

26. According to Defendant Lehner, Plaintiff's actions in "thrashing around" put him at risk of injury, which, in Defendant Lehner's view, provided sufficient justification for him to intervene physically with Plaintiff:

They can severely hurt themselves. I've had numerous incidents with people who thrash around the back. They've hit their heads on the divider between the front seat and the back seat and they slice their heads open. They've hurt their legs. All types of different injuries.

27. Although the second squad car in which Plaintiff was detained was equipped with a camera, one purpose of which is to record the activities of arrestees causing damage while being detained in the backseat of the squad car, Defendant Lehner consciously chose not to activate the recording equipment, which could have been easily accomplished by pushing a button.

28. At the time Defendant Lehner claimed to have such serious concern for the welfare of Plaintiff and/or the squad car, Plaintiff had not, in fact, injured himself, nor had he damaged the squad car in any way. By way of explanation, Defendant Lehner later testified that Plaintiff did not cause any damage or injury "because I did not allow him to."

29. Instead of simply turning on the backseat video camera to document the alleged attempts to damage the interior of the squad car, Defendant Lehner chose to confront the handcuffed, diminutive Plaintiff – to "gain control" of him – although Plaintiff was already fully controlled in the rear of the squad.

30. With the video camera still off, Defendant Lehner made the deliberate choice to open the rear door of the squad car to physically interact with Plaintiff. In doing so, Defendant Lehner sought to harm Plaintiff, as his actions served no legitimate police function.

31. After opening the rear squad car door, Defendant Lehner made the deliberate choice to use a significant amount of force on Plaintiff, kicking Plaintiff in the face with his police-issued Danner brand boot with so much force that it caused Plaintiff to lose consciousness.

32. For his part, Defendant Lehner estimated that, following his kick to Plaintiff's face, Plaintiff was unconscious for "half a second, a second."

33. Because Plaintiff's hands were handcuffed behind his back as he sat in the rear of the squad car, Plaintiff was unable to defend himself from Defendant Lehner's unprovoked and completely unjustified use of unreasonable force.

34. Defendant Lehner's vicious kick broke Plaintiff's jaw - an open fracture causing the bone to protrude through his gums – and knocked out his two front teeth, in addition to

causing fractures to Plaintiff's nose and sinuses. Plaintiff began bleeding profusely from his face, as his lower lip was also severely lacerated.

35. After kicking Plaintiff in the face, Defendant Lehner testified that he closed the squad door again for "three, four seconds" before opening it again and removing Plaintiff from the vehicle.

36. Despite acknowledging that he kicked Plaintiff in the face, and despite acknowledging that Plaintiff had all of his teeth at the time Lehner initially interacted with him, Defendant Lehner testified that he has "no idea" how Plaintiff lost his two front teeth.

37. When it became apparent that Plaintiff was seriously injured, Officer Wuorinen and Defendant Lehner drove him to HCMC, where Defendant Lehner chose to stay in the squad car to avoid explaining how Plaintiff had gotten injured.

38. At HCMC, medical records described Plaintiff's appearance upon arrival as bleeding "copious amounts of blood," so much blood that when Plaintiff was "talking [he] was spitting blood (not intentional.)"

39. Although he was unwilling to actually enter the hospital with Plaintiff, Defendant Lehner nonetheless falsely testified under oath that Plaintiff still had his two front teeth when he was dropped off at HCMC, an allegation which a squad-car video would have easily disproved.

40. Defendant Lehner's false testimony about Plaintiff's injuries was as follows:

When he was in the back seat of that squad, he had all his teeth. Now, what happened when he was walked into the hospital, and what happened in the hospital, and later, with his teeth, I have no idea.

41. Because Defendant Lehner was unwilling to interact with the medical providers at HCMC, Officer Wuorinen was left to explain Plaintiff's injuries and he told medical providers that Plaintiff sustained his severe facial injuries when his face hit concrete, as opposed to being caused by being kicked in the face by Wuorinen's partner while Plaintiff was handcuffed in the backseat of a video-enabled squad car whose video system was inexplicably not engaged.

42. As a result of Defendant Lehner's violent kick to his face, Plaintiff required multiple root canals and will require implants to replace his front teeth. Because his lower lip was lacerated and dangling downward, it had to be stitched. His fractured mandible required Plaintiff to comply with a soft food-only diet while his jaw was wired shut. Plaintiff also continued to experience severe headaches following the assault by Defendant Lehner.

43. As he has done several times in the past in efforts to cover up his unconstitutional misconduct, Defendant Lehner filed a false report in which he attempted to avoid responsibility for causing serious injury to Plaintiff.

44. In the process, Defendant Lehner created a false justification for why he had just smashed in the face of a handcuffed, 5'5", 18-year old man, who was detained in a squad car simply for being a passenger in a vehicle who was unable to provide identification.

45. At 5:09 a.m. on December 29, 2013, Defendant Lehner completed a supplemental report in which he claimed that he merely "lifted [his] right leg to *push* kick [Garcia] into the squad so the door could possibly be closed or we could gain some control of him."

46. Defendant Lehner's combination of the terms "push" and "kick" was designed to leave the impression that he had not, in fact, used much force on Plaintiff, which would fail to explain how Plaintiff suffered such serious injuries. Defendant Lehner's unwillingness to acknowledge the degree of force he used is consistent with his implausible denial of the fact that his kick caused the loss of Plaintiff's two front teeth.

47. Moreover, Defendant Lehner's report demonstrates his utter lack of understanding of the term "push," as in his report he claimed that he merely lifted his right leg and "*pushed* it into the vehicle at [Plaintiff's] torso," but Plaintiff then "leaned forward at me with his upper body changing the target of my push kick."

48. Despite his attempts to minimize his conduct in his initial report, Defendant Lehner subsequently became concerned that he had nonetheless admitted to kicking a handcuffed 125-pound man in the face, breaking his jaw and knocking out his teeth. As a result, at 5:40 a.m., Defendant Lehner wrote another supplemental report in which he further attempted to shift the blame for the severity of Plaintiff's injuries onto Plaintiff himself.

49. Defendant Lehner claimed he wrote the supplement merely to "clarify a sentence," indicating that he wanted to make clear Plaintiff "had changed his position" during the "push kick" and that "it was due to the quick movement of [Plaintiff] that he was struck in the face." Lehner claimed he was "all ready [sic] in the kicking motion," and simply intended to "push kick [Plaintiff] in the chest...not to hit him in the face."

50. Plaintiff was later charged with obstructing legal process, giving a peace officer a false name, disorderly conduct and consuming alcohol under the age of 21, all misdemeanors. He pled guilty to minor consumption, but all other charges were dismissed.

51. As a direct and proximate result of the excessive force and unreasonable seizure of Plaintiff by Defendant Lehner on December 29, 2013, Plaintiff has incurred special damages, including medical expenses, wage loss and expenses related to hiring legal counsel to defend against the false charges lodged against him.

52. Since December 29, 2013, Plaintiff has suffered general damages, including physical and mental pain and suffering as a direct and proximate result of the excessive force and unreasonable seizure by Defendant Lehner.

COUNT I – DEFENDANT LEHNER
42 U.S.C. § 1983 FOURTH AMENDMENT VIOLATION

53. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth herein in their entirety.

54. By the actions described above, Defendant Lehner, under color of state law, violated and deprived Plaintiff of his clearly established and well-settled civil rights to be free from excessive force and unreasonable seizure under the Fourth Amendment of the United States Constitution.

55. Defendant Lehner deprived Plaintiff of these rights either maliciously or by acting with reckless disregard for whether Plaintiff's rights would be violated by his actions.

56. Defendant Lehner's actions were also objectively unreasonable pursuant to *Graham v. Connor*, 490 U.S. 386 (1989).

57. At the time Defendant Lehner kicked him in the face, Plaintiff posed no threat to the safety of Lehner, himself or others and was already handcuffed in police custody, in a position which left him defenseless against Lehner's kick to his face.

58. Plaintiff never actively resisted arrest or attempted to evade arrest by flight.

59. As a direct and proximate result of Defendant Lehner's actions, Plaintiff suffered serious injuries, was forced to endure pain and mental suffering, and was thereby damaged in an amount to be determined, but well in excess of amount Seventy-Five Thousand (\$75,000) Dollars.

60. Punitive damages are available against Defendant Lehner and are hereby claimed as a matter of federal common law, and therefore are not subject to the pleading standard set forth in Minn. Stat. § 549.20.

61. Plaintiff is entitled to recovery of his costs, including reasonable attorney's fees, under 42 U.S.C. § 1988.

COUNT II – DEFENDANT CITY OF MINNEAPOLIS
CIVIL RIGHTS VIOLATION

62. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth herein in their entirety.

63. As of December 29, 2013, Defendant City of Minneapolis maintained a custom and practice of deliberate indifference to the use of excessive force by its officers.

64. Prior to December 29, 2013, the City of Minneapolis, with deliberate indifference to the rights of those within its jurisdiction, initiated, tolerated, permitted, failed to correct, promoted, and/ or ratified a custom, pattern, or practice on the part of its officers, including Defendant Lehner, of the use of excessive force and unreasonable seizure in violation of the United States Constitution.

65. Upon information and belief, there have been at least fifteen complaints and three lawsuits filed against Defendant Lehner wherein it has been alleged, in part, that he used excessive or unreasonable force.

66. Prior to December 29, 2013, Defendant City of Minneapolis, with deliberate indifference to the rights of those within its jurisdiction, continued to employ Defendant Lehner as a police officer despite notice that he had repeatedly used excessive and unreasonable force.

67. Through the City of Minneapolis' ratification and approval of its officers' actions, in both this case and others, and by failing to discipline its officers, including Defendant Lehner, there has been a policy, custom, or practice of the use of excessive force and unreasonable seizure without sanction or consequence.

68. As of December 29, 2013, Defendant City of Minneapolis maintained a custom and practice of failing to take action to remove Defendant Lehner from service despite his repeated misconduct.

69. Through its failure to take corrective or remedial measures or to punish or deter Defendant Lehner from using excessive and unreasonable force, the City's actions had the effect of condoning Defendant Lehner's use of unlawful and brutal police methods, which directly caused the unconstitutional arrest and assault of Plaintiff on December 29, 2013.

70. Moreover, by awarding Defendant Lehner a Department Award of Merit in May of 2014, the City further ratified Lehner's unconstitutional actions.

71. The constitutional deprivations suffered by Plaintiff were directly and proximately caused by the aforementioned acts and omissions and by the City's customs, patterns, and/ or practices, and the City of Minneapolis is thereby liable in an amount to be determined by the jury.

72. As a direct result of the acts and omissions, systematic flaws, policies, and customs of Defendant City of Minneapolis, Plaintiff's constitutional rights were violated and he was forced to endure pain and mental suffering, and was thereby damaged in an amount to be determined, in excess of Seventy-Five Thousand (\$75,000) Dollars.

73. Plaintiff is entitled to recovery of his costs, including reasonable attorney's fees, under 42 U.S.C. § 1988.

WHEREFORE, Plaintiff Luis Daniel Garcia prays for judgment against the Defendants as follows:

1. As to Count I, a money judgment against Defendant Lehner for compensatory damages in an amount in excess of Seventy-Five Thousand (\$75,000) Dollars and punitive damages in an amount to be determined by the jury, together with costs, including reasonable attorney's fees under 42 U.S.C. § 1988, and prejudgment interest.
2. As to Count II, a money judgment against Defendant City of Minneapolis for compensatory damages in an amount in excess of Seventy-Five Thousand (\$75,000) Dollars, together with costs, including reasonable attorney's fees under 42 U.S.C. § 1988, and prejudgment interest.
3. For injunctive relief against Defendant City of Minneapolis, including changes in the way it administers discipline to officers who use excessive force; and
4. For such further relief as this Court deems just and equitable.

Dated: August 5, 2015

PRITZKER OLSEN P.A.



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RECEIVED DEC 16 2015



Minneapolis
City of Lakes

Office of the City Attorney

Susan L. Segal
City Attorney

350 South 5th Street - Room 210
Minneapolis, MN 55415

December 15, 2015

Office: 612 673-2010
Civil Division Fax: 612 673-3362
Criminal Division Fax: 612 673-2189
CPED Fax: 612 673-5112
TTY: 612 673-2157

Eric W. Hageman, Esq.
Pritzker Olsen, P.A.
Plaza VII, Suite 2950
45 South Seventh Street
Minneapolis, MN 55402

BY U. S. MAIL

Re: Luis Daniel Garcia v. Blayne Lehner, et al.
Court File No. 15-cv-03214 (SRN/HB)

Dear Mr. Hageman:

Enclosed and served upon you via U. S. mail please find the following:

1. City of Minneapolis's Rule 26(a)(1) Initial Disclosures;
2. City of Minneapolis's Answers to Plaintiff's Interrogatories;
3. City of Minneapolis's Responses to Plaintiff's Document Requests; and
4. Disks containing responsive documents.

Please contact me with any questions. Thank you.

Sincerely,

SARAH C.S. MCLAREN
Assistant City Attorney
(612) 673-2183



City Information
and Services

www.minneapolismn.gov

Affirmative Action Employer

enclosures

cc: Joseph Kelly, Esq., w/enclosures

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Luis Daniel Garcia,

Court File No. 15-cv-03214 (SRN/HB)

Plaintiff,

vs.

Blayne Lehner, in his individual
capacity as an officer of the
City of Minneapolis, and the City of
Minneapolis,

DEFENDANT CITY OF
MINNEAPOLIS'S RULE
26(a)(1) INITIAL DISCLOSURES

Defendants.

TO: Plaintiff, Luis Daniel Garcia, and his attorneys, Eric Hageman, Pritzker Olsen, P.A., 45 South Seventh Street, Plaza VII, Suite 2950, Minneapolis, MN 55402.

Pursuant to Rule 26(a)(1), Defendant City of Minneapolis ("City") makes the following disclosures concerning the disputed facts alleged with particularity in the pleadings.

INTRODUCTORY STATEMENT

The following disclosures are made based on the information reasonably available to the City as of the date hereof. By making these disclosures, the City does not represent that it is identifying every document, tangible thing or witness that it may possibly use to support its claims or defenses. The City does not waive its right to object to production of any document or tangible thing disclosed herein on the basis of any privilege, the work product doctrine, relevance, undue burden or any other valid objection. The City's disclosures

represent a good faith effort to identify information it reasonably believes it may use to support its claims or defenses, unless solely for impeachment, as required by Rule 26(a)(1).

Finally, the City's disclosures are made without in any way waiving: (1) the right to object on the grounds of competence, privilege, relevance and materiality, hearsay, data classification or any other proper ground, to the use of any such information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

All of the disclosures set forth below are made subject to the above objections and qualifications.

- A. Name and, if known, the address and telephone number of each individual likely to have discoverable information that defendants may use to support their claims or defenses, unless solely for impeachment, identifying the subjects of the information.

IDENTITY	SUBJECT OF INFORMATION
Officer Blayne Lehner Minneapolis Police Department <i>Contact through his counsel, Kelly and Lemmons, P.A.</i>	Defendant, prepared a supplement to police report CCN 13-430045 regarding the incident at issue.
Officer Steve Wuorinen Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Prepared a supplement to police report CCN 13-430045 regarding the incident at issue.
Officer Christopher Kelly Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Identified as Assisting Officer in police report CCN 13-430045. Prepared a supplement to police report regarding

	the incident at issue.
Officer Daniel Misgen Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Prepared a supplement to police report CCN 13-430045 regarding the incident at issue.
Officer Marcus Lukes Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Prepared a supplement to police report CCN 13-430045 regarding the incident at issue.
Officer G. Jodene Malloy Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Identified as Reporting Officer in police report CCN 13-430045 regarding the incident at issue.
Sergeant Kurt Radke Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Identified as Supervising Officer in police report CCN 13-430045 regarding the incident at issue.
Sergeant Richard Altonen Minneapolis Police Department <i>Contact through undersigned counsel.</i>	Prepared a force supervisor review in police report CCN 13-430045.
Plaintiff	Known to Counsel for Plaintiff.
Antonio Jesus Rios-Pelayo 4128 13 th Ave South Minneapolis, MN 55407 (612) 231-4598	Identified as an arrested person in police report CCN 13-430045 regarding the incident at issue.
All individuals named in Plaintiff's Disclosures under Rule 26(a)(1).	Known to Counsel for Plaintiff.
All persons necessary to establish foundation, authenticity, or chain of custody	

B. A copy of, or a description by category and location of, all documents, data compilations and tangible things in the possession, custody, or control of defendants and that defendants may use to support their claims or defenses, unless solely for impeachment.

DESCRIPTION	LOCATION
CAPRS CCN 13-430045	See documents labeled Response to Request No. 1.
MECC Incident Detail Report CCN 13-430045	See documents labeled Response to Request No. 1.
CD containing audio of MECC calls corresponding to CCN 13-	See documents labeled Response to Request No. 1.

430045	
CAPRS Case Report with Force CCN 13-430045	See documents labeled Response to Request No. 1.

C. A computation of all damages claimed by the defendants, including materials bearing on the nature and extent of injuries suffered.

Not applicable.

D. Any insurance agreement which may cover all or part of the judgment or to indemnify or reimburse payments made to satisfy the judgment.

The City of Minneapolis is a self-insured municipal corporation.

The City respectfully makes these disclosures based on information reasonably available to it at this time. The City will supplement these disclosures as appropriate.

Dated: December 15, 2015

SUSAN L. SEGAL
City Attorney
By
s/ Sarah McLaren
SARAH C.S. MCLAREN (#345878)
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(612) 673-2183

Attorneys for City of Minneapolis

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Luis Daniel Garcia,

Civil File No. 15-cv-03214 (SRN/HB)

Plaintiff,

v.

DEFENDANT CITY OF
MINNEAPOLIS' ANSWERS TO
PLAINTIFF'S INTERROGATORIES

Blayne Lehner, in his individual
capacity as an officer of the
City of Minneapolis, and the City of
Minneapolis,

Defendants.

Defendant City of Minneapolis, for its Answers to Plaintiff's First Set of
Interrogatories, states as follows:

GENERAL OBJECTIONS

1. Defendant answers these Interrogatories to the best of its current knowledge, based upon reasonable search and inquiry. Supplemental answers will be served as required under the Federal Rules of Civil Procedure.
2. Defendant makes these answers subject to the reservation of its rights to object to the introduction into evidence, in this or any other action, of any of the information contained or produced hereunder on any ground; including, but not limited to, relevance and/or hearsay.

3. Defendant will not, in answering these Interrogatories, produce any documents or divulge any information that is privileged (including the attorney-client privilege), constitutes attorney work product, or is otherwise immune from discovery because the information was prepared in anticipation of litigation, or is privileged from production for any other reason. Defendant does not intend by supplying any information hereunder to waive any claims of privilege or work product protection. If documents or other information are divulged for which any claim of privilege or work product protection is applicable, such production shall be deemed inadvertent, and not a waiver of the claim of privilege or attorney work product.

4. Defendant objects to the Interrogatories to the extent they purport to impose obligations beyond those imposed by the Federal Rules of Civil Procedure and other rules of court.

5. Defendant objects to the Interrogatories to the extent they call for the disclosure of information in violation of the Minnesota Government Data Practices Act.

ANSWERS AND SPECIFIC OBJECTIONS

1. State the full name, badge number, and rank of each member of the Minneapolis Police Department (MPD) who was present at the scene during the December 29, 2013, incident that is the subject of this litigation, and state whether

each individual completed a police report, or other record of his or her activities on the night in question.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 1.

2. State the full name, badge number and rank of each member of the Minneapolis Police Department (MPD) who was present at the scene after the December 29, 2013, incident during interview, interrogations, or any other communications with parties or witnesses involved in the incident that is the subject of this litigation, and state whether each individual completed a police report or other record of his or her activities.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 1.

3. State the name, age, and address of each person who is not a MPD officer but was present on the scene before, during, or after the December 29, 2013, incident.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 1.

4. State the name, age, and address of each person the MPD or City of Minneapolis or any of their agents or employees have questioned or attempted to

question concerning the incident that is the subject of this lawsuit. For each person state:

- a. the name, badge number, position and unit of each person who did the questioning or made any attempt to question;
- b. whether or not a written statement was made or an oral statement was transcribed and whether or not the statement was signed; and
- c. whether there were any reports, memoranda and/or other document that was prepared.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 1.

5. Identify each person answering these Interrogatories, and each person who was consulted, conferred with, or otherwise provided information for the purposes of answering these interrogatories and Plaintiff's Request for Production of Documents to Defendants.

ANSWER: Counsel for the City of Minneapolis.

6. State the name, age, and address of each and every person, other than those previously stated, with knowledge relevant to the incident that is the subject of this lawsuit.

ANSWER: See individuals identified in the City of Minneapolis's Disclosures made pursuant to Rule 26(a)(1). Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 1.

7. Identify and describe the use of force training Minneapolis Police Officers are required to receive, including any ongoing periodic training requirements.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 6 and Response to Request No. 7.

8. Identify any MPD policy regarding the use of squad car recording equipment.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 6, Response to Request No. 7, and Response to Request No. 24.

9. Identify and describe the training MPD officers, including defendant Lehner, have received in the past 10 years regarding the use of a "kick push" (or similar maneuver) during or after arrest, as described in defendant Lehner's police report in this matter. This request includes, but is not limited to: (a) the date of such training; (b) the materials provided during the training; and (c) the instructors or persons who provided the training.

ANSWER: Defendant is not aware of any maneuver called a "kick push" maneuver. Pursuant to Fed. R. Civ. P. 33(d), see MPD policies and training records produced as documents labeled Response to Request No. 6 and Response to Request No. 7.

10. Identify and describe the training defendant Lehner has received in the past 10 years on handling incidents involving individuals without identification. Your description should include, but is not limited to: (a) the date of such training; (b) the materials provided during the training; (c) a description of the subject matter of the training; and (d) the instructors or persons who provided the training.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 2, Response to Request No. 6, and Response to Request No. 7.

11. Identify and describe the training MPD officers have received in the past 10 years on handling incidents involving individuals under age 21 suspected to be under the influence of alcohol. Your description should include, but is not limited to: (a) the date of such training; (b) the materials provided during the training; (c) a description of the subject matter of the training; and (d) the instructors or persons who provided the training.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 6, and Response to Request No. 7.

12. Identify and describe the training MPD officers have received in the past 10 years on handling handcuffed arrestees. Your description should include, but is not limited to: (a) the date of the training; (b) the materials provided during the training; (c) a description of the subject matter of the training; and (d) the instructors or persons who provided the training.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 6, and Response to Request No. 7.

13. Identify and describe the training MPD officers have received in the past 10 years regarding the use of recording devices in squad cars. This description should include, but is not limited to: (a) the date of such training; (b) the materials provided during the training; and (c) the instructors or persons who provided the training.

ANSWER: Pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 6, Response to Request No. 7, and Response to Request No. 24.

14. Identify all instances in the past ten years where an individual was injured or died while being detained in the rear of a MPD squad car.

ANSWER: Defendant objects to this interrogatory as overly broad and unduly burdensome. In-custody injuries and deaths are not tracked by whether they occurred in a squad car. Responding to such a request would require a review of thousands of force reports from the requested time period. Such reports may or may not describe the location of the subject at the time of the alleged injury.

15. Identify all instances in the past ten years where an individual was injured as a result of force used by defendant Lehner.

ANSWER: Defendant objects to this interrogatory as not reasonably calculated to lead to the discovery of admissible evidence and as calling for private data under Minn. Stat. § 13.43. Subject to said objections and pursuant to Fed. R. Civ. P. 33(d), see documents labeled Response to Request No. 3 and Response to Request No. 9. Such documents are produced as "Confidential Materials" pursuant to the Protective Order issued by the Court [Doc. No. 13].

16. Identify whether the MPD or any of its officers have been the subject of an investigation or inquiry by the Federal Bureau of Investigation or other state or federal agency regarding the use of excessive or unlawful force by MPD officers in the past 10 years. If so, describe the investigation or inquiry and the results of the investigation or inquiry.

ANSWER: Defendant objects to this interrogatory in that it seeks information not in the possession, custody or control of the City of Minneapolis. Such an inquiry is properly directed to the Federal Bureau of Investigation or other state or federal agency conducting any such investigation or inquiry.

17. Identify all documents, materials and information relied upon by the City of Minneapolis in making the determination the "Defendant Lehner was not acting in the course or scope of his employment during the incident that gives rise to this lawsuit."

ANSWER: Defendant objects this request to the extent it requests documents that the administrative law judge has ordered be kept confidential. Such information will be produced upon confirmation that such production will not violate any order of the administrative law judge.

18. Identify all documents, materials and information relied upon by the City of Minneapolis in making the determination the Defendant Lehner's actions on December 29, 2013 "were not related to his duties as a Minneapolis Police Officer".

ANSWER: Defendant objects this request to the extent it requests documents that the administrative law judge has ordered be kept confidential. Such information will be produced upon confirmation that such production will not violate any order of the administrative law judge.

19. Identify every lawsuit, claim, allegation or complaint made in the past 10 years in which defendant Lehner was alleged to have used excessive force. For each instance, state:

- a. the name and address of each complainant;
- b. the date the complaint was made; and
- c. describe in detail the allegations of each complaint.

ANSWER: Defendant objects to this interrogatory as not reasonably calculated to lead to the discovery of admissible evidence and as calling for private data under Minn. Stat. § 13.43. Subject to said objections, and pursuant to Fed. R. Civ. P. 33(d), Defendant is producing responsive documents as "Confidential Materials" pursuant to the Protective Order issued by the Court [Doc. No. 13]. See documents labeled Response to Request No. 3.

Dated: December 15, 2015

SUSAN L. SEGAL
City Attorney
By

s/ Sarah McLaren

SARAH C.S. MCLAREN (#345878)
Assistant City Attorney
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Attorneys for City of Minneapolis

5-301.01 POLICY (10/16/02) (08/17/07)

Based on the Fourth Amendment's "reasonableness" standard, sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used. The force used shall be consistent with current MPD training.

5-303 AUTHORIZED USE OF FORCE (10/16/02) (08/17/07)

Minn. Stat. §609.06 subd. 1 states, "When authorized...except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

When used by a public officer or one assisting a public officer under the public officer's direction:

- In effecting a lawful arrest; or
- In the execution of legal process; or
- In enforcing an order of the court; or
- In executing any other duty imposed upon the public officer by law."

In addition to Minn. Stat. §609.06 sub. 1, MPD policies shall utilize the United States Supreme Court decision in *Graham vs Connor* as a guideline for reasonable force.

The *Graham vs Connor* case references that:

"Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case, including:

- The severity of the crime at issue,
- Whether the suspect poses an immediate threat to the safety of the officers or others, and;
- Whether he is actively resisting arrest or attempting to evade arrest by flight.

The "reasonableness" of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation."

Authorized use of force requires careful attention to the facts and circumstances of each case. Sworn MPD employees shall write a detailed, comprehensive report for each instance in which force was used.

1 STATE OF MINNESOTA DISTRICT COURT

2 HENNEPIN COUNTY FOURTH JUDICIAL DISTRICT

3 -----

4 State of Minnesota,

5 Plaintiff,

6 and D.C. Court File No. 27-CR-14-1930

7 Luis Daniel Garcia-Pineda,

8 Defendant.

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10 The above-entitled proceeding came duly on for hearing
11 before the Honorable Toddrick Barnette, Judge of the
12 above-named Court, on the 26th day of June, 2014 at the
13 Government Center, City of Minneapolis, County of Hennepin,
14 State of Minnesota.

15 APPEARANCES:

16 RONALD BLUM, ESQUIRE, Assistant Minneapolis City
17 Attorney, appeared for and on behalf of the State.

18 PAUL EDLUND, ESQUIRE, appeared for and with Defendant,
19 who personally appeared.

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25 DAWN TORRINI, Court Reporter.

1 MR. BLUM: This is Ronald Blum, B-l-u-m, on
2 behalf of the State and the City of Minneapolis calling
3 27-CR-14-1930. This is State versus Luis Daniel
4 Garcia-Pineda.

5 THE COURT: Will you note your appearances.

6 MR. EDLUND: Good morning, Your Honor. Paul
7 Edlund for Mr. Garcia, who's present.

8 THE COURT: Okay. We're here for an
9 evidentiary hearing. Mr. Edlund, you want to state
10 what your issues are for the hearing.

11 MR. EDLUND: We are challenging the expansion
12 of the stop of the motor vehicle that Mr. Garcia was a
13 passenger in, the seizure of Mr. Garcia, as well as
14 that the conduct of the officers involved shocks the
15 conscience enough so that the matter should be
16 dismissed on those grounds.

17 MR. BLUM: Your Honor, if I may put our offer
18 on the record before we get started.

19 THE COURT: Yes.

20 MR. BLUM: The State has previously offered
21 and would reiterate a pre-hearing offer only to plead
22 guilty to disorderly conduct under the ordinance as a
23 stay of imposition to vacate and dismiss for a period
24 of one year on condition that there be no same or
25 similar offenses.

1 And, in addition, we've offered an option of
2 another offer to a stay of adjudication under the same
3 charge for eight STS, any surcharges to be determined
4 by the Court and no fines requested by the State.

5 And again, if those offers are not accepted,
6 then they are rejected and we are under no obligation
7 to reoffer them after today.

8 THE COURT: Okay. And, Mr. Edlund, is that
9 your client's position that he does not want to accept
10 one of those offers?

11 MR. EDLUND: Yes. Mr. Garcia, you and I have
12 talked about the offers that the City Attorney's office
13 has offered for you to resolve your case, is that
14 right?

15 THE DEFENDANT: Yes.

16 MR. EDLUND: We talked about that?

17 THE DEFENDANT: We talked about it.

18 MR. EDLUND: And it's my understanding that
19 you wish to decline their offer, which is to reject the
20 offer, and I believe you wish to move forward, is that
21 right?

22 THE DEFENDANT: I reject it.

23 THE COURT: Okay. Who's your first witness?

24 MR. BLUM: Your Honor, the State calls
25 Officer Lukes.

1 MARCUS LUKES,
2 after having been first duly sworn, testified on his
3 oath as follows:

4 THE COURT: Take a seat in the witness stand.
5 That microphone moves, so you can pull it close to you,
6 push it away, wherever you need; it is fine with me.
7 Adjust it any way you need to. As long as we can hear
8 you, that's great.

9 If you can give us your first and last name,
10 and then spell your first and last names for us.

11 THE WITNESS: Marcus Lukes. M-a-r-c-u-s.
12 The last name L-u-k-e-s.

13 THE COURT: All right. Thank you. Your
14 witness.

15 DIRECT EXAMINATION

16 BY MR. BLUM:

17 Q. Officer Lukes, where do you work?

18 A. City of Minneapolis.

19 Q. And for how long have you worked there?

20 A. I was employed April 2013.

21 Q. And have you had any other law enforcement-related
22 employment?

23 A. Yes, I have.

24 Q. And where was that and for how long?

25 A. I worked for the City of LeSeuer, Minnesota

1 approximately a year and I spent six years in the
2 military police in the United States Marine Corps.

3 Q. And in conjunction with your career in law enforcement,
4 have you received training?

5 A. Yes.

6 Q. And generally what did that training involve?

7 A. Numerous on-the-job training. I hold a two-year degree
8 in law enforcement from Herring (phonetic) Community
9 College.

10 Q. And do you have training in enforcing the vehicle and
11 traffic laws of the State of Minnesota?

12 A. Yes, I do.

13 Q. Let me take you back to December 29, 2013, approximately
14 3 a.m. in the morning. Were you on shift on that
15 particular date and time?

16 A. Yes.

17 Q. And where was your assigned shift location or patrol
18 territory?

19 A. The Fifth Precinct, City of Minneapolis.

20 Q. Was that in Hennepin County, State of Minnesota?

21 A. Yes, sir.

22 Q. And at approximately that time, what were you doing or
23 specifically what activity were you engaged in?

24 A. We received a call, a person with a gun, and while on
25 the way to the call, got a -- we got information on the

1 computer that was updated to shots being fired at 3710
2 Nicollet Avenue South.

3 Q. And after hearing that update about where the shots were
4 fired, what did you do?

5 A. We got there, we checked the immediate area, weren't
6 able to find anybody who was hit by anything, and I
7 started canvassing the area to look for spent casings.

8 Q. And as you were looking for the spent casings, did you
9 find any of them?

10 A. I found one across the street from 3710 Nicollet Avenue
11 in the parking lot.

12 Q. What, if anything else, occurred during your
13 investigation?

14 A. As I was -- after I found the spent cartridge, I went
15 across to try to find impacts where a bullet might have
16 hit somewhere. As I was crossing the road, a car came
17 up and accelerated towards me as I was crossing.

18 Q. You say that it accelerated towards you. How do you
19 know that it accelerated towards you?

20 A. I heard the motor wind up and shift down, the vehicle
21 down shift.

22 Q. And as a result of hearing that, what did you do?

23 A. I got off the roadway and got on the sidewalk as quick
24 as possible.

25 Q. And if you hadn't moved out of the way, were you in the

1 direct path of that vehicle?

2 A. Yes.

3 Q. And so is it your understanding that you'd have been
4 struck if you had not gotten out the way?

5 A. Yes.

6 Q. As a result of that occurring, what did you do next?

7 A. I was on the sidewalk. My partner at the time, Officer
8 Misgen, gave the information over the radio to other
9 units that were there with us and explained what went
10 on. And another squad, Officer Kelley, he was also
11 there with us, got in his squad, and caught up to the
12 vehicle and stopped him.

13 And I remained on scene until I could collect
14 the evidence for our previous incident.

15 Q. And did you have any interaction at all with the
16 occupants of that vehicle?

17 A. No, I didn't. Except for booking -- transporting one to
18 jail. But while on the stop, I did not.

19 Q. And which one did you transport to jail, do you
20 remember?

21 A. I do not recall.

22 Q. And was there any issue on the way to jail with anything
23 occurring in the squad car that's memorable?

24 A. No.

25 MR. BLUM: Nothing further for this witness,

1 Your Honor.

2 THE COURT: All right. Any
3 cross-examination?

4 CROSS-EXAMINATION

5 BY MR. EDLUND:

6 Q. Good morning, Officer Lukes.

7 A. Good morning.

8 Q. When this event took place, it sounds like there was --
9 you were sent out kind of -- there was a shooting and/or
10 gun event that took place that you were kind of sent out
11 to deal with, is that right?

12 A. There were shots fired in the area.

13 Q. Shots fired?

14 A. Yes. It wasn't a shooting. Nobody was shot that we
15 were able to locate.

16 Q. And the vehicle that came close to your vicinity, that
17 vehicle wasn't determined to be involved in the
18 shots-fired event, is that right?

19 A. At the time, it was unknown who was involved with it.

20 Q. Well, did you have a vehicle description of the car that
21 was involved in the shots fired?

22 A. We didn't have any information on any vehicles involved.
23 It was a group of people.

24 Q. So you don't have any information as to whether the
25 vehicle that came in close contact with you was or was

1 not involved in the shots-fired event?

2 A. It was unknown to me.

3 Q. Unknown to you?

4 A. Uh-huh.

5 Q. All right. How -- after the vehicle came into kind of
6 close proximity with you, how close was that vehicle to
7 being stopped? Could you see where that vehicle was
8 stopped?

9 A. I'm trying to -- when the officer stopped the vehicle,
10 are you asking if I could see what -- the stop location?

11 Q. Yes.

12 A. I could not.

13 Q. You could not?

14 A. No.

15 Q. So if you were on 37th and Nicollet, that's kind of
16 where you were when the vehicle came near you?

17 A. Yes.

18 Q. You did not observe the vehicle being stopped?

19 A. No. It took them blocks to catch up with the vehicle.

20 Q. Okay. So your only interaction with the vehicle was, it
21 sounds like, this moving out of the way, watching the
22 vehicle go by and that that was the end of it?

23 A. Yes, from my involvement, yes, sir.

24 Q. From your involvement. And then you kind of went on
25 your duty to kind of look for casings and such?

1 A. Well, no. I had evidence there which I had to preserve
2 the scene of the evidence that I had there, so I wasn't
3 able to leave at that time. There was another squad who
4 was there who took over or went to stop the vehicle.

5 Q. And you said that you transported someone to the jail.
6 Do you recall that?

7 A. Yes.

8 Q. You didn't transport Mr. Garcia?

9 A. I don't recall who it was.

10 Q. All right. Did you transport anybody that had their two
11 front teeth missing to the jail?

12 A. I don't recall. I know it says in my report who I
13 transported, but I don't recall exactly who it was.

14 MR. EDLUND: No other questions, Your Honor.

15 THE COURT: All right. Any other questions?

16 REDIRECT EXAMINATION

17 BY MR. BLUM:

18 Q. The only question is did you see the description of the
19 driver of the vehicle?

20 A. It was a Hispanic male.

21 MR. BLUM: Nothing further.

22 THE COURT: Anything else, Mr. Edlund?

23 MR. EDLUND: Yeah, just briefly.

24 RECROSS-EXAMINATION

25

1 BY MR. EDLUND:

2 Q. I'm sorry. I forgot to ask just a couple of questions,
3 Officer Lukes. Did the person that you transported,
4 were they placed in your squad car?

5 A. I don't recall if I put them there or if some other
6 officers did. There was numerous officers down there.

7 Q. Well, you were working with a partner, is that right?

8 A. Yes.

9 Q. Who was your partner?

10 A. Officer Misgen.

11 Q. And so was the person -- one of the individuals was
12 transported in your vehicle, is that right?

13 A. Yes, sir.

14 Q. And when you are -- does your squad car have video
15 cameras?

16 A. Yes.

17 Q. And how is it that the squad video cameras are -- come
18 to be in use? How do they start being used?

19 MR. BLUM: Objection, Your Honor.

20 THE COURT: What's your objection?

21 MR. BLUM: Beyond the scope.

22 THE COURT: Sustained.

23 MR. EDLUND: I can recall the officer, Your
24 Honor, on direct if the Court would prefer that.

25 THE COURT: However you want to. It's up to

1 Mr. Blum whether he wants to allow you to continue
2 along this line of questioning. Beyond the scope.

3 MR. BLUM: If you need to recall him, you can
4 recall him.

5 MR. EDLUND: In the scope of judicial
6 economy, I'd appreciate to allow questioning the
7 witness, but if the Court would prefer and Mr. Blum
8 would prefer, I could recall the witness if that would
9 be preferable.

10 THE COURT: I'm ruling on the objections. If
11 you guys agree to that, that's fine with me.

12 THE WITNESS: What else are you going to ask
13 him?

14 MR. EDLUND: About the video.

15 MR. BLUM: He's already answered those
16 questions.

17 MR. EDLUND: I'll call him back on direct.
18 He's going to answer the questions.

19 MR. BLUM: I'll withdraw my objection.

20 THE COURT: All right. Go ahead.

21 BY MR. EDLUND:

22 Q. So Office Lukes, I'd like for you to just kind of help
23 us understand how the video recording operates, if you
24 can, okay?

25 A. How it operates or --

- 1 Q. How it begins. As you're driving your car, I understand
2 the video is not constantly on, correct?
- 3 A. Correct.
- 4 Q. How is it that the video comes to be turned on?
- 5 A. Manually. By pushing a button.
- 6 Q. Okay.
- 7 A. Or by activating your lights all the way over to the
8 third switch.
- 9 Q. Activating your lights to the third switch?
- 10 A. Yes.
- 11 Q. And what does that mean, activating your lights to the
12 third switch?
- 13 A. For our light box in our police car, they have --
14 there's a light switch. It's got a toggle switch.
15 There's 1, 2 and 3. Different selection mode. 1 is the
16 rear lights, 2 is the flashing front and 3 is all lights
17 for code 3 driving with lights and sirens.
- 18 If you go over to 3, it's automatically --
19 camera's automatically turned on.
- 20 Q. And then how is the camera turned off?
- 21 A. Manually by pushing a button.
- 22 Q. And so in this case, your camera was illuminated,
23 right?
- 24 A. What?
- 25 Q. Your camera at some point's turned on?

1 A. I wasn't in my car, nor did I have my lights on.

2 Q. So your squad car was never activated as far as the
3 lights or recording goes?

4 MR. BLUM: Objection. Asked and answered.

5 THE COURT: Sustained.

6 BY MR. EDLUND:

7 Q. Maybe I misunderstood. Was your camera ever activated
8 in this event on December 29, 2013?

9 A. I wasn't in my police car when the events took place. I
10 was out on foot.

11 Q. And -- I understand that, but was your camera ever on
12 recording any of the events that took place that
13 night?

14 A. Recording any events, no.

15 Q. Okay. And that's -- I just want to make sure I wasn't
16 misunderstanding you.

17 A. Okay.

18 MR. EDLUND: Thank you.

19 THE COURT: Any other questions, Mr. Blum?

20 MR. BLUM: No, Your Honor. Thank you.

21 THE COURT: All right.

22 Thank you, Officer. You may step down.

23 MR. BLUM: Is the Court prepared for the next
24 witness?

25 THE COURT: Yes.

1 MR. BLUM: The State calls Officer Kelley.

2 THE COURT: All right, Officer.

3 CHRISTOPHER KELLEY,

4 after having been first duly sworn, testified on
5 his oath as follows:

6 THE COURT: Please take a seat in the witness
7 stand. And that microphone there, you can move it
8 wherever, whatever is comfortable for you as long as we
9 can hear you.

10 THE WITNESS: Yes, sir.

11 THE COURT: And then give us your first and
12 last name and spell your first and last names.

13 THE WITNESS: Yes, sir. My name's
14 Christopher -- Officer Christopher Kelley,
15 C-h-r-i-s-t-o-p-h-e-r, Kelley, K-e-l-l-e-y.

16 THE COURT: All right. Thank you. Your
17 witness.

18 MR. BLUM: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. BLUM:

21 Q. Mr. Kelley, where do you work?

22 A. Minneapolis Police Department, sir, Fifth Precinct.

23 Q. For how long have you worked there?

24 A. Over 15 years now, sir.

25 Q. And what, if any other, employment have you had in law

1 enforcement?

2 A. This is my first job as a law enforcement officer,
3 sir.

4 Q. And generally, what, if any, training would be received
5 in conjunction with your years in law enforcement?

6 A. Trained in enforcing state statutes and city
7 ordinances.

8 Q. Does that include vehicle and traffic laws?

9 A. Yes, it does, sir.

10 Q. Let me take you back to December 29, 2013, approximately
11 3 a.m. Were you on shift that particular time?

12 A. Yes, sir.

13 Q. And what was your assigned location or patrol territory?

14 A. I was in the area of the 3700 block of Nicollet
15 investigating a shooting incident.

16 Q. And how were you dispatched to that scene?

17 A. We were probably the closest car, as far as I can
18 recollect, and arriving on scene looking for bullet
19 holes.

20 Q. And so when you arrived on scene, what did you do first?

21 A. Well, we were conducting initial investigation.

22 Q. And what did that involve?

23 A. It involved checking the perimeter of the building at
24 3700 -- I believe it was 3700 or 3710 Nicollet Avenue.

25 Q. And would you do that check on foot or in your squad

1 scar?

2 A. I was on foot, sir.

3 Q. And who were the other officers with you?

4 A. Officer Misgen was across the street by a squad, and
5 then Officer Lukes was crossing the street at about the
6 time I was on the perimeter of the building.

7 Q. And what, if anything, occurred at that time?

8 A. A car was approaching from the north going southbound on
9 Nicollet Avenue South and I heard the vehicle accelerate
10 as Officer Lukes was crossing the street. The car --
11 when you floor a car or push the accelerator down,
12 suddenly, the transmission kicks down to a lower gear,
13 it makes a very audible accelerating noise and my
14 concern was the car was either trying to intimidate
15 Officer Lukes or strike him.

16 Q. And upon seeing that occur, what did you do next or what
17 did anyone do next?

18 A. I observed Officer Lukes run out of the way, and then I
19 ran back towards my squad and I talked to Officer
20 Misgen. I know what I saw, but I said did you see what
21 I saw? And he said yes.

22 He aired the initial vehicle information. So
23 it was a four-door sedan, and then I got into my squad
24 and began to pursue the vehicle and pull him over.

25 Q. At this time of night, are there a lot of vehicles on

1 the roads?

2 A. No, sir.

3 Q. And you said that you started to pursue the vehicle.

4 About how long did it take you to catch up to him?

5 A. He was driving at a pretty decent rate of speed, meaning
6 over 30 miles an hour, which is the speed limit on
7 Nicollet, but by the time I got in my car, backed up,
8 got in the street, he was several blocks ahead. But I
9 never lost visual on the vehicle, and I was able to pull
10 him over, and again I want to say around the 43 -- 4400
11 block of Nicollet Avenue South.

12 Q. And what occurred after the vehicle was stopped? What
13 happened next?

14 A. We got out of the vehicle and made initial contact with
15 the driver.

16 Q. You said we. Who's we?

17 A. Myself and my Officer Maloy. She's a cover officer. I
18 was a contact officer. And at that point, because of
19 the reckless driving, I told the guy he was under
20 arrest, took him out of the car, and handcuffed him at
21 that point and escorted him back to my squad.

22 Q. When you say reckless driving, are you referring to
23 something specifically or are you simply --

24 A. Specifically it appeared to me like he was going to
25 strike Officer Lukes as he was crossing the street, so I

1 -- at that point when I stopped him, this driver was
2 under arrest.

3 Q. And so what happened after the driver was placed in the
4 squad car?

5 A. We placed him in his car, and my partner began the
6 identification process of the driver. I went back to
7 get the names of the passengers and there was three
8 other passengers, two females and another male in the
9 vehicle.

10 Q. And when you asked them their names, what happened?

11 A. The females were compliant. I talked to the defendant
12 and he was a little belligerent with me and appeared he
13 had been under the influence of alcohol.

14 Q. And you say that he appeared to be under the influence
15 of alcohol. How did you know that or believe that?

16 A. By demeanor and smell.

17 Q. What did you smell?

18 A. Smell of an alcoholic beverage. It's very distinct.

19 Q. And what was his demeanor?

20 A. I would characterize it negative, but I believe he
21 uttered a curse at me, too. So at that point, I had him
22 out of the car for his disorderly conduct because it
23 appears that he was getting aggressive and belligerent
24 so I decided to take him under control, prevent any
25 further escalation of the conflict.

- 1 Q. When you say take him under control, what do you mean by
2 that?
- 3 A. Arrest him for disorderly conduct. Put him in handcuffs
4 so it will not escalate, there will be no physical
5 altercation between me and the suspect.
- 6 Q. And was the -- how was the suspect dressed, do you
7 remember?
- 8 A. Pardon me?
- 9 Q. How was the suspect dressed, if you recall?
- 10 A. I don't recall that, sir.
- 11 Q. Do you recall if he had a hat on or not?
- 12 A. I don't. I know he was the rear passenger behind the
13 driver.
- 14 Q. Do you recall being able to clearly see his face?
- 15 A. Yes.
- 16 Q. And were you able to make a judgment about what his age
17 was?
- 18 A. He appeared to be under the age of 21. He looked young
19 so -- and that was worthy of further investigation in
20 itself.
- 21 Q. Describe in further detail the process of getting the
22 defendant secured and into the squad car.
- 23 A. I asked him -- I had him get out of the vehicle. I had
24 him get out. Got him in back, handcuffed him and really
25 there was no serious incident when I made contact with

1 him. And escorting officers took him back to another
2 squad.

3 Q. Escorting officers, who were they?

4 A. Officer Lehner and Officer Wuorinen. After getting
5 control, I went back to my squad, and then we were
6 dealing with the initial arrested party who was driving
7 the vehicle.

8 Q. Okay. And what did you happen to do at that point in
9 the investigation?

10 A. Again, I advised the officer when they took him and
11 placed him in the car of why he was taken out, and then
12 I went back to start, you know, assisting my partner
13 dealing with the initial arrested party.

14 Q. Okay. And at any point, were you able to observe the
15 passenger's conduct after that point?

16 A. No. Actually, I was dealing with the first party again,
17 and my squad was ahead of the other one. Put it kind of
18 side by side, the vehicles offset behind me. So, again,
19 the way we do it, we separated the two parties. I dealt
20 with the initial party who I observed doing the driving
21 conduct. And then my partners dealt with the other
22 gentleman.

23 Q. And that passenger you removed from the vehicle on that
24 day, if you ever see him again, would you be able to
25 recognize him?

1 A. Yes.

2 Q. Is he in the courtroom today?

3 A. Yes, he is, sir.

4 Q. Would you please describe him by an article of clothing.

5 A. He's wearing a plaid shirt and jeans.

6 MR. BLUM: Okay. Your Honor, could the
7 record please reflect that the witness has identified
8 the defendant.

9 THE COURT: It does.

10 MR. BLUM: Thank you.

11 BY MR. BLUM:

12 Q. And did you transport either arrested party to any
13 location from the scene?

14 A. No, we did not.

15 Q. And by we, you mean yourself --

16 A. Myself and Officer Maloy, yes.

17 MR. BLUM: Nothing further.

18 THE WITNESS: Yes, sir.

19 THE COURT: Any cross-examination?

20 MR. EDLUND: Yes.

21 CROSS-EXAMINATION

22 BY MR. EDLUND:

23 Q. Good morning, Officer Kelley.

24 A. Good morning, sir.

25 Q. When you were sent out to the scene of the events on

1 December 29th, 2013, did you have a description of the
2 actors involved in the shots-fired event?

3 A. No. But there was -- I believe -- I don't know if there
4 was a witness or not. I didn't deal with them, but we
5 were -- there was a report of bullet holes, shots being
6 fired toward the building, so that was my mission, I
7 guess, for lack of a better word, was to look for
8 damage.

9 Q. But as far as make and model of a vehicle or
10 descriptions of persons involved --

11 A. I don't recall that, sir.

12 Q. You didn't have that type of information?

13 A. No.

14 Q. So it was more of go out -- there was a shots event --
15 and kind of gather information?

16 A. Right. There was a witness there, but I didn't speak to
17 that witness.

18 Q. Right. So you had no knowledge of whether the
19 assailants or suspects were Black or Hispanic or Asian?

20 A. I don't recall that. I'd have to see the reports from
21 the -- report from the Vizanet (phonetic) system which
22 are dispatched.

23 Q. You don't have a recollection of whatever type of make
24 and model of the vehicle that was involved in the
25 events?

1 MR. BLUM: Objection. Asked and answered.

2 THE WITNESS: I don't --

3 THE COURT: Overruled. He can answer that
4 question.

5 THE WITNESS: I don't know. I don't recall
6 that, sir. I'm not saying there wasn't, but I don't
7 recall.

8 BY MR. EDLUND:

9 Q. If you had that information, you would likely include
10 that information in your report?

11 A. Yes, sir.

12 Q. And you got an opportunity to review the report probably
13 since the event took place, right?

14 A. Yes, sir.

15 Q. So you know that that information was not in your
16 report?

17 A. Okay. I don't see the relevance on that, sir.

18 Q. I didn't ask you what the relevance was. I asked you
19 was that information in your report.

20 A. If I didn't deal with the witness, it wouldn't be in
21 there. I responded to a shooting scene. To clarify, I
22 responded to a shooting scene. Apparently there was
23 shots fired, so I forget who was talking to the witness,
24 and I was really looking for bullet holes.

25 Q. And so Officer Lukes was in the road near 37th and

1 Nicollet, approximately --

2 A. Yes, sir.

3 Q. -- as you guys were kind of -- kind of on the scene, so
4 to speak?

5 A. Yes, sir.

6 Q. And was Officer Lukes -- was he stationary in the middle
7 of the road or was he walking across the road in the --

8 A. He was walking across it, sir.

9 Q. And as the vehicle was approaching him, was the vehicle
10 stationary, and then revved its engine or was it moving
11 towards him --

12 A. It was already moving, and then it accelerated. It
13 appeared to me like they were trying to, A, intimidate
14 him, scare him to make him run, or strike him. I mean,
15 I --

16 Q. And before the vehicle accelerated, how quickly was the
17 vehicle moving, from your best guess? I know you didn't
18 have a radar gun out, but what's your sense about --

19 A. It was moving at least speed limit, would be my guess,
20 and accelerated.

21 Q. And then accelerated -- after going the speed limit,
22 then accelerated near Officer Lukes?

23 A. It appeared it was designed to either intimidate or
24 strike Officer Lukes.

25 Q. And how close were you to observing all of that?

1 A. I observed everything. I heard the audible whine of the
2 car accelerating and I observed Lukes running, getting
3 out of the way, so I was probably within 30 feet of
4 him.

5 Q. Similar to the distance you and I are?

6 A. It was a little further, but I mean, there was no other
7 traffic so there was no mistaking what vehicle was
8 involved.

9 Q. And you approached the driver initially, is that right?

10 A. After the stop was made, yes, sir.

11 Q. And you believe that the driver had been drinking, is
12 that right?

13 A. Yes.

14 Q. And you're aware that the driver was not given a
15 citation for DWI?

16 A. No, he wasn't.

17 Q. And so your impression that this person had been under
18 the influence was incorrect?

19 A. No, it was not.

20 Q. It was not -- it was correct?

21 MR. BLUM: Objection.

22 THE WITNESS: I don't think it was incorrect,
23 no.

24 THE COURT: What's the objection?

25 MR. BLUM: Asked and answered, Your Honor.

1 THE COURT: Overruled. He's already
2 answered.
3 BY MR. EDLUND:
4 Q. So he was not charged with DWI --
5 A. Okay. Yes, sir.
6 Q. Right.
7 A. Reckless driving.
8 Q. Reckless driving was dismissed, right?
9 A. I don't know if it was dismissed or not, sir.
10 Q. But your impression initially was this guy had been
11 drinking?
12 A. Had been drinking. It doesn't mean he was under the
13 influence. But if you can smell alcohol --
14 Q. So you believe that you smelled alcohol from the driver?
15 A. Yes, sir.
16 Q. Okay. What was his PBT?
17 A. I didn't PBT him. We didn't have one.
18 Q. Who did the PBT?
19 A. I don't know if anybody did or not.
20 Q. How about a PBT on Mr. Garcia?
21 A. I don't recall. The hospital may have done it.
22 Q. The hospital?
23 A. Maybe, yeah. I don't know. I wasn't there.
24 Q. So you handcuffed the driver first and put him in your
25 squad car, is that right?

1 A. Our squad, yes, sir.

2 Q. And then later came back and was it again you that
3 handcuffed Mr. Garcia?

4 A. Yeah.

5 Q. And when you did, he didn't fight with you, right?

6 A. He was getting to the point where he was aggressive to
7 the point where he cursed at me, number one, okay?

8 Q. What did he say?

9 A. I don't recall what he said. It was some muttered curse
10 word.

11 Q. Well, which one?

12 A. I don't recall, sir. I can tell when somebody's ticked
13 off at me. I can tell when somebody's belligerent with
14 me. I've been doing this for 15 years and I could smell
15 the alcohol. So, again, because of the alcohol, because
16 of the curse word, I decided to put him in handcuffs
17 because that's not the proper way to talk to a police
18 officer and I don't want to escalate into a bigger
19 situation.

20 Q. You were offended by how --

21 A. I wasn't offended. It was just through my years of
22 experience, it's better to take control of somebody
23 before a situation escalates.

24 Q. Better to arrest somebody?

25 A. Well, not -- yes. At that point, it's disorderly

1 conduct. But sometimes you can unarrest people, too.
2 Okay? But again we don't want an escalation of a
3 conflict. We don't want people hurt.

4 Q. You can unarrest people?

5 A. Sure. I can decide not to arrest somebody. It's my
6 discretion. However, that wasn't the case in this
7 case.

8 Q. So after you arrest someone, sometimes you choose to
9 unarrest them?

10 A. Well, we can release them without charging them. Maybe
11 the person needs to calm down. And again, we have
12 discretion.

13 Q. So, you took Mr. Garcia who was a rear-seat passenger in
14 that motor vehicle?

15 A. Yes.

16 Q. Right?

17 A. Uh-huh. Yes, sir.

18 Q. And because you didn't like the way that he communicated
19 with you, arrested him?

20 A. No. It wasn't just the communication. It was body
21 language, it was demeanor, okay? And again, the other
22 passengers -- I just want to identify the passengers,
23 who they are. And at that point, somebody appears to be
24 getting aggressive, belligerent, again, we don't want to
25 escalate the situation.

1 Q. You said there were two other females in the car?
2 A. Yes, sir.
3 Q. What law did those females violate?
4 A. They didn't violate any laws, but I was allowed to
5 identify them because they gave me their names.
6 Q. What law did Mr. Garcia violate?
7 A. Disorderly conduct. City statute. Or I'm sure a city
8 ordinance. Disorderly conduct.
9 Q. And Mr. Garcia, was he cited with disorderly conduct?
10 A. I believe he was.
11 Q. I believe he was cited for obstruction of the legal
12 process without force and minor consumption. Does that
13 sound accurate?
14 A. I'd have to refer to my report.
15 Q. Would you like to take a look at the citation?
16 A. Sure.
17 MR. EDLUND: May I approach, Your Honor.
18 THE COURT: Yes, you may.
19 BY MR. EDLUND:
20 Q. I'm showing you a copy of the citation (indiscernible)
21 Mr. Garcia, the defendant in this matter, if you want to
22 take a look at that.
23 A. Uh-huh. I'd have to look at the badge number. I did
24 not write this ticket. That's why I didn't -- my badge
25 numbers are not on here. The other officer cited --

1 Q. So based on the citation, what charges do you see?

2 A. Obstruction --

3 MR. BLUM: Objection.

4 THE COURT: What's the objection?

5 MR. BLUM: Your Honor, the witness has
6 testified that he did not write this citation, cannot
7 authenticate it in any fashion, and does not have a
8 knowledge of it, and so he would be simply reading from
9 a piece of paper that defendant's counsel has handed to
10 him. Not evidence. Not something that he has personal
11 knowledge of.

12 THE COURT: Any response, Mr. Edlund?

13 MR. EDLUND: Your Honor, I believe that the
14 officer indicated that he was cited for disorderly
15 conduct and I offered the officer to (indiscernible)
16 based on the citation.

17 THE COURT: Okay. Ask him that question.

18 BY MR. EDLUND:

19 Q. As you understand it now, was Mr. Garcia charged with
20 disorderly conduct?

21 A. No, he was not.

22 Q. When you placed handcuffs on Mr. Garcia, was he
23 handcuffed in the front or in the back behind him?

24 A. In the back, sir.

25 Q. And then you placed him in your squad, is that right?

- 1 A. The driver in my squad. The other gentleman went to the
2 other squad.
- 3 Q. Whose was Mr. Garcia placed in?
- 4 A. Officer Lehner's and Wuorinen.
- 5 Q. And you placed Mr. Garcia in the squad?
- 6 A. Yes. I didn't place him. They took him after I
7 handcuffed him.
- 8 Q. Okay. Let's just walk through that, if you can, with
9 us. You have Mr. Garcia get out of the vehicle, right?
- 10 A. Uh-huh.
- 11 Q. Correct? And you handcuff him right kind of near the
12 vehicle behind his back, is that right?
- 13 A. Yes, sir.
- 14 Q. And then what happens after that? Do you --
- 15 A. The other officers came to assist me when they saw me
16 handcuffing him. Because I already had a defendant in
17 our vehicle, we will separate them.
- 18 So the other officers took control after we
19 patted him down and placed him in their car.
- 20 Q. And in your vehicle, does it have a squad camera?
- 21 A. I forget -- may I see the report? I just want to see
22 what squad I had because there's one of our beat cars,
23 our sergeant's cars, they would not. It wouldn't have a
24 VHS cassette.
- 25 MR. EDLUND: I have a copy of that report if

1 the Court would --

2 THE COURT: Fine with me. It's up to you
3 guys.

4 MR. EDLUND: I'd be happy to show you a copy
5 of the report if you'd like.

6 THE WITNESS: Sure. I'd have to see if there
7 was a P number, which is an identification number, on
8 the vehicle and I could tell you or not. Yes, most of
9 them have cameras, but some are inoperable. Yup. 21.
10 I couldn't tell you what squad it was because we have
11 Squad 521, but I don't have a P number on there, so I
12 don't know.

13 They typically do have squad cameras,
14 however, so many vehicles because they're switching to
15 new systems, we don't have VHS cassettes anymore, so if
16 that was a squad with a VHS cassette, which I cannot
17 ascertain, it wouldn't have it.

18 BY MR. EDLUND:

19 Q. Well, I can tell you I've seen a squad video I believe
20 is from your squad.

21 A. Okay.

22 Q. Car with the driver in your vehicle.

23 A. Okay.

24 MR. BLUM: Objection.

25 THE COURT: What's the objection?

1 MR. BLUM: Is that a question or a statement?

2 Improper form.

3 THE COURT: Sustained.

4 BY MR. EDLUND:

5 Q. The individual that was placed in your car --

6 A. Okay.

7 Q. -- was eventually taken to jail, right?

8 A. Yes, sir.

9 Q. And was he taken to jail by you?

10 A. No, no, no, sir.

11 Q. But it was -- help me understand this. It's your
12 vehicle, but you didn't take the person to jail?

13 A. Correct. We didn't transport anybody that night. An
14 assistant squad did.

15 Q. So, ultimately, the person was removed from your vehicle
16 and placed in a different squad, is that right?

17 A. Probably, sir. Yes, sir. We didn't, so yes.

18 Q. And why was that?

19 A. Because we were sitting on a tow waiting, doing
20 paperwork.

21 Q. Sitting on what?

22 A. Sitting on a tow. Waiting for a tow.

23 Q. Waiting?

24 A. And doing paper work.

25 Q. Waiting for -- oh, a tow for the vehicle to be towed?

- 1 A. Yes, sir. I'm assuming that's why we didn't
2 transport.
- 3 Q. Okay. At some point, was Mr. Garcia -- you indicate
4 that he was kicking in the back of Squad 513?
- 5 A. Yes.
- 6 Q. Do you remember that? Is Squad 513 your squad or
7 somebody else's squad?
- 8 A. Somebody else's squad, sir.
- 9 Q. Whose squad is that?
- 10 A. I believe Officer Lehner's and Wuorinen.
- 11 Q. Describe for me what you recall about that process of
12 Mr. Garcia in the back of Squad 513.
- 13 A. I didn't get out of the vehicle. I heard the commotion
14 and kicking in the vehicle. You can hear that. And
15 that was -- I wasn't involved in that situation.
- 16 Q. Well, how close was that Squad 513 to where you were
17 when you were --
- 18 A. Next to us, probably offset a little bit.
- 19 Q. However -- how many feet?
- 20 A. Probably right next to us. I could -- probably right
21 next to us, literally. If I could hear it, we were
22 pretty close.
- 23 Q. So you were in close proximity of Squad 513?
- 24 A. Yes, sir.
- 25 Q. And Mr. Garcia was in the back seat of that vehicle

1 handcuffed, right? And what was going on at that time?

2 A. I didn't see the whole thing. I wasn't out of my
3 vehicle.

4 Q. I'm sorry. Could you sit up.

5 A. Sorry about that. I was in my vehicle dealing with the
6 other party, me and my partner. There was assisting
7 squads there and so I didn't see what happened. I could
8 hear a commotion, and then it stopped.

9 Q. What did you hear?

10 A. Like somebody was kicking the squad.

11 Q. And then it stopped. What did you observe?

12 A. I didn't observe anything, sir. I was dealing with my
13 suspect. There was other officers there so I assumed
14 they -- there was enough people there, so I didn't get
15 out of my squad at all.

16 Q. So you were a few feet away from from Squad 513?

17 A. Yes, sir.

18 Q. And you hear a commotion, right?

19 A. Yes, sir.

20 Q. But you don't look over -- you don't observe what
21 happened?

22 A. No, I really didn't, and it was probably out of my
23 corner view anyhow. Again, I can't -- I didn't see
24 directly what happened, so I can't comment on it. I
25 could hear.

1 Q. You could hear what?

2 A. Like somebody was kicking inside the car.

3 Q. And did you observe one of the officers kick Mr. Garcia
4 in the face?

5 A. No.

6 Q. Did you observe Mr. Garcia being put face down on the
7 concrete?

8 A. No.

9 Q. So you're dealing with the other vehicle and the
10 passengers involved a few feet away and you hear a noise
11 and then there's no more noise, is that right?

12 A. Yes, sir.

13 Q. And that was it?

14 A. That's all I -- yes, sir.

15 Q. And that's all you recall?

16 A. Yes, sir. I was doing something else.

17 Q. I was working, dealing with my suspect in the vehicle.

18 MR. EDLUND: That's all the questions I have,
19 Your Honor.

20 THE COURT: Any questions at all?

21 MR. EDLUND: No, Your Honor. Thank you.

22 THE COURT: Okay. Thanks, Officer.

23 THE WITNESS: Okay. Yes, sir. Thank you.

24 THE COURT: Who are you calling?

25 MR. BLUM: The State calls Officer

1 Wuorinen.

2 THE COURT: I can swear you in.

3 STEVE WUORINEN,

4 after having been first duly sworn, testified on
5 his oath as follows:

6 THE COURT: All right. Please take a seat in
7 the witness stand there. As you approach the
8 microphone, the whole thing moves, so place it in a
9 spot where it fits for you and adjust it so we can hear
10 you.

11 Once you've done that, if you can give us
12 your first and last names and spell your first and last
13 name for us.

14 THE WITNESS: Officer Steve Wuorinen. First
15 name is S-t-e-v-e, last name's W-u-o-r-i-n-e-n.

16 THE COURT: Your witness.

17 DIRECT EXAMINATION

18 BY MR. BLUM:

19 Q. Where are you employed?

20 A. City of Minneapolis, Minneapolis Police Department.

21 Q. And for how long have you been employed there?

22 A. About 18 years.

23 Q. And what, if any other jobs have you had in law
24 enforcement?

25 A. I worked for the Department of Corrections for 12 years

1 prior to being hired by the City of Minneapolis.

2 Q. Can you -- generally what training have you received in
3 conjunction with your career in law enforcement?

4 A. I went through the Minnesota Police Officer's Skills
5 Training course in Edina. Went through the Minnesota
6 Department of Corrections Academy. Minneapolis Police
7 Academy. And there's been various other training since
8 then.

9 Q. And does that training involve, in part, detection of
10 vehicle and traffic law violations?

11 A. Yes, it does.

12 Q. And does that involve detection of alcohol
13 consumption?

14 A. Yes, and -- in fact, I've went through quite a bit of
15 alcohol detection. I went through standard field
16 sobriety testing, advanced field sobriety testing, drugs
17 impaired, I am currently a field -- standard field
18 sobriety testing instructor. I also was a drug
19 recognition officer and, at one point, a drug
20 recognition officer instructor.

21 Q. Okay. In the course of your life and in the course of
22 your career as an officer, have you had an opportunity
23 to come into contact with people who have drank alcohol?

24 A. Yes, I have. In fact, I've been recognized by the
25 Minnesota Department of Public Safety two years for the

1 amount of intoxicated drivers I have removed from the
2 roadways.

3 Q. Let me take you back to December 29, 2013, approximately
4 3 a.m. in the morning. Were you on shift that
5 particular day and time?

6 A. Yes, I was.

7 Q. And what was your assignment location of patrol
8 territory?

9 A. Fifth Precinct. I was assigned to Squad 513 with my
10 partner, Officer Lehner.

11 Q. And is that in the City of Minneapolis, County of
12 Hennepin, State of Minnesota?

13 A. Yes, it is.

14 Q. And what, if anything, were you doing at approximately
15 that time?

16 A. We responded to a shots-fired call. It was the 3700
17 block of Nicollet. Somebody said that they saw a
18 vehicle leaving that area. Another officer called out
19 on a possible match to that vehicle further down on
20 Nicollet, and we responded to that to assist the
21 officer.

22 Q. And what was the result of that response?

23 A. We found a vehicle that would -- was abandoned in that
24 gas station parking lot. Officer Novak, who called out
25 on that stop, was handling that when we heard that

1 another vehicle almost struck one of our officers
2 further north on Nicollet. And that vehicle was
3 traveling southbound.

4 Q. Let's rewind a moment back to the abandoned vehicle.
5 Was it definitive at that point that that was the
6 vehicle that was involved in the shooting?

7 A. No, it was unsure.

8 Q. And you said that you heard something over dispatch.
9 What was that?

10 A. That Officer Lukes had almost been run over by a vehicle
11 that swerved in an attempt to hit him while he was
12 collecting evidence at the shooting scene.

13 Q. And what did you do in response to hearing that
14 dispatch?

15 A. The fact that it was traveling southbound, we responded
16 northbound to see if we could cut that vehicle off.

17 Q. And so, based on your understanding, you would run into
18 that vehicle if it continued on its present course?

19 A. Yes.

20 Q. And do you believe you, in fact, found that vehicle at
21 some point or not?

22 A. We then heard squad car 521 air that they had the
23 vehicle stopped on Nicollet. And we continued normal
24 routine patrol speed to that location.

25 Q. And when you arrived at that location, what were your

1 initial observations?

2 A. I saw that there was a vehicle stopped, that there were
3 three occupants in the vehicle, and that the driver of
4 the vehicle had been removed and Squad 521 was stopped
5 behind that vehicle with its emergency lights on.

6 Q. And what did you do after making those initial
7 observations?

8 A. I saw that -- I lit up his car with my spot light to see
9 who was in the vehicle, and I saw the back driver's side
10 passenger yelling profanity towards me.

11 Q. And what did you do after making that observation?

12 A. I turned off my spot light and pulled along -- made a U
13 turn behind Squad 521 pulling off to its left rear side
14 and stood by in case those officers needed assistance.

15 Q. And what did you observe those other officers doing
16 while you were waiting?

17 A. I saw Officer Kelley approach the vehicle, looked like
18 he start having trouble with the left rear passenger who
19 was giving him a hard time. I saw that he was -- asked
20 him -- asking that passenger out of the car.

21 When I saw that, I went up to the vehicle to
22 assist him because of the hostile behavior that he was
23 displaying when I was alongside of him.

24 Q. And you say that you observed the rear passenger giving
25 Officer Kelley a hard time. How did you come to that

1 conclusion or understanding?

2 A. There was argument between the two.

3 Q. And what did you do upon observing that interaction?

4 A. I got in my squad car and approached to assist in case
5 there was going to be a fight. He was -- that back
6 passenger was placed into handcuffs for our safety,
7 along with his, and then I -- or attempted to escort him
8 back to my squad car, but he pulled away from me. And
9 then I was able to escort him to the trunk of my squad
10 car where I did a pat search of his person.

11 Q. Now, did you notice anything in particular about how the
12 defendant smelled at that point?

13 A. Yeah, I noticed that his speech was slurred as he was
14 talking to us, and that he had a strong odor of an
15 alcoholic beverage on his breath. I also noticed that
16 he appeared to be under 21 years of age.

17 Q. And do you feel that you were able to get a good look at
18 his face?

19 A. Yes. When I was attempting to pat search him and also,
20 I believe, when I was attempting to get his other wrist
21 handcuffed, he was looking back at me and I was able to
22 see his eyes were bloodshot and watery.

23 Q. And if you were to see that person again, would you be
24 able to recognize him?

25 A. Yes.

1 Q. And is that person in the courtroom today?

2 A. Yes. He's seated between you and the defendant's
3 attorney wearing the plaid shirt and, I believe, blue
4 jeans.

5 MR. BLUM: Your Honor, could the record
6 please reflect that the witness has identified the
7 defendant.

8 THE COURT: It does.

9 MR. BLUM: Thank you.

10 BY MR. BLUM:

11 Q. And what occurred after you conducted your pat search?

12 A. Your client was telling me that he's been arrested
13 numerous times and placed in the back of a squad car
14 numerous times. Told me that he was going to be a
15 police officer and continued with his rantings about how
16 I will regret this.

17 I placed him in the back of the squad, shut
18 the door, and I tried to gather his property from the
19 trunk of the squad car.

20 Q. And what, if anything, occurred while you were gathering
21 that property?

22 A. The defendant started kicking the doors of the squad and
23 using his head to hit the squad.

24 Q. As a result of that, did anyone do anything?

25 A. My partner opened the squad car door and told the

1 defendant to stop kicking.

2 Q. And at that point, do you believe that the defendant was
3 going to stop kicking?

4 A. At that time, shortly after Officer Lehner told him to
5 stop kicking and said get out of the car, that's when I
6 stopped doing what I was doing and went to assist
7 Officer Lehner in taking the defendant out of the car to
8 prevent himself from injuring himself or doing damage to
9 the squad car and we placed him down on the ground.

10 Q. And why was he placed down on the ground?

11 A. To restrict his movement.

12 Q. And at any point in time, was the defendant --

13 MR. BLUM: Strike that, Your Honor.

14 BY MR. BLUM:

15 Q. At any point in time, did the defendant identify
16 himself?

17 A. Yes, he did.

18 Q. And what do you recall about that identification?

19 A. The name that he gave us did not come back on file and,
20 later on, we learned that he had given us a false name.

21 Q. And do you have an understanding of how the defendant
22 became injured?

23 A. After he was out of the squad car, my partner told me
24 that he was injured and I saw that he apparently was
25 bleeding from the mouth area.

1 Q. And as a result of observing that, did you do or conduct
2 the defendant anywhere? Did you do anything or conduct
3 the defendant to any place?

4 A. Yes, we had paramedics respond, and we also had a street
5 supervisor respond for use of force.

6 Q. And was the defendant transported anywhere after this?

7 A. Yeah. I transported him to Hennepin County Medical
8 Center to be treated.

9 Q. And inside the hospital, was there any interaction
10 between you and the defendant?

11 A. Yes.

12 MR. EDLUND: Objection. Relevance.

13 THE COURT: What's the relevance?

14 MR. BLUM: Your Honor, I intend to show that
15 his conduct was consistent throughout the evening of
16 being belligerent and that's the relevance of the
17 interaction.

18 THE COURT: Anything to add?

19 MR. EDLUND: I don't believe it is relevant
20 to the issues at hand today, Your Honor.

21 THE COURT: At this point, how's it -- I'm
22 assuming, since we're beyond the scope, and -- I have
23 three issues for Mr. Edlund. Expansion of the stop,
24 the seizure of his client, and then he has the shock
25 the conscience issue.

1 How is it related to any three of those
2 issues?

3 MR. BLUM: It's related to all three, Your
4 Honor. Because the defendant's self-inebriation by
5 alcohol is the root issue in all of those points. The
6 expansion of the scope of the stop was, in part,
7 because officer observed that he was drinking alcohol
8 and under age and belligerent.

9 The seizure of the defendant for those same
10 reasons. And as far as anything that shocks the
11 conscience, I don't see that yet, Your Honor. But per
12 -- at least for those first two issues, it shows that
13 the defendant was consistent throughout the evening in
14 being belligerent and drunk under age.

15 THE COURT: Is this your last question along
16 those lines or have you got several more?

17 MR. BLUM: It was probably the last, Your
18 Honor.

19 THE COURT: All right. I'll let him answer
20 the last question.

21 MR. BLUM: Thank you, Your Honor.

22 THE COURT: And we'll see where it goes.

23 THE WITNESS: Can you repeat the question?

24 BY MR. BLUM:

25 Q. Generally what was the extent of the interaction between

1 you and the defendant in the hospital? What was said,
2 what happened?

3 A. He continued to yell profanities. Told me to try my
4 shit now. Told me that I was going to regret this.
5 Told me to take off my badge. His behavior also
6 continued towards medical staff where the nurses had
7 addressed to me that he was unpleasant to deal with, and
8 they had to isolate him from other patients from
9 disturbing them.

10 Q. And what happened after the defendant was treated that
11 evening?

12 A. He was left at the hospital. I issued a citation, I
13 believe, for violations.

14 MR. BLUM: No further questions.

15 THE COURT: Any cross-examination?

16 MR. EDLUND: Yes.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. EDLUND:

20 Q. Officer Wuorinen?

21 A. Wuorinen.

22 Q. Wuorinen. Good morning.

23 A. Good morning, sir.

24 Q. You told us a little bit about your experience in any
25 kind of alcohol detection earlier.

- 1 A. Yes, sir.
- 2 Q. And so it sounds like you observed the odor of alcohol
3 in dealing with Mr. Garcia, is that right?
- 4 A. Yes, sir.
- 5 Q. And tell us about that. Was that when he was still in
6 the motor vehicle, while he was outside of the motor
7 vehicle?
- 8 A. It was out -- as soon as he got outside of the car that
9 he was riding in, I could smell the strong odor of an
10 alcoholic beverage on his breath.
- 11 Q. So as Mr. Garcia was a back-seat passenger in the motor
12 vehicle, you had not detected the odor of alcohol at
13 that point?
- 14 A. I wasn't present at the time he was still in the
15 vehicle. He was being asked out at the time I
16 approached to assist Officer Kelley.
- 17 Q. So your first interaction with Mr. Garcia, he was
18 already being removed from the vehicle?
- 19 A. Yes, sir.
- 20 Q. You mentioned another squad, Squad 521?
- 21 A. Yes, sir.
- 22 Q. That's not your squad, right?
- 23 A. No, sir.
- 24 Q. You were Squad 513?
- 25 A. Yes, sir.

1 Q. And I believe you indicated that as you approached the
2 scene, Squad 521 had the lights on, activated, is that
3 right?

4 A. Yes. It had its emergency lights on.

5 Q. And in your experience having emergency lights on, does
6 that activate the squad video camera, as well?

7 A. It depends on what -- what switch they're at. The
8 emergency light's activated by -- or the camera
9 activated by emergency lights has to be in the third
10 level, okay? The first two levels will not activate the
11 lights.

12 Q. And so it sounds like it's -- the officer can choose to
13 activate the recording device or not, is that fair?

14 A. There's also a button that we can push to activate the
15 recorder.

16 Q. And that activates it and to de-activate it, right?

17 A. Yes.

18 Q. And was your squad video recording the events that took
19 place on this date?

20 A. No.

21 Q. Why is that?

22 A. Because I wasn't making a traffic stop.

23 Q. Did you have your lights illuminated?

24 A. My -- which -- my headlights or what lights are you
25 pertaining to on my squad car?

1 Q. Well, let's -- walk me through. What lights did you
2 have available, and which ones did you have on?

3 A. Well, I had my headlights on, my taillights on. I
4 turned on and then turned off my driver's spot light,
5 and once I got behind Squad 521 to assist, I had my rear
6 emergency lights on to warn traffic that I was blocking
7 that traffic lane.

8 Q. And so it sounds like you did not move to that third
9 switch to instigate your recording device?

10 A. No. Because I wasn't the one that made the stop.

11 Q. And that's your practice, if you're not the one making
12 the stop, you don't choose to activate the recording
13 device?

14 A. I do not activate my lights -- or my recording unless
15 I'm taking somebody out for DWI testing, which I did not
16 take your client out for DWI testing.

17 Q. And you didn't give him a PBT test either, did you?

18 A. I don't believe I did a PBT. I may have offered it to
19 him, but I don't think he complied with that offer, if I
20 did, because it would have been in my report.

21 Q. Does your report indicate offering him a PBT?

22 A. I don't remember, sir.

23 Q. Would you like to take a look at your report to refresh
24 your memory as to whether or not you offered him a PDT?

25 A. Sure.

1 MR. EDLUND: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. EDLUND:

4 Q. I'm showing a copy of Supplement Number 1, which I
5 believe has a heading with your name on it and take an
6 opportunity to review that to review the issue of
7 whether or not you believe you offered Mr. Garcia a PBT.

8 A. Okay. It doesn't appear that I put any reference into
9 that, sir.

10 Q. When Mr. Garcia was placed in the back of your squad,
11 were you the officer that physically placed him there or
12 was there somebody else that physically put him in the
13 back of the squad car?

14 A. I placed him in there.

15 Q. And where were the other officers at the time when you
16 placed Mr. Garcia into your squad? Where were the other
17 officers at that time?

18 A. You know, sir, when I'm dealing with a prisoner, I focus
19 my attention on that person because it's a safety issue.
20 And once I put them in that car and shut my door, my
21 other attention was his property that was on my trunk.
22 I want to secure that so none of it's damaged or blowing
23 away or whatever else because I couldn't tell you where
24 the other people were.

25 Q. Was there another squad near your squad car?

- 1 A. Yes, as I said, I parked to the left rear of Squad 521.
- 2 Q. And how much distance are we talking about between you
3 and Squad 521?
- 4 A. I'm not really sure. Probably five to ten feet.
- 5 Q. So closer than you and I are right now?
- 6 A. Yeah, maybe.
- 7 Q. And so you placed Mr. Garcia in the back of the squad.
8 How long was it that he was in the back of your squad
9 before your partner asked him to stop kicking?
- 10 A. I'm not sure. A few minutes. Maybe less.
- 11 Q. And I know this happened back in December, but do you
12 have a sense of whether one minute, twenty minutes, your
13 best recollection?
- 14 A. Sir, I said a few minutes, maybe less. Your client
15 started kicking right away and banging his head on the
16 squad as soon as the door was shut.
- 17 Q. It was your perception that he was not happy with being
18 in the back of the squad, right?
- 19 A. Yup.
- 20 Q. And so as I understood you to say you -- the squad door
21 was open to prevent what? To help him or to prevent an
22 incident? What is it -- why is it that the squad door
23 was opened?
- 24 A. He was kicking the squad with his feet, he was banging
25 his head on the Plexiglas and on the bars of the window

1 and anywhere else I'm sure he could reach. If we'd
2 allow that to happen long enough with enough force, the
3 squads can get damaged. We've had squad doors that are
4 out of alignment because of people kicking them.

5 We've also had prisoners injure themselves,
6 and then claim that officers injured them because they
7 were banging their heads on the squad car.

8 Q. And I've seen quite a few Minneapolis squad car videos.
9 It's my understanding that you also have the ability to
10 videotape the back prisoner area of the squad car, isn't
11 that right?

12 A. Yes.

13 Q. And so in the event, again, to prevent what you're
14 talking about, to prevent a false claim of somebody
15 claiming police abuse, you can start the camera and
16 videotape exactly what's going on in the back seat,
17 right?

18 A. Yes.

19 Q. That didn't happen in this case, though?

20 A. No.

21 Q. So, instead of turning on the squad video and leaving
22 Mr. Garcia to his own devices in the car, was it you who
23 opened the back door or your partner?

24 A. My partner.

25 Q. And where were you when your partner opened the door?

- 1 A. I was standing by the back of the car collecting Mr.
2 Garcia's property.
- 3 Q. And just kind of looking at this space of that, that's,
4 what, two or three feet away, trunk area to where the
5 back door is?
- 6 A. Oh, not that much. It would be under two feet.
- 7 Q. Close enough where you could almost touch the other
8 officer, right?
- 9 A. Maybe.
- 10 Q. And so the other officer, he opened the door, Officer
11 Lehner?
- 12 A. Lehner.
- 13 Q. Officer Lehner opens the door. Have you advised Mr.
14 Garcia to stop kicking before you opened the door or
15 after you opened the door?
- 16 A. You know, I was picking up your client's property so I
17 wasn't watching what my partner was doing. However, I
18 did hear him say stop kicking.
- 19 Q. And you don't recall if that was before the door was
20 opened or after the door was opened?
- 21 A. No, I don't.
- 22 Q. What property were you picking up on the trunk?
- 23 A. I forget what was on his person I collected.
- 24 Q. Was it a lot of items? Was it --
- 25 A. Yeah, there was a lot of items. It could have been a

1 cell phone. I don't recall. Nothing's of use for me.
2 I just know that once I check people's property, it's
3 important for them to get their property back and that
4 was my focus.

5 Q. So your focus was on the property of Mr. Garcia which
6 had been placed on the trunk?

7 A. Yes.

8 Q. And so the door opens and what did you observe after the
9 door opened?

10 A. I saw that Officer Lehner was telling him to get out of
11 his squad. I went, then, to assist Officer Lehner put
12 him on the ground, laying down.

13 Q. Officer Lehner was telling Mr. Garcia to get out of the
14 squad?

15 A. Yes.

16 Q. And what was Mr. Garcia doing at that time?

17 A. He was sitting in the squad.

18 Q. Was Mr. Garcia conscious at that point?

19 A. I didn't see his face when he was sitting in the car.
20 He was facing away from me.

21 Q. Did you observe Officer Lehner kick Mr. Garcia?

22 A. No, I did not.

23 Q. So, you were two feet away, close enough to touch your
24 partner, but you did not observe your partner kick Mr.
25 Garcia?

1 MR. BLUM: Objection; asked and answered.

2 THE COURT: Sustained.

3 BY MR. EDLUND:

4 Q. So, if Mr. -- as your partner asked Mr. Garcia to get
5 out of the car, did Mr. Garcia say anything?

6 A. No. No. He may have -- yeah, he said stuff after he
7 was placed on the ground, but --

8 Q. And when you said placed on the ground, you mean that he
9 was face first, handcuffed on the concrete sidewalk,
10 right?

11 A. No. He was placed down into the street laying face
12 first. It was on pavement; not this concrete
13 sidewalk.

14 Q. On the pavement?

15 A. Pavement.

16 Q. So on the street?

17 A. Yes.

18 Q. Handcuffed, right?

19 A. Yes.

20 Q. Face first?

21 A. Yup.

22 Q. Bleeding profusely out of his face, right?

23 A. He was bleeding from the mouth.

24 Q. And missing his two front teeth?

25 A. I didn't know that until I was told later at the

1 hospital.

2 Q. When did you learn that?

3 A. At the hospital.

4 Q. Do you typically take people to the hospital after you
5 arrest them?

6 A. At times.

7 Q. And why, in this case, did you take him to the hospital
8 as opposed to taking him to jail?

9 A. He was injured. There's two policies. One, if a
10 prisoner is injured, we're responsible to take him to
11 the hospital to be treated. If a juvenile is
12 intoxicated, we're also responsible to take him to the
13 hospital to be treated for alcoholism.

14 Q. What was his PBT?

15 A. Sir, you clearly stated that we did not PBT him.

16 Q. I believe you stated that.

17 MR. BLUM: Objection, Your Honor. I believe
18 this has been asked and answered multiple times.

19 THE COURT: There's actually no question.

20 MR. BLUM: (Indiscernible).

21 THE COURT: The officer said that Mr. Edlund
22 (indiscernible).

23 BY MR. EDLUND:

24 Q. So how long was it that Mr. Garcia lied in the street
25 bleeding from the mouth?

1 A. I don't remember.

2 Q. Well, as you recall and think about it now, do you have
3 an estimate of whether it was one minute, twenty
4 minutes, how long it might have been?

5 A. It wasn't 20 minutes. We called for an ambulance. A
6 few minutes.

7 Q. And during the time that Mr. Garcia was face down on the
8 pavement, was he conscious?

9 A. Yes.

10 Q. How do you know that?

11 A. He was moving around, and he was talking.

12 Q. What was he saying?

13 A. Swearing at us.

14 Q. He was swearing at you?

15 A. Yes.

16 Q. Did he seem to be upset that your partner had kicked his
17 teeth out of his face?

18 A. He was swearing; his behavior prior to us making contact
19 with him swearing. As I told you was when I pulled up
20 first alongside of him, he was swearing at me from the
21 back seat of the car. His demeanor did not change.

22 Q. How long was Mr. Garcia unconscious, as you recall?

23 A. Sir, did I not say he was unconscious.

24 Q. I didn't say that you said that. I'm asking how long do
25 you recall him being unconscious?

1 A. I'm not aware of him being unconscious.

2 Q. You didn't observe that?

3 A. No.

4 Q. Because you were focused on the property?

5 A. I don't know of him ever being unconscious, sir.

6 MR. EDLUND: That's all the questions I have,

7 Your Honor.

8 THE COURT: Any redirect?

9 MR. BLUM: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BLUM:

12 Q. When someone is belligerent and uncooperative, do you
13 always give them a PBT?

14 A. No.

15 Q. Do you always put the camera on in every situation that
16 might merit it?

17 A. No.

18 MR. BLUM: Nothing further.

19 THE COURT: Any other questions?

20 MR. EDLUND: No.

21 THE COURT: You may step down.

22 How many more officers do you have?

23 MR. BLUM: Just one.

24 THE COURT: I need to take a quick break,
25 about 10 minutes.

1 MR. BLUM: Okay. All right.

2 THE COURT: Then we'll get to that one. You
3 guys can take a break.

4 (WHEREUPON, recess was had).

5 MR. BLUM: The State calls Officer Lehner.

6 BLAYNE LEHNER,

7 after having been first duly sworn, testified on his
8 oath as follows:

9 THE COURT: The microphone, the whole thing
10 moves. Just find a spot that's comfortable for you,
11 and then you can adjust the mic. And then when you're
12 ready, can you give us your first and last name and
13 spell your first and last names for us.

14 THE WITNESS: My first and last name is
15 Blaine Lehner. First name is spelled B-l-a-y-n-e.
16 Last name is L-e-h-n-e-r.

17 THE COURT: Thank you. Your witness.

18 MR. BLUM: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. BLUM:

21 Q. Where do you work?

22 A. I work for the City of Minneapolis Police Department.

23 Q. And for how long have you worked there?

24 A. Over 15 years.

25 Q. And what, if any, other jobs have you had in law

1 enforcement?

2 A. None, prior to this.

3 Q. Generally, what, if any, training have you had in
4 conjunction with your career in law enforcement?

5 A. Well, throughout the Minneapolis Police Department, we
6 have service training. I've also done other training
7 outside of Minneapolis Police Department through the
8 BCA. Also when I went to Hennepin County Community
9 College to get my two year A.S. degree, I did law
10 enforcement training there, as well.

11 Q. And does that involve in any way detection of alcohol
12 consumption?

13 A. It does.

14 Q. And over your 15-year career in law enforcement as well
15 as your personal life, have you had the opportunity to
16 come into contact with people who have consumed alcohol?

17 A. I have.

18 Q. And how many people have you come into contact with on
19 the job that have consumed alcohol?

20 A. More than I could even count. Thousands upon
21 thousands.

22 Q. Let me take you back to December 29, 2013, approximately
23 3 a.m. Were you on shift or duty at that time?

24 A. I was.

25 Q. And what was your assigned location or patrol territory?

1 A. I believe Squad 513 with Officer Wuorinen, and we were
2 assigned to the northern sector of Fifth Precinct, which
3 is north of Lake Street.

4 Q. Was that in Minneapolis, Hennepin County, State of
5 Minnesota?

6 A. It is.

7 Q. And what, if anything, occurred at approximately that
8 time, 3 a.m.?

9 A. At that time, there was shots fired per gun/fight call
10 in the area of 37th and Nicollet Avenue South. We
11 responded to that location because of the severity of
12 the crime and, upon going there, there was a description
13 of the vehicle that was given out and then the officer
14 called out they may have been with that vehicle further
15 south of that location, so we went to assist him. And
16 at that time --

17 Q. And at that time or any other time, was it ever
18 confirmed that that initial vehicle was involved in the
19 shooting?

20 A. We conducted a real quick investigation on that vehicle
21 that was called out and it was found it wasn't involved.
22 And also during at that time, other officers had stated
23 that there was actually a scene at 37th and Nicollet
24 where there was spent casings on the street.

25 Q. And were you involved in that scene in any way at all?

- 1 A. No.
- 2 Q. What happened next?
- 3 A. While down with the other officers at that prior
4 vehicle, I heard on the radio Officer Misgen said that a
5 vehicle, a four-door gray vehicle, had almost struck his
6 partner and that the vehicle is traveling southbound on
7 Nicollet.
- 8 Q. What did you do in response to hearing that dispatch?
- 9 A. We had already decided that the vehicle that we had
10 stopped further south was not involved, so myself and
11 Officer Wuorinen got in the squad car and went towards
12 the location where the vehicle was leaving.
- 13 Q. And did you, in fact, come upon any vehicles?
- 14 A. We did. Squad 521, Officer Kelley and his partner,
15 Maloy, had stopped a gray-colored vehicle, had four
16 occupants in it.
- 17 Q. At 3 a.m. in this part of Minneapolis, were there a lot
18 of vehicles on the road?
- 19 A. No, there are not.
- 20 Q. And what did you do upon arriving at the scene?
- 21 A. I was passenger in the squad car, and Officer Wuorinen
22 pulled up parallel to the stopped vehicle and we just
23 essentially helped the squad car that had the vehicle
24 stopped.
- 25 Q. And so did you get out of your squad car?

1 A. I did not. The officer went into -- my partner shined
2 the spot light on the car to light it up even more for
3 the other officers. While looking into the squad, the
4 driver had already been removed by Officer Kelley and
5 Maloy, and the defendant here was in the back seat
6 behind the driver's seat, and he was staring at us and
7 cursing at us inside the vehicle, and you could tell by
8 looking at him that he was intoxicated.

9 Q. Now, you said the defendant here. Are you referring to
10 somebody in the courtroom?

11 A. I am.

12 Q. And is there somebody in the courtroom that is, in fact,
13 that passenger that you observed on that evening in the
14 back seat?

15 A. Yes. He's sitting between the two attorneys, he's
16 wearing a grayish reddish flannel button-up shirt.

17 MR. BLUM: Your Honor, if the record could
18 reflect that the witness has identified the
19 defendant.

20 THE COURT: It does.

21 MR. BLUM: Thank you.

22 BY MR. BLUM:

23 Q. And what happened next after the spot light was shown on
24 the car?

25 A. Officer Wuorinen then pulled north on Nicollet and did a

1 U-turn behind Squad 521 and then I just stayed in the
2 squad and I saw Officer Kelley go back up to the vehicle
3 that had stopped, and he was talking with the passengers
4 inside, including the defendant.

5 And he was -- you could hear with the window
6 down that he was getting information and then when he
7 was talking to the defendant here, the defendant was
8 cursing at him, refusing to give his name and that type
9 of stuff.

10 Q. And so what happened next after that point?

11 A. I heard and observed Officer Kelley ask the defendant to
12 get out of the car. At that point, my partner got up
13 there, too, and then I exited my squad and approached
14 Officer Wuorinen and Officer Kelley who were dealing
15 with the defendant.

16 Q. And can you describe the defendant's demeanor at this
17 point out of the vehicle?

18 A. He was extremely agitated. He was cursing at us. He
19 was intoxicated. He had bloodshot and red eyes, and you
20 could smell it coming from his breath. He was just
21 belligerent and moving around a lot.

22 Q. So based on your training in alcohol detection, you
23 believe that he had consumed alcohol?

24 A. Oh, for sure.

25 Q. And did you get a good chance to look at his face?

1 A. I did.

2 Q. And could you make a judgment at that point in time
3 regarding his age?

4 A. He appeared to be under the age of 21.

5 Q. Are people allowed to consume alcohol under the age of
6 21 in this state?

7 A. With their parents' permission, but he didn't have a
8 parent with him and he was out in public, so, no, not in
9 his case.

10 Q. There were other passengers in the car, though,
11 correct?

12 A. There were.

13 Q. And did you get a chance to observe those passengers?

14 A. I did.

15 Q. And could you say whether or not you knew the
16 approximate age?

17 A. They appeared to be under 21, as well.

18 Q. Do you think that there's any possibility that any of
19 those other people were his parents?

20 A. No possibility.

21 Q. And you said that you heard him cursing. Do you
22 remember any of those curse words?

23 A. It's been too long.

24 Q. And so from the point of him being out of the vehicle
25 and being in contact with Officer Kelley, how did you

1 observe Officer Kelley proceed at that point?

2 A. Due to his belligerent behavior and his being arrested
3 for a minor consumption, they handcuffed him and then
4 Officer Wuorinen walked him back to the squad car, our
5 squad car, actually.

6 And then I stayed up at the vehicle to talk
7 with the two females because they were screaming at the
8 defendant to cooperate with the police and to stop
9 arguing and cursing at us. And then I heard the
10 defendant cursing again at Officer Wuorinen at the back
11 of the squad car, so I walked back to assist him.

12 Q. And what did you observe when you went back to assist
13 Officer Wuorinen?

14 A. The defendant was just cursing at him and essentially
15 trying to get into his face, making it hard for him to
16 calm him down, but Officer Wuorinen finished and opened
17 up his squad and had him sit in the squad.

18 Q. And at that point, what did you proceed to do?

19 A. The squad door was shut, and I just stayed at the back
20 side -- or the back of the squad car, and I was just
21 talking to Officer Wuorinen. And while there, I noticed
22 the defendant was thrashing around and kicking inside
23 the back seat of the squad car, so I opened up the squad
24 door to prevent him from damaging the squad and to tell
25 him to stop doing what he's doing.

1 And at that point, he kicked at me and he
2 reared up to kick again, so I lifted my leg to prevent
3 him from kicking me and to keep him in the squad, and
4 at the same time, when I pushed him -- pushed at him to
5 keep him in the squad, he moved forward, and I ended up
6 hitting him in the face.

7 And then he was pushed back in the squad and
8 the door was shut. At that point, he wasn't thrashing
9 around anymore or kicking anymore in the back seat of
10 the car, so he was left there for now.

11 Q. So was it your intention to hurt the defendant when you
12 kicked him?

13 A. Absolutely not.

14 Q. And if someone is left alone thrashing around in the
15 vehicle, what could happen?

16 A. They can severely hurt themselves. I've had numerous
17 incidents with people who thrash around the back.
18 They've hit their heads on the divider between the front
19 seat and the back seat and they slice their heads open.
20 They've hurt their legs. All types of different
21 injuries.

22 Q. Now, are the back seats of squad cars indestructible?

23 A. No.

24 Q. So is it possible that he could have damaged the vehicle
25 as well?

1 A. He could have, yes.

2 Q. And what occurred after you tried to get him back into
3 the vehicle?

4 A. Well, he was pushed in the vehicle, the door was shut
5 right away. Then I opened it. He was pulled from the
6 vehicle and sat down on the street. It was done to
7 again get control of him again and to make sure he
8 didn't continue to damage property and start again.

9 When he was on the street, he calmed down and
10 I was with him 30 seconds. He was asked if he was
11 going to stay calm. He said he was. He stood back up,
12 put in the squad car, and that's where he stayed.

13 Q. Did you make any observations of the defendant's
14 physical appearance or his state while he was on the
15 ground outside?

16 A. I did. I noticed that he was bleeding from his mouth.
17 I checked to see how it was, and it appeared to be minor
18 at this time and that's when he was sat up and put back
19 in the squad car.

20 Q. So after he was put back in the squad car, what did you
21 proceed to do next?

22 A. We have a policy if there's force used on the scene to
23 call out a supervisor or, if there's injury, call out a
24 supervisor, and the sergeant ultimately came out and did
25 his force investigation and review.

1 After that, it was decided that we would book
2 -- he was going to be booked in the jail, but due to
3 his injuries, he was transported to Hennepin County
4 Medical Center by Officer Wuorinen and received medical
5 attention.

6 Q. And you said that you transported him, is that
7 correct?

8 A. We did, yes.

9 Q. And?

10 A. Officer Wuorinen and myself.

11 Q. And you were both with him in the hospital?

12 A. I may have stayed out in the squad to do the report,
13 but, yeah, he was brought there, and I believe Officer
14 Wuorinen walked him in.

15 Q. At any time did the defendant verbally identify himself?

16 A. He did to me.

17 Q. Do you recall what name he used?

18 A. It was not his real name. I'd have to check my
19 report.

20 Q. And how do you know that wasn't his real name?

21 A. We found out later, I believe -- it's been a while. I
22 believe I typed the name he gave me into our Capper
23 (phonetic) system which then showed his other name,
24 which ended up being his real name.

25 Q. Do you recall any conduct at the hospital or any

1 interaction between yourself and the defendant or the
2 defendant and your partner?

3 A. I don't.

4 MR. BLUM: Nothing further.

5 THE COURT: Any cross-examination?

6 MR. EDLUND: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. EDLUND:

9 Q. Good morning, Officer Lehner?

10 A. It is. Lehner.

11 Q. Pardon me?

12 A. I just said good morning.

13 Q. Oh, good morning, yeah. Lehner is correct --

14 A. It is.

15 Q. -- pronunciation?

16 And why did you kick Mr. Garcia's teeth out?

17 A. I didn't kick his teeth out.

18 Q. How did his teeth come to be removed from his face?

19 A. I have no idea.

20 Q. You don't know?

21 A. I have no idea.

22 Q. When you first interacted with Mr. Garcia, did he have
23 his two front teeth in his face?

24 A. He had all his teeth, yes.

25 Q. When you dropped him off at HCMC, did he have his two

1 front teeth in his face?

2 A. He did.

3 Q. He did.

4 A. As far as I know, he did, yeah. If he lost them later,
5 I have no idea what happened.

6 Q. You are not aware that he was missing his two front
7 teeth after you kicked him in the face?

8 A. I was not aware of that, no.

9 Q. Really?

10 A. Yeah.

11 MR. BLUM: Objection.

12 THE COURT: What's the objection?

13 MR. BLUM: Asked and answered.

14 THE COURT: Sustained.

15 BY MR. EDLUND:

16 Q. So this is the first time that you've learned since
17 December that he -- you removed his two front teeth from
18 his face?

19 MR. BLUM: Objection.

20 THE COURT: What's the objection?

21 MR. BLUM: Witness already testified that he
22 didn't know.

23 THE COURT: Overruled. He asked him if this
24 is the first time he found this information out.

25 THE WITNESS: Yes.

1 THE COURT: Answer the question.

2 THE WITNESS: Yes. I'm sorry.

3 BY MR. EDLUND:

4 Q. Officer, you indicated that when you arrived on the
5 scene, Mr. Garcia was already being removed from your
6 car, is that right?

7 A. I did not testify to that.

8 Q. Okay. Let me backtrack.

9 A. Okay.

10 Q. As you arrived on the scene, was Mr. Garcia still in the
11 motor vehicle or was he -- had he been removed
12 already?

13 A. He was still in the motor vehicle.

14 Q. Okay. And at that time as you observed him, could you
15 smell any odor of alcohol on Mr. Garcia at that time?

16 A. No.

17 Q. And did you remove Mr. Garcia from the vehicle or was he
18 removed by somebody else?

19 A. A different officer.

20 Q. So prior to Mr. Garcia being removed from the vehicle,
21 you did not smell the alcohol on Mr. Garcia?

22 A. No.

23 Q. As Mr. Garcia was handcuffed and put in your squad car,
24 did you handcuff him or was that somebody else?

25 A. I did not do it, but I don't know who did, which one of

- 1 the two other officers.
- 2 Q. And I think you said that while he was still in the
3 motor vehicle, there was some cursing going on, isn't
4 that right?
- 5 A. When we first arrived, yes.
- 6 Q. Towards what officer?
- 7 A. I assume it would be as he was looking at us. I don't
8 know if it was my partner or myself.
- 9 Q. And do you recall what curse words he would have said?
- 10 A. No. No. But you could see him mouth it.
- 11 Q. See him mouth what?
- 12 A. The word fuck. Very plain to see when someone says
13 it.
- 14 Q. Did you write the word fuck in your police report?
- 15 A. No.
- 16 Q. Did you write the word shit in your police report?
- 17 A. No, I didn't write any curse words.
- 18 Q. You didn't?
- 19 A. No.
- 20 Q. As Mr. Garcia was placed in the back of your squad, I
21 believe you said he was kicking, is that right?
- 22 A. He was.
- 23 Q. And he was handcuffed at that time, is that right?
- 24 A. He was.
- 25 Q. And was he handcuffed in the front of his person or

1 behind his back?

2 A. In back.

3 Q. And in the back of the squad car, it's a relatively
4 little space in the back, right?

5 A. I guess.

6 Q. They're not built for the comfort of the passenger?

7 A. No. But you can fit a very large individual back
8 there.

9 Q. And so Mr. Garcia is in the back of the squad car, by
10 himself?

11 A. Yes.

12 Q. Okay. And there's a partition or a wall in between the
13 passenger and the front -- the driver area, right?

14 A. Yes.

15 Q. Is it Plexiglas or something?

16 A. Well, there's like a sheet metal on the bottom half and
17 Plexiglas on the top, yes.

18 Q. And it's just designed, obviously, so the person in the
19 back can't have contact with the people in the front?

20 A. Yes.

21 Q. Right?

22 And that was the case in this vehicle?

23 A. Yes. There was a partition.

24 Q. Yes. And so, Mr. Garcia, you knew what he did in the
25 back was not going to get through that partition to the

- 1 front of the vehicle?
- 2 A. No, that's not true.
- 3 Q. Have you had people come through that partition?
- 4 A. I personally, no. But can you do it? Gee, I could
- 5 handcuff myself behind my back and get through the
- 6 Plexiglas, absolutely.
- 7 Q. How would you do that?
- 8 A. I'd kick it.
- 9 Q. You'd kick it?
- 10 A. Yeah, it's not that thick. It's not a Plexiglas like a
- 11 bullet-proof window that's this big. It's Plexiglas
- 12 that's this, that slides shut. It's essentially made,
- 13 in that case, to not get spit on.
- 14 Q. Could you show us the photographs of the damage that Mr.
- 15 Garcia did to the vehicle.
- 16 A. There are none because we didn't allow him to damage the
- 17 vehicle or hurt himself.
- 18 Q. So, Mr. Garcia did not cause any damage to the vehicle?
- 19 A. Because we didn't allow him to.
- 20 Q. He did or did not cause damage to your vehicle?
- 21 A. He did not. Because I didn't allow him to.
- 22 Q. And he did not damage or injure his own self?
- 23 A. Right. Was he injured by the actions that he was
- 24 performing at the scene? Did my foot hit his face?
- 25 Yes. If that's what you're talking about.

- 1 Q. I'm asking you if, before you kicked him in the face --
- 2 A. Uh-huh.
- 3 Q. -- removing his two front teeth from his face, did he
- 4 cause himself injury prior to that event?
- 5 A. No, because I did not allow him to.
- 6 Q. Right. The only injury came at your actions kicking Mr.
- 7 Garcia?
- 8 A. And Mr. Garcia's actions.
- 9 Q. You opened the rear door where Mr. Garcia was seated,
- 10 right?
- 11 A. Yes.
- 12 Q. And where was your partner at that time?
- 13 A. The back of the squad. I don't know. I don't know for
- 14 sure.
- 15 Q. How close was he to you?
- 16 A. I can't answer that. I don't know.
- 17 Q. Well, did you see him?
- 18 A. You'll have to ask him.
- 19 Q. I did ask him. I'm asking you.
- 20 A. I don't know.
- 21 Q. You don't recall seeing him?
- 22 A. He was at the scene, yes, but I don't know how far away
- 23 he was from me.
- 24 Q. You don't recall how close he was to you when you kicked
- 25 Mr. Garcia in the face?

- 1 A. No.
- 2 Q. As you opened the door -- did you ask Mr. Garcia to stop
3 kicking before you opened the door or after you opened
4 the door?
- 5 A. I don't know on that one. It's been too long. I don't
6 know if it was while I was opening the door or before.
- 7 Q. It was your goal to kind of ask him to stop kicking?
- 8 A. It was to gain control with him.
- 9 Q. Well, he was controlled in the back of the squad, right?
- 10 A. No.
- 11 Q. Well, was he going to escape from the back of the of
12 your squad?
- 13 A. He may. You never know.
- 14 Q. How would he do that?
- 15 A. By breaking the Plexiglas partition. He was flailing
16 around and kicking back there. And also, his ability to
17 hurt himself -- because, like I testified before, I've
18 seen numerous people severely injure themselves back
19 there.
- 20 Q. How many people have you had escape from the back of
21 your squad car?
- 22 A. I personally have never had one.
- 23 Q. How many have you heard of who have escaped from
24 Minneapolis police officers' back seats of a squad
25 handcuffed?