

February 7, 2023

**SENT VIA CERTIFIED MAIL / EMAIL**

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**Re: Second Amended Notice of Claim – Sharon Roberts, individually, and as mother and next of kin to Leontae Kirk, Kashane Kirk as pending personal representative of the Estate of Leontae Kirk, and Brittne Turner on behalf of and as legal parent of her minor child LK<sup>1</sup>.**

To Whom It May Concern:

Pursuant to A.R.S. § 12-821.01, this Notice of Claim is submitted by Sharon Roberts (“Roberts”) on behalf of herself and as parent and next of kin of Leontae Kirk (“Leontae”) and Kashane Kirk (“Kashane”) on behalf of the Estate of Leontae Kirk, and Brittne Turner on behalf of and as legal parent of LK (collectively, the “Claimants”) for his wrongful death and murder occurring at the hands of the Phoenix Police Department, the City of Phoenix (“City”), and various officers of the Phoenix Police Department (the “Incident”).

Specifically, this NOC is being brought against: The City, Chief Michael Sullivan (“Sullivan”), Officer Ladines #10262, Maryvale Precinct 82D Squad (“Ladines”), Officer Garza #10608, Maryvale Precinct 82F Squad (“Garza”), Sergeant Roy #9420, Maryvale Precinct 82D Squad (“Roy”), Sergeant Howard #6118, Maryvale Precinct (“Howard”), Officer Ramirez #8372, Maryvale Precinct (“Ramirez”), Officer Makic #10152, Maryvale Precinct (“Makic”), Officer Ravelo (“Ravelo”) #10169, Maryvale Precinct, Officer Traylor #10300 (“Traylor”), and Officer Reddy #9166 (“Reddy”) (collectively, the “Offenders”).

This NOC is being brought because of the above-named parties’ negligence and violation of Leontae’s Civil Rights culminating in the murder and wrongful death of Leontae Kirk. The Claimants, via their counsel and otherwise, are still investigating the events in question. Accordingly, this Notice of Claim is based largely on the information currently available including without limitation a review of certain Phoenix Police Department reports and video footage.

**THIS NOTICE OF CLAIM IS BEING SUBMITTED BASED ON THE INFORMATION MADE AVAILABLE BY THE PHOENIX POLICE DEPARTMENT. THE PHOENIX POLICE DEPARTMENT IS THE SOLE CUSTODIAN OF ALL RECORDS PERTAINING TO POLICIES, PROCEDURES, AND THE MURDEROUS AND NEGLIGENT ACTIONS OF PHOENIX POLICE OFFICERS.**

**THROUGH A PUBLIC RECORDS REQUEST, THE PHOENIX POLICE DEPARTMENT HAS NOT PROVIDED THE FULL NAMES OF ALL POTENTIAL OFFICERS RESPONSIBLE FOR THE ACTS AND OMISSIONS DETAILED HEREIN. THEREFORE, THE CLAIMANTS RESERVE THE RIGHT TO AMEND THEIR NOTICE OF CLAIM OR COMPLAINT IN A COURT OF COMPETENT JURISDICTION BASED ON THE LACK OF INFORMATION CURRENTLY IN THE PHOENIX POLICE DEPARTMENT’S SOLE CUSTODY AND CONTROL BEING WITHHELD FROM ROBERTS, LK, KASHANE, AND THE ESTATE OF LEONTAE KIRK BASED ON EQUITABLE LEGAL THEORIES INCLUDING THE DISCOVERY RULE.**

<sup>1</sup> AS LK IS A MINOR, AND THIS DOCUMENT IS PUBLIC, HER FULL NAME IS BEING OBSCURED. ANYONE OF THE OFFENDERS MAY INQUIRE WITH THIS OFFICE AS TO THE FULL NAME.

**IF FOR ANY REASON YOU BELIEVE THIS NOTICE OF CLAIM IS NOT IN COMPLIANCE WITH A.R.S. § 12-821.01, OR IF ADDITIONAL FACTS/INFORMATION IS NEEDED, PLEASE CONTACT UNDERSIGNED COUNSEL AT THE NUMBER LISTED BELOW.**

The Claimants are putting the Offenders, their employees, agents, and officers on notice for the potential following claims without limitation: negligence; gross negligence; battery, civil rights violations under 42 U.S.C. § 1983 for unreasonable search and seizure and violations of equal protection of the law under the Fourth and Fourteenth Amendments and violations of due process rights under the fifth and fourteenth amendments; false arrest; intentional infliction of emotional distress; negligent infliction of emotional distress; negligent supervision, hiring, and training; civil conspiracy; failure to train and supervise; wrongful death under A.R.S. § 12-611, *et. seq.*, and a claim for survivorship under A.R.S. § 14-3110. These claims are being brought against the Offenders listed above.

The Claimants seek an award of damages reasonably calculated to compensate for the injuries they suffered in connection with the wrongful death of Leontae Kirk on November 2, 2022.

Furthermore, the terms and content of this NOC are subject to Rule 408 of the Arizona Rules of Evidence and Rule 408 of the Federal Rules of Evidence.

**I. WHO IS LEONTAE KIRK?**

He was a loving father. He was a musician who loved his craft.

Kashane Kirk, Leontae's brother describes Leontae:

He was never a trouble maker, he said when we were kids he always wanted to be a music artist and have fun doing it and to put a smile on peoples' faces. He was a selfless and giving person who only wanted to look out for his family. He promised that if he ever made it in the music industry and received a good income from it, he would take care of his family so they would not have to struggle in life.

He was full of love and forgiveness when others would do him wrong in life, he would be the type to be the bigger person in a situation. I can say no matter how hard life got, he always tried to keep a smile on his face through all the pain and struggles we would go through growing up. He would try to stay busy with doing side jobs as much as possible as he got older and he worked on doing music as well to stay busy. He wanted to be someone that others look up to and would love to motivate kids to do good in life.

He was a loving father to his children, and he doted on them and pushed himself to be that father figure as much as possible. He wanted the best for his children and wanted them to see how much he loved them. He would be there for them for special occasions and when his oldest daughter had sporting events at school, he would put forward the effort to go out of his way to see her and to cheer her up to let her know that her father was there watching her. His youngest daughter was born September 1, 2022. He always strived to get his children together to be close to one another.

He would say he wanted them to be someone in life, for example a doctor, lawyer, or someone with their own business. He spoke highly of his children and lived for them.

Leontae wanted to have a good life, and as he was getting older, he was just getting to his starting point of making better decisions. There are things that have been said about my brother that are negative but I can say, I remember my brother being a person full of love, care, bringing joy to others to make them smile, laugh, and bring good positive energy around others. He was an observer and of people and life, he was actively working on making sure he was a role model for his family. He deeply cared for his family and loved ones, he wanted to grow in his spiritual walk more, and I can say he would have never intended for his life to end like this, he was not the type to start altercations with others. He wanted to be that good example to show others that he can bring something good out of the pain he went through in life.

Take a good look at Leontae. He was Twenty-Nine (29) years old when the Offenders brutally murdered him.



The Offenders ended his promising life through homicide despite the fact that he was running away from and defending himself from a volatile situation. The Offenders will be held accountable.

**II. FATAL POLICE SHOOTINGS ARE THE NORM FOR PHOENIX POLICE**

**Black Americans are killed at a much higher rate than White Americans**

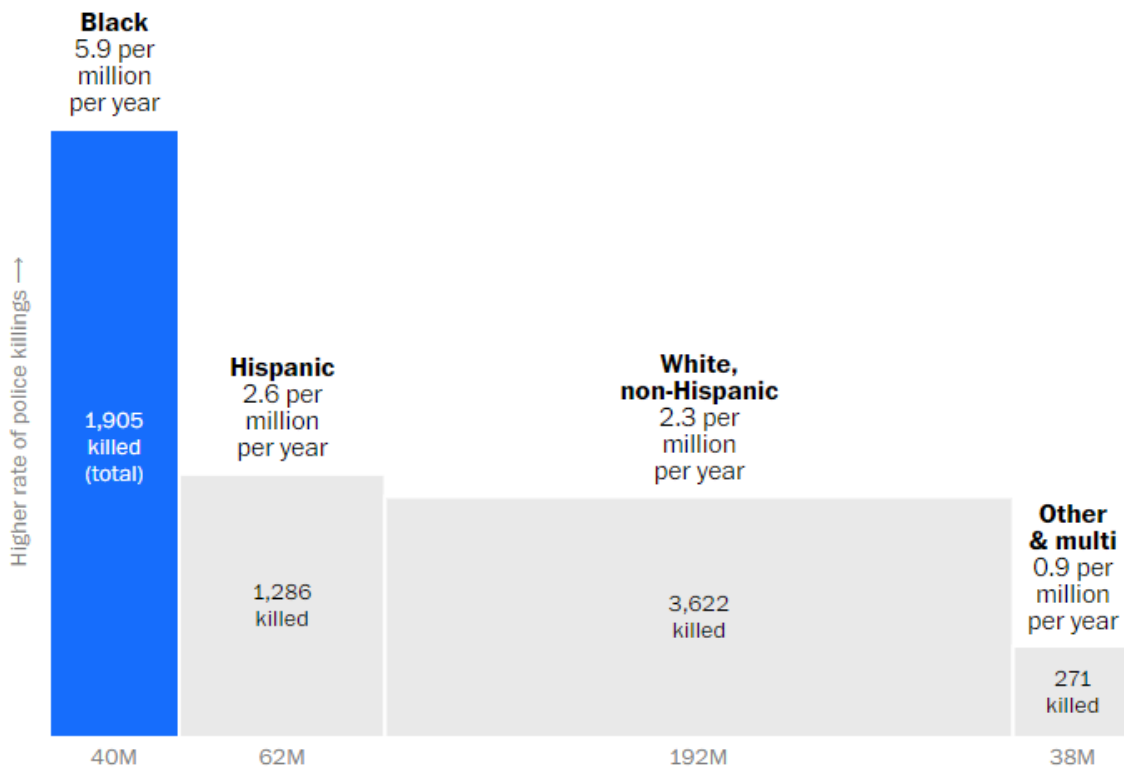


Figure 1 - Data from the Washington Post<sup>i</sup>

Black individuals are killed by police at an astronomical rate compared to other races. This holds true in Phoenix. Since 2015, there have been 53 fatal Phoenix Police Shootings involving minorities. In that same timeframe, according to the Washington Post, only 33 white individuals have faced the same fate.

### **III. FACTUAL BASIS ESTABLISHING LIABILITY**

Leontae Kirk was walking to a convenience store to purchase a can of beer for \$3.00. On the way, he encountered multiple people with whom he had conversations. Some of the conversations turned into verbal altercations. At no time did Leontae threaten or harm anyone. Leontae displayed his gun to one person because the altercation had the potential of escalating.

It did not.

Leontae continued on his way and arrived at the convenience store. In video, you can clearly see Leontae interact with multiple people. With the exception of one person – we'll get to that later – Leontae's interactions were mostly jovial and ended with handshakes.

Unbeknownst to Leontae, a Hispanic individual - Humberto Gonzalez-Rios – followed him to the convenience store at 3710 W. McDowell Road. Humberto then followed Leontae into the convenience store. No physical altercation between the two occurred in the convenience store. Humberto exited the convenience store before Leontae did. Humberto went to "his" motorcycle and retrieved a gun. He then sat on "his" motorcycle with his gun and waited for Leontae to exit the store.

On video – while Humberto was lying in wait – a man pushing a stroller with his child is seen.

When Leontae exited the store, his back was to Humberto. He turned around and saw Humberto sitting on "his" motorcycle with a gun pointed at Leontae.

Leontae ran.

At this point, a Phoenix Police Helicopter was above the scene. Incredibly, the Helicopter occupants<sup>2</sup> – including a spotter whose *sole job is to relay accurate information* – claimed that they saw Leontae and Humberto actively firing their weapons.

This is the first of *many* bumbling mistakes made by the Offenders. Dispatch audio announced that there was an "ACTIVE SHOOTER" situation. This does not excuse the subsequent actions by the Offenders. Bad information is bad information. 911 callers and witnesses give inherently skewed and flawed information. This is well known in the policing community. This is why it is of dire importance to have officers on foot verify information before charging in with their guns blazing. To wit, one of the witnesses reported that he saw Leontae fire his gun three times towards the east, 36<sup>th</sup> Avenue.

Another witness told police that Leontae discharged his handgun and he knew he did because of smoke coming from the gun. Again, a total fabrication. Yet another witness reported that he saw Leontae fire one shot from his pistol. Still yet another witness provided the following information "WHILE WALKING EASTBOUND ON THE SOUTHSIDE OF MCDOWELL ROAD SHE OBSERVED WHAT SHE DESCRIBED AS A HISPANIC

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<sup>2</sup> Flight Officer Steven Ramirez #8372 and Flight Sergeant Jonathan Howard #6118

MALE IN HIS 20'S OR 30'S WEARING A YELLOW JACKET, RED SHORTS AND BLACK SLIPPERS WAS POINTING A GUN AND HER AND HER FRIENDS FROM THE NORTHSIDE OF MCDOWELL AND TOLD THEM TO BE QUIET.”

The reports that Leontae fired his weapon are obviously one hundred percent false. Leontae never fired a weapon. The other report regarding a yellow jacket and red shorts throws the entire situation off-kilter. None of these witnesses could A) accurately describe what they saw; or, B) saw a completely different person than Leontae pointing a gun at people. This is why police must approach a situation such as this with caution. The Offenders instead approached this by throwing caution to the wind.

While Leontae was running away from his aggressor, he managed to pull his own gun out of his pocket in defense. Video footage proves this. Leontae ran away and waved his gun up in the air while frantically searching for cover.

Humberto Gonzalez-Rios was the aggressor.<sup>3</sup> In Officer Thomas Cuthbertson’s Report, he noted that he interviewed Humberto. The following is what Humberto told Officer Cuthbertson:

HUMBERTO WANTED TO KNOW WHY WE ARRESTED HIM. I ADVISED HUMBERTO WE HAD NOT ARRESTED HIM, BUT HE HAD BEEN DETAINED. I TOLD HUMBERTO I DID NOT THINK HE WOULD BE ARRESTED, BUT I DID NOT KNOW WHAT HAPPENED AND NEEDED TO FIND OUT FROM HIM WHAT HAPPENED. I ASKED HUMBERTO WHY HE WAS AT THIS LOCATION. HUMBERTO WAS THERE TO PURCHASE BEERS FOR A FRIEND OF HIS. HUMBERTO LIVED NEAR BY, BUT DID NOT KNOW THE ADDRESS. HUMBERTO NOTED HE LIVED AT NORTH 37TH AVENUE AND WEST GRANADA.

HUMBERTO WORKED AS A CARPENTER FOR AN INDIVIDUAL NAMED “JOSE. I ASKED HUMBERTO ABOUT THE MOTORCYCLE. HUMBERTO WAS IN THE PROCESS OF REPAIRING THE MOTORCYCLE FOR A FRIEND NAMED “GUERO” WHO LIVED IN THE AREA OF 7TH AVENUE AND ROOSEVELT.

I ASKED HUMBERTO TO TELL ME WHAT HAPPENED. HUMBERTO DROVE THE MOTORCYCLE DOWN NORTH 37TH AVENUE AND HUMBERTO OBSERVED THE SUBJECT (LEONTAE KIRK) WALK OUT OF THE ALLEY WHILE PUTTING A GUN IN HIS POCKET. HUMBERTO OBSERVED LEONTAE TALK TO A WHITE FEMALE IN THE ALLEY. LEONTAE CALLED THE FEMALE A “BITCH”. WHILE IN THE STORE LEONTAE GRABBED SOME BEER FIRST AND ASKED HUMBERTO “WHAT’S UP”. WHILE HUMBERTO WAS WAITING TO PURCHASE BEER LEONTAE INSULTED HUMBERTO BY TELLING HUMBERTO TO “SHUT UP” AND SAYING OTHER INSULTING THINGS

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<sup>3</sup> It appears that Humberto made a plan to shoot and/or kill Leontae. He grabbed his gun, sat on “his” motorcycle, waited for Leontae to exit the convenience store, pointed his weapon at Leontae, causing Leontae to panic, and chased him around the parking lot – until Police showed up.

TO HUMBERTO. HUMBERTO WENT OUTSIDE AND TRIED TO START THE MOTORCYCLE AND NOTED THE MOTORCYCLE WOULD NOT START. HUMBERTO NOTED THE MOTORCYCLE HAD ELECTRICAL PROBLEMS. HUMBERTO SAW LEONTAE EXIT THE STORE. HUMBERTO TOOK OUT A BLACK 9MM RUGER HANDGUN WHICH WAS STOWED IN A COMPARTMENT ON THE MOTORCYCLE. AS LEONTAE EXITED THE STORE LEONTAE PULLED OUT A GUN, POINTED THE GUN AT HUMBERTO, AND HUMBERTO BELIEVED LEONTAE WAS GOING TO SHOOT HUMBERTO. HUMBERTO PULLED OUT THE BLACK 9MM RUGER, POINTED THE GUN AT LEONTAE, AND PULLED THE SLIDE BACK ON THE GUN TO SCARE LEONTAE OFF. HUMBERTO STATED THE GUN HE HAD DID NOT HAVE BULLETS. HUMBERTO NOTED THE GUN DID NOT BELONG TO HIM AND HUMBERTO DID NOT KNOW WHO THE GUN BELONGED TO AS IT WAS ON THE MOTORCYCLE WHEN HE RETRIEVED IT FROM “GUERO”.

HUMBERTO HID BEHIND A WHITE CAR. HUMBERTO NOTED THE POLICE ARRIVED AND SHOT AND KILLED LEONTAE.

HUMBERTO NOTED LEONTAE SHOT AT LEAST ONE TIME IN AN UPWARD DIRECTION.

WHEN THE SHOOTING OCCURRED, HUMBERTO RAN TO THE ALLEY AND RAN UP THE ALLEY. HUMBERTO DISCARDED THE GUN IN THE ALLEY, AS HUMBERTO DID NOT WANT TO HAVE ANY PROBLEMS. PRIOR TO THE INTERVIEW HUMBERTO SHOWED ME THE LOCATION WHERE HE DISCARDED THE GUN AND THE GUN WAS NOT LOCATED.

HUMBERTO HAD NEVER SEEN LEONTAE PREVIOUSLY. HUMBERTO DESCRIBED LEONTAE AS A BLACK MALE, SHORTS, WHITE “CAMISA DE TIRANTES” (POSSIBLY A TANK TOP). HUMBERTO NOTED LEONTAE APPEARED TO BE ON DRUGS OR DRUNK.

HUMBERTO HAD BEEN ARRESTED PREVIOUSLY FOR A TRAFFIC VIOLATION. I ASKED HUMBERTO IF HE HAD A FELONY CONVICTION AND HUMBERTO DID NOT BELIEVE HE HAD A FELONY.

Humberto lied in his report to protect himself. He was the aggressor. He pulled his gun on Leontae. He was in possession of a – at the very least – chopped up motorcycle. None of the VIN numbers matched. He claimed Leontae fired his weapon. False.

Instead, the video shows that Humberto continued to hunt Leontae. This continued until Humberto apparently saw police vehicles heading their way. He ran from the property leaving Leontae hiding and wondering if he was going to continue being hunted.



The video then shows officers arriving. Without warning, provocation, or otherwise, three Phoenix Police officers began shooting at Leontae. None of the other Offenders intervened.

By that time, Leontae no longer had a gun in his hand. He had thrown his gun to the ground to avoid the very fate he suffered at the hands of the Offenders. He was defenseless and harmless. No police officers announced their presence.

No police officers attempted to contact Leontae prior to opening fire on him.

No police officers used less lethal methods until *after* firing their **LETHAL** service weapons at Leontae.

Sergeant Roy fired **SEVENTEEN** bullets at Leontae. Officer Ladines and Garza fired no less than seven (7) bullets at Leontae.<sup>4</sup>

The Incident Report details twenty-five (25) separate casings from Phoenix Police service weapons were found strewn about.

Let's recap.

- **Leontae had a gun, and displayed it for defense against an aggressor who was actively hunting him.**
- **He dropped his weapon when he saw police coming.**
- **He's black.**
- **He was murdered.**
- **That's it.**

**a. Timeline**

The following are quotes, times, and descriptions pulled directly from Phoenix Police AXON 3 body cam footage of the Incident:

**i. Sergeant Roy Body Cam Footage**

TIME	DESCRIPTION
0:25	ROY JUMPS OUT WITH WEAPON LOADED AND DRAWN
0:30	ROY DIRECT LINE OF SIGHT ON SIDEWALK IN FRONT OF SHOPPING CENTER
0:31	TWO SHOTS HEARD / SUSPECT FALLING BACKWARD AGAINST BUILDING

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<sup>4</sup> The actions taken by these three officers will be discussed in further detail herein.

0:32 ROY FIRES 17 BULLETS AT LEONTAE  
0:48 ROY LOADS ANOTHER CLIP  
0:51 ROY CALLS A "998"  
1:04 ROY BEGINS MANEUVERING TO BODY  
1:37 ROY states he will go get his shield  
1:41 Yelling heard to drop the gun and get hands up. Frantically trying to confirm if Leontae has gun.  
1:51 Yelling heard to drop the gun and get hands up. Frantically trying to confirm if Leontae has gun.  
2:07 ROY returns to vehicle LIC G 626JT - Retrieves Shield  
2:25 School bus drives by  
2:41 "So there's another shooter?"  
2:59 Someone comes out of liquor store  
3:02 Officer yells to get in the store  
3:33 Seven officers approach Kirk  
3:38 If we got to move him, just move him  
3:46 Officer pulls something out of Kirk's pocket and throws it  
3:49 Officer throws something else from Kirk's pocket  
3:53 Officer throws something else from Kirk's pocket  
4:16 Officer begins to remove Kirk's clothing  
4:23 Gun's right here under this car  
4:34 "I shot right here we got to get these people out of here"  
4:54 People coming out of laundromat  
5:30 Tells people "No videotaping"  
5:54 "How many shooters do we have?"  
5:58 Garza? Me? Unintelligible other  
6:41 DISPATCH TO AIR UNIT - WHEN YOU SAW HIM SHOOTING WHAT DIRECTION WAS HE SHOOTING AND WHERE WAS HE STANDING  
6:59 "Alright, I copy" - NO COMMS HEARD ON VIDEO  
8:00 Volkswagen shows bullet holes in bumper  
8:58 Have we checked for a pulse? "a little bit of movement"  
10:22 She was in this truck when this dude was shot.  
10:52 Alright, I think we're good; I think I'm calmed down now (shows hands flat out) THEN LAUGHS  
11:13 ALL MY CASINGS ARE DOWN HERE

**ii. Officer Garza's Body Cam Footage**

TIME	DESCRIPTION
0:44	Officer jumps out of vehicle
0:47	Three Shots Fired
0:50-1:03	At least 20 more shots fired
0:59	0:59 - Kirk on ground - officer fires 3 shots from rifle
1:12	Kirk moves hands... "DON'T FUCKING MOVE YOUR HANDS"
1:21	Officer tells other officer to go grab her 40, he's got him right here
1:25	Officer yells to "drop the gun" NO GUN SEEN
1:28	Officer yells to "drop the gun" NO GUN SEEN
1:32	Officer yells to "drop the gun" NO GUN SEEN
1:36	Officer yells to "drop the gun" NO GUN SEEN
1:39	Does he still have it with him? I don't know!
1:42	I can't see his hands
2:03	Drop the gun and put your hands up
2:10	Not sure where the gun is
2:14	PUT YOUR HANDS UP
2:27	LET ME SEE YOUR HANDS!
2:53	Ok, where's the gun? We can't see it
4:28	"good job"
5:02	(Unintelligible) fire dept? yes.
5:04	CPR starts
5:37	Is fire coming (hard to decipher)
12:45	So we are the three shooters
12:47	"Are you off now? We can go off now" (re: body cams)

**iii. Ladines' Body Cam Footage**

TIME	DESCRIPTION
:53	Hey where's the gun
2:16	I'm not seeing anything
3:24	FUCK
4:21	Officer realizes person in the truck
4:28	Did you get hit at all?
4:31	did you get shot?
4:48	take a second; take a second
5:00	I'm sorry... it's ok now

5:50 Are you good Autumn? Yeah, I'm one of the shooters... ok I am too.  
9:25 Where's fire [department]? No clue - maybe these barricades are too good laugh  
laugh laugh

**iv. Ravelo's Body Cam**

TIME	DESCRIPTION
0:17	Officer (Passenger) Jumps out of car
0:19	GUY AT BUS STOP
0:30	Multiple gun shots
0:40	STOP STOP PHX PD PUT YOUR HANDS UP
1:41	Boss I can't see if he has a gun or not
1:45	I can't see if he has a gun
2:30	Where's the gun? I don't know
2:40	He's still moving - Can't see a gun or not
3:30	Guns underneath him
3:50	I'm not seeing anything
4:14	Cutting Clothing
4:14	Got a pulse? I don't know yet
4:40	4:40 - I'm going to start compressions and check for wounds
5:00	Arms leg shoulder... wound visible on right side of chest
6:42	You thought he was shooting, where was he standing
7:48	Removes cuffs
16:24	FIRE ARRIVES
20:12	Discussion about where Leontae's gun is
20:35	5 in his back; 1 in his neck
20:57	Where's his casings?

The remaining Offenders and officers did nothing to intervene. Not a single officer paused for reflection. Not a single Offender or officer put their foot down to establish proper assessment procedures. Not a single Offender or officer made any attempt – verbal or physical – to de-escalate and prevent their fellow officers from engaging in the most reprehensible and reckless activity possible. **BYSTANDERS WERE EVERYWHERE.** A 13-year-old was found in the back of truck *mere feet* from the gunshots – and had been there the entire time of the Incident. Diana Concepcion Flores Ochoa was the driver of the Dodge Ram. According to Police Reports and her interview, she was also inside the Ram during the Incident. She saw Leontae run out of the Convenience Store but did not see anyone with a gun.

According to Police Reports:

THERE WAS AN APPARENT BULLET STRIKE (LABELLED "A") TO A SOUTH FACING WINDOW OF THE GRAND STOP TWO BUSINESS. THE INTERIOR SIDE OF THE WINDOW WAS LABELLED "A1". THERE WAS AN APPARENT BULLET STRIKE (LABELLED "A2") TO THE INTERIOR MIRRORS MOUNTED ON THE EAST WALL. THE PROJECTILE WAS UNABLE TO BE RECOVERED.

THERE WERE TWO (2) APPARENT BULLET STRIKES (LABELLED "B" AND "C") ON THE EXTERIOR SOUTH FACING WALL OF JR'S CELLULAR, NEAR THE DECEDENT.

THERE WAS ONE (1) APPARENT BULLET STRIKE (LABELLED "D") ON THE LEFT REAR QUARTER PANEL OF THE GOLD HONDA PILOT, PARKED FACING NORTH TOWARD BUILDING (SPACE 9). ONE (1) PROJECTILE (ITEM 42) WAS LOCATED IN THE REAR CARGO AREA OF THE GOLD HONDA PILOT, PARKED FACING NORTH TOWARD BUILDING (SPACE 9)

THERE WERE POSSIBLE BULLET STRIKES (LABELLED "E", "F", AND "G") ON THE REAR BUMPER TO THE PARKED GRAY VOLKSWAGEN JETTA, PARKED FACING NORTH TOWARD BUILDING (SPACE 10).

This is not a case of simple neglect. The Offenders displayed a conscious and reckless disregard to not only Leontae's rights and life, but they endangered civilians, business owners, children, and anyone who found themselves unlucky enough to be in the vicinity.

#### **IV. UNITED STATES DEPARTMENT OF JUSTICE ANNOUNCES INVESTIGATION INTO THE PHOENIX POLICE DEPARTMENT**

The United States Department of Justice ("USDOJ") announced on August 5, 2021 that they were investigating the Phoenix Police Department. The full text of the announcement follows:

Justice Department Announces Investigation of the City of Phoenix and the Phoenix Police Department

Attorney General Merrick B. Garland and Assistant Attorney General Kristen Clarke for the Civil Rights Division announced today that the Justice Department has opened a pattern or practice investigation into the City of Phoenix and the Phoenix Police Department (PhxPD).

This investigation ***will assess all types of use of force by PhxPD officers, including deadly force.*** The investigation will also seek to determine whether PhxPD engages in retaliatory activity against people for conduct protected by the First Amendment; whether PhxPD engages in ***discriminatory policing***; and whether PhxPD unlawfully seizes or disposes of the belongings of individuals experiencing homelessness. In addition, the investigation will assess the City and PhxPD's systems

and practices for responding to people with disabilities. The investigation will include a ***comprehensive review of PhxPD policies, training, supervision, and force investigations***, as well as PhxPD’s systems of accountability, including misconduct complaint intake, investigation, review, disposition, and discipline.

Department of Justice officials informed Phoenix Mayor Kate Gallego, PhxPD Chief Jeri Williams, and other City officials of the investigation. As part of this investigation, the Department of Justice will reach out to community groups and members of the public to learn about their experiences with PhxPD.

“When we conduct pattern or practice investigations to determine whether the Constitution or federal law has been violated, our aim is to promote transparency and accountability,” said Attorney General Merrick Garland. “This increases public trust, which in turn increases public safety. We know that law enforcement shares these goals.”

“One of the highest priorities of the Civil Rights Division is to ensure that every person in this country benefits from policing that is lawful, effective, transparent, and free from discrimination,” said Assistant Attorney General Kristen Clarke. “Police officers across the country must use their authority in a manner that adheres to the Constitution, complies with federal civil rights laws and respects human dignity.”

The investigation is being conducted pursuant to the Violent Crime Control and Law Enforcement Act of 1994, which prohibits state and local governments from engaging in a pattern or practice of conduct by law enforcement officers that deprives individuals of rights protected by the Constitution or federal law. The statute allows the Department of Justice to remedy such misconduct through civil litigation. This is the seventy-third investigation of a law enforcement agency conducted pursuant to this statute since it was enacted in 1994. The department will be assessing law enforcement practices under the First, Fourth, and Fourteenth Amendments to the United States Constitution, as well as under the Safe Streets Act of 1968; Title VI of the Civil Rights Act of 1964; and Title II of the Americans with Disabilities Act.

Retrieved February 2, 2023 from <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department> (emphasis added).

## **V. PHOENIX POLICE NEW USE OF FORCE POLICY**

It should be noted that the Phoenix Police Department’s Use of Force Policy was updated in January 2023. The Phoenix Police Department – as discussed herein – has been the subject of a USDOJ investigation due to their violent, racially-motivated tactics.

The Phoenix Police and City’s policies regarding use of force and “active shooters” has been woefully deficient for years.

Phoenix Police Chief Michael Sullivan was hired in September 2022 specifically to help the department address the wide-ranging and ongoing probe by the USDOJ.

A major component of the USDOJ’s investigation is into the use of force of Phoenix Police officers. The Phoenix Police Department is no stranger to civil wrongful death lawsuits and years of protests. It is an institutional problem and the City, the Police, and the Offenders are all actors in the shameful display of policing that has occurred throughout the years – culminating in the horrific, violent, take no prisoners approach the Offenders used on November 2, 2022 to murder Leontae Kirk.

In response, Sullivan implemented a new Use of Force Policy (“Force Policy”) that applies to all Phoenix Police Officers. Operations Order 1.5 details the Force Policy.

According to the Force Policy, the purpose is:

“to establish what constitutes a permissible use of force by an employee, and the employee’s duties before, during, and after using force. The goal of every encounter is to resolve it without resorting to force, and using force in any case must be based on a careful assessment of the situation, including the threats, options, and risks faced by the employee.”

Phoenix Police Department Use of Force Policy Rev. 01/23 retrieved from <https://www.phoenix.gov/policesite/Documents/1.5%20Use%20of%20Force%202023.pdf> on February 2, 2023.

The Force Policy further states that “The standards established by this Department policy are deliberately stricter than the Constitutional and legal minimums established by the Courts. These more rigorous standards for use of force must be complied with.” *Id.* **Too little, too late.**

The Core Principles in the Force Policy are:

A. **Sanctity of Human Life** – Employees shall make every effort to preserve human life in all situations.

B. **Value and Worth of All Persons** – Employees shall respect and uphold the value, rights, liberty, and dignity of all persons at all times.

C. **Use of Force: Reasonable, Necessary, and Proportional** – Employees shall use only the force that is reasonable, necessary, and proportional to effectively and safely resolve an incident. The employee will immediately reduce the level of force as the threat or resistance diminishes.

D. **De-Escalation** – Employees shall use de-escalation techniques and tactics when feasible to

attempt to reduce any threat or gain compliance with lawful commands without the use of force. If that is not possible, the employee must reduce or eliminate the threat using the lowest level of force possible. Employees shall avoid action or language that escalates an encounter unless necessary to achieve a lawful purpose.

E. **Continuous Assessment** – Employees shall continuously assess each situation and modify their response as the circumstances change—before, during, and after an employee uses force. Employees may be justified in using force at a particular moment but not justified in using force when circumstances change.

F. **Reporting Use of Force** – Each employee who uses force, or observes another employee or employees use force, shall notify their supervisor as soon as practical, and will accurately complete the required Incident Report and/or any supplements by the end of their shift.

G. **Duty to Intervene** – All employees shall intervene, with no fear of retaliation, when they know or should know another employee is using unreasonable force or is otherwise engaging in abusive behavior or misconduct.

H. **Duty to Provide Medical Assistance** – As soon as practical after any Use of Force incident, employees are responsible for requesting medical treatment for injured subjects and rendering aid consistent with the employee’s training.

I. **Accountability** – Employees shall be held accountable for uses of force that violate law or policy. Employees have an absolute duty to report all misconduct, including but not limited to, the use of excessive force.

J. **Retaliatory Force** – Employees shall not use force against persons to punish them for fleeing, resisting arrest, assaulting an employee, or for any other reason. *Id.*

Use of Force is defined as:

(1) Sworn and civilian employees acting in an enforcement capacity have the authority to use Reasonable, Necessary, and Proportional force when necessary to accomplish lawful objectives.

(a) This authority is limited by the United States Constitution, federal law, laws of the State of Arizona, and the provisions of this policy.

(b) Employees must conform their actions to the requirements of these sources of lawful authority.

(c) When employees use force, they shall exercise the utmost restraint.



(d) Employees should announce that force will be utilized prior to the application of such force unless it is impractical to do so.

(2) Employees shall prevent or stop the illegal, inappropriate, or excessive Use of Force by other employees. Failure to intervene may subject an employee to disciplinary action.

(3) Only Department-issued or approved weapons, equipment, and irritants are authorized.

*Id.*

The Force Policy defines the Use of Deadly Force as:

(1) The use of Deadly Force shall always be the last resort.

(2) Employees shall not use Deadly Force unless:

- They have exhausted De-escalation and Less-Lethal Force options;
- These alternatives have been tried and failed; or
- These alternatives are not safe based on the Totality of Circumstances.

(3) Employees may use Deadly Force when they reasonably believe such action is immediately Necessary to protect an employee or another person from an Imminent Threat of death or Serious Physical Injury.

(4) Prior to the decision to employ Deadly Force, employees shall consider environmental considerations such as field of fire, backdrop, bystanders, potential for ricochet, possibility of over-penetration, and other risks to life.

(5) Where safety permits, employees should identify themselves as a law enforcement officer and state their intention to use Deadly Force before using a firearm or employing Deadly Force.

(6) An employee may use Deadly Force to prevent the escape of a fleeing person if force is authorized and no reasonable force alternative exists, provided that:

- There is probable cause to believe that the person has committed or is in the process of committing a felony involving the infliction or threatened infliction of Serious Physical Injury or death, and
- The escape of the person would pose an Imminent Threat of death or Serious Physical Injury to the employee or another unless the person is apprehended without delay, and

- If time, safety, and circumstances permit, employees have identified themselves as law enforcement officers, have stated their intention to use Deadly Force, and have given the person a reasonable opportunity to comply voluntarily.

The Force Policy defines the following duties:

A. Duty to Intervene

(1) Employees shall intervene to stop any employee from using excessive force and/or engaging in abusive behavior or other forms of misconduct; intervention may be verbal and/or physical.

B. Duty to Provide Medical Assistance

(1) As soon as practical, when there is a visible injury, complaint of injury, signs of medical distress, or when medical attention is requested by any person, employees shall render aid consistent with their training.

(a) When safe to do so, the employee shall promptly request that medical personnel respond to the scene.

(b) The employee shall then notify their supervisor.

(2) If a person has been subjected to impact by any type of Less-Lethal Force, including CEW, impact weapons, or impact projectiles, the person will be provided with medical treatment.

*Id.*

The updates to the Use of Force Policy show that the policies and procedures in place at the time of Leontae's death failed to protect members of the public. It serves as the City's and the Police Department's *mea culpa*.

Even if the Force Policy as it exists now had been in place on November 2, 2022, it still proves that the force used by the Offenders was unnecessary, extreme, reckless, grossly negligent, and shows that the Offenders did nothing to verify the situation, use less lethal methodologies, or use plain common sense. It is a travesty beyond comprehension. The Offenders – each and every one of them – had a duty to intervene:

Employees shall intervene to stop any employee from using excessive force and/or engaging in abusive behavior or other forms of misconduct; intervention may be verbal and/or physical.

Each and every Offender failed in that basic task.

If litigation continues, evidence will be elicited that proves that the City and Phoenix Police Department had in place policies and procedures that were not only woefully deficient, but set a course for officers' to willfully infringe on the Constitutional civil rights of Leontae Kirk.

## **VI. POLICE COVERUP**

The fix was in from the get go.

The timelines herein show that the Offenders shot first and asked questions later – or allowed the Incident to occur without intervening. Those questions included frantic attempts to justify on camera why they fired their lethal munitions. Those questions included frantic attempts to claim that Leontae had a gun on his person. They included frantic attempts claiming that the gun was underneath him; that the gun was being pointed at people; that Leontae had been firing his weapon; and that Leontae was not complying with orders after he had been shot nineteen (19) times.

It is clear that the Offenders had only one thing on their minds: *Execution*.

Their only concern was to punish Leontae for things he did not do – instead of assessing, evaluating and properly executing their duties.

### **a. THE SHOOTERS**

#### **i. OFFICER LADINES AND RAVELO**

According to Ladines, she was riding with Ravelo in response to a “SUBJECT WITH A GUN” call. She heard the helicopter dispatch call that there was an active shooter. Ladines – in contravention to the video evidence – claimed that Leontae was holding his gun “GANGSTER STYLE.” Ladines claims she heard shots from Leontae – even adding detail that he had the gun in his hand and it was moving up and down as he fired. Again, video evidence proves this to be demonstrably false.

She claimed that Leontae was shooting to the North and the East. Ladines saw pedestrians walking nearby.

Let that sink in. She saw pedestrians **WALKING** nearby. Not running. Not screaming. Not in fear for their lives. **WALKING**. Additionally, as seen in body cam footage and corroborated by Officer Ravelo in her investigation interview with Detective Shuck, “THERE WAS AN UNIDENTIFIED PERSON AT THE BUS STOP WHO QUICKLY WALKED AWAY AFTER BEING ASKED TO DO SO BY OFFICER RAVELO.”

The bus stop was directly in front of the Incident. If weapons had been fired, why did the person at the bus stop stay?

**Where were the exigent circumstances? Why were pedestrians unconcerned? Because no weapon was fired by Leontae – and the Offenders knew it.**

**There is no other possible explanation. The Offenders had all the information they needed to know this was decidedly not an active shooter situation. They deliberately and consciously disregarded the information that was readily available to them. They then executed Leontae.**

According to police reports in response to an interview by detectives, “OFFICER LADINES TOLD ME THE SUBJECT WAS “ACTIVELY SHOOTING IN THE DIRECTION OF AN OCCUPIED BUILDING COMMITTING AGGRAVATED ASSAULT”. Ladines claimed that Leontae had fired between three (3) and five (5) bullets.

In a complete lack of clarity, Ladines “THOUGHT” she told the subject to stop. Video shows she did not – until after Leontae lie bleeding on the concrete. Ladines fired her weapon multiple times into Leontae. She believes she shot five (5) times.

Ladines then moved closer to Leontae – who was dying on the concrete with no weapon and claims to have heard him firing more bullets. Only after Ladines moved to Garza’s position did she see that Leontae was slumped against the wall on the concrete. She claims that Leontae was raising his hands up and down and moving around. This could not be further from the truth.

At this point, the Offenders likely realized how much of a mistake they had made and they began shouting commands for Leontae to **drop his gun**. Ladines claims that Leontae was not complying.

Subsequent remedial measures are worthless when someone is dead.

Concerningly, Ladines then retrieved a non-lethal weapon and fired a 40mm canister into Leontae. Shouldn’t non-lethal force be used first? Not on November 2, 2022.

Ladines and Ravelo quickly concocted a story that Leontae’s gun was underneath him as they clearly could not see a weapon. Ladines claims then that additional officers arrived with their shields. Again, where were they prior to opening fire and murdering Leontae?

Only after waiting anywhere between six and ten minutes, did officers approach Leontae to provide medical care. Ladines’ and Ravelo’s story about the gun being underneath Leontae fell apart in a matter of seconds. The gun was found underneath a vehicle.

It was at this point that Ladines realized that a 13-year-old girl was in a vehicle mere feet from the location of Leontae’s dying body.

Ladines doubled-down towards the end of her interview and told the investigator that she fired her weapon because Leontae was actively firing his weapon in public and she wanted to protect civilians and other officers.

She also stated she did not see other officers firing weapons.

In Ravelo's investigation, she stated that "OFFICER LADINES REMOVED HER 40MM GUN, DESIGNED FOR "LESS LETHAL USE," FROM THEIR PATROL CAR'S REAR CARGO AREA AND PLACED THE WEAPON IN THE PASSENGER COMPARTMENT WITH OFFICER RAVELO BEFORE RESPONDING TO THE EMERGENCY RADIO CALL."

Ladines knew she could use less lethal force and she deliberately chose otherwise.

Furthermore, Ravelo told Detective Shuck that she "WAS UNSURE IF LEONTAE WAS THE SUBJECT OF THEIR CALL, AS HE DID NOT MATCH THE DESCRIPTION, AND SHE DID NOT SEE LEONTAE WITH A WEAPON. OFFICER RAVELO CONTINUED LOOKING AROUND FOR A HISPANIC MALE IN THE RED HOODED SWEATSHIRT."

Ravelo also told Detective Shuck that she "DID NOT SEE ANYONE WITH A FIREARM OTHER THAN THE POLICE, SO SHE DID NOT DISCHARGE HER WEAPON. OFFICER RAVELO RECALLED HEARING APPROXIMATELY TEN GUNSHOTS BUT NOTED THAT OFFICERS SEEMED TO BE FIRING SIMULTANEOUSLY. AFTER THE GUNFIRE ENDED, LEONTAE WAS DOWN ON THE GROUND, LYING ON HIS BACK WITH HIS HANDS DOWN BY HIS SIDES IN THE SAME VICINITY WHERE OFFICER RAVELO INITIALLY OBSERVED HIM."

Officer Ravelo did nothing to stop the ensuing slaughter. Officer Ravelo's statements to Detective Shuck directly contradict Officer Garza's, Officer Ladines', and Sergeant Roy's statements that Leontae had a weapon in his hands.

It's sickening that Police Officers lie. It's also a sad truth.

## ii. OFFICER GARZA

According to Detective Interviews of Officer Garza following the incident, the following was stated:

WHEN OFFICER GARZA ARRIVED, HE PARKED ON MCDOWELL ROAD, FACING EAST, ON THE NORTH SIDE OF MCDOWELL. HIS VEHICLE WAS IDENTIFIED AS VEHICLE #111739 (STILL PRESENT). OFFICER GARZA SAW THE SUBJECT IN THE PARKING LOT, SOUTH OF THE VEHICLES AND WEST OF THE BOOST MOBILE BUSINESS, POINTING A HANDGUN "AT PEOPLE IN FRONT OF THE BUSINESS".

***OFFICER GARZA DESCRIBED THE SUBJECT AS SHOOTING THE HANDGUN IN A NORTHEAST DIRECTION.***

OFFICER GARZA INDICATED HE DID NOT SEE CIVILIANS, BUT KNEW IT WAS "BUSY" DUE TO THE TIME OF DAY.

**OFFICER GARZA BELIEVED THE SUBJECT FIRED HIS GUN ONE OR TWO TIMES. OFFICER GARZA DESCRIBED THE SUBJECT’S GUN AS A BLACK HANDGUN.**

OFFICER GARZA RETRIEVED HIS RIFLE AND EXITED HIS PATROL VEHICLE. AS HE DID THIS, HE HEARD GUNFIRE.

OFFICER GARZA ASSUMED IT WAS AN OFFICER BECAUSE IT WAS COMING FROM HIS LEFT AND KNEW THE SUBJECT WAS NOT AT THAT LOCATION.

OFFICER GARZA SAW THE SUBJECT RUN TO THE FRONT OF THE PARKED VEHICLES TOWARDS THE BUSINESSES.

OFFICER GARZA RAN EAST DOWN THE SIDEWALK AS HE WANTED TO KEEP THE SUBJECT FROM ENTERING ANY OF THE BUSINESSES. OFFICER GARZA STOPPED JUST SOUTH OF THE SHORT PONY WALL, EAST OF THE BUS STOP.

OFFICER GARZA COULD SEE THE SUBJECT RUNNING FROM OTHER OFFICERS. OFFICER GARZA FIRED HIS WEAPON AT THE SUBJECT AS HE (SUBJECT) WAS NEAR THE BOOST MOBILE, **NEAR THE FRONT OF A SILVER DODGE RAM TRUCK**. OFFICER GARZA FIRED THREE TIMES AND BELIEVED HE HIT THE SUBJECT ALL THREE TIMES.

OFFICER GARZA WAS AIMING “CENTER MASS”. **OFFICER GARZA UTILIZED THE SCOPE THAT WAS ATTACHED TO HIS RIFLE.**

AFTER, THE SUBJECT FELL TO THE GROUND. OFFICERS WERE GIVING COMMANDS FOR THE SUBJECT TO SHOW HIS HANDS. BECAUSE OF THE SUBJECT’S POSITIONING, OFFICERS COULD NOT SEE THE SUBJECT’S HANDS AND DID NOT KNOW WHERE THE GUN WAS.

OFFICER GARZA TOLD OFFICER LADINES TO RETRIEVE HER “LAUNCHER” (40MM). ONCE SHE RETURNED, OFFICER LADINES FIRED ONE ROUND BUT THE SUBJECT DID NOT RESPOND.

AFTER THE SHOOTING OCCURRED, OFFICER GARZA SAW NUMEROUS PEOPLE EXIT THE BUSINESSES.

Garza has clearly lied in his interview. Garza claimed that he actually saw Leontae fire his weapon multiple times. Officer Garza had a scope on his AR-15 Daniel Defense rifle. Officer Garza used that scope. Officer Garza could clearly see that Leontae had no weapon. Yet, Officer Garza fired three shots “CENTER MASS” and believed that all three shots hit Leontae.

Officer Garza's actions are despicable. He had the choice to use non-lethal measures. He had a scope to view Leontae through. He clearly did not see Leontae holding a weapon – because Leontae was not holding a weapon. Garza participated in the execution Leontae. Of note, Garza stated that Leontae was near the front of the silver Dodge Ram. There were people inside the Dodge Ram. Garza did not even clear the area of civilians before he participated in the murder of Leontae.

**iii. SERGEANT ROY**

According to Detective Interviews of Sergeant Roy, he stated:

SERGEANT ROY COULD SEE THE SUBJECT IN THE PARKING LOT, NEAR THE BACK OF A SILVER TRUCK (DODGE RAM). THE SUBJECT WAS FACING AWAY FROM SERGEANT ROY, **HOWEVER SERGEANT ROY COULD SEE A GUN IN HIS RIGHT HAND**, BEING POINTED IN A NORTHEAST DIRECTION TOWARDS THE BARBER SHOP AND LIQUOR STORE. SERGEANT ROY COULD NOT SEE IF THE SUBJECT WAS FIRING THE WEAPON.

SERGEANT ROY KNEW OFFICERS WERE TO THE SOUTH OF THE SUBJECT. SERGEANT ROY BELIEVED THE OFFICERS HAD “CHALLENGED” THE SUBJECT BECAUSE HE RAN NORTH, BETWEEN THE **TRUCK** AND VOLKSWAGEN, TOWARDS THE CELLULAR STORE. SERGEANT ROY RAN NORTH TO THE SIDEWALK THAT RUNS EAST AND WEST IN FRONT OF THE BUSINESS COMPLEX.

AS SERGEANT ROY REACHED THE SIDEWALK (JUST EAST OF 37TH DRIVE), HE SAW THE SUBJECT EMERGE FROM BETWEEN THE TWO VEHICLES. THE SUBJECT “CROUCHED DOWN” AND TURNED TOWARDS THE OFFICERS (TO THE SOUTH). SERGEANT ROY BELIEVED THE SUBJECT WAS GETTING INTO A POSITION TO ENGAGE THE OFFICERS IN A “GUNFIGHT”.

**SERGEANT ROY COULD NOT SEE THE GUN** BUT HIS BODY LANGUAGE AND POSITIONING MADE SERGEANT ROY BELIEVE HE WAS STILL ARMED WITH THE GUN.

SERGEANT ROY FEARED FOR THE SAFETY OF THE OFFICERS AND FIRED HIS HANDGUN AT THE SUBJECT.

SERGEANT ROY FIRED HIS WEAPON UNTIL THE SUBJECT WAS NO LONGER IN A POSITION TO BE A THREAT. AT THIS POINT, THE SUBJECT WAS ON THE GROUND. SERGEANT ROY DID NOT KNOW AT THE TIME HOW MANY ROUNDS HE HAD FIRED. SERGEANT ROY DID A “TACTICAL EXCHANGE” AND LATER LOOKED AT HIS MAGAZINE AND DISCOVERED HE HAD FIRED 17 ROUNDS.

SERGEANT ROY SAW A TEAM BEING DEVELOPED TO APPROACH THE SUBJECT. SERGEANT ROY RETRIEVED THE SHIELD FROM HIS PATROL VEHICLE, JOINED THE TEAM, AND EVENTUALLY THEY MOVED UP TO THE SUBJECT.

SERGEANT ROY EXPLAINED WHEN HE FIRED HIS WEAPON, HE DID NOT SEE ANY CIVILIANS IN THE AREA. HIS BACKDROP WAS DESCRIBED AS BEING THE SUBJECT.

...

SERGEANT ROY DID NOT HEAR ANY OTHER GUNFIRE BESIDES HIS.

Sergeant Roy wasted no time in participating in the murder of Leontae. From the time he exited his vehicle, it took him 31 seconds to pull his gun and fire 17 shots. He claims he didn't remember how many shots he fired – yet he emptied his entire clip and reloaded another clip. Video shows that Sergeant Roy could not have seen Leontae holding a weapon. Furthermore, his body cam footage shows that Leontae had already been shot and was on the ground when he unleashed hell on Leontae. His cowboy and mercenary actions are not only unbelievably shocking, but are a stain on the United States Constitution. Roy performed no assessment. Roy bypassed all policies and procedures and deployed lethal force when it was not only unnecessary, but wantonly and recklessly dangerous to the life of Leontae and innocent bystanders. Literally nothing in the video shows that ANY use of force was necessary by Roy. Leontae had already been shot by Garza and Ladines and had no weapon. In no uncertain terms, Roy is a murderer. Roy made the conscious decision to bypass all of Leontae's recognizable Civil Rights and was a main contributor to the execution of Leontae.

Was Roy upset by his actions? Not at all. In fact, he was bouncing around gleefully following his participation in the execution of Leontae. He can be heard on his bodycam footage stating that he has calmed down and then begins laughing. This is less than 10 minutes following the execution of Leontae.

Heartbreaking. Disgusting. Inhuman.

#### **b. THE HELICOPTER**

To describe the actions of the helicopter occupants is an exercise in futility. They had binoculars. They had visual line of sight on Leontae. Yet, they failed in the simplest of tasks. Observation.

FLIGHT OFFICER STEVEN RAMIREZ #8372 and FLIGHT SERGEANT JONATHAN HOWARD #6118 (collectively "Helicopter Officers") recklessly and wrongly reported what was plain to see. They reported false information that Leontae was firing his weapon.

This is not a simple mistake that can be brushed aside. The Helicopter Officers have one overriding job: to observe. They then report what they see. Mistakes cannot happen. The Helicopter Officers reported that there



was an active shooter – when there clearly was not. The Helicopter Officers failed not only at their jobs and their duties, but they provided false information to their colleagues. The Helicopter Officers kicked off the fracas. They are as responsible for the murder of Leontae as the Offenders who actually shot him.

## **VII. AUTOPSIES**

### **c. POLICE AUTOPSY**

The following is taken from the Autopsy information reported in the Police Reports:

DATE OF AUTOPSY: FRIDAY, NOVEMBER 4, 2022

OME CASE NUMBER: 2022-11285

DECEASED: LEONTAE KAAMEECH KIRK

PATHOLOGIST: DOCTOR CROSS

CAUSE OF DEATH: MULTIPLE GUNSHOT WOUNDS

MANNER OF DEATH: HOMICIDE

ON FRIDAY, NOVEMBER 4, 2022, AT APPROXIMATELY 0800 HOURS, I ATTENDED THE POSTMORTEM EXAMINATIONS OF LEONTAE KAAMEECH KIRK AT THE MARICOPA COUNTY OFFICE OF THE MEDICAL EXAMINER, LOCATED AT 701 WEST JEFFERSON STREET.

Leontae horrifically was shot:

- BLACK RIGHT SHOE AND YELLOW SOCK
- BLACK LEFT SHOE AND YELLOW SOCK
- LEFT HANDBAG
- LEFT FINGERNAIL CLIPPINGS WITH CLIPPERS
- RIGHT HANDBAG
- RIGHT FINGERNAIL CLIPPINGS
- PROJECTILE; FROM LEFT MID BACK
- PROJECTILE; FROM RIGHT WRIST
- PROJECTILE; FROM LEFT HAND
- PROJECTILE; FROM RIGHT KNEE
- PROJECTILE; FROM LEFT CHEST WELL
- PROJECTILE; FROM LEFT INTERCOSTAL SPACE
- PROJECTILE; FROM POSTERIOR LEFT ABDOMEN

- PROJECTILE; FROM RIGHT PELVIS
- PROJECTILE; FROM LEFT PELVIS
- PROJECTILE; FROM LEFT 11TH RIB
- PROJECTILE; FROM LEFT BUTTOCK
- PROJECTILE; FRAGMENTS FROM RIGHT THIGH
- PROJECTILE; FRAGMENT FROM LEFT PERIRENAL TISSUE
- PROJECTILE; FRAGMENT FROM RIGHT LUNG
- PROJECTILE; FRAGMENTS, MISC
- OTHER; BLUE FRAGMENT FROM RIGHT ABDOMEN
- OTHER; METAL FRAGMENT FROM PUBIS

**d. PRIVATE AUTOPSY**

A private autopsy was also performed. Similar results were found. Both autopsy reports list cause of death as Homicide.

**e. WEAPONS USED**

Officer Garza used a Daniel Defense 5.56 Caliber AR-15 Rifle. These types of rifles cause cavitation. This means that instead of a bullet passing straight through, it creates a cavity in the body. The high velocity of the weapon also liquifies organs.

Officer Ladines used her 9MM Glock.

Sergeant Roy used his 9MM Glock.

Three Projectiles were recovered from the parking lot south of Jorge's Barbershop, the ground underneath a silver 2005 Honda Lx, and the rear cargo area of a gold 2003 Honda Pilot.

A black projectile (.40 caliber) was recovered in a parking space south of JR's Cellular.

Seventeen bullet casings from a WIN 9MM Luger were recovered on the ground and the sidewalk on the northwest corner of the parking lot.

Four bullet casings from a WIN 9MM Luger were found in the roadway south of businesses and in the rocks south of businesses.

Another bullet casing was found from an EXT SH 223 REM in the rocks on the east side of North 37<sup>th</sup> Drive.

Three other bullet casings from an FC 223 REM were found in the parking lot south of Jorge's Barber Shop / Beauty Salon.

A cartridge from an FC 223 REM was found in the rocks south of the businesses.

## **VIII. LEGAL BASIS OF CLAIMS**

### **a. VIOLATION OF EQUAL PROTECTION OF THE LAW UNDER FOURTEENTH AMENDMENT**

By the actions described above, the entities and individuals to whom this Notice of Claim is addressed violated Leontae Kirk's right to freedom from unreasonable seizure and excessive force as protected by the Fourth Amendment of the United States Constitution and his right to equal protection of the law as protected by the Fourteenth Amendment to the United States Constitution.

### **b. 42 U.S.C. § 1983- EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AMENDMENT**

42 U.S.C. § 1983 provides individuals with a cause of action to sue for violations of his or her constitutional rights. The 14th Amendment protects individuals from constitutional violations of State and local authorities. As incorporated by the 14th Amendment, the 4th Amendment protects individuals from the use of excessive force by law enforcement officers. The Offenders, while acting in their official capacity and individual capacities and under the color of law, violated Leontae Kirk's rights to freedom from unreasonable seizures.

Under Article 2, Section 8 (Rights to Privacy) and 13 (Equal Privileges and Immunities) of the Arizona Constitution: By authorizing, acquiescing in, employing, failing to adequately train or supervise those directly involved in and/or participating in or being deliberately indifferent to the force used on Leontae Kirk. The entities and individuals to whom this Notice of Claim is addressed violated Leontae Kirk's right to freedom from unreasonable seizure. Leontae Kirk was also subjected to unreasonable seizure based the officers' use of excessive force. The Offenders had a duty to refrain from using excessive force in specific circumstances. The Offenders used excessive force by shooting Leontae for no reason. He had no weapon at the time he was shot. He was running for his life from Humberto.

Leontae was neither a threat of death nor of great bodily harm to the Offenders, nor was he engaging in any conduct that justified the extent of force used by the officers.

By shooting Leontae first and asking questions later, the Offenders violated Leontae's rights. The Offenders had available to them less lethal implements. They could have announced themselves. They could have pointed a lethal weapon at Leontae and could have asked him to lie down. They could have done a million things other than what they chose to do.

### **c. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

To sue for intentional infliction of emotional distress, a claimant must show: (1) defendant's conduct was extreme and outrageous; (2) defendant either intended or recklessly disregarded the certainty that the claimant

would suffer emotional distress; and (3) the claimant suffered emotional distress. *Mintz v. Bell Atl. Sys. Leasing Int'l, Inc.*, 183 Ariz. 550, 553, 905 P.2d 559, 562 (Ct. App. 1995).

The Offenders engaged in extreme and outrageous conduct by shooting and killing Leontae without proper justification. Outside of Garza, Ladines, and Roy, the remaining Offenders had a *duty* to intervene. Ravelo clearly saw that Leontae had no weapon. It is likely the other Offenders saw the same. However, through their suspected lies and falsifications, it is clear they just wanted to shoot their firearms. Through their conduct, the Offenders either intended or completely disregarded Leontae's dignity and constitutional rights and knew their conduct would lead Claimants to suffer emotional distress. Thus, the Offenders are liable for intentional infliction of emotional distress.

#### **d. WRONGFUL DEATH**

When death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to murder in the first or second degree or manslaughter.

#### **e. EXCESSIVE FORCE**

Under A.R.S. § 13-410, the use of deadly force by a peace officer against another is justified only when the peace officer reasonably believes that it is necessary (1) to defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly force; (2) to effect an arrest or prevent the escape from custody of a person whom the peace officer reasonably believes (a) has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of deadly weapon, (b) is attempting to escape by use of a deadly weapon, (c) through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay, or (d) is necessary to lawfully suppress a riot if the person or another person participating in the riot is armed with a deadly weapon.

The Offenders had a duty to refrain from using excessive force in specific circumstances. Leontae was neither a threat of death or great bodily harm to the officers, nor was he engaging in conduct that justified the extent of force used by the officers.

None of the circumstances required under the statute were present when the officers killed Leontae.

#### **f. BATTERY PURSUANT TO A.R.S. § §12-611 et seq., 14-3110**

The Offenders intentionally shot Leontae causing harmful or offensive contact with Leontae. As a direct and proximate result of this harmful or offensive contact, Leontae died. The Offenders' acts constitute a battery upon Leontae in the above-described bodily contact was intentional, unauthorized, or grossly offensive in nature. The acts and omissions of the Offenders were intentional, negligent, reckless, and unwarranted, and without any just cause or provocation.

As a direct and proximate result of the Offenders conduct, Leontae was deprived of his liberty, and was ultimately killed. The conduct described in this Notice of Claim was undertaken by the Offenders within the scope of their employment and under color of law such that their employer, Phoenix Police Department – and the City of Phoenix – is vicariously liable for their actions.

**g. NEGLIGENCE, SUPERVISION, RETENTION, AND/OR TRAINING**

Pursuant to A.R.S. § §12-611 et seq., 14-3110, The Phoenix Police Department were negligent in their hiring, supervision, retention, and/or training of the Offenders. The acts, omissions, and conduct of the Offenders as described in this Notice of Claim were the direct and proximate cause of the injuries and death of Leontae and violated Leontae's constitutional, statutory and common law rights as guaranteed by the law and Constitution of the State of Arizona.

**h. NEGLIGENCE**

The basic elements of actionable negligence are a duty owed to the plaintiff, a breach thereof and an injury proximately caused by the breach. *Ballesteros v. State*, 161 Ariz. 625, 627, 780 P.2d 458, 460 (App. 1989).

“A duty is a matter of ‘the relation between individuals which imposes upon one a legal obligation for the benefit of another.’” *Id.* (internal citations omitted). A duty is breached when the defendant fails to conform to the standard of care reasonable under the circumstances. *Ballesteros*, 161 Ariz. at 627.

Pursuant to A.R.S. § §12-611 et seq., 14-3110, the Offenders, while acting as agents and employees for the Phoenix Police Department, owed a duty to Leontae to perform their responsibilities as officers of the law without the use of excessive force. The Offenders, while acting as agents and employees for Phoenix Police Department, owed a duty to Leontae to act reasonably under the circumstances. The Offenders' use of deadly and excessive force upon Leontae constitutes recklessness and/or negligence for which the Offenders are individually liable. The Offenders' conduct, in not using non-lethal force that was readily available, constitutes negligence and gross negligence for which the Offenders are individually liable. In taking the actions as described above, the Offenders breached their duty to refrain from such unreasonable and indifferent conduct.

**i. GROSS NEGLIGENCE**

Pursuant to A.R.S. § §12-611 et seq., 14-3110, the Offenders' acts and omissions constitute reckless and/or gross negligence for which the individual Offenders are liable. The actions of the Offenders, as described above, were taken with such reckless disregard for the life and safety of Leontae so as to be a conscious violation of Leontae's rights to life and liberty. As a direct and proximate result of the individual Offenders' conduct, Leontae was deprived of his life and liberty and was ultimately killed.

**IX. SPECIFIC AMOUNT FOR WHICH CLAIM CAN BE SETTLED**

As a result, the family of Leontae Kirk, including Sharon Roberts, LK, and the Estate of Leontae Kirk intend to file an action in Maricopa County Superior Court or other appropriate forum in both state and federal court wherein the family will seek, among other things, compensatory damages, special damages, hedonistic damages, and pursuant to federal law, punitive damages. The family will also seek, pursuant to federal law, an award of incurred attorney's fees and costs.

Should this matter proceed to litigation, the family will obtain compensatory damages that will include, without limitation:

- a. An award of compensatory damages to the family for the death of Leontae Kirk. It is expected that this will be amount approaching \$25,000,000 for depriving his mother and daughter of the continued loving familial relationship they shared with Leontae, as well as the significant emotional and physical struggle they will be now forced to endure without consortium they could have shared for many years to come; and,
- b. An award of compensatory damages to the family for the extreme pain and suffering they have sustained due to the wrongful conduct of these defendants. It is expected that this will be an amount approaching \$25,000,000 for the ongoing emotional toll this continues to exact on the family of Leontae Kirk.

In addition to their state law claims, the family of Leontae Kirk – including Sharon Roberts and LK– intends to assert claims pursuant to federal law, most particularly 42 U.S.C. § 1983 et seq. Under federal law, in addition to compensatory damages, the family will also be entitled to an award of punitive damages and his incurred attorney's fees and costs. See e.g., 42 U.S.C. §1988. Given the gravity of the wrongful conduct, it is foreseeable that these awards will in and of themselves be substantial.

**Should the family be forced to litigate, it is likely they will obtain a jury verdict that may exceed \$50,000,000.**

If this matter continues to trial, Roberts, LK, and Kashane – as pending personal representative and on behalf of the Estate of Leontae Kirk will seek damages for wrongful death, loss of the companionship, society affection, care, protection, guidance of her son, for Sharon Roberts’ pain, grief, sorrow, anguish, stress, shock, and mental suffering resulting from the loss of her son, and for LK’s pain, grief, sorrow, anguish, stress, shock, and mental suffering resulting from the loss her father.. Certain elements of damages may also be the subject of expert testimony. Accordingly, it is in the best interest of the family of Leontae Kirk to resolve this matter short of litigation in a way that provides solace during this terribly emotional and difficult time and for years to come. Moreover, A.R.S. § 12-821.01 requires the Claimants to include in their Notice of Claim a specific dollar amount for which their claims can be settled; that amount is twenty-five million dollars (\$25,000,000).

Very truly yours,

**MILLS + WOODS LAW**



Sean A. Woods

SAW:

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<sup>1</sup> The Washington Post’s database contains records of every fatal shooting in the United States by a police officer in the line of duty since Jan. 1, 2015.

In 2015, The Post began tracking more than a dozen details about each killing — including the race of the deceased, the circumstances of the shooting, whether the person was armed and whether the person was experiencing a mental health crisis — by culling local news reports, law enforcement websites and social media, and by monitoring independent databases such as Killed by Police and Fatal Encounters. The Post conducted additional reporting in many cases.

The Post supplemented this database in 2022 by publishing police agency names and appending each agency’s unique federal identifying code. This work involved some manual cleanup. Agencies with multiple offices — such as state police departments and federal law enforcement agencies — were often combined into one code for ease of comparison against other full departments.

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The Post is documenting only those shootings in which a police officer in the line of duty, shoots and kills a civilian — the circumstances that most closely parallel the 2014 killing of Michael Brown in Ferguson, Mo., which began the protest movement culminating in Black Lives Matter and an increased focus on police accountability nationwide. The Post is not tracking deaths of people in police custody, fatal shootings by off-duty officers or non-shooting deaths.

The FBI and the Centers for Disease Control and Prevention log fatal shootings by police, but officials acknowledge that their data is incomplete. Since 2015, The Post has documented more than twice as many fatal shootings by police as recorded on average annually by these agencies.

The Post’s database is updated regularly as fatal shootings are reported and as facts emerge about individual cases. The Post seeks to make the database as comprehensive as possible. To provide information about fatal police shootings since Jan. 1, 2015, send us an email at [policeshootingsfeedback@washpost.com](mailto:policeshootingsfeedback@washpost.com).

There may be a lag between the date of the shooting and its inclusion in the database because of delays in reporting and data verification.

For a full data dictionary and methodology on the data collection, see [here](#).

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