

- Q. Sgt. McLean: Okay. Well, can you think of other options if you had taken time to talk to your partner, to talk to your other partners, your other officers that are out there at the scene. "Look, this guy's goin' crazy in the back of the squad. He just kicked me and assaulted me. What are our options? What could we do here?" Did you take time to do that?
- 5 A. Unless you can educate me on different options, the only option is to remove him from the squad.
- Q. Sgt. McLean: Okay.
- A. Out. Or you, you gonna mace 'em?
- 10 Q. Sgt. McLean: What could you do...
- A. Because you could mace him but he's still gonna hit his head. Are you gonna tase 'em? Okay, you can tase 'em but he's still gonna hit his head. You have to remove him from the situation.
- Q. Sgt. McLean: All right. Do you know that he's still gonna do that after he's been maced? Have you ever maced somebody and then they stop doin' the behavior?
- 15 A. Sometimes they do, sometimes they don't.
- Q. Sgt. McLean: Okay. But have you ever seen somebody who's tased and then they stop doing that behavior?
- 20 A. Sometimes they do, sometimes they don't.
- Q. Sgt. McLean: Okay. And in this case, you didn't try those options, so you didn't know if maybe those things would work.
- A. So, you're tellin' me instead of just removing him from the squad...
- 25 Q. Sgt. McLean: No, I'm not saying that.
- A. Where propensity of injury is extremely low because you're just takin' 'em out, you want me to mace him?
- 30 Q. Sgt. McLean: No, I'm not sayin' that. I'm asking if you considered other things.
- A. I would not have considered that because that cau... first of all, I don't carry a taser and secondly, I don't know why I would mace him to cause him more pain and injury than him already bashin' his head against the...
- 35 Q. Sgt. McLean: Would you have to mace him or could you tell him, "If you don't stop thrashin' around and injuring yourself, I'm going to mace you." Have you done that?
- A. Obviously, obviously, he doesn't listen to verbal commands because I asked him to stop and his response was to kick at me.
- 40 Q. Sgt. McLean: So, you raise the level or the, the threat level by saying, "If you don't stop that you're gonna get maced." Do you agree that there's a difference between the verbal command of, "Stop kicking. And if you don't stop kicking, you're going to get maced?"
- A. What would be the difference of removing someone from the squad and putting them...
- 45 Q. Sgt. McLean: Let, let, let's just...
- A. Face first on the ground.
- Q. Sgt. McLean: Let's suspend the removal from the squad for a minute and I'll address that in a second.
- 50 A. Okay.
- Q. Sgt. McLean: So, let's say you don't want to remove him from the squad because there's some inherent danger in doing that. Would you agree?
- A. In removing someone from the squad?
- 55

ELL

Q. Sgt. McLean: Yes. To you, there isn't inherent danger...

A. Yes, there is...

5 Q. Sgt. McLean: From out of the squad who's not cooperative. There's even danger to you liability wise because now you're taking someone out of the squad who's handcuffed.

A. Mr. Beck: So, was that a question or are we just testifying at this point?

10 Q. Sgt. McLean: Yeah. Um, I'll rephrase it. If you take somebody out of the squad and they're in handcuffs, is there a higher level of control that you have to exert over them because they're handcuffed and they can't maneuver themselves as they would if they weren't?

A. So, are you're asking me this as a hypothetical or...

Q. Sgt. McLean: No.

15 A. Does it relate to this incident? Because this incident was an individual who is using the backseat of the squad to injure himself. You know if, if this was a training issue where you're gonna start educating officers how to properly do this, then I would hope you do because if you were to sit 500 other cops in this room, they'd have different answers on how to deal with this thing. A lot of 'em would agree with the way I did it and a lot of 'em may do it differently but I did what I did. Was it wrong? Was it wrong to open up a guy and remove him from the car so you had the ability to hobble him? Was it wrong to not mace him and cause, inflict more pain on this individual? Macing...some people are allergic to it...

20 Q. Sgt. McLean: It, it's not a question of if it's wrong or not. What, what I'm asking, what we're asking is did you consider other options before taking him out of the car? That's a simple question.

25 A. So, through hindsight, you're askin' me whether I...

Q. Sgt. McLean: I'm not asking if your hindsight...

A. But you are.

30 Q. Sgt. McLean: At the scene. Did you consider other options before you took him out of the car?

A. The decision I made was to open the door and remove him.

Q. Sgt. McLean: Okay. So, are you saying that you didn't consider other options?

35 A. I considered when he kicked at me whether I could ~~make something happen~~ so fast I didn't even have a chance to do it. *make him, but it happened*

Q. Sgt. McLean: But after he was calmed down...

A. No. I opened the door to take him out.

40 Q. Sgt. McLean: All right.

A. Why would I not do that?

Q. Sgt. McLean: What did you accomplish when you had him out of the squad on the ground to get him to stop kicking that you...

45 A. I...

Q. Sgt. McLean: I'm not done.

A. Oh, okay.

50 Q. Sgt. McLean: Okay? What did you accomplish when you had 'em out of the squad and on the ground that you could have all...that you could have accomplished with him staying in the squad?

A. That's very simple. When he was removed from the squad, and he's on the ground, he's under control. It is freezing cold out and I knew that and he would be under control. I had two other officers at least who were standing by so we could hobble him so he couldn't kick anymore.

55

BLL

Q. Sgt. McLean: Okay.

5 A. Now, if you leave him in the car after I shut that door, he's not under control. He was never under control in that squad. He was kickin' and flailin' and bashin' his head and hurtin' himself like nobody's business and what am I supposed to do? Shut that door and continue to allow him to do that to get out of control again? I took an opportunity where he was layin' there to open that door and remove him out with the help of Officer Wuorinen who obviously knew what my plan was and I didn't have to communicate it with him. And we brought him out. We put him on the street and we gained control now.

10 Q. Sgt. McLean: Okay.

A. And not only did we gain control, he did everything single thing that we asked him to do besides mother fuckin' us, that we wanted him to do because he knew it was cold out, he knew he injured himself and I didn't do it. And he knew he injured himself and he wanted that part to be done with.

15 Q. Sgt. McLean: Okay. So, what do you think was the factor that caused him to now cooperate with you and not...

A. Us...putting him under control.

Q. Sgt. McLean: Being on the ground outside?

20 A. Being on the ground outside, having him removed from that car, everything, us talking with him, us de-escalating the situation, us having him realize, "Dude, quit hitting your head." And probably at that point he probably realized his teeth were gone because he broke 'em out himself and he probably decided, "You know, I'm not gonna do this anymore 'cause it hurts."

25 Q. Sgt. McLean: At what point do you think he broke his teeth out himself?

A. I believe he did it when he was bangin' 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.

Q. Sgt. McLean: Did you...

30 A. It doesn't make sense.

Q. Sgt. McLean: Did you search the squad after...

A. Why would I? I didn't know his teeth were missing.

35 Q. Sgt. McLean: I thought you'd search the backs of the squads anytime you had someone back there. Did you do that?

A. I'm not looking for teeth. And I don't know if I searched it or Steve did.

Q. Sgt. McLean: Did anyone search it?

40 A. I, I guaranty it was because you do it every single time you take someone out.

Q. Sgt. McLean: Yeah. Okay.

A. Now did I see any teeth in there? No. Was I looking specifically for teeth? No.

45 Q. Sgt. McLean: What do you search for when you're looking in the backseat?

A. We look for contraband. You look for anything that's not normal.

Q. Sgt. McLean: Like?

50 A. So, did I see any teeth that were sitting there without me not knowing, no. But I don't know where they are.

Q. Sgt. McLean: If he knocked 'em out in the back of your squad, they probably would still be back there.

A. How do you know they weren't knocked out beforehand? I don't know.

55

BU

Q. Sgt. McLean: Yeah.

A. I don't know. I wish I could say, "Yes, I kicked his teeth out." because this would be so easy.

5 Q. Sgt. McLean: Okay. So, if my question was, 'cause you talked to 'em, the same way you talked to 'em outside of the squad, inside the squad, and if that didn't work, then take him out of the squad.

A. So, you're tellin' me that I'm supposed to try to talk to him first. It doesn't work. He goes out of control again and now we have to deal with an out of control individual in the squad instead of a guy who's just layin' there that you can just pull out?

10 Q. Sgt. McLean: He wasn't out of control when you pulled him out, right?

A. Correct. But you want me to roll down a window, talk with him...

Q. Sgt. McLean: No.

A. Having get out of control again and now we have to deal with him.

15

Q. Sgt. McLean: No. You don't have to roll down a window.

A. Okay. You talk with him or whatever you want to do.

20 Q. Sgt. McLean: When you opened the door, where was the threat comin' from, from him? What, what area of his body...

A. And legs.

Q. Sgt. McLean: His legs.

A. Mmhmm.

25

Q. Sgt. McLean: So, when you open the door with his legs, are you exposing yourself to the threat area that he's presenting to you?

A. Sure.

30 Q. Sgt. McLean: Okay. What if you went to the, to the other side and opened that door?

A. And what would keep a guy who is 5'5 115 pounds from sitting up, spinning in the backseat and kicking at you again?

35 Q. Sgt. McLean: He could. But you don't know if he's gonna do that. You do know that opening the same door that you just opened and got kicked, that you have more chance getting kicked that way than you do by going to the other side. That's the whole point of all this questioning. And I'm sorry to, to keep doin' it but one of the things is that issue is use of force and escalating it and trying other things before you have to resort to a higher level of force. That's what we're trying to get at.

40 A. But can you please explain to me how I escalated the use of force? Is anybody gonna hold Mr. Garcia responsible for the actions that he did? Because Deputy Chief Glampe didn't in the ALJ hearing and no one has.

Q. Sgt. McLean: We, we...

45

A. No one...

Q. Sgt. McLean: We, we hear...

A. No one...

50 Q. Sgt. McLean: We hear this...

A. No one seems to know, ever take the time...

Q. Sgt. McLean: Blayne, you know that...

55

A. To understand that Mr. Garcia is the one who started this. He's the one who kicked at me. He's the one who ~~started~~ but yet I'm the one who ecsa...escalated the force. No, I didn't. I opened up

started me

BLU

the car door to tell 'em to stop.

Q. Sgt. McLean: The venue for that is, as you know very well, is a criminal case. We have no jurisdiction over him administratively.

5 A. Mr. Beck: I'm gonna jump in 'cause I disagree because you have a use of force in ~~INAUDIBLE~~ ^{Continuum} ~~1:14:50~~ that specifically addresses the conduct of the subject. So, his statement, as we sit here today, is that Mr. Garcia kicked him and then in response he push-kicked or ~~bump~~ thrust or whatever semantical term you want to use back. So, for that point, that's a policy decision. That's perfectly relevant for ~~INAUDIBLE 1:15:12~~. ^{STOM}

10 Q. Sgt. McLean: Okay. Fair enough. Then, we'll address what Mr. Garcia was doin' at the moment that he was taken out of the car.

A. Mr. Beck: And so, is your questioning, as I understand it, the use of force that we're focusing on now is just the removal from the car?

15 Q. Sgt. McLean: It's, it's the, um, trying of other options before we remove them from the car.

A. Mr. Beck: That, that was ~~INAUDIBLE 1:15:33~~ is the removing from the squad. That's a use of force?

20 Q. Sgt. McLean: No, it's, it's...

A. Mr. Beck: So, what's the use of force we're questioning on right now? The last twenty minutes.

Q. Sgt. McLean: The...the use of force that we're questioning on is his kick and then what he wanted to accomplish by taking him out of the car.

25 A. Mr. Beck: And so after the kick is done, what is the use of force after that? Removing from the squad?

Q. Sgt. McLean: Yeah.

A. Mr. Beck: Oh. So that in of itself is...

30 Q. And putting him, and putting him on the blacktop ~~counts~~. ^{concrete}

A. ~~INAUDIBLE DIALOGUE~~

Q. Sgt. McLean: Okay. Wherever he was.

35 A. Mr. Beck: Okay. Okay. Yeah.

Q. Sgt. McLean: And, and we don't know if the injury may have occurred at that point.

A. Mr. Beck: We don't know a lot. I understand that. I'm just tryin' to pin down what, what you guys are saying use of force is.

40 Q. That, that's the window that we're looking at. And, and again, that's why we kept trying to ask why, you know, you've already done thrust kick however you want to describe it. Okay? You closed the door again. Then, you opened back up the door and take him out and put him on the concrete. Again, that's what we're asking. Why again to take him out of the backseat? 'Cause at that point, he's not flailing or kicking anymore.

45 A. Mr. Beck: I ~~don't~~ understand that.

Q. (laugh)

50 A. Mr. Beck: I've been sitting here just like you guys have. I heard Blayne answer that question about six times the same way.

Q. Sgt. McLean: All right. We'll call it answered and move on.

A. Mr. Beck: ~~CROSSTALK 1:16:42~~ at this point. Yeah.

55 Q. Sgt. McLean: Well, let's call it asked and answered and move on.

A. Mr. Beck: Perfect.

Q. All right. Do you want to go with the training?

A. [INAUDIBLE DIALOGUE 1:17:03]

5

Q. Sgt. McLean: Sure. Um...

A. [INAUDIBLE DIALOGUE]

Q. I think we've already gone through the, the teeth. We don't know when the teeth were out.

10

A. [INAUDIBLE DIALOGUE 1:17:09]

Q. Sgt. McLean: Yeah. Yeah. Were you assigned to the training unit for training regarding the use of force, um, after the 3rd Precinct and before your assignment of 5th Precinct?

A. Yeah.

15

Q. Sgt. McLean: When was that?

A. Oh boy. It was August of 2012.

Q. Sgt. McLean: Okay. I think it was October.

20

A. Oh, okay.

Q. Sgt. McLean: October 1st.

A. The first? Oh, yeah, yeah, yeah because I got transferred to the 5th Precinct on October 21st. Yeah, so it was October.

25

Q. Sgt. McLean: All right. And how long were you in the training unit?

A. It was two to three weeks.

Q. Sgt. McLean: Until the 20th of October? Does that sound right?

30

A. Yeah.

Q. Sgt. McLean: All right. And, why were you sent there?

A. They sent me there as...why did they send me there? Just...for training.

35

Q. 13.43

A. [REDACTED]

Q. Sgt. McLean: Yes.

A. 13.43

40

Q. 13.43

A. [REDACTED]

45

Q. [REDACTED]

What were you taught at training? What was the curriculum?

A. The curriculum they had de-escalation, they had dealing with people, um, where...it's just like we did in in-service. We have mental illness or, um, there's a term they call it now. It's not mental illness. It's...

50

Q. Sgt. McLean: [INAUDIBLE 1:18:52]

A. People in crisis.

Q. Sgt. McLean: Okay.

55

A. [NO AUDIBLE DIALOGUE 1:18:53]

BLU

Q. [INAUDIBLE 1:18:55] Critical incident or crisis?

A. Yeah, they, we did...

5 Q. Sgt. McLean: ~~PDFs~~ ~~EDPs~~

A. 13.43

Um, we talked about, ah, search and seizure fresh pursuit, um, I read perf articles, hundreds of pages of perf articles about de-escalation and, um, again, the crisis intervention stuff and I did ~~read~~ ^{read} Case Law, ah, weapons and that type of thing. So on one day I went to a Brazilian Jujitsu thing but it was for I think two hours.

10 Q. Sgt. McLean: Okay.

A. So.

15 Q. Sgt. McLean: Did, did you read books?

A. Ah, yes. I remember reading, ah, one or two I think but a lot of it was on the Internet. It was perf articles on the Internet.

20 Q. Sgt. McLean: What were the books titled?

A. Um, I was asked this before too and I can't remember. Unless, ah, Sergeant Zierden at the time wrote 'em down I can't remember the names.

25 Q. Sgt. McLean: Was he the one that gave you the training?

A. Yeah, he was like in charge of...yeah, in charge of training me I guess. I don't know.

Q. Sgt. McLean: What happened?

A. I don't know what you'd call it. He was my supervisor at the time, so.

30 Q. Sgt. McLean: Okay. Well, that was your job to go to the training unit...

A. Right.

Q. Sgt. McLean: And attend class?

A. Right.

35 Q. Sgt. McLean: Okay. So it was primarily Sergeant, Sergeant Zierden?

A. Yeah. And Burbank was the, um, he was the guy, him, I just met Sergeant Burbank the very first day, ah, because Zierden wasn't there and then it was Zierden for the rest of the time and then Lieutenant Gross was the Lieutenant. He was a, I was just assigned in the training unit.

40 Q. Sgt. McLean: So, the books you read, you say you can't, you can't remember the title or can?

A. I can't remember them. Even if you told 'em I don't even know if I'd remember 'em.

45 Q. Sgt. McLean: Um, do you remember anything about them? Any of the principles or ideas that the books, ah, presented?

A. Um, I, ~~see it~~, they mix together. I don't know if it was the books that talked about, um, de-escalation and crisis intervention or if it was the stuff I had to read on, online. I don't know. I can't remember exactly what was what.

50 Q. Sgt. McLean: Well, here, here's one of the titles. It's called Unleashing the Power of Unconditional Respect Transforming Law Enforcement and Police Training by Jack Collwell and Charles Hooth. Does that ring a bell to you at all?

A. Um, Hooth sounds familiar. I don't know if I read that book or a different one by him.

55 Q. Sgt. McLean: Can, can you tell me anything about the principles in that book?

A. I don't know. It's been too long. I'd have to review the book again if it's the one I read.

BLU

Q. Sgt. McLean: Okay. It was in 2012.

A. Mmhmm.

5 Q. Sgt. McLean: All right. How about, um, Verbal De-escalations Strategies and Techniques? Do you remember reading that?

A. Ah, that might have been one of the perf articles.

10 Q. Sgt. McLean: De-escalation Strategies and Techniques. Do you remember any of the contents from that?

A. Um, they talked about, um, I remember one is, they talked about avoidance, um, essentially ~~he~~ they talked about Detroit PD. If you roll up in a, um, a fight in the middle of the street, unless you get a 9-1-1 call, don't worry about it. That's their de-escalation tactic. Um, I don't know if it was from there or some other part I read but kinda odd to me that the cops would just avoid stuff but they talked about, ah, some I don't know if...you're tellin' me titles but I don't know what I read where, you know?

15 Q. Sgt. McLean: Yeah.

A. And they talked about de-escalation and, um, they talked about how to remove yourself from the situation when your partners, um, if someone's fixated on you, um, when you get 'em under control, sometimes it's better to, ah, switch. Um, have your partner deal with the guy and you go talk to the victim and so you can try to de-escalate the guy with a new body that type of thing.

20 Q. Sgt. McLean: I think some of that training must have stuck because that's how you described it when you and Officer Wuorinen took him to the hospital.

A. Correct. And normally that's something you learn in training that's common sense ~~at least~~ when it comes to law enforcement. Based

25 Q. Sgt. McLean: Okay.

A. You know, you do that when you're essentially like a hostage negotiator. If you as a negotiator calls the guy out and he tells you to fuck yourself, "And I'm not talking to you. I want to talk to so and so...", well you're not gonna sit on the phone you're gonna try to get Sergeant McLean because he wants to talk to you and you're gonna put him on the phone. That's de-escalation.

30 Q. Sgt. McLean: Sure.

A. So.

35 Q. Sgt. McLean: How about, um, how about a paper entitled, ah, An Integrated Approach to De-escalation and Minimizing Use of Force...

40 A. Ah...

Q. Sgt. McLean: That was, ah, a perf paper. Do you remember reading that?

A. All this stuff runs together when it comes to the titles. When it comes to the content, it's, it's the stuff you've learned throughout your career, so.

45

Q. Sgt. McLean: Okay. Do you remember a PowerPoint presentation that Officer Chris Porras and Jeff Johnson put together?

A. Yeah, that was the, ah, crisis intervention stuff.

50 Q. Sgt. McLean: All right. The basis of that presentation; can you tell me what that was about?

A. Ah, just dealing with people in crisis. Why they get in crisis, um, some tactics on what to do or how do you approach people who are in crisis. Um, it briefly talks about I believe it talks about how to approach them and talk with them, try to understand, um, what they're goin' through and that type of thing.

55

BU

Q. Sgt. McLean: Do you think Mr. Gars... Garcia Pineda was in crisis and how you dealt with him?
A. He was intoxicated. Now, was he in crisis for bangin' his head? Obviously, he had something goin' on but, ah, sure.

5 Q. Sgt. McLean: Okay. Um, the training unit states that the basis of that presentation, that PowerPoint, was using time and distance to an officer's advantage and workin' on active listening skills and that was presented to you by Serg, Sergeant Zierden.
A. Okay.

10 Q. Sgt. McLean: Do you recall those principles...in the presentation using time and distance to your advantage as an officer?
A. Not only in that but that's Police 101. We use time and distance all the time...so.

15 Q. Sgt. McLean: Um, what else was brought up to you regarding your assignment to the training unit 13.43 [redacted] Were there other topics?
A. Yep. Like I said before, we talked about, um, search and seizure, ^{fresh} ~~press~~ pursuit into buildings and stuff. Um, talked about, ah, weapons cases, essentially we talked about, ah, I believe it was Yang, St. Paul versus Yang, a guy with a gun on his, in his front yard where he lived there and because one of the cases 13.43 [redacted] was a person ^{playin'} with a handgun and so we talked with that and talked about the similarities and differences between the two, um, that one in St. Paul and the one I was, I was involved in. _{Fleeing}

Um, what else? Ah, we talked about using, ah, utilizing, um, like ground defense so I went through Jujitsu classes and I was doin' that actually before I ever went to the training unit. Um, ^{What else did we talk about?} ~~also we talked about,~~ ^{we} probably had me read, read some pursuit stuff I would assume. I don't know for sure, probably some pursuit case law. I know he had me read a couple books but I can't remember the title. What else? All I did there for those, probably the 19, 20 days was read articles and books so I apologize if they all blend together.

30 Q. Sgt. McLean: You hurt your knee, correct? 'Cause they had, they had some scenarios that they wanted you to go through but your knee had been injured.
A. Yeah, my knee...

Q. Sgt. McLean: Where your right knee, October 2012.
35 A. Did I, did I do an IOD for that date?

Q. Sgt. McLean: I don't know. I didn't look into see if you had a, a, IOD filled out but it, it's noted here that they had planned scenarios for you...
A. Oh.

40 Q. Sgt. McLean: But you had a knee injury.
A. Yeah, I had to deal with my knee injury off and on for the last ten years.

45 Q. Sgt. McLean: Here, I'll list, um, prior to sending you there, they're, they're, um, they compiled a list of ten concerns and ~~I don't know~~ ^{I'll read them to you} ~~INAUDIBLE 1:27-24~~ to help refresh your memory.
A. You don't need to read those to me. I know exactly what they are.

Q. Sgt. McLean: Okay. Can you tell me what they are?
A. Off memory, all ten?

50 Q. Sgt. McLean: Yes, tell me if you can, yeah.
A. You know what? I'll let you read 'em because I'd rather not because over half of those aren't even true and actually I've asked Lieutenant Gross who actually wrote those ten concerns and he refused to tell me where it came from. So, can someone please explain that? Where it came from? Because I'd like to, to ask what proof they have.
55

BU

Q. Sgt. McLean: I can tell you what, I can tell you what this says.

A. Mmhmm.

5 Q. 13.43

A. So, you must be reading something different than what I've had.

10

Q. Sgt. McLean: Possibly. I'm reading your training curriculum for the record.

A. Okay so that is not what I've ever received and I've never seen it.

15

Q. Sgt. McLean: I don't know that, um, what you've seen or haven't see but I'm gonna tell you what the ten categories are so we can talk about them in relation to this case. That's the point.

De-escalation, use of force reasonableness, type of force reasonableness, use of force, understanding force, discretion, judgment, reliance on back-up, better understanding of the law, attitude and independent actions. Those were ten of the areas of concern that supervisors in the MPD had identified based on your performance.

20

A. I, can I interrupt for a second?

Q. Mmhmm.

A. [NO AUDIBLE DIALOGUE 1:29:13]

25

Q. Sgt. McLean: No. Actually, um...

A. [NO AUDIBLE DIALOGUE 1:29:14]

Q. Oh, okay.

30

A. [NO AUDIBLE DIALOGUE 1:29:15]

Q. Sgt. McLean: They, they then took those ten items and they, ah, compiled them into five general areas and item one was de-escalation, item two was use of force, item three was discretion, item four was understanding the law and item five was attitude. So, what's your question?

35

A. ~~Noted~~ that supervisors...noted these concerns. What supervisors?

You noted ↑

Q. Sgt. McLean: I don't have a list of the supervisors.

A. [NO AUDIBLE DIALOGUE 1:29:46]

40

Q. We don't have that information with us.

A. And neither have I ever and when I asked Lieutenant Gross who wrote this because I would like to actually just know, no one would tell me. So, you say it's supervisors but yet for the first what fifteen years of my career, never once on a performance evaluation have I ever had anything that stated that I didn't use discretion properly, I didn't use the use of force properly and, in fact, on those performance evaluations, it says the opposite. It actually...

45

Q. Sgt. McLean: No, no...

A. Says that I do follow policy. I have a good grasp of policy. I relate to the community well and so on and so forth. So, this has always been a concern that I have.

50

Q. Sgt. McLean: Fair enough.

A. I asked Lieutenant Gross if this after my training was gonna be put in my personnel file to be used against me in the future which low and behold, ~~twenty~~ ^{how many} years later, four years later?

55

Q. Sgt. McLean: I've read your personnel file and I've seen recommendations for awards,

BU

recommendations for com, commendations, recommendations for officer of the month, recommendations for officer of the year...

A. So, can you...

5 Q. Sgt. McLean: I didn't stop. Hold on. I didn't ask you a question here. And what you're saying it's a better venue in the Loudermill than here. All right? Agreed?

A. But I'm bein' accused of doing something from an anonymous...

10 Q. Sgt. McLean: No. I haven't asked you a question. I want you to, I just want you to answer the questions. What, what you're getting into is better suited in the Loudermill. Would you agree, Kevin?

A. Mr. Beck: I really ~~could use another minute. I'm just~~, was this training curriculum in his personnel file? This? *Don't have an opinion on the matter*

15 Q. Sgt. McLean: I don't know.

A. Mr. Beck: Okay.

20 Q. Sgt. McLean: Okay? All right, so we covered those five things and, and I'll try to get, I'll try to be brief. So, under use of force, the, the, then they headed them. All right. So, for de-escalation, that's where they talked about those two titles that I mentioned earlier. That was the de-escalation curriculum that you were, you were given. Under use of force, it says that, um, specifically, and I'm quoting, "Issues arise with Officer Lehner's accelerating his use of force to higher levels more quickly than appear reasonable. Additionally, it appears that Officer Lehner moves ~~and~~ kicks more rapidly than seems appropriate." So, my question is, regarding this incident, Mr. Pineda, how did you integrate this extra training that you received in the training unit on these ten areas which were then ~~just spilled~~ down to five and specifically de-escalation and use of force regarding *Distilled* kicks? It's a long question. If you want me to simply it, I will.

25 A. As we spoke at length before, I don't know how to essentially answer the question because I didn't, I used a push-kick. And we had conversation about how it just should be called a push with your foot. And it was a reaction thing. Why cannot, why can people not understand that this happened so fast, so quick that all I did was have time to him barely miss my, my knee, to step back, notice that he's comin' out of the car and I just wanted to push him back.

30 Q. Sgt. McLean: I don't think...

A. I don't know how to answer your question.

35 Q. Sgt. McLean: I don't think people are missing that part. That, that's what you said happened and it's what you reported happened and I don't think people are questioning whether it happened or not. But, can you tell me how you integrated this training in your handling of this call on that evening, December 29th?

40 A. Because I gotta get person to stop injuring himself. I removed him from my car.

45 Q. Sgt. McLean: Okay. Um, how about the kicking part?

A. I just explained that it was a reactionary thing to keep the guy in the car.

50 Q. Sgt. McLean: ~~Why?~~ *All right*

A. (papers shuffling)

55 Q. Sgt. McLean: Do you have questions about this training as it regards to, um, the incident?

A. [NO AUDIBLE DIALOGUE 1:34:35]

Q. Sgt. McLean: Yeah, I mean if you think there's, if there's any questions about...Do you feel that this training helped you in understanding the use of force?

A. Well, of course it does. Any training that you receive on anything broadens your horizons and assists you.

Q. Sgt. McLean: Can you tell us in any way how this particular training that you went helped you on this particular call that night?

5 A. You implement your training and just like I said before, you do what you can to de-escalate a situation. When Garcia was in the backseat bangin' his head and smashin' his body, again, I asked everybody, what am I supposed to do? By policy, I have to do something and then if I do nothing, I get in trouble. But even by policy on what I did because I decided to do what I did, I get in trouble. So, it seems like no matter what I did so when it comes to implementing the training, I de-escalated the situation because he was removed from my car and he stopped doing what he's doing. And he stopped. He, not only did he stop, we didn't have to hobble him, we didn't have to call an ambulance to give him ketamine to make sure he stopped. He stopped. Isn't that de-escalation?

15 Q. Sgt. McLean: That's what I'm asking you. So, you're answering the question.

A. So, yes.

Q. Sgt. McLean: Okay.

A. [NO AUDIBLE DIALOGUE 1:36:18]

20 Q. Did you at that, that evening, did you have a hobble restraint with you?

A. You have to carry 'em. Yes.

Q. Okay.

A. But there was no reason to use it.

25 Q. Right. But I'm just saying you had one available to you.

A. Correct.

Q. Okay.

30 A. Yeah, you're required by policy. Everyone's supposed to have it accessible. I don't know if they have to actually carry it on their person but...

Q. Right. But you had your, in your squad car, you had it someplace.

A. Correct.

35 Q. All right. Are you done with the training?

A. [NO AUDIBLE DIALOGUE 1:36:48]

Q. Sgt. McLean: Mmhmm.

40 A. [NO AUDIBLE DIALOGUE 1:36:49]

Q. Um, one, a couple other questions just when you got to the hospital you said that, um, your partner, Officer Wuorinen, escorted Mr. Garcia-Pineda into the hospital and you stayed outside ~~Do you remember~~ your report?

45 A. Correct. Again, part of de-escalation. That's exactly what I learned.

Q. And, um, when Officer Wuorinen came back out, did he tell you anything about what the hospital had said, um, what injuries Mr. Garcia Pineda may have received, anything like that?

50 A. No. He told me he...well, I don't know. I remember him sayin' that, um, he was out of control and they're, ah, I think he said they had to put a spit mask on him because he was like spitting.

Q. Okay. Did he mention anything about teeth?

A. No. I, like I said, I didn't know anything about missing teeth 'til that Rasmussen hearing whenever that was.

55

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Q. Okay. So, Officer Wuorinen didn't come out, you're sittin' in the, you know, you're doin' the report, he's not, "Gees, he's got his teeth knocked out"?

A. ~~Nothin'~~ NO

5 Q. Nothin' like that. Okay. You said, ^{None of the things} ~~how~~ I want to go back to. You said part of de-escalation was removing yourself from the situation. Is that correct?

A. That's part of it.

10 Q. All right. Um, did you think about that when Mr. Garcia Pineda first kicked, kicked at you and you shut the door? That maybe Officer Wuorinen then should maybe open up the door and talk to 'em? 'Cause he had already, you know, tried to kick at you.

A. We discussed this already. No.

15 Q. All right. But that, you agree that's part of de-escalation, tryin' to, which is exactly what you did at the hospital, right? You did the right thing, you know, apparently, Mr. Garcia Pineda was mad at you, you decided, you and your partner decided that maybe Officer Wuorinen should take him in. Is that correct?

A. At the hospital, yes.

20 Q. Okay. Anything else?

A. [NO AUDIBLE DIALOGUE 1:38:56]

Q. Sgt. McLean: I don't have anything else.

A. [NO AUDIBLE DIALOGUE 1:38:58]

25 Q. Okay. All right. (papers shuffling) Are there any facts ^{concerning this} ~~concerned with~~ the incident that you have knowledge of but have not disclosed?

30 A. I encourage you to, ah, do the proper research when it comes to the ALJ hearing. There's been testimony on this stuff not only by me but other people. Steven Frazer from St. Paul gave an expert witness testimony. I encourage you to review his as well. So this isn't just...

Q. Sgt. McLean: What's that pertaining to?

A. This.

35 Q. Sgt. McLean: Okay, but specifically, what part of all of this?

A. The use of force.

Q. Sgt. McLean: Okay, specifically...

A. [NO AUDIBLE DIALOGUE 1:39:43]

40 Q. Do you mean the use of force expert, or?

A. That is correct.

Q. Sgt. McLean: And, and just briefly, what is his position on this, on your use of force...

45 A. His position is that I was justified and it was not unreasonable and he testified under oath, in front of an administrative law judge to that.

Q. Sgt. McLean: Okay. And what was his reasoning for his finding of it not being unreasonable?

A. I would encourage you to read his testimony.

50 Q. Sgt. McLean: Well, can you tell us what it was?

A. I don't want to paraphrase what he said so I would encourage you to do it any, and plus he wrote a, a report or a brief on it as well.

55 Q. Sgt. McLean: Can you provide that for us?

A. I'm sure we can.

Q. Sgt. McLean: Okay.

A. (papers shuffling)

5

Q. Sgt. McLean: What else? Is there, is there anything else that you think we should consider in looking at this?

10 A. Well, this has been a case that has gone through Administrative Law Judge hearings and things and I encourage you to look at Deputy Chief Glampe's, ah, testimony as well and the reason I encourage you to do that is because when you read it, you'll find that there's lies in it. There's mistruths and it's, those mistruths are damning towards me.

Q. Sgt. McLean: What ^{are the} ~~other~~ mistruths...

A. [NO AUDIBLE DIALOGUE 1:40:57]

15

Q. And what are those? Did they? If we get a copy of that testimony, what should we be looking at? Tell us what are the lies?

20 A. Well, it's obvious when you read it because my attorney at the time, Joe Kelly, points 'em out on his cross so you can make the distinction on whether they're lies or not. I believe they are, or mistruths or what would you call 'em, ah, fudging the answers to make me look bad and, ah, for instance, one is he, before the indemnification process and why I was, um, denied indemnification, he stated that he reviewed all materials, um, including health records of this case and he didn't. That was a lie. He didn't get the health records until approximately a month later after they denied the indemnification. So, there's more to this case of just Blayne showin' up on call. He did this. He took 'em to the hospital and that's concerning to me that a deputy chief would do those things. So, I encourage you to review everything. It's not just talking to Steve, talking to me, and moving on. I encourage you to look at the depositions as well. Look at Garcia's deposition.

30 Q. Sgt. McLean: What else?

A. See what happens.

Q. Sgt. McLean: What else?

35 A. That's about it for now. I'm sure I could probably think of other stuff in the days and hours to come but.

Q. Sgt. McLean: We want a thorough and complete investigation.

A. [NO AUDIBLE DIALOGUE 1:42:26]

40 Q. Mmhmm.

A. ~~All good~~ That's it.

OK

Q. Sgt. McLean: If there's other materials that you think need to be included that we don't know about, we would ask you to provide those for us.

45 A. Okay.

Q. Sgt. McLean: Also, um, the training records for the lesson plans for the defensive tactics where the push-kick is described and you want to include that in the case file as well, can you get that to us?

50 A. That is no problem.

Q. Sgt. McLean: Through Kevin then or however it is...

A. Mr. Beck: Yeah, I think we have that. We'll make sure.

55 Q. Sgt. McLean: Okay. Okay. What else? What else do you want to say on, on your part...for our

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investigation today.

A. Like you said earlier, some of this should be saved for a Loudermill Panel.

5 Q. Sgt. McLean: Yeah. Stuff that's not Loudermill but, but factual things that you felt we didn't ask that are important it should be included in here. In other words, from your standpoint, is it a comprehensive interview?

A. Well, like I said, at the moment that's all I can think of.

10 Q. Sgt. McLean: If there's anything that, that you left out or we left out that's factual, that's part of the interview and it is Loudermill related, I really want to hear it now.

A. [NO AUDIBLE DIALOGUE 1:43:42]

Q. That's, that's why we're giving you that chance now.

15 A. No. That's it.

Q. All right. Is this a true and accurate statement?

A. It is.

20 Q. Per Minneapolis Police Department Policy and Procedure Sections 5-107.8, you are not to discuss this interview or case investigation with anyone other than your Federation Union Representative or attorney. Do you understand this?

A. I do.

Q. Statement concluded at 12:45.

25 A. [NO AUDIBLE DIALOGUE 1:44:09]

Q. Sgt. McLean: Kevin, before we close, did you have any thing that you wanted to add?

A. Mr. Beck: No. *I'm good.*

30 Q. Sgt. McLean: All right.

A. [NO AUDIBLE DIALOGUE 1:44:12]

35 Signature: 

Date: 2.20.17

jmc

BU



Office of Police Conduct Review

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

February 01, 2017

RE: OPCR Case# 15-16258

Dear Officer Lehner:

Enclosed you will find the statement which you provided on January 5, 2017 to the Office of Police Conduct Review. Please review the statement, initial any corrections you wish to make and sign it. You can submit the revised version by scanning it and emailing it to Matthew.McLean@minneapolismn.gov or return one copy by interoffice mail to Internal Affairs, Room 112 City Hall.

If we have not received your signed statement within seven business days, it is assumed that the contents of your statement are correct and accurately reflect your testimony.

Thank you for your cooperation. Should you have any questions, feel free to contact me at (612) 673-3702.

Sincerely,

Sgt. Matthew Mclean

Disclaimer: Information in this message or an attachment may be government data and thereby subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, may be subject to attorney-client or work product privilege, may be confidential, privileged, proprietary, or otherwise protected, and the unauthorized review, copying, retransmission, or other use or disclosure of the information is strictly prohibited. If you are not the intended recipient of this message, please immediately notify the sender of the transmission error and then promptly delete this message from your computer system.

Hill, Liisa

From: Hill, Liisa
Sent: Tuesday, October 25, 2016 8:45 AM
To: Jaafar, Imani S.; Case, Jason
Cc: McLean, Matthew
Subject: Officer Wuorinen's interview

Late yesterday, Bob Kroll left a message, stating Officer Wuorinen would be unavailable to come to his scheduled interview on Wed 10/26 at 18:30. Kroll stated there are no Fed Reps available to accompany Officer Wuorinen. He wants to reschedule for next week.
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

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

Hill, Liisa

From: Hill, Liisa
Sent: Tuesday, October 25, 2016 1:32 PM
To: 'Bob Kroll'
Cc: 'kbeck@kellyandlemmons.com'; Jaafar, Imani S.; Case, Jason; McLean, Matthew
Subject: RE: OPCR Interview

Tracking:	Recipient	Delivery
	'Bob Kroll'	
	'kbeck@kellyandlemmons.com'	
	Jaafar, Imani S.	Delivered: 10/25/2016 1:32 PM
	Case, Jason	Delivered: 10/25/2016 1:33 PM
	McLean, Matthew	Delivered: 10/25/2016 1:32 PM

Bob,

How about we schedule Officer Wuorinen's interview for next Thursday 11/03 at 18:30 hrs. Let me know if this is OK for the Fed and Mr. Beck. If this time conflicts with anyone's schedule, please email me times and dates that would be acceptable, and I will fit it into my schedule. Also, I am trying to complete this investigation as expeditiously as possible, and your assistance and cooperation in this matter would be greatly appreciated.

Thank you
k to you soon

Liisa

From: Bob Kroll 13.43 - Personnel Data
Sent: Tuesday, October 25, 2016 10:20 AM
To: Hill, Liisa; Wuorinen, Steve
Cc: kbeck@kellyandlemmons.com
Subject: OPCR Interview

Liisa,

I'm following up on my message yesterday. A rep is not available for Steve's interview tomorrow. In addition, Attorney Kevin Beck (CC'd below) will be representing all officers involved in this case as we go forward, thank you.

Lt. Bob Kroll
President POFM
1811 University Ave. NE
Minneapolis, MN 55418
(612) 788-8444 Office

13.43 - Personnel Data

Hill, Liisa

From: Hill, Liisa
Sent: Friday, November 04, 2016 3:51 PM
To: Wuorinen, Steve; Kroll, Bob (Federation); 'kbeck@kelandlemmons.com'
Cc: Jaafar, Imani S.; Case, Jason; Halvorson, Henry; McLean, Matthew
Subject: OPCR Interview-Officer Wuorinen

Importance: High

Tracking:	Recipient	Delivery	Read
	Wuorinen, Steve		Read: 11/5/2016 6:35 AM
	Kroll, Bob (Federation)		
	'kbeck@kelandlemmons.com'		
	Jaafar, Imani S.		Read: 11/4/2016 4:31 PM
	Case, Jason		
	Halvorson, Henry	Delivered: 11/4/2016 3:51 PM	Read: 11/7/2016 8:48 AM
	McLean, Matthew		Read: 11/8/2016 6:59 AM

This is a confirmation email regarding the rescheduling of Officer Wuorinen's interview with the Office of Police Conduct Review.

Officer Wuorinen's OPCR Interview is scheduled for November 14th 2016 at 5:00 pm in room 239, of the Minneapolis Civil Rights Department. If there are any questions or concerns please feel free to contact me at the numbers/email below. It is noted that because of interview delays, the 30 day completion of this investigation may not be possible.

Thank you

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: kbeck@kellyandlemmons.com
Sent: Friday, November 04, 2016 4:04 PM
Subject: Relayed: OPCR Interview-Officer Wuorinen

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

kbeck@kellyandlemmons.com (kbeck@kellyandlemmons.com)

Subject: OPCR Interview-Officer Wuorinen



OPCR
Interview-Office...

Office of Police Conduct Review
Data Practices Advisory

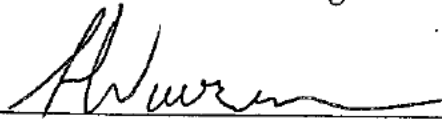
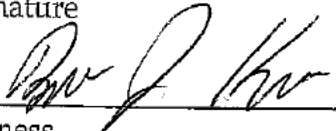
Internal Investigation Warning for Employees under Investigation
(Tennessee Warning)

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.

	11/14/16	1704
Signature	Date/Time	
	11/14/16	1705
Witness	Date/Time	

STATEMENT OF PLACE:

Officer Steve Wuorinen
Minneapolis Department of Civil Rights
Office of Police Conduct Review – Room 239

DATE:

November 14, 2016

TIME:

5:08 p.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, Esq., Attorney for Officer Wuorinen

Q. This is a recorded statement of Officer Steve Wuorinen W-U-O-R-I-N-E-N on November 14th, 2016 at approximately 17:08 hours in the Minneapolis Civil Rights Department Room 239 being interviewed by Investigator Liisa M. Hill and Sergeant Matthew McLean M-C-L-E-A-N of Minneapolis Police Department Internal Affairs Unit. This interview is regarding OPCR Case Number 15-16258. Lieutenant Bob Kroll K-R-O-L-L from the Minneapolis Police Federation and Kevin M. Beck B-E-C-K, attorney for Officer Wuorinen are also present during this interview.

What is your full name?

A. Steve Wuorinen.

Q. What is your present rank and work assignment?

A. I'm a Patrol Officer in the Traffic Investigation Unit.

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

A. 7876 and it was October 15th of, ah, '96.

Q. All right. Thank you. You are being ordered to give a 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 you provide in this investigation cannot be used in criminal proceedings against you except in cases of alleged perjury. Do you understand this warning?

A. Yes.

Q. I'm advising you that should any of your questions...that any of your answers in this statement be found untruthful, departmental disciplinary proceedings will be taken against you. Do you understand this?

A. Yes.

Q. Ah, is it correct that you have read, understood and signed the Data Practice Advisory, otherwise known as the Tennessen Warning?

A. Yes.

Q. Have you been informed that the purpose of this statement relates to an OPCR investigation and specifically an administrative review regarding an incident that occurred on December 29th, 2013 at approximately three o'clock a.m. at the approximate location of 44th and Nicollet in Minneapolis, Minnesota and that you have been called to explain the circumstances regarding this event?

A. Isn't the location 43rd and Nicollet?

Q. Is it 43rd? All right. The record will reflect 43rd and Nicollet.

Um, all right, Officer Wuorinen, at this time, I'm going to take you back to, um, that time, December 29th, um, 2013, ah, early in the morning. Why don't you start out with, um, tell me why, you know, how you came to be on the scene that we're gonna talk about, you know, later. Um, were you on duty that day? Were you on traffic duty? What? I mean, you tell me what circumstances you came up to, um, help the other officers that evening. Just kind of bring me up to speed.

- 5 A. Ah, well I was working Squad 513 with my partner, Officer Lehner. Ah, we were dispatched to a
shots call, to a shots fired call on Nicollet. We then had another call down at I believe it was 46th
and Nicollet that, ah, there was a vehicle that may be involved in that shots fired call. We went
down there. That was at the British Petroleum BP gas station. Um, we determined that vehicle
was not involved but there was some other stuff goin' on with that car. Um, at that time that we
were still at that location, we heard Officer Misgen air that a car swerved and tried to hit his
recruit, Officer Lukes, and, ah, the vehicle was traveling southbound on Nicollet. Um, I started
goin' northbound and I was...I heard on the radio that, um, Squad 521 had that car stopped at
43rd and Nicollet.
- 10 Q. Okay. And who was Squad 521 you said?
A. That was Officer, ah, Kelly and Malloy.
- 15 Q. Okay. And what happened when you came on the scene there with Officer Malloy and Officer
Kelly?
A. I had pulled up along parallel to, ah, the car that tried to hit Officer Lukes, ah, turned on my
stoplight onto the car to see into the pashen or passenger compartment and saw that the driver
seat was empty and that there were I believe three, ah, passengers in the car and the passenger
on the driver's side rear was, ah, angry and it looks like he was swearing at me and then I turned
off my light.
- 20 Q. And you, is that the spotlight?
A. Yes.
- 25 Q. You spotlight him? Okay. And then what did you do?
A. Ah, Officer Kelly went up to the car and, ah, I made a U-turn and got behind Officer Kelly's squad
and then I was to the left of that car, or left to the, his car and behind. And when it looked like he
was havin' problems with the passenger, I got out of the car to go help 'em and, ah, he ended up
taking out the backseat passenger from the driver's side and, ah, we ended up handcuffing him
after struggling with him at that car.
- 30 Q. Okay.
A. [NO AUDIBLE DIALOGUE 5:39]
- 35 Q. Sgt. McLean: Steve, can I ask you a question? If we back up a little bit, when you were, you
shined the, um, the spotlight on him?
A. Mmhmm.
- 40 Q. Sgt. McLean: How far away from him were yuh about when you did that?
A. Well, I was at least in the northbound lane. I might have been over or around 'em.
- Q. Sgt. McLean: Okay. Could you see his face clearly?
A. Yeah, I guess as clear as possible at night with spotlights goin'.
- 45 Q. Sgt. McLean: Right. Were the windows fogged up or anything like that?
A. You know, I read that in the, ah, other testimony things and I don't think they were because I
could see it and then the, the attorney, he asked in the statement that, ah, was the car running
and it had to be because the windows weren't fogged up.
- 50 Q. Sgt. McLean: Okay.
A. And it was, it was cold so I'm thinkin', you know, through my past experiences dealin' with cars
that have, ah, been turned off or somethin', it's gonna fog up real quick especially with the cold
weather.
- 55 Q. Sgt. McLean: Okay.

- A. And it wasn't.
- Q. Sgt. McLean: Could you see? Could you see the description of this guy? Could you tell how old he was? What he looked like? What race he was?
- 5 A. He was younger and, you know, um, I think he looked Hispanic, you know.
- Q. Sgt. McLean: Did he mouth anything to you that you could see?
- A. They looked like swear words, you know.
- 10 Q. Sgt. McLean: Okay. Did you notice anything abnormal about his face when he did it?
- A. It would look angry.
- Q. Sgt. McLean: Okay. Anything else?
- A. No.
- 15 Q. Sgt. McLean: Okay. Did he look like he was injured?
- A. No.
- Q. Sgt. McLean: Okay. All right. Thanks.
- 20 A. [NO AUDIBLE DIALOGUE 7:20]
- Q. Um, you said you were the driver of your squad car?
- A. Yep.
- 25 Q. Were you wearing a, a wireless mike that night?
- A. Um, yeah, I believe so.
- Q. And was it turned on and operating?
- A. No, because I didn't make a traffic stop.
- 30 Q. Okay. So, you have control of that? You can turn it off and turn it on for a traffic stop or turn it off?
- A. Yeah.
- Q. When you, um, helped Officer Kelly, and, who, who initially handcuffed, um, Luis Garcia Pineda?
- 35 A. I believe I did based on what I read in my testimonies and from what I can remember as of now.
- Q. Okay. Um, but Officer Kelly was up there too so it was probably the both of you up at that, that vehicle getting, um, Garcia Pineda out of the backseat?
- A. Officer Kelly got 'em out of the backseat and I went to help and, ah, ah, Officer Lehner was with us or he, he was strugglin' with the three of us and, ah, you know, we've been taught the more of us there, the less force we have to...use.
- 40 Q. Okay. And so after, um, Mr. Garcia Pineda is handcuffed, who takes him back to your car?
- A. I did.
- 45 Q. Okay. And where did you go first? Did you search him? Tell me what, tell me what you did.
- A. I brought 'em back to my, ah, passenger right, ah, rear fender near the trunk and that's where I searched 'em and tried to, um, tried to find some ID and also control his movement.
- 50 Q. Okay.
- A. [NO AUDIBLE DIALOGUE 9:11]
- Q. Sgt. McLean: Did you talk to him while you're doin' this? Were you givin' him verbal commands?
- 55 A. Yeah, I, I was, ah, tellin' 'em to stop movin', you know, um, in my statement in my reports that, you know, he's movin' around and I've had experience where people do that to try to hide things,

5 you know, if they have something on them that...they're tryin' to discourage you from getting a good search. And also he was turning around making threats. He pursed up his lips like he was gonna spit at me and that's, you know, hap...that was during while I'm searching him and all that and I got his belongings out of his pockets onto the trunk of the car and when I saw 'em that he's tryin' to purse up his lips, you know, I, I turn 'em away and try to get him into the squad as soon as possible to prevent him from getting that opportunity to spit on me.

Q. Sgt. McLean: All right. So, when he was lookin' like that, you were lookin' at his lips when he was lookin' like he might spit at yuh?

10 A. Yeah.

Q. Sgt. McLean: Did you notice anything abnormal about his mouth?

A. No.

15 Q. Sgt. McLean: Did you notice if he had teeth or didn't have teeth or was missing any teeth?

A. I didn't notice that.

Q. Sgt. McLean: Okay.

20 A. [NO AUDIBLE DIALOGUE 10:33]

Q. When you searched him, did you find anything...of an illegal nature?

A. I don't recall, eh, eh, it should have been in the report if I did so I didn't see anything noted in the report or in my other testimonies.

25 Q. Okay. And, who placed him in the backseat of your squad?

A. I did.

Q. Okay. Did you close the rear door?

30 A. Yes, I did.

Q. When you put 'em in? Okay. Was Mr. Garcia Pineda still resisting whether verbally or...?

A. Yeah, telling me that he was, ah, gonna get me, I, and was makin' threats during the search and then once in the squad he started kicking and hitting, ah, in the squad.

35 Q. Okay. How long after? Once you put him in the backseat, how long? Where did you go after you put him in the backseat, then what did you do?

A. Well, I still had his property on my trunk.

Q. Okay.

40 A. So, I started lookin' through there to see if I can find the name or an ID and I wasn't able to and he was thrashin' about in the back of the squad.

Q. Okay. How long would you say from the time that you put him in the backseat; you're back at the trunk now lookin' through his items that he started thrashing, kicking?

45 A. Oh, right away.

Q. And what did you...what was your first thoughts when you saw that?

50 A. You know, all, eh, my concern and this is because I've been burned in the past. I have his property on the trunk of my car. I need to identify him to make sure that there's nothing that's gonna blow away so that he can't make a false claim that something's missing. So I, I want to look through that property, I want to secure it and then I'll deal with the next thing. You know, take one thing at a time and be done with it. [INAUDIBLE 12:32 be done with it?]

Q. Okay.

55 A. [NO AUDIBLE DIALOGUE 12:33]

- Q. Sgt. McLean: What do you say his property? Can you describe what you were looking at out there?
- 5 A. There was papers and I don't know what, I don't remember even now what those were and, um, various papers. I think there were some headphone jacks or somethin' for something and I don't know if there was a device with that but, um, a lot of junk, nothing of value.
- Q. Sgt. McLean: All right. So you're looking for the papers trying to get a name to get 'em ID'd. What were you intending to do with all of this stuff once you got it, had looked through it and got, got, got it together. What would you do with it? Would you put it in the trunk or in the front seat of the squad or what would you do with it?
- 10 A. I normally bring it into the squad car. That's, so I remember to give it back whenever I...but whatever happens the person along, I remember that I have it and that I give it back. If it's something larger where it needs to go into the trunk then it will go in the trunk but what I had from his pockets wasn't qualifying for that.
- 15 Q. Sgt. McLean: Okay. So, that was goin' in the squad in the dash or somewhere?
- A. Yeah.
- 20 Q. Okay.
- A. [NO AUDIBLE DIALOGUE 13:44]
- Q. Okay. When Mr. Garcia Pineda starting kicking the backseat, what did you do?
- 25 A. I continued to look through his property and...
- Q. Okay.
- A. Try to get it secured.
- Q. Okay. And what did your partner do? Officer Lehner.
- 30 A. Officer Lehner eventually came, um, from somewhere behind me and asking, ah, what Garcia said to me and I told 'em, ah, he told me that he wasn't afraid of us that he's been in the backseat of the squad car and I forget exactly the proper quote but it was, you know, hundreds of times or somethin' like that and that he was gonna be a cop. He knew somebody on the North Side that was a cop so, ah, that's, that's all that um, my conversation with Officer Lehner was at that time.
- 35 Q. Okay. Was, um, Mr. Garcia Pineda still kicking?
- A. Yeah.
- Q. In the backseat? Okay.
- 40 A. Kicking, thrashing about.
- Q. How long was it, estimate the time you're, I, I understand you're at the trunk; you're looking through Mr. Garcia Pineda's items. You said your partner, Mr., ah, Officer Lehner comes. How long do you think that is...timeframe?
- 45 A. I'm not sure. It wasn't very long.
- Q. Okay. And then...
- A. [NO AUDIBLE DIALOGUE 5:11]
- 50 Q. Sgt. McLean: Can you estimate? Five seconds? Twenty seconds? What would be your best recollection?
- A. Well, it's definitely more than five seconds, um...ah, somewhere between thirty to, thirty seconds to maybe a minute, a minute, two minutes.
- 55 Q. Sgt. McLean: Okay.