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6-7). "It sounded like they were coming down the stairs from upstairs" (Exhibit J 19: 17-18). No one heard either the banging of a hammer in the crawl-space and he testified that he did not come down a hole in the attic to the bedroom. **And most importantly all testified that there was no weapon or hammer with Terrance Kellom** "I know for a fact he didn't have a hammer in his hands." (Exhibit F 100: 9). Question: "Did you ever see a hammer in the house?" Answer: "No." (Exhibit H 18: 9-10). "The hammer was not there [in the house] before Terrance's killing." (Exhibit I 24: 14-15). "Did you see a hammer?" Answer: "No." (Exhibit J 22: 6-7). Cheffon Jones, who was unable to be deposed, also states there was no hammer in an investigative report. And there was also testimony that he was not in handcuffs, and that could very well be due to the mere impracticality of trying to handcuff him in the tiny and overstuffed upstairs hallway.

When Terrance meets his unfortunate fate of being executed by Agent Quinn. Agent Quinn shoots once or twice and then, **it is undisputed that**, there was a pause before the next six or seven rounds were fired. All of the Defendants' testimony is that Defendant Quinn shot while facing west, meaning his bullets would have travelled east-to-west. Terrance was shot at the bottom of the stairs, in a narrow hallway running east-west. No Defendants' testimony ever puts Defendant Quinn closer than several feet east of Terrance Kellom. Defendant Quinn's own testimony is that every shot he fired travelled east to west, that **Terrance was still standing when he fired his last shot, and that Terrance fell**

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(not on his knees but) flat on his face. During the shooting, supposedly, Agent Quinn fell backwards. “I may have been shooting in the process of falling.” Dep. (Exhibit E 117: 15). “I was falling backwards.” *Id.*, 118: 11. However, in direct contrast to this Defendant Eaton says the first shot caused Terrance to fall forward on his knees. “It was after the first shot [Terrance] started falling.” Question: “Do you know why additional shots were needed if he started falling after the first shot?” Answer: “I don’t.” (Exhibit D 52: 11-16). Fitzgerald also testifies that Terrance had fallen to his knees when he saw him. “He was on his knees when I saw him.” (Exhibit B 25: 20). “[Terrance] buckled to his knees[ and] the rest of the shots rang out.” (Exhibit F 40: 16-18). Both Kevin Kellom’s father and sister say there was an additional shot directly in the back. “The officer put his boot to his shoulder and he says, freeze, I said freeze mother fucker, and shot one more time.” *Id.*, 42: 16-18. “I seen the officer step over him and shot again.” (Exhibit H 15: 13). These are the testimonies of the witnesses with personal knowledge of the shooting. Although all the investigators cannot explain this, the evidence shows that this is exactly what happened. How else would a bullet go straight down into the ground? That also may explain why they removed the number 8.

Yet, the autopsy report of Terrance Kellom shows two bullets entered him from behind. The Michigan State Police Laboratory Report found a bullet hole from a shot fired in a southwest direction. (Exhibit K pp 2) When the ‘lead

investigator' of Terrance's killing was shown these facts, he was absolutely bewildered. **"Is that possible, northeast [to] southwest? I'm trying to figure out how. It is impossible, it's going back that way. How can it come back that way?"** (Exhibit L 88: 18-21); see also page 87, lines 2-24 and page 88, lines 5-10.

c. The Law of Excessive Force:

Defendants cite case law regarding justifiable police homicides that also agree directly with Plaintiffs' legal theory. "[W]hat constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest [] or other "seizure" of his person[?] We hold that such claims are properly analyzed under the Fourth Amendment's "objective reasonableness" standard[.]" *Graham v. Connor*, 109 S. Ct. 1865, 1867-68 (U.S. 1989). The objective reasonableness test given in *Graham v. Connor* is still the standard of evaluation. "[T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them[.]" *Id.*, 1872.

**If Terrance Kellom had no hammer, as all non-government witnesses have maintained, then Defendant Quinn's use of force was not reasonable, as not a single other allegation has been made that could justify the killing (e.g. 'he was going for my gun', 'he had me by the thought,' etc.).** Defendant knows this, which is why they only cite to two recent cases where, whether or not the plaintiff wielded a weapon was absolutely not in dispute.

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First, *Kisela v. Hughes*, 138 S. Ct. 1148, 1150–51 (2018) is easily distinguished as, in that case, no one disputed that the woman was wielding a “large kitchen knife” towards another civilian. “[S]omebody in Hughes’ neighborhood called 911 to report that a woman was hacking a tree with a kitchen knife[.]” *Kisela v. Hughes*, 138 S. Ct. 1148, 1151 (2018). Here, six witnesses, including Defendant Fitzgerald, say that Plaintiff did not have a hammer. Second, in *Easley v. City of Riverside*, 890 F.3d 851 (9th Cir. 2018) reh’g en banc granted, 908 F.3d 1156 (9th Cir. 2018), “It is an undisputed fact that Macias was concerned about the presence of a gun.” *Id.*, 857. It should be noted that Defendant’s citation ommits the reference to the *en banc* rehearing: reh’g en banc granted, 908 F.3d 1156 (9th Cir. 2018).

**4. After the Shooting and The so-called Investigation.**

Immediately after the shooting everyone was summoned back to have pictures taken of the DFAT unit. What’s incredible, is that everyone except the person who did the shooting (Defendant Quinn) attended, and more troubling, no one even asked Defendant Quinn to attend or allow someone else to take photos of him. “Did anyone ask you to come to the Federal Courthouse and take a picture?” Answer: “No.” (Exhibit E 136: 9-11). Supposedly Defendant Quinn hurt his finger during the shooting, it bled a little, and he went to the hospital. This was a clear attempt to avoid questioning and documentation of any blood splatter on his cloths. Incredibly, Defendant Quinn does not know if he drove to the hospital, he

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does not know if he was alone or not when he went to the house, and **he does not know what he was wearing when he arrived at the hospital immediately after the shooting!** “Do you remember what you were wearing when you went to the hospital?” Answer: “No.” *Id.*, 137: 23-25. Again, not only does this show his complete lack of candor and utter dishonesty, it makes it painfully obvious that Defendant Quinn changed his blood-misted clothes immediately after the shooting but was fearful that this counsel may possess video surveillance footage from the hospital. There was no serious damage whatsoever to Defendant Quinn that could necessitate him going to the hospital; he testified that he cannot even remember his supposed injury.<sup>1</sup> It is worth noting that Defendant Quinn does not even know how he got there to the Evergreen address. The counsel encourages the Court to read Defendant Quinn’s deposition transcript, as he was ridiculously evasive. It took many times longer that was reasonable to simply answer any, including the simplest of questions. He frequently played dumb. Incredibly, he doesn’t even know if he drove his car the scene of the shooting, if he drove himself to the hospital, **or even if he was in a bullet proof vest upon his arrival at the hospital.**

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<sup>1</sup> This counsel urges the Court to review Defendant Quinn’s deposition. He is the most untruthful, deceitful, and evasive deponent that this counsel has ever come across. He evaded every important question and it took this counsel many times what it should to get answers to simple questions. His evading of the questions was simply outrageous.

Unlike any of the Defendants, the Kelloms' neighbors were questioned and one testified that she called the police the next day to report that she heard requests for a shield after the shooting occurred. This leaves Plaintiffs to wonder if that is when the previously unseen hammer entered the Evergreen home.

The person that was charged with investigating this high-profile case, in the height of the Black Lives Matter movement, the Detroit Coalition Against Police Brutality, with demonstrations, national attention, high hostility between African-Americans and police, was Detective Sanchez. This was his very first homicide investigation. Detective Sanchez was from the Michigan State Police but, he also happened to be housed at the Detroit Police Department and was, incredibly, part of the Detroit Police Homicide Unit. "Did you have to sign up or be interviewed to be a part of this Detroit Police Department Homicide Unit?" Answer: "Not my position. I was asked[.]" (Exhibit L 21: 19-21). This is a classic case of the fox being put in charge of the hens. Detective Sanchez, who was never a lead investigator on any homicide, was put in charge of this very important shooting of a young unarmed African-American male.

Not surprisingly, Detective Sanchez's investigation was akin to no investigation. The so-called investigation was so botched and incompetent, as was laid out in his deposition testimony through this counsel's examination, it was painful to listen to him describe his methods. There was absolutely nothing unique or in-depth about his investigation, more importantly, it did not even rise to the

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level of a competent, run-of-the-mill investigation. It was your run-of-the mill low-level crime investigation. The supposed “statements” made by the DFAT members, it turns out, are just standard incident reports required with every police report, perhaps in every police force around the country, for every incident. “[J]ust to be sure, the Exhibit 8, this was -- this document was done as a normal routine of [ ] a criminal incident that happened, right? I mean this document is [done] in your normal routine of work basically just an incident report, correct?” Answer: “Correct.” (Exhibit D 61: 20-25; 62:1). Each officer provided that as their statement, and there were no questions posed to any of the DFAT officers. (Exhibit E 134: 2-4). “Did anyone ask you any questions in the investigation?” Answer “No.” (Exhibit B 29: 3-4). “Were you questioned by anyone, by any agency, in reference to an investigation in the shooting of Terrance Kellom?” Answer: “No.” (Exhibit D 60: 13-16). No questions were asked of Defendant Fitzgerald, Defendant Eaton, and unbelievably, not of the shooter himself, Defendant Quinn. There was no so-called (in direct contradiction of Defendants’ claims) Office of the Inspector General or City of Detroit Investigations. It was simply Detective Sanchez and his shady, botched, collection of some reports and write-ups. Speaking as to the Investigator General’s investigation: “He was just following our investigation.” (Exhibit L 45: 12-13). There was no internal affairs investigation. There was no independant investigation by the Department of Justice or any other third-party. All of the documents that were used in the Inspector

Generals investigation were the same as those used, and provided, by Detective Sanchez's investigation. All three defendants stated under oath that no one asked them any questions or knew who the investigators were. This detective, amongst many other things, could not answer the simplest of questions. Below are numerous important issues that an amateur investigator would have looked into.

1. **There is no picture by the investigator of Terrance Kellom holding the hammer.** *Id.*, 55: 21-25. The majority of witnesses that were inside the house, and all witnesses that were non-law enforcement, (five of them) said that Terrance Kellom did not have a hammer or any kind of weapon on his person. *Id.*, 57: 1-25; 58: 3: 17-21.

2. **Detective Sanchez, although in charge of this highly-publicized and important investigation, could not tell us how many bullet casings were recovered at the time of the incident.** *Id.*, 59, 22-25; 60: 1-4, 10, 18-25; 61: 10-23; 62: 1-9;

3. **Failed to even take trajectory measurements of the blood splatter.** *Id.*, 69: 13-25; 70: 14-25; 71: 2-5, 23-25; 72: 7-8, 23-25; 73: 1-25.

4. **Could not state how the bullet shell casings could have gotten to so many different rooms.** "So, your opinion is ... that these shell casings were basically tampered with...?" Answer: "...I don't know. I was not there at the time." *Id.*, 74: 17-25; 75: 5-9, 14-17. "Did you ask Agent Quinn or any of the other law enforcement officers, how did the casings end up in [ ] the bedroom and the



bathtub?” Answer: “No.” *Id.*, 76: 7-10, 25. “you never asked those questions, did you?” Answer: “No.” *Id.*, 77: 1-4.

5. Did not ask the question or take into account why the testing that was done on the paint chips on the source of the drywall and the fabric, the clothing of Terrance Kellom, and the fiberglass insulation turned out to be negative for a match. *Id.*, 79: 15-25; 80: 1-10, 24-25; 81: 1-25; 82: 1-13.

6. Detective even gives an answer that maybe the evidence in the chain of custody was tampered with. Sanchez: “...a lot of that evidence could be removed and replaced, because it's going through so many different hands...” *Id.*, 81: 23-25; see also 82: 1-12.

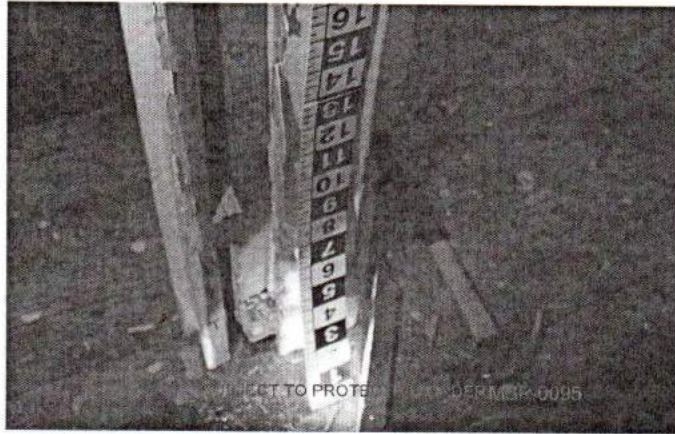
7. There were no fingerprints on the hammer from Terrance Kellom. *Id.*, 83: 1-15. As the investigator in charge, he even failed to ask for tests on the hammer to see if the items that Terrance Kellom was supposedly slamming the hammer through (the wood, insulation, drywall, paint) were left on the hammer. None of that was requested or tested. *Id.*, 83: 20-25; 84: 5-21.

8. It was the findings of the MSP forensic investigators that the number of people on the scene could have altered the scene and altered the wet blood stains or created additional blood stain patterns and Detective Sanchez agrees. *Id.*, 85: 2-20. (Exhibit M)

9. Detective Sanchez, in charge of a very important homicide, could not explain why there was a large plastic tarp laid over the floor where the

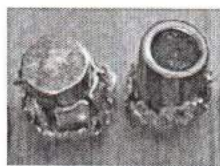
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shooting took place. Yet he “absolutely” agrees that this would have an impact on the investigation. (Exhibit L 93, 1-9).

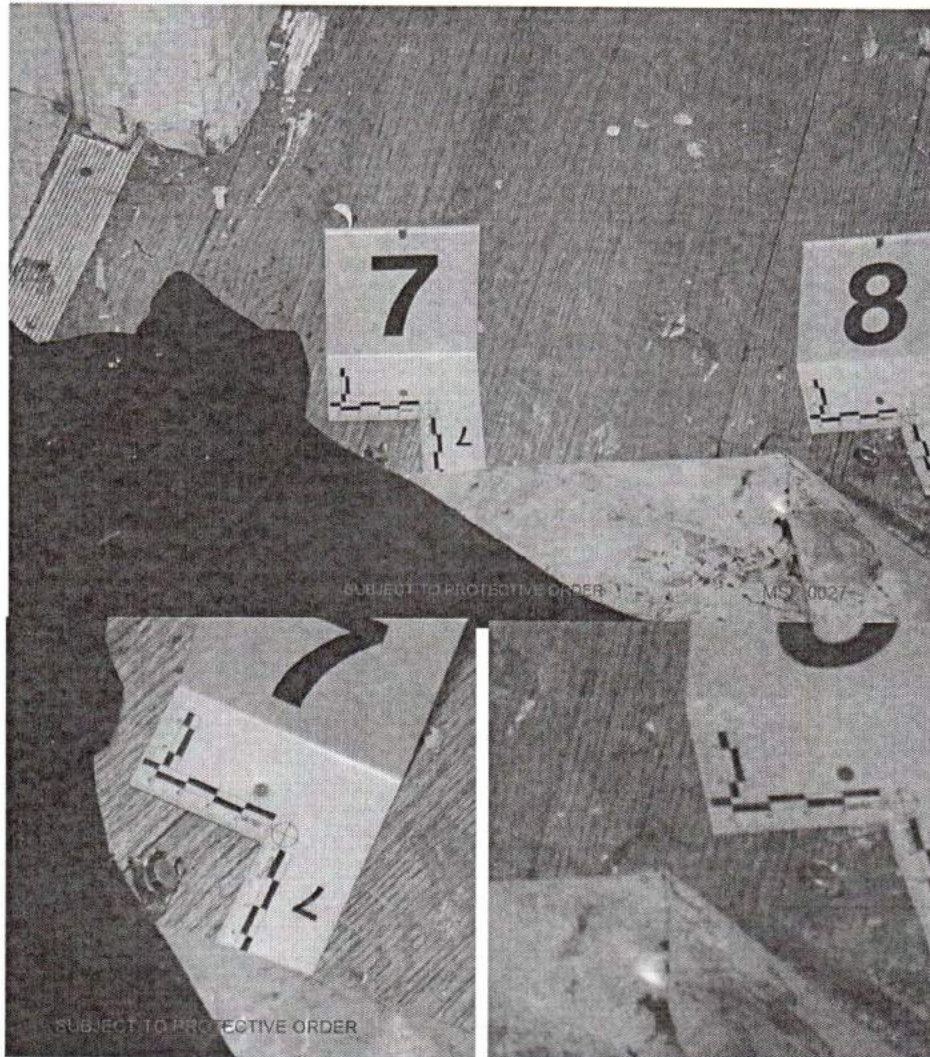


10. Detective Sanchez could not answer why there was a different type of bullet/casing at the scene of the shooting. *Id.*, 93: 22-25; 94: 14-25; 96: 7-23. He agrees that it would be highly unlikely that a different bullet casing would be coming from the same gun. *Id.*, 116; 117: 4-11.

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Sample Bullets of Different manufacture showing a jacked back and a non-jacketed back, compared to actual crime scene photos from the Kellom investigation.



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11. Detective Sanchez said he could not recognize a bullet. *Id.*, 104: 1-8.
12. Could not explain why there were two evidence marker number 8's. One that was a bullet hole in the floor, directed straight down, and then switched to mark a shell casing. *Id.*, 97: 13-23; 98: 1-9; 101: 2-25. And at one time

even tried to act as if he does not recognize a close-up of one of his own investigative photos. *Id.*, 102: 19-25; 103: 4-25; 104: 1-25.



Exhibit #, Moved Marker 8 and Removed Bullet from former Marker 8 Location.

13. Could not answer why Terrance was shot from the back, twice, the opposite direction of where Defendant Quinn was supposedly shooting. *Id.*

108: 1-9. THEY DIDN'T HAVE A GOOD ANSWER FOR ME.

PENETRATING GUNSHOT WOUND TO THE RIGHT LOWER BACK (GSW#3):

There was an entrance gunshot wound on the right lower back. The wound track proceeded from this injury through the soft tissue, peritoneal cavity, fractured the anterior right 10th rib and ended at a near-exit on the right upper abdominal quadrant, where a deformed jacketed was recovered and retained. The wound track was from back to front, right to left and upward.

PERFORATING GUNSHOT WOUND TO THE RIGHT THIGH (GSW#4):

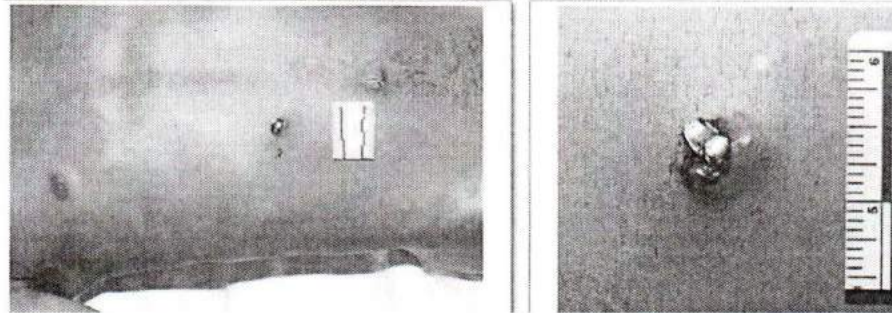
There was through-and-through, entrance gunshot wound on the lateral right thigh. The wound track proceeded from this injury through the skin and soft tissue, and ended at an exit wound on the right inguinal area. The wound track was from back to front, right to left and downward.

14. Detective Sanchez does not believe everything that Agent Quinn told him. *Id.*, 109: 22-25. Yet did not ask him any questions. Defendant Quinn: "No further questions were put to me." Attorney Ayad: "No one asked you any questions?" Defendant Quinn: "No." (Exhibit E 134: 2-4).

15. Could not identify a bullet fragment. (Exhibit L 113: 21-23; 114: 7-9).

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16. Could not explain why the other bullet failed to exit the body of Terrance Kellom after having passed all the way through his torso and broken the skin on his stomach. *Id.*, 114: 19-25; 115: 8-25. But, he did not rule out that Terrance was already on the ground when shot. *Id.*, 116: 4-6, 9-11.



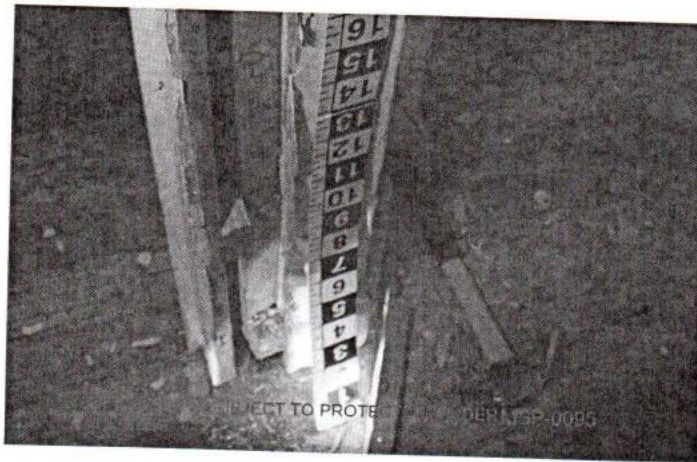
17. He could not explain why pictures were taken of everybody except the shooter. *Id.*, 117: 23-25; 118: 1-4. He admitted that it is important to take the pictures but did not even ask Defendant Quinn why he was not there to take those pictures. *Id.*, 118: 1-25; 119, 1-13. And he agreed that it would be very relevant if Defendant Quinn had blood splatter all over him. *Id.*, 119: 1-25.

18. He did not test Defendant Quinn's gun to see if all the bullets were fired from his gun. *Id.*, 119: 24-25; 120: 1-2, 10-12.

19. He did not test to see if any of the other officers' guns were used, even though it is the current practice now to do so, for obvious reasons. *Id.*, 120: 19-24; 121: 1-8.

20. This Detective-in-charge did not even know that there was a second hammer in the house, even though the investigative pictures that were taken show

it. *Id.*, 121: 9-21; 122: 13-22. He agreed that the location of the first hammer was different than the location of the second hammer, near Terrance Kellom's hand, and in fact does not recall ever seeing another hammer. *Id.*, 123: 2-25. There is nothing in this investigators report that even mentions another weapon or hammer. *Id.*, 124: 1-21.



21. He does not know how the blood of the decedent got onto the hammer *Id.*, 126: 4-9. The reports indicate that the blood staining on the hammer was the result of blood-stained objects contacting it. *Id.*, 151: 15-21. And he agrees that the movement also altered the bloodstains on the floor. *Id.*, 152: 2-5.

22. He could not explain why the shirt of Terrance Kellom was not examined for gun discharge or residue, which would indicate the distance of the shooter. *Id.*, 126: 11-24.

23. He did not ask the shooter, Agent Quinn, any questions as to his role in the shooting. He simply accepted the statement that was provided by Agent

Quinn's attorney and didn't follow-up with any questions. *Id.*, 127: 1-2, 8-14. "But you don't have any questions outside the one's that was presented to?" Answer: "I may or may not have, I don't know." *Id.*, 128.

24. Basically said they all shared the same information with the other agencies and inspector general's office. *Id.*, 132, 13-25. His is the only investigation he knows of. Page *Id.*, 133: 1-5.

25. He did not question why his request for an arrest warrant of Agent Quinn was denied.

Further, the uncontested expert reports (no one contested our expert and we do not contest the government's experts laboratory reports or autopsy report) paints a whole different story.

Agent Quinn stated that Mr. Kellom charged at him and that he fled whilerretreating and falling with Nlr. Kellom falling toward him (facedown) on the floor. The evidence and the account of the shooting do not correlate.

(Exhibit N)

Mr. Kellom was struck by fcur (4) fired bullets, all entering his body from fow (4) different directions and angles making the account of the shooting given by Agent Quinn and other members of the team inconsistent with the evidence.

(Exhibit N)

Q: Okay. It was in the back. Okay. Did you inquire as to why this shot was in the back on Mr. Terrance Kellom?

\* \* \* \*

**THE WITNESS: We asked the Medical Examiner's Office and they didn't give a good explanation. He just said, he was shot in the back...**

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(emphasis added)(Exhibit L 108: 2-9).

**CONCLUSION AND RELIEF REQUESTED**

Defendants motion must be dismissed as the law is absolutely clear that there is genuine issues of material facts as to these pivotal issues, as to the forced entry, the shooting of an unarmed 110lb young man already in custody, the absolute lack of any real investigation, and the cover-up exposed through Defendant Fitzgerald's own testimony. Despite Detective Sanchez's incredible incompotence, he did at least initially request an arrest warrant for Defendant Quinn. "Sir, at least, and on May 13 of 2015, you requested a warrant for Mitchell Quinn, correct?" Answer: "That is correct." *Id.*, 49: 9-12. When asked if he ever asked why they denied his warrant request, Detective Sanchez replied: "No. I never inquired once I received this [denial letter]." *Id.*, 53: 6-10.

WHEREFORE, Plaintiffs respectfully requests that this honorable Court DENY Defendant's Motion for Summary Disposition.

Respectfully submitted,

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/s/Nabih H. Ayad

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