P-Rail until last month. It will be interesting to see whether the added
9 video evidence will make it easier to resolve citizen complaints.

10 Even where a citizen complaint is "not sustained," there may be certain other things a
11 department can and, in some cases, should do in order to prevent confrontations where force may
12 be necessary. BMLR appears to have taken some concrete steps to make clear when and how
13 officers should use their stun guns; the BMLR Police Department's Officer Handbook shown in
14 Exhibit 5 is an excellent example. If anything, the Department perhaps could require additional
15 training following incidents where the use of force is alleged to have been improper. It is important
16 that, where appropriate, police departments don't just discipline officers and leave it at that. It is
17 equally critical to give officers the tools they need to avoid confrontations in the future.

18 All that in mind, if it were my decision, I would have required Officers Palmer and Cruze
19 to attend additional training sessions on the use of stun guns following the incident with Avery
20 Leon. I have not heard anything about any such training taking place, at least not yet. I am not sure
21 I would have disciplined them but, clearly, something went wrong that day and it is important that
22 BMLR take steps to make sure it does not happen again.

23 I hereby attest to having read the above statement and declare under penalty of perjury
24 under the laws of the United States that it is true and correct. Before giving this statement, I was
25 told it should contain all relevant testimony, and I followed those instructions. I also understand
26 that I can and must update this affidavit if anything new occurs to me until the moment before I
27 testify in this case.

28 Signed this 15th day of September, 2015.

Declaration of Sandy Ensign

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/s/ Sandy Ensign
Sandy Ensign

Exhibit 1

robertste

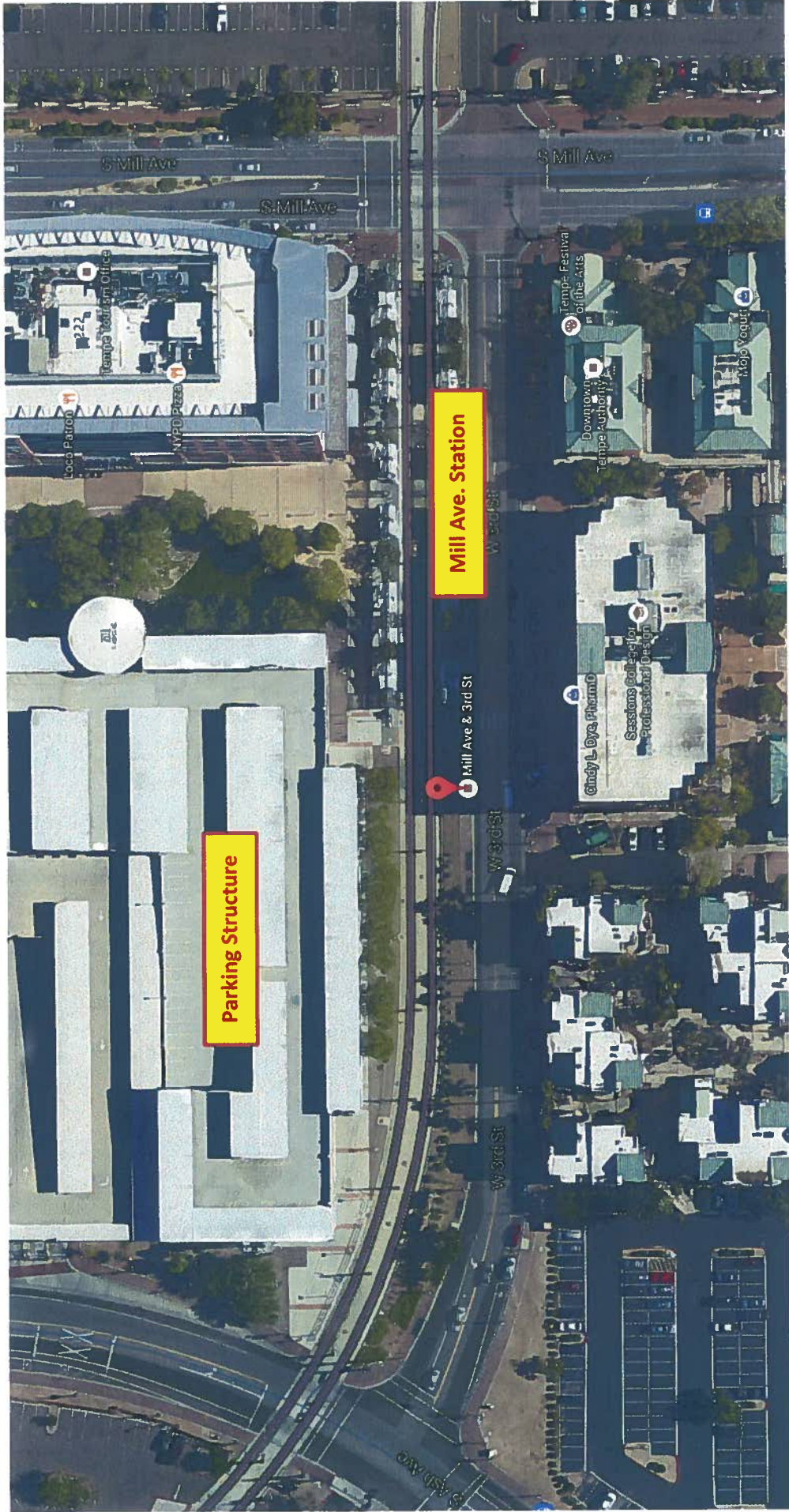


Exhibit 2



Exhibit 3



UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

AVERY LEON, an individual,

Plaintiff,

vs.

BASIN METRO LIGHT RAIL,
INC., a non-profit public
corporation existing in the
State of Arizona; BMLR
POLICE DEPARTMENT OFFICER
LINDSEY PALMER, an
individual

Defendants.

Case No. 2:15-cv-555121-WAL

DEPOSITION OF COURTNEY CRUZE

Phoenix, Arizona

July 16, 2015

Reported by: Carly Sensemacher, RPR, CSR
Certified Reporter, No. 555111

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THE DEPOSITION OF **COURTNEY CRUZE**

was taken on July 16, 2015, commencing at 9:30 a.m., at the law offices of Gnota, Penni, LLC, before Carly Sensemacher, a Certified Court Reporter in the State of Arizona.

COURTNEY CRUZE,
a witness herein, having been first duly sworn by the Certified Court Reporter, was examined and testified as follows:

EXAMINATION

BY Mr. Otto Lipinski:

Q. Please state your name for the record.

A. I'm Courtney Cruze, C-R-U-Z-E, and for the record, I really do not have time for this.

Q. Mr. Cruze, how old are you?

A. I'm fifty-four.

Q. Have you ever been deposed before?

A. Yes, twice. Once was during my divorce. The other time was during the lawsuit following that 1997 thing with the bank robber.

Q. We'll talk about that in a moment, but for now, I just want to get the basic introductory stuff out of the way. Are you taking any medications?

A. No.

Q. Are you currently under the influence of alcohol?

A. No.

33. Q. Is there any reason you're aware of why you
34. wouldn't be able to answer my questions truthfully,
35. accurately, and completely?

36. A. No, not that I can think of.

37. Q. If I ask you a question and you begin to answer
38. it, I'm going to presume you understood the question
39. fully. Is that okay?

40. A. Sure.

41. Q. If there's any part of a question you don't
42. understand, please let me know, and I'll do my best to
43. clarify, okay?

44. A. Sure.

45. Q. Okay, then let's dive right in. You mentioned a
46. thing in 1997 about a bank robbery. What happened there?

47. A. How is that relevant to anything?

48. Q. I don't want to argue, Mr. Cruze, but we get to
49. ask a broad range of questions here.

50. MS. LOPEZ: They do, Courtney.

51. THE WITNESS: Fine, whatever.

52. MS. LOPEZ: Just go ahead and answer his questions as
53. best you can.

54. BY MR. LIPINSKI: So, what happened with that bank
55. robbery thing in 1997?

56. A. Well, back then, I was a beat cop with the BMLR.
57. Bet you didn't know BMLR was around back then. Most
58. people don't—probably most of the officers with the BMLR
59. PD for that matter. Mainly buses, but there was a
60. trolley line and they hooked their name from that
61. apparently. Anyway, one day, we get a call on the radio
62. saying that some hoodlums were in the process of robbing
63. Young's Savings and Trust, which used to be over on
64. Serra Street near what is now a P-Rail station. My

65. partner and I were right in the area, and we responded.
66. When we got there, we heard a gunshot from inside the
67. bank and then saw the robbers just come tearing out of
68. the front door. They were wearing masks, and split off
69. in different directions.

70. So I went after one, and my partner went after the
71. other. They were each carrying duffel bags full of cash,
72. so it was hard to tell who had the gun, or maybe whether
73. both of them had guns. I --

74. Q. Why did you believe both of them had guns?

75. A. I didn't say I believed they both had guns, I said
76. we didn't know. We knew there was at least one gun, and
77. we didn't know who had it.

78. Anyhow, my guy is running across the plaza in front
79. of the bank and toward a car parked by the sidewalk.
80. There are people on the sidewalk, too, including a young
81. mother pushing her baby in a stroller. And I'm thinking,
82. holy crap, this guy might take a hostage. Then I saw him
83. reach into his pocket for something, like he was
84. grabbing at something, and then I thought I saw
85. something metal. So I didn't hesitate. I put him down.

86. Q. Put him down?

87. A. Yeah. I unholstered my sidearm, yelled for him to
88. stop and, when he didn't, I shot him.

89. Q. Why did you think he might take a hostage? I mean,
90. did they have any other hostages?

91. MS. LOPEZ: Objection, compound.

92. Q. You can answer.

93. A. Uh, seriously? Why did we think he might take a
94. hostage? He had just robbed a bank, killed a teller, and
95. was now on the run toward a woman and her baby with a
96.

97. cop hot on his tail. That's why I thought he might take
98. a hostage.

99. Q. What did you yell at him?

100. A. What do you mean? I just told you. I yelled at him
101. to stop.

102. Q. I mean specifically, what words did you use?

103. A. What words? I don't know. "Hey, you, stop."
104. Something like that.

105. Q. Did you identify yourself as a police officer
106. before firing?

107. A. Did I what?

108. Q. Did you identify yourself as a police officer
109. before you shot him?

110. A. No, I mean, not that I remember. But believe me,
111. this guy wasn't sprinting away from the bank because he
112. wanted to make it to McDonald's before they stop serving
113. Breakfast, though I suppose that saying is a little
114. dated now. He saw the lights and heard the sirens when
115. we pulled up. He knew we were cops.

116. Q. Did you announce that you would shoot him if he
117. didn't stop?

118. A. Nah.

119. Q. Why not?

120. A. I don't know. I didn't have time. I mean, I
121. already went through this with IAD a million times, it's
122. all in the report.

123. Q. We'll get to the report, but I need you to tell me
124. now.

125. A. Yeah, blah, blah, blah, I know, fine. What was the
126. question again?

127. Q. Why didn't you tell him that you would shoot if he
128. didn't stop?

129. A. Look, to be honest with you, we usually don't do
130. that. I know Lindsey didn't do that here, and I back
131. Lindsey up on that. The reality is, in my line of work,
132. we have to make split-second decisions, and there's not
133. always a lot of time to go through a mental checklist
134. and say, hmm, did I give this criminal all of the
135. warnings and protections and other stuff the department
136. says we have to give him? I mean, a lot of the time, we
137. just can't.

138. Q. So, any other reason, why you didn't warn him that
139. you'd shoot, apart from not having time?

140. A. Uh, no. Not that I can think of. It was so long
141. ago.

142. Q. You're aware that the person you shot wasn't
143. actually armed, right?

144. A. I mean, yeah, it turns out he was reaching for his
145. car keys or something. But I didn't know that at the
146. time.

147. Q. You couldn't distinguish car keys from a gun?

148. A. No, not from where I was at that time. And I mean,
149. like I said, we don't usually have time to double check
150. when our view's obstructed. I was behind him at the
151. time, and I couldn't see real well.

152. Q. I'm showing you Exhibit A.

153.

154. [Exhibit A was marked.]

155.

156. Q. According to this IAD report on the incident -
157. this is the internal affairs report on that incident,
158. isn't it?

159. A. Yeah.

160. Q. And, you've read it?

161. A. Yeah. Don't agree with some of what it says there.

162. Q. Well, according to this report, you're aware that
163. there was a witness who said you were standing off to
164. the side of the robber, and that it was pretty clear
165. that the robber was going for his keys. And that you
166. shot him anyway.

167. A. Yeah, we interviewed that guy. I smelled alcohol
168. all over his breath. He was lying.

169. Q. Can you prove he was lying?

170. A. No, you and I both know I can't. That's why the
171. complaint wasn't dismissed outright. But they still
172. believed me over that drunk witness. That's why it was
173. "non sustained."

174. Q. You know for a fact that's why the complaint was
175. "not sustained"?

176. A. Yeah, our IAD chief, Bill Meeuwsen, told me that.
177. He said that he knew I was telling the truth, but since
178. this witness had come forward, he couldn't just throw
179. the complaint out, because then it'd look like he was
180. ignoring evidence or something. But he said that he'd
181. make it go away and that it wasn't a big deal.

182. Q. As far as you know, did Mr. Meeuwsen do anything
183. to investigate the matter himself?

184. A. I don't know. Maybe. I wouldn't hear about that
185. sort of thing, because I'm not in IAD.

186. Q. You wouldn't hear about it? Mr. Cruze, it
187. concerned an incident in which you shot and killed an
188. unarmed man, and the review was focused on your action.
189. You mean to say you wouldn't have heard about the
190. investigation that was going on?

191. A. I don't know. We just usually don't really hear
192. about that sort of stuff.

193. Q. So you don't know if Mr. Meeuwsen performed his
194. own investigation?

195. A. I guess I don't.

196. Q. Okay. Did you ever talk to Lindsey Palmer about
197. that incident?

198. A. The bank robbery? Sure. It was the first time I
199. ever killed a guy in the line of duty. I used it as a
200. teaching moment.

201. Q. A teaching moment?

202. A. Yeah. Lindsey's a good kid, and I wanted to do my
203. part to teach Lindsey the ropes.

204. Q. How in the world did you use that shooting as a
205. teaching moment

206. A. Well, okay, maybe that's not the best way to
207. describe it. But here's the deal. The most important
208. lesson I teach all the newbies when they come to the
209. BMLR PD is like that thing Sean Connery's character said
210. in that movie the Untouchables. Your first job
211. requirement is that when your shift ends at the end of
212. the day, you go home alive. And that's what I tried to
213. teach Lindsey, and all the new kids who join.

214. Q. And you shooting the suspect was an example of
215. staying alive at the end of your shift? Isn't that a
216. little melodramatic, Mr. Cruze?

217. MS. LOPEZ: Objection, compound, argumentative.

218. WITNESS. Are you kidding me? That's incredibly
219. offensive,

220. MR. LIPINSKI. I know a bunch of guys at BMLR and in
221. other departments who don't think there's anything
222. melodramatic about wanting to stay alive on the job,
223. because they've lost friends in the line of duty.

224. Q. I'm sorry, I didn't mean it that way.

225. A. It's fine.

226. Q. No, I really am. I think what I'm getting at is
227. how the 1997 incident has to do with the lesson you
228. taught to Lindsey Palmer.

229. A. Sure, I get it. Here's what I told Lindsey after I
230. told Lindsey that story: the point is that you don't
231. second guess yourself, and you don't take chances. If I
232. had wanted to be a hundred percent sure whether that guy
233. had a gun, I would have had to wait another second or
234. two after I first saw the metal, like, until he had
235. drawn it all the way out of his pocket. And by that
236. time, for obvious reasons, it can be too late. Don't do
237. that, I told Lindsey. As soon as you have reason to
238. believe that your life or someone else's life is in
239. danger, you have to act.

240. Q. What does the department think about that?

241. A. What do you mean?

242. Q. Well, does the department support the use of
243. lethal force in those situations?

244. A. Support? I don't know. It depends on whether it's
245. justified or not. And believe me, when it isn't, they
246. come down on you like a ton of bricks.

247. Q. Can you think of a situation where they've done
248. that?

249. A. Not off the top of my head. And that's because
250. since then, there hasn't been a situation where an
251. officer has used lethal force where it's even been a
252. question whether the officer was justified or not.

253. Q. What about non-lethal force?

254. A. Oh, well, that's different.

255. Q. How so?

256.

257. A. I mean, with non-lethal force, so as long as the
258. suspect is alive and breathing at the end of the day,
259. the department isn't always going to be breathing down
260. your neck about how it went down. Those stun guns, I
261. mean, they've saved people's lives. I might have used it
262. with that bank robber in 1997 if we had had them then.

Hang on. My phone is going off. I have to go. Like,
this is BMLR police stuff, and it really can't wait.
Sorry.

MS. LOPEZ: we can reschedule the rest of this.

MR. LIPINSKI: Yes, we'll have to. Mr. Cruze, are you
sure you have to go?

THE WITNESS: Yeah, I really do.

MR. LIPINSKI: Okay, we'll just have to reschedule, I
guess.

Whereupon, the deposition was concluded.

I have reviewed the transcript above and certify that it
is an accurate transcription of the testimony that was
given.

/s/ Carly

Sensemacher

Carly Sensemacher, RPR, CSR
Certified Reporter, No. 555111



Deposition
Exhibit
A

DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Courtney Cruze
Date of Incident: January 17, 1997

Description of incident, investigation, and findings: Officer Cruze and his partner, Officer David Rooney, arrived at Young's Savings and Trust following a report of an armed robbery. According to both officers and the dispatcher, the report alerted them that "one of the suspects is armed." When Cruze arrived, the two robbers ran out of the bank door and in different directions. The suspect Cruze was pursuing appeared to be running toward a car parked across the bank plaza. Cruze claims that he saw "something that looked like a gun in the guy's hands, so I ordered him to stop, and when he didn't, I discharged my weapon at him." The suspect was killed instantly. A set of car keys to a getaway vehicle was recovered on the body; no gun was found. Officer Rooney did not witness the incident but believes Cruze. One witness, whom IAD was unable to contact for a re-interview during its investigation, said to Officers Cruze and Green that Cruze was "standing off to the side of the robber, and it was pretty clear that guy was going for his keys and not a gun."

Disposition and recommendation: Because the key witness cannot presently be located, there is not enough evidence to sustain or dismiss the complaint following this incident. The most likely outcome was that Cruze reasonably believed that the suspect was armed and dangerous, even though no weapon was found on his body. However, there is insufficient evidence to support that finding fully. Complaint is not sustained.

/s/Bill Meeuwsen
Bill Meeuwsen, BMLR IAD Director
Dated: January 24, 1997

Recommendation approved:
/s/Ed Green
Chief, BMLR Police Department
Dated: January 25, 1997



Policy 12.2: Use of Stun Guns and Other Non-Lethal Force

All BMLR Police Officers must be aware at all times that the use of non-lethal force, including the use of BMLR-issued "stun guns," is a serious matter. BMLR has provided stun guns to give its officers an alternative to lethal force, which may not be necessary in all circumstances involving a physical confrontation with a suspect. Stun guns, pepper spray, and other non-lethal implements may even help save the life of a suspect where an officer would otherwise be forced to use lethal force.

In all cases, there must be an imminent threat to the officer's or another person's safety in order to justify the use of non-lethal force. The amount of force to use depends on the circumstances; in all cases, officers must exercise caution and good judgment, and act with integrity and professionalism.

Officers must abide by the following additional requirements when using stun guns:

- While non-lethal in the vast majority of cases, stun guns may cause serious injury or death if used improperly. Officers should use their stun guns only as a last resort in situations where there is no other reasonably effective way to subdue a suspect.
- Except where impossible or impracticable, officers should always warn a suspect of their intention to discharge their stun gun before doing so.
- Except where necessary to protect the officer's or the public's safety, officers should never discharge their stun gun at a suspect where the suspect is standing on a ledge, staircase, or any other elevated position.



**BMLR POLICE DEPARTMENT OFFICER
TRAINING AND DEVELOPMENT**

OFFICER TRAINING SUMMARY

PREPARED BY TRAINSMART OFFICERS HQ

Type of training: Stun gun use and safety
Instructor: Burt Lambeau, Safety Analytics, LLC
Topics covered: This training covers the mechanics of stun guns, appropriate uses of stun guns (including simulations and exercises), and the physiological and psychological effects of stun guns
Date Range start: 1/1/2007 **Date Range end:** 6/30/2014

Key: c = complete p = partial i = incomplete
 jan = January jun = June + = commendation from instructor

Officer	2008	2009	2010	2011	2012	2013	2014	2015
Jones, J.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Irsay, J.	c+-jan c+-jun	c+-jan p-jun	c+-jan c-jun	c-jan p-jun	c-jan i-jun	c+-jan c-jun	c-jan c-jun	c+-jan i-jun
Cruze, C.	i-jan i-jun	i-jan i-jun	i-jan i-jun	p-jan c+-jun	c+-jan c+-jun	c+-jan p-jun	i-jan c+-jun	i-jan c+-jun
Allen, P.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
York, J.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c+-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Spanos, A.	c+-jan c+-jun	c-jan i-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan p-jun	c-jan c-jun	c-jan c-jun
McCasky, V.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Benson, T.	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Packer, F.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Kraft, R.	c+-jan c+-jun	c+-jan c+-jun	c-jan c-jun	c-jan c-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c-jun
Richardson, J	p-jan p-jun	c-jan c-jun	c-jan c-jun	p-jan i-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Johnson, W.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Bidwill, B.	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c+-jun
Adams, B.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Blank, A.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Bisciotti, S	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Wilson, R.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Brown, M.	c-jan p-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Haslam, J.	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun

Bowlen, P.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan i-jun	c-jan c-jun	c-jan c-jun
Ford, M.	c-jan c-jun	c-jan c-jun	c-jan c-jun	p-jan i-jun	p-jan c-jun	c+-jan c-jun	c-jan p-jun	c-jan c-jun
McNair, R.	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Khan, S.	c+-jan c-jun	c-jan c-jun	c-jan c+-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c+-jan c-jun	c-jan c-jun
Ross, S.	c-jan c-jun	c-jan c-jun	c-jan c-jun	p-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Wilf, Z.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Mara, J.	c-jan c-jun	c-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c+-jan c-jun	c-jan c-jun	c-jan c-jun
Rooney, D.	c+-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	p-jan p-jun	c+-jan p-jun	c-jan p-jun	i-jan c-jun
Nguyen, A.	n/a	c+-jan c+-jun	c+-jan c-jun	c+-jan c+-jun	c+-jan c+-jun	c+-jan c-jun	c+-jan c-jun	c+-jan c+-jun
Lurie, J.	n/a	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Davis, c.	n/a	n/a	n/a- jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun	c-jan c-jun
Palmer, L.	n/a	n/a	n/a	n/a	n/a	n/a-jan c+-jun	c+-jan c-jun	c+-jan c+-jun



BMLR POLICE DEPARTMENT
INTERNAL AFFAIRS DEPARTMENT

From the desk of Sandy Ensign
 Director, Internal Affairs Department
 Phone: (602) 555-5000
 Fax: (602) 555-5001
 Sandy.ensign @BMLR.state.as.us

September 1, 2015

Corrina M. Ruberosa
 Deputy City Attorney
 corrinaruberosa@state.az.gov
 Office of the City Attorney of Phoenix
 812 Channing Street, Suite 2100
 Phoenix, AZ 85004

Dear Ms. Ruberosa:

You asked my office to provide statistics on complaints related to use of force against BMLR officers, and the dispositions of those complaints. The table below summarizes the complaints that have been filed against BMLR officers since 2007 (2015 numbers are not yet available):

Year	Total Complaints	Unfounded/Exonerated	% of Total	Not Sustained	% of Total	Sustained	% of Total	Other	% of Total
2007	8	2	66.7%	1	33.3%	0	0.0%	0	0.0%
2008	4	1	25.0%	3	75.0%	0	0.0%	0	0.0%
2009	1	1	100.0%	0	0.0%	0	0.0%	0	0.0%
2010	3	2	66.7%	0	0.0%	1	33.3%	0	0.0%
2011	2	2	100.0%	0	0.0%	0	0.0%	0	0.0%
2012	7	3	42.9%	2	28.6%	1	14.3%	1	14.3%
2013	2	1	50.0%	1	50.0%	0	0.0%	0	0.0%
2014	4	2	50.0%	1	25.0%	0	0.0%	1	25.0%
Total since 2007	26	14	53.8%	8	30.8%	2	7.7%	2	7.7%

To view these statistics in context, there are a few important points to be aware of. The following data comes from a study ("Citizen Complaints about Police Use of Force") released in June 2006 by the Bureau of Justice Statistics:¹

- On average, large municipal police departments receive approximately 9.5 complaints alleging improper use of force per 100 officers per year. Thus, based on the national average, a police department of BMLR's size (approximately 30 officers) would be expected to receive 2.85 complaints per year. Note, however, that there are two factors that make that figure an unreasonably low estimate of the number of complaints that BMLR should reasonably be expected to receive. First, BMLR is not a "large" municipal police department, which is defined as a department with at least 100 full time officers. Second, BMLR

¹ This was the most recent report from the Bureau of Justice Statistics regarding the use of force by police officers that I could locate.

police officers operate in an environment that is quite different from most other police officers. Given the often cramped quarters in the P-Rail and the sometimes short tempers of passengers during rush hour, confrontations are generally more frequent and, accordingly, lead to slightly increased numbers of complaints.

- Like many police departments nationwide, BMLR uses the Bureau of Justice Statistics' terminology to describe how complaints are resolved:
 - A complaint is "unfounded" if the complaint is, on its face, not based on facts, or if an investigation reveals that the reported incident did not occur.
 - A complaint is "exonerated" if the reported incident occurred, but the officer's action was deemed lawful and proper.
 - A complaint is "not sustained" if there is insufficient evidence to prove the allegation.
 - A complaint is "sustained" if an investigation reveals sufficient evidence to justify disciplinary action against the officer(s) involved.
- According to the Bureau of Justice Statistics study, in large municipal police departments: (a) approximately 46% of all force-related complaints are either unfounded or exonerated, (b) approximately 37% of all force-related complaints are not sustained, (c) approximately 8% of all force-related complaints are sustained, and (d) approximately 9% of all force-related complaints receive some other disposition (e.g., they are withdrawn). I note that, in the aggregate, this data shows that the BMLR Police Department is essentially on par with the relevant national averages.

Please don't hesitate to let me know if you need any other information.

Very truly yours,

Sandy Ensign

Sandy Ensign



DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Courtney Cruze, Jessica Irsay

Date of incident: December 9, 2010, approx. 7:30p.m.

Description of incident and investigation: Officers Cruze and Irsay observed a drug sale at the Middlefield Road station of the P-Rail. No witness disputed the fact of the sale. When Officers Cruze and Irsay approached the suspect (the seller) and the buyer, the suspect attempted to flee. Officer Irsay tackled the suspect to the ground. The suspect resisted arrest by attempting to punch, kick, and bite Officer Irsay while she attempted to subdue him. The suspect was a male weighing approximately 160 pounds; Officer Irsay is a female weighing approximately 130 pounds. All witnesses agree that after approximately two seconds, Officer Cruze discharged his stun gun into the suspect. All witnesses except Officers Cruze and Irsay agree that, following Officer Cruze's discharge of his stun gun into the suspect, the suspect was subdued. (Officers Cruze and Irsay claim that they "weren't sure" whether the suspect was fully subdued or whether he was, in Officer Cruze's words, "playing dead.") At that point, Officer Cruze instructed Officer Irsay to "hit him again, just to make sure." That statement was confirmed by multiple bystanders interviewed by IAD, and admitted by Officers Cruze and Irsay themselves. Then, apparently at Officer Cruze's direction, Officer Irsay unholstered her stun gun and discharged it into the suspect a second time. At present, the suspect has no known long-term injuries as a result of the incident.

Disposition and recommendation: Officer Cruze properly discharged his stun gun into the suspect before he and Officer Irsay subdued the suspect. However, all witnesses except for Officers Cruze and Irsay seem to agree that Officer Irsay's subsequent use of her stun gun was unnecessary and improper; Officers Cruze and Irsay should have known that the suspect was subdued at that time. I recommend that Officers Irsay and Cruze each receive a written reprimand and a half-day suspension without pay.

/s/ Bill Meeuwsen
Bill Meeuwsen, BMLR IAD Director
Dated: December 21, 2010

Recommendation approved and adopted:
/s/ Ed Green
Chief, BMLR Police Department
Dated December 23, 2010



DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Annie Nguyen

Date of incident: January 21, 2014, approx. 8:15 p.m.

Description of incident and investigation: All witnesses, including the three bystanders interviewed and Officers Nguyen and Courtney Cruze, agree to the following facts: Officers Nguyen and Cruze (who was filling on a shift for Nguyen's regular partner, Shannon Ross) approached a suspect at the top of a small staircase at Tasso Street station of the P-Rail. Prior to the arrest, Officers Nguyen and Cruze had received word that the suspect was suspected of committing a violent and seemingly random assault that had taken place about an hour earlier, and was likely armed and dangerous. When the suspect saw them and began to flee toward the stairs, Officer Nguyen discharged her stun gun at the suspect. Officer Nguyen called for the suspect to stop, but did not warn him that she would use her stun gun if he failed to do so. She hit him in the lower back with her stun gun, which caused him to tumble the rest of the way down the staircase. The suspect (on whom Officer Nguyen discovered a gun and a substantial quantity of drugs) broke his collarbone and sustained several scrapes and bruises.

Disposition and recommendation: Officer Nguyen's actions were justified. While Officer Nguyen technically violated BMLR Police Department Policy 12.2, which generally prohibits the use of stun guns on suspects in elevated positions and requires an officer to announce her intention to discharge her stun gun before doing so, her actions were acceptable because the suspect posed an imminent threat to the public. I recommend that the complaint be exonerated.

<u>/s/ Bill Meeuwsen</u> Bill Meeuwsen, BMLR IAD Director Dated: February 13, 2014	Recommendation approved and adopted: <u>/s/ Ed Green</u> Chief, BMLR Police Department Dated February 13, 2014
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DEPARTMENT OF INTERNAL AFFAIRS
INCIDENT REPORT AND RECOMMENDATION

Officer(s) Involved: Paul Bowlen

Date of incident: December 12, 2014, approx. 10:45 p.m.

Description of incident and investigation: All witnesses, including the five bystanders interviewed and Officers Paul Bowlen and Lindsey Palmer, agree to the following facts: Officers Bowlen and Lindsey Palmer (who was filling in on a shift for Officer Bowlen's regular partner, Jennifer Mara) responded to a report of a disturbance on a train at the Ramona Street station of the of the P-Rail. There, they discovered a man suffering from mental illness, who was ranting at random passers-by and brandishing a pocketknife. When Officer Bowlen called for him to stop and put down the knife, the suspect began walking quickly toward Officer Bowlen. Officer Bowlen again called for him to stop, and indicated that he would use his stun gun if the suspect failed to do so. The suspect did not stop, and Officer Bowlen discharged his stun gun. The suspect suffered no permanent injuries but was admitted to St. George's Hospital for psychiatric evaluation.

Disposition and recommendation: Officer Bowlen's actions were justified. The suspect posed an imminent threat to Officer Bowlen, particularly given his possession of a knife. All witnesses generally agree on the relevant events. I recommend that the complaint be exonerated

<u>/s/ Bill Meeuwsen</u> Bill Meeuwsen, BMLR IAD Director Dated: December 23, 2014	Recommendation approved and adopted: <u>/s/ Ed Green</u> Chief, BMLR Police Department Dated December 13, 2014
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