

CAUSE NO. C-1-CV-19-009949

IN RE ATHIGE DENZIL DESILVA

PETITIONER

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§
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§
§
§
§

IN THE TRAVIS COUNTY

COURT AT LAW NO. 1

TRAVIS COUNTY, TEXAS

**PETITIONER DESILVA'S MOTION TO ENFORCE RULE 202 ORDER & FOR
SANCTIONS (IF ORDER IS NOT COMPLIED WITH)**

O THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Denzil DeSilva, asks the court to enforce its Rule 202 Order signed on January 27, 2020 and to levy sanctions against Respondent City of Austin if the ordered materials are not tendered by the deadline of May 20, 2020.

A.

Summary of Motion

1 On July 31st, 2019 Dr. Mauris DeSilva was shot to death by City of Austin Police Officers inside the Spring Condominiums, where he resided. A copy of Dr. DeSilva's death certificate is attached as Ex 1.

2. Petitioner filed a Rule 202 Petition seeking depositions, documents and other information from the City of Austin in order to prepare for a federal civil rights lawsuit.

3. A hearing was held on January 23, 2020. At the conclusion of the hearing, after hearing all evidence the Judge ordered the following materials to be produced:

All video images and videotapes of the incident, all audio and audio recordings of the incident including all 911 and 311 calls, all non-privileged portions of the personnel files of City of Austin Police Officers Karl Krycia, Christopher Taylor, and Joseph Cast, and all original investigative reports concerning the incident.

A copy of the file-marked Order signed by the Judge is attached as Ex. 2. As shown in the Order

the materials are to be produced by May 20, 2020 or “the end of the Austin Police Department Investigation, *whichever is earlier*” (emphasis added).

4. Plaintiff has repeatedly inquired about the status of the ongoing investigation only to be told by counsel for the City of Austin that the investigations are ongoing. See emails from counsel Gray Laird, dated February 10, March 23 and April 22 of 2020, attached as Ex. 3. In each email Counselor Laird states that investigations are ongoing, and thus presumably no materials can be released.

5. Explanation to the Court and Petitioner is owed as it has become public knowledge that APD Officer Christopher Taylor, one of the officer’s whose excessive use of force lead to the untimely death of Dr. DeSilva, Petitioner’s beloved son, has now been involved in yet another shooting which lead to the fatality of yet another member of the public. See Officer involved in Friday's southeast Austin fatal shooting was involved in another shooting in July 2019, attached as Ex. 4. The investigation of Officer Taylor must have ended if he is on patrol, and still using excessive force against members of the community. It is time for the materials to be produced on or before the deadline, and if they are not sanctions should be levied against the City of Austin for each day the materials are not produced.

B.

Introduction

6. Petitioner is Denzil DeSilva.

7. Respondent is the City of Austin.

C.

Facts

8. On July 31st, 2019 Dr. Mauris DeSilva was shot to death by City of Austin Police

Officers inside the Spring Condominiums, where he resided. A copy of Dr. DeSilva's death certificate is attached as Ex 1.

Petitioner believes that a case for violations of 42 U.S.C. §1983 may lie, as well as other relevant causes of action as the conduct of the peace officers in questions was inappropriate and the force used was excessive.

D.

Arguments & Authorities

9. Defendant should explain how Officer Taylor is allowed back on patrol if he was supposedly under investigation. If the investigation is ended then the materials should be tendered to Petitioner immediately.

If the City of Austin does not intend to act in good faith than it should be ordered to pay sanctions for abuse of process and willful defiance of the Court Order.


E.

Prayer

10. Petitioner DeSilva prays that this Court grant Plaintiff's Motion to Enforce Rule 202 Order and For Sanctions, award sanctions, and for any other relief warranted.

Respectfully Submitted,

DUNAWAY LAW FIRM, P.C.
1411 West Avenue, Suite 100
Austin, Texas 78701
(512) 469-7941
FAX (512) 479-9510
atty@austinfairlaw.com


Aspen J. Dunaway
State Bar No. 24034425
Board Certified, Personal Injury Trial Law
Texas Board of Legal Specialization
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the following counsel of record in accordance with the Texas Rules of Civil Procedure on the 30th day of April 2020 as follows:

Via Fax No. 512-974-1311

Anne L. Morgan

H. Gray Laird

P.O. Box 1546

Austin, TX 78767-1546

Attn: Anne L. Morgan

Attorney for Defendant


Aspen J. Dunaway

STATE OF TEXAS

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES VITAL STATISTICS

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS

Aug 07 2019

STATE OF TEXAS

CERTIFICATE OF DEATH

STATE FILE NUMBER

142-19-118244

1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last)				2. DATE OF DEATH - ACTUAL OR PRESUMED (mm-dd-yyyy)	
MAURIS NISHANGA DE SILVA				JULY 31, 2019	
3. SEX	4. DATE OF BIRTH (mm-dd-yyyy)	5. AGE-Last Birthday (Years)	6. BIRTHPLACE (City & State or Foreign Country)		
MALE		46	SRI LANKA		
7. SOCIAL SECURITY NUMBER		8. MARITAL STATUS AT TIME OF DEATH		9. SURVIVING SPOUSE'S NAME (If spouse, give name prior to first marriage)	
		<input type="checkbox"/> Married <input type="checkbox"/> Divorced (but not remarried) <input checked="" type="checkbox"/> Never Married <input type="checkbox"/> Unknown			
10a. RESIDENCE STREET ADDRESS			10b. APT. NO.	10c. CITY OR TOWN	
300 BOWIE ST			1708	AUSTIN	
10d. COUNTY		10e. STATE	10f. ZIP CODE	10g. INSIDE CITY LIMITS?	
TRAVIS		TEXAS	78703	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
11. FATHER/PARENT 2 NAME PRIOR TO FIRST MARRIAGE			12. MOTHER/PARENT 1 NAME PRIOR TO FIRST MARRIAGE		
ATHIGE DENZIL DESILVA			ALAGIYADURA J FERNANDO		
13. PLACE OF DEATH (CHECK ONLY ONE)					
<input type="checkbox"/> If death occurred in a hospital: <input type="checkbox"/> Inpatient <input checked="" type="checkbox"/> ER/Outpatient <input type="checkbox"/> ODA					
<input type="checkbox"/> If death occurred somewhere other than a hospital: <input type="checkbox"/> Hospice Facility <input type="checkbox"/> Nursing Home <input type="checkbox"/> Decedent's Home <input type="checkbox"/> Other (Specify)					
14. COUNTY OF DEATH			15. CITY/TOWN, ZIP (If outside city limits, give precinct NO)		
TRAVIS			AUSTIN, 78701		
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED			18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code)		
ATHIGE DENZIL DESILVA - FATHER			1009 E. 144TH ST., BURNSVILLE, MN 55337		
19. METHOD OF DISPOSITION			20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH		21. <input checked="" type="checkbox"/> Unknown
<input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Entombment <input type="checkbox"/> Removal from state <input type="checkbox"/> Mausoleum <input type="checkbox"/> Other (Specify)			DIANA REYNA, BY ELECTRONIC SIGNATURE - 117226		Section _____ Block _____ Lot _____ Space _____
22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)			23. LOCATION (City/Town, and State)		
SUPERIOR CREMATORY SER			AUSTIN, TX		
24. NAME OF FUNERAL FACILITY			25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code)		
A SIMPLE TRADITION FUNERAL SERVICE			1611 E. CESAR CHAVEZ, AUSTIN, TX 78702		
26. CERTIFIER (Check only one)					
<input type="checkbox"/> Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated. <input checked="" type="checkbox"/> Medical Examiner/Jurist of the Peace - On file basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.					
27. SIGNATURE OF CERTIFIER			28. DATE CERTIFIED (mm-dd-yyyy)	29. LICENSE NUMBER	30. TIME OF DEATH (Actual or presumed)
TIMOTHY FAGEN D.O., BY ELECTRONIC SIGNATURE			AUGUST 7, 2019	R9952	06:07 PM
31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code)					32. TITLE OF CERTIFIER
TIMOTHY FAGEN, D.O. 7723 SPRINGDALE RD, AUSTIN, TX 78724					DEPUTY M.E.
33. PART 1. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH.					
IMMEDIATE CAUSE (Final disease or condition resulting in death) a. MULTIPLE GUNSHOT WOUNDS Due to (or as a consequence of): b. Due to (or as a consequence of): c. Due to (or as a consequence of): d.					
PART 2. ENTER OTHER CAUSE GIVEN IN PART 1					
SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING					
34. WAS AN AUTOPSY PERFORMED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
36. MANNER OF DEATH		37. DID TOBACCO USE CONTRIBUTE TO DEATH?		38. IF FEMALE:	
<input type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input checked="" type="checkbox"/> Homicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Previously <input type="checkbox"/> Probably <input type="checkbox"/> Unknown		<input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to one year before death <input type="checkbox"/> Unknown if pregnant within the past year	
39. IF TRANSPORTATION INJURY, SPECIFY:					
<input type="checkbox"/> Driver/Operator <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Other (Specify)					
40a. DATE OF INJURY (mm-dd-yyyy)		40b. TIME OF INJURY	40c. INJURY AT WORK?	40d. PLACE OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area)	
JULY 31, 2019		05:30 PM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	APARTMENT COMPLEX HALLWAY 5TH FLOOR	
40e. LOCATION (Street and Number, City, State, Zip Code)		40f. COUNTY OF INJURY			
300 BOWIE ST, AUSTIN, TX 78703		TRAVIS			
41. DESCRIBE HOW INJURY OCCURRED					
THE DECEDENT WAS SHOT BY OTHER PERSON(S)					
42a. REGISTRAR FILE NO.		42b. DATE RECEIVED BY LOCAL REGISTRAR	42c. REGISTRAR		
			Tara Das		

EDR NUMBER 00004444540524

This is a true and correct copy of the record as registered in the State of Texas. Issued under the authority of Section 191.051, Health and Safety Code.

ISSUED Aug 08 2019

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

TARA DAS
STATE REGISTRAR

PLAINTIFF'S
EXHIBIT

JON



CAUSE NO. C-1 CV-19-009949

ATHIGE DENZIL DESILVA
Petitioner

VS

CITY OF AUSTIN
Defendant

IN THE COUNTY COURT

AT LAW NO. 1

TRAVIS COUNTY, TEXAS

**ORDER ON PETITIONER DESILVA'S PETITION TO TAKE DEPOSITIONS UNDER
RULE 202**

On the 27th day of January, 2020, came on to be heard *Petitioner Desilva's Petition to Take Depositions Under Rule 202*.


The Court, having heard the arguments of counsel and the evidence presented at the hearing:

FINDS and RULES that *Plaintiff's Petition to Take Depositions Under Rule 202* is GRANTED IN PART.


The COURT RULES THAT BEFORE MAY 20, 2020, OR at the end of the current Austin Police Department Investigation, whichever is earlier, the City of Austin PRODUCE to Petitioner the following:

All video images and videotapes of the incident, all audio and audio recordings of the incident including all 911 and 311 calls, all non-privileged portions of the personnel files of City of Austin Police Officers Karl Krycia, Christopher Taylor, and Joseph Cast, and all original investigative reports concerning the incident

SIGNED this 27th day of Jan, 2020.


JUDGE PRESIDENT **ERIC M. SHEPPERD**

AGREED AS TO FORM:


Aspen J. Dulaney
Attorney for Petitioner
Austin


Gray Laird,
Attorney for Defendant City of

PLAINTIFF'S
EXHIBIT

2

Aspen Dunaway

From: Laird, Gray <gray.laird@austintexas.gov>
Sent: Monday, February 10, 2020 12:23 PM
To: Aspen Dunaway
Cc: Dunaway Admin
Subject: RE: Desilva

Aspen,

I believe I approved your proposed order but I did not see where you forwarded it to Judge Sheppard. I will check on the status of the APD investigations. I was out most of last week so I don't currently know the status but I will check on it and let you know. Thanks. Gray

From: Aspen Dunaway <atty@austinfairlaw.com>
Sent: Monday, February 10, 2020 11:13 AM
To: Laird, Gray <gray.laird@austintexas.gov>
Cc: Dunaway Admin <admin@austinfairlaw.com>
Subject: RE: Desilva

*** External Email - Exercise Caution ***

Gray:

Where are we on this?

Aspen J. Dunaway
Dunaway Law Firm, P.C.
Board Certified, Personal Injury Trial Law
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From: Laird, Gray [<mailto:gray.laird@austintexas.gov>]
Sent: Thursday, January 9, 2020 1:48 PM
To: Aspen Dunaway
Subject: Desilva



Aspen Dunaway

From: Laird, Gray <gray.laird@austintexas.gov>
Sent: Monday, March 23, 2020 1:28 PM
To: Aspen Dunaway; Brad Vinson (brad@smithandvinson.com)
Cc: Dunaway Admin
Subject: RE: Desilva

Aspen,

I checked on the status and both the IA and SIU investigations of APD are still ongoing. I will check again in a couple of weeks. Thanks. Gray

From: Aspen Dunaway <atty@austinfairlaw.com>
Sent: Friday, March 13, 2020 10:50 AM
To: Laird, Gray <gray.laird@austintexas.gov>; Brad Vinson (brad@smithandvinson.com) <brad@smithandvinson.com>
Cc: Dunaway Admin <admin@austinfairlaw.com>
Subject: RE: Desilva

*** External Email - Exercise Caution ***

Gray:

Can you give me a status on the police investigation regarding the shooting death of Dr. DeSilva?

Aspen J. Dunaway
Dunaway Law Firm, P.C.
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From: Laird, Gray [<mailto:gray.laird@austintexas.gov>]
Sent: Thursday, January 9, 2020 1:48 PM
To: Aspen Dunaway
Subject: Desilva

Aspen,

Aspen Dunaway

From: Laird, Gray <gray.laird@austintexas.gov>
Sent: Wednesday, April 22, 2020 12:06 PM
To: Aspen Dunaway; Brad Vinson (brad@smithandvinson.com)
Cc: Dunaway Admin
Subject: RE: Desilva

Aspen,

We checked again with APD and both the SIU and Internal Affairs investigations are still pending. Thanks. Gray

From: Aspen Dunaway <atty@austinfairlaw.com>
Sent: Friday, April 17, 2020 9:47 AM
To: Laird, Gray <gray.laird@austintexas.gov>; Brad Vinson (brad@smithandvinson.com) <brad@smithandvinson.com>
Cc: Dunaway Admin <admin@austinfairlaw.com>
Subject: RE: Desilva

Laird, please update me on the investigation status, are we ready to have the information mandated by the judge sent to my office?

Aspen J. Dunaway
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From: Laird, Gray [<mailto:gray.laird@austintexas.gov>]
Sent: Monday, March 23, 2020 1:28 PM
To: Aspen Dunaway; Brad Vinson (brad@smithandvinson.com)
Cc: Dunaway Admin
Subject: RE: Desilva

Aspen,

I checked on the status and both the IA and SIU investigations of APD are still ongoing. I will check again in a couple of weeks. Thanks. Gray

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No Thanks

ALLOW



MENU

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Group calls for Austin leaders to be fired after officer-involv..

Officer involved in Friday's southeast Aust fatal shooting was involved in another shooting in July 2019

Shooting in July 2019

According to APD Chief Manley, Officer Christopher Taylor fired the fatal shot April 24. Taylor was one of three officers involved in a shooting in July 2019.

AUSTIN, Texas — At a press conference Monday afternoon, [Austin Police](#) Chief Brian Manley provided updates on an [officer-involved shooting](#) near East Oltorf Street and South Pleasant Valley Road that left a man dead on Friday, April 24.

On Monday, Manley identified the victim as 42-year-old Michael Brent Ramos. Manley said the two officers involved were Mitchell Pieper, who was commissioned to APD in January, and Christopher Taylor, who has been with APD since December 2014.

RELATED:

[Community group calls for police chief to resign over fatal shooting](#)

[Calls for transparent investigation after police shoot man dead in southeast Austin](#)

According to Manley, Pieper was the officer who fired shots from a less lethal "bean bag" shotgun. Taylor was the officer who [fired the fatal shot](#) from his rifle, according to Manley.

KVUE previously reported that Taylor was one of three officers involved in a fatal [shooting in Downtown Austin in July 2019](#).

RELATED: [Police identify man killed in officer-involved shooting in Downtown Austin](#)



Austin Police Department
@Austin_Police

Chief Manley provides update regarding OIS
pscp.tv/w/cXXguTk1Nzcz...

Austin Police Dept @Austin_Police

Chief Manley provides update regarding OIS

pscp.tv

23 3:04 PM - Apr 27, 2020

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Manley also confirmed Monday that the vehicle involved in this incident was the vehicle involved in a shooting and evading the police on Thursday, April 23. Manley said that APD has carried out a search warrant for the vehicle but is not disclosing the findings because they don't want to influence witnesses who have not been interviewed.

Travis County DA Margaret Moore echoed Manley's sentiments on Monday, saying, "Collection and preservation of evidence is critical, and every effort must be made to protect the integrity of the investigation. For example, we would not approve the release of certain facts before witnesses are interviewed."

Manley said six officers who were on scene, as well as 24 civilians, have been interviewed so far but there are still others who haven't been interviewed yet.

Manley also said video from the officers' body-worn cameras will be released at the earliest opportunity once doing so will not impact the integrity of the investigation. He said due to that, some videos may be released before others.



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"I will approve Chief Manley's release of body camera videos collected by police officers, as soon as it is practicable. In this instance, I do not see how the release of these videos would compromise the investigation or any subsequent prosecution," Moore said.

WATCH: [Suspect dies after southeast Austin police shooting](#)

Suspect dies after southeast Austin police shooting | KVUE



The Civil Rights Unit of the [DA's Office](#) is conducting an investigation to determine if the officers' actions were compliant with state law, along with the APD [Special Investigations Unit](#). Manley said Monday that Moore and he have also reached out to the Texas Rangers to join the investigation and the Texas Department of Public Safety has granted that request.

The [Internal Affairs Office of Police Oversight](#) will investigate whether the actions complied with administrative policies.

Manley said all investigations are active and ongoing. He said APD has "heard the community's concerns and is working to ensure a thorough, timely investigation that 'fosters community trust'."

[APD has been criticized after videos of the shooting circulated online.](#) Several city council members, as well as Mayor Steve Adler, have expressed concern over the shooting and the [League of United Latin American Citizens](#) (LULAC) of Austin has called for Manley's resignation. On Monday, Chas Moore with [Austin Justice Coalition](#) said that group is calling for Manley to be fired.



Mari Salazar @MariSalazarTV · Apr 27, 2020

HAPPENING NOW: Austin Justice Coalition is having a virtual press conference about the APD officer-involved shooting that happened Friday. They're calling it a "senseless shooting because Michael Ramos" had his hands up. @KVUE



Mari Salazar
@MariSalazarTV

#BREAKING Austin Justice Coalition's Chas Moore says they're calling for @Austin_Police Chief Brian Manley to be fired. Moore said APD needs new leadership and Moore said AJC has been in contact with city officials about their concerns. @KVUE

6 3:40 PM - Apr 27, 2020

[See Mari Salazar's other Tweets](#)

On Monday, [Austin Police Association](#) President Ken Casaday released a statement responding to the shooting. Casaday said in part:

"Police work, especially this type of call, is dynamic, intense and can quickly evolve into a life and death situation where critical decisions are made within a matter of milliseconds. It is never easy for an officer to make the decision to use deadly force. We are already hearing criticism from individuals that don't have all of the investigative details. Even council members who are not privy to the complete facts of the incident are jumping to conclusions on the case. The investigation into all aspects of the officer-involved shooting are well underway and will take time to complete. We ask that people refrain from creating their own narrative. Instead, we urge you to let the facts of the investigation tell the story of what happened last Friday night."

At Monday's press conference, Manley asked that anyone who witnessed the incident or has video of contact APD at 512-472-TIPS. He said the department has already received three videos from the public.

PEOPLE ARE ALSO READING:

[Texas 'stay home' order will expire April 30, Gov. Abbott says](#)

[Retail stores, movie theaters, restaurants and malls able to reopen May 1, Gov. Abbott says](#)

[Coronavirus in Texas: Abbott reveals plan to reopen more Texas businesses, will allow 'stay home' to expire April 30](#)

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CAUSE NO. C-1-CV-19-009949

ATHIGE DENZIL DESILVA
Petitioner

VS

CITY OF AUSTIN
Defendant

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IN THE COUNTY COURT

AT LAW NO. 1

TRAVIS COUNTY, TEXAS

ORDER ON PETITIONER DESILVA'S MOTION TO ENFORCE RULE 202
ORDER & FOR SANCTIONS (IF ORDER NOT COMPLIED WITH

On the _____ day of May, 2020, came on to be heard *Petitioner Desilva's Motion to Enforce DeSilva's Rule 202 Order & For Sanctions*.

The Court, having heard the arguments of counsel and the evidence presented at the hearing: FINDS and RULES that Petitioner's Motion to Enforce is GRANTED and that the following materials be provided to Petitioner IMMEDIATELY, AS PREVIOUSLY ORDERED:

All video images and videotapes of the incident, all audio and audio recordings of the incident including all 911 and 311 calls, all non-privileged portions of the personnel files of City of Austin Police Officers Karl Krycia, Christopher Taylor, and Joseph Cast, and all original investigative reports concerning the incident.

The Court Rules FURTHER that for ever day after May 20, 2020 that the materials are not produced to Petitioner that sanctions in the amount of _____, shall be levied against the City Of Austin until such time as the City of Austin complies with the Order.

SIGNED this _____ day of _____, 2020.

JUDGE PRESIDING

AGREED AS TO FORM:

Aspen J. Dunaway
Attorney for Plaintiff

Gray Laird
Attorney for Defendant City
of Austin