

Mr. Garcia-Pineda was discharged from HCMC on 12-29-2013 at 2044 hours with a recommendation that he follow up with oral surgery in approximately two weeks and suture removal in 5 days.⁹

Dental Records

Community University Health, Dr. Edgar Mantilla, DDS
2001 Bloomington Ave. Minneapolis, MN

13.384 - Medical Data

Force Review Interview by Sgt. Altonen

Officer Lehner notified Sgt. Altonen of the use of force and Sgt. Altonen responded to the scene to conduct a supervisor's use of force investigation. He reported that, "Officer Lehner told me that while the AP was in the back of the squad AP began to start kicking inside the back of the squad. Officer Lehner said he opened the rear door and the AP tried kicking him. Officer Lehner ended up using his foot to gain control of him, striking AP in the face one time with his foot. AP was taken to HCMC."¹²

Sgt. Altonen indicated in the report that he spoke with the subject but there is no summary of what was said in his narrative.

Statement of Officer Steve Wuorinen

Officer Wuorinen provided a statement on November 14, 2016, which is summarized below:

On the date of the incident he was working squad 513 with his partner, Officer Lehner. They responded to assist on the traffic stop of a vehicle which had allegedly been driven in such a way as to put an officer in danger of being hit by this vehicle. When he arrived at the scene of the stop he observed that the driver was out of the car, while three passengers remained inside, including Luis Garcia-Pineda. He shined the spotlight on Mr. Garcia-Pineda, who he described as being a younger Hispanic male who appeared angry. Officer Wuorinen saw his face and did not observe any injuries.¹³

Officer Wuorinen stated:

- He believed he handcuffed Mr. Garcia-Pineda after officers decided to take him out of the car and that he struggled briefly with him, and then brought him back to the right rear fender area of the squad where he searched him and attempted to find a form of identification.¹⁴
- Mr. Garcia-Pineda pursed his lips and appeared as if he was going to spit at him, so he turned him away before he could.
- He did not notice anything abnormal about his mouth and that he didn't notice any missing teeth.¹⁵

⁹ Medical Records, HCMC, page 39

¹⁰ Dental Records, Edgar Mantilla, DDS, page 1-2

¹¹ Garcia-Pineda Dental Records, pages 1-27

¹² Supervisor's Force Report, Sgt. Altonen, page 5

¹³ Statement of Officer Wuorinen, page 3, lines 3-17

¹⁴ Statement of Officer Wuorinen, page 3, lines 46-48

¹⁵ Statement of Officer Wuorinen, page 4, lines 1-16

- He placed Mr. Garcia-Pineda in the rear of the squad and was going through his property on the trunk attempting to find a form of identification.
- Observed Mr. Garcia-Pineda kicking and thrashing in the squad.
- Was focused more on his property because he didn't want to lose any of it.

He estimated that Mr. Garcia-Pineda had been in the squad from between 30 seconds to 2 minutes at this point,¹⁶ and that Officer Lehner then came up to the squad. From here, Officer Wuorinen stated:

- Officer Lehner opened the squad door and gave a verbal command for Mr. Garcia-Pineda to stop kicking.¹⁷
- He heard Officer Lehner tell Mr. Garcia-Pineda to get out, and then he stopped what he was doing and grabbed Mr. Garcia-Pineda "by the right shoulder and arm and helped get him out of the back of the car and laid him down on the pavement of the street."¹⁸
- He did not look up from his examination of Mr. Garcia-Pineda's paperwork when Officer Lehner opened the door and that he didn't know what Mr. Garcia-Pineda did when the door was opened.¹⁹
- He did not look up because he had "worked with Officer Lehner for a while. I've known him always to be very professional and I had no concerns."²⁰
- While the squad door was opened he did not hear a "smack"²¹ or the sound of a kick, stating, "I didn't hear anything"²²

He was asked directly if he saw Officer Lehner push-kick Mr. Garcia-Pineda, and he responded, "No."²³ He was asked directly if he heard Officer Lehner push-kick him, and he also responded, "No."²⁴

Officer Wuorinen further stated that:

- Mr. Garcia-Pineda was not fighting when he reached in to remove him from the squad, and he thought he was conscious at the time.²⁵
- Mr. Garcia-Pineda was not thrown or dropped to the ground, and did not hit his face on the curb or on any part of the squad during the extraction.²⁶
- Mr. Garcia-Pineda remained face down in the street for 1-2 minutes, "and then you know, we got an agreement that he would, you know, control himself, he would stop acting out and then he went back in the car."²⁷
- Mr. Garcia-Pineda was bleeding from his mouth, but Officer Wuorinen did not know that he was missing any teeth until a nurse at HCMC told him.²⁸

¹⁶ Statement of Officer Wuorinen, page 5, lines 30-53

¹⁷ Statement of Officer Wuorinen, page 6-7, lines 46, 5

¹⁸ Statement of Officer Wuorinen, page 7, lines 7-10

¹⁹ Statement of Officer Wuorinen, page 6, lines 49-50

²⁰ Statement of Officer Wuorinen, page 7, lines 28-29

²¹ Statement of Officer Wuorinen, page 18, line 29

²² Statement of Officer Wuorinen, page 18, line 32

²³ Statement of Officer Wuorinen, page 8, lines 42-43

²⁴ Statement of Officer Wuorinen, page 8, lines 48-49

²⁵ Statement of Officer Wuorinen, page 9, lines 43-50

²⁶ Statement of Officer Wuorinen, page 11, lines 1-15

²⁷ Statement of Officer Wuorinen, page 12, lines 39-44

²⁸ Statement of Officer Wuorinen, page 12-13, lines 52-54, 1-2

- Officer Lehner did not tell him how Mr. Garcia-Pineda was injured, and he didn't ask him, stating that he "figured he would tell me when he was ready to tell me, so I found out later that he, ah, kicked him, so."²⁹

Regarding what he told the staff at HCMC regarding Mr. Garcia-Pineda's mechanism of injury, Officer Wuorinen stated, "...he was banging about in the back seat of the squad and somehow he got injured, he's bleeding from the mouth..."³⁰

He was asked if he had turned on the MVR to record Mr. Pineda-Garcia while he was in the squad, and he responded, "No, I didn't." When asked why not, he responded, "I didn't think of it."³¹

Statement of Officer Blayne Lehner

Officer Lehner provided a statement on January 5, 2017, which is summarized below.

He stated that he was the passenger officer with Officer Wuorinen driving when they responded to the area of 43rd and Nicollet Ave. S. after hearing that a vehicle had almost run over an officer in the street. When they arrived, they found that squad 521, Officers Kelley and Malloy, had stopped the suspect vehicle and had removed the driver. He observed that two females and one male remained in the car. He described the male, later identified as Mr. Garcia-Pineda, as appearing very intoxicated and was mouthing profanities at them as they pulled alongside the suspect vehicle.

He was asked to tell us what happened on the traffic stop, and he stated:

- Mr. Garcia-Pineda was non-cooperative³² with Officer Wuorinen as he was handcuffing him and then attempting to pat search him.
- That "within five, ten seconds or whatever it was, a real brief period of time, Garcia starts flipping out in the backseat of the car and he starts kicking everywhere, he's kicking the door, he's kicking the...and then kicking the divider things, he's slamming his head against the divider and the window and he's just going crazy inside..."³³

He described how Mr. Garcia-Pineda was kicking with his legs against the divider and doors of the squad. Additionally, he was hitting his head on the plastic divider and rear metal bars which are installed on the interior of the squad door windows.

- "You literally open the door, he looks up and boom and he kicks at you and now he hooks it right away and he's coming out. This is happening within like one second, a second and a half and so it's a startle thing so you just kind of back up. It's like, whoa. So, I used a push-kick that I aimed for his chest, but instead of kicking at me he actually hooked his leg and he was coming out of the squad to get out. So instead of hitting in the chest, my, the bottom of my boots, boot, hit him in the face. And when I hit him it was from like his chin all the way to his forehead because the

²⁹ Statement of Officer Wuorinen, pages14-15 , lines 43-55, 1-4

³⁰ Statement of Officer Wuorinen, page16, lines 3-4

³¹ Statement of Officer Wuorinen, page 8, lines 32-37

³² Statement of Officer Lehner, page 4, line 24

³³ Statement of Officer Lehner, page 5-6, lines 53-55, 1-2

boot hits him. And a push-kick too, a push-kick has momentum so you're going and you're pushing so that was what I was doing."³⁴

- "So when I made contact with his face, I just kept continuing to push him and I pushed him into the squad. And once I pushed him into the squad, his legs kinda flew up or whatever it was. I don't know if it was a defensive thing for him to block or what but his leg wasn't hooked anymore so I slammed the door shut. And again, the whole thing was, it was just a reaction. I opened the door to tell him to knock it off and if I had to, to take him out from injuring himself, just have him stop banging his head, because again, if he was just kicking, I don't care."³⁵

Post Use of Force

After he closed the door to the squad, Officer Lehner looked in "and he's just lying there and with him hitting his head prior and all that stuff, I decided, okay, he needs to come out, so we opened the door and Steve and I reach in there and grab him and he's struggling a little bit because I can't get him out myself. And he's a little guy."³⁶

Officer Lehner explained the next sequence of events, stating:

- He "pulled Mr. Garcia out of the squad and put him face first down on the ground and while doing so he was screaming and yelling and calling them names."³⁷
- He "put his knee between his shoulder blades to hold him down, and that he knew he would stop soon because it was bitter cold outside and he was only wearing a t-shirt."
- "After about 20-30 seconds he stopped and says, "Okay, I'll cooperate, just put me back in the car because it's cold."³⁸
- He "had a conversation with Mr. Garcia-Pineda about cooperating and not slamming his head or kicking, and then put him back in the squad."

Injuries

Regarding the injury to Mr. Garcia-Pineda, Officer Lehner stated:

- He did not know Mr. Garcia-Pineda was injured until he "stood him up and saw that he was bleeding from his lip a little bit."
- He noticed "there was a tiny little pool of blood on the street because he was lying there for about 30 seconds or even longer."³⁹
- Enroute to the hospital he said that "Garcia was talking with us just fine. He never complained about his injury at all."⁴⁰
- He "never noticed anything about his teeth. His upper lip swelled up a little bit but yeah, when it came to me finding out that he was missing teeth and I found that out at that Rasmussen hearing

³⁴ Statement of Officer Lehner, page 6, lines 42-49

³⁵ Statement of Officer Lehner, page 6-7, lines 52-53, 1-2

³⁶ Statement of Officer Lehner, page 7, lines 8-9

³⁷ Statement of Officer Lehner, page 7, lines 17-18

³⁸ Statement of Officer Lehner, page 7, lines 28-30

³⁹ Statement of Officer Lehner, page 8, lines 1-4

⁴⁰ Statement of Officer Lehner, page 8, lines 26-27

which was 6, 7, 8 months later or whatever and I was asked on the stand about it. I had no idea he was ever missing any teeth.”⁴¹

Missing Teeth

He was asked if Mr. Garcia-Pineda suffered any injuries as a result of his thrashing around and hitting his head in the car and kicking, and Officer Lehner responded, “If he’s missing teeth, I truly believe he knocked them out himself. He was asked if any teeth were found in the squad, and he responded,

- “I have no idea where his teeth were.”
- “We didn’t find them on the street.”
- “We didn’t find them in the squad, but yet I’m accused of doing it because I was honest in my report about what I, what my actions were that night.”⁴²

He was asked at what point he thought Mr. Garcia-Pineda broke his own teeth out, and he responded,

- “I believe he did it when he was banging his head in the car.”
- “There is no way you can convince me that a front push-kick, even to someone’s face, can kick their teeth out.”⁴³
- “Just because I push-kicked someone and it accidentally, I didn’t mean to hit him square in the face. I didn’t mean to. That wasn’t my target.”
- “Just because that action happened, doesn’t mean I kicked his teeth out.”
- “He also smashed his head in the backseat of that car on the partition, on the bars, everywhere but yet because I was honest in my report and I said what I did and I said where I hit him, do you know how easy it could have been for me because I knew it was not on the video just to lie?”⁴⁴

He was asked if he searched the back seat of the squad after the event and he responded,

- “Why would I?”
- “I didn’t know his teeth were missing.”
- “I’m not looking for teeth, and I don’t know if I searched it or Steve did.”
- “Now did I see any teeth in there? No. Was I looking specifically for teeth? No.”⁴⁵

Removing Garcia-Pineda from the squad

Officer Lehner was asked why he wanted to remove Mr. Garcia-Pineda from the squad, he responded that:

- The push-kick is “not an offensive kick”⁴⁶ but rather it is “just like pushing someone away with your hands except you use your leg.”⁴⁷
- “A push-kick is a defensive maneuver to create distance, not to destroy somebody’s body like a kick is.”⁴⁸

⁴¹ Statement of Officer Lehner, page 9, lines 36-40

⁴² Statement of Officer Lehner, page 18, lines 26-33

⁴³ Statement of Officer Lehner, page 22, lines 25-27

⁴⁴ Statement of Officer Lehner, page 18, lines 36-41

⁴⁵ Statement of Officer Lehner, page 22, lines 33-43

⁴⁶ Statement of Officer Lehner, page 14, lines 1-3

⁴⁷ Statement of Officer Lehner, page 13, lines 54-55

- “Well, it’s an opportunity to at that point, like I said, the reaction was, it was a reactive thing, to push him away, keep him in the car and slam the door shut because he’s trying to get out and flee or assault me or do whatever just trying to get out.”⁴⁹

Sense of Urgency

Officer Lehner was asked to articulate whether timeliness was of concern, as related to removing Mr. Garcia-Pineda from the squad, given he was no longer kicking but had shown himself to be combative.

- “But now is an opportunity for you as an officer. Steve already knows what’s going on whether he saw what happened probably not because it happened so fast, you know, it happened so quick that you can barely register in your own mind what’s going on.”⁵⁰
- “And then you do your thing and but at this point too, you have to understand, it’s a window of opportunity. Now, you look in the squad and he’s just lying there. Do you let him come to or whatever, get his brain back into the game and start kicking around again? Or do you open the door and remove him since he’s not moving? You have to remove him from the car.”⁵¹
- He added that Mr. Garcia-Pineda “was injuring himself, smashing his head, and that he would have liability if he gave himself a concussion or a brain bleed.”

Consideration of other options

Officer Lehner was asked if he could have considered other options instead of removing him from the squad if he starting kicking again, such as chemical agent. He responded,

- “Because you could mace him but he’s still gonna hit his head.”
- “Are you gonna tase him?”
- “Okay, you can tase him, but he’s still gonna hit his head.”
- “You have to remove him from the situation.”⁵²

He was asked if he knew that Mr. Garcia-Pineda was still going to keep hitting his head after trying these other options, Officer Lehner responded “Sometimes they do, sometimes they don’t.”⁵³

He was asked if he considered other options before he removed Mr. Garcia-Pineda from the squad, and he responded, “The decision I made was to open the door and remove him.”⁵⁴

Officer Lehner maintained that there was not an alternative use of force that would have been more effective in stopping Mr. Garcia-Pineda’s behavior. According to Officer Lehner, taking Mr. Garcia-Pineda out of the squad was an attempt to de-escalate the incident and was meant to prevent Mr. Garcia-Pineda from further injuring himself.⁵⁵

⁴⁸ Statement of Officer Lehner, page 14, lines 26-27

⁴⁹ Statement of Officer Lehner, page 14, lines 49-52

⁵⁰ Statement of Officer Lehner, page 16, lines 16-18

⁵¹ Statement of Officer Lehner, page 16, lines 24-28

⁵² Statement of Officer Lehner, page 20, lines 1-13

⁵³ Statement of Officer Lehner, page 20, lines 14-16

⁵⁴ Statement of Officer Lehner, page 21, lines 30-31

⁵⁵ Statement of Officer Lehner, page 20, lines 1-5

MVR

He was asked if the MVR was activated, and he responded that it wasn't, and that he noticed it was off when he got back in the squad and "so it's just an unfortunate thing that it wasn't on."⁵⁶

Civil Lawsuit, Rasmussen Hearing and Deposition Statements⁵⁷

Officer Lehner's statements in his CAPRS report, Internal Affairs Unit interview and Rasmussen Hearing deposition all were consistent in regards as to why and how he employed a front thrust kick/push-kick. He stated that he reacted in surprise, and that his target area was Mr. Garcia-Pineda's chest, but that Mr. Garcia-Pineda moved and he instead struck him in the face.

Statement of Luis Daniel Garcia- Pineda

Mr. Garcia-Pineda provided a statement on January 13, 2017, which is summarized below. His transcribed copies of the interview were sent to the address he provided and were returned marked "Return to sender, insufficient address, unable to forward."⁵⁸

He stated that on the night of the incident he was at a party and "was a little tipsy"⁵⁹ and after leaving the party was a passenger in car driven by "Tony" which was stopped by police in the area of 38th and Nicolle.

Police Contact:

- Acknowledged that he became annoyed with the officer and responded to him using profanity, resulting in him being removed from the car, handcuffed and placed in a squad car.
- Got mad and started kicking.⁶⁰
- Didn't remember a lot because he was knocked out and thrown on the concrete, and that he woke up and heard an officer telling him to get up.
- Felt a bunch of blows to his face and his mouth area, and when he woke up he was dizzy and in significant pain and could not talk because his mouth was full of blood 13.384 and that the officers were asking him if he was going to calm down.⁶¹
- Initially he repeatedly denied that he ever tried to kick at the officer who opened the squad car door to take him out.
- Said he was only kicking directly in front of himself the entire time and that he stopped kicking when the officers opened the door.⁶²
- Later in his interview acknowledged that he did kick at Officer Lehner.

After being told that the officer reported that he gave him a push kick after he tried to kick the officer when the officer opened the door, he stated that the kick and the injury did not happen while he was inside the squad car, but instead happened while outside on the ground.⁶³

⁵⁶ Statement of Officer Lehner, page 10, lines 42-46

⁵⁷ I attempted to obtain transcripts of Officer Lehner's deposition in the civil suit filed by Mr. Garcia-Pineda which was given on November 12, 2015, but was not able to do so because of a protective order issued by the presiding judge.

⁵⁸ See copy of mailing envelope, Luis Garcia-Pineda, statement of Luis Garcia-Pineda

⁵⁹ Statement of Luis Garcia-Pineda, page 2, line 8

⁶⁰ Statement of Luis Garcia-Pineda, page 2, lines 25-28

⁶¹ Statement of Luis Garcia-Pineda, page 2, lines 37-50

⁶² Statement of Luis Garcia-Pineda, page 9, lines 12-49

He was asked if he told the officers that his teeth were knocked out once he was placed back in the squad, and he said he:

- Was crying in anger and pain, and spitting blood in the back of the squad car while telling the officers he had broken teeth.
- Heard the officers say that he was bleeding a lot and that they should take him to the emergency room.⁶⁴

He mentioned that his sister had gotten out of the car and seen him on the ground not moving, and that an officer had reportedly told her, "you're next"⁶⁵ if she didn't get back in the car. (*See summary of interview with Miriam Aguilar-Garcia, paragraph 7.*)

Once at HCMC, he was asked by staff how he was injured, and he responded by saying that:

- He told them he had been kicked by police.
- The nurse told him that the officer who brought him in told staff that he fell.⁶⁶
- He heard Officer Wuorinen tell hospital staff that "he fell."⁶⁷

I asked Mr. Garcia-Pineda to demonstrate how he was seated in the squad car, and he showed me that he was sitting facing forward with his feet on the floor. I asked him again if he had kicked at Officer Lehner when Officer Lehner opened the squad car door, and this time he responded that he "might have kicked him like this, but I'll tell you I wasn't hitting him hard."⁶⁸

He was asked again if he had been kicked by Officer Lehner while he was still in the back seat, and he first responded, "yes, one kick and then responded no, not really, not really."⁶⁹ In an attempt to clarify whether he felt he had been kicked in the face while he was in the back of the squad or not he was asked again and responded that he didn't think so; that he might have been kicked in the shoulder or body while still in the squad, but that he lost consciousness while he was on the ground. He stated that the push-kick didn't cause him to lose consciousness.⁷⁰ He then demonstrated how he was removed from the squad, and indicated that he was pulled out back first and then put down on the ground immediately.⁷¹

Statement of Miriam Aguilar-Garcia

Mr. Garcia-Pineda's sister, Miriam Aguilar-Garcia provided a statement on January 23, 2017 which is summarized below:

She stated that she was in back seat of the vehicle sitting next to her brother when they were stopped by police, and that:

⁶³ Statement of Luis Garcia-Pineda, page 10, lines 5-26

⁶⁴ Statement of Luis Garcia-Pineda, page 14, lines 1-34

⁶⁵ Statement of Luis Garcia-Pineda, page 10, line 33

⁶⁶ Statement of Luis Garcia-Pineda, page 14, lines 40-52

⁶⁷ Statement of Luis Garcia-Pineda, page 15, lines 26-39

⁶⁸ Statement of Luis Garcia-Pineda, page 16, lines 7-19

⁶⁹ Statement of Luis Garcia-Pineda, page 16, lines 46-51

⁷⁰ Statement of Luis Garcia-Pineda, page 17, lines 1-28

⁷¹ Statement of Luis Garcia-Pineda, page 18, lines 25-44

- Her brother was unable to show an officer an ID, and became upset and used profanity towards the officer, who then had him step out of the vehicle.⁷²
- She remained in the car with the other female, and after a short time, she heard loud noises which she described as “like someone is hitting something or someone is hitting something or someone, later describing this again as someone hitting something metal.”⁷³
- She got out of the car and walked past a squad car and saw two officers sitting inside, which she described as a lady and a man (Officer Kelley and Officer Malloy)⁷⁴, who looked at her but didn’t say anything to her, so she continued walking towards the other squad.
- She observed several officers standing around her brother while he was lying on the ground outside the squad.⁷⁵
- She asked the officers what was going on, why was he on the ground, is he okay?
- The officers “all just kind of looked at each other without saying anything and then looked down at her brother to see if he moved and they just stood there and didn’t answer her questions.”⁷⁶

She did not see the force used on her brother, she only saw him lying on the pavement with his hands cuffed behind his back. She stated he was not moving at that time.

- She stated that eventually an officer told her, “Okay, that’s enough. Shut up. Shut the fuck up. That’s enough. She said she ignored the officer and kept trying to talk to her brother, and that the officer then approached her and pushed her, stating, “That’s enough. Get. Go back. Go back in the car”.⁷⁷ She was worried that the officer would become aggressive with her, so she decided to go back to the car.
- She estimated the elapsed time from when she got out of the car to when she returned to the car as being between 6 to 8 minutes, or possibly as long as 10 minutes, during which she said her brother was unconscious the entire time.⁷⁸
- She was asked if she saw any of the officers punch or kick her brother, and she responded, “No.”⁷⁹
- She affirmed that her brother had his front teeth earlier that night while at the party.⁸⁰

Statement of Officer Glenda Malloy

Officer Malloy provided a statement on January 27, 2017, which is summarized below.

Officer Malloy stated she was the passenger officer with Officer Christopher Kelley as the driver on the coup, and that she was entering people into the computer during the course of the call.

Officer Malloy stated that she:

- Did not hear any thrashing or kicking coming from squad 513.⁸¹

⁷² Statement of Miriam Aguilar-Garcia, page 2, lines 38-47

⁷³ Statement of Miriam Aguilar-Garcia, page 3, line 46

⁷⁴ Statement of Miriam Aguilar-Garcia, page 5, lines line 41

⁷⁵ Statement of Miriam Aguilar-Garcia, page 4, lines 1-10

⁷⁶ Statement of Miriam Aguilar-Garcia, page 4, lines 19-29

⁷⁷ Statement of Miriam Aguilar-Garcia, page 4-5, lines 54, 1

⁷⁸ Statement of Miriam Aguilar-Garcia, page 8, lines 14-31

⁷⁹ Statement of Miriam Aguilar-Garcia, page 4, lines 19-29

⁸⁰ Statement of Miriam Aguilar-Garcia, page 12, lines 47-54

⁸¹ Statement of Officer Malloy, page 5, lines 12-15

- Did not recall any verbal commands being given by officers at the scene.⁸²
- Did not see Officer Lehner open the squad door.
- Did not see or hear Mr. Garcia-Pineda kick at Officer Lehner.
- Did she see or hear Officer Lehner and Officer Wuorinen remove him from the squad.
- Did not recall being aware at any time during the stop that he had been removed from the squad.
- Did not know what happened when he was removed from the squad.
- Did not know where officers put him.
- Did not know what officers did with him.
- Did not see Officer Lehner kick him while he was out of the squad.⁸³
- Did not recall if Officer Kelley ever got out of their squad during the call.
- Did not recall why a sergeant was called to the scene.
- Did not recall if she ever became aware during the stop that Mr. Garcia-Pineda was injured.
- Doesn't remember if EMS was ever requested.
- Didn't recall if there were any conversations about the use of force after the event.
- Completed the body of the report and filled in the names.
- Didn't recall what she put in the field for "use of force" when she completed the report.
- Didn't recall what she entered for injuries to Mr. Garcia-Pineda when she made her report.
- Didn't recall if Mr. Garcia-Pineda went to the hospital or to jail.

Statement of Officer Dan Misgen

Officer Misgen provided a statement on January 31, 2017, which is summarized below.

When he arrived on the traffic stop, Mr. Garcia-Pineda was in the back seat of Squad 513. He said he saw a little bit of blood on his lips and that he needed to go to the hospital to be treated.⁸⁴

While completing CAPRS reports at the 5th Precinct, he learned how the injuries had occurred, stating "Blayne said that the guy was out of control and that he was going to grab him and try and secure him to prevent injury and then the kid lunged at him and the Blayne had kind of realized maybe he needs more help or something and that he had pushed him back with his foot."⁸⁵

He learned at some point that Mr. Garcia-Pineda had been taken out of the squad, but he could not recall the specifics of that. He said he did not know anything about the possibility that Mr. Garcia-Pineda was kicked in the mouth when he was outside the squad. He stated that everything he knew about the injuries was that Mr. Garcia-Pineda "had injured himself in the squad."⁸⁶ He then added that he thought he was thrashing around trying to harm himself in the squad and that Officer Lehner "either kicked him or pushed him with his foot, and then there was alleged injury from that, but I don't know how any of the injuries occurred or where."⁸⁷

Officer Misgen stated that he looked at Mr. Garcia-Pineda through the window and shined his flashlight on his face and that he saw a little bit of blood, "but wouldn't call it actively bleeding."⁸⁸ He stated he did

⁸² Statement of Officer Malloy, page 5, lines 30-33

⁸³ Statement of Officer Malloy, pages 5-6, lines 39-42, 1-22

⁸⁴ Statement of Officer Misgen, page 3, lines 35-39

⁸⁵ Statement of Officer Misgen, page 5, lines 1-4

⁸⁶ Statement of Officer Misgen, page 5, lines 36-39

⁸⁷ Statement of Officer Misgen, page 6, lines 1-4

⁸⁸ Statement of Officer Misgen, page 7, lines 1-3

not notice his front teeth were missing, and that when he looked at Mr. Garcia-Pineda, he "would say that he probably still had his teeth. Whether they got pulled later by a dentist later because of, you know, whatever or they were loose and fell out later. I think they were still there when I saw him."⁸⁹

Statement of Officer Christopher Kelley

Officer Kelley provided a statement on January 31, 2017, which is summarized below.

He stopped the suspect vehicle because the driver had almost run over a police officer, and removed him from the car and placed him in the rear of his squad. He then returned to the vehicle and began to identify the two females and the other male still inside the suspect vehicle. He stated the male swore at him and appeared to have been drinking. He took Mr. Garcia-Pineda out of the vehicle and handcuffed him behind his back.⁹⁰

He did not observe any injuries to his face, missing teeth or if he was bleeding, or if there was anything out of the ordinary regarding his appearance. He stated he was drunk and belligerent.⁹¹

He handed Mr. Garcia-Pineda off to Officer Wuorinen and then returned to squad 521 to determine what they were going to do with the driver. While in his squad, he heard "muffled kicking" which he thought went on for approximately 30 seconds.⁹²

Officer Kelley further stated that he:

- Did not get out of his squad to see what was happening because there were two senior officers there and his primary goal was to decide what action to take with the driver.
- Was not aware if Mr. Garcia-Pineda had kicked or attempted to kick Officer Lehner.
- Did not see Officer Lehner kick Mr. Garcia-Pineda while he was in the back seat of the squad.⁹³
- Was not aware that Mr. Garcia-Pineda had ever been removed from the squad.
- Did not see Officer Lehner or any other officer kick Mr. Garcia-Pineda while he was on the ground.⁹⁴
- Did not observe either of the female occupants exit the suspect vehicle.
- Did not hear any verbal commands directed to anyone to return to the suspect vehicle.⁹⁵
- Was not aware that Mr. Garcia-Pineda had been injured during the call.
- Did not observe any officers standing around Mr. Garcia-Pineda while he was unconscious on the pavement outside the squad.⁹⁶

He stated the squad MVR was running during the stop, and I informed him it was turned off shortly after the driver was put in his squad, and he was asked if he turned the MVR off, or if Officer Malloy turned it off, and he stated he didn't recall. He stated the reason for shutting off the MVR would be because the

⁸⁹ Statement of Officer Misgen, page 7, lines 21-36

⁹⁰ Statement of Officer Kelley, page 5, lines 5-25

⁹¹ Statement of Officer Kelley, page 6, lines 20-27

⁹² Statement of Officer Kelley, page 7, lines 10-29

⁹³ Statement of Officer Kelley, page 8, lines 24-37

⁹⁴ Statement of Officer Kelley, page 9, lines 1-14

⁹⁵ Statement of Officer Kelley, page 9, lines 16-25

⁹⁶ Statement of Officer Kelley, page 9, lines 27-29

scene was Code 4 with the driver. He was asked if there was any event that caused him or his partner to shut the MVR off and he stated, "No sir."⁹⁷

Statement of Officer Marcus Lukes

Officer Lukes was Officer Misgen's partner on the night of the incident. He was not interviewed as he resigned his position with the Minneapolis Police Department on January 16, 2017.

Squad Biohazard Cleanup

On February 10, 2017, I called MPD Fleet Manager Andy Williams and asked him to check garage records for any biohazard cleanup done on squad 513, P#76372, on or about 12-29-2013. He responded with a copy of a work order⁹⁸ which showed this vehicle was dropped off at the Royalston Garage on 12-31-2013 at 0916 hours.

The work order showed "00-40-011 – No Work Code Bio Hazard Clean-Up" and the Job Instructions and Notes showed, "CSO dropped car off/ stated blood in back seat." Scott Peterson of MECC IT verified that Squad 513 was not used after the end of Officer Lehner's shift on 12-29-13 until it was taken to the shop by a CSO on 12-31-2013 for biohazard cleanup.⁹⁹

DISCUSSION

The Minneapolis Police Department's Policy and Procedure Manual states in part:

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

"Minnesota Statutes §609.06 subdivision 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:

1. When used by a public officer or one assisting a public officer under the public officer's direction;
2. In effecting a lawful arrest; or
3. In the execution of legal process; or
4. In enforcing an order of the court; or
5. 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."

In this case, Officer Lehner was legally justified in potentially using force, as he had determined that Mr. Garcia-Pineda showed signs of intoxication and was under the age of 21, so legal grounds for his arrest were met in accordance with Section 2.

⁹⁷ Statement of Officer Kelley, page 11, lines 1-23

⁹⁸ Work Order Job List, City of Minneapolis, Royalston Garage, Work Order 2449787

⁹⁹ Email, Scott Peterson, MECC

While Officer Lehner had legal authorization to use force, the amount of force and reasonableness of the force used falls in part under the three prong test of the *Graham vs. Connor* decision¹⁰⁰.

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."

Severity of the Crime at Issue

The crimes at issue in this case were misdemeanors. In his CAPRS report supplement, Officer Lehner stated that Mr. Garcia-Pineda was "tagged and released at HCMC for Minor Consumption and Obstructing Legal Process."¹⁰¹ The CAPRS report under "Charges" shows that Mr. Garcia-Pineda was charged with Misdemeanor Disorderly Conduct, Minnesota State Statutes 609.72.

In the subsequent criminal case, court records¹⁰² show the following outcome for Mr. Garcia-Pineda:

- Convicted, 340A. 503.1(a)(2), consuming alcohol under 21 years of age, misdemeanor,

Whether the suspect poses an immediate threat to the safety of the officers or others

Mr. Garcia-Pineda had been searched prior to being placed in the rear of the squad and no weapons were found. He was handcuffed behind his back and was secured in the squad. While confined there, he posed no danger to officers outside.

Officer Lehner stated that Mr. Garcia-Pineda posed a danger to himself based on his actions of "bashing his head, kicking around and then numerous people I have seen and in my custody have done that, who've gashed themselves open and have injured themselves severely."¹⁰³

¹⁰⁰ *Graham v. Connor*, 490 U.S.386 (1989), was a United States Supreme Court case where the Court determined that an objective reasonableness standard should apply to a civilian's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person

¹⁰¹ Statement of Officer Lehner, page 9, paragraph 6

¹⁰² Register of Actions, State of Minnesota vs Luis Daniel Garcia-Pineda

Officer Lehner stated that he was responsible for Mr. Garcia-Pineda's well-being while in the rear of his squad and that he took the action of opening the door in order to get Mr. Garcia-Pineda to stop kicking and banging his head on parts of the squad and possibly injuring himself. He said that he kicked him because he was surprised at Mr. Garcia-Pineda's actions and that he reacted by kicking at him, intending to create distance.

After delivering the push kick, Officer Lehner stated, "So then I look in and he's just lying there and with him hitting his head prior and all that stuff, I decided, okay, he needs to come out."¹⁰⁴

Mr. Garcia-Pineda denied doing anything other than kicking the partition with his legs, stating that he was only using his feet, not his head.¹⁰⁵ He stated he was kicking in the squad for seconds, under a minute, and kicked only at the partition, not the plastic divider, and not the door.¹⁰⁶ He described that he was sitting upright, and kicking only in front of himself at the partition.¹⁰⁷ He also acknowledged that he didn't "recall many of the events that happened that night"¹⁰⁸ and when he was told that it was important that he tell me the truth regarding whether he kicked at Officer Lehner or not, he responded, "I know, but I only remember so much."¹⁰⁹ However, In his statement Mr. Garcia-Pineda had acknowledged that he had kicked towards Officer Lehner.¹¹⁰

Whether the suspect is actively resisting arrest or attempting to evade arrest by flight

According to reports and statements in interviews, Mr. Garcia-Pineda did not show active resistance¹¹¹ when he was taken out of the suspect vehicle, but did show passive resistance¹¹² in the form of pulling away from Officer Wuorinen. The force used to place him in the squad consisted of an escort hold and joint manipulation.¹¹³ Officer Wuorinen reported that he "grabbed a hold of his left arm and he was trying to pull away as I was attempting to handcuff him."¹¹⁴ Officer Wuorinen further reported that he thought Mr. Garcia-Pineda "appeared to be getting ready to spit with his facial movement. I turned Garcia away from me and placed him in the back seat."¹¹⁵

¹⁰³ Statement of Officer Lehner, page 6, paragraph 2

¹⁰⁴ Statement of Officer Lehner, Page 7, paragraph 2

¹⁰⁵ Statement of Luis Garcia-Pineda, page 6, lines 44-49

¹⁰⁶ Statement of Luis Garcia-Pineda, page 6, line 32-49

¹⁰⁷ Statement of Luis Garcia-Pineda, page 8, lines 18-39

¹⁰⁸ Statement of Luis Garcia-Pineda, page 5, line 11

¹⁰⁹ Statement of Luis Garcia-Pineda, page 9, lines 28-33

¹¹⁰ Statement of Luis Garcia-Pineda, page 16, lines 7-19

¹¹¹ Active Resistance is defined in the MPD Policy Manual as: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control.

¹¹² Passive Resistance is defined in the MPD Policy Manual as: A response to police efforts to bring a person into custody or control for detainment or arrest. This is behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer's control efforts.

¹¹³ An escort hold and joint manipulation are forms of soft empty hand control whereby an officer grasps a subject by the bicep and wrist on the same arm and uses leverage applied to the joints of the arm and shoulder in order to facilitate cooperation while moving a subject from one location to another. It is done to maintain positive control of the subject and minimize the potential for the subject to attempt to break away from the officer.

¹¹⁴ Statement of Officer Wuorinen, CAPRS Report, page 6, paragraph 2

¹¹⁵ Statement of Officer Wuorinen, CAPRS Report, page 6, paragraph 3

Officer Lehner reported that Mr. Garcia-Pineda was "being belligerent with Officer Kelley and refusing to identify himself and it sounded as if he was cursing at Officer Kelley"¹¹⁶ and that he heard Mr. Garcia-Pineda "yelling at Officer Wuorinen while he was being pat searched. Once the pat search was completed on AP/2 Garcia he was placed in the rear of the marked squad."¹¹⁷

Mr. Garcia-Pineda was not actively resisting arrest or attempting to evade arrest by flight during the initial portion of the call when he was being placed in the squad. He did show active aggression in the form of a kick to Officer Lehner when he opened the squad door, and Officer Lehner stated he felt Mr. Garcia-Pineda was attempting to get out of the squad by hooking his leg over the seat, which was in part why he delivered the push-kick, to prevent him from getting out and push him back into the squad.

Tense, Uncertain, and Rapidly Evolving Circumstances

Included in *Graham vs. Conner* is language further requiring that "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."

Officer Lehner stated that the push-kick was in reaction to being surprised by the kick by Mr. Garcia-Pineda and that he executed it in order to create space, and that because Mr. Garcia-Pineda moved, the target area shifted. Instead of striking Mr. Garcia-Pineda in the torso as Officer Lehner intended, he stated he struck Mr. Garcia-Pineda in the face.

The circumstances of this case were that prior to Officer Lehner opening the squad car door, Mr. Garcia-Pineda:

- Had been searched for weapons with none found.
- Was intoxicated and verbally abusive.
- Engaged in passive resistance which required soft empty hand control by Officer Wuorinen to place him in the squad.
- Was handcuffed behind his back.
- Was secured and contained in the rear of the squad.
- Admitted to kicking while inside the squad, but stated it was only at the partition with his feet in front of his body.
- Admitted that he had kicked towards Officer Lehner
- Was observed kicking and thrashing around by Officer Wuorinen.
- Was stated by Officer Lehner to have been kicking, thrashing around and placing himself in danger of being injured.

Prior to Officer Lehner opening the squad car door, these facts do not show that things were unusually tense, uncertain, or rapidly evolving. However, a sense of urgency arose once the squad car door was opened and Officer Lehner began to deal with Mr. Garcia-Pineda. Officer Lehner stated he had to react quickly to the kick by Mr. Garcia-Pineda and what Officer Lehner perceived as an attempt by Mr. Garcia-Pineda to escape from the squad, and that the kick was delivered for this purpose.

¹¹⁶ Statement of Officer Lehner, CAPRS Report, page8, paragraph 5

¹¹⁷ Statement of Officer Lehner, CAPRS Report, page8, paragraph 8

Control and Defense

Force is authorized for defense or control, or both, but must also be reasonable given the circumstances as outlined above. In this case, Officer Lehner stated that he used force for both defense – in order to create distance, and for control – in order to push Mr. Garcia-Pineda back into the squad.

Sufficient Time to Comply

In addition to the *Graham vs. Connor* requirements regarding the reasonableness and proportionality of the use of force, another question is whether Officer Lehner gave Mr. Garcia-Pineda sufficient time to comply with his verbal commands.

Officer Lehner stated in multiple places during his interview that he felt he needed to act quickly in order to prevent Mr. Garcia-Pineda from severely injuring himself as a result of his banging his head and thrashing around. Officer Lehner maintained that he opened the door to attempt to get him to stop, and that his kick was a reaction to Mr. Garcia-Pineda's attempt to kick him, with the purpose of creating distance.

Mr. Garcia-Pineda for his part denied engaging in any behavior which could have caused head or facial injuries, stating that he was only kicking the divider with his feet. Mr. Garcia-Pineda was not treated at HCMC for any injuries to his head other than the mouth injuries.

Push-Kick as part of Academy Instruction

When asked in his interview if he was taught the push-kick in the academy, Officer Lehner responded, "Correct. And then also I was taught it in 2005 in PPCT, that program that I went on to become a defensive tactics instructor. It's called a front thrust kick."¹¹⁸

Cdr. Troy Schoenberger, Commander of the Leadership and Organizational Development Division and Lt. Tom Wheeler provided documents which support both that Officer Lehner was a defensive tactics instructor and that there is a technique taught called a "Foot Jab/Front Thrust Kick.

Included in these materials was a ground fighting training syllabus which lists a "Foot Jab/Front Thrust Kick", noting, "*Good to maintain distance from someone directed at pelvis/thigh area= sit down motion Hip-Flexors used/push off, do not sit it there (sic).*"¹¹⁹

Cdr. Schoenberger also provided *The Minneapolis Police Department In-Service Use of Force Master Lesson Plan for 2005-2006*, which shows Officer Lehner as an Instructor for the practical exercise portion of instruction on January 17 and January 30, 2006, for a total of 2 days.¹²⁰

Lt. Wheeler wrote in an email that, "In 2005, WFD shows that Officer B. Lehner participated in "Instructor level training" in the following:¹²¹

- 2005 Use of Force investigation Course (21 hours)
- 2005 Pressure Point Control Tactics (35 hours)

¹¹⁸ Statement of Officer Lehner, page 15, lines 33-38

¹¹⁹ Ground Fighting, Training Syllabus, page 5

¹²⁰ MPD In-Service 2005-2006 Use of Force Master Lesson Plan (Excerpt)

¹²¹ Email, Lt. Tom Wheeler, 1-30-2017

- Officer B. Lehner served as a DT (Defensive Tactics) Instructor circa 2005

Mechanism of Injury

There are six possible ways Mr. Garcia-Pineda could have incurred his injuries:

1. Had suffered a prior injury before officers encountered him
2. Self-inflicted in the rear of the squad.
3. The push-kick by Officer Lehner.
4. Injured while being extracted from the squad
5. Face hitting the pavement after being taken out of the squad.
6. Struck in the face while outside the squad on the pavement.

In his statement, Officer Lehner said that he felt Mr. Garcia-Pineda broke his own teeth out while banging his head in the car, stating,

- “There is no way you can convince me that a front push-kick, even to someone’s face, can kick their teeth out.”¹²²
- A push-kick is “not an offensive kick”¹²³ but rather it is “just like pushing someone away with your hands except you use your leg.”¹²⁴
- “A push-kick is a defensive maneuver to create distance, not to destroy somebody’s body like a kick is.”¹²⁵

Given these statements by Officer Lehner, the question arises as to whether the injuries incurred by Mr. Garcia-Pineda are consistent with the amount of force Officer Lehner stated he used while employing the push-kick.

Regarding the extraction of Mr. Garcia-Pineda from the squad, Officer Wuorinen was asked if they had positive control¹²⁶ of him the entire time from when he was removed from the squad until he was put on the ground, and he responded, “Yeah, I didn’t let go of him. But he didn’t get thrown to the ground or dropped to the ground.”¹²⁷

In his statement, Officer Lehner described how he removed Mr. Garcia-Pineda from the squad by stating, “And then once we pulled him out, we just put him face first on the ground and while he was on the ground and the whole time we were pulling him out he’s screaming and yelling and calling us names and that type of thing.”¹²⁸

¹²² Statement of Officer Lehner, page 22, lines 25-27

¹²³ Statement of Officer Lehner, page 14, lines 1-3

¹²⁴ Statement of Officer Lehner, page 13, lines 54-55

¹²⁵ Statement of Officer Lehner, page 14, lines 26-27

¹²⁶ Positive Control in this instance refers to Officer Wuorinen’s contention that he maintained hands-on control of Mr. Garcia-Pineda from the time he first touched him to when Mr. Garcia-Pineda was placed on the pavement. This means that by Officer Wuorinen’s account, Mr. Garcia-Pineda was not dropped or thrown down on the pavement.

¹²⁷ Statement of Officer Wuorinen, page 10, lines 45-50

¹²⁸ Statement of Officer Lehner, page 7, lines 15-17

Whether Mr. Garcia-Pineda kicked at Officer Lehner

Mr. Garcia-Pineda gave conflicting statements regarding whether he kicked at Officer Lehner. When he was first asked, "Did you ever try to kick at the officer when the door was opened?"¹²⁹ His response was, "No, No."¹³⁰

Later in the interview when he was asked for clarification regarding whether he had ever kicked at Officer Lehner, he responded, "I might have. I might have. Did you guys ever try to charge me for obstruction?"¹³¹ In fact he was charged with Obstructing Legal Process; those charges were dismissed.¹³²

When asked when he *might have* kicked at Officer Lehner, he responded, "Maybe when they pulled out, when they opened the...the door."¹³³

When asked to explain this further, he responded, "Oh, I might have kicked him like this but I'll tell you, I wasn't hitting him hard."¹³⁴ He further stated, "Maybe like that, but not like this. No, no."¹³⁵

In contrast, Officer Lehner was consistent in his reports, testimony in the Rasmussen hearing, and in his statement that Mr. Garcia-Pineda kicked or attempted to kick at him.

Whether Officer Lehner kicked Mr. Garcia-Pineda

Officer Lehner was consistent in all his accounts of whether he kicked Mr. Garcia-Pineda while he was in the squad, stating that he had.

However, Mr. Garcia-Pineda was inconsistent as to whether he was kicked in the face while in the back of the squad. When he was asked about this, he responded, "Yeah, one kick and then two of them might, ah more kicks to..."¹³⁶ When asked where the kicks landed, he responded, "I don't think I might have got hit in the face because I have some bruises on my shoulders too. It could have been anywhere."¹³⁷ When asked if that one kick he described had knocked his teeth out, he responded, "I think you need more force than that so I do mean multiple kicks, I think you need multiple force, I certainly got them, you know?"¹³⁸

Whether Mr. Garcia-Pineda injured himself in the squad

Mr. Garcia-Pineda was asked if he was hitting his head while in the back seat of the squad, and he responded that he was only using his feet, not his head.¹³⁹ He stated he was kicking in the squad for

¹²⁹ Statement of Luis Garcia-Pineda, page 9, line 12

¹³⁰ Statement of Luis Garcia-Pineda, page 9, lines 13

¹³¹ Statement of Luis Garcia-Pineda, page 16, lines 7-9

¹³² Register of Actions, State of Minnesota vs Luis Daniel Garcia-Pineda

¹³³ Statement of Luis Garcia-Pineda, page 16, lines 11-12

¹³⁴ Statement of Luis Garcia-Pineda, page 16, line 19

¹³⁵ Statement of Luis Garcia-Pineda, page 16, lines 32-35

¹³⁶ Statement of Luis Garcia-Pineda, page 16, lines 11-12

¹³⁷ Statement of Luis Garcia-Pineda, page 17, lines 6-8

¹³⁸ Statement of Luis Garcia-Pineda, page 17, lines 10-15

¹³⁹ Statement of Luis Garcia-Pineda, page 6, lines 44-49

seconds, under a minute, and kicked only at the partition, not the plastic divider, and not the door.¹⁴⁰ He described that he was sitting upright, and kicking only in front of himself at the partition.¹⁴¹

Officer Lehner stated in multiple portions of his interview that Mr. Garcia-Pineda was kicking and hitting his head on the doors and partition, and it was this behavior that caused him to take action to remove Mr. Garcia-Pineda from the squad to prevent him from injuring himself.¹⁴²

Whether Mr. Garcia-Pineda was kicked while outside the squad

In his interview, Mr. Garcia-Pineda stated, "I kinda remember not a lot because I got knocked out getting thrown to the concrete and the ground, and then I don't even know...I just felt the blows...it was like a bunch of blows to my face and my mouth area and then when I woke up I was in crucial pain."¹⁴³

He further described that "They took me out hard, and then boom, I felt the blow...it was face first...I got knocked out but I said I was getting, I thought I felt I was getting kicked, I was getting kicked...on the ground, on the ground."¹⁴⁴

Officer Lehner said he pulled Mr. Garcia out of the squad and put him face first down on the ground¹⁴⁵ and put his knee between his shoulder blades to hold him down, and that he knew he would stop soon because it was cold outside and he was only wearing a t-shirt and that after about 20-30 seconds he stopped and said, "Okay, I'll cooperate, just put me back in the car because it's cold."¹⁴⁶ He stated that he then had a conversation with Mr. Garcia-Pineda about cooperating and not slamming his head or kicking, and then put him back in the squad.

Officer Wuorinen stated that Mr. Garcia-Pineda was not thrown or dropped to the ground, and did not hit his face on the curb or on any part of the squad during the extraction.¹⁴⁷ He described that he took Mr. Garcia-Pineda by "the right shoulder and arm and helped get him out of the back of the car and laid him down on the pavement of the street."¹⁴⁸

Miriam Aguilar-Garcia did not see any use of force outside the squad; she only heard "banging noises" coming from the area of the squads. When she got out of the vehicle to look at the scene, she only saw a group of officers standing around her brother, who was lying on the pavement.

None of the other officers at the scene, Officers Malloy, Misgen, or Kelley said they saw any kicks or force used on Mr. Garcia-Pineda outside the squad.

¹⁴⁰ Statement of Luis Garcia-Pineda, page 6, line 32-49

¹⁴¹ Statement of Luis Garcia-Pineda, page 8, lines 18-39

¹⁴² Statement of Officer Lehner, page 6, paragraph 2

¹⁴³ Statement of Luis Garcia-Pineda, page 2, lines 37-42

¹⁴⁴ Statement of Luis Garcia-Pineda, page 10-11, lines 55, 1-9

¹⁴⁵ Statement of Officer Lehner, page 7, lines 17-18

¹⁴⁶ Statement of Officer Lehner, page 7, lines 28-30

¹⁴⁷ Statement of Officer Wuorinen, page 11, lines 1-15

¹⁴⁸ Statement of Officer Wuorinen, page 7, lines 7-10

CLOSING

1. Points to consider regarding the use of force by Officer Lehner.

- a. The justification for the use of force by Officer Lehner was for control and defense as a result of a valid arrest.
- b. Officer Lehner stated that he opened the squad car door to get Mr. Garcia-Pineda to stop kicking.
- c. Officer Lehner stated he felt he had to act quickly to prevent Mr. Garcia-Pineda from injuring himself.
- d. Officer Lehner stated that he was surprised by the attempted kick by Mr. Garcia-Pineda.
- e. Mr. Garcia-Pineda at first claimed that he did not attempt to kick Officer Lehner, but later in his interview admits that he "might have."
- f. Officer Lehner stated he reacted to the attempted kick and what he perceived as an attempt by Mr. Garcia-Pineda to get out of the squad by directing a push-kick to his chest.
- g. Officer Lehner stated that Mr. Garcia-Pineda moved and this caused him to strike him in the face instead.
- h. Officer Lehner stated that the purpose of the push-kick was to create distance.
- i. After removing him from the squad, Officer Lehner stated they put Mr. Garcia-Pineda face down on the ground.
- j. Mr. Garcia-Pineda was arrested for consuming alcohol under 21 years of age, a misdemeanor.

2. Points to consider regarding the use of force by Officer Wuorinen.

- a. He stated that Mr. Garcia-Pineda was thrashing around in the rear of the squad.
- b. He stated he did not see or hear Officer Lehner kick Mr. Garcia-Pineda while he was in the back seat of the squad
- c. He stated Mr. Garcia-Pineda was not dropped or thrown to the ground when he was removed from the squad.

3. Points to consider regarding the statements of Luis Garcia-Pineda.

- a. He admits that he was under the influence of alcohol during the incident.
- b. He admits that he doesn't recall many of the events that happened that night.
- c. He claims that he was only kicking the partition in front of him, and was not banging his head on anything while in the squad.
- d. He was not clear as to whether or not he was kicked in the face while in the back of the squad car.
- e. He was not clear as to whether or not he kicked at Officer Lehner after Officer Lehner opened the door to the squad car.
- f. He stated he felt he was "knocked out cold" after being taken out of the squad car.¹⁴⁹
- g. He stated that he was kicked by Officer Lehner while he was face down on the pavement.

4. Points to consider regarding the statements of Miriam Aguilar-Garcia.

- a. She claimed that she heard banging noises and shortly thereafter saw Mr. Garcia-Pineda lying motionless on the pavement.

¹⁴⁹ Statement of Luis Garcia-Pineda, page 16, lines 46-51

b. She did not see any use of force by any officer.

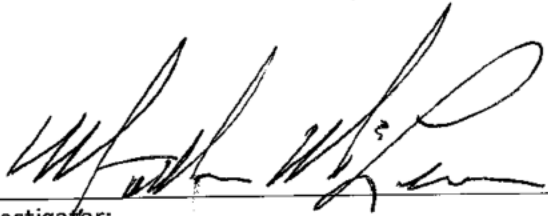
5. Other Facts to consider.

- a. There is no MVR video of the force or events in the back seat of the squad or outside the squad.
- b. No other officer stated they saw or heard Officer Lehner kick Mr. Garcia-Pineda while he was in the back of the squad.
- c. No other officer stated they saw or heard Officer Lehner or any other officer kick Mr. Garcia-Pineda while he was outside of the squad.
- d. No missing teeth were recovered.
- e. Squad 513 was not used after this incident and was taken to the Royalston Garage for biohazard cleanup of blood in the back seat on 12-31-2012.
- f. HCMC Medical records state that Mr. Pineda "had his mouth and face collide with the concrete."
- g. Mr. Garcia-Pineda suffered multiple injuries to his mouth area, teeth and jaw.

There are two key issues presented:

- 1. Was Officer Lehner's use of force in the form of a "push-kick" to the face of Mr. Garcia-Pineda reasonable given the totality of the circumstances?
- 2. Were the injuries suffered by Mr. Garcia-Pineda consistent with those which would be expected from the utilization of a "push/kick" as described by Officer Lehner?

I confirm that the information I provided in this case is true to the best of my knowledge.


Investigator: _____

March 30 , 2017
Date _____

EVIDENCE

1. Statements

- a) Statement of Officer Steve Wuorinen
- b) Statement of Officer Blayne Lehner
- c) Statement of Luis Garcia-Pineda
- d) Statement of Miriam Aguilar-Garcia
- e) Statement of Officer Glenda Malloy
- f) Statement of Officer Dan Misgen
- g) Statement of Officer Christopher Kelley

2. Records

- a) Discipline Worksheet, Officer Blayne Lehner
- b) OPCR Form #3401
- c) Case Closure Letter, Liisa Hill, June 22, 2016
- d) MPD CAPRS Report, CCN 13-430045
- e) MPD CAPRS Report, CCN 13-430045, Supervisor's Use of Force Report
- f) Incident Detail Report, CCN 13-430045
- g) CD, Squad Video, MPD CCN 13-430045
- h) Medical Records, Luis Garcia-Pineda
- i) HCMC Security Report, Luis Garcia-Pineda
- j) Dental Records, Luis Garcia-Pineda, Edgar Mantilla, DDS
- k) Dental Records, Luis Garcia-Pineda, Community University Health CA, Edgar Mantilla, DDS
- l) Injury Photographs, Luis Garcia-Pineda
- m) Statements, District Court, Fourth Judicial District, Rasmussen Hearing, State of MN v. Luis Garcia-Pineda, Officer Lehner, et. all
- n) Lawsuit, United States District Court, District of Minnesota, Luis Garcia-Pineda v. Blayne Lehner, City of Minneapolis
- o) Defendant City of Minneapolis's Rule 26(a)(1) Initial Disclosures
- p) Defendant Lehner's Rule 26(a)(1) Initial Disclosures
- q) Plaintiff's Answers to Interrogatories of the Defendant, City of Minneapolis, (Set 1)
- r) Plaintiff's Responses to Requests for Production of Documents of Defendant, City of Minneapolis, (Set 1)
- s) Defendant City of Minneapolis' Answers to Plaintiff's Interrogatories
- t) Defendant City of Minneapolis' Responses to Plaintiff's Requests for Production of Documents
- u) Request for Officer Lehner Civil Suit Transcript, MCA Trina Chernos
- v) United States District Court, Protective Order, Civil Suit, Garcia v. Lehner
- w) United States District Court, Amended Protective Order, Civil Suit, Garcia v. Lehner
- x) United States District Court, Order Amending Protective Order, (Doc. No. 13) Civil Suit, Garcia v. Lehner
- y) Register of Actions, Criminal Case, State of Minnesota v. Luis Garcia
- z) Work Order #2449787
- aa) Email, Sgt. McLean/Scott Peterson MECC IT
- bb) WorkForce Director Schedule, Third Precinct Dogwatch
- cc) Emails, Cdr. Schoenberger and Lt. Wheeler
- dd) Ground Fighting Training Syllabus
- ee) MPD 2005-2006 In-Service Use of Force Master Lesson Plan (Excerpt)
- ff) MPD Policy, 5-303, Authorized Use of Force

- gg) Relieved of Duty Letter, Officer Lehner
- hh) Commendations and Awards, Officer Blayne Lehner
- ii) Employee History, Officer Blayne Lehner

Hill, Liisa

From: Hill, Liisa
Sent: Friday, January 20, 2017 10:41 AM
To: Misgen, Daniel M.
Cc: Waite, Kathy; Jaafar, Imani S.; Halvorson, Henry; Case, Jason
Subject: OPCR Officer Notification
Attachments: OPCR Officer Notification Letter-Daniel Misgen-Witness.docx

Importance: High

Tracking:	Recipient	Delivery	Read
	Misgen, Daniel M.	Delivered: 1/20/2017 10:41 AM	Read: 1/20/2017 10:56 AM
	Waite, Kathy	Delivered: 1/20/2017 10:41 AM	
	Jaafar, Imani S.	Delivered: 1/20/2017 10:41 AM	Read: 1/20/2017 11:04 AM
	Halvorson, Henry	Delivered: 1/20/2017 10:41 AM	Read: 1/20/2017 10:46 AM
	Case, Jason	Delivered: 1/20/2017 10:41 AM	

RE: OPCR File 15-16258

Officer Misgen,

Attached is a letter scheduling your appointment for an interview with the Office of Police Conduct Review . Your OPCR interview is scheduled for Friday, January 27, 2017 @ 1300 hrs. The details are included in the letter. You will also be receiving a hard copy of this letter in the Inter-Department Mail. Please call me if you have any questions.

Liisa M. Hill
Case Investigator

City of Minneapolis – Department of Civil Rights
Office of Police Conduct Review
350 S. Fifth St. – Room # 239
Minneapolis, MN 55415

Office: 612-673-2093
Fax: 612-673-5510
liisa.hill@minneapolismn.gov

Hill, Liisa

From: Misgen, Daniel M.
Sent: Friday, January 20, 2017 2:01 PM
To: Hill, Liisa
Subject: Re: OPCR Officer Notification
Attachments: OPCR Officer Notification Letter-Daniel Misgen-Witness.docx

According to your letter I am listed as working on the 27th. However according to the schedule I have I am not working that day. I am trying to schedule my attorney and fed rep for that day and trying to move my schedule around as I am off for four days and that is the middle of my days off. If conflicts arise I will let you know.

Officer Misgen

Get [Outlook for iOS](#)

On Fri, Jan 20, 2017 at 10:41 AM -0600, "Hill, Liisa" <Liisa.Hill@minneapolismn.gov> wrote:

RE: OPCR File 15-16258

Officer Misgen,

Attached is a letter scheduling your appointment for an interview with the Office of Police Conduct Review . Your OPCR interview is scheduled for Friday, January 27, 2017 @ 1300 hrs. The details are included in the letter. You will also be receiving a hard copy of this letter in the Inter-Department Mail. Please call me if you have any questions.

Liisa M. Hill
Case Investigator

City of Minneapolis – Department of Civil Rights
Office of Police Conduct Review
350 S. Fifth St. – Room # 239
Minneapolis, MN 55415

Office: 612-673-2093
Fax: 612-673-5510
liisa.hill@minneapolismn.gov

Hill, Liisa

From: Hill, Liisa
Sent: Wednesday, January 25, 2017 12:53 PM
To: Jaafar, Imani S.; Case, Jason
Cc: Halvorson, Henry; McLean, Matthew
Subject: Officer Misgen

Importance: High

Tracking:

Recipient

Delivery

Jaafar, Imani S.

Delivered: 1/25/2017 12:53 PM

Case, Jason

Delivered: 1/25/2017 12:53 PM

Halvorson, Henry

Delivered: 1/25/2017 12:53 PM

McLean, Matthew

Delivered: 1/25/2017 12:53 PM

Officer Misgen left me a message. He will not be able to attend his Friday appointment for the purpose of providing his statement to OPCR, because his representation(attorney), and Fed Rep are unavailable that day. He stated he will get together with them and contact me with an alternate date and time. I did not ask him how long that would take. Misgen also stated that Friday was his day off and he has prior commitments.

Please advise.
Liisa

Liisa M. Hill
Case Investigator

City of Minneapolis – Department of Civil Rights
Office of Police Conduct Review
350 S. Fifth St. – Room # 239
Minneapolis, MN 55415

Office: 612-673-2093
Fax: 612-673-5510
liisa.hill@minneapolismn.gov

Hill, Liisa

From: Kevin Beck <kbeck@kellyandlemmons.com>
Sent: Thursday, January 26, 2017 9:40 AM
To: Hill, Liisa
Cc: Kroll, Bob (Federation)
Subject: RE: Officer Lehner OPCR Interview and Statement

Ms. Hill,

I just left you a voicemail but thought I'd follow up in e-mail. Officer Misgen has been scheduled for an interview tomorrow (1/27) at 1300. He is off tomorrow and was wondering if we could reschedule to next week. Would Wednesday (2/1) work in the AM?

Kevin

Kevin M. Beck
Attorney at Law

Kelly & Lemmons, P.A.
223 Little Canada Road East
Suite 200
Little Canada, MN 55117
651-224-3781
651-223-8019 (FAX)

THE INFORMATION CONTAINED IN THIS E-MAIL COMMUNICATION AND IN ANY ACCOMPANYING ATTACHMENT, IS CONFIDENTIAL AND PRIVILEGED AS ATTORNEY-CLIENT COMMUNICATION. IT IS INTENDED ONLY FOR THE USE OF THE RECIPIENT(S). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER THIS MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, OR DISTRIBUTION OF THE CONTENTS OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (651) 224-3781.

From: Hill, Liisa [<mailto:Liisa.Hill@minneapolismn.gov>]
Sent: Wednesday, January 11, 2017 11:40 AM
To: Kevin Beck <kbeck@kellyandlemmons.com>
Subject: RE: Officer Lehner OPCR Interview and Statement

Kevin,

Sorry I have been out the office for a couple of days. Absolutely I can get you a copy. It is with our transcription person, and should be completed this week. What we normally do is send out a copy of the transcribed audio statement to the Officer, and their Attorney to make sure it is accurate. If it is acceptable then send/email me back an Officer signed copy for the file.

Let me know if you have any questions.

Liisa