

IN THE
Supreme Court of the United States

CHRISTOPHER THOMAS,

Petitioner,

v.

TRACY PACHOTE,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**REPLY BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

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TABLE OF CONTENTS

| | <i>Page</i> |
|--|-------------|
| TABLE OF CONTENTS..... | i |
| TABLE OF APPENDICES | ii |
| TABLE OF CITED AUTHORITIES | iii |
| INTRODUCTION..... | 1 |
| ARGUMENT..... | 2 |
| I. THE OPPOSITION AFFIRMS THE SALIENT FACTS OF THIS CASE | 2 |
| II. THE OPPOSITION EFFECTIVELY CONCEDES THAT THIS COURT SHOULD GRANT THIS PETITION..... | 4 |
| A. THIS PETITION INVOLVES AN IMPORTANT FEDERAL QUESTION OF LAW THAT WARRANTS THIS COURT'S RESOLUTION | 4 |
| B. THE NINTH CIRCUIT'S DENIAL OF QUALIFIED IMMUNITY CONFLICTS WITH THIS COURT'S PRIOR DECISIONS..... | 8 |
| C. THIS COURT SHOULD SUMMARILY GRANT THIS PETITION ON THE MERITS | 11 |
| CONCLUSION | 12 |

TABLE OF APPENDICES

| | <i>Page</i> |
|--|-------------|
| APPENDIX — EXCERPTS OF RECORD IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MARCH 16, 2024 | 1a |

TABLE OF CITED AUTHORITIES

| | <i>Page</i> |
|---|-------------|
| CASES: | |
| <i>City of Escondido v. Emmons</i> , 586 U.S. 39 (2019)..... | 9 |
| <i>DeFrancesco v. Robbins</i> , 136 F.4th 933 (9th Cir. 2025)..... | 9 |
| <i>District of Columbia v. Wesby</i> , 583 U.S. 48 (2018)..... | 9 |
| <i>Duran v. Douglas</i> , 904 F.2d 1372 (9th Cir. 1990) | 11 |
| <i>Florida v. Bostick</i> , 501 U.S. 429 (1991)..... | 10 |
| <i>Graham v. Conner</i> , 490 U.S. 386 (1989)..... | 1, 4, 8, 12 |
| <i>Gravelet-Blondin v. Shelton</i> , 728 F.3d 1086 (9th Cir. 2013)..... | 10 |
| <i>Hansen v. Black</i> , 885 F.2d 642 (9th Cir. 1989) | 11 |
| <i>Houston v. Hill</i> , 482 U.S. 451 (1987)..... | 10 |
| <i>Jackson v. City of Bremerton</i> , 268 F.3d 646 (9th Cir. 2001) | 8 |

Cited Authorities

| | <i>Page</i> |
|--|--------------------|
| <i>Jensen v. Brown</i> , 131 F.4th 677 (9th Cir. 2025) | 10 |
| <i>Jones v. City of Elyria</i> , 947 F.3d 905 (6th Cir. 2020) | 7 |
| <i>Kisela v. Hughes</i> , 584 U.S. 100 (2018) | 1, 4, 8, 9, 10, 12 |
| <i>Meredith v. Erath</i> , 342 F.3d 1057 (9th Cir. 2003) | 10-11 |
| <i>Motley v. Parks</i> , 432 F.3d 1072 (9th Cir. 2005), <i>overruled on other grounds by United States v. King</i> , 687 F.3d 1189 (9th Cir. 2012) | 6 |
| <i>Rice v. Morehouse</i> , 989 F.3d 1112 (9th Cir. 2021) | 9, 10 |
| <i>Segrain v. Duffy</i> , 118 F.4th 45 (1st Cir. 2024) | 9 |
| <i>Shafer v. County of Santa Barbara</i> , 868 F.3d 1110 (9th Cir. 2017) | 9, 10 |
| <i>White v. Pauly</i> , 580 U.S. 73 (2017) | 1, 4, 6, 8, 9, 12 |
| <i>Williamson v. City of Nat'l City</i> , 23 F.4th 1146 (9th Cir. 2022) | 8 |

Cited Authorities

Page

STATUTES AND OTHER AUTHORITIES:

| | |
|------------------------------|----------------------|
| U.S. Const., amend. I | 9, 10 |
| U.S. Const., amend. IV | 1, 4, 5, 6, 7, 9, 10 |
| Sup. Ct. R. 10 | 11 |
| Sup. Ct. R. 10(c) | 4, 6, 8, 11 |
| Sup. Ct. R. 16 | 1, 11 |

INTRODUCTION

Petitioner Deputy Christopher Thomas submits this response to Respondent Tracy Pachote's Brief in Opposition. As discussed further below, the Opposition confirms that this Petition presents a suitable vehicle for this Court to address the unresolved question of whether an officer can rely on the assumption that an earlier use of force by another officer was constitutional. The Opposition does not identify a prior case by this Court squarely addressing this important question of federal law and confirms that this issue is both clearly presented by the facts of this case and warrants resolution by this Court.

The Opposition also confirms that this Petition provides a suitable vehicle for this Court to reiterate the requirement that reviewing courts give an allowance to officers making split-second decisions in tense, uncertain circumstances under *Graham v. Conner*, 490 U.S. 386 (1989), and the requirement that the denial of qualified immunity in the Fourth Amendment context requires a prior controlling decision that squarely governs the facts presented as specified in *White v. Pauly*, 580 U.S. 73 (2017) and *Kisela v. Hughes*, 584 U.S. 100 (2018).

The Opposition supports not only granting this Petition, but summarily resolving this case in Thomas' favor as permitted by Supreme Court Rule 16.

ARGUMENT

I. THE OPPOSITION AFFIRMS THE SALIENT FACTS OF THIS CASE

The Opposition effectively concedes that this Petition presents a novel fact pattern for this Court, specifically the situation where a late-arriving officer uses minimal force to assist a fellow officer already engaged in a physical struggle with a suspect based on the assumption that the prior officer's actions were constitutional. *See* Petition Appendix 7a-8a (dissent below).

The Opposition expressly concedes that Thomas was not present when his partner (Deputy Stephanie Nelson) knocked on Pachote's door and, following a brief, heated conversation, allegedly commenced a physical struggle with Pachote. Opposition at 2-3; *see also* Pet.App. at 18a, 53a. And it expressly concedes that Thomas used only his hands to assist Nelson and had only seconds to make a decision. Opposition at 3-4; *see also* Pet.App. at 7a, 53a.

The Opposition also concedes that Thomas lacked critical information about Nelson's reasons for initiating the struggle and that he could not see all of Pachote because she was partially behind a screen door. Opposition at 2-3; *see also* Petition Appendix ("Pet.App.") at 53a. The photo below approximates what Thomas would have seen of Pachote.



The Opposition tries to make something out of a statement in Thomas' police report that he saw Pachote push Nelson with two hands. Opposition at 7. However, this statement is consistent with Thomas' declaration that he could not see all of Pachote. See Pet.App. at 53a. As indicated by the photo above, Pachote's hands would have been visible to him at the time Pachote was pushing Nelson. *Id.*

In sum, Respondent concedes that the dissent below aptly summarized the relevant facts. “When Deputy Thomas arrived at the altercation between Pachote and Deputy Nelson, it is undisputed that he did not know the full story of what was happening.” Pet.App. at 7a. “[H]e witnessed the altercation turn physical just seconds before he arrived at the house.” *Id.* “Deputy Thomas saw a fellow officer in physical trouble and decided to assist the other officer using minimal force.” *Id.* at 8a.

Given these facts, this Court should grant this Petition.

II. THE OPPOSITION EFFECTIVELY CONCEDES THAT THIS COURT SHOULD GRANT THIS PETITION

Thomas asserts two separate grounds under Rule 10(c) for granting this Petition: 1) the Ninth Circuit “decided an important question of federal law that has not been, but should be, settled by this Court;” and 2) the Ninth Circuit “decided an important federal question in a way that conflicts with relevant decisions of this Court,” specifically *Graham*, *White* and *Kisela*. The Opposition does not meaningfully contest Thomas’ showing on either ground. This Petition should be granted.

A. THIS PETITION INVOLVES AN IMPORTANT FEDERAL QUESTION OF LAW THAT WARRANTS THIS COURT’S RESOLUTION

The question of whether the Fourth Amendment permitted Thomas to use minimal force based on the assumption that Nelson’s actions were lawful has not been resolved by this Court, but should be given its importance and the deleterious effects of the Ninth Circuit’s ruling.

Although the Opposition tries to characterize this Petition as presenting a run-of-the-mill, “long-settled” use of force issue, Opposition at i and 6, it cannot do so. The novel facts of this case, as conceded by the Opposition and the Ninth Circuit’s decision below, preclude any attempt to treat the federal issues presented in this Petition as routine or “long-settled.”

As noted above, the Opposition concedes the critical facts regarding Thomas not being present when Nelson allegedly initiated the physical struggle and having limited information and time to make a decision. In light of these facts, which are not present in a routine use of force fact pattern, Thomas’ decision to use force was reactive; it was based on Nelson’s prior use of force and presumed Nelson’s use of force was lawful.

Not surprisingly, the Ninth Circuit did not treat this case as presenting a routine Fourth Amendment excessive force analysis. Both opinions from that court acknowledge that Thomas was a late-arriving officer with limited information and time. Pet.App. 4a-5a; Pet.App. 6a-7a. Significantly, the conflict between the majority opinion and the dissent centers on whether Thomas could assume Nelson’s alleged initiation of the physical conflict was legal. The majority concluded Thomas could not make that assumption as a jury could purportedly find he had the opportunity to independently evaluate whether to use force. Pet.App. 5a. The dissent concluded he could make that assumption based on his limited information and the limited time he had to make a decision. *Id.* at 7a.

Respondent’s attempt to muddy the issues results in an Opposition filled with misplaced arguments having no real bearing on this Petition and the failure to rebut

Thomas’ showing. To be sure, that showing could not be rebutted as the true question posed here, whether late-arriving officers can use force based on the assumption that the actions of earlier officers were legal, warrants review under Rule 10(c).

There is no doubt that this is an important question of federal law. Both the Petition and in the Brief submitted by the California State Association of Counties and the California Force Instructors’ Association as Amici Curiae (“CSAC/CFIA Amicus”) discuss at length the importance of this question, noting its legal import and its serious practical implications for effective law enforcement and the safety of officers and suspects. Pet. 8-12; CSAC/CFIA Amicus at 10-18; *see Motley v. Parks*, 432 F.3d 1072, 1081 (9th Cir. 2005), *overruled on other grounds by United States v. King*, 687 F.3d 1189 (9th Cir. 2012) (en banc and per curiam) (“[e]ffective and efficient law enforcement requires cooperation and division of labor to function”).

Further, this Court has not issued a decision squarely addressing this question. The Court in *White* touched on the ability of an officer to rely on the legality of actions taken by officers arriving early on scene. However, *White*’s holding was phrased in the negative; “[n]o settled Fourth Amendment principle requires [a late-arriving] officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one *White* confronted here.” *White*, 580 U.S. at 80. Similarly, as noted in the CSAC/CFIA Amicus, the Court’s “collective knowledge doctrine” decisions suggest that Thomas could make this assumption, but do not affirmatively address that issue. CSAC/CFIA Amicus at 21-23.

And there is a clear need for this Court to resolve this issue. Officers likely encounter similar situations every day in this nation and react in the same way as Thomas did. As the Sixth Circuit noted in a similar case, the officer's use of force was "quite unremarkable" – "there is no doubt a similarly situated officer would have done precisely the same thing - assist her fellow officers in securing the suspect and ask questions later." *Jones v. City of Elyria*, 947 F.3d 905, 916 (6th Cir. 2020); *see also* CSAC/CFIA Amicus at 17 (officers trained to assist fellow officers). The Ninth Circuit's decision, if permitted to stand, creates uncertainty in what should be a settled question of federal law and will dissuade officers from assisting their fellow officers to the detriment of both officers and suspects. *See* Pet. at 10-11; CSAC/CFIA Amicus at 10-19. For these and other reasons, the Ninth Circuit's decision is "dangerous to law enforcement." Pet.App. at 8a (dissent).

This Petition presents an ideal opportunity for this Court to resolve this federal question as there are no complicating factual or legal issues. As noted in the Petition and not challenged by Respondent, Thomas was aware of no information that would have caused a reasonable officer in his position to believe Nelson's use of force violated the Fourth Amendment. Pet at 11-12. Further, both Thomas and Nelson used only minimal force.¹

1. The Opposition tries to inflate the amount of force used by Thomas and Nelson, asserting Thomas used a "takedown" maneuver and Nelson "was tugging Ms. Pachote out of the house by her hair." Opposition at 4 and 9. These contentions are not supported by the evidence nor by the decisions below. Pet.App. 3a-8a, 18a, 47a and 53a; *see also* Appendix hereto at 7a. And even if Thomas and Nelson had engaged in these uses of force, which they did not, their uses of force would still be considered minimal

In sum, this Petition should be granted under the unresolved “important question of federal law” prong of Rule 10(c).

B. THE NINTH CIRCUIT’S DENIAL OF QUALIFIED IMMUNITY CONFLICTS WITH THIS COURT’S PRIOR DECISIONS

This Petition should also be granted under another prong of Rule 10(c) based on the significant conflicts between the Ninth Circuit’s decision and this Court’s prior decisions in *Graham*, *White* and *Kisela*. As discussed below, Respondent does not directly address the arguments presented in the Petition and, thus, concedes this independent ground for granting this Petition.

Respondent does not address Thomas’ argument that the Ninth Circuit’s decision conflicts with *Graham* because the Ninth Circuit failed to consider Thomas’ lack of information and his need to make a split-second decision in a rapidly evolving situation. Pet. at 13-14. The failure to consider *Graham* is self-evident as the majority opinion nowhere cites *Graham* and gave Thomas no “allowance for the fact that [he was] forced to make a split-second judgment[] – in circumstances that [were] tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.” Pet.App. at 4a-5a; *Graham*, 490 U.S. at 397.

as a matter of law. *Williamson v. City of Nat'l City*, 23 F.4th 1146, 1152 (9th Cir. 2022) (“minimal” force when officers “did not strike [suspect], throw her to the ground or use any compliance techniques or weapons for the purpose of inflicting pain on her”); *Jackson v. City of Bremerton*, 268 F.3d 646, 652 (9th Cir. 2001) (pushing someone to the ground was minimal use of force).

Respondent also does not address Thomas' arguments respecting the conflicts with *White*, specifically the failure to heed *White*'s admonition that novel fact patterns are "important indicators" that qualified immunity applies and *White*'s holding that prior Fourth Amendment decisions did not "require" an officer to "second-guess earlier steps taken by his or her fellow officers." Pet. at 14-15; *see White* at 80; *see also* Pet.App.7a (dissent). Instead, the Opposition asserts *White* is inapposite because it involves the use of deadly force. Opp. 10. Neither this Court nor any other Court have limited *White* in this manner; indeed, numerous decisions demonstrate the contrary. *See, e.g., District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018) (citing *White* in arrest case); *Segrain v. Duffy*, 118 F.4th 45, 57 (1st Cir. 2024) (citing *White* in case involving leg sweep and pepper spray); *DeFrancesco v. Robbins*, 136 F.4th 933, 939 (9th Cir. 2025) (citing *White* in First Amendment retaliation case).

And Respondent does not respond to the Petition's argument that the Ninth Circuit's decision conflicts with *Kisela* due to the decision's improper reliance on two factually inapposite cases (*Rice v. Morehouse*, 989 F.3d 1112 (9th Cir. 2021) and *Shafer v. County of Santa Barbara*, 868 F.3d 1110 (9th Cir. 2017)). Pet. 16; *see also* Pet.App. 8a (dissent). The Opposition asserts that *Kisela*, like *White*, is inapposite because it involves the use of deadly force. Opp. 10. This contention is meritless as *Kisela*'s holding respecting what constitutes "clearly established" law has been applied to all manner of cases, not just those involving the use of deadly force. *See, e.g., City of Escondido v. Emmons*, 586 U.S. 39, 42-43 (2019) (citing *Kisela* in case involving arrest and takedown of

suspect); *Jensen v. Brown*, 131 F.4th 677, 694 (9th Cir. 2025) (citing *Kisela* in First Amendment retaliation case).

Equally significantly, Respondent does not, and cannot, contend that *Rice* and *Shafer* “squarely govern[.]” the specific facts at issue” as required by *Kisela*. See Pet. 16. The Opposition does not mention *Shafer* and only mentions *Rice* as part of a quote from the Ninth Circuit’s decision. Opp. 7.

Instead of defending the Ninth Circuit’s decision on these issues, Respondent cites several cases from this Court and the Ninth Circuit with little factual resemblance, if any, to this case. See Opp. 6, 9-10. Notably, none of these cases involve an officer facing a similar situation, specifically having to decide quickly and with imperfect information about whether to assist a fellow officer already engaged in a physical struggle.

This point is most clearly illustrated by the Court’s decisions cited in the Opposition, *Florida v. Bostick*, 501 U.S. 429 (1991), and *Houston v. Hill*, 482 U.S. 451 (1987). Opposition at 6, 9. *Bostick* involves a claim that a bus passenger was “seized” under Fourth Amendment when police officers requested consent to search the passenger’s luggage. 501 U.S. at 431 and 433. In *Houston*, this Court considered whether a municipal ordinance that made it unlawful to interrupt a police officer was “unconstitutionally overbroad under the First Amendment.” 482 U.S. at 453.

Respondent cites Ninth Circuit cases that are equally inapposite. *Gravelet-Blondin v. Shelton*, 728 F.3d 1086 (9th Cir. 2013), involves the use of intermediate force (taser) against a passive bystander. *Meredith v. Erath*,

342 F.3d 1057 (9th Cir. 2003), involves the use of force and handcuffing of a woman demanding to see a warrant. *Duran v. Douglas*, 904 F.2d 1372 (9th Cir. 1990), holds that the use of obscene gesture to the officer did not justify detention or arrest. *Hansen v. Black*, 885 F.2d 642 (9th Cir. 1989), holds there was no qualified immunity for false arrest.

By presenting arguments that have no bearing on this Petition, Respondent has effectively conceded that the Ninth Circuit's decision conflicts with this Court's prior decisions and warrants review under Rule 10(c).

C. THIS COURT SHOULD SUMMARILY GRANT THIS PETITION ON THE MERITS

Supreme Court Rule 16 authorizes this Court to summarily grant a petition at this stage in the proceedings. It should do so here. Respondent's Opposition reads like an opposition on the merits. There is no real discussion as to whether this Court should grant this Petition under Rule 10. Further, the Opposition's focus on irrelevant legal contentions establishes that Respondent has no serious contrary arguments on the merits. In this situation, summary disposition in Petitioners' favor is appropriate.

CONCLUSION

This Court should grant this Petition. As shown above and in the Petition itself, this Petition presents an important, yet unresolved question of law warranting this Court's resolution. In addition, this Courts review is necessary because the Ninth Circuit's decision conflicts with this Court's decisions in *Graham*, *White* and *Kisela*.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

| | <i>Page</i> |
|--|-------------|
| APPENDIX — EXCERPTS OF RECORD IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED MARCH 16, 2024 | 1a |

**APPENDIX — EXCERPTS OF RECORD IN THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FILED MARCH 16, 2024**

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

APPEAL NO. 23-4000

**STEPHANIE NELSON and
CHRISTOPHER THOMAS,**

Defendants-Appellants,

v.

TRACY PACHOTE,

Plaintiff-Appellee.

On Appeal from the United States District Court

For the Northern District of California

Honorable Sallie Kim

District Court No. 3:21-cv-04097 SK

Filed March 16, 2024

APPELLANTS' EXCERPTS OF RECORD

VOLUME 4 OF 5

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Appendix

* * *

[13]happened?

A. I asked her why was she at my door.

Q. And did she respond?

A. Yes

Q. And what did she say?

A. She said, "Because you're the one who called the police."

And I said, "Can you say that any louder?"

Because there was people outside and across the street. And I live in the projects, so a policeman coming to my door in the middle of the night is not a good thing. A policeman coming to my door at any time is not a good thing.

Q. Did you say anything else to Deputy Nelson at that time?

A. After she said, "You're the one who called? I – yes, I said, "Can you say that any louder?"

Q. And did she respond to that or did you say something else?

Appendix

A. She said, "Yes, I can."

Q. Okay. And did you respond to that?

A. I did.

Q. What did you say to her?

A. "You want to be a smart ass bitch today, I see."

[14]Q. Did she respond to that?

A. Yes

Q. And what did she say?

A. She pushed up on my arm, giggled, and told me that I was under arrest for assaulting a police officer.

Q. So you didn't attempt to close the door on Deputy Nelson?

A. No

Q. Did you ever push Deputy Nelson?

A. No, sir.

Q. So your testimony is you had a conversation with her and you called her something – what was it, something, "bitch" or something?

Appendix

A. "Smart ass bitch."

Q. "Smart as bitch." And then she then arrested – she then arrested you?

A. She pushed up on my arm, because I had my screen door in my hand, holding it, because I have – I had dogs behind me. She pushed up on my arm, giggled, and told me now I was under arrest for assaulting a police officer.

Q. What happened after that?

A. I told her, "That's fine, but I'm not going anywhere until I have somebody here for my son."

Q. Okay. Did she handcuff you at that time?

[15]A. No, sir.

Q. Okay. Were you ever handcuffed?

A. After the other officer came, and they – he went in my house, pushed me up behind my back, and they both fell on my back with their knees.

Q. You never told Deputy Nelson to leave the premises?

A. Yes

Q. When did you tell her that?

Appendix

A. Um, let me think. I'm not sure if it was before or after – no, it was before she told me I was under arrest for assaulting a police officer.

I told her, “I don't have to talk to you, I know my rights, and you need to leave.”

Q. Did you – were you yelling at her or were you saying that in a –

A. No. My son was asleep right there so, no, she had already made enough noise. I didn't want to wake up my son.

Q. Okay. So how long did this conversation between you and Ms. sorry – Deputy Nelson last decided to arrest you?

A. Oh, it was after I told her, “I'm not going anywhere until I have somebody here for my son.”

She then grabbed me and tried to pull me outside of [16] my house, and she couldn't. She couldn't. So she called for backup. I told her, “That's fine, but I'm not leaving until I have somebody here for my son.”

Q. So I'm trying to break this down since you were there, I wasn't there.

How long – so how long did the conversation take from when you opened the door and you saw Deputy Nelson and she says, “I'm going to arrest you”?

Appendix

A. Oh, probably about maybe two minutes.

Q. Is there anything else that you can recall about that conversation with Deputy Nelson before she said, "I'm going to arrest you"?

MR. CLARKE: Objection, vague.

MR. BAKER:

Q. You can answer the question, Ms. Pachote, if you understand it.

A. She came to my door with her flashlight in my face

Um, what was the question again? I'm sorry.

Q. Is there anything else you can recall about that conversation with Deputy Nelson before she said to you, "I'm going to arrest you"?

A. No. Just the back and forth that we had. You know, her telling me, yeah, you're the one who called the – yeah, nothing more than that, really. I don't [17]recall anything more.

Q. Now, at some point in time was there a physical struggle between you and Deputy Nelson?

A. Yes. Right away she tried to pull me out of my house.

Q. Okay. So this is after she says, "I'm going to arrest you"?

Appendix

A. Correct.

Q. Okay. I thought you said, "That's fine, as long as there was someone there."

A. Right. "That's fine, as long as I have somebody here for my son."

And she pertained to grab me by my arm and tried to pull me out of my house.

Q. Okay. So you didn't resist her efforts to arrest you?

A. I didn't resist, no, I just stood there.

Q. And so I guess there was – then so there's just a struggle. She's trying to pull you out, if I understand your story, you're not resisting, but she's not able to pull you out?

A. Correct

Q. And then at some point in time another officer showed up, Deputy Thomas?

A. Correct.

[18]Q. Okay. How long before he showed up?

A. I don't know. I can not even say.

Appendix

Q. Okay.

A. Time was moving fast at that point.

Q. I understand you don't have a good sense of the time?

A. No, I don't have a sense of the time when my adrenalin is going 1,000 miles an hour.

Q. No, that's kind of what I'm meaning. There's sometimes that life speeds up, life slows down. It's hard for people to say how long it took. I just want – so you and I are having a conversation.

We have a court reporter who is taking down hopefully everything I say, and making me sound good.

But you and I can understand what we're saying, but unless the record is clear then it's not that helpful.

So that's why I'm falling off and just saying your sense of timing at that point in time was disrupted. You're telling me I don't really have a good sense of timing based on what was happening then.

A. It was going by fast. Time was going by fast.

Q. So then Deputy Thomas showed up. And what happened after he showed up?

A. He went in my house, and was pushing me from my back to come outside my house.

Appendix

[19]Q. Okay. So he went – so Deputy Nelson is attempting to pull you out, she's not being able to do it. Deputy Thomas goes behind and pushes you out?

A. Correct.

Q. Okay. And at some point in time did they take you to the ground?

A. Yes.

Q. Okay. Who did that?

And describe what happened, if you can.

A. Both of them did. As he grabbed me, he's pushing me, she had me by this arm. She was pulling me, he was pushing me. And somehow or another her knee and his knee both ended up on my back on the ground. I think we all missed maybe the step right there.

Q. Okay. All right. Let's see. I'm just going to try to do this.

Karen, can you help me with that one exhibit, the first one or the second one? Can you post that?

(Brief discussion off the record)

MR. BAKER:

Q. Ms. Pachote, can you see this photograph?

Appendix

A. Yes.

Q. So this is a photograph of your front door; is that right?

A. My front gate and door, yes.

[20](Whereupon, Defendant's Exhibit 1 was identified for the record)

MR. BAKER:

Q. Yeah. So the gate you are referring to is the screen door?

A. Correct

Q. Okay. And –

A. It was a locked screen door

Q. Okay. And it's your testimony that somehow Deputy Nelson broke the lock on that screen door?

A. Correct. She pulled the whole frame and bent it.

Q. Okay. And I think you were just saying that in the course of them pushing you, you fell, or you were going to make a comment about this little stair, like the half stair we see there in front of your front door.

Is that what you were saying?

Appendix

A. Yes. Yes. That's where I fell from up top, and we just missed that whole stair.

Q. Okay. And so you ended up on the ground, on the cement, not in that little stoop area, but farther along the path.

Is that what you're saying?

A. Correct.

Q. Okay. And they were on top of you –

* * *