

Hill, Liisa

From: Hill, Liisa
Sent: Wednesday, January 11, 2017 11:40 AM
To: 'Kevin Beck'
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

From: Kevin Beck [<mailto:kbeck@kellyandlemmons.com>]
Sent: Thursday, January 05, 2017 12:39 PM
To: Hill, Liisa
Subject: Re: Officer Lehner OPCR Interview and Statement

Ms. Hill,

Pursuant to Minn. Stat. 626.89, subd. 8, I request a copy of the audio recording from today's interview of Officer Lehner.

Cordially,

Kevin M. Beck
Kelly & Lemmons, P.A

Sent from my mobile.

On Dec 20, 2016, at 12:33 PM, Hill, Liisa <Liisa.Hill@minneapolismn.gov> wrote:

This email is to confirm Officer Lehner's interview at the Office of Police Conduct Review, (Minneapolis Department of Civil Rights room 239)on Thursday, January 5, 2017 @ 11:00 am

Thank you Kevin for getting back to me so soon.

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: Microsoft Outlook
To: Kevin Beck
Sent: Wednesday, January 11, 2017 11:40 AM
Subject: Relayed: RE: Officer Lehner OPCR Interview and Statement

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[Kevin Beck \(kbeck@kellyandlemmons.com\)](mailto:kbeck@kellyandlemmons.com)

Subject: RE: Officer Lehner OPCR Interview and Statement



Civilian Unit
350 S. Fifth St. – Room 239
Minneapolis, MN 55415
TEL 612.673.5500

Internal Affairs Unit
350 S. Fifth St. – Room 112
Minneapolis, MN 55415
TEL 612.673.3074
www.minneapolismn.gov

December 08, 2016

Officer Blayne Lehner
Minneapolis Police Department

OPCR Case Number 15-16258
CAPRS Number MP-13-430045
VisiNet 13-430045

Dear Officer Lehner:

NOTIFICATION LETTER

You are being investigated for alleged violations of Minneapolis Police Department Policy and Procedures. The specific policies alleged to have been violated are:

MPD P/P 5-301 EXCESSIVE FORCE: *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.*

13.43



Luis Garcia-Pineda alleges that he was a passenger in a vehicle which was stopped for reckless driving. Garcia-Pineda was subsequently arrested for Obstruction and Consumption of Alcohol by a Minor.

Blayne Lehner
December 08, 2016
Page 2

Garcia-Pineda alleges that while he was in the backseat of a Minneapolis Police Department squad car, you, Officer Lehner opened the squad car door and kicked Garcia-Pineda in the face, causing him to lose two (2) teeth.

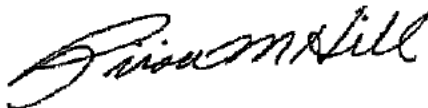
Pursuant to the Minneapolis Police Department's Discipline Process, the above allegations, if true, constitutes a policy violation. However, the above listed policy violations may be amended or changed at any time during the investigation.

Your appointment to provide a statement to the Office of Police Conduct Review is scheduled for December, 14, 2016 at 10:00 hours at the Department of Civil Rights, Office of Police Conduct Review, Room 239 in City Hall. If you have a compelling conflict you must contact me by December 13, 2016 to discuss an alternate date.

I can be contacted by e-mail at liisa.hill@minneapolismn.gov or phone at 612-673-2093 between the hours of 08:30 and 16:30, Monday through Friday. Failure to show for your scheduled interview or to request one of the alternate dates by the time directed will result in additional charges.

This is an ongoing investigation and you are not to discuss this case or interview with anyone other than your union/federation representative. You are entitled to be represented at this interview by a union/federation representative or an attorney.

Sincerely



Liisa M Hill
Investigator - Civilian
Minneapolis Office of Police Conduct Review

Office of Police Conduct Review
Data Practices Advisory

Internal Investigation Warning for Employees under Investigation
(Tennessee Warning)

You are being questioned as part of an official internal investigation into a complaint of misconduct. The information you provide will be used in a fact-finding process, as part of the total evidence, to determine if such misconduct occurred and for assessing whether disciplinary action should be taken. Any admissions that you make during the course of questioning may be used against you as evidence of employee misconduct or as a basis for discipline. The information you supply may also be used in a grievance hearing, arbitration, or other appeal procedure. The following individuals and entities may have access to the information you provide:

- The subject of the data, which includes you, but may include someone else.
- Employees and officials of the City of Minneapolis whose work assignments reasonably require access to the information.
- Individuals or entities that have contracts with the City of Minneapolis reasonably requiring access to the information.
- Attorneys for the City of Minneapolis if such information is related to a matter upon which the City seeks legal advice.
- If disciplinary action is imposed against you based on the results of this investigation, the information you provide may be made available to the public as documentation supporting final disciplinary action.
- Other persons or entities authorized by you, by a state or federal law, or by court order to have access to such information.

Failure to provide the information requested means that the internal investigation must be concluded based upon all evidence and testimony received by the investigator(s) without your statement.

I have read the above warning or have had it read to me.

Signature

Date/Time

Witness

Date/Time

STATEMENT OF PLACE:

Officer Blayne Lehner
Minneapolis Department of Civil Rights
Office of Police Conduct Review – Room 239

DATE:

January 5, 2017

TIME:

11:00 a.m.

CASE NO:

15-16258

INVESTIGATOR:

Liisa M. Hill

ALSO PRESENT:

Sgt. Matthew McLean, Minneapolis Police Department Internal Affairs Unit
Lt. Bob Kroll, Minneapolis Police Federation
Kevin M. Beck, Attorney for Officer Lehner

Q. This is a recorded statement of Officer Blayne B-L-A-Y-N-E Lehner L-E-H-N-E-R on January 5th, 2017 at 11:00 hours in the Minneapolis Civil Rights Department Room 239 being interviewed by Investigator Liisa M. Hill and Minneapolis Police Department Internal Affairs Unit Sergeant Matthew McLean M-C-L-E-A-N. This is regarding OPCR Case 15-16258. Lieutenant Bob Kroll from the Minneapolis Police Federation is present during this interview as is also Kevin M. Beck B-E-C-K, attorney for Officer Lehner.

What is your full name?

A. It's Blayne Larry Lehner.

Q. And what is your present rank and work assignment?

A. I'm a Police Officer with the Minneapolis Police Department and my work assignment is Internal Affairs.

Q. Okay. What is your employee number and date of appointment?

A. Badge number is 004073. Date of employment is December 6th of 1998.

Q. All right. You are being ordered to give a complete and truthful statement regarding matters pertaining to the scope of your employment or fitness for duty. It is a compelled statement pursuant to Minneapolis Police Department Policy and Procedure. Under the Garrity Decision, any statement provided in this investigation cannot be used in a criminal proceeding against you except in cases of alleged perjury. However, these statements may be used against you in relation to employment allegations. Do you understand this warning?

A. I do.

Q. I'm advising you that if you refuse to answer, give a false or intentionally incomplete statement or intentionally omit information that is pertinent to this investigation, you will be subject to disciplinary action up to and including suspension or discharge. Do you understand this?

A. I do.

Q. Ah, is it correct that you have read, understood and signed the Data Practices Advisory, also known as the Tennesen Warning?

A. I have.

Q. Ah, have I informed you that the purpose of this statement relates to an OPCR investigation and specifically an administrative review that is being conducted and that you have been accused of Minneapolis Police Department Policy and Procedure 5-301 Excessive Force. Minneapolis Police

13.43

um, which was on December 29th, 2013 at approximately 3 o'clock, ah, in the morning in the vicinity of 43rd, 44th and Nicollet in Minneapolis, Minnesota and that you are being called to explain the circumstances regarding this event?

A. 13.
43

Q. Do you want to ~~answer~~ ^{take} that?

A. [NO AUDIBLE DIALOGUE 2:56]

Q. Sgt. McLean: Yeah, actually no, I'm not prepared to answer that.

A. [NO AUDIBLE DIALOGUE 3:00]

5

Q. All right.

A. Okay.

Q. I think there were some statements on your police report, um, that didn't match up to some of the, the depositions.

10

A. Hmm.

Q. Um, so, we'll go ahead. If, if that comes not to be true, you know, that, um, violation, then we just, we get rid of that.

15

A. Okay.

Q. All right. What I'm gonna do now is, um, I'm gonna take you back to December 29th, 2013 and I know it's been a couple of years. Um, hopefully have you reviewed, um, your police report, your supplement, um, your reports from that, that time?

20

A. I've reviewed 'em but again this happened three years ago, so the very minute details are gonna be vague.

Q. Okay.

A. Now I, I may not be able to answer questions that are in the police report or in the ALJ hearing or in deposition.

25

Q. Okay.

A. 'Cause it's hap...it's been so long.

30

Q. Okay. Understand. So, what we'll do is, what I'm gonna do is we're gonna take you back to the very beginning, you know, um, before we get into really any of the specifics. So, um, that evening, tell me what you're doing patrol-wise and how you came to assist the other officers, ah, in that Nicollet area. So, why don't you go ahead and start.

A. I was working ~~in my squad~~ ^{sector 513} September 1 I think it was 545 with Officer Steven Wuorinen. Um, we were at North of Lake Street. At the time, I believe we were at the precinct.

35

Full uniform in a marked

Q. Okay.

A. It's vague. And, ah, we heard a shots fired call come out in the area of was it 37th or 35th and Nicollet and, ah, Wuorinen. I'm sorry, ah, Misgen and Lukes offered up to go and I believe some other officers did too. Ah, so Steve and I were at the precinct which is 31st and Nicollet so we were in that area anyway. I don't know if that's the precinct exactly. So we went to the area. ~~At~~ Dispatch gave out a description of the vehicle as possibly involved and Officer...what's his first name? I'm sorry. Novak. Jonahs Novak. Gees. Jonahs Novak, ah, was in the area of 46th and Nicollet and saw a vehicle at the gas pumps that may be involved or a similar description in the shots call.

45

So, other officers had arrived on the shots call so we went to assist Jonahs at, ah, the area of 46th and Nicollet, um, with that stop. We got there, um, essentially the car was vacant so we assisted Jonahs and while we were there, Officer Misgen called out that a vehicle was travelin' southbound on Nicollet that almost, ah, struck his partner, Officer Lukes and it was a gray I believe four-door, ~~at~~ sedan traveling southbound. So Jonahs would essentially, ah, finish ~~him~~ ^{up} ~~at~~ there because the car was unoccupied so we told Jonahs Novak that we were gonna go and assist on that.

50

55

And, ah, so we headed north on Nicollet, ah, Steve Wuorinen was the driver of the squad. I was

the passenger. While we were starting to head north, squad 521 I believe it was with Kelly and Malloy, Officers Kelly and Malloy, ah, stated that we're stopping the vehicle southbound so we continued northbound on Nicollet and, ah, in the area of, what was it? 4300 block I believe, 42 or 4300 block of Nicollet. Um, we came across the traffic stop ~~and~~ ^{then} Kelly and Malloy were ~~INAUDIBLE 6:55~~ on the vehicle and, ah, when we were pullin' up, Kelly and Malloy had the driver out of the vehicle I think by the front of their squad I believe and, ah, they were, ah, pat searchin' 'em. I don't know if they handcuffed 'em and they put him in the backseat of the car. While they were doing that, Steve pulled up parallel ~~to~~ ^{so} the suspect vehicle. ~~It~~ was facing southbound so we were facing north so we're parallel ~~to~~ Steve was like next to it I guess.

10

Q. Okay.

A. And about I don't know ten, ten feet away, fifteen away, I don't know. And, ah, he shined his spotlight into the car. I think I did too. There was two females on the passenger side, one in the front, one in the back, then you had a male passenger in the backseat. So there was three people left in the car. And while they were there, the backseat passenger, male, Mr. Garcia, um, was looking at us. I don't, ~~you~~ ^{he} couldn't really like see in the car because of the spotlights...

15

Q. All right.

A. He was looking at us but, ah, he had that blank stare like a drunk person has. It's just I don't know how to really describe it, it's a, a look a really drunk person has.

20

Q. Mmhmm.

A. It's just like a blank stare. But he's cussin' and swearing and then you can see him mouth it and...

25

Q. What was he mouthing? Could you tell?

A. Um, he was like, "Fuck you." Um, ah, he was sayin' other words, ah, such as, ah, "Go fuck yourself." A lot of, you can tell the word "fuck"...

Q. Mmhmm.

A. Is comin' out of his mouth.

30

Q. Okay.

A. I, he was givin' us the middle finger, um, the two female passengers, they aren't really doing anything, um, and then at some point I don't know if... I can't remember when but at some point Steve drives north, um, he drives north past the squad, does a U-turn and then on Nicollet and then comes south 'cause I think that's when Kelly put the driver in and then got out to go back ~~to~~ the car. Ah...

35

Q. Were Officer Kelly putting, um, the driver of that vehicle in his squad?

A. Yeah.

40

Q. In his and Officer Malloy's...

A. Yeah.

45

Q. Squad car?

A. Yeah.

Q. Okay.

A. I can't remember the exact times when he did the U-turn. Does a U-turn. He stops like... how you describe this. So you got Kelly and Malloy's car...

50

Q. Mmhmm.

A. He stops behind.

55

Q. Okay.

A. He's not parallel to ~~the~~ ^{the m}

Q. Okay.

A. He's like behind 'em but he's offset too.

5

Q. Okay.

A. So if traffic were to come they have to truly go around.

Q. Okay.

10 A. Um, and then I'm just sitting there. Kelly goes back up to the car and, ah, Steve gets out at some point, um, I get out at some point because Kelly... I think he goes up to the females first on the passenger side and ID's them or is talking to them. I would assume he's ID'ing 'em.

Q. Mhmm.

15 A. Then goes I think to ~~the back~~ again and I haven't seen the video for... I don't think I've ever seen the video. So he goes over to the, to Garcia at some point is talking with him and you can tell that he's havin' issues with Garcia. And then Steve gets out at some point, I get out, ah, Kelly asks Garcia to get out, um, he gets out. Steve and, ah, Off... I'm sorry, I don't, Steve and Chris but Officer Wuorinen and Officer Kelly...

20

Q. Right.

A. Um, are dealin' with Garcia and that, ~~you know, the~~ ^{little} triangle of the passenger door and they're handcuffing him. He's not cooperating. He's cussin' and swearin' at 'em and I don't (cough) ~~[INAUDIBLE 10:50]~~ at that point anymore but he was.

25

Know if he was

Q. Was it just verbal or was he physically...

A. Um...

Q. When they're tryin' to cuff him? Or is he just...

30

A. I thought that he...he was, it wasn't like flailing around...

Q. Right.

35 A. And pulling away. It was more of a, "Put your hands behind your back." And he won't I believe. Ah, it's been so long and at one point I know Steve had to like force his arm to put a handcuff on 'em so he's not cooperating, um, by simply, "Hey, step out of the car. Turn around. Put your hands behind your back." He's not doing that. Um, he's sayin' stuff to 'em, it's been so long I can't remember, um, I rem... I do remember the front seat passenger I believe while Garcia's out... is yelling at him.

40

Q. Mhmm.

A. "Knock it off. Cooperate." And she's apologizing. "We're so sorry." And, ah, you know, "He doesn't mean it. He's drunk." That kind of stuff. Um, and then the backseat passenger I don't think said anything...ever. I could be havin' 'em switched around. I don't know who I talked to exactly.

45

Q. Right.

50 A. So they handcuff 'em, um, I think he goes somewhere and Steve, they kind of both take 'em back but Steve takes ahold of 'em. I don't know when Kelly goes off him. And then I stay up at the car for a bit because the...or maybe it's the front seat passenger is talking with me and I'm tellin' her...

50

Q. Okay.

55 A. You know, "Don't worry about it. This will be fine. They're gonna ID you, get you out of here, try to figure out what's going on." And I'm sure I asked her, "What's his problem?" referring to Garcia. Why is he bein' like this? 'Cause the driver wasn't...

Q. Mmhm.

5 A. As far as I knew. And the driver is the one who almost ran over a cop so and he wasn't bent out of shape at all it didn't seem like. Um, she's, she's essentially just apologizing, sayin', "We're sorry. We didn't mean to do anything wrong." Um, I think she said they came from a party or something. At one point, I know I probably asked them, um, "Did my partner get your ID's?" And ~~like~~ they must have said yes because I didn't ID 'em.

10 And Steve...then I hear somethin' back by the squads and I looked back and Kelly was in his squad with Malloy and Steve's outside struggling with, ah, Garcia.

Q. Okay.

15 A. And Steve is big and Garcia is a tiny little guy but he's still havin' to struggle with 'em and Garcia's like facing him sometimes and turning towards him and essentially not allowing him to pat search him or put him in the squad.

Q. And he's handcuffed at that time? Garcia's handcuffed at that time?

A. Yeah. Yeah. But Garcia, even though he's handcuffed, he's limber.

20 Q. Right.

A. He's a small little guy.

Q. Is he handcuffed in the front or the back?

25 A. No, the back.

Q. Okay.

30 A. So then I went back there just to assist Steve and so, ah, Steve has 'em against the passenger's side, ah, rear fender and, ah, so Steve's kinda pushin' and holding him but he, but he's having to forcefully hold him so he can't really pat search him properly, so because he's having to push him against the squad. He can't check his waistband that type of thing and it's tough to do when somebody's struggling with you. So, I kinda just hold his left arm, kinda push him up against the car and hold him so Steve can pat search him.

35 Um, while we're there, Garcia's, he's, um, talkin' about how it's no, or, it's essentially ah, he doesn't really care 'cause he's been in squad cars about a hundred times or whatever he had stated. Um, he is cursin' and swear...cussin' and swearin' and then he's just bein' uncooperative. He won't spread his feet when he's supposed to. That type of thing. So, Steve gets his property, puts it on the trunk and Steve is holding him I think. I go around him and open up his passenger door and, ah, Steve kinda takes him and essentially, ah, Garcia doesn't sit in on his own. He, Steve actually has to kind of guide him with his hands or whatever because Steve is big and just pushes him towards it and he kind of pushes. Garcia sits in there and just gets in and I close the door.

45 And, ah, so then Steve goes towards the trunk of the car so back by the trunk where his property is and, um, I'm standing. At some point and oh, now that I remember, ah, I opened the, I think I opened the door and then when Steve sat in his...Garcia said somethin' to Steve and that's and then I shut it and then I asked Steve when he was back by the property, "What did he say to you?" And Steve said, "Oh, I've been in squad cars hundreds of times." That's when he essentially said that.

50 Um, and then I'm just standin' back there and it's really cold out and, ah, so I'm just watchin' Steve get his stuff and within what, five, ten seconds or whatever it was, a real brief period of time, Garcia starts flippin' out in the backseat of the car and he starts kickin' everywhere, he's kickin' the door, he's kickin' the, or kneeling ~~over~~ and then kickin' the divider thing, he's slammin' his head against the divider and the window and he's just goin' crazy inside, so. I don't know if you

55

want me to keep goin'.

Q. Keep goin' then, then what did you do?

5 A. So, he's just goin' nuts inside and again the time frames are vague. I don't know if it's ten, twenty seconds or...whatever it was while I'm standin' out there. Um, Steve is doin' his, gettin' his property, probably lookin' for an ID because Garcia didn't identify himself. He refused to. Um, I'm seein' Garcia do all this stuff so, um, part of bein' an officer is you have to care for the person in your custody. You can't let someone sit there and just injure themselves and destroy property. Um, you can't essentially handcuff the guy and walk him through a parking ramp and he breaks through and he jumps off the fourth floor. You can't allow it to happen.

10 So, Garcia is in there bashin' his head, ah, kickin' around and then numerous people I have seen and in my custody who've done that, who've gashed themselves open and have injured themselves severely. And in this day and age with people with the big thing with concussions and, you know, you have to make that decision. What do you do? You have to make sure he doesn't injure himself and he's, if he was just kicking the squad...

15 Q. Mmhmm.

20 A. Who cares? But he was doin' more than that. He's slammin' his head against the partition. He's slammin' it against the, ah, the bars on the windows and stuff so you gotta take care of 'em. So, um, while he is doing that, he'll do it for a brief four or five seconds. He'll smash and then he'll smash his head, he'll stop, he'll do it again. At one point, he'll kick the passenger side. The next point he'll kick the driver side. It'd be a knee in the partition, he's slammin' his head on the partition. Then he takes a small little break then he slams it on the, the window and so he at one point he stops and he gets ~~sat~~ like he's normal and he's not bustin' his head so I open the door and tell 'em, "Stop kickin' around. Stop flailin' around." But right when I opened the door, he looks at me and he turns immediately and he kicks at me so he, ah, he kicks with his right leg, um, he misses hittin' me in the knee but also when he kicks, um, he rears back right away and it looks like he's gonna kick me again. So, it took me by surprise because I've done this several times, just opened the door and people have stopped...

25 Q. Mmhmm.

30 A. Because they realize they're just not contained anymore. It's, the cops are confronting them. But, no, he took it to immediately took it to an assaultive level and, ah, he kicks at me and just barely misses my knee and, ah, I don't know if you've known but I've had issues with my right knee for the last ten years. I injured it on work and I've always had issues with it. So, he misses it and it startles me so I just back up and then he hooks his right leg and he's rearin' up to what I thought was another kick but instead, um, he started comin' out so, um, I was gonna push-kick and just keep him in because it startled me.

35 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 comin' out. This is happening within like one second a second and a half and, ah, 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 and, ah, but instead of kickin' at me he actually hooked his leg and he was coming out of the squad to get out. So, instead of hittin' in the chest my, the bottom of my blu...or boots, uh, boot, ah, hit him in the face. And, ah, when I hit 'em it was from like his chin all the way to his, um, forehead because the boot hits him. And, a push-kick too, a push-kick has momentum so you're goin' and you're pushin' so that was what I was doing...

40 Q. Mmhmm.

45 A. So when I made contact with his face, I just kept ^{squad} continuing to push him and I pushed him into the squad. And then once I pushed him in the scod, in the squad, his legs kinda flew up or whatever is 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, that whole thing was, it was just a reaction. ^{thing} 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 bangin' his head. 'Cause, again, if he was just kickin', I don't care.

Q. Mmhmm.

5 A. But he was doin' more than that and, ah, so this whole thing happened essentially what four, five seconds max where I opened it, "Hey, knock it off." He kicks at me, hooks his leg, I push-kick him in the car and slammed the door. And it was all, it was essentially once you slam the door, you think to yourself, "What the hell was that about?" So, then I look in and he's just layin' there and with him hittin' his head prior and all that stuff, I decided okay, he needs to come out. So, we opened the door and Steve... I reach in there and I grab him and he's struggling a little bit 'cause I can't get him out myself. And he's a little guy. You would think you could just grab him and pull him out but you can't. He's like stickin' his legs down in the thing, like the foot well or whatever it's called and, ah, so I grab 'em and I pull 'em and he's kind of like stuck, he's stickin' himself in there so Steve came over there and we both pulled him out.

That old saying

15 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 pullin' him out he's screamin' and yellin' and callin' us names and that type of things. Um, and then when he's on the ground he's flailin' around a little bit and movin' around so I, I kneel down on him and I put my ~~hands~~ I guess it depends what side I was on. I don't know if it was right or left side I was on. Put it between his shoulder blades to hold him down. And, ah, he was only wearin' a T-shirt I think so I knew he would stop soon because it was like bitter cold.

20

Q. Mmhmm.

25 A. I mean it was, it sucked. And, ah, so he's screamin' and yellin' and flailin' around on the ground and I'm just tellin' him, "You know, calm down and, ah, we'll put you back in the car. It's cold out here." I'm tellin' him that type of thing. And then after like twenty or thirty seconds I don't, I don't know the timeframe 'cause it's been too long. Twenty or thirty seconds or so he's, he just stops and, ah, he starts not apologizing but he says, "Okay. I'll cooperate, you know, I, um, just put me back in the car." 'Cause it's cold.

30

Q. Mmhmm.

35 A. It's like really cold out and it's windy too. It's, it was bitter. So, I had a conversation briefly with him and said, "Look, I'll put you back in the squad but you can't be kickin' around. You can't hit your head and that stuff. If you do, we're gonna take you back out." I probably mentioned something about hobbling him. I don't know but, um, Steve was standin' there with me. I think Kelly may have gotten out too. I don't think Malloy ever did. So, I stood him up and had a conversation with him I'm sure while and he was goin', we were goin' back over to the squad and opened the door, put him in and he was probably just sitting there for a while.

40 I probably had another conversation with him. "Don't, ah, slam your head." And that type of thing in the car, ah, and then he gets in... probably... I can't remember if, if I closed the door and then helped Steve with the property or if I put him in and left the door open and got his name. At some point I, in the back, I got his name, ah, where he lied about his name. He told me his date of birth. I think I got his address. While I was doin' that he's talkin' about, um, he knew some cop on the north side and he was gonna be a cop and I was gonna be fired and all this other stuff and, um, while he was outside on the ground is when I think it was me. Did I? Yeah, pretty sure I, it, it's been so long I believe I called for a supervisor to see, um...

45

Q. And why would you have done that?

50 A. 'Cause I, I used force on 'em, um...

Q. Was he bleeding?

55 A. I didn't know he was bleeding until I actually stood him up. And when I stood him up, you know, he faced me, 'cause I was talkin' with 'em. He had a cut on his lip and he was bleeding from his lip a little bit. And, ah, then there was a tiny little or a pool of blood on the street because he was

BCC

5 layin' there for about 30 seconds or actually may even been longer than that. I mean, I don't know. He was there for a time and then, ah, so I probably called, once I s-s-s, yeah, when I was kneelin' on his for the force I called, ah, Sergeant Altonen, ah, to come to the scene and that's when I stood him up and I don't think... I know I didn't. I don't think anybody called an ambulance to the scene at all. Um, 'cause it was just a cut lip. You can do first aid on that and it was just bleedin' a little bit.

Q. Mmhmm.

10 A. It was ah, I think his top~~x~~ um, lip swelled up a little bit, um, but that was minutes later. It wasn't right away. And, ah, and then, ah, I got his date of birth and his name, his address and that stuff and he cussed and swore at me and threatened me and all this other nonsense so the door was shut and he was fine. He didn't bang his head or nothin' anymore and kick around and then Sergeant Altonen came to the scene, um, he talked with me real briefly about, not real briefly, he asked me what happened and I told him what happened and, ah, he attempted to talk to Garcia. He refused. Garcia refused to speak with him.

15 And then Sergeant Altonen, he told me like any other, any sergeant does, you know, document what you did, um, take him to the hospital, which we were gonna do anyway not because of the cut lip, that was part of it but it was because he was under 21 and he was, he was drunk and I knew jail wasn't gonna take 'em and, ah, so he just advised me like a sergeant would, you know, document your stuff, take him to the hospital, that type of thing.

20 So Kelly and Malloy was kind of done and then so Steve and I drove Garcia to the hospital and again that was for his intoxication mainly but he also had the cut lip and, ah, on the way to the hospital, Garcia was talkin' with us just fine. He never complained about his injury at all. Ah, he, again, it was all about essentially mother fucking us, tellin' us how he was gonna sue us and tellin' us how we're all gonna be fired. If we didn't have our badges on, he'd kick our ass and, um, talked about, ah, the cop on the north side that ~~we~~ know and I even asked him who it was and he refused to tell me and things like that and then he started gettin' on Steve a little bit for whatever reason. Steve never did anything to him. And, ah, but it was mainly directed towards me, so.

25 Then we got to the hospital, the special care, um, they teach us in, in the in-service about de-escalating and stuff and one of the parts about de-escalation is, ah, remove yourself from the situation so Steve didn't have much of an issue earlier...

35 Q. Mmhmm.

A. With him. Yeah, the guy pulled away a little bit but Steve is big. He can handle him. And also too I can get out of the squad if Steve had an issue. So, Steve just, I just had Steve take him into the hospital. Um, Steve knew that he had a cut lip and was intoxicated and that was the main reason we had taken him there and so he took him into the, into special care I believe it was at HCMC and came out what ten minutes later or something while I did the report and... I think ~~INAUDIBLE~~ ~~the tape~~ on the way down to the hospital. Gave that to Steve to give to 'em and he came out...

40 I wrote him a tag →

45 Q. Is that when you left him then? You left him at the hospital?

A. Yeah. And then Steve came out and then we went to the precinct to do our to finish our reports. I was doin' ~~em~~ like the CAPRS front stuff...

Q. Mmhmm.

50 A. In the squad. And that's about it.

Q. All right. You said that you took 'em to the...did anybody call for an ambulance that, that evening...or that morning?

55 A. I don't know. You'd have to check the dispatch tapes and I don't believe I did. No ambulance came. I know that 'cause we drove down there. I don't, I don't know why anybody would because

he just had cut lip.

Q. Mmhmm. And you said the jail wouldn't take 'em if they're bleeding. Is that correct?

5 A. Yeah, not, yeah if they're bleedin' from their ~~m~~ ^{mouth} and not necessarily that but he's underage and he's drunk. Jail tends to refuse for that.

Q. All right. So, what if he wasn't, if he wasn't drunk and he was still bleeding, would you have called from an ambulance knowing that the jail's not gonna take him?

10 A. No, because jail might take 'em with bleeding. The reason we didn't go down to HC or Hennepin County Jail was because of his, of his level of intoxication. Jail has, ~~has~~ done that numerous times especially when they're underage because they're a danger to themselves and they need to be essentially written off by a doctor that their, their blood alcohol content or whatever is okay for jail ~~intake~~ intake.

15 Q. Mmhmm.

A. So that's happened numerous times. Even with adults, you walk 'em in when they can barely stand and they're so...no, so you have to go take 'em to jail or I'm sorry, the hospital for them to say, "Yeah, he's okay for jail." So it's essentially not even an age thing. It's an intoxication level...

20 Q. Okay.

A. ~~With you~~ Issue

Q. In terms of, um, medical assistance, ah, in your policy and procedure, um, do you know what it states? I mean, if they're bleeding or any type of injury whatsoever, you're supposed to render

25 ~~Yeah~~ ~~no~~, you apply first aid.

Q. Okay.

A. So, and it's...

30

Q. Do you do that or do you call for an ambulance or EMS unit?

A. You can do either one so officers are, can do the first aid aspect of it if it's just a little cut or if it's a like a little cut on his mouth like Garcia had, yeah, you can do first aid on that.

35 Q. Did you notice anything else? Did you notice if he had his front teeth?

A. No, he talked to me normal. I never noticed anything about his teeth. His, ah, 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 like at that Rasmussen hearing which was what six, seven, eight months later or whatever and I was asked on the stand about it. I had no idea he was ever missin' any teeth.

40

He never...Garcia never complained about it, never talked about it which is weird because if my teeth are missin' I would know and I'd point it out. "You kicked my teeth out." You know I, I mean how many times have you arrested somebody that dealt with somebody and they complained to you, "You hurt my arm when you put me down in an arm bar." Or you know, "You, you stepped on me." It's like, they complain about what you did. I mean, never once. It was always about you know, "Go fuck yourself. You're gonna get fired. I'm suin' you. I know people on the north side. I'm gonna kill you." That type of stuff instead of saying, "You kicked my teeth out." So, no. And you, you never noticed it either.

45

50 Q. Mmhmm. Let's go back to the backseat when you did your push-kick. What leg did you utilize to do the push-kick?

A. ~~You know~~, my right.
Yeah

55 Q. Your right? Okay. And when he, when Mr. Garcia Pineda started kicking in the, in the backseat, you said that, you know, you were surprised that, you know, he'd be doing that. Officer

Wuorinen's in the, you know, trunk, you're...am I correct in that you're kind of talkin' with your partner there at the back of the trunk area, backseat area?

A. I don't know if we're talkin'. We're standin' by each other.

5 Q. All right. Um, when he started kickin', did you guys talk about, "All right. Now he's kickin'." Did you formulate a plan or anything?

A. No, like verbally? No.

10 Q. Verbally? I mean to have maybe one go on one side, one on the other. I mean he's kicking the door. You open up the door. There's a chance you can get hurt.

A. But he wasn't kicking at the time I opened the door. He would kick, he would bang his head.

Q. Mmhmm.

15 A. And I waited for an opportunity and then, like I said in my, in the ALJ hearing, I waited for an opportunity when he was sittin' normal.

Q. Mmhmm.

20 A. So...to formulate a plan is, look, Steve is within me to, to Bob Kroll here. It's like we've done this enough where an officer can do something and the other officer can work off what you're doing. You don't formulate plans every single time you're going on a domestic. You don't formulate a plan of, "Okay, he's standin' there, she's standin' there." and we talk in front of them. "Okay this is what they're gonna do while we approach them." You just go and do it.

Q. Mmhmm.

25 A. So, if it's something that I stood there and told, "Okay, Steve, we're gonna open the door. If he does this, we're gonna do this. If he does this, we're gonna do this." No. We don't do that. Cops don't do that. Now, if you have time on a, some guy is barricaded in the house to formulate a plan and go through every scenario, that's different. That's not a, a situation just out on the street that you're just. All I want to do is open the door and say, "Stop kicking." Or "Stop banging your head against the door."

30 Q. Did you, um, before you opened the door, did you yell at him, you know, the doors are closed, you're standing there with your partner. I mean, he probably could have heard you, you know, if he's in the backseat. Did you yell at him then? "Hey, stop it. Knock it off."

35 A. Probably was one over there. I'd probably say, "Hey, knock it off." And then you open it and, "Hey, stop hittin' your head."

Q. Mmhmm.

40 A. Probably. I don't know. Maybe.

Q. Did you have your MVR going...in your car?

A. Ah, no, it wasn't going.

Q. Okay. And why wasn't it going?

45 A. You know, I don't know why it wasn't going. Because after it was done and I put him back in the seat, I opened up the front passenger seat and looked and I noticed it was off and I remember looking at Steve and asking him. "Why isn't it on?" So, it's just an unfortunate thing that it wasn't on.

50 Q. Mmhmm.

A. And by the time he was in the backseat, I was, none of the force was ^{caught} copied. It would only go back thirty seconds so what's the point of even turning it on. It's been two, three, four, five minutes at this point because I identified him with his name and all this other stuff once he was sittin' there.

55 *Back*

Q. Sure.

A. So, okay you turn it on but now it's no good.

Q. Mmhhh.

5 A. It's too late. So it shows nothing. All it shows is Garcia sitting there. Oh, yeah, I guess you can capture him mother fucking you.

Q. Mmhhh.

10 A. But none of the force is on there, so.

Q. Sgt. McLean: When you talk about, you know, we didn't really need a plan, could that have been something that you, you could've asked Wuorinen? "Hey, we're gonna go in and deal with this guy, did you turn the MVR on?"

15 A. I just assumed that it was on.

Q. Sgt. McLean: Okay.

A. Because we're going to a call and he pulled up behind and I just assumed it was on. I don't sit there and check every time I get out.

20 Q. Sgt. McLean: All right. I was gonna ask if, if you checked when you got there to see if it's on or not.

25 A. No, I, that's, as a passenger, you're. Look, when you have a driver and a passenger, the driver is in charge of driving, positioning, that type of thing. The passenger. Your job is to supplement the driver on the things that he doesn't have the ability to do at that time. So, in his position as squad as a passenger in my mind your, your job is to make sure you're lookin' around, lookin' for threats because he's busy doing other things. He's positioning, he's driving, he's workin' lights, supposed to be turnin' the camera on, that type of thing. But, as a passenger, you're lookin' at the car that just ran over or tried to run over another cop, you're lookin' for other threats, you're lookin' at Kelly who's goin' backup to this car and you're dealing with that so that's what I'm dealing with as a passenger. So, I get out and I just do my thing. I was expecting that to be done.

30 Q. Sgt. McLean: But you're, but you're supposed to be backing him up and part of that backing up could be to ensure yeah, MVR's running. Here we are on this stop.

35 A. That could be but...

Q. Sgt. McLean: Okay.

A. It just. I assumed it was on and it wasn't.

40 Q. What was Officer Wuorinen's response when you, when you asked him, "Hey, MVR's not, not on."

A. Ah, I think he said, you know, "I'm sorry." Something like that but, you know, what can ~~you~~ ^{he} do? It just wasn't on. It's one of those things. It's like, "Crap." ~~You know.~~

I DON'T KNOW

45 Q. Sgt. McLean: Then, why didn't you turn the MVR on when you got back in the squad and you realized it wasn't on for the transport down to jail if this guy's mouthin' and givin' you guys a hard time?

A. We could have but ^{a lot of that} ~~at that~~ stuff you can just document. There's two ^{ya, there's} ~~cops in there, two on, we're~~ ~~two cops~~ ^{in there} and all he's doin' is just mouthin' off so, I just...

50 Q. Sgt. McLean: But, you'll... okay, agreed. But, then it comes down to a he said, she said. If you run the MVR then you have the video evidence of it.

A. Sure.

55 Q. Sgt. McLean: And also you don't know what he's gonna start doin' en route to jail. He could start doin' all that stuff again.

A. Yeah but he...

Q. Sgt. McLean: You'd have the MVR runnin' to, to document and show it.

5 A. Very true but he didn't and if he'd started to, you can turn it on. It goes back 30 seconds. That's the nice thing about those MVR's.

Q. Sgt. McLean: Right.

10 A. So, it's not like he can start bangin' his head and it's like, "Oh, crap, it's gone. It's too late." 'cause it's not. You go back 30 seconds, if he starts doin' it, just tap the switch and turn it on.

Q. Sgt. McLean: Right.

15 A. So, I guess that's my more of my logic about it. Do, I know we have a policy now that you record everything when you transport somebody which probably is a good thing but just, I mean, yeah, we have a policy now but in the past, yeah, we can record every single transport and get every single thing in the face of the earth and never. What's the point I guess? Yeah, I guess now they just make you do it so.

Q. Sgt. McLean: Yeah.

20 A. [NO AUDIBLE DIALOGUE 40:04]

Q. Sgt. McLean: The point is to document...

A. Sure.

Q. And so...

25 A. [NO AUDIBLE DIALOGUE 40:08]

Q. Sgt. McLean: And so, so you don't have to make a statement and have his statement contradict your statement. You can just refer to the video.

30 A. But what crime is he committing by just verbally assaulting us? So, I guess that's the parameter that I live by is documenting the elements of a crime. Okay, yeah he's mother fucking you and telling you how he's gonna sue you and stuff. It's like, okay, I'll just put it in my report but it's not, ah, crime-based.

Q. Sgt. McLean: True. But these videos can help you in administrative things like this one too.

35 A. Well, that's true but I don't, I guess I don't look far enough ahead to worry about bein' sued, sued civilly. I do my job as a criminal aspect. That's what I do. At least...

Q. Sgt. McLean: But we do teach you in, in multiple training, um, venues, to be concerned about the civil aspect of your job, do we not?

40 A. I understand that but when you're documenting what people do it's ~~not~~ ^{about} documenting the elements of the crime, so, like you said, if he went and started banging his head, all you gotta do is turn it on because it goes back 30 seconds. And do I know that? Yeah.

Q. Sgt. McLean: All right.

45 A. So, in the future, if, when I'm in a squad again, every single thing, body camera, squad, it'll be tape recorded. So, I'll do it 24/7, seven days a week. I don't care because to go through what I've gone through for the last year and a half, it's been hell. Now, when you had the first 17 years or 16 and a half years of my career where I never dealt with this stuff, it's a little shocking to have to go through. So once you go through it, I'll tape record everything. If you're gonna ask me, ah, for a stick a gum while I'm standing at SA, well guess what? I'm gonna tape record ~~you~~ ^{you}. So, it's just the way it is now. It's all because it's a, it's the civil aspect of it. I didn't get, I didn't get into law enforcement to have to worry about the civil aspect of it. You want to put criminals in prison.

50

Q. Sgt. McLean: But it isn't that simple. The civil aspect is a large part of it.

55 A. Times have changed very much, so...

Q. Sgt. McLean: Right.

A. Lt. Kroll: Depending on where you work.

5 Q. [NO AUDIBLE DIALOGUE 42:18]

A. Yep.

Q. [NO AUDIBLE DIALOGUE 42:18]

10

A. Lt. Kroll: And the mentality of the police administration.

Q. [NO AUDIBLE DIALOGUE 42:21]

15

A. So, do I regret that it's not on? Yeah, absolutely. I would not be sitting here today if that thing would have been on. I...there's nothin' I can do about it. It happened and it wasn't on and it sucks because I'm sitting here again ~~relieve the duty~~ ^{relieved of duty} at home because that wasn't on. If that would have been on, I would not be here, I would not be talkin' to anybody, I'd be workin' the street right now.

Q. When you opened the door and, um, Mr. Garcia Pineda, you know, what you stated, kicked at you, and you did the push-kick, then you said you closed the door. Was Mr. Garcia Pineda conscious or unconscious once you kicked him? You said that he stopped for a moment, yeah.

20

A. Well, I guess in my report, I said I, in my report, it appeared as if I...okay, what did I say? it appeared as if he went unconscious or somethin' like that. I don't know.

Q. Okay. But...

25

A. I looked in the car...

Q. He, he, stopped...

A. And he stopped. He just wasn't sit...he wasn't movin' around so I took that as an opportunity okay; let's get 'em out. Now, do I know if he was unconscious? I don't know. The second I opened that door again, the second time, he was conscious.

30

Q. Right.

A. 'Cause I couldn't get 'em out of the car.

Q. I guess what I'm wondering is once you kick him the first time, the one kick that you did, um, he's not kicking or flailing anymore. Is that correct? Could be conscious, unconscious...

35

A. Well, I didn't...

Q. But he's not...

A. I didn't give him a time to...

40

Q. Right.

A. Flailing 'cause I slammed the door shut and I literally looked in there it's like...

Q. And you were ac...was he? He wasn't doin' anything?

45

A. He was just layin' there.

Q. Okay.

A. It was like seconds and then you opened it up and, you're tryin' to remove him from the car while he's...

50

Q. And, so, give me the reason as to why you wanted to remove him? Okay? He's...my understanding, and, correct me if I'm wrong; we're just goin' through this. He's kicking. You open up the door, you do your push-kick, he stops kicking, you close the door, then you re-open up the door and bring him out. Why, if he's already stopped, he st...he stopped kicking, why do you open up the door and get him out?

55

5 A. You have to understand. It's like I said before. It's the, the, when I slammed the door shut again, it was like it was one of those, like I said before, "What the hell was that about?" And it was the pull push-kick is to create distance, it's not a, it's not a offensive kick and I, a lot of people don't understand that. All they hear is kick. "Oh, you kicked 'em." No. I push-kicked someone away. It's just like pushing somebody with your hands except you use your leg. You can also punch somebody but if I push you, it's not called a punch. So, I don't know. I don't understand why people keep differentiating my kicks. They're all the same. No, you didn't push someone with a foot. It's like pushing him to get away from me because he startled me when he was coming out.

r.k.e

10 Q. Sgt. McLean: Would it change if you would had written in your report, "I pushed him using my foot." and omitted the word kick?

A. I guess but that's not what it's called. It's called a front thrust kick. It's called a push-kick.

Q. Sgt. McLean: All right. But, to the reader, there's a difference.

15 A. Huh, 'cause it's word games at that point 'cause that's not what it's called. Yeah, I pushed him with my foot but...

Q. Sgt. McLean: But it describes the action.

20 A. [~~CROSSTALK 45-43~~] pushed him.

It's a push kick

Q. Sgt. McLean: It describes the action. You pushed him using your foot. Those are your words. That's what you just said.

A. Well, that's what you do. That's what a front push-kick is; you're pushing someone with a kick.

25 Q. Sgt. McLean: All right, but as soon as you use the word "kick," now you introduce the word "kick" and you know in our use of force policy and our language, kicks are addressed differently or considered to be different levels of force than a push is. Would you agree?

30 A. Well, only because they don't understand that a push-kick is a, is a defensive kick and when it comes to the use of force, you don't consider pushing someone with your hands a punch so it's not considered hard empty hand so why would you consider a push-kick, a kick, as hard empty hand? A push-kick is a, is a defensive maneuver to create distance not to destroy somebody's body like a kick is.

35 Q. Sgt. McLean: To my original point, I think that they consider it that way because they see the word kick.

A. Okay, so I got, okay I...yeah, I got caught up in a, in a word game I guess, or, it's semantics essentially.

40 Q. Sgt. McLean: Well, I think it adds confusion. I don't think it changes the action that you did it just, it, it adds confusion.

A. Okay.

Q. Sgt. McLean: So, that's why we're askin' you to explain the action.

45 A. Yeah, it's a push with your foot, you know? So, yeah, it's, huh, I get hung up on it. It's, it's called a push-kick. It's always been called a...in martial arts, in defensive tactics, you know, when you're taught this stuff, they teach you a push-kick or a thrust kick. We don't, we don't call it a, you, you thrust with your foot.

Q. Is that somethin' they tray...they teach you in the academy?

50 A. Correct. And then also I was taught it in 2005 in ~~TPCT~~ that program that I went to to become a defensive tactics instructor. It's called a front thrust kick. *TPCT*

Q. Okay. Now, is that police department, Minneapolis Police...

55 A. Correct.

BCU

- Q. Department sanctioned? That class that you took?
 A. Yeah. I used it to become a defensive tactics instructor through the Minneapolis Police Department. I have the manual for it and everything...
- 5 Q. Sgt. McLean: Do you have that? Did you bring it?
 A. I didn't bring it with me today but...
- Q. Sgt. McLean: Do you have any documentation where it calls it that?
 10 A. Yeah. It's called a front thrust kick or whatever it's called. Yeah. A front thrust kick. I always consi... I always called it a push-kick 'cause...
- Q. Sgt. McLean: So, if the technical term for it in our training manual is a front thrust kick...
 A. Yeah...
- 15 Q. Sgt. McLean: Can I ask you why you didn't term it that when you wrote your report?
 A. 'Cause when people talk, it's a push-kick. It's like slang for it, you know?
- Q. Sgt. McLean: Do you use slang in your police reports when you're describing a technical thing that you've done?
 20 A. That's a very good point. I've always called it a front push-kick.
- Q. Sgt. McLean: Okay.
 A. So.
- 25 Q. Sgt. McLean: I think you're safer when you're writing reports legally and administratively if you use the accurate term...
 A. Yeah.
- Q. Sgt. McLean: That describes your action because then it eliminates the chance of confusion and then everyone who's involved is, is talking the same language and understanding the same action or term.
 30 A. Yeah, I, I agree.
- Q. Sgt. McLean: Okay.
 35 A. And looking back it's a poor choice of words I guess. Yeah. So, but, yeah, I can, I, I, it might be in one of these books but, yeah, I have the book. I guess, actually I think Joe ~~owns~~ ^{has} the book, so.
- Q. Okay. Going back to when, my question is then why the need to get him out of the backseat if he's already stopped kicking?
 40 A. Well, it's an opportunity ~~to~~ ^{thing} at that point, um, like I said, the reaction was it was a reactive thing...
- Q. Mmhmm.
 A. To push 'em away, keep him in the car and slam the door shut because he's trying to get out and ~~flee~~ ^{flee} or assault me or do whatever just tryin' to get out.
 45
- Q. Sgt. McLean: Now he's contained.
 A. But now you slam the door and he's...
- Q. Sgt. McLean: He's not goin' anywhere.
 50 A. [NO AUDIBLE DIALOGUE 49:33]
- Q. Mmhmm.
 A. However...
- 55 Q. Sgt. McLean: You have time to think about... "Oh, okay. Now this guy's a problem."

A. Yeah.

Q. Sgt. McLean: I mean you've got your partner there and you've got other officers there...

A. Yeah and Steve helped me.

5

Q. Sgt. McLean: And there's no, there's no rush to do anything. You guys could say, "All right. So, this guy, he's uncooperative. He just kicked me. Um, what should we do? How do you want...how should, how should we handle this?" Right?

A. But is there not a need to rush?

10

Q. Sgt. McLean: Yeah.

A. That he's...

15

Q. Sgt. McLean: That's my question to you. What is the need to rush? He's contained. He's not kicking. And you recognize that he's combatative and there could be problems with him.

A. But now is an opportunity for you as an officer. Steve already knows what's goin' on whether he saw what happened probably not 'cause it happened so fast. You know, it happened so quick that you can barely register in your own mind what's goin' on.

20

Q. Sgt. McLean: Did you tell him after it happened and you shut the door? Did you say, "Hey, the guy just kicked me." Did you communicate that with Steve?

A. Um, did I? ~~Not~~ I don't know if I communicated it directly to him. I probably, I believe I said, "Stop kicking." Now, whether...so, yeah, I would assume that was it kickin' at me 'cause I opened it up to say, "Hey, quit bangin' your head." And then as he's kickin', "Stop kicking." And then you do your thing and but at this point too, you have to understand it's a, it's a window of opportunity. Now, you look in the squad and he's just layin' there. Do you let him come to or whatever, get his brain back into the game and start kickin' around again? Or do you quickly open the door and remove him since he's not moving? You have to remove him from the car.

25

30

Q. Sgt. McLean: Backin' up just a second. Do you think it was important to communicate to Steve, "Hey, this guy just tried to kick me. This guy's assaultive."?

A. How would Steve not know that? He, I mean...

35

Q. Sgt. McLean: You just said a minute ago that you didn't know...

A. No-no-no-no-no. How would Steve not know that he's assaultive, he's kicking? He was doin' it in the backseat for 20 seconds.

Q. Sgt. McLean: Kicking, kicking the squad but did he try to kick you? There's a difference between just kickin' back there and then kickin' the officer. Agreed?

40

A. Did I communicate stuff to Steve? No.

Q. Sgt. McLean: Okay.

A. I took an opportunity to open the door and remove a guy who wasn't kicking anymore from the car and obviously Steve knew what I was tryin' to do because he came over and helped. So, like I said before, the, this ability to always communicate and the need to always communicate is yeah, it's essential for communications but you have to get on the same page with your partners that you work with on the street. You can't always be, um, constantly putting your hand on your partner, "We're gonna do this now. We're gonna do this now." at every single step. Eventually, you have to go into a situation and someone's in charge as ^{the} a group and you take the lead and do and the rest of the people fill in and do what else is needed. You can't constantly have this, this. I don't even know how to describe it. This constant teaching moment of, "I'm gonna do this. I'm gonna do this. I'm gonna do this." It's...

50

Q. Well, I, do you...

55

A. [NO AUDIBLE DIALOGUE: 52:42]

Q. Sgt. McLean: No, nobody's, nobody in here is saying that...

A. [NO AUDIBLE DIALOGUE: 52:44]

5 Q. No.

A. [NO AUDIBLE DIALOGUE: 52:45]

Q. Sgt. McLean: At all.

A. [NO AUDIBLE DIALOGUE: 52:46]

10

Q. But.

A. But, so your question indicates...

Q. Sgt. McLean: [CROSSTALK 52:47]

15

A. [NO AUDIBLE DIALOGUE: 52:48]

Q. Yeah, I don't think it's a teaching thing. I think it's just communication between you and your partner. It's not. I'm not out there as a partner trying to teach this is what we do. But I know fire and maneuver or anything like that, you're constantly...talking to your, you know, to your partner and I guess our point is after he tried to assault you, as you said, Garcia Pineda, he kicked you once, you closed the door. I think wouldn't there have been, you know, less than, it would take less than a second to tell your, you know, ask your partner, "He just kicked me. You know, let's get 'em out." And then you can formulate a plan. I mean, it doesn't take that long because why are you risking 'cause it, from my viewpoint, you're risking yourself now opening that door again 'cause he's already proved one time he's gonna kick you. Now you're opening that door again.

20

25

A. I don't believe that is true. Steve obviously knew what I was gonna do by openin' the door again because he came over and helped me.

Q. [NO AUDIBLE DIALOGUE 53:42]

30

A. Lt. Kroll: Can we take a time out? I've gotta go to another appointment at 12 but I'd like to talk to these two for a minute before I go 'cause then I won't come back in.

Q. Yep. Okay.

A. [NO AUDIBLE DIALOGUE: 53:48]

35

Q. Sgt. McLean: Yes.

A. [NO AUDIBLE DIALOGUE: 53:48]

Q. [NO AUDIBLE DIALOGUE 53:49]

40

A. Lt. Kroll: Okay.

Q. All right. We're gonna take a break at 11:55.

45

All right. We will commence, ah, the interview. Um, Lt. Kroll has left for another appointment. So, again, we have, um, Sergeant McLean, myself, Officer Lehner and his attorney, Kevin Beck. And the time is 11:58.

50

All right Officer Lehner we're gonna go back, um, to where we left before the break. Again, the question, Mr. Garcia Pineda is in the backseat. He has stopped flailing and kicking, ah, by your testimony. Um, you go back and open up the door and, ah, get him back out of the car. Um, the question was again, why the need to go back in when he's not kicking anymore, why the need to go back into the backseat and take him out?

55

A. When it comes to Mr. Garcia, even Deputy Chief Glampe's testimony during the ALJ hearing said three different times that I know of reading his testimony that Mr. Garcia had to be removed from the car. Even a deputy chief recognizes that fact and understands it. I took a window of

opportunity when an individual isn't violent and kicking because I made a mistake the first time.

5 Never once in our academy and any training, in-service, whatever, do they work with you on removing an individual from a squad...especially the backseat. It's quote the on-the-job training like Glampe says in his ALJ hearing testimony. So, if I made a mistake by opening the first...the door the first time, I did. I opened the door the second time because he wasn't movin' and he wasn't violent at that point. So, he was just layin' there so I removed him. Did I communicate it with Steve about what I was gonna do? I didn't think I had to. He knew exactly what I was gonna do when I opened the door the second time and that was to take 'em out. Not only did he know, 10 he helped me take him out. And, so I can't answer the question any better than that. Garcia had to be removed from the car.

Q. Sgt. McLean: But why?

15 A. He was using the car to injure himself. Is, is it not imperative of an officer to care for the individuals who are in their custody? That, that's what I don't understand about this. I, I've been asked this question. "Why? Why did you open that door? Why did you do that? Why did you even...? He was contained." No he wasn't. He was injuring himself. Am I supposed to just sit back or even like I've been asked, "Well, why didn't you turn the tape recorder on first?" Because I wasn't thinkin' about it. I thought it was on. Okay? I didn't do it. So, am I supposed to just stand back? Are we supposed to do that as cops now and let people injure themselves, destroy 20 themselves, give them concussions? He's not just kicking in the backseat. Why don't people understand that? He's smashing his head. So, am I supposed to allow somebody to give themselves a cush...a concussion, a brain bleed? Where would the liability be on me if I did do that?

25 Q. Sgt. McLean: Did he suffer any injuries from, as a result of his thrashing around and hitting his head in the car and kicking?

A. If he's missin' teeth, I truly believe he knocked 'em out himself.

30 Q. Sgt. McLean: Were there teeth found in the squad?

A. I have no idea where his teeth were. We didn't find 'em on the street. We didn't find 'em on 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.

35 Q. Sgt. McLean: You're, you're...

A. 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 40 where I hit 'em, do you know how easy it could have been for me because I knew it was not on the video just to lie?

Q. Sgt. McLean: When did you know it wasn't on video?

45 A. Right after he was in there. I got his name and stuff then I looked up there just like I told you before but I wasn't gonna lie. What's the point of that? You lie. You are fired.

Q. Sgt. McLean: All right.

A. [NO AUDIBLE DIALOGUE 1:02:07]

50 Q. But that was after all this transpires and at the end, like you said, you're getting his name finally, he's calmed down, 'cause you had already taken him out. Correct?

A. Right.

55 Q. Put him down on, you know, on the concrete, on the blacktop. You've told him to calm down. He said, "Yeah, man. I, I, I'm gonna cooperate now." And then that's when you got his name. Is that

correct?

A. When he was on the blacktop...

Q. Yeah.

5 A. I opened up the squad. He sits back in the car, you have to get his name...

Q. Right. And so...but that's when you find out the MVR's not working.

A. Yeah, after I do all that and then I look up there and it's not working.

10 Q. So, in, in answer to Sgt. McLean's question, you didn't know up until the events are already done that that MVR wasn't playing.

A. Correct.

Q. Recording.

15 A. So, again, I go to my point. Why is it that I'm the one who kicked his teeth out? Every single person you talk to when it's Glampe, his ALJ hearing, when it's coming in here and talking to people, ~~why did you kick~~ his teeth out? Do you know that he was slammin' his head in the backseat of that car? No one on that scene, me, Steve, Kelly, Sergeant Altonen, nobody knew that his teeth were out and these are people who talked to him, never once complained about it. Were his teeth missin' prior to us even dealin' with 'em? I don't know.

Q. Sgt. McLean: You, you talked to 'em. Were they there?

A. I don't know. I assume they were but when I just look at yuh, I don't see your teeth.

25 Q. Sgt. McLean: Yeah.

A. I just assume you have all of your teeth.

30 Q. Sgt. McLean: All right. Let's back up. Yes, you're right. You do have a duty to protect him while he's doing something in the back of the squad, absolutely. That, that's not questioned. Right? So, were there other things that you could have done to protect him while he's in the back of the squad that didn't involve taking him out?

A. I...you'd have to educate me on that. Like what?

Q. Sgt. McLean: Did you consider it?

35 A. He's using the backseat of that squad to injure himself so you have to remove him from the situation.

Q. Sgt. McLean: Well, you're faced with a problem. You're right. He's using the backseat of his squad to injure himself.

40 A. Mmhmm.

Q. Sgt. McLean: You're faced with a problem. You have responsibility for him now.

A. All right.

45 Q. Sgt. McLean: He's doing this.

A. Right.

50 Q. Sgt. McLean: So, the problem is his behavior. As police officers, um, we often have to modify people's behavior to get them to do things that we want them to do that might not be good for them to do so we have to consider other options.

A. And the other option is to hobble, h. m. .

Q. Sgt. McLean: In order to do that. Right.

A. And you can't do that while he's in the squad.

55

Blc