PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD MEETING

October 17, 2024
AGENDA
9:00 AM

The Peace Officer Standards Accountability Advisory Board (Board) operates under the requirements set forth by the Bagley-Keene Open Meeting Act (Bagley-Keene) under Government Code sections 11120 through 11132. Bagley-Keene generally requires that the Board publicly notice meetings, prepare agendas, allow public participation, and conduct meetings in a location accessible to public members unless specifically authorized by Bagley-Keene to meet in closed session.

Public comment will be limited in time at the discretion of the Board Chair. The public comment period preceding items on the agenda will allow members of the public to comment on items not on the agenda but must be within the Board's jurisdiction. Further, public comment will be allowed after each item on the agenda and must relate to matters on the agenda. Members of the public who wish to participate during public comment may do so in person by attending the meeting, by telephonic means stated hereafter or by submitting a written public comment submission no later than three days before the meeting date. Written public comments will be published on the Commission on POST's website under the Public Comment section under the corresponding meeting date. Written public comments can be submitted via email to posadpc@post.ca.gov. Telephonic public comment can be made by dialing +1 669 444 9171 US or +1 669 900 6833 US and entering the Webinar ID: 817 3463 0494 and Passcode: 749503

The Board cannot act on or deliberate on items not on the agenda, but only to the extent necessary to determine whether they should be made an agenda item at a future meeting, respond briefly to statements or questions posed during public comment, request clarification, or refer the item to staff. Agenda items may be taken out of order and action (e.g., voting) may be taken on any agenda item.

Persons requesting disability-related accommodations or modifications may do so by contacting the Board assistant at (916) 227-3909 (voice), posadpc@post.ca.gov (email), or Speech-to-Speech users may dial 7-1-1 for the California Relay Service to request special accommodations. Please note: This meeting and all public meetings will be recorded.

No weapons are allowed on the premises during public meetings. Upon entering POST's facility, you are subject to a weapons screening and will be denied entry if you possess any weapon. POST's Executive Director retains the discretion to grant exceptions for duly-authorized individuals, such as on or off-duty law enforcement officers who are not the subject of a POST administrative investigation, suspension, or decertification action.

I. **CALL TO ORDER**

II. **ROLL CALL OF POSAAB MEMBERS**

Elizabeth T. Buchen - Senate Rules Appointee - Public Member
Dr. Nicole Clavo Psy.D - Governor Appointee - Public Member
Regina Hatcher-Crawford - Governor Appointee - Public Member
Robert Doyle - Governor Appointee - Former Command Rank Peace Officer
Joyce E. Dudley - Chair - Governor Appointee - Attorney
Professor Jack Glaser - Governor Appointee - Public Member
Cephus Johnson - Governor Appointee - Public Member
Lieutenant Charles Lara - Governor Appointee - Management Rank Peace Officer
Margaret Pena - Speaker of Assembly Appointee - Public Member

III. **PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

The Board Chair will advise the audience of the following:

This time is set aside for members of the public who wish to comment on items not on the agenda but within the board's jurisdiction. Public comment on matters on the agenda will be heard at the time each item is called. Public comment on specific peace officer revocation cases to be heard today will be heard at the time of the hearing of each such matter. Members of the public who wish to speak during the public comment period may be asked to limit their remarks in time at the discretion of the Board Chair.

IV. **APPROVAL OF MEETING TRANSCRIPTS**

Approval of meeting transcripts from the previous Peace Officer Standards Accountability Advisory Board Meeting held on March 21, 2024.

a. Approval of Meeting Transcript from the March 21, 2024 Meeting

If the Board concurs, the appropriate action would be a **MOTION** to approve the Meeting Minutes from the last Board meeting.

V. **NEW BUSINESS**

a. Discussion and Possible Action to Vacate the Conflict of Interest Code and Delete a Provision of the Peace Officer Standards Accountability Advisory Board (POSAAB) Administrative Requirements Policy

If the Board concurs, the appropriate action would be a **MOTION** to vacate the previously adopted POSAAB Conflict of Interest Code and delete the identified provision of the POSAAB Administrative Requirements Policy as described in the staff report.

b. Discussion Regarding a Board Policy: POSAAB Travel and Compensation Policy

The Board may discuss details of the POSAAB Travel and Compensation Policy.

c. Report on Outcome of Case Review from the June 12, 2024 Commission Meeting

This report is presented for information only. No action is required.

d. Report on Data for Serious Misconduct Reporting, Investigations, and Disciplinary Action Outcomes

This item is presented for informational purposes only. No action is required.

VI. ASSISTANT EXECUTIVE DIRECTOR COMMENTS

The Assistant Executive Director of the Peace Officer Standards Accountably Division will address the Board.

VII. NEW CASES - REVIEW, DISCUSSION AND RECOMMENDATIONS TO COMMISSION

a. POST2303451 - James Mutuku (POST ID: C25-A69) Last employing agency: Riverside Police Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

b. POST2307511 - Sifredo Cano (POST ID: C03-G01) Last employing agency: Los Angeles County Sheriffs Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

c. POST2313715 - Jaime Bermudez (POST ID: C36-U28) Last employing agency: Daly City Police Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

d. POST2300017 - Paul Matejcek (POST ID: C65-U31) Last Employing Agency: Brentwood Police Department

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

VIII. CLOSED SESSION

At this time the meeting will adjourn into closed session for for deliberations on the cases presented today.

With regard to POST2303451, James Mutuku: Pursuant to Government Code section 11126(c)(3), Penal Code section 832.7(b)(6)(B), and Penal Code section 13510.85(b), the Board may review the following attachment in closed session: Attachment D (Complainant_Interview_1644_11_08_2022_03_43_PM).

Attachment D is an audio recording that includes the voice of the complainant in this case. If the Board finds it necessary, this attachment will be reviewed in closed session to preserve the anonymity of the complainant. A redacted transcription of this recorded interview, however, is part of the public record for these proceedings, and can be located under Attachment C to this Investigative Summary and Findings.

With regard to POST2300017, Paul Matejcek, pursuant to Government Code section 11126(c)(3), Penal Code section 832.7(b)(6)(B), and Penal Code section 13510.85(b), the Board may review the following attachments in closed session: Attachment K (K_4_BPD-2201912_-_FRANSON_DAVID_624D.mp4) and Attachment L (L_2_BPD-2201912_-_MATEJCEK_PAUL_-_595P_2_.mp4).

Attachments K and L are body worn camera footage of the incident at issue in these proceedings, which includes images of the victim's face. If the Board finds it necessary, these attachments will be available to be viewed in closed session to preserve the anonymity of the victim and preserve her right to privacy. Redacted versions of these attachments have been made public for these proceedings.

IX. FUTURE BOARD MEETING DATES

Upcoming Board meetings will be held:

- January 15-16, 2025 - POST, West Sacramento
- April 16-17, 2025 - POST, West Sacramento

X. ADJOURNMENT

AGENDA ITEM REPORT

Title: APPROVAL OF MEETING TRANSCRIPT FROM THE MARCH 21, 2024 MEETING

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY	**REVIEWED BY**	
REPORT DATE	**APPROVED BY**	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

BACKGROUND:

ANALYSIS:

RECOMMENDATION: If the Board concurs, the appropriate action would be a **MOTION** to approve the Meeting Minutes from the last Board meeting.

ATTACHMENT(S):
03.21.2024_POSAAB_Hearing

STATE OF CALIFORNIA

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

(POSAAB) MEETING

THURSDAY, MARCH 21, 2024

9:02 A.M.

MEETING HELD

AT THE OFFICES OF

COMMISSION ON POST

860 STILLWATER ROAD, SUITE 100

WEST SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Stenographically Reported By:
Kathryn S. Swank
California Certified Shorthand Reporter #13061
Registered Professional Reporter

A P P E A R A N C E S

POSAAB MEMBERS PRESENT

ROBERT DOYLE
Governor Appointee
Former Command Rank Peace Officer
(Vice Chairperson)

NICOLE CLAVO, Psy.D.
Governor Appointee
Public Member

REGINA HATCHER-CRAWFORD
Governor Appointee
Public Member

ROBERT DOYLE
Governor Appointee
Former Command Rank Peace Officer

JACK GLASER
Governor Appointee
Public Member

CEPHUS JOHNSON
Governor Appointee
Public Member

CHARLES LARA
Governor Appointee
Management Rank Peace Officer

MARGARET PENA
Speaker of Assembly Appointee
Public Member

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POST COMMISSION LEGAL COUNSEL

CHRISTOPHER BEATTY
Deputy Attorney General
Department of Justice
Office of the Attorney General

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A P P E A R A N C E S C O N T I N U E D

POST COMMISSION STAFF

ANNEMARIE DEL MUGNAIO
Assistant Executive Director
Peace Officer Standards
Accountability Division
Executive Office

CHRISTOPHER BECKER
Assistant Chief Counsel
Legal Affairs Bureau

ROBERT BRINGOLF
Law Enforcement Consultant
Professional Conduct Los Angeles County Bureau

BRYANT HENLEY
Attorney IV
Legal Affairs Bureau

WILLIAM IMBODEN
Law Enforcement Consultant
Professional Conduct Los Angeles County Bureau

CHANDLER KNAPP
Staff Services Manager
Executive Office

MARK NAGEL
Law Enforcement Consultant
Professional Conduct Southern Bureau

KEVIN SHERBURNE
Law Enforcement Consultant
Professional Conduct Central Bureau

CARRIE WOOLLEY
Attorney IV
Legal Affairs Bureau

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A P P E A R A N C E S C O N T I N U E D

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ALSO PRESENT

KASEY A. CASTILLO
Counsel for
Officer David Hubbard
(Via videoconference)

CESAR DIAZ
Peace Officer
POST ID C68-U20

SAKU ETHIR
Counsel for
Officer Ivan Sarabia-Medina
(Via videoconference)

DILLON FUSTON
Peace Officer
POST ID C71-S10

BRADLEY M. FIELDS
Counsel for
Officer Dillon Fuston
(Via videoconference)

BEATRICE JOHNSON

DANIEL SANCHEZ

IVAN SARABIA-MEDINA
Peace Officer
POST ID C12-A96
(Via videoconference)

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I N D E X

PROCEEDINGS		PAGE
I.	CALL TO ORDER	7
II.	ROLL CALL OF POSAAB MEMBERS	7
III.	PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA	9
IV.	ASSISTANT EXECUTIVE DIRECTOR COMMENTS	11
V.	NEW BUSINESS	
	1. Peace Officer Standards Accountability Division (POSAD) Update	11
	2. Report on Outcome of Case Review from the March 07, 2024 Commission Meeting	21
	3. Election of Vice Chair	24
VI.	APPROVAL OF MEETING MINUTES AND TRANSCRIPT	
	1. Approval of Meeting Minutes from the December 13, 2023 Meeting	29
	2. Approval of Meeting Transcript from the December 14, 2023 Meeting	29
VII.	NEW CASES - REVIEW, DISCUSSION AND RECOMMENDATIONS TO COMMISSION	
	1. POST2311496 - Cesar Hazel Diaz (POST ID: C68-U20) Last employing Agency: Los Angeles School District Police Department	35
	2. POST2300809 - Dillon Fuston (POST ID: C71-S10) Last employing Agency: San Diego Police Department	45
	3. POST2300204 - David Wesley Hubbard (POST ID: C15-B77) Last employing agency: Kern County District Attorney's Office	82

I N D E X C O N T I N U E D

PROCEEDINGS	PAGE
4. POST2322012 - Ivan D. Sarabia-Medina (POST ID: C12-A96) Last employing Agency: Los Angeles County Sheriff's Department	108
VIII. CLOSED SESSION	
(Transcripts prepared and bound under separate cover)	
IX. FUTURE BOARD MEETING DATES	131
May 15-16, 2024 - POST, West Sacramento July 24-25, 2024 - POST, West Sacramento	
X. ADJOURNMENT	134
CERTIFICATE OF REPORTER	135
ERRATA SHEET	136

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Thursday, March 21, 2024, 9:02 a.m.

West Sacramento, California

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MS. DEL MUGNAIO: Good morning. Welcome everyone. This is our second hearing of the Peace Officer Standards Accountability Advisory Board.

Today before we get into the first order of business, I'm just going to make a quick announcement about the proceedings today. As many of you know, on the Board, Ms. Dudley, our Chair, will not be joining us today. Sadly, she would have been here if she could. But due to some unforeseen circumstances, she will not be joining us today.

So I will go ahead and facilitate at least the first half of the meeting until we get to our cases that are before the Board today. And then we will probably have our vice chair, as long as that person feels comfortable, facilitate the remainder of the meeting.

Does that sound fair to the board members?

(No response.)

MS. DEL MUGNAIO: Okay. Great. All right. I'm going to go ahead and ask Chandler to call the roll this morning.

MR. KNAPP: Okay. Good morning, members of the Board.

Board Member Buchen.
(No response.)
MR. KNAPP: Board Member Clavo.
MEMBER CLAVO: Present.
MR. KNAPP: Board Member Crawford.
MEMBER HATCHER-CRAWFORD: Present.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: Here.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Here.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Present.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Here.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Here.
MS. DEL MUGNAIO: Okay. Thank you.
We have a quorum.
I want to thank those of you who are in attendance today. We want to take a couple of notes to kind of explain to you that this meeting or hearing is being webcast. It is also being recorded and transcribed.
The microphones are on auto on and off, so you do

not have to touch them before you speak. As soon as you begin speaking, they will go live. When you are not speaking, they will not be live.

You will need to watch the cross-talk because if you lean over and talk to your partner, that will be caught on recording and webcast, so just be advised.

I also want to thank those in attendance today for joining us. When you are asked to come forward for public comment, you may introduce yourself and your association. You do not have to. So that is voluntary. I want to make sure that's clear today.

I would like to introduce some of the folks here at the table today. To my left, I would like to introduce Chris Beatty. He's our board counsel.

I'm assistant director -- Assistant Executive Director Annemarie Del Mugnaio of the Peace Officer Standards and Accountability Division.

To my right is Chandler Knapp. He works in EXO.

Thank you.

Okay. We're going to see if there's any public comment before the Board today. This is the time that is set aside for public members of the public who wish to comment on items that are not on the agenda but those within the Board's jurisdiction.

Public comment on matters on the agenda will be

heard after each item presented. Public comment specific to peace officer revocation cases to be heard today will be heard at the time of the hearing of each case.

Please be advised the Board cannot take action on items not on the agenda. But only to the extent necessary to determine whether they should be made an agenda item at a future Board meeting, or to respond briefly to the statements or questions posed, request clarification, or refer the item to staff.

Please remember that this meeting, again, is being transcribed. So I may politely interrupt and ask you to repeat or speak slowly and clearly so that the comment can be correctly captured in the transcript.

I may ask members of public to limit their remarks to no more than 3 minutes pursuant to existing Board policy. I also may conclude public comment if multiple speakers are voicing repetitive or similar statements and our 15-minute public comment period has expired.

Is there anyone present today in the audience or appearing remotely by phone would like to address the Board during the public comment? When it is your turn, you may state your name and organization only if you wish.

Are there any public comments this morning?

(No response.)

MS. DEL MUGNAIO: Okay. Seeing none, we'll move on.

At this time, I want to take a couple of minutes to do an administrative update for the board members. Again, this is a standing item that will appear on every board meeting, and it is simply to give the board members and members present today an idea of kind of where we are organizationally as a division and also the volume of cases that we are currently managing.

I believe we have a visual for you.

Go ahead and go to the first page.

All right. This is just an overview of where we are with the staffing for the division. We currently have about 13 full-time permanent law enforcement consultants that are working the cases, in addition to 14 retired annuitants that are law enforcement consultants, as well. We are in the process of bringing a couple of more.

As you folks are aware, we did the in-person training on February 13th for the Board and the Commission. We also have had our staff attend, especially our law enforcement consultants and our division leaders and Bureau Chiefs specialized regulatory investigator training. And that was really

specific to administrative cases. What needs to be included in an investigation, how the report should be written, and how, of course, you substantiate your findings and report your findings to Advisory Board or a governance board.

Chief Counsel Toby Darden and I actually did some training for our administrative law judges from the Office of Administrative Hearings. We did that on March 14th. And that was essentially to give those judges that will be assigned the cases, when they get to that administrative review, an overview of all things Senate Bill 2, the decertification process, the procedures, the types of cases that may see, and a little bit of insight into what we are finding in terms of the cases that are being submitted by law enforcement agencies.

We sent out six Notices of Intent to Revoke in mid-January. That resulted in the four appeals that are before you today. Since then, we have also sent out an additional Notice of Intent to Revoke, and we have not received an appeal back.

So as you folks know, we have a May hearing scheduled. Depending on whether or not we get additional appeals from those notices will obviously indicate whether or not we're going to have a May

hearing.

So I need to keep you apprised as to whether or not we have additional cases for May or with -- whether or not our next hearing will be held in June, and we can kind of talk about that later.

Next page.

Okay. There's a couple of internal improvements that we have made. And one most significant is sending out the Notice of Investigation to subject peace officers. I think we talked about this a little bit during training. But what that has resulted in an uptick in our voluntary surrenders. And so we are notifying the officers that POST has received a sustained finding from a law enforcement agency regarding one of the nine acts of serious misconduct. This is upon initial screening. So this is not where POST has made any decisions about the veracity of the case in terms of bringing it before the Board or Commission.

We notify the officers that we are now investigating the case, and what the sustained findings were by the law enforcement agency that submitted the case to POST.

Since January, we have received -- and I think this number has changed since I wrote this -- it is 11

voluntary surrenders.

Prior to January, we might have had four or five. So within the last two months, we have really -- we have really seen an uptick in those based on that notice.

We are also working on what we call disciplinary guidelines. Those are almost like what folks would consider a bail schedule in terms of what type of discipline may result in certain penalties. And it is based on, obviously, the severity of the act itself. It is based on the history of the officer and several other factors.

But these disciplinary guidelines will be used to apply some level of consistency to the types of cases we see. They will also give instruction to administrative law judges regarding the imposition of discipline the Commission feels is appropriate based on, you know, the facts of the case.

So we will be bringing those to the Board, once they are reviewed by the Commission and we get some feedback by the Commission. So you folks can weigh in as well on those disciplinary guidelines.

We hope to share those with the Commission in June, at their June 13th meeting.

Right now, I want to take an opportunity to show you a really short video clip. This is a production

that our team in the Learning And Training [sic] Resources Bureau put together for the field. And these are officers that are currently in the field, working peace officers. And really, it is an overview of what certification and decertification looks like after the implementation of Senate Bill 2.

It is to provide some guidance and more factual information to the line staff who may not have ever had POST inform them about Senate Bill 2 and all things certification and decertification.

The actual video itself is seven segments. It is about 43 minutes long. But we're going to show you a promo today, so you can see the type of information. You will see there's a couple of us that are in the video. Ms. Clavo assisted in the video when we filmed the production of this. And we think it's turned out really well. We actually contract with a producing company who does all of the staging, you know, puts together all of the lights, camera, action, so it doesn't look like a novice has done this.

So I'm going to go ahead and have our team cue this up for you.

(Video played.)

MS. DEL MUGNAIO: Okay. So that is just kind of a promo or a preview to what the full video will look

like. And, again, that's intended to roll out to the field. We anticipate making that a required continuing professional training for our law enforcement officers in the future. Right now we're going to roll it out, and we're going to have them pilot this and, you know, the law enforcement agencies.

We're also working on an academy video that will explain certification, decertification for recruits that are in the academies. So that before they ever start their career, they have a fair understanding of their relationship with POST, which has changed substantially since the implementation of Senate Bill 2.

Any questions about the video or comments before I move on?

MEMBER LARA: Is the video already up on the portal?

MS. DEL MUGNAIO: No, not yet. We're getting ready to release it. We want to make sure that the Commission and the Board -- we're able to show you the promo.

Anything else?

(No response.)

MS. DEL MUGNAIO: Okay.

Next page, please. This is just an overview of our current statistics within the Professional Conduct Bureau.

So, again, just to explain, agency misconduct reports, there's a lot of them. There's over 22,000 agency misconduct reports. Those aren't necessarily cases. Those are reports that have come in. Sometimes there's multiple reports about one incident.

But I think what is notable here, 69 percent of those are retroactive cases. So those date back from January 1st, 2020, to January 1st, 2023.

One statistic that we've been asked to include is how many officers are involved in these cases. So here you will see there's 14,940 officers. 515 of those came from public complaints, not from law enforcement agencies.

Another extremely notable statistic here is, upon initial screening, a small number of these cases actually result in a substantiated finding or a finding of serious misconduct by clear and convincing evidence.

And so to put this into perspective, right now we're looking at probably 8 percent of those cases may, after thorough rereview, result in some sort of proceeding.

And that, again, tells a different story, right? 22,000 is a -- is a huge volume of cases. But when you look at the actual number of cases that we consider meritorious at this point based, on what was submitted,

we're looking at about 8 percent.

There are 10,327 cases that are opened. Again, you will see here, you know, about 5,500 are open with POST. The others are opened with the law enforcement agencies, meaning we have received them as a complaint, charge, or allegation. And they are still completing their Internal Affairs investigation. So it is not complete at the law enforcement agency level.

We have closed about 5200 cases, 5300 cases, which is 34 percent of that total number of 10,000 cases -- or, excuse me, 15,000 cases.

Many of those cases are the retro nonactionable. So they did not fall within one of the three categories that we could take action, which is use of deadly force resulting in serious bodily injury or death, dishonesty, or sexual assault. Those were the only three acts of serious misconduct that we could take action on prior to January 1st, 2023.

A majority of those cases fall into the other categories.

And then again, the top three areas of alleged misconduct is excessive use of force, demonstrating bias, and abuse of power.

Any questions from the Board on the statistics?

VICE CHAIRPERSON DOYLE: What is the percentage of

cases that don't apply to SB 2? I know that --

MS. DEL MUGNAIO: Nonjurisdictional?

VICE CHAIRPERSON DOYLE: Yes.

MS. DEL MUGNAIO: Very few.

We do have a percentage of those cases. I don't have the stat in front of me, but I can bring that to the Board at the next hearing.

The reason I know it is very few is we just prepared a report to the legislature, and it's an annual report. In Penal Code section 13512, the legislation spells out an annual report with various statistics that will need to be submitted every year. One of those statistics is kind of the disposition of the cases from the law enforcement agency submission.

So what happened? Right? Was it exonerated, unfounded, sustained, or upon review, did we send it back because it was a nonjurisdictional case?

So there -- there's a small percentage that we receive that just don't fall into one of the nine acts of serious misconduct.

What we see more of are cases where I think the agencies are attempting to maybe shoehorn them into one of the nine categories. But it is a failure to act, a failure to supervise, a dishonesty case that doesn't meet the very specific definition in SB 2.

So the agency may label it dishonesty, which upon initial review, is one of the nine acts of serious misconduct. But if you look at the dishonesty definition, it's very narrow. And so the type of dishonesty that is submitted may be jurisdictional. So we do get those cases. And I can bring that statistic back.

Any other questions?

MEMBER GLASER: I just have a clarification.

MS. DEL MUGNAIO: Sure.

MEMBER GLASER: On the second big bullet point there, the context one, when it says, "after triage, around 5 percent appear to have potential merit for decertification." Is that 5 percent of those that have passed through triage, or 5 percent of the total?

MS. DEL MUGNAIO: So the triage -- that's 5 percent of the total after triage, right?

So triage is essentially not, we don't like it, or we like it. Triage is these are sustained findings. Which of these sustained findings are going to move -- do we think are going to move forward for a thorough investigation and potentially a hearing before the Board and the Commission?

Yeah.

MEMBER GLASER: And then the 5 percent is among

those?

MS. DEL MUGNAIO: Right. Correct.

MEMBER GLASER: Okay. So it is getting smaller and smaller?

MS. DEL MUGNAIO: Right. Thank you for the clarification.

All right. Are there any comments from the public regarding the report?

(No response.)

MS. DEL MUGNAIO: Thank you.

We're going to move on to the next item.

Okay. So as, you know, at our very first hearing on December 14th, the Board took a look at two specific cases. Both cases involved acts that violate the law. Very different cases. And I'm sure as you recall, the decision of this board was revocation on both counts.

The Commission reviewed both cases on March 7th at their Commission meeting.

In the matter of the Ramirez case, the Commission upheld the revocation. That was the Justin Raymond Ramirez case, POST Case Number 2308479.

So the Commission agreed with the recommendation of the Board and moved the case for revocation.

So that case will now, if the individual is interested in appealing, would go to an administrative

hearing, a full evidentiary hearing before an administrative law judge.

So there will be an accusation filed. We work with the Department of Justice and their licensing section to file the accusation on behalf of POST. The individual will be given a ten-day Notice of Defense to file in response to that accusation.

If the individual does not file a Notice of Defense, the revocation will be the default order, and we will advise you accordingly.

In the matter of James Kurtz Fillmore, POST Case Number 2303691, the Commission voted to adopt settlement terms. Those terms have not been ironed out to this date. The Division is working with our attorney, Chris Beatty, who will also -- is also the attorney for the Commission in all of the case matters before the Commission. We will be presenting what we think they would like to see in terms of settlement terms at their June meeting. And if those settlement terms are adopted, I will report back to the Board what those settlement terms are.

If their legal counsel does not agree to those settlement terms, the default in that case, or the alternative, would be revocation. So there's more to come on the Fillmore case.

Is there any questions?

MEMBER GLASER: Can you say anything more about that? I know there are probably limits to what you can say, but what kind of settlement might we be talking about?

MS. DEL MUGNAIO: So because the Commission hasn't agreed to those terms, I can't publically describe the nature of those terms.

I can tell you that part of the discussion is the division's ability to operationalize those terms.

So as you folks may know or may not know -- I will describe it here for you today -- we don't have a probationary unit. So there's not a workforce here at POST that is designed to monitor someone's compliance with settlement terms.

So there's some discussion on the operational side of things as, how will we monitor any settlement terms that come before the Board or Commission, even into the future. And we're working those -- working those things out right now.

Until such time that I can give you a confirmation, I can't say much. I apologize.

Yes, Board Member Pena.

MEMBER PENA: Is there an echo? There's an echo, and it is a little hard to hear every now and then.

MS. DEL MUGNAIO: If I stay away from the mike, does that help?

AUDIO-VISUAL TEAM: It's bouncing off the walls and then coming back.

MS. DEL MUGNAIO: Oh, okay. I will try to sit back. Maybe it's me. It is possible.

MEMBER PENA: Thank you.

MS. DEL MUGNAIO: You're welcome.

Any comments, public comments regarding the cases that have been heard before the Board and now the Commission?

(No response.)

MS. DEL MUGNAIO: Okay. Seeing none, we will move on.

Okay. It is now time for us to decide on the nomination of a vice chair for the Peace Officer Standards Accountability Advisory Board.

As most of you know who have served on governance boards, the vice chair's job and responsibilities may vary. For the most part, they are here to sit in for and substitute for the chair in the chair's absence.

A vice chair may also be assigned such duties as overseeing a task force or a subcommittee of the Board for very specific purposes that the Board may delegate to a subcommittee, whether that be audit functions,

research, etc.

So at this point, is there anyone present who would like to -- well, I should say, are there any nominations for the vice chair?

Board Member Pena.

MEMBER PENA: I just want to make a comment before we --

MS. DEL MUGNAIO: Sure.

MEMBER PENA: -- nominate -- before there are nominations, that I really personally feel that the vice chair should be someone from the non-law enforcement side of the Board. I think the legislature made this Board balanced. And I think we should -- that balance should be reflected in the chair and vice chair.

MS. DEL MUGNAIO: Thank you.

MEMBER PENA: Thank you.

MS. DEL MUGNAIO: Any other comments?

(No response.)

MS. DEL MUGNAIO: Okay. Any nominations?

MEMBER CLAVO: I would like to nominate Mr. Robert Doyle.

MS. DEL MUGNAIO: Mr. Doyle, do you accept that nomination?

VICE CHAIRPERSON DOYLE: Do I what?

MS. DEL MUGNAIO: Accept that nomination?

VICE CHAIRPERSON DOYLE: Yes.
MS. DEL MUGNAIO: Okay.
Others?
Ms. Pena.
MEMBER PENA: I nominate Regina Hatcher-Crawford.
MS. DEL MUGNAIO: Ms. Crawford, do you accept that nomination?
MEMBER HATCHER-CRAWFORD: Yes, I do.
MS. DEL MUGNAIO: Okay. Do I have any others?
MEMBER JOHNSON: I would like to nominate Nicole Clavo.
MS. DEL MUGNAIO: Ms. Clavo, do you accept that nomination?
MEMBER CLAVO: No. I will pass.
MS. DEL MUGNAIO: Thank you.
MEMBER CLAVO: Thank you, sir.
MS. DEL MUGNAIO: Any further nominations?
MEMBER GLASER: I would like to nominate Board Member Johnson.
MS. DEL MUGNAIO: Okay.
Mr. Johnson, do you accept that nomination?
MEMBER JOHNSON: I would like to pass, also.
MS. DEL MUGNAIO: Okay.
MEMBER JOHNSON: Thank you.
MS. DEL MUGNAIO: The good news is you all seem to

like each other, so that's cool.

Do I have any additional nominations?

(No response.)

MS. DEL MUGNAIO: Okay. So I'm going to take these in order as they were called. I think our first nomination was Mr. Doyle.

Do I have a motion to elect Robert Doyle as Vice Chair of the Peace Officer Standards Accountability Advisory Board?

You can make a motion, yes.

MEMBER CLAVO: I make a motion.

MS. DEL MUGNAIO: Okay. Clavo moved.

Do I have a second?

MEMBER JOHNSON: Second.

MS. DEL MUGNAIO: Thank you, Mr. Johnson.

Okay. Mr. Knapp, will you call the roll.

MR. KNAPP: Yes.

Okay. Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Abstain or nay.

MS. DEL MUGNAIO: Abstain or nay?

MEMBER HATCHER-CRAWFORD: Nay.

MS. DEL MUGNAIO: Okay.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Nay.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Yes.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Aye.
MR. KNAPP: Board Member Pena.
MEMBER PENA: Abstain.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: Yes.
MS. DEL MUGNAIO: Okay. So we have four yeses. I think we have two nos. And one abstention.
So I believe that motion passes. Seven members present.
Okay. So Mr. Doyle, congratulations. You are the Vice Chair of the Peace Officer Standards Accountability Advisory Board.
The reason we don't call the second and third is because we had a motion that passed. Okay.
Thank you very much.
All right. So we are now going to move -- I'm sorry. Is there any members of the public that wish to

comment on this matter?

We have one. Caller on the line.

Go ahead, caller. Did you have a public comment?

UNIDENTIFIED SPEAKER: You know, I'm waiting for the -- for the David Hubbard agenda.

MS. DEL MUGNAIO: Oh, okay. We're going to take that up shortly in the cases, so we are not quite there yet. But thank you.

Any other comments? Board? Public?

(No response.)

MS. DEL MUGNAIO: Okay. What I would like to do now, because that completes kind of the administrative business of the hearing today. Before we move into the cases, is we are going to take a quick ten-minute break. The vice chair --

Oh, I'm sorry. I'm missing something. I apologize. I'm getting ahead of myself. I'm anxious to get to the cases, clearly.

We need to review the transcripts from the last meeting. So let's do that order of business first, and then we will take our break.

Okay. So at this time we will go ahead and take an approval of many meeting minutes from the December 13th, 2023, meeting. And the meeting transcript from the December 14th, 2023, Board hearing.

Any discussion before we have a motion on either set of transcripts?

(No response.)

MS. DEL MUGNAIO: Okay. Does anyone have a motion to accept both the December 13th, 2023, minutes, and the minutes from the December 14th hearing?

MEMBER LARA: Motion to accept.

MS. DEL MUGNAIO: Thank you.

Second?

VICE CHAIRPERSON DOYLE: Second. Doyle.

MS. DEL MUGNAIO: Doyle. Thank you.

Okay. Public comment on the transcript or minutes from the two dates?

Okay. Seeing none, Mr. Knapp, can you call the roll?

MR. KNAPP: Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.

MEMBER CLAVO: Yes.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Yes.

MR. KNAPP: Board Member Doyle.

VICE CHAIRPERSON DOYLE: Yes.

MR. KNAPP: Board Member Dudley.

(No response.)

MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Yes.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Yes.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Yes.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Yes.
MS. DEL MUGNAIO: Okay. Motion carries.
Thank you very much.
Now, we will take a ten-minute break. And we will have our vice chair take over facilitating the meeting for our cases.
VICE CHAIRPERSON DOYLE: Sure.
MS. DEL MUGNAIO: Okay. So we will reconvene at quarter to 10:00. Thank you.
(Break taken in proceedings.)
MS. DEL MUGNAIO: Okay. We are back on the record.
Okay. Now is the time in the agenda where we are going to hear new cases that are before the Board to discuss whether or not decertification or some form of suspension is appropriate in each case.
I'm going to read some introductory statements before I turn it over to Vice Chair Doyle to introduce our cases.

We have four cases to hear today. We will only be reviewing the facts in evidence as presented by this Division. This is not an evidentiary hearing. The rules of evidence do not apply here. Evidence is not formally admitted into the record. There is no need to make any objections, and objections will not be ruled upon.

Under the Penal Code and applicable state regulations, this initial hearing will determine only if the matter will proceed forward for Commission review and then, should the Commission approve, for a full evidentiary hearing before an administrative law judge to determine whether the allegations are true and justify discipline.

For those commenting on each item at this early stage, the Board must only consider facts that the Division, after investigation, believes can be proven at a later evidentiary hearing. For that reason, today the Board will entertain arguments as to whether or not those facts as presented by the division demonstrate a high probability that serious misconduct, as defined in Penal Code section 13510.8 and Regulation 1205 have occurred.

This finding results in the matter being moved forward. No actions by the Board or the Commission

prior to the full evidentiary hearing amount to a final determination that the officer did, in fact, engage in serious misconduct, or that the revocation or suspension is ordered.

That will be determined after the evidentiary hearing.

At the conclusion of the law enforcement consultant's presentation before the Board, the Board will have an opportunity to ask questions. Then public comment from the subject officer and/or their counsel will be taken followed by members of the public.

Further discussion by the Board will be allowed, if necessary. The Board has several options before them today: The Board may go into closed session to deliberate after each case. Or the Board may wait until all cases have been presented and adjourn into closed session to deliberate all cases at the end of the hearing.

After reconvening into regular session, votes will be taken on each case.

With that, we will now dive into our first case of the day. I do want to remind the Board members, closed session is optional. If the Board is ready and willing to take a vote or a motion on a case without having to go into closed session, that is also an option before

the Board. So I just want to reiterate what I just read, because I read a lot.

The first option is the Board may go into closed session after each case if it feels as though they need to seek the advice from legal counsel or deliberate some of the facts with legal counsel that were presented at the time of the case presentation by the law enforcement consultant.

The Board may wish to discuss the case in open forum and take a motion and vote without going into closed session after each case, or the Board may hold closed session to the end of all four cases being heard in open session.

Just want to make sure. Does that make sense to everybody before we move into the cases?

(No response.)

MS. DEL MUGNAIO: After the presentation, Vice Chair Doyle will kind of lead you into which option seems to be, you know, most appropriate, given the case that you have heard.

Are we ready?

(No response.)

MS. DEL MUGNAIO: Okay. I'm going to turn it over to Mr. Doyle.

VICE CHAIRPERSON DOYLE: Thank you.

First case is Cesar Diaz POST2311496 and POST ID C68-U20.

At this time, I will call upon Law Enforcement Consultant William Imboden, Professional Conduct Los Angeles Bureau, and Carrie Woolley, Attorney IV, Legal Affairs Bureau, to provide a report on case POST2311496, Cesar Diaz, who the time of the events at issue in this case was employed by the Los Angeles School District Police department.

MR. IMBODEN: Thank you, Mr. Vice Chair.

VICE CHAIRPERSON DOYLE: Please.

MR. IMBODEN: My name is William Imboden. I'm a Law Enforcement Consultant II in Professional Conduct, assigned to the Los Angeles County Bureau.

Beside me is Carrie Woolley, an attorney with the Legal Affairs Bureau.

The case before you, POST2311496, was submitted to POST for an allegation of serious misconduct under California Penal Code section 13510.8(b)(6), Acts That Violate the Law.

That states that "Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with the peace officer's obligation to uphold the law or respect the rights of members of the public as determined by the Commission."

In June 2020, Cesar Hazel Diaz, an officer with the Los Angeles School District Police Department, while off duty was arrested in Orange County, California, for suspicion of -- (audio malfunction).

In June 2020, Cesar Hazel Diaz, an officer with the Los Angeles School District Police Department, while off duty was arrested in Orange County, California, for suspicion of driving under the influence of alcohol.

Mr. Diaz was seen driving his vehicle recklessly at a high rate of speed, approximately 50 miles per hour in a 25 mile an hour zone on the wrong side of the road and crossing over solid double yellow lines with several passengers in his vehicle.

Mr. Diaz failed field sobriety tests, and was subsequently arrested. And when he was taken into custody, his loaded handgun was located in the waistband of his clothing.

During the booking process, Mr. Diaz provided a blood sample to determine his blood alcohol concentration, which ultimately returned as .14 percent BAC post-arrest.

Just ten weeks later in August of 2020, while driving his vehicle off duty in Los Angeles County, Mr. Diaz was seen rapidly accelerating as he exited a parking lot and swerving across four lanes of traffic in

one move without signaling.

After stopping at a red light, Mr. Diaz then accelerated rapidly while crossing two lanes of traffic to make a right turn without signaling.

During the subsequent DUI investigation, it was discovered Mr. Diaz's loaded firearm was on the floor under the front passenger seat, which was occupied by a subject who was not a peace officer and who also had been drinking alcohol.

While being booked at the jail after being arrested, Mr. Diaz provided breath samples to determine his blood alcohol concentration. The sample showed Mr. Diaz -- (audio malfunction).

The sample shows Mr. Diaz's blood alcohol concentration was .17 percent and .19 percent shortly after his arrest.

In July 2021, in LA County Court, Mr. Diaz pled no contest to one misdemeanor count of drivings under the influence of alcohol with BAC of .08 percent or higher.

The second misdemeanor charge was dismissed as part of the plea bargain.

In October of 2022, in Orange County court, Mr. Diaz pled guilty to two misdemeanors; driving under the influence and driving under the influence with a BAC of .08 percent or higher.

Mr. Diaz's employer told the administrative investigation while the criminal cases worked their way through court, and due to the court delays, the June 2020 arrest was not cleared administratively until December of 2022.

At the conclusion of the administrative investigation, Mr. Diaz was suspended without pay for 240 hours by his agency.

As a result of his actions, Mr. Diaz arrest -- I'm sorry -- was arrested twice in 10-week span for driving under the influence of alcohol.

At the time of his second arrest, his blood alcohol concentration was significantly higher than the first time. During both arrests he exhibited erratic and dangerous driving behavior, putting both his passengers and the rest of the driving public at extreme risk of death or serious injury.

Additionally, he was in possession of a loaded firearm both times. The second time, his firearm was unsecured and accessible by an inebriated passenger.

Based on these actions and the details as I have described them, the Division believes there's clear and convincing evidence that Mr. Diaz committed serious misconduct as defined in section 13510.8(b)(6).

For the purposes of this report, "clear and

convincing evidence" means evidence of a charge is clear and convincing so long as there is a high probability the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

That's the end of my report, and I would be happy to take questions.

VICE CHAIRPERSON DOYLE: Ms. Pena.

MEMBER PENA: Thank you.

On the first DUI, there was no weapon found?

MR. IMBODEN: There was a weapon on him both DUIs. The first DUI was in his waistband.

MEMBER PENA: Thank you.

VICE CHAIRPERSON DOYLE: Any other questions by board members?

(No response.)

VICE CHAIRPERSON DOYLE: At this time, does the subject officer or their counsel wish to make public comment? You may state your name and organization, if you wish. Please come to the...

MR. DIAZ: Hello, Madam Chair, and Vice Chair and Board members. I prepared a three-minute speech because I know I was told I only had three minutes to speak about myself.

So my name is Cesar Diaz. Thank you for allowing me to speak a little bit about myself today. I ask that

while you consider my case that you also have -- you also consider the facts about what I have done to learn from my mistakes and how growing from those mistakes have made me a different person and a better police officer to this day.

There was a period of time in 2020 where my actions did not correctly reflect my true character. I was dealing with undiagnosed PTSD, unmanaged grief from family and work losses, the 2020 riots in Los Angeles, childhood trauma, and unfortunately my list of coping skills only included drinking.

After my off-duty mistakes, I realized what I was doing to cope wasn't working. I made the conscious decision to work on my personal and mental wellness by choosing to attend a 30-day inpatient rehab for first responders.

After that, I also completed a 90-day outpatient program where I received continued support for my personal wellness to this day.

I have found since then new and healthy ways to cope with my PTSD that include -- that don't include drinking. I learned how my coping skills were detrimental to me and negatively affecting those around me, like my family, community, and friends.

Today I stand in front of you a better man with a

long list of healthy coping skills. I recently became a father, which has shaped my world for the better and created a why for me every day.

With my any coping skills, I have been able to successfully manage duty-related traumas as I have continued to work in the field as a police officer and having dealt with personal losses for the last four years.

I love my job as a police officer. It affords me the opportunity to serve people on their worst days, including people who have made similar mistakes to what I have made.

It allows me to positively impact my community, and to help set an example of how one can overcome their mistakes and increase their overall wellness and be able to lead a better life.

With all that said, I understand the need for accountability in peace officers, and I commend your service for these efforts.

I hope that you can see how my actions after my mistakes reflect my integrity, and how I have held myself accountable for my family and my community that I serve.

Thank you for allowing me to represent myself and speak about who I am.

If you have any questions I can answer in regards to my case.

VICE CHAIRPERSON DOYLE: Members, any questions?

(No response.)

VICE CHAIRPERSON DOYLE: No? Okay.

Is there any public comment to the presentations?

(No response.)

VICE CHAIRPERSON DOYLE: Thank you. At this time, is it the Board's interest in going into closed session after each case or take them all at the same time?

MEMBER GLASER: I move that we go into closed session now.

VICE CHAIRPERSON DOYLE: Okay.

MEMBER CLAVO: I second.

VICE CHAIRPERSON DOYLE: Okay. Okay. At this time, the meeting will adjourn into closed session for the deliberations on this case. And the Board will now exit to a private room.

(Time noted: 10:03 a.m.)

---o0o---

(Closed session was held from 10:07 a.m. to 10:55 a.m.)

---o0o---

(Time noted: 11:01 a.m.)

VICE CHAIRPERSON DOYLE: We will now reconvene to

the regular session to take a vote on the Board's recommendation to the Commission.

As a reminder to the Board, the Board has several options in making a recommendation to the Commission, including a suspension, revocation, or no action. Each option is available until a motion is voted on and approved. In other words, if a motion to revoke certification is made and passes, that ends the deliberations.

If such a motion is made and fails, however, a motion to suspend certification may still be made should any board member wish to do so.

In the matter of the case POST2311496, Cesar Diaz, who at the time of events was -- at issue was employed by the Los Angeles School District Police Department, what comments do members of the Board have to make on this matter?

(No response.)

VICE CHAIRPERSON DOYLE: Okay. Is there a motion by the Board to make a recommendation to the Commission?

MEMBER LARA: I would like to make a recommendation, please.

VICE CHAIRPERSON DOYLE: Commissioner Lara.

MEMBER LARA: I recommend that the -- the period of six-month suspension.

MEMBER GLASER: Second.
VICE CHAIRPERSON DOYLE: A second by Mr. Glaser.
Roll call.
MR. KNAPP: Board Member Buchen.
(No response.)
MR. KNAPP: Board Member Clavo.
MEMBER CLAVO: Aye.
MR. KNAPP: Board Member Crawford.
MEMBER HATCHER-CRAWFORD: Abstain.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: Yes.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Nay.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Aye.
MR. KNAPP: Board Member Pena.
MEMBER PENA: No.
MR. KNAPP: We have four yeses; one abstention; and two nays.
VICE CHAIRPERSON DOYLE: Motion passes. Four yes. Two nay. One abstention.

Okay. Motion passes.

The next case will be POST2300809. Dillon Fuston, POST ID C71-S10.

At this time, I will now call upon Law Enforcement Consultant Mark Nagel, Professional Conduct Southern Bureau, and Chris Becker, Assistant Chief Counsel, Legal Affairs Bureau, to provide a report on case POST2300809, Dillon Fuston, who at the time of events at issue was employed by the San Diego Police Department.

MR. NAGEL: Good morning, Vice Chair, Members of the Board. My name is Mark Nagel, and I'm one of the Law Enforcement Consultants assigned to the Professional Conduct Bureau South in the Peace Officer Standards Accountability Division.

With me today is Chris Becker, an attorney with our Legal Affairs Bureau.

I'm here today to present Case 2300809 involving Officer Dillon Fuston, currently with the San Diego County Sheriff's Office.

It is the Division's determination that clear and convincing evidence exists to demonstrate that Officer Fuston committed an act of serious misconduct as set forth in Penal Code section 13510.8, on April 10th, 2020.

Specifically, the Division has determined that

Officer Fuston committed dishonesty as described as serious misconduct.

In this presentation, I will present a brief outline of the Division's Findings of Investigation in this matter, along with supporting slides and a shortened clip of the body-worn camera video.

On April 10th, 2020, Officer Fuston and a partner responded to a call of domestic violence incident. While on scene, Officer Fuston used force on the male suspect on two separate occasions. The force used by Officer Fuston on these two separate occasions was found to have violated the San Diego Police Department's use of force policy.

Next slide, please.

As on the slide, any action by POST relating to the uses of force, however, are not actionable by statute because the date of the incident predates the implementation of Penal Code section 13510.8(b)(3). However, the facts relating to the force used by Officer Fuston are relevant to support the dishonesty, which is covered under Penal Code section 13510.8(b)(1) and (g)(1)(A).

Those facts are: Incorrectly stating the amount of time the suspect was unconscious. Incorrectly stating the suspect was guided to the ground. Falsely stating

the suspect had access to immediate weapons. Stating he used distraction blows to secure the suspect's arm while pausing a half second between each strike.

Before addressing the facts of the matter at issue today, I would like to bring to the Board's attention that the Investigative Summary of Findings submitted to the Board is an amended version. An original Investigative Summary of Findings was issued to Officer Fuston on October 13th, 2023, addressing the Division's findings that he was dishonest in the reporting of his applications of force.

The Division conducted a subsequent review of the facts of the case and noted additional findings related to Officer Fuston's dishonesty surrounding the reporting of his applications of force.

An amended Investigative Summary of Findings, which you have before you today, was then sent to Officer Fuston outlining the original and additional findings. And he was provided with an additional 30 days to appeal.

At the time of events at issue, Officer Fuston was employed as a peace officer with the San Diego Police Department. On September 22nd, '22, he resigned from the San Diego Police Department, and is currently employed as a deputy sheriff with the San Diego

Sheriff's Office, effective September 23rd, 2022. Officer Fuston holds a basic and intermediate certificate.

In this case -- in this case, the Division concluded that Officer Fuston committed four instances of dishonesty used to mitigate his actions and the extent of the suspect's injuries stemming from excessive use of force on April 10, 2020.

First, Officer Fuston stated on multiple occasions the suspect was unconscious for 2 or 3 seconds. For example, Officer Fuston stated the following in his criminal report: Quote, while guiding the suspect to the ground, he fell awkwardly due to his level of intoxication and struck the side of his head on the ground, causing him to lose consciousness for approximately 2 to 3 seconds.

However, our investigation found Officer Fuston's reporting of the time when the suspect was unconscious to be dishonest based on the following:

Officer Fuston keyed his radio and asked dispatch to send medics 11 seconds after he hit the ground. 48 seconds after the suspect hit the ground, Officer Fuston keyed his mic and advised the suspect lost consciousness for 2 to 3 seconds.

1 minute after the suspect hit the ground, Officer

Fuston gave the suspect a sternum rub and told the suspect to wake up.

1 minute and 5 seconds after the suspect hit the ground, Officer Fuston checked the suspect's pulse.

1 minute and 47 seconds after the suspect hit the ground, Officer Fuston checked the suspect's pulse, while the suspect could be heard snoring.

2 minutes and 58 seconds after the suspect hit the ground, the suspect moved his head for the first time.

During Officer Fuston's investigative interview, he said he observed the suspect snoring and saw his eyes flutter as a sign the suspect was conscious.

Officer Fuston clarified his statement and said he misspoke. He said his time assessment was wrong when he said the suspect was unconscious for 2 to 3 seconds.

Officer Fuston stated, quote, "The suspect was alive, but as far as awake and alert, no. Officer Fuston asked if he was accurate in his report."

To this, Officer Fuston responded, "No, I think it's pretty clear."

Second, Officer Fuston's statement that he held onto the suspect's body with both hands to guide the suspect to the ground. Specifically, in his criminal report, Officer Fuston stated the following: Quote, "I knew that the suspect was in handcuffs and wasn't able

to control himself during the fall. So I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me."

However, our investigation found this statement to be dishonest based on the following: As seen in the video footage, the suspect was intoxicated and handcuffed. Officer Fuston swept the suspect's legs out from under him without a plan for protecting the suspect from harm.

Indeed, Officer Fuston's left hand was on the suspect's left arm, and the suspect fell to the right, making it unlikely his left arm would help control the suspect to the ground. The suspect's head was not controlled, resulting in the suspect's head colliding with the concrete floor.

Third, Officer Fuston's statement that the suspect had immediate access to a weapon while lying on the bed was not supported by articulable facts. Specifically, Officer Fuston said the following in his criminal report of the incident: Quote, "The suspect forced his left hand underneath him towards his waistband. Knowing that I had seen several large knives in the apartment, and that they were spread out randomly throughout the apartment, I feared there may be another knife in the bed with the suspect. I also had not been able to check

if the suspect had a weapon on his person."

However, our investigation found this statement to be dishonest based on the following:

There was no mention of a weapon in the initial call. The reporting party did not mention weapons. A knife on the table was no longer in reach of the suspect once the table was moved by the officers. Officers did not check the bed for weapons prior to waking the suspect. Officers had a clear view of the suspect's hands for several seconds. The suspect was not patted for weapons until he was taken outside. Neither officer mentions weapons in their reports besides the knife on the table that was moved away.

Fourth, Officer Fuston stated in his investigative interview that he used distraction blows to secure the suspect's arm while pausing a half a second between each strike. Specifically, he said, quote, "I executed distraction blows in order to basically get him to comply with our commands, as well as get his arm up."

However, our investigation found this statement to be dishonest based on the following:

Distraction blows target the lower body and are defined by San Diego policy as open-handed, lesser controlling strikes, using a lower level of force.

Officer Fuston used a closed fist to deliver six

full-force punches to the suspect's upper back, resulting in fractures to multiple ribs.

The injuries sustained by the suspect are not consistent with distraction blows. The use of a closed-fist strike as a distraction technique is not authorized per San Diego Police Department Policy 1.04.

Officer Fuston said he believed the suspect was armed with a weapon. However, he could not articulate specific articulable facts to support his belief that the suspect was armed or had immediate access to a weapon at the time he punched the suspect multiple times.

So Penal Code 13510.8(c)(5) provides that the Commission shall consider a peace officer's prior conduct, discipline, and service record, and any prior instances of misconduct, including any incidents occurring beyond the time limitation for investigation, in evaluating whether to revoke certification for the incident under investigation.

To the Division's knowledge, there are three prior claims against Officer Fuston alleging excessive use of force. They are as follows:

October 27, 2019, while employed by the San Diego Police Department, Officer Fuston responded to an intoxicated male. The suspect resisted arrest by

pulling away from the responding officers and attempted to evade arrest. The suspect was subsequently arrested for narcotics possession and resisting arrest.

A complaint by the suspect was made alleging excessive use of force against officers. The allegation was investigated and determined to be not sustained.

December 14th, 2019, four months before the event we are speaking on today. San Diego Police Department officers, including Officer Fuston, contacted a subject who matched the description of a person wanted for vandalism. The subject did not comply with commands and physically resisted officers. Officer Fuston subdued the suspect by applying a carotid hold. The suspect alleged Officer Fuston used excessive use of force.

San Diego Police Department subsequently conducted an investigation into Officer Fuston's actions that day and determined that he violated their use of force and carotid restraint procedures when he applied a nondepartmental-approved or modified carotid restraint or neck restraint, and when he exceeded the carotid restraint duration hold for 15 seconds.

As for the excessive use of force claim, POST closed this matter as a nonactionable because the events took place in December of 2019, prior to the January 1st, 2022, effective date of Senate Bill 2 and

Penal Code section 13510.8(b)(3).

It is our understanding that the victim in this matter filed a civil lawsuit in San Diego Superior Court on July 2020 against Officer Fuston, the officers involved that day, and the City of San Diego. The lawsuit asserted, among other claims, that Officer Fuston used excessive and unreasonable force against the victim and a reckless -- recklessly administered a chokehold against the victim. This case was removed to federal court and reportedly settled in January of 2024 for $875,000.

While this use of force in this matter was determined to be not actionable by POST under SB 2, it is particularly noteworthy because it occurred four months prior to the events in question, and, in our opinion, likely impacted Officer Fuston's state of mind, played a role, and provided motive in Officer Fuston's dishonesty in reporting the use of force in this case.

On October 20th, 2022, a complainant alleged she suffered a facial fracture and numerous body wounds resulting from an encounter with San Diego sheriffs' deputies, which included Officer Fuston. The use of force was determined to be within department policy and law and was found to have been justified. This case was referred to POST and is currently pending review.

The facts I have just recited support the Division's finding that Officer Fuston was involved in serious misconduct, specifically dishonesty. For purposes of the Division's analysis, "clear and convincing evidence" means evidence of a charge is clear and convincing, so long as there is a high probability that the charge is true. The evidence need not establish the fact beyond a reasonable doubt.

The Division recommends that Officer Fuston's POST certificate be revoked. The Division's recommendation is based on the following:

Police legitimately reflects the belief that police ought to be allowed to exercise their authority, to maintain social order, manage conflicts, and solve problems in their communities. Public trust and confidence in the police involve the belief that the police are honest.

That concludes my opening statement.

Prior to today's hearing, the Board was provided with the full video from the Officer Fuston's body-worn camera showing the events in question. I have taken that video and clipped it to a more condensed version outlining the more relevant events demonstrating Officer Fuston's use of force and dishonesty.

At this part of the presentation, we will show the

condensed version of the video.

(Video played.)

MR. NAGEL: We are going to pause it there. The video does not show any more examples of use of forces. I just want to be mindful of your time this afternoon. We can continue playing, or we can bring it back to the Board, and we're happy to answer any questions if you would like.

VICE CHAIRPERSON DOYLE: Does the Board have any questions?

(No response.)

VICE CHAIRPERSON DOYLE: No.

Also, for the audience, Mr. Lara excused himself from this case because he's a member of the San Diego Police Department. And he left the room before the presentation. So thank you.

Mr. Fuston had forwarded to POST written statements reported to him from members of the public. The statements regarding his character. The division is making them available to you, with the following caveats: At this stage of the proceedings, the only issue for the Board is whether or not the Division's Investigative Summary and Findings provides clear and convincing evidence of serious misconduct.

The Division's position is that character

statements of this kind are not relevant to this inquiry and might be provided -- and might be provided if at all only during a later evidentiary hearing. In an excess of caution, however, staff will provide the letters to you as public comment, keeping in mind that we did not receive them directly from those members of the public. And, again, keeping in mind that the Board's ultimate task is to determine the sufficiency of the Division's Investigate Summary and Findings.

At this time -- at this time, does the subject officer or their counsel wish to make a public comment?

MR. FIELDS: I do.

Can your hear me?

VICE CHAIRPERSON DOYLE: Yes. Please state your name and organization, if you wish.

MR. FIELDS: Thank you. Good morning. My name is Bradley Fields from the Law Firm of Bobbitt, Pinckard & Fields, counsel for Dillon Fuston.

May I proceed?

VICE CHAIRPERSON DOYLE: Yes, please.

MR. FIELDS: Thank you.

Dishonesty is intended to cover intentionally and knowingly making a false statement. Instead, the Commission is using suspicions, inaccurate descriptions, and inaccurate understanding of medical terminology as

the basis for decertification.

If that's the case, any mistake by an officer could be used as the foundation for decertification, and that certainly can't be the case.

With regard to the first allegation as stated in the report, the Commission incorrectly characterizes Officer Fuston's statement as a definitive statement that the suspect had immediate access to a weapon. This was not the statement made by Officer Fuston in his report.

Rather, Officer Fuston stated, "I fear there may be another knife in the bed with the suspect." The statement was based on the totality of the circumstances experienced by Officer Fuston during the radio call.

Specifically, there were several large knives in the apartment, and Officer Fuston could not see the suspect's hands when he made -- when he made first contact.

The Commission is classifying Officer Fuston's statement that there "may be another knife in the bed" as dishonest for the sole reason that Officer Fuston's premonition was incorrect. Just because a premonition turns out to be incorrect does not mean it is a lie.

With regard to Act Number 2, it is unclear what part of the statement the Commission believes was

dishonest. Officer Fuston was correct in the number of blows he delivered in approximately the half second time frame between blows. Officer Fuston reasonably believed the six blows he delivered were intended to be distractionary blows. Whether or not these blows were characterized or categorized as distractionary or impact blows is a question for a use of force expert within Internal Affairs at the San Diego Police Department.

For this sole reason, IA did not agree with Officer Fuston's categorization of these blows, as distractionary blows does not mean he was dishonest when he reported that.

With regard to Act Number 3, as depicted on page 20 of POST investigative documents, as the suspect's right shoulder hit the ground, Officer Fuston's right hand lost contact with the suspect's upper back. It appears Officer Fuston maintained contact with the suspect's left bicep and right upper back throughout the fall.

The first clear loss of contact was when the suspect's lower body and right shoulder had already made contact with the ground.

The left bicep and right upper back are both considered part of the upper body. This is not a dishonest statement. The suspect was already on the ground when his right hand came off the suspect's right

upper back.

Even if Officer Fuston's right hand came off the suspect a split second before the suspect's contact with the ground, it is clear throughout the take-down attempt Officer Fuston's hands were grasping the suspect's upper body. Officer Fuston thought that he maintained contact with the upper body throughout the takedown, and that's objectively reasonable thought that he had while writing the report.

With regard to Act Number 4, we fully admit Officer Fuston was factually incorrect and misstated the amount of time the suspect was unconscious. This is reason that Internal Affairs sustained Officer Fuston on failure to accurately document all the facts and circumstances surrounding the force he used during the suspect -- the arrest of the suspect.

However, Officer Fuston was not dishonest about his time estimate of how long the suspect -- suspect was unconscious. If I had believed by a preponderance of the evidence that Officer Fuston lied, he would have been sustained on dishonesty. Rather, the department clearly believed Officer Fuston solely failed to accurately document the facts and circumstances surrounding force.

In every interaction Officer Fuston had in this

case, the evidence points to an innocent misunderstanding of the medical mechanics of being unconscious.

At every point in the radio call, Officer Fuston clearly articulates the suspect was unconscious for 2 to 3 seconds. He put that out over the radio. He told that to fire personnel. And, finally, he put it in his report. At no time does it appear that Officer Fuston is attempting to cover up his actions.

During his IA interview, he stated that once the suspect was snoring and eyes fluttering, he believed the suspect was conscious. This thought was entirely rational and reasonable in light of Officer Fuston's rudimentary knowledge of unconsciousness.

In concluding, IA was provided all opportunities to sustain Officer Fuston on dishonesty, and instead only sustained him on failure to accurately report facts related to what has been characterized in the -- in the POST report as Dishonest Act Number 4.

The Department did not sustain Officer Fuston for failure to accurately report on any other parts of the -- this case.

Most importantly, with the lower burden of proof of preponderance of the evidence that Internal Affairs at the San Diego Police Department uses, the Department did

not sustain dishonesty as to anything related to this investigation whatsoever.

Again, and in summation, ultimately incorrect suspicions or inaccurate depictions should not form the basis for decertifying a peace officer. If this is the standard, then every statement that is ultimately incorrect can form the basis for decertification.

We ask that this decertification not move forward.

Thank you.

VICE CHAIRPERSON DOYLE: Officer Fuston.

MR. FUSTON: I have prepared a statement if y'all are willing to hear it.

VICE CHAIRPERSON DOYLE: Yes, go ahead.

MR. FUSTON: Good morning, distinguished Board Members. My name is Deputy Dillon Fuston, and I'm present today to shed light on the incident in question as well as provide a perspective on myself as a law enforcement officer that the investigation does not have.

I would like to reiterate that at no point in time was I willfully dishonest in anything that I wrote in my report, said in any Internal Affairs interview, or did on scene.

I would also like to reiterate that nothing I wrote in my report was a material fact in charging the suspect

with any crime. I was -- I was writing a report regarding the events occurred on scene surrounding the use of force against the suspect on scene. I was not the arresting officer, nor did I charge him with any crime that night. I wrote my report from my perspective I had on the scene and from my recollection as I was trained to do in the police academy.

The Internal Affairs investigation you have already been familiarized with was conducted, and I received a two-day suspension without pay for this incident.

Throughout my disciplinary process, I sought senior officers within my department for mentorship and guidance to make sure that the mistakes I made on the scene did not happen again. I did that all on my own accord without any guidance from anyone else to do that.

I accepted my discipline wholeheartedly and returned to duty eager to show that this incident did not define me and who I was as a man or police officer.

I made the necessary adjustments and continue to better myself in order to serve the citizens of my community to the highest standard.

I continued to work for the San Diego Police Department for approximately another year and a half. I was recognized for my high level of police work on multiple occasions and ultimately promoted and selected

to a crime suppression team within Central Division in order to specifically address violent crimes within that service area.

Throughout my time on the crime supression team, I received multiple commendations for my efforts to address violent crimes, including catching murderers and several suspects of gang shootings.

I made the decision to leave the San Diego Police Department and lateral to the San Diego Sheriff's Department to seek a wider range of opportunities that it has as a larger department within the county. This investigation or my discipline played no factor in me leaving my prior department and moving on to another one. I was not running from any discipline or trying to hide anything from anyone.

When I applied to San Diego Sheriff's Department, I personally went to the Internal Affairs Bureau in San Diego Police Department and retrieved entire copies, including the body-worn camera footage you have seen today, as well as audio and video files, to ensure the background investigators of San Diego Sheriff's Department had a complete picture of who I was as a police officer.

That also included over nine commendations that I received after this incident occurred from both my

commanding officers and supervisors. I did this to ensure the most transparency and utmost amount of honesty to the department that I was intending to work for next.

It has been almost four years since this incident has occurred, and I have not received any further discipline for any accord or had any instances of reoccurrence.

I made the necessary changes, and I have moved forward and become a better law enforcement officer because of it.

I would like to reiterate that I never willfully or intentionally attempted to deceive anyone during this incident through dishonest action or reporting. I did not hide anything from my supervisor who was notified on scene. I did not hide anything from Internal Affairs or the investigating detectives.

I would also like to make a note of the October 20th, I believe, 2022, the incident that happened with the Sheriff's Department. That was alleged excessive force with facial fractures. I was merely there on traffic control. The entire incident happened prior to me being there. And I did not take -- the only thing I did on scene, at most, was put my hand on her shoulder and try to calm her down because she was

extremely high on methamphetamine.

As far as the carotid restraint, one thing the investigator left out: A police officer was head butted and sustained a facial injury prior to me utilizing that carotid restraint. I utilized a carotid restraint I was taught in the United States Marine Corps. It was dangerous or ineffective. It was something I was trained on to a higher extent than what I was trained on in the police academy. And that's why I reverted back to my training to use it.

Ultimately, the suspect in that incident also sustained no injuries from me nor did he have any repercussions from me using a carotid restraint.

Just to give you guys a broader perspective on those incidents because I understand that after watching video, and just hearing it on paper, you don't have the perspective that I had on scene.

Every time I used force in this incident, I was merely trying to protect myself and the other officer on scene. I truly and wholeheartedly believed he made a furtive movement towards his waistband to retrieve a large weapon based off the amount of times I had been to that apartment and seen him continuously beat that poor woman time and time again which was -- excuse me. Time and again, I had seen him beat on her.

And every time I was in that apartment, he was aggressive towards me and fellow officers on scene, which was corroborated by a neighbor, which was also left out of the investigation in Internal Affairs. She stated that every time we came to the door, he got into our face.

Regardless of what you saw in the video, he was dangerous towards myself and my partner. And I truly and wholeheartedly believed he was attempting to retrieve a weapon in order to hurt me or my partner. And I had just seen him hurt an elderly female for probably the fourth or fifth time. So I truly believed he was a threat to me.

Thank you for your time.

VICE CHAIRPERSON DOYLE: Board Members have any questions?

MEMBER JOHNSON: Yes, I do.

October 27th, 2019. What role did you play in that excessive force?

MR. FUSTON: Yes, sir.

So it was Halloween night. There was a gentleman attempting to gain entry into his vehicle, that was extremely inebriated. We initially walked up to him and were trying to get him an Uber or an ambulance, if he needed it, to get him home safely, because that was our

main mission for the night.

He discarded his Halloween costume and ran about a block and a half from us. I chased after him. My partner got back into our patrol vehicle and headed him off. I was able to catch up to him. He gave up. As he was falling to the ground, due to his inebriation, I held onto his hands and made sure that he didn't hit his head, and that was the only time I put hands on him when he was not handcuffed. So the only thing I did to him was caretake and ensure he didn't hit his head.

I understand that that video does not make me look like I'm not a monster. I have dealt with this for four years, and I have had to go over these situations time and time again both in my personal life and within my department. But I can promise you today that I have never intended or meant to hurt anyone by using force. I have only done it -- every single time I have done it, it is because I thought I needed to do it in order to protect myself or a victim of a crime.

I feel that law enforcement is my calling above everything else. And I truly wholeheartedly love this job. It's given me a lot, and I have been able to give back to the community. I have saved people's lives. I have been there for people in their worst days. And I mean, if you want to hear one of those stories, I would

be happy to give it. I understand your time is valuable.

But I have one in particular that I would love for you to hear if you have time.

VICE CHAIRPERSON DOYLE: It is outside the record.

Any other questions by the Board?

Yes, ma'am. Ms. Pena.

MEMBER PENA: Were you trained by San Diego Police Department on how to administer distraction blows?

MR. FUSTON: Yes, ma'am.

MEMBER PENA: And what is their policy?

MR. FUSTON: So the policy -- I wouldn't be able to quote it to you. But at the time I used those distraction blows, I thought I was within policy. I believed I could use a closed fist direct to the upper body. Afterwards, through the Internal Affairs Investigation, I was obviously informed I was out of policy.

At the time I used them, I didn't believe that I was doing the wrong thing. If I would have known that -- and, again, that is -- it is my responsibility to know the policy. It is on me. I accepted that, the responsibility for making that error.

But at the time, I believed I could use closed-fist strikes, but it is actually just open-fist, not intended

to cause injury as I believe Mr. Nagel said.

But yeah. I hope that answers your question.

MR. BECKER: Vice Chair, I believe either Mr. Nagel or I can address that question.

VICE CHAIRPERSON DOYLE: Please do.

MR. BECKER: Okay. So the San Diego Department Policy 1.04, Use of Force Distraction Techniques, "Acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes using a lower level of force. These lower level types of strikes are not intended nor likely to cause serious injury.

"Personal body weapons may be used under these constraints when lesser controlling force has not been effective, or the officer reasonably believes lesser controlled force will not be effective.

"If a distraction technique provides [sic] ineffective, a different distraction technique or force option should be considered."

And I think it is worth noting that in the Internal Affairs report, that the agency found that Officer

Fuston was using full-force, closed-fist strikes that were not distraction blows.

MEMBER PENA: And what type of injuries did the suspect experience?

MR. NAGEL: Six fractured ribs.

MR. FUSTON: I believe it was actually three, from the medical report I have seen. Not six.

What I can also tell you about the distraction blows, the reason why I described them as "distraction blows" is because my intention behind them. I wasn't trying to hurt him. I wasn't trying to break any of his ribs. I was merely trying to divert his attention away from his waistband, where his hand was, so that I could not get hurt and my partner could not get hurt.

And my partner was pulling on his left arm with both of his hands and could not get his arm out from underneath his waistband, which I believed meant he was intentionally going for something in his waistband. And I was trained time and time again that weapons come from waistbands. And if someone reaches for their waistbands, I have to act immediately, or I'm going to get hurt.

VICE CHAIRPERSON DOYLE: Any other questions?

Go ahead.

MEMBER JOHNSON: December 14th, the chokehold was

out of policy. That's correct?

MR. FUSTON: Yes, sir. So I applied a carotid, sir, not a chokehold. I didn't crush his windpipe at all. So I did not choke him.

The reason why I was out of policy is purely because I used a carotid restraint that I was taught in the Marine Corps, and not at San Diego Police Department.

I -- I can reiterate that he didn't suffer any injury whatsoever from that.

MEMBER HATCHER-CRAWFORD: I have a question.

VICE CHAIRPERSON DOYLE: Crawford.

MEMBER HATCHER-CRAWFORD: On hindsight of everything, you were able to counteract everything that was said.

In that given situation, would you have used the same level of force -- or not force, because it is alleged. Would you have used the same tactics that you used, is my question.

MR. FUSTON: I think at the end of the day, at the time, you are watching that video, I had eight months on as a law enforcement officer. I didn't even have a year off training. So to say that I wouldn't approach the situation different after now five years and a wealth of experience would be wrong. Because I think as law

enforcement officers, we learn from every single call we go to.

I have learned -- these Internal Affairs investigations and even coming to this Board have taught me an immense amount about law enforcement. I have learned every day I've been on the job. And that's why it has never happened again. I made a mistake. I owned up to it.

Never once did I -- never once did I say, "Oh, this is not my fault." I took it directly on. I made a mistake. I made the necessary adjustments, and I move forward from it.

Obviously, I can't -- I can't go back in time and undo certain things or not other things. But I know where I am today as a law enforcement officer, I have a wealth more of knowledge to be able to handle all sorts of situations. And that's why you have never seen it happen again. And that's both working with the agency that wrote these investigations and the agency now that I work for that's larger than that previous agency.

VICE CHAIRPERSON DOYLE: Any other questions?

(No response.)

VICE CHAIRPERSON DOYLE: Is there anybody from the public that would like to comment on the presentations?

Please.

Please state your name.

MS. JOHNSON: Yes. My name is Beatrice Johnson. And I'm an impacted family member on several levels. And I wanted to -- I wish somebody on the Board would ask the question about if this -- if this -- if this is hitting to the suspect, did he actually put that in his report? Did he actually write that he hit him six times? Did he write that?

The other thing is that from what I saw, the suspect was turned over first. He was asleep. He was drunk. He was asleep. He was turned over first and then he was turned back. There was an opportunity to see if there was a weapon there, or if he had something in his hand. Because on this side, he was turned over. He was asleep. And then he was turned back over.

So the knife part about thinking it was a knife in order to hit, I couldn't see life being threatened when you already turned him over, and he was dead asleep.

And if there was other knives in that place, he was handcuffed going by the kitchen.

And so the -- the devastation of police officers to be able to lie affects families in such a way. It is a slow burn. And so I just think it is important that, you know -- and the fact that he said that he's learning. I don't think police officers should learn on

the job. Because the ability to take life, they have the biggest job because, in a split second, they have the ability to take a life.

And as families impacted by this, our loved ones never come back. And so I just wanted to say that.

Thank you.

VICE CHAIRPERSON DOYLE: Thank you.

Anyone else from the public who would like to speak?

(No response.)

MR. BECKER: Can I make one quick comment before --

VICE CHAIRPERSON DOYLE: Sure.

MR. BECKER: So Mr. Fields attempted to downplay how this turned out in the Internal Affairs investigation. And there's a quote that I just wanted to read from that investigation that I think really kind of displays how serious this was as far as dishonesty and accuracy.

So it said, "Officer Fuston's lack of a feasible safe plan to take Carrera to the ground after he performed an unauthorized leg sweep takedown on a handucffed prisoner resulted in Carrera being knocked unconscious. Officer Fuston told medics and fire personnel Carerra was unconscious for 2 to 3 seconds. In reality, Carerra was unconscious for approximately 2

minutes and 58 seconds.

"Officer Fuston had a duty to care for the wellbeing of Carrera, who was in his custody, but instead provided medical personnel inaccurate information as to how long Carerra was unconscious.

"Officer Fuston admitted to being wrong in his time assessment of Carerra being unconscious, thus providing a wrong injury assessment to medical personnel for an injury he had caused," which is important, because he had a duty to convey appropriate information to medical personnel so that they can treat this individual.

But we feel that he was dishonest in that causing harm to the suspect.

One quick thing, too, that I wanted to mention -- and I think that it was touched on briefly -- was that you have received some statements. Well, they are purported to be from members of the public that was submitted by Officer Fuston.

It was mentioned to you that this is irrelevant and outside of the record. And I just wanted to touch on it briefly.

So if this was a normal hearing, we would have an opportunity, both sides, to present evidence and cross-examine witnesses. If there was character evidence that somebody tried to submit, which is

questionable in a hearing, but if there was, I would have an opportunity to ask these individuals, "Did you actually make this statement?" I would have an opportunity to ask, "How well do you know Officer Fuston?" I would have an opportunity to ask them if they knew certain instances of bad conduct by Officer Fuston and if they changed their opinion about him.

And consequently, I would have an opportunity to submit instances of bad conduct. That is not happening here today. That is why I just want to highlight that those statements are irrelevant to the record, and they are not relevant to the inquiry here today. So...

MR. FUSTON: If necessary, I can provide --

MR. FIELDS: May I -- may I respond since I was referenced in that comment?

VICE CHAIRPERSON DOYLE: Yes. Go ahead.

MR. FIELDS: Thank you. Briefly. Just very briefly.

Just to direct everyone why we are here. While I understand we are here in the context of why we are here is based on an allegation of force and an instance in use of force. The specific allegations that you are here to determine today are whether or not Officer Fuston was dishonest, not whether he used excessive force or not, because that is -- jurisdictionally, that

is -- that is the basis for what you have before you.

Again, as to the issue of the unconscious, Officer Fuston admitted he made a mistake. His -- his rudimentary understanding at the moment of time was the unconscious was when, in essence, he wasn't -- you know, he wasn't responding at all. And, you know, very clearly in that video, within 2 to 3 seconds, you can hear the suspect, you know, certainly audibly snoring. I think everybody would hear that. It was a mistake. And he admitted it was a mistake.

And, you know, I think what really the -- what is extraordinarily important that you recognize here is that this was investigated by one of the largest agencies, law enforcement agencies in the state, the San Diego Police Department. Extraordinarily large agency. Again, one of the largest law enforcement agencies in the state. Very good reputation. And they determined that Officer Fuston was not dishonest in anything that he did in relation to this allegation -- these allegations in this particular incident.

But as Officer Fuston has told you, you know, a while afterward, a year or so afterward, he applied to lateral to the San Diego Sheriff's Department, an even larger law enforcement agency in the state. Does extraordinarily thorough backgrounds. They reviewed

this incident.

Now, obviously, if they thought that Officer Fuston had been dishonest in his -- in his -- in this incident, in the reporting and his testimony regarding this incident, they wouldn't have touched him with a 10-foot pole. And they hired him as well.

So in essence, you have two of the largest law enforcement agencies in the state having reviewed this incident with a fine-tooth comb and determined that there was no dishonesty here.

I understand that obviously, it is not the -- you know, not the findings that we are here on today, but I ask you to consider that very heavily as you make this decision. Because, you know, again, he made some mistakes. There's no question he made some mistakes here. He made some mistakes in his use of force. And he made some mistakes in the way that he characterized what he -- what he had done.

But mistakes and dishonesty are two different things. And with that, I will conclude.

Thank you.

VICE CHAIRPERSON DOYLE: Thank you.

Okay. We will now go into -- we'll adjourn and go into closed session. And we will do that in another room. Thank you.

MR. FUSTON: Thank you all for your time.

(Time noted: 11:58 a.m.)

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(Closed session was held from 12:05 p.m. to 12:40 p.m.)

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(Time noted: 12:43 p.m.)

VICE CHAIRPERSON DOYLE: We will now reconvene and take a vote on the Board's recommendation to the Commission in the matter of Case POST2300809, Dillon Fuston, who at the time of the events at issue was employed by the San Diego Police Department.

What comments do the board members have?

Yes. Ms. Pena.

MEMBER PENA: I would like to make a motion.

VICE CHAIRPERSON DOYLE: Okay.

MEMBER PENA: A motion to recommend decertification.

VICE CHAIRPERSON DOYLE: Is there a second?

MEMBER JOHNSON: I second.

VICE CHAIRPERSON DOYLE: Second by Mr. Johnson.

Is there any public comment?

(No response.)

MR. KNAPP: Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.
MEMBER CLAVO: Aye.
MR. KNAPP: Board Member Crawford.
MEMBER HATCHER-CRAWFORD: Abstain.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: No.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Board Member Lara.
(No response.)
MR. KNAPP: Board Member Pena.
MEMBER PENA: Aye.
VICE CHAIRPERSON DOYLE: There has been a motion and a vote.
MR. KNAPP: And we have four ayes; two abstentions; and a no.
VICE CHAIRPERSON DOYLE: The motion passes.
We're going to break for lunch.
MS. DEL MUGNAIO: Why don't we do 45 minutes.
VICE CHAIRPERSON DOYLE: 45 minutes. 1:30.
MS. DEL MUGNAIO: Thank you.

VICE CHAIRPERSON DOYLE: We're adjourned until 1:30.

(Luncheon recess: 12:45 p.m. to 1:32 p.m.)

VICE CHAIRPERSON DOYLE: Good afternoon. We are back on the record.

I wanted to call on Chandler Knapp to clarify the vote count from our previous case.

MR. KNAPP: Thank you, Vice Chair.

I want to clarify for the matter of Dillon Fuston POST2300809.

I'm going to reread the votes into the record and correct one thing that was previously stated.

Board Member Clavo. Aye.

Board Member Crawford. Abstain.

Board Member Doyle. Nay.

Board Member Glaser. Aye.

Board Member Johnson. Aye.

Charles Lara, recusal; previously stated as an abstention. So that's the correction for the record.

Board Member Pena was an aye.

And the motion still passes.

VICE CHAIRPERSON DOYLE: Okay. Thank you.

At this time, I would call upon Law Enforcement Consultant Kevin Sherburne, Professional Conduct Central Bureau, and Bryant Henley, Legal Affairs Bureau, to

provide a report on case POST2300204, David Wesley Hubbard, who at the time of the events in issue was employed by the Kern County -- is employed now by the Kern County District Attorney's Office, then by the Kern County Sheriff's Office.

So gentlemen.

MR. SHERBURNE: Thank you, Board Members, for your time today. My name is Kevin Sherburne. I'm a Law Enforcement Consultant, and I served as the investigator on this case. With me to my right is Bryant Henley. He is legal counsel for POST.

I serve in the Professional Conduct Central Bureau. So Central Bureau handles Kern County.

This case today is regarding David Wesley Hubbard. The case number is POST2300204. He formerly is of the Kern County Sheriff's Office, and he currently is assigned with the Kern County District Attorney's Office.

He is subject to an Immediate Temporary Suspension of all of his certificates. That suspension became effective March 9, 2023, and remains in place today.

The ITS, as it is known, was based upon Mr. Hubbard's termination for serious misconduct and/or separation pending an internal investigation.

The summary of this case is that the Division found

clear and convincing evidence that Mr. Hubbard abused his power and was dishonest.

For the purposes of the Division's findings, "clear and convincing evidence" means there is sufficient evidence to establish that there is a high probability that the charge is true and the evidence need not establish a fact beyond a reasonable doubt.

What I would like to do now is go through a little bit of background on the case.

Mr. Hubbard began working at the Kern County Sheriff's Office on October 6, 2007. He promoted to sergeant in 2015 and to lieutenant in 2020.

Mr. Hubbard started working for the Kern County District Attorney's Office in August 2021.

Over the years, POST issued four certificates to Mr. Hubbard: A basic certificate in 2009; intermediate in 2011; advanced in 2015; and a supervisory certificate in 2018.

The facts and the timeline are set forth in the Investigative Summary and Findings, known as an ISF, which are on pages 9 through 13. For ease of reference, I have summarized the timeline of significant events in a slide.

IT Department, would you please display the slide.

If -- I understand that board members have already

received a copy of this slide, and earlier this morning, Bryant Henley, counsel for POST, emailed Mr. Hubbard's counsel so that they had a copy of this to follow along in case this did not display on their screen. So they have a copy of that as well.

In my presentation, I will use the term "Suspect 1" and "Victim 1" as they are defined in the ISF.

Please refer to the ISF for more detailed information about the factual background than what I am providing here in person today.

In short, here is a brief factual background of the case:

Mr. Hubbard held various assignments as lieutenant during the times relevant to my investigation. His assignments, based on Kern County Sheriff's Office practices and policies, as well as for legal reasons, dictated what access and role he had with respect to criminal investigations and with respect to Internal Affairs investigations.

Criminal investigations take precedence over Internal Affairs investigations. IA investigations, as they are known, are put on the back burner during ongoing criminal investigations. This practice is known as tolling. The investigation is tolled during the criminal investigation.

At Kern County Sheriff's Office, the Professional Standards Unit, I may refer to that as PSU, conducted criminal investigations of peace officers. As lieutenant of the Internal Affairs section, Mr. Hubbard interfered with the criminal investigation of Suspect 1, who was alleged to have sexually battered Victim 1. Suspect 1 was another deputy at Kern County Sheriff's Office. Victim 1 was a civilian employee at the same office.

The alleged sexual battery occurred while Mr. Hubbard was a lieutenant of the detective section where both Suspect 1 and Victim 1 reported to him.

After Mr. Hubbard transferred to be lieutenant of the Professional Standards Unit, which handled criminal investigations, Mr. Hubbard interfered with the Internal Affairs investigation of Suspect 1, as I will detail later.

Throughout the months from the initiation of the criminal investigation of Suspect 1, Mr. Hubbard took personal actions that conflicted with his professional obligations, including accompanying or representing Victim 1 with the Kern County District Attorney's Office in May 2021.

The culmination of those personal actions occurred over a weekend in late November 2021 when Mr. Hubbard

had sexual intercourse twice, over two days, in his office with Victim 1, who was a direct report to him, and while he was acting as the watch lieutenant, which is the highest ranking law enforcement officer on duty at the time.

And Mr. Hubbard proactively obtained information from the Internal Affairs investigation of Suspect 1 and shared that information with Victim 1.

Then he destroyed evidence relevant to that Internal Affairs investigation and to a potential Internal Affairs investigation into his own conduct.

In my investigation, the Division found clear and convincing evidence that Mr. Hubbard engaged in serious misconduct; again, abuse of power and dishonesty.

Under abuse of power, Mr. Hubbard abused his power when he interfered with the IA investigation of Suspect 1. He provided input on the investigative strategy and interview questions to Suspect 1, while simultaneously serving as the personal representative to Victim 1, having a sexual relationship with her, and sharing information he learned during the IA investigation with her.

Mr. Hubbard abused his power when he had on-duty sexual intercourse twice with Victim 1 in his office, even taking into account that both Mr. Hubbard and

Victim 1 stated that the sex was consensual.

Victim 1 was a direct subordinate reporting to him. At the time he had sex, Mr. Hubbard was serving as the watch lieutenant.

Three days after Mr. Hubbard had sex with Victim 1, Mr. Hubbard proactively sought confidential information about what Suspect 1 had said during his Internal Affairs investigation in an interview.

The IA investigator viewed Mr. Hubbard as a mentor and a leader. Mr. Hubbard did not first disclose to the IA investigator that he had just had sex with Victim 1 when he sought the information from the IA investigator.

The IA investigator would not have revealed information to Mr. Hubbard had he known about Mr. Hubbard's sexual relationship with the victim.

The information that Mr. Hubbard learned during his discussion with the IA investigator was significant because Mr. Hubbard learned for the first time Suspect 1's defense was that Mr. Hubbard and Victim 1 had an affair. Thus, Mr. Hubbard knew that his alleged intimate relationship with Victim 1 was now a key aspect of the Internal Affairs investigation of Suspect 1.

After obtaining this confidential information, Mr. Hubbard abused his power by sharing it with Victim 1, by telling her what Suspect 1 had said,

including that Victim 1 consented to the sexual battery and that Victim 1 and Mr. Hubbard had an affair.

Excuse me.

Mr. Hubbard knew it was wrong to share the information, but he shared it anyway. After learning what Suspect 1 had said about Mr. Hubbard and Victim 1, Mr. Hubbard abused his power by deleting work phone text messages and phone log records of communications between himself and Victim 1.

He destroyed the evidence knowing that the information was relevant to the IA investigation of Suspect 1 and to a second potential IA investigation into his own conduct.

The Division made second findings with respect to dishonesty.

Mr. Hubbard failed to disclose material information related to criminal and Internal Affairs investigations by not revealing the conflict between his personal interests and his professional obligations.

His destruction of relevant phone calls and text messages destroyed evidence intentionally and purposefully to conceal his own misconduct.

The Division recommends revocation of Mr. Hubbard's certificates based upon his serious misconduct. This is not solely a case of an extramarital affair. This is

not a one-time instance of sexual misconduct or indiscretion.

Even while I interviewed him, Mr. Hubbard continued to downplay the negative impact that his decisions had on the integrity of two ongoing investigations, the stature of the Sheriff's Office, and the wellbeing of the victim.

This case goes to the very heart of what it means to be a peace officer in the state of California. Mr. Hubbard's actions cut against the core values of being a peace officer, and they affected the entire law enforcement community and the public.

Mr. Hubbard abused his power and was dishonest over a period of several months. He had a conflict between his personal interests and his professional obligations on multiple levels. He was wearing two hats at the same time.

The multiple levels include the victim. He took advantage of the victim personally and professionally. The victim was particularly vulnerable over the weekend he had sex with her because the IA interview of her alleged attacker was imminent, and Mr. Hubbard knew that she was anxious about the interview.

He -- his actions affected his fellow law enforcement officers within his own department. He

betrayed the trust of people who saw him as a leader and a mentor.

As a superior officer within the Kern County Sheriff's Office, Mr. Hubbard abused his position of authority and his status as a mentor to gain access to confidential information that he shared with a party to the case.

He also mislead his own command staff. Mr. Hubbard's actions affected the integrity of investigations in Kern County. He compromised the Internal Affairs investigations of other peace officers and his own Internal Affairs investigation. He compromised the integrity of other sex crimes investigations conducted by the Kern County Sheriff's Office. He played two incompatible roles at the same time, as a Kern County Sheriff's Office investigative team member on one hand and as Victim 1's personal representative on the other hand.

At the Kern County District Attorney's Office, Mr. Hubbard's role allows him continued access to criminal investigations like the one in this case.

Mr. Hubbard's actions affected the community at large. Mr. Hubbard breached the trust of the community, which expects that investigations will occur without favoritism or bias or interference and without

destruction of evidence.

Mr. Hubbard was dishonest. He destroyed evidence after learning it may be needed in a case against another officer in what he surely knew would be a case against him.

Mr. Hubbard sought out and then improperly shared confidential information.

Given his rank, training, and experience, his actions are especially egregious and warrant revocation.

At this point, I'm happy to answer any questions that the board members may have.

VICE CHAIRPERSON DOYLE: Board member questions?

MEMBER LARA: You stated that the -- that Mr. Hubbard downplayed the facts, I think, as it pertained to your investigation.

How would you -- how would you sort of operationalize? What were the -- what was that, that you saw, to your eyes was the downplaying?

MR. SHERBURNE: He made statements to the effect that it was minimized; that the impact was not as great --

Did we want to play the audio?

MR. HENLEY: It is up to you.

MR. SHERBURNE: I think at this point I would let you listen to Mr. Hubbard's own words. Can we play an

audio clip, please. This is Attachment Z to the Investigative Summary and Findings.

MR. HENLEY: Do you want to give a little background of what this part is about, or shall I?

MR. SHERBURNE: Yeah, please go ahead.

MR. HENLEY: Members of the Board, just to prepare you for this audio, this is a colloquy between the Internal Affairs investigators and Mr. Hubbard where they are asking him about the sexual intercourse he had with Victim 1 while serving as watch lieutenant two days in a row while watch lieutenant. That's what this question relates to, and we would ask you to listen to his response.

(Audio file played.)

MR. SHERBURNE: In addition to the clip that was just played, during my interview of Mr. Hubbard, which is at Attachment G to the ISF -- and this goes to POST Regulation 1213 and the factors of mitigation or aggravation with respect to his conduct. He did not appear to appreciate the harmful nature of his misconduct. He stated that it was splitting hairs to go after him for sharing information; that nothing affected his ability to perform as a peace officer. As her personal representative, he said he would learn it anyway.

I would contend that that is factually not true. Once the relationship became known, he would not have been able to serve as her personal representative.

I would also point the board members to Attachment E, which is the Notice of Disciplinary Action-Termination. It is a letter to Mr. Hubbard from the Kern County Sheriff's Office from the sheriff himself.

At the Skelly hearing, the conclusion, on page 5 of that attachment: "You accepted responsibility for your actions, however minimized the gravity of obtaining and releasing confidential information, as well as the consequences your actions could have on the Sheriff's Office. Due to your misconduct, you have exposed the Sheriff's Office to unnecessary liability for multiple active and former members of the Sheriff's Office. You violated the right of a fellow employee to confidentiality in his Internal Affairs investigation.

"Additionally, you isolated a potential sexual assault victim by moving her under your control and assuming supervision of her."

It continues from there.

These are examples of how I would answer your question, Board Member Lara, as to what -- what was it that I concluded -- what supported my conclusion that he

downplayed his role and his activities.

MEMBER LARA: Thank you.

VICE CHAIRPERSON DOYLE: Yes.

MEMBER PENA: The interview that we were all sent and listened to, is there -- was there a -- I didn't have a picture. It was just audio. Was there -- did you videotape it?

MR. SHERBURNE: There may have been two audio recordings of interviews. The one was the clip that we just played, which was Mr. Hubbard's Internal Affairs interview. The second interview that was conducted, I conducted with a fellow Law Enforcement Consultant, and that was not videotaped.

The IA interview, I don't think, was also videotaped, either. Some departments videotape and audio tape. Some only audio tape.

MEMBER PENA: Yeah. I just wanted to comment that it was -- it would have been helpful to have a visual tape to not only hear the audio, but to be able to look at body language, etc., while we're listening to it.

Just a comment.

MR. SHERBURNE: Thank you. Okay.

VICE CHAIRPERSON DOYLE: Any other questions?

(No response.)

VICE CHAIRPERSON DOYLE: POST has received written

comments from the public concerning Mr. Hubbard. The Division is making them available to you with the following caveats: At this stage of the proceedings, the only issue for the Board is whether or not the Division's Investigative Summary and Findings provide clear and convincing evidence of serious misconduct.

The Division's position is that character statements of this kind are not relevant to this inquiry and might be provided if -- if at all, only during a later evidentiary hearing.

In an excess of caution, however, staff will provide the letters to you as public comment, keeping in mind that the Board's ultimate task is to determine the sufficiency of the Division's Investigative Summary and Findings.

At this time, does the subject officer or counsel wish to make public comment?

Please state your name and organization if you wish.

MS. CASTILLO: Hi. My name is Kasey Castillo. I am the representative counsel for David Hubbard, and I would like to be heard.

VICE CHAIRPERSON DOYLE: Please proceed.

MS. CASTILLO: Thank you for the opportunity to address the sufficiency of the findings. In the

instance of David Hubbard, they are insufficient for Commission review on revocation.

Considering the factors outlined in Section 1213 of the Code of Regulations, as it pertains to abuse of power, there is no evidence that his relationship with Ms. Doe was inherently coercive. Indeed, there's no evidence from the investigation that it was coercive at all. The two of them were long-term friends and coworkers and, as stated by the investigator, their relationship was consensual.

And while the order and findings reference abuse of power in gathering confidential information for the purpose of sharing it with Ms. Doe, there is no evidence that the information was shared for that purpose, nor believed to have been confidential at that time. Indeed, the information sharing was in response to questions from her on the process and not with any desire or intent to tamper with the outcome of an ongoing investigation into someone else.

And as this investigation made clear, both Ms. Doe and he faced their mistakes head-on. Further, Hubbard took the additional step of contacting his superior and self-reporting when it became clear he had overstepped.

As it pertains to dishonesty, in the method of evidence tampering as it relates to the deletion of

texts and call logs, for acts to be characterized as such, there must be an intent to deceive, and it must be willful, knowing it would cause a certain result. Deletion of his contacts with Ms. Doe was not done to hide or impede any investigation or conceal evidence, but rather to avoid an issue at home.

Hubbard did not fail to disclose. In fact, he self-reported to his supervisors and his spouse the relationship.

Notably, the investigation undertaken by his original investigating agency did not, even with the low burden of preponderance of the evidence, sustain or even allege dishonesty of any type, in any form.

As it pertains to the mitigating factors that were addressed by the investigator, Hubbard remained employed as a peace officer, albeit as a result of these proceedings, currently in a nonsworn position. He remains employed because despite this episode in his career, his history in law enforcement has proven that he is a person of integrity and someone whose true character showed when faced with his mistakes.

After the investigation, Hubbard resigned his position. And after a full transparent and customary background investigation, he was hired at the Kern County District Attorney's Office as a district attorney

investigator. He is again currently employed there.

It is important to note that this was essentially a voluntary lateral demotion, given the same county employer but different division. Had this transfer not occurred, Hubbard would have proceeded to hearing before the Civil Service Commission in relation to the penalty imposed.

As it pertains to his prior conduct, discipline, and service record, and any other prior instances of misconduct, before you, you have an example of an individual with a record of prior conduct that is exemplary, with no prior discipline and with the evaluation ratings consistently above standard. The actions that bring David Hubbard before you are isolated, personal in nature, and span the course of a short period in 2021 in contrast to an admirable career of over 16 years.

The events before the Board occurred over the few months in 2021. And Hubbard did, in fact, take a voluntary demotion and reassignment, and he has been working since without incident.

Other mitigating factors that I believe are important:

Are that he acknowledged and accepted discipline for his mistakes as was appropriate. While he was

remorseful, much of his error in judgment was human and borne out of extreme personal stress in the immediate prior months as a result of his own participation in an officer-involved shooting involving the death of his friend and coworker. Anyone who has experienced such a significant event and personal loss can attest to the impact to sound mind and judgment that occurs, but is also unlikely to reoccur absent such stressors. This event may have been catalytic, and there is no doubt that the behavior that immediately followed was completely out of character for this peace officer. And while his judgment momentarily lapsed, he self-reported to his supervisors.

Hubbard unwaveringly expressed remorse and accepted responsibility. He was forthright in his dealing with his agency during his investigation as well as the District Attorney's Office, who subsequently hired him after that full background investigation.

And then later, the POST investigator. The honesty and candor in this investigation is evidence of rehabilitation and mitigation, as is moving forward with his current employer.

He has additionally sought counseling with his wife, and they are in a good place. The issues before you will never reoccur, and even a cursory review of his

personal life and law enforcement career supports such a conclusion.

In summary, a fair and objective review of the findings do not support furtherance of the revocation process for David Hubbard. His continued service as a district attorney investigator is not a threat to health, safety, or welfare of the public. And findings do not properly impart a holistic review of his candor, his long-term record of public service, and lack of any disciplinary history in almost two decades of service to the community.

Thank you.

VICE CHAIRPERSON DOYLE: Board, any questions?

(No response.)

VICE CHAIRPERSON DOYLE: Hearing none, is there anyone from the public who would like to address the Board at this time?

(No response.)

VICE CHAIRPERSON DOYLE: No?

MR. HENLEY: Mr. Vice Chair --

VICE CHAIRPERSON DOYLE: Oh, I'm sorry.

MR. HENLEY: If we could -- if we could speak to Ms. Castillo's comments, with your permission.

VICE CHAIRPERSON DOYLE: Sure.

MR. SHERBURNE: I would like to start.

First, counsel for Mr. Hubbard mentioned POST Regulation 1213. I will speak briefly to a couple of points that Counsel mentioned. But then I will defer to Mr. Henley, POST legal counsel, for further information about 1213.

I believe that Ms. Castillo misstated the Division's job in the definition of abuse of power. The abuse of power, she cited that there's no evidence of it being inherently coercive. That is not part of the definition that the Division is looking at.

Whether the information -- whether the acts occurred is what is at issue here today. Not POST Regulation 1213, which is what level of discipline the Commission may impose.

Ms. Castillo also said that he did not have the intent to share the information. That issue is irrelevant for my inquiry during my investigation. He also had recognized that he could not share it. He told Victim 1 that he could not share the information because it was confidential. That level of intent pushes it over the line, in my eyes.

Ms. Castillo also said that he self-disclosed. This is a little bit misleading, because he did disclose it to his wife, perhaps, according to him. But there was a time lapse of him disclosing this to his

supervisor, and he waited until after Victim 1 had reported the misconduct. And during that time period, Kern County Sheriff's Office was flying blind with respect to Suspect 1's Internal Affairs investigation, and they were trying to wrap up that investigation. And they were -- they didn't know about the evidence that he had deleted. And that evidence was not only relevant, but it was material to his own Internal Affairs investigation.

And with that, I will just ask Mr. Henley about 1213.

MR. HENLEY: Thank you. And Members of the Board, I think Law Enforcement Consultant Sherburne has really covered this well.

The point I wanted to emphasize to you today is Ms. Castillo, on behalf of Mr. Hubbard, has spoken a lot about Regulation 1213. And as Mr. Sherburne has explained, it is important to level set that the purpose of today's proceedings aren't so much the focus on the 1213 factors. Those are actually factors that are directed to the Commission. By -- by the definition in the regulations, it's the Commission that is to weigh those factors in rendering a decision.

For purposes of today, the question before this Board is, are the -- is there sufficient findings from

Mr. Sherburne's Investigative Summary and Findings? Are there sufficient findings to show, by clear and convincing evidence; one, that lieutenant -- former Lieutenant Hubbard abused his power with the conduct we have described to you today; and, two, did former Lieutenant Hubbard engage in dishonesty in deleting text messages and phone call records as well as omitting important details that affected both an Internal Affairs investigation about another officer, and a likely Internal Affairs investigation of Mr. Hubbard himself. Those are the questions before this Board.

If the Board determines that Mr. Sherburne's evidence is clear and convincing, the appropriate action, we recommend, the Division recommends, is revocation and that serious misconduct, in fact, occurred and to recommend that the Commission consider revocation as the appropriate action.

And with that, we remain available for questions.

VICE CHAIRPERSON DOYLE: Questions?

(No response.)

VICE CHAIRPERSON DOYLE: No? Okay.

At this time, the meeting will be adjourned, so the Board can go into closed session.

(Time Noted: 2:01 p.m.)

---o0o---

(Closed session was held from 2:15 p.m. to 2:20 p.m.)

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(Time noted: 2:23 p.m.)

VICE CHAIRPERSON DOYLE: We will now reconvene to regular session to take a vote on the Board's recommendation to the Commission in the matter of case of POST2300204, David Wesley Hubbard, who at the time of events at issue was employed with the Kern County Sheriff's Office, now with the Kern County District Attorney's Office.

Is there a motion by the Board? Take a recommendation to the Commission?

Yes. Ms. Crawford.

MEMBER HATCHER-CRAWFORD: I would like to make the motion to decertify.

VICE CHAIRPERSON DOYLE: Decertify.

Is there a second?

MEMBER GLASER: Second.

MEMBER LARA: Yes.

VICE CHAIRPERSON DOYLE: Mr. Glaser.

Take the roll, Chandler.

MR. KNAPP: Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.

MEMBER CLAVO: Aye.
MR. KNAPP: Board Member Crawford.
MEMBER HATCHER-CRAWFORD: Aye.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: Yes.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Aye.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Aye.
MR. KNAPP: We had seven yeses.
VICE CHAIRPERSON DOYLE: Motion passes.
(Audio system malfunction.)
(Pause in proceedings.)
MS. DEL MUGNAIO: We'll be on hold for a moment while we figure out the IT issues. Thank you.
VICE CHAIRPERSON DOYLE: I understand, there is a -- someone has called in that would like to make a comment on the previous case. Hubbard case.
Go ahead.

MR. SANCHEZ: Hi there. Can you hear me?

VICE CHAIRPERSON DOYLE: Yes.

MR. SANCHEZ: Hi there. This is Daniel Sanchez, 18-year veteran with the sheriff's office.

Hello. So I just want to thank you guys for your service. Thank you for -- thank you for the effort that you put into these types of investigation.

Mr. Sherburne, again, thank you for the investigation you conducted into the David Hubbard investigation. I believe that it was necessary to send a message to the sheriff's office that this behavior will not be -- that will not be tolerated by you guys.

But, unfortunately, there is more to this story than what -- than what you discovered. There is an entire background of information that led to this incident, and I believe that there is possibly more officers that are potential SB 2 issues. I don't believe that the Sheriff's Office was caught without having knowledge of Mr. Hubbard's behavior.

Again, I think that this is possibly something that maybe you and your Commission may consider looking into. I'm available to contact if you would ever like to contact me so I can share additional information.

I want to reiterate that this was a good decision. Again, thank you.

I also want to add that I am off duty, just in case somebody decides to trigger an Internal Affairs investigation against me.

(Laughter.)

MR. SANCHEZ: Again, there are very few officers out there that will speak out. I think there are officers that can provide inside information into the behavior of these organizations. I don't believe that some of these organizations are capable of investigating themselves, especially when it involves investigations like these types of investigations.

Again, there was a plot to get Mr. Hubbard out of the Sheriff's Office to save his career. And there is a lot more people involved into the manner in which this investigation was conducted and the outcome of it.

And thank you again.

VICE CHAIRPERSON DOYLE: Thank you for your comments.

The next case is Ivan Sarabia-Medina, POST2322012, POST ID C12-A96.

At this time, I will call upon Law Enforcement Consultant Robert Bringolf, Professional Conduct LA Bureau, and Bryant Henley, attorney, Legal Affairs Bureau, to provide a report on this case.

MR. BRINGOLF: Thank you, Vice Chair.

Good afternoon, everybody. My name is Robert Bringolf, and I'm one of the Law Enforcement Consultants assigned to the Los Angeles County Professional Conduct Bureau.

We operate in the Peace Officer Standards Accountability Division. And you have all met Bryant Henley sitting next to me, an attorney with our Legal Affairs Bureau.

I'm here to present case 2322012 involving Los Angeles Sheriff Department Sergeant Ivan Sarabia-Medina. I may refer to him as Sergeant Sarabia during this.

Sergeant Sarabia started his law enforcement career as a deputy sheriff with the Los Angeles County Sheriff's Department in 2007. He was promoted to the rank of sergeant in 2016. He has had no other law enforcement appointments in the state of California.

In August of 2022, a retired Los Angeles sheriff's sergeant contacted the Internal Affairs Bureau after watching several of Sergeant Sarabia's videos on the social media platform TikTok. Internal Affairs investigators watched the videos and believed Sergeant Sarabia was in violation of several LASD policies, as it appeared Sergeant Sarabia was filming TikTok videos for his personal TikTok account while he was on duty as a sergeant.

An Internal Affairs investigation into Sergeant Sarabia's on-duty filming of TikTok videos led to two separate Internal Affairs interrogations in which Sergeant Sarabia was asked in no equivocal terms whether he was filming the TikTok videos on duty.

Sergeant Sarabia stated he had never filmed any of his TikTok videos while on duty.

The Division reviewed several videos from Sergeant Sarabia's personal TikTok account. We reviewed the Internal Affairs investigation interrogation transcripts. And upon review of the videos and transcripts, it was clear that Sergeant Sarabia was repeatedly dishonest with Internal Affairs investigators. That dishonesty was clearly intended to cover up his misconduct, and the motivation to cover up that misconduct was plainly evident.

At several points in the TikTok videos, Sergeant Sarabia's watch was visible while he was filming. In those instances his watch showed the time the video was recorded had fallen within the hours of his scheduled work shift, which was 2100 to 0500, or 9:00 p.m. to 5:00 a.m. Same time frame.

In another video, Sergeant Sarabia films himself in a police car in full LASD uniform and states he has a couple hours left in his shift.

A further aggravating factor in this case is Sergeant Sarabia's status as a supervisor, one who would routinely act as the Watch Commander for the Walnut Station in the absence of a lieutenant.

Sergeant Sarabia's lack of integrity caused directly into question the accuracy and objectivity of his written reports, his testimony, and his workplace evaluations of subordinates.

Sergeant Sarabia was terminated from the Los Angeles County Sheriff's Department for dishonesty related to this case.

The facts I just relayed support the Division's findings that Ivan Sarabia-Medina was involved in serious misconduct, specifically dishonesty relating to the investigation of misconduct of a peace officer.

For purpose of the Division's analysis, as you have heard, "clear and convincing evidence" means evidence of a charge is clear and convincing so long as there's a high probability that the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

I'm happy to answer any questions.

VICE CHAIRPERSON DOYLE: Board members?

(No response.)

VICE CHAIRPERSON DOYLE: Mr. Henley, did you want to make some comments?

MR. HENLEY: No, thank you, Vice Chair. Not at this time.

VICE CHAIRPERSON DOYLE: At this time, does the subject officer or counsel wish to make a comment?

(No response.)

VICE CHAIRPERSON DOYLE: Is there anyone in the public who would like to make a comment on this case?

(No response.)

MEMBER GLASER: One question. I'm sorry. Is there any indication that at any point along the way the sergeant was given any indication that he shouldn't be posting images on social media during -- that were taped during his shift?

MR. BRINGOLF: Yeah. There's a policy against it. There is a few policies. Those are mentioned in the back of that record that I provided.

It was pretty well understood. And, in fact, there was one statement -- I'm happy to read -- that was in that ISF that I think might shed a little bit of light.

Let me just pull it up. It is towards the end of -- page 23 of the investigative summary and recommendation that I drafted.

He says -- to the Internal Affairs investigators, Sergeant Sarabia says, "I always made it my goal to -- every time I record something to make sure that I'm, you

know, before my start time or after my end time. I have always made it a goal to, you know, make sure that it's off duty because it is pretty obvious that if you are on duty, you know, you are doing any social media, that might get you in trouble."

And that was a direct quote from him taken out of the transcript.

So it seemed relatively clear that that was not --

UNIDENTIFIED SPEAKER: Hello.

VICE CHAIRPERSON DOYLE: We'll be right with you.

Mr. Lara?

MEMBER LARA: Just real quick.

Also, you prompted a memory. So some of the videos, they show him covering up what is referred to by the agency as their intellectual property. Covering up of the badges, the star, the rank insignia. So to my mind, that would show some of the requisite knowledge that, hey, this is probably not per policy.

MR. BRINGOLF: That's correct.

At some point in time, he was approached by a supervisor. I don't recall the rank of that supervisor. I believe somebody at a command level, who had indicated, "Look, you cannot be showing intellectual property." That's one of the issues that we are having. So to remediate that, he put the stickers, I believe

they are called, on the TikTok app; he put these digital stickers over the intellectual property.

That being said, the assertion was that none of it was happening on duty. And so the places in which we found repeated acts of dishonesty as they relate into the investigation into misconduct was the repeated assertions that he did not do any of this while on duty.

And that was just clearly not the case.

Ma'am?

VICE CHAIRPERSON DOYLE: Pena.

MEMBER PENA: What was the time frame between when he started posting on TikTok and when he was talked to by his superiors about not doing that?

MR. BRINGOLF: I'm not sure. That's a great question. I'm not sure when they all started. The record that I was provided was it contains several TikTok videos. There may have been more that existed at one point in time. When I started looking at this investigation and when the Division started reviewing this investigation, his personal TikTok that these videos had previously existed on had been taken down.

He does have another personal TikTok account online now, but they do not include these videos. They are separate types of videos.

So I wasn't able to necessarily identify how long

he had been doing it until he had been spoken to. Yeah. And then how long he continued to do it afterward.

The issue at hand in this case just showing the dishonesty was not necessarily that he hadn't had an opportunity to take them down, or that he was trying to comply by covering up the intellectual property. The main issue that we were -- the Division is addressing in the dishonesty is the fact that he is saying he didn't do any of this while he was done duty.

And that's -- we have proven to a clear and convincing standard that that's not the case. To include times in which he even tells people on the TikTok video, "I'm on duty." Right? "I have a couple hours left on my shift." Or he explains what time it is. His watch showing the time frame that it was recorded fell within his work hours.

And another assertion that he said he never came to work on one of his days off to film the TikTok video. So if he was there, he had to have been on a workday. And if it fell within the hours of his work shift, he had to have been on duty.

So that's the issue, the dishonesty that we are addressing. And that was clearly provable.

MEMBER PENA: What if all of the TikTok videos were done in his patrol car, etc., but not on work time?

MR. BRINGOLF: Well, if they were done that way, he wouldn't be lying, but they weren't. So he -- I mean, had he done them in his patrol car -- excuse me -- if he's in his patrol car, and he's wearing full uniform, and he's in public, the assumption is that he's on duty when he's doing these things.

The fact of the matter is, in his Internal Affairs investigation, he was asked in no unspecific terms if he did these things when he was on duty. And he said he did not. He never did. It's not something he did. He never filmed any of his videos on duty.

And so there was nothing to support that other than his statement that he didn't do it on duty. He never provided any evidence that he did these things off duty. There's nothing there. We have seen him in a patrol car with his body-worn camera on, with his watch saying that it's within his work hours, in full uniform with his badge, in a police car.

At times in some of the videos, you hear a radio transmission that the Internal Affairs investigators were able to track down and determine happened during his work hours.

I mean, there's no -- had he done those things, it may not have been a violation necessarily of the sheriff's department's policy, but that is not what the

record is speaking to.

MEMBER PENA: Right. Right.

MR. BRINGOLF: Specifically -- and I don't want to presume that I understand the nuances of their policy in this -- in this case. Really, what we're dealing with is an allegation of dishonesty that was presented by the agency that he lied in the Internal Affairs investigations, and that was proven to a clear and convincing standard by the Division.

MEMBER PENA: Thank you.

VICE CHAIRPERSON DOYLE: Any other questions?

(No response.)

VICE CHAIRPERSON DOYLE: No? One moment. We understand there is a representative of Mr. Medina on the call or on video. If there is, please identify yourself, and go ahead.

MS. ETHIR: Good morning. I'm sorry -- good afternoon, everybody. My name is Saku Ethir. I am the attorney that works with PPOA, the sheriff's department union. And I am currently representing former Sergeant Ivan Sarabia-Medina.

I would like to just address -- I appreciate the questions that have already been presented by the Board or inquired of by the Board. I would like to provide everybody just some background with respect to the

events that involved the allegations involving my client's TikTok account.

To answer, I hope, some of the questions that were posed, then Sergeant Sarabia created the account in question, the TikTok account, in or around March of 2022. At the time, he was a sergeant. And this was a social media platform on TikTok that he was utilizing.

His intentions -- as the TikTok account garnered some traction and was creating a platform for him, his intentions were an attempt to bridge the gap between the community and law enforcement and the sheriff's department.

He began posting TikToks in and around March of 2022. At some point in time, the sheriff's department did become aware of the platform, and he was approached -- and this, I believe, was one of the questions. He was approached by a captain, but solely for the purpose of asking him to not put or place the department's intellectual property in his TikToks. He was asked to essentially cover that intellectual property.

At the time that he was approached, the evidence in the sheriff's department's own investigation, which is what the POST utilized in their investigation, he -- he then proceeded to ensure that videos -- to the best of

his ability, that the videos -- TikToks on his account were covering the intellectual property.

At no time, at that time, was he asked by a captain whether or not these TikToks were on duty or off duty or whether or not -- you know, the times that they were either video recorded or posted.

And he did, in fact, move forward. He covered the insignia or the intellectual property in the best fashion that he was aware of.

And at that time, he was never approached again with questions up until the interview with Internal Affairs about being on duty or off duty. He did continue after that initial inquiry to continue to post so long as he was covering the intellectual property.

We have information -- the information in the investigation established that after the TikTok account was created, the sheriff's department and specialized unit within the sheriff's department was, in fact, monitoring Sergeant Sarabia's TikTok account. And one of the reasons we believe that was occurring was because he shared a TikTok during the election process involving then Sheriff Villanueva, and he was the incumbent, and his opposition, which is the current Sheriff Luna. And he shared a TikTok in support of then Sheriff Villanueva.

And we have information that as a result of that, his TikToks were being recorded and were being tracked.

At one point in time, he was approached again by his supervision. And he was offered a three-day suspension for the displaying of department intellectual property.

Officer -- I'm sorry -- Sergeant Sarabia indicated at the time that he felt that that was excessive under the circumstance because when given direction to conceal any intellectual property, he took that under -- under advisement, and he immediately moved forward in doing that. And he felt that the three-day suspension was excessive. And so he asked that instead he be issued a written reprimand.

Following that, and very shortly after that, is when the department provided Sergeant Sarabia with the initial Notice of Administrative Investigation. That was on September 28 of 2022.

And then he was then subsequently provided another Amended Notice of Administrative Investigation by the sheriff's department on 11/11/2022.

And then he was placed on paid administrative leave on March 9th of 2023.

And then issued another Amended Notice of Investigation on May 11th of 2023.

And then finally interviewed for the first time on June 8th of 2023, almost eight months after he was initially notified that there would be an administrative investigation.

At the time of the initial interview, Sergeant Sarabia did his best to recall times and dates that he either recorded TikToks at the police department or the station and times and dates when he posted those TikToks.

What's important for the Board to keep in mind is Sergeant Sarabia did not learn about the specific TikToks he was going to be questioned about until he was in the midst of his interview. And at that time, he made it very clear that his practice with respect to recording TikToks at the station was to do it before he started his shift or after he completed his shift.

He admitted being in uniform at times. He admitted that sometimes he was at the station. But his best recollection at the time, as he conveyed it, was that his practice was to make every effort not to do this on duty.

And so the answers he provided in that interview almost nine months after, or eight months after, being advised of this investigation, and a year to a year and a half, in some instances, of when he posted these

TikToks, he did his best to provide answers that were truthful and concise to the best of his recollection.

He was then subsequently interviewed again on July 14th of 2023. Again, approximately nine months after the original notice. And, again, a year to a year and a half at that point or almost a year and a half since some of these TikToks had been actually posted. Not necessarily recorded.

And so the burden, as POST is aware, or the Board is aware, is clear and convincing evidence. No clear and convincing evidence has been introduced to establish that going into this interview, or in this interview, Sergeant Sarabia possessed the intent to deceive or be deceitful in his responses.

Remember, going into this interview, Sergeant Sarabia was aware that the department's level of discipline that they had intended to impose against him almost nine months prior was a three-day suspension without pay.

Lastly -- I know I'm running out of time or have run out.

Ultimately, Sergeant Sarabia, at the time of imposition of this discipline, had a 16-year career. Seven of those as a sergeant, with no notable prior discipline referenced by the department or even

referenced, more importantly, by the investigators in this case. And he had excellent prior evaluations. There were no issues of credibility, integrity, or honesty either as a deputy or as a sergeant.

So we believe, in this case, the criteria has not been met with the clear and convincing standard, not just that is required here, but also that is required in order to sustain allegations of dishonesty.

VICE CHAIRPERSON DOYLE: Board, any questions?

MEMBER JOHNSON: I have one.

VICE CHAIRPERSON DOYLE: Mr. Johnson.

MEMBER JOHNSON: I believe you stated that he stated that these TikTok videos were to bridge the gap between the police and the community.

Could you explain the video concerning the Taser when the young man was running, and he was Tased, and he kept flashing the Taser beam consistently?

MR. ETHIR: So I mean, I know specifically what you are referring to.

But what you have to remember, with respect to what is before the Board, here is an allegation of dishonesty. And so that -- that is the criteria here. That's what we are here to address are the allegations of dishonesty. There are no findings as I'm familiar with the Board that is -- involves the actual content of

the TikToks or the -- the content of the TikToks.

I will tell you that Sergeant Sarabia posted numerous, numerous TikToks well beyond those that he was questioned about.

However, I will tell you that he said in his interview and he described the purpose behind the account and why he was posting these TikToks, and oftentimes would describe reasons for uses of force and how and why sometimes these things would occur.

And so certainly I think -- and I know he is present on this call. He may be able to provide you with more clarity with respect to that, sir.

But I do know that he has expressed and expressed in his interview that his intentions at all times were not to disrespect or to present information that would be perceived or reviewed by someone as being disrespectful.

However, his intentions at all times, he expressed, were to provide information, context, experiences, that he felt would certainly bridge that gap.

But he is -- he is on this call, and if you would like him to provide you with more context as to his intentions behind any of his TikToks, including that one, I'm sure he would be willing to do that.

MR. BRINGOLF: Chair, if I could just add something

to that point.

I just want to bring attention to section 1209, which essentially says we can only address the issue of sufficiency of our findings during this hearing, right, and during the public comment period.

Our findings are a finding of dishonesty by the peace officer during the Internal Affairs investigation. As counsel for Sergeant Sarabia has indicated, there are no allegations about the content of those videos.

There's also an indication that his statements were only to help provide clarity. The Division has found that that's not the case. The Division has found that the dishonesty was clearly intended to cover up his misconduct.

And what we need to decide here today is whether our findings were sufficient in that matter, under 1209.

MEMBER CLAVO: I have a quick comment.

Adding to what Mr. Johnson's question was --

Board Member Clavo.

I think his question was relevant to the honesty/dishonesty because as community members sitting here on this board, I don't think anyone I know in the City of Sacramento, the County of Sacramento, would look at that video and see that it is bridging the gap of the community.

So if Mr. Diaz -- I'm sorry, Mr. Medina would like to explain and bring us on board on how that is bridging the gap -- the gap in a community who are facing issues with law enforcement currently in California, we would -- I am more than willing to listen.

MR. SARABIA-MEDINA: Of course. Can you guys hear me okay?

VICE CHAIRPERSON DOYLE: Yes.

MR. SARABIA-MEDINA: Right. Again, thank you again for listening to my case here today.

To answer your question on that specific video, there's a caption that I put on top of the video. And that caption says "50,000 volts. Please fight us in court, not on the streets." And that's the message that I want to get out there. Like, do not fight police officers on the street. If you don't agree with what he is doing or saying at the time, do not fight them. Just fight us in court.

I do agree that maybe the Taser was a mistake looking back. But that is the caption that I put on the video because that's the message that I wanted to get across to my viewers.

VICE CHAIRPERSON DOYLE: I have a question.

Is it your position that none of the TikTok postings that were investigated were conducted on duty?

And my second question was: Is there some monetary reward or compensation for doing this?

MR. SARABIA-MEDINA: Of course.

So as to your -- I see you are asking about whether or not there's a monetary compensation on the videos. The videos that I post are monetized. So basically they do pay per view or per -- I believe per thousand views or 10,000 views. I really don't know the algorithm behind the TikTok algorithm, but they do pay a certain amount of money, which is not much. I believe a video that went viral, I got like $1.25. So this is not, you know, life-changing money.

But to answer your question, yes, they do pay per view or per thousand views, I believe.

And what was your first question, sir?

VICE CHAIRPERSON DOYLE: My first question was: Is it your position that none of the postings that were done -- that were investigated were done on duty?

MR. SARABIA-MEDINA: So at the time, I believe that all the postings that were done were not done on duty, which is why I stated to Internal Affairs that that was my belief, and that's why I answered.

Obviously, I didn't have the luxury that the department has to listen to radio traffic or to look at different -- to slow down the videos and look at

specific times.

So, obviously, some of those videos did fall within the time that I was on duty. And, of course, you know, knowing that now, I of course -- you know, I would have -- had I known, I would have disclosed that.

But at that time, I did not know that, and that's why I provided my statement to Internal Affairs.

VICE CHAIRPERSON DOYLE: Thank you.

Any other questions?

MEMBER GLASER: Yeah. I would like to follow up on that point.

VICE CHAIRPERSON DOYLE: Mr. Glaser.

MEMBER GLASER: Mr. Sarabia, thank you for answering our questions.

On that point, it appears from what we have seen that there were more than a few videos posted where the evidence is quite clear that you were on duty. And so I would just like to reinforce Mr. Doyle's question, which is: Is it still your contention that you didn't realize, at the time of the IA interview, that you had been on duty for some of these?

MR. SARABIA-MEDINA: Now, so I recorded the majority of my videos before my shift and after my shift. That's the message I was trying to get across to the Internal Affairs investigators. However, they

weren't videos that I recorded on duty. A lot of those videos were never posted. Those videos were just for myself and for family members.

However, it turns out that maybe some of these videos were ultimately posted at some point. And that's why it shows that I was on duty.

I did record some videos on duty, as I said. But those videos, as far as I know, were never posted. And that was my idea when I went into my interview Internal Affairs, and that's why I provided those statements.

VICE CHAIRPERSON DOYLE: Any questions?

(No response.)

VICE CHAIRPERSON DOYLE: Okay. Thank you very much.

MR. SARABIA-MEDINA: You are welcome, sir.

VICE CHAIRPERSON DOYLE: At this time, we will adjourn the meeting and go into closed session.

(Time noted: 2:57 p.m.)

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(Closed session was held from 3:00 p.m. to 3:30 p.m.)

---o0o---

(Time noted: 3:32 p.m.)

VICE CHAIRPERSON DOYLE: We're back on the record again, in the matter of Case POST2322012, Ivan

Sarabia-Medina, who at the time of events in this case was employed by the Los Angeles County Sheriff's Department.

Comments on -- did the Board have any comments?

(No response.)

VICE CHAIRPERSON DOYLE: Would a board member care to make a motion?

MEMBER JOHNSON: Johnson. Motion: Decertification.

VICE CHAIRPERSON DOYLE: Okay. We have a motion to decertify.

Is there a second?

MEMBER GLASER: Second.

VICE CHAIRPERSON DOYLE: Second is Mr. Glaser.

Please take the roll.

MR. KNAPP: Okay. Board Member Buchen.

(No response.)

MR. KATAPODIS: Board Member Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Abstain.

MR. KNAPP: Board Member Doyle.

VICE CHAIRPERSON DOYLE: Yes.

MR. KNAPP: Board Member Dudley.

(No response.)

MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Board Member Lara.
MR. ELLSWORTH: Aye.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: No.
MR. KNAPP: Five yeses; one abstention; and one no.
VICE CHAIRPERSON DOYLE: Motion passes.
Okay. Is there any other business?
MS. DEL MUGNAIO: Sure.
So as this concludes our case proceedings for today, I just want to point your attention to future meeting dates before we adjourn.
As I mentioned earlier in an administrative report this morning, we have a hearing scheduled for May 15th and 16th to be held here in West Sacramento.
At this point, we're going to kind of hold that date, but keep you advised whether or not we have any appeals to hear -- to hear cases on that date.
We will, however, have cases for the July 24th, 25th hearing here in West Sacramento.
And I also would like for you folks to put some additional dates on your calendar so that we can plan

forward.

October 16th, 17th.

January 15th, 16th, 2025.

MEMBER PENA: What was it again? Sorry.

MS. DEL MUGNAIO: January 15, 16, 2025.

VICE CHAIRPERSON DOYLE: 15, 16?

MS. DEL MUGNAIO: Yes.

VICE CHAIRPERSON DOYLE: And the October one, again?

MS. DEL MUGNAIO: October 16th, 17th, 2024.

VICE CHAIRPERSON DOYLE: Got it.

MS. DEL MUGNAIO: April 16th, 17th, 2025.

VICE CHAIRPERSON DOYLE: 17th 18th?

MS. DEL MUGNAIO: 16th, 17th of April.

VICE CHAIRPERSON DOYLE: There we go.

MS. DEL MUGNAIO: And again, these dates -- which one? I'm sorry.

MEMBER HATCHER-CRAWFORD: Can I get it emailed?

MS. DEL MUGNAIO: Yeah. We will send it out. I just wanted to make sure we made an announcement.

Again, we will hold two dates in case we have a number of hearings. As you know, we have only been holding hearings for a single-day hearing because the number of cases haven't required two days. So to the extent that we can isolate it to a single-day hearing,

we will likely meet on the Thursday.

MEMBER JOHNSON: Question.

On the 15th and 16th, there's contention on an appeal process, correct?

MS. DEL MUGNAIO: Correct. On the May dates?

MEMBER JOHNSON: Yeah.

MS. DEL MUGNAIO: Yeah. So when we send out a Notice of Intent to Revoke, the officers have 30 days within which they can appeal. If they don't appeal, that's a default. And whatever the Division's findings were and recommended discipline would take effect.

So at this point, we have not received an appeal for that date.

MEMBER JOHNSON: How many notices went out?

MS. DEL MUGNAIO: We have had one that has gone out, and we have another one that we're preparing to go out before that date.

Any other questions about meeting dates? Any public comment about that?

(No response.)

MS. DEL MUGNAIO: Okay. That concludes our business for today.

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So I will go ahead and announce adjournment at 3:35. You are okay. I just want to make sure for the record. We will adjourn at 3:35. Thank you.

(Proceedings concluded at 3:35 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported, to the best of my ability, in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of April 2024.

Kathryn S Swank

KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061

E R R A T A S H E E T

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AGENDA ITEM REPORT

Title: DISCUSSION AND POSSIBLE ACTION TO VACATE THE CONFLICT OF INTEREST CODE AND DELETE A PROVISION OF THE PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD (POSAAB) ADMINISTRATIVE REQUIREMENTS POLICY

REPORT PROFILE

MEETING DATE	**BUREAU SUBMITTING THE REPORT**
10/17/2024	Peace Officer Standards Accountability Division

RESEARCHED BY	**REVIEWED BY**
Carrie Woolley	William Darden

REPORT DATE	**APPROVED BY**	**DATE APPROVED**

PURPOSE	**FINANCIAL IMPACT**
	No

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

Based on subsequent legal guidance, should the Board vacate the previously adopted Conflict of Interest Code and delete a provision of the Board's Administrative Requirements Policy that required the Board members to file a Form 700 - Statements of Economic Interests.

BACKGROUND:

On September 30, 2021, Governor Gavin Newsom signed Senate Bill 2 into law, which created the Peace Officer Standards Accountability Advisory Board (POSAAB) to make recommendations on the decertification of peace officers to the Commission. As a new state board, POSAAB was required to adopt a conflict of interest code pursuant to Government Code section 87300 to designate those positions who make or participate in making decisions which may foreseeably have a material effect on economic or financial interests, subject to certain specified exceptions.

ANALYSIS:

On December 14, 2023, the Board adopted a Conflict of Interest Code pursuant to Government Code section 87300 and adopted an Administrative Requirements Policy that included a provision that required Board members to file a Form 700 - Statements of Economic Interests (Form 700s) pursuant to the adopted Conflict of Interest Code. Staff previously recommended that the Board adopt a Conflict of

Interest Code and the requirement for Board members to file Form 700s pending a determination by the Fair Political Practices Commission (FPPC) as to whether the Board was "solely advisory" to ensure that the Board complied with the law.

The FPPC has since provided guidance to staff that the Board is "solely advisory" to the Commission on Peace Officer Standards and Training, and therefore does not need to adopt a Conflict of Interest Code. Accordingly, staff recommends vacating the previous adoption of the Board's Conflict of Interest Code and the requirement that Board members file Form 700s. The requirement to file Form 700s was imposed by the adopted Conflict of Interest Code. All other provisions of the Administrative Requirements Policy should remain as previously adopted.

RECOMMENDATION: If the Board concurs, the appropriate action would be a **MOTION** to vacate the previously adopted POSAAB Conflict of Interest Code and delete the identified provision of the POSAAB Administrative Requirements Policy as described in the staff report.

ATTACHMENT(S):

12.14.2023 POSAAB agenda item COI.pdf
Final_Draft_-_POSAAB_Administrative_Requirements_Policy_-_12142023_Meeting.pdf
11.02.23_COI_draft_POSAAB.pdf
12.14.2023 POSAAB agenda item Administrative Requirements Policy.pdf

AGENDA ITEM REPORT

Title: DISCUSSION AND POSSIBLE ACTION TO ADOPT A CONFLICT OF INTEREST CODE PURSUANT TO GOVERNMENT CODE SECTION 87300

REPORT PROFILE

MEETING DATE 12/14/2023	**BUREAU SUBMITTING THE REPORT** Intake and Disposition Bureau	
RESEARCHED BY	**REVIEWED BY**	
REPORT DATE	**APPROVED BY**	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE: Discussion and Possible Action to Adopt a Conflict of Interest Code Pursuant to Government Code Section 87300.

BACKGROUND: On September 30, 2021, Governor Gavin Newsom signed Senate Bill 2 into law, which created the Peace Officer Standards Accountability Advisory Board (POSAAB) to make recommendations on the decertification of peace officers to the Commission. As a new state board, POSAAB must adopt a conflict of interest code pursuant to Government Code section 87300 to designate those positions who make or participate in making decisions which may foreseeably have a material effect on economic or financial interests.

ANALYSIS: The proposed conflict of interest code is the model code prepared by the Fair Political Practices Commission and adopted as a regulation under Title 2 California Code of Regulations section 18730. Board members will be expected to adhere to the conflict of interest code and prepare and file Statements of Economic Interest upon adoption of this code and annually thereafter. Board members' Statements of Economic Interest will be filed electronically with the Fair Political Practices Commission and will be available for public inspection under the California Public Records Act.

RECOMMENDATION: If the Board concurs, the appropriate action would be a **MOTION** to adopt the proposed regulation (Conflict of Interest).

ATTACHMENT(S):

11.02.23_COI_draft_POSAAB.pdf

Title: DRAFT POSAAB Administrative Requirements	Number:
Approved: _____ [INSERT NAME], POSAAB Chair _____ Date	Date Issued:
	Expires: upon revision

Purpose

The purpose of this policy is to outline the administrative requirements for all Peace Officer Standards Accountability Advisory Board (POSAAB) members.

Policy and Authority

While performing their duties, POSAAB members are expected to adhere to POST administrative requirements and policies.

Procedures

Board Administration

Board members should be concerned primarily about thoughtfully reviewing cases of serious misconduct brought before them and in formulating recommendations on the decertification of peace officers to the Commission. Strategies for the day-to-day management of programs and staff shall be the responsibility of the Executive Office.

Communications with Other Organizations and Individuals

Individual Board members shall not speak on behalf of, or act for, the entire Board without proper authorization from the Board Chair.

Media Inquiries

If a member of the Board receives a media call, the member should promptly refer the caller to the POST Office of Public Affairs, who is employed to interface with all types of media on any type of inquiry. It is important for members to make this referral as the authority of the Board is vested in the Board itself and not with an individual Board member.

A Board member who receives a call should politely thank the caller for the call, but state that it is the Board's policy to refer all callers to the POST Office of Public Affairs. The Board member should then send an email to the Assistant Executive Director indicating they received a media call and relay any information supplied by the caller.

Legal Opinions – Requests from Outside Parties

The Board does not provide legal services. Requests for legal opinions from outside entities are to be discussed with the Peace Officer Standards and Accountability Division's Assistant Executive Director and Board legal counsel to determine whether it is an issue over which the Commission has jurisdiction and the opinion, if prepared, could benefit the general public rather than one individual.

Service of Lawsuits

Board members may receive attempted service of a lawsuit, complaint, or similar document against themselves (and usually the Board) pertaining to issues (e.g., a decertification matter) in which the Board member acted within the course and scope of their appointment as a Board member. The Board member may, but is not required to, accept the document from the process server to prevent a confrontation. Do not agree with any process server's statement that you have accepted service; acknowledge only that you have received the document. Upon receipt, the Board member should notify the Assistant Executive Director of the receipt of the document and give any pertinent information. The Board member should then immediately deliver the entire package that was received to the Assistant Executive Director. The Board's legal counsel will provide instructions to the Board member(s) on what is required of them. The Board member(s) may be required to submit a request for representation to the Board to provide to the Attorney General's Office.

Board Member Availability

It is recommended that Board members who will be unavailable for a period longer than one week notify the Assistant Executive Director of the absence in case an urgent matter arises that requires an emergency meeting of the Board.

Mandatory Training
(Penal Code section 13509.6)

State law requires Board members to complete training in several important areas, including ethics, sexual harassment prevention, and peace officer decertification.

Ethics Orientation - http://oag.ca.gov/ethics
(Government Code section 11146.1)

California law requires all appointees to complete an ethics orientation within the first six months of their appointment and to repeat this ethics orientation every two years throughout their term.

The training includes important information on activities or actions that are inappropriate or illegal. For example, generally public officials cannot take part in decisions that directly affect their own economic interests. They are prohibited from misusing public funds, accepting free travel, and accepting honoraria. There are limits on gifts.

An online, interactive version of the training is available on the Attorney General's website at http://oag.ca.gov/ethics. An accessible, text-only version of the materials is also available on the Attorney General's website.

Sexual Harassment Prevention - https://calcivilrights.ca.gov/shpt/
(Government Code section 12950.1)

All new Board members are required to attend at least two hours of classroom, or other interactive training and education, regarding sexual harassment prevention within six months of their appointment. The POST Human Resources Office is responsible for ensuring that all

Board members complete their required training. A copy of the course completion certificate shall be sent to POST Human Resources as proof of training. An online version of this training is available through the CA Department of Fair Employment and Housing at https://calcivilrights.ca.gov/shpt/.

Board Member Orientation

Every newly appointed board member is required to complete a 40-hour decertification training course offered by POST. The training reviews the decertification process, internal investigations, evidentiary standards, use of force standards and training, and local disciplinary processes.

For more information and assistance with scheduling training, please contact:

CA Commission on Peace Officer Standards and Training (POST)
860 Stillwater Road, Ste. 100
West Sacramento, CA 95605
(916) 227-6882
Chandler.Knapp@post.ca.gov

Resignation of Board Members
(Government Code section 1750)

In the event that it becomes necessary for a Board member to resign, state law requires written notification be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. A copy of this letter shall also be sent to the POST Assistant Executive Director.

Form 700 – Statement of Economic Interests
(Government Code section 87302; California Code of Regulations, Title 2, section 18730)

Board members are public officials required to annually report their investments and income in accordance with the Board's Conflict of Interest Code to the Fair Political Practices Commission using the *Form 700, Statement of Economic Interests*, which is a publicly disclosable record. Each member must submit their Form 700 using the online submission process. Information on the Form 700 and other conflicts of interest topics can be found at: https://www.fppc.ca.gov/Form700.html.

Conflict of Interest
(Government Code Section 87100)

No Board member may make, participate in making, or in any way use or attempt to use his or her official position to influence any governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any member who has a financial interest shall disqualify themselves from making or attempting to use his or her official position to influence the decision.

Conflicts of interest or disqualification issues mainly arise from two general sources: (1) financial conflicts arising under the *Political Reform Act of 1974* (Gov. Code § 87100 et seq.);

and (2) common law conflicts of interest arising from personal interest or bias, or even the potential appearance of a bias or personal interest in a matter even in the absence of a financial conflict of interest.

Any member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Assistant Executive Director or the Board's legal counsel.

Honoraria Prohibition
(Government Code Section 89502)

As a general rule, Board members should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a State board is precluded from accepting an honorarium from any source, if the board member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances: (1) when an honorarium is returned to the donor (unused) within 30 days; (2) when an honorarium is delivered to the State Controller within thirty days for donation to the General Fund (for which a tax deduction is not claimed); and (3) when an honorarium is not delivered to the member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the Board Chair, so that they, in consultation with the Assistant Executive Director and legal counsel, may determine whether the potential for conflict of interest exists.

Paid Travel to Attend Meeting Unrelated to Board Business
(Government Code Section 89506)

In general, payments by a third party for a public official's travel are considered a gift, subject to the per year gift limit, and must be reported by the official on his or her statement of economic interests; however, there are exceptions to this rule. Payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited and are not subject to the per year gift limit if either of the following apply:

(1) The travel is in connection with a speech given by the member, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which

substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Keep in mind that the rules regarding financial conflicts of interest are complex, and therefore, Board members should contact the Board's legal counsel for assistance.

Gifts
(Government Code sections 89503 and 86203)

As members of a state board, Board members shall not accept gifts from any single source in any calendar year with a total value of more than five hundred ninety dollars ($590) if the board member would be required to report the receipt of income or gifts from that source on the member's statement of economic interest.

This prohibition does not apply to payments, advances, or reimbursements for travel and related lodging and subsistence as permitted under Government Code section 89506 or wedding gifts and gifts exchanges between individuals on birthdays, holidays, and other similar occasions, provided the gifts are not substantially disproportionate in value. Gifts from lobbyists, lobbying firms, or agents thereof are limited to no more than ten dollars ($10) in a calendar month.

Contact with Certificate Holders

Board members shall not intervene for any reason on behalf of a certificate holder with a pending potential decertification before the board as this may create a conflict of interest. Members should forward all contacts or inquiries from certificate holders or their representatives to the Assistant Executive Director.

Gifts from Certificate Holders

Gifts of any kind to members from certificate holders with a pending potential decertification hearing before the Board shall not be permitted.

Request for Records Access

No Board member may access POST's records of a certificate holder without the Assistant Executive Director's knowledge and approval of the conditions for such access. Records or copies of records shall not be removed from POST's office.

Ex Parte Communications
(Government Code Section 11430.10 et seq.)

The *Administrative Procedure Act* prohibits ex parte communications.

An "ex parte" communication is a communication to the decision-maker made by one of the parties to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in Government Code section 11430.10, subdivision (a), which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an ex parte communication with Division staff regarding any issue in the proceeding while a proceeding is pending before the Board or the Commission.

Occasionally, a certificate holder who is being formally decertified, or recommended for decertification, will attempt to directly contact Board members. If the communication is written, the recipient should read only far enough to determine the nature of the communication. Once they realize it is from an individual against whom an action is pending, they should reseal the envelope, if hardcopy, and forward the communication to POST's legal counsel. If an email is received, the Board member should forward the email to POST's legal counsel.

If a Board member receives a telephone call from a certificate holder against whom an action is pending, they should immediately tell the individual they cannot speak to them about the matter.

If a Board member believes they have received an unlawful ex parte communication, they should contact the Board's legal counsel.

Responsibility

All POSAAB members shall acknowledge and comply with the directives in this policy.

Subject Index and History

Subject Index: Administrative; legal; media inquiry, communication, conflict, training

History: Originated: 12/14/2023

DRAFT

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

CONFLICT OF INTEREST REGULATIONS

PROPOSED CODE

Add section _____ of Division ___ of Title 11 of the California Code of Regulations to read as follows:

____. General Provisions.

The Political Reform Act, as found in Government Code sections 81000 *et seq.*, requires state and local agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, Title 2 California Code of Regulations section 18730, which contains the terms of a standard Conflict of Interest Code, which may be incorporated by reference and amended in the Political Reform Act after public notices and hearings. Therefore, the terms of Title 2 California Code of Regulations section 18730, including any amendments as may hereafter be duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference and, in addition to the attached Appendix designating positions and establishing disclosure categories, which is further incorporated hereto, shall constitute the Conflict of Interest Code for the Peace Officer Standards Accountability Advisory Board.

Board members shall file statements of economic interests electronically using the Fair Political Practices Commission's online submission process upon assuming office and annually thereafter. These statements will be available for public inspection and reproduction. (Gov. Code § 81008.)

Note: Authority cited: Section 87300, 87306, and 87307, Government Code. Reference: Sections 87300-87302 and 87302, Government Code.

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

PROPOSED CONFLICT OF INTEREST REGULATIONS

Appendix

Designated Employees……. Disclosure Categories

Board Members ……. 1

Disclosure Categories

Category 1

Designated officials or employees assigned to this category must report:

Investments and business positions in business entities and sources of income (including receipt of gifts, loans, and travel payments) if the investment, business entity or source is subject to the Board's authority.

AGENDA ITEM REPORT

Title: DISCUSSION AND POSSIBLE ACTION TO APPROVE BOARD POLICY - POSAAB ADMINISTRATIVE REQUIREMENTS POLICY

REPORT PROFILE

MEETING DATE 12/14/2023	**BUREAU SUBMITTING THE REPORT** Intake and Disposition Bureau	
RESEARCHED BY Holly Kinney	**REVIEWED BY** Sarah Wallace	
REPORT DATE 11/30/2023	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED** 12/04/2023
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The purpose of this policy is to outline the administrative requirement for all Peace Officer Standards Accountability Advisory Board (POSAAB) members. While performing their duties, POSAAB members are expected to adhere to POST administrative requirements and policies.

BACKGROUND:

Penal Code Section 13509.6 established the new Peace Officer Standards Accountability Advisory Board and vested POSAAB with the responsibility of reviewing cases of serious misconduct by peace officers for the purpose of making recommendations regarding decertification to the Commission on Peace Officer Standards and Training. POSAAB may establish policies that govern the operation and administration functions of the Board. The policy before the Board sets forth duties and responsibilities for the members of POSAAB.

ANALYSIS:

RECOMMENDATION:

If the Board concurs, the appropriate action would be a **MOTION** to adopt the proposed policy *POSAAB Administrative Requirements Policy.*

ATTACHMENT(S):

Final Draft - POSAAB Administrative Requirements Policy - 12142023 Meeting.pdf

AGENDA ITEM REPORT

Title: DISCUSSION REGARDING A BOARD POLICY: POSAAB TRAVEL AND COMPENSATION POLICY

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Intake and Disposition Bureau	
RESEARCHED BY Holly Kinney	**REVIEWED BY** Sarah Wallace	
REPORT DATE 11/30/2023	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED** 12/04/2023
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The purpose of this policy is to provide travel and reimbursement requirements and guidelines for all Peace Officer Standards Accountability Advisory Board (POSAAB) members who incur business and travel expenses. This policy is to formalize consistent, reasonable, necessary, and accountable reimbursement policies for costs of incurred for the preparation of Board hearings and to align POSAAB travel reimbursement policies with that set forth by the California Department of Human Resources (CalHR).

BACKGROUND:

Penal Code section 13509.6 established the Peace Officer Standards Accountability Advisory Board (POSAAB) and vested POSAAB with the responsibility of reviewing cases of serious misconduct by peace officers for the purpose of making recommendations regarding decertification to the Commission on Peace Officer Standards and Training. POSAAB may establish policies that govern the operation and administrative functions of the Board. The policy before the Board provides travel and reimbursement guidelines.

ANALYSIS:

At the December 14, 2023, POSAAB meeting, the Board approved this policy. However, there was an outstanding issue before the Board regarding the reimbursement rate for Board members completing their review of serious misconduct cases prior to the next scheduled Board hearing. Penal Code section 13509.6 provides that *(h) Each member of the board*

shall receive a per diem of three hundred fifty dollars ($350) for each day actually spent in the discharge of official duties, including any required training and reasonable time spent in preparation for public hearings, and shall be reimbursed for travel and other expenses necessarily incurred in the performance of official duties. Upon request of a member based on financial necessity, the commission shall arrange and make direct payment for travel or other necessities rather than providing reimbursement.

In the interest of establishing a baseline for the *reasonable time spent in preparation for Board hearings,* the Division surveyed Board members regarding the average time members are spending reviewing case documents and videos. The reported average time spent was approximately four (4) hours per case. While there has only been a limited number of cases before the Board, this may serve as a reasonable estimation for standardizing reimbursement for case review and hearing preparation. That being said, it may be necessary to consider exceptions for cases that are clearly more complex, have voluminous exhibits, and require a greater time investment of the Board members.

RECOMMENDATION: The Board may discuss details of the POSAAB Travel and Compensation Policy.

ATTACHMENT(S):
POSAAB Travel and Compensation Policy - 12.14.2023 Meeting.pdf

Title: POSAAB Travel and Compensation Policy	Number:
Approved: _____ MANUEL ALVAREZ, Jr., Executive Director _____ Date	Date Issued:
	Expires: upon revision

Purpose

The purpose of this policy is to provide travel and reimbursement requirements and guidelines for all Peace Officer Standards Accountability Advisory Board (POSAAB) members who incur business travel expenses.

Policy and Authority

This policy is to establish consistent, reasonable, necessary, and accountable standards to record and control the cost of appropriate business and travel expenses incurred fifty (50) miles or more from home and headquarters in accordance with California Department of Human Resources (CalHR) policy. It is not intended to cover every possible situation.

Travelers authorized to travel for official state business will follow these requirements and guidelines, which include Method of Travel, Approved Booking Processes, Fare Types and Cost Savings, Ticket Credits, Types of Travel, Lodging, Travel Advances, and Expense Reimbursement. The basic concepts central to the policy requirements and guidelines include:

- With limited exceptions, state travelers must make all travel arrangements through the Travel Payment System (TPS), except for short-term rentals. See the State Administrative Manual (SAM4117) for definitions.
- State travelers must know the most current lodging reimbursement rates before booking travel. Rates are found on the CalHR website: https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx.
- Reimbursement must be for actual and necessary out-of-pocket expenses, consistent with applicable reimbursement rates, incurred while traveling on official state business.

This Travel and Reimbursement Policy is in accordance with all State Administrative Manual (SAM) policies, CalHR policies, and HR Manuals. If any of the information herein conflicts with the most recent provisions set forth by the Government Code sections or CalHR's current policy as outlined in the HR Manual cited above, then those provisions will supersede this policy. HR Manual sections 2201 – Travel and Relocation Policy, 2202 – Mileage Reimbursement, and 2203 – Allowances and Travel Reimbursements provide additional information about travel reimbursements, including links to authorities and resources. Additionally, information provided in this policy is routinely updated by various control agencies. The traveler or user of this policy is responsible to ensure they have the most current information.

Authority

- CalHR
- State Administrative Manual

Procedures

Travel Arrangements

Board members are encouraged to coordinate with the Executive Office support staff when making travel arrangements and lodging accommodation.

Government travelers can make their business travel reservations for airline tickets, car rentals, and hotel accommodations through the State's online booking tool, Concur, or through the state's only authorized travel agency, CalTravelStore. This one-stop shop solution allows travelers to use the most economical rates available via contracted travel-related services.

For more information on the program, please visit: www.dgs.ca.gov/OFAM/Travel.

Out-of-State Travel
(SAM section 700 et seq.)

For out-of-state travel, Board members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meals and supplemental expenses. Out-of-state travel for all persons representing the State of California is controlled and must be approved by the Governor's Office.

Travel Claims
(SAM section 700 et seq.)

Rules governing reimbursement of travel expenses for Board members are consistent with rules that apply to management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Executive Office support staff will maintain these forms and complete them as needed. It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

Those traveling for California state business may be eligible for the reimbursement of authorized out-of-pocket expenses that are necessarily incurred in the performance of official duties. In accordance with current state policy, Board members may be eligible to receive reimbursement for expenses such as:

- Method of travel (transportation)
- Meals and incidentals
- Short-term lodging
- Personal vehicle mileage
- Other actual and necessary business and/or travel costs incurred while conducting official state business.

California state travel expenses have maximum reimbursement rates. These amounts change periodically, please check for updated amounts here: https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx

Effective January 1, 2024, the reimbursement rates are as follows:

Lodging:

County	**Maximum Lodging Reimbursement Rate**
All Counties Except Those Listed Below	$107
Alameda	$189
City of Santa Monica	$270
Los Angeles	$169
Marin	$166
Monterey	$184
Napa	$195
Orange	$169
Riverside	$142
Sacramento	$145
San Diego	$194
San Francisco	$270
San Mateo	$222
Santa Clara	$245
Ventura & Edwards AFB, excluding the City of Santa Monica	$169

All lodging reimbursement claims must be accompanied by a receipt, or they will not be paid.

Should the base room rate exceed the rates noted above, an *Excess Lodging Rate Approval Request, STD 255C,* must be submitted and approved by POST and/or CalHR before the trip begins.

Meals for trips over 24 hours:

Expense	**Reimbursement for actual expense**
Breakfast	Up to $13.00
Lunch	Up to $15.00
Dinner	Up to $26.00
Incidentals	Up to $5.00

In the event of an audit, the traveler must be able to produce receipts for all meal reimbursement claims to substantiate the amount claimed.

Mileage for travel completed via personal vehicle (approved for business/travel expense) is reimbursed at $0.625 per mile. This reimbursement covers:

- Gasoline
- The cost of maintenance (oil, lube, routine maintenance)
- Insurance (liability, damage, comprehensive and collision coverage)
- Licensing and registration
- Depreciation and all other costs associated with operation of the vehicle

Mileage reimbursement claims must include the addresses the traveler started from and traveled to. The total miles must roughly match the distance between the locations when mapped.

In order for their expenses to be reimbursed, Board members shall follow the procedures contained in POST policy and complete a travel expense claim with the itemized amounts being claimed, and any required supporting documents including all receipts.

Per Diem Compensation

Board members will receive per diem compensation for each day actually spent in the discharge of official duties and shall be reimbursed for travel and other expenses necessarily incurred in the performance of official duties.

In accordance with Penal Code section 13509.6(h), the following general guidelines shall apply to the payment of per diem compensation or reimbursement for travel:

1. No per diem compensation or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board meetings. Attendance at gatherings, events, hearings, conferences, or meetings other than official Board meetings shall be approved in advance by the Board Chair. The Executive Director shall be notified of the event and approval shall be obtained from the Board Chair prior to the member's attendance.

2. "Day actually spent in the discharge of official duties" shall mean the time expended from the commencement of a Board meeting to the conclusion of that meeting.

   Where it is necessary for a Board member to leave early from a meeting, the Board Chair shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize compensation for per diem and reimbursement for travel-related expenses.

   For specified Board work, members will be compensated for actual time spent performing work authorized by the Board Chair. That work includes, but is not limited to, authorized attendance at gatherings, events, meetings, hearings or conferences, and committee work. Board members may receive per diem compensation for each day spent preparing for Board meetings. Members cannot claim per diem compensation for time spent traveling to and from a Board meeting.

Responsibility

All POSAAB members shall acknowledge and comply with the directives in this policy.

Subject Index and History

Subject Index: Expenses – Travel Policy

History: Originated: 12/14/2023

AGENDA ITEM REPORT

Title: REPORT ON OUTCOME OF CASE REVIEW FROM THE JUNE 12, 2024 COMMISSION MEETING

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY Chandler T. Knapp	**REVIEWED BY** Annemarie Del Mugnaio	
REPORT DATE 05/23/2024	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE: This report is presented for information only. No action is required.

BACKGROUND: This is a report of the outcome of cases heard at the Commission on Peace Officer Standards and Training Meeting held on June 12, 2024 in West Sacramento, CA.

ANALYSIS: At the June 12, 2024 Meeting, the Commission met to review recommendations made by the Peace Officer Standards Accountability Advisory Board (POSAAB) from its March 21, 2024 Meeting in West Sacramento, CA.

The Commission heard a total of five cases to include four new case recommendations as well as a final decision/status of settlement discussion in reference to Case POST2303691. Further details of the outcomes of individual cases are outlined hereafter.

Final Decision/Status of Settlement Discussions:

- *POST2303691 – James Kurtz Fillmore (POST ID: A37-Q67)*

At the March 07, 2024 Commission meeting in Los Angeles, CA, the Commission considered the Board's recommendation of revocation of James Kurtz Fillmore's certification. The Commission rejected the Board's recommendation and instead directed Division staff and the Legal Affairs Bureau personnel

to enter into stipulated settlement discussions with the subject officer and their counsel. At the Commission meeting on June 12, 2024 the Commission met in closed session to review and deliberate on the settlement terms agreed upon by the Subject Officer, their counsel, and the Division. Upon convening back into regular session, the specifics of the settlement terms were read into the record, a motion was made to accept the terms, the Commission voted to accept the terms with a 7/8 vote in favor and one abstention.

Case Review/Recommendations Made by the POSAAB:

- *POST2311496 – Cesar Hazel Diaz (POST ID: C68-U20)*

At the March 21, 2024, Board hearing, the Board recommended a suspension of the peace officer's certificate for a term of six months. The subject officer appeared in person at the June 12, 2024 Commission meeting and represented himself. Following the presentation o the case, the subject officer's statements, reviewing the Board's record recommendation, the Commission rejected the Board's recommendation and instead directed Division and Legal Affairs Bureau personnel to enter into stipulated settlement negotiations. If agreed upon, the terms will be presented before the Commission for final decision/settlement at the September 12, 2024, Commission Meeting in Pasadena, CA. At the September 12, 2024 Commission Meeting, The Commission voted in favor to accept the settlement terms in this matter.

- *POST2300809 – Dillon Fuston (POST ID: C71-S10)*

At the March 21, 2024 Board hearing, the Board recommended revocation of the peace officer's certificate. With the record before the Commission, after closed session deliberations, a motion was made to uphold the board's recommendation, a second was made, and the motion failed. No further action will be taken against the peace officers' certification at this time. The Commission felt the burden of clear and convincing evidence standard was not met by the Division with regard to the finding of dishonesty by the subject officer, citing the lack of evidence proving intentional deception in the subject officer's statements during the administrative investigation. Several written public comments were received including one from the subject officer's counsel.

- *POST2300204 – David Wesley Hubbard (POST ID: C15-B777)*

At the March 21, 2024 Board hearing, the Board voted to

recommend revocation of the peace officer's certificate. At the June 12, 2024 Commission meeting, the Commission voted unanimously in favor of the Board's recommendation. This matter now moves before an administrative law judge and the hearing date is pending. A written statement from the subject officer's counsel was provided to the Commission and made available publicly on the POST website.

- *POST2322012 – Ivan D. Sarabia-Medina (POST ID: C12-A96)*

At the March 21, 2024, Board hearing, the Board voted in favor of the Divisions recommendation to revoke the peace officer's certificate. Following the presentation at the June 12, 2024, Commission Meeting, the Commission voted in favor of the Board's recommendation and the matter is now moved for preparation of an accusation for the purposes of an administrative hearing. The subject officer and his counsel both appeared remotely and issued statements during the public comment period.

RECOMMENDATION: This report is presented for information only. No action is required.

ATTACHMENT(S):

POST2300809_Dillon Fuston_6-12-24 Fuston Order.pdf
POST2300204_ David Wesley Hubbard_6-12-24 Hubbard's Commission Order.pdf
POST2322012_Ivan D. Srabia-Medina_6-12-24 Sarabia-Medina Commission Order.pdf
POST2303691_Fillmore_Acusation_Settlement Terms.pdf
POST2311496_Diaz_Acusation_Settlement Terms.pdf

STATE OF CALIFORNIA
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

In Re: CERTIFICATION OF Dillon Fuston, **Respondent.**	**COMMISSION'S DETERMINATION ON BOARD RECOMMENDATION** Penal Code section 13510.85(a)(5)

The Peace Officer Standards Accountability Division (the Division) found reasonable grounds for the revocation of Respondent's peace officer certification in this matter. Respondent timely requested a review of the Division's findings. In accordance with Penal Code section 13510.85, the Peace Officer Standards Accountability Advisory Board (the Board) held a public hearing on March 21, 2024, and issued its decision recommending that Respondent's peace officer certification be revoked.

Under Penal Code section 13510.85, the Commission shall review all recommendations made by the Board. Accordingly, on June 12, 2024, the Commission held a public meeting to consider the Board's recommendation in this matter. The Commission hereby issues this determination on the Board's recommendation.

At the time of Respondent's request for review of the Division's determination, Respondent had been issued the following POST certification(s):

__ Proof of Eligibility
_x_ Basic
_x_ Intermediate
__ Advanced
__ Supervisory
__ Management
__ Executive

COMMISSION'S REVIEW OF THE RECORD

Having considered the Board's recommendations in this matter and the record in its entirety, the Commission has determined that:

__ The record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

X The record, in its entirety, does not support the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

COMMISSION'S DECISION

In light of the Commission's review of the record and the Board's recommendation in this case, the Commission hereby determines that the following action(s) must be taken against Respondent's certification:

__ Revocation of Certification

__ Suspension of Certification for the following period of time, not to exceed 3 years, per 11 CCR section 1213(b): _____.

X No further action.

REASONS FOR DIFFERENT DETERMINATION

__ (Where applicable) In accordance with Penal Code section 13510.85(a)(5), the Commission has reached a different determination than the Board's recommendation. The Commission's reasons for its determination are as follows:

The Commission did not believe that dishonesty was established by clear and convincing evidence.

COMMISSION'S INSTRUCTIONS

__ (Where applicable) In light of the Commission's determination requiring action to be taken as stated above, this matter shall be returned to the Division. Pursuant to Penal Code section 13510.85(a)(6), the Division is directed to initiate proceedings for a formal hearing to take action consistent with the Commission's determination in this matter.

Dated: 6/12/24

Chairperson or Designee
Commission on Peace Officer Standards and Training

STATE OF CALIFORNIA
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

In Re: CERTIFICATION OF David Wesley Hubbard, **Respondent.**	**COMMISSION'S DETERMINATION ON BOARD RECOMMENDATION** Penal Code section 13510.85(a)(5)

The Peace Officer Standards Accountability Division (the Division) found reasonable grounds for the revocation of Respondent's peace officer certification in this matter. Respondent timely requested a review of the Division's findings. In accordance with Penal Code section 13510.85, the Peace Officer Standards Accountability Advisory Board (the Board) held a public hearing on March 21, 2024, and issued its decision recommending that Respondent's peace officer certification be revoked.

Under Penal Code section 13510.85, the Commission shall review all recommendations made by the Board. Accordingly, on June 12, 2024, the Commission held a public meeting to consider the Board's recommendation in this matter. The Commission hereby issues this determination on the Board's recommendation.

At the time of Respondent's request for review of the Division's determination, Respondent had been issued the following POST certification(s):

__ Proof of Eligibility
x Basic
x Intermediate
x Advanced
x Supervisory
__ Management
__ Executive

COMMISSION'S REVIEW OF THE RECORD

Having considered the Board's recommendations in this matter and the record in its entirety, the Commission has determined that:

X The record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

__ The record, in its entirety, does not support the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

COMMISSION'S DECISION

In light of the Commission's review of the record and the Board's recommendation in this case, the Commission hereby determines that the following action(s) must be taken against Respondent's certification:

X Revocation of Certification

__ Suspension of Certification for the following period of time, not to exceed 3 years, per 11 CCR section 1213(b): _____.

__ No further action.

REASONS FOR DIFFERENT DETERMINATION

__ (Where applicable) In accordance with Penal Code section 13510.85(a)(5), the Commission has reached a different determination than the Board's recommendation. The Commission's reasons for its determination are as follows:

_____

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COMMISSION'S INSTRUCTIONS

X (Where applicable) In light of the Commission's determination requiring action to be taken as stated above, this matter shall be returned to the Division. Pursuant to Penal Code section 13510.85(a)(6), the Division is directed to initiate proceedings for a formal hearing to take action consistent with the Commission's determination in this matter.

Dated: 6/12/24

Chairperson or Designee
Commission on Peace Officer Standards and Training

STATE OF CALIFORNIA
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

In Re: CERTIFICATION OF Ivan Sarabia-Medina, **Respondent.**	**COMMISSION'S DETERMINATION ON BOARD RECOMMENDATION** Penal Code section 13510.85(a)(5)

The Peace Officer Standards Accountability Division (the Division) found reasonable grounds for the revocation of Respondent's peace officer certification in this matter. Respondent timely requested a review of the Division's findings. In accordance with Penal Code section 13510.85, the Peace Officer Standards Accountability Advisory Board (the Board) held a public hearing on March 21, 2024, and issued its decision recommending that Respondent's peace officer certification be revoked.

Under Penal Code section 13510.85, the Commission shall review all recommendations made by the Board. Accordingly, on June 12, 2024, the Commission held a public meeting to consider the Board's recommendation in this matter. The Commission hereby issues this determination on the Board's recommendation.

At the time of Respondent's request for review of the Division's determination, Respondent had been issued the following POST certification(s):

___ Proof of Eligibility
_x_ Basic
_x_ Intermediate
_x_ Advanced
_x_ Supervisory
___ Management
___ Executive

COMMISSION'S REVIEW OF THE RECORD

Having considered the Board's recommendations in this matter and the record in its entirety, the Commission has determined that:

X The record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

__ The record, in its entirety, does not support the Board's conclusion that serious misconduct has been established by clear and convincing evidence.

COMMISSION'S DECISION

In light of the Commission's review of the record and the Board's recommendation in this case, the Commission hereby determines that the following action(s) must be taken against Respondent's certification:

X Revocation of Certification

__ Suspension of Certification for the following period of time, not to exceed 3 years, per 11 CCR section 1213(b): _____.

__ No further action.

REASONS FOR DIFFERENT DETERMINATION

__ (Where applicable) In accordance with Penal Code section 13510.85(a)(5), the Commission has reached a different determination than the Board's recommendation. The Commission's reasons for its determination are as follows:

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COMMISSION'S INSTRUCTIONS

X (Where applicable) In light of the Commission's determination requiring action to be taken as stated above, this matter shall be returned to the Division. Pursuant to Penal Code section 13510.85(a)(6), the Division is directed to initiate proceedings for a formal hearing to take action consistent with the Commission's determination in this matter.

Dated: 6/12/24

Chairperson or Designee
Commission on Peace Officer Standards and Training

ROB BONTA
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Senior Assistant Attorney General
DAVID E. BRICE
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Attorneys for Complainant

BEFORE THE
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JAMES KURTZ FILLMORE** **Basic Certificate No. 120395** **Intermediate Certificate No. 87606** **Advanced Certificate No. 84859** Respondent.	Case No. 23-3691 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Manuel Alvarez, Jr. (Complainant) is the Executive Director of the California Commission on Peace Officer Standards and Training (Commission). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by David E. Brice, Supervising Deputy Attorney General.

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2. James Kurtz Fillmore (Respondent) is represented in this proceeding by attorney Leslie Wilcox, whose address is: Wilcox & Associates, P.C., 4014 Long Beach Blvd, Suite 200, Long Beach, CA 90807.

3. On or about February 3, 2005, the Commission issued Basic Certificate No. 120395 to Respondent.

4. On or about October 25, 2006, the Commission issued Intermediate Certificate No. 87606 to Respondent.

5. On or about May 10, 2010, the Commission issued Advanced Certificate No. 84859 to Respondent.

JURISDICTION

6. Accusation No. 23-3691 was filed before the Commission, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 30, 2024. Respondent timely filed his Notice of Defense contesting the Accusation.

7. A copy of Accusation No. 23-3691 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 23-3691. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

9. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

11. Respondent admits the truth of each and every charge and allegation in Accusation No. 23-3691.

12. Respondent agrees that his Basic Certificate, Intermediate Certificate, and Advanced Certificate are subject to discipline and he agrees to be bound by the Commission's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

13. This stipulation shall be subject to approval by the Commission. Respondent understands and agrees that counsel for Complainant and the staff of the Commission may communicate directly with the Commission regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Commission considers and acts upon it. If the Commission fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Commission shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Commission may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Basic Certificate No. 120395, Intermediate Certificate No. 87606, and Advanced Certificate No. 84859 issued to Respondent James Kurtz Fillmore are revoked. However, the revocations are stayed and Respondent is placed on probation for five (5) years on the following conditions.

IT IS FURTHER ORDERED that any new certification(s) issued while Respondent remains on probation shall also be placed on probation subject to the same terms and conditions applicable to Respondent's existing certification.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all alleged violations of law shall be reported by Respondent to the Commission in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, notwithstanding any provision of law, Respondent agrees that the Commission can receive notification of an arrest and/or conviction from any federal, state, and/or local agency.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Serious Misconduct: Respondent shall not engage in any acts of serious misconduct, as defined under Penal Code section 13510.8, subdivision (b), including but not limited to, any acts that involve substance abuse related incidents. Any acts of serious misconduct shall be deemed a

violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with Probation.** Respondent shall fully comply with the conditions of probation and cooperate with representatives of the Commission in its monitoring and investigation of the Respondent's compliance with probation. Respondent shall inform the Commission in writing within no more than 15 calendar days of any address change and shall at all times maintain an active, current certification status with the Commission, including during any period of suspension.

Upon successful completion of probation, Respondent's certification shall be fully restored.

3. **Proof of Completion.** Respondent shall provide the Commission with proof of completion and/or participation in all alcohol abuse treatment and counseling programs taken to date, as well as the results of any alcohol testing he has taken to date.

4. **Notice to Employers.** Respondent shall provide any current, future or potential law enforcement employer with the terms and conditions of this stipulation. Respondent understands and agrees that this stipulation, once adopted, will be a public document and will be subject to public release. Respondent further understands and agrees that the Commission shall have the right to provide any and all records showing compliance or lack of compliance with the terms of this stipulation to any current, past, future or potential law enforcement employer of Respondent, upon the employer's request.

5. **Violation of Probation.** If Respondent violates the conditions of his probation, the Commission, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's certification.

Following any violation of these probation terms, the Commission may, in its discretion, notify Respondent in writing that the Commission intends to lift the stay and revoke Respondent's certification after 35 days from the date of mailing of the notification letter. If Respondent disputes the Commission's determination that a violation of probation has occurred, Respondent shall have 35 calendar days from the date of mailing of the notification letter to file with the Commission a dispute to the action being taken on Respondent's certification, in which

the Respondent shall fully explain the factual and legal basis of his dispute to the asserted probation violation, and supply at that time any evidence supporting the dispute as to the probation violation. The Commission shall consider Respondent's argument and evidence before taking action on the Respondent's certification. If Respondent fails to respond, this action shall be placed, in accordance with the Bagley-Keene Act, on the consent calendar at the next regularly scheduled meeting of the Commission. Upon approval of the consent calendar by the Commission, the revocation order shall become final, and the file will be closed.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's certification or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's certification, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Commission.

6. **Certification Surrender.** During Respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his certification to the Commission under Penal Code section 13510.8, subdivision (f). Upon formal acceptance of the surrendered certification, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's certification shall be considered a disciplinary action and shall become a part of Respondent's certification history with the Commission.

7. **Withdrawal of Immediate Temporary Suspension.** The Commission shall withdraw the Immediate Temporary Suspension issued in this matter within 30 days of the Commission's adoption of this stipulation.

8. **Abstain from Alcohol and Submit to Tests and Samples.** Respondent shall abstain from the use of alcohol and, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Commission approves. The length of time and frequency will be up to 15 times per year on a random basis. Respondent is responsible for keeping the Commission informed of Respondent's current telephone number at all times and in the event Respondent's telephone number changes, Respondent shall update the Commission within 48

hours. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Commission, as directed. Any confirmed positive finding shall be reported immediately to the Commission by the program, Respondent shall be considered in violation of probation, and the Commission may, in its discretion, order additional testing or screening, over and above the time and frequency listed above.

If Respondent has a confirmed positive finding for alcohol and the Commission files a petition to revoke probation or an accusation, the Commission may suspend Respondent's Certification pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

This term shall not apply until Respondent secures appointment to a new peace officer position. Regardless of the effective date of this agreement, this term shall be tolled until Respondent is appointed to a peace officer position, after which this term shall be operative for five years, during which time Respondent will remain on probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Leslie Wilcox. I understand the stipulation and the effect it will have on my Basic Certificate, Intermediate Certificate, and Advanced Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Commission on Peace Officer Standards and Training.

DATED: 6/5/24

JAMES KURTZ FILLMORE
Respondent

I have read and fully discussed with Respondent James Kurtz Fillmore the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/5/24

LESLIE WILCOX
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Commission on Peace Officer Standards and Training.

DATED: 6/6/2024

Respectfully submitted,

ROB BONTA
Attorney General of California
CARL W. SONNE
Senior Assistant Attorney General

DAVID E. BRICE
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 23-3691

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Attorneys for Complainant

BEFORE THE
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JAMES KURTZ FILLMORE** **Basic Certificate No. 120395** **Intermediate Certificate No. 87606** **Advanced Certificate No. 84859** Respondent.	Case No. 23-3691 **ACCUSATION**

Complainant alleges:

PARTIES

1. Manuel Alvarez, Jr. (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the California Commission on Peace Officer Standards and Training (Commission).

2. On February 3, 2005, the Commission issued Basic Certificate Number 120395 to James Kurtz Fillmore (Respondent). On October 25, 2006, the Commission issued Intermediate Certificate Number 87606 to Respondent. On May 10, 2010, the Commission issued Advanced Certificate Number 84859 to Respondent (collectively "Certification"). The Certification was in full force and effect at all relevant times to the charges brought herein. However, on April 10, 2024, Complainant ordered the immediate temporary suspension of Respondent's Certification

under Penal Code section 13510.8, subdivision (d), because, following Respondent's termination for cause from employment as a peace officer due to serious misconduct, Complainant determined that the temporary suspension was in the best interest of the health, safety, and welfare of the public.

JURISDICTION

3. This Accusation is brought before the Commission under the authority of the following laws. All section references are to the Penal Code (Code) unless otherwise indicated.

4. Code section 830 states:

> Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer. The restriction of peace officer functions of any public officer or employee shall not affect his or her status for purposes of retirement.

5. Code section 830.1, subdivision (a), states that "a police officer, employed in that capacity and appointed by the chief of police ... of a city ... is a peace officer...."

6. Code section 13510.1 states:

> (a) The commission shall establish a certification program for peace officers described in Section 830.1, 830.2 with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 830.33, or any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program. A certificate or proof of eligibility issued pursuant to this section shall be considered the property of the commission.
>
> (b) Basic, intermediate, advanced, supervisory, management, and executive certificates shall be established for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officer members of city police departments, county sheriffs' departments, districts, university and state university and college departments, or by the California Highway Patrol.
>
> ...
>
> (e) The commission shall assign each person who applies for or receives certification a unique identifier that shall be used to track certification status from application for certification through that person's career as a peace officer.
>
> (f) Notwithstanding any other provision of law, the commission shall have the authority to suspend, revoke, or cancel any certification pursuant to this chapter. This authority extends to any certificate or proof of eligibility issued by the commission including, without limitation, any certificate or proof of eligibility that is invalid, inactive, expired, or canceled.

. . .

(i) As used in this chapter, "certification" means any and all valid and unexpired certificates issued pursuant to subdivision (b), including basic, intermediate, advanced, supervisory, management, and executive certificates or any proof of eligibility issued by the commission pursuant to this section.

7. Code section 13510.85, subdivisions (a) and (b), state:

(a)(1) When, upon the completion of a serious misconduct investigation conducted pursuant to subdivision (c) of Section 13510.8, the division finds reasonable grounds for the denial, revocation, or suspension of a peace officer's certification, it shall take the appropriate steps to promptly notify the peace officer involved, in writing, of its determination and reasons therefore, and shall provide the peace officer with a detailed explanation of the decertification procedure and the peace officer's rights to contest and appeal.

(2) Upon notification, the peace officer may, within 30 days, file a request for a review of the determination by the board and commission. If the peace officer does not file a request for review within 30 days, the peace officer's certification shall be suspended or revoked, consistent with the division's determination, without further proceedings. If the peace officer files a timely review, the board shall schedule the case for hearing.

(3) The board shall meet as required to conduct public hearings, but no fewer than four times per year.

(4) At each public hearing, the board shall review the findings of investigations presented by the division pursuant to paragraph (1) and shall make a recommendation on what action should be taken on the certification of the peace officer involved. The board shall only recommend revocation if the factual basis for revocation is established by clear and convincing evidence. If the board determines that the facts and circumstances revealed by the investigation warrant a sanction other than revocation, it may recommend that a peace officer's certification be suspended for a period of time. The board shall issue a written decision explaining its reasons for decertification or suspension.

(5) The commission shall review all recommendations made by the board. The commission's decision to adopt a recommendation by the board to seek revocation shall require a two-thirds vote of commissioners present and shall be based on whether the record, in its entirety, supports the board's conclusion that serious misconduct has been established by clear and convincing evidence. In any case in which the commission reaches a different determination than the board's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing.

(6) The commission shall return any determination requiring action to be taken against an individual's certification to the division, which shall initiate proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), which shall be subject to judicial review as set forth in that act.

(b) Notwithstanding Section 832.7, the hearings of the board and the review by the commission under this section, administrative adjudications held pursuant to

paragraph (6) of subdivision (a), and any records introduced during those proceedings, shall be public. These public records may, in the discretion of the division, be redacted for the reasons set forth in paragraphs (6) and (7) of subdivision (b) of Section 832.7. This subdivision does not preclude the board or the commission, or both, from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken.

8. On October 13, 2023, pursuant to its authority under Code section 13510.8, subdivision (c), the Peace Officer Standards Accountability Division found reasonable grounds for a disciplinary action against Respondent's Certification. Respondent was properly notified and timely requested a review of the determination under Code section 13510.85, subdivision (a)(2). On December 14, 2023, pursuant to its authority under Code section 13510.85, subdivision (a)(4), the Peace Officer Standards Accountability Advisory Board (Board) determined that clear and convincing evidence existed for a disciplinary action against Respondent. On March 7, 2024, pursuant to its authority under Code section 13510.85, subdivision (a)(5), the Commission directed that counsel for POST explore settlement and report back to the Commission at their next meeting. Pursuant to Government Code section 11415.60, subdivision (b), this Accusation is filed because, in a proceeding to discipline an occupational license, a settlement may not be made before the issuance of the agency pleading. Complainant explicitly reserves all rights to amend this accusation under Government Code section 11507, should a settlement not be reached or adopted by the Commission.

STATUTORY PROVISIONS

9. Code section 13510.8 states:

(a) (1) A certified peace officer shall have their certification revoked if the person is or has become ineligible to hold office as a peace officer pursuant to Section 1029 of the Government Code.

(2) A peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct as described in subdivision (b).

(b) By January 1, 2023, the commission shall adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. This definition shall include all of the following:

. . .

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission.

. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 11, section 1205, states:

(a) Serious Misconduct is:

. . .

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the Commission.

. . .

11. California Code of Regulations, title 11, section 1212 states:

(a) The Commission shall have the authority to suspend, revoke, or cancel any certification issued pursuant to Chapter 1 of Title 4 of Part 4 of the Penal Code.

(b) At the hearing, conducted by the Commission, to review a recommendation made by the Peace Officer Standards Accountability Advisory Board (the "board"):

(1) The Commission's decision to adopt a recommendation by the board to seek revocation shall require a two-thirds vote of Commissioners present.

(2) The decision shall be based on whether the record, in its entirety, supports the board's conclusion that serious misconduct has been established by clear and convincing evidence.

(3) The Commission may conduct deliberations in closed session.

(4) In any case which the Commission reaches a different determination than the board's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing. A copy of the written decision shall be provided to:

(A) The board,

(B) The Peace Officer Standards Accountability Division (the "division"), and

(C) The involved peace officer or designated representative.

(c) The Commission shall return any determination requiring action to be taken against an individual' s certification to the division, which shall initiate proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act.

(1) After the hearing, the Commission will receive the proposed decision from the administrative law judge.

(2) The proposed decision shall be reviewed by the Commission in accordance with Government Code Section 11517(c)(2).

(3) The Commission's decision shall be considered final 30 days after the date of service of the decision upon the involved peace officer or their legal representative. A copy of the written decision shall be provided to:

(A) The board,

(B) The division,

(C) The involved peace officer or designated representative, and

(D) The head of the agency that employs or employed the involved peace officer.

(d) The commission shall publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation on the POST website.

(e) The commission shall notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation.

12. California Code of Regulations, title 11, section 1213 states:

(a) In considering whether to take action against a peace officer's certification, and in considering whether a revocation or suspension is appropriate in light of the facts of the particular case, the Commission shall consider any of the following factors:

(1) The nature and severity of the act or omission.

(2) The circumstances surrounding the conduct and the extent to which the act or omission caused any actual or potential harm to or impact upon the victim, the public, other peace officers, the employing agency, or the law enforcement profession.

(3) Whether the involved peace officer is currently employed as a peace officer.

(4) Whether the alleged conduct was committed under the color of authority or while the peace officer was acting in the capacity of a peace officer.

(5) The peace officer's prior conduct, discipline and service record, and any prior instances of misconduct.

(6) The proximity or remoteness in time since the conduct occurred.

(7) Any mitigating or aggravating factors and/or evidence of rehabilitation.

(8) The degree of accountability and cooperation with the investigation evidenced by the peace officer.

(9) The extent to which discipline, or forbearance from discipline, would impact the best interests of the public, the public service, the employing agency, and/or the law enforcement profession.

(10) The motives of the peace officer that resulted in the conduct.

(11) Consistency of the penalty with those imposed upon other peace officers for the same or similar offense.

(12) The clarity with which the peace officer was on notice of any rules that were violated in committing the offense.

(13) The extent to which the act or omission was done intentionally, willfully, or maliciously.

(14) The likelihood of recurrence.

(15) Any other aggravating or mitigating factors relevant to the Commission's determination.

(b) A suspension shall not exceed three years.

(c) A peace officer whose certification has been suspended may not be assigned duties which include the exercise of peace officer powers.

FACTUAL ALLEGATIONS

13. Beginning on or about July 28, 2003, Respondent was employed as a full-time Police Officer with the Los Angeles Police Department (LAPD). On or about June 15, 2014, Respondent was promoted to the rank of Detective with the LAPD.

14. On or about September 29, 2016, in the criminal proceeding entitled *People of the State of California vs. James Kurtz Fillmore* (Los Angeles County Super. Ct., Case No. 6SC01398), Respondent was convicted by the court on his plea of guilty to violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08% or higher), a misdemeanor. Respondent stipulated to a BAC of 0.12%. Respondent was placed on probation with imposition of sentence suspended for three years on terms and conditions including: serve two days in jail, two days credit time served, 30 hours of community service, complete a six-month alcohol education program, and pay fines, fees, and restitution. The circumstances were that on or about February 27, 2016, Respondent's vehicle was stopped by a Los Angeles County Sheriff's deputy after making a left hand turn on a red light without stopping in Santa Clarita. The deputy observed a strong odor of alcoholic beverage emitting from Respondent and that Respondent's eyes were bloodshot and watery and his speech was slurred. Respondent admitted to drinking from an open container of beer in the vehicle. The deputy

conducted field sobriety tests that showed signs of impairment.

15. On or about April 19, 2023, in the criminal proceeding entitled *People of the State of California vs. James Fillmore* (Los Angeles County Super. Ct., Case No. 28C01493-01), Respondent was convicted by the court on his plea of no contest to violating Vehicle Code section 23152, subdivision (b) (driving with blood alcohol content (BAC) of 0.08% or higher), a misdemeanor. Respondent stipulated to a BAC of 0.18%. Respondent was placed on probation with imposition of sentence suspended for 60 months on terms and conditions including: serve 15 days in jail, complete an 18-month alcohol education program, and pay fines, fees, and restitution. The circumstances were that on or about April 30, 2022, a Los Angeles County Sheriff's deputy responded to a report of a three-vehicle traffic collision in Santa Clarita. The deputy located Respondent trapped inside one of the vehicles. Respondent was transported to the hospital where he was interviewed by the deputy. Respondent told the deputy that he had sustained a fractured wrist in the accident. Respondent admitted to the deputy that he had been drinking vodka and driving at a high rate of speed. The registered owner of Respondent's vehicle was listed as the City of Los Angeles.

CAUSE FOR DISCIPLINE

(Serious Misconduct – Acts that Violate the Law)

16. Respondent has subjected his Certification to disciplinary action on the grounds of serious misconduct under Code section 13510.8, subdivision (b)(6), and section 1205, subsection (a)(6), of title 11 of the California Code of Regulations, because he committed acts that violate the law and were sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as alleged above in paragraphs 13-15 and as follows:

17. Vehicle Code section 23152, subdivision (b) makes it unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. Respondent's conduct repeatedly violated this section of the Vehicle Code, violated the trust placed in him as a police officer and detective, and was inconsistent with the obligation of a peace officer to uphold the law and respect the rights of members of the public.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Commission issue a decision revoking the Basic, Intermediate and Advanced Certificates issued to Respondent James Kurtz Fillmore, or taking other appropriate disciplinary action according to evidence.

DATED: 06/04/2024

MANUEL ALVAREZ, JR.
Executive Director
Commission on Peace Officer Standards and Training
State of California
Complainant

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BEFORE THE
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JAMES KURTZ FILLMORE** **Basic Certificate No. 120395** **Intermediate Certificate No. 87606** **Advanced Certificate No. 84859** Respondent.	Case No. 23-3691

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Commission on Peace Officer Standards and Training as its Decision in this matter.

This Decision shall become effective on 07/12/2024.

It is so ORDERED 06/12/2024.

FOR THE COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING
STATE OF CALIFORNIA

ROB BONTA
Attorney General of California
CARL W. SONNE
Senior Assistant Attorney General
DAVID E. BRICE
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E-mail: David.Brice@doj.ca.gov
Attorneys for Complainant

BEFORE THE
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CESAR HAZEL DIAZ** **Basic Certificate No. 194077** **Intermediate Certificate No. 149616** Respondent.	Case No. 23-11496 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Manuel Alvarez, Jr. (Complainant) is the Executive Director of the California Commission on Peace Officer Standards and Training (Commission). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by David E. Brice, Supervising Deputy Attorney General.

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2. Cesar Hazel Diaz (Respondent) has chosen not to exercise his right to be represented by counsel and is representing himself in this matter.

3. On or about March 6, 2019, the Commission issued Basic Certificate Number 194077 to Respondent.

4. On February 28, 2022, the Commission issued Intermediate Certificate Number 149616 to Respondent.

JURISDICTION

5. Accusation No. 23-11496 was filed before the Commission, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 15, 2024. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 23-11496 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read and understands the charges and allegations in Accusation No. 23-11496. Respondent has also carefully read and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; the right to be represented by counsel; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 23-11496.

11. Respondent agrees that his Basic Certificate and Intermediate Certificate are subject to discipline and he agrees to be bound by the Commission's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Commission. Respondent understands and agrees that counsel for Complainant and the staff of the Commission may communicate directly with the Commission regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Commission considers and acts upon it. If the Commission fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Commission shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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15. In consideration of the foregoing admissions and stipulations, the parties agree that the Commission may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Basic Certificate No. 194077 and Intermediate Certificate No. 149616 issued to Respondent Cesar Hazel Diaz are revoked. However, the revocations are stayed and Respondent is placed on probation for five (5) years on the following conditions.

IT IS FURTHER ORDERED that any new certification(s) issued while Respondent remains on probation shall also be placed on probation subject to the same terms and conditions applicable to Respondent's existing certification.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all alleged violations of law and any arrests shall be reported by Respondent to the Commission in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, notwithstanding any provision of law, Respondent agrees that the Commission can receive notification of an arrest and/or conviction from any federal, state, and/or local agency.

2. **Criminal Court Orders:** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

3. **Serious Misconduct:** Respondent shall not engage in any acts of serious misconduct, as defined under Penal Code section 13510.8, subdivision (b), including but not limited to, any acts that involve substance abuse related incidents. Any acts of serious misconduct shall be deemed a violation of these probation conditions, and may result in the filing

of an accusation and/or petition to revoke probation.

4. **Comply with Probation.** Respondent shall fully comply with the conditions of probation and cooperate with representatives of the Commission in its monitoring and investigation of the Respondent's compliance with probation.

Respondent will at all times comply with California Code of Regulations, title 11, section 1215, and maintain a physical address of record with the Commission for three (3) years after separation of service from peace officer employment in California. In addition, Respondent will ensure that the Commission has his current home address and preferred method of contact (i.e., phone number, email address) during the period of probation. This information will be maintained confidentially in accordance with the Information Practices Act, Civil Code section 1798 et seq. and California Penal Code section 832.7.

Upon successful completion of probation, Respondent's certification shall be fully restored.

5. **Proof of Completion.** Respondent shall provide the Commission with proof of completion and/or participation in all alcohol abuse treatment and counseling programs taken to date, as well as the results of any alcohol testing he has taken to date.

6. **Notice to Employers.** Respondent shall provide any current, future or potential law enforcement employer with the terms and conditions of this stipulation. Respondent understands and agrees that this stipulation, once adopted, will be a public document and will be subject to public release. Respondent further understands and agrees that the Commission shall have the right to provide any and all records showing compliance or lack of compliance with the terms of this stipulation to any current, past, future or potential law enforcement employer of Respondent, upon the employer's request.

7. **Violation of Probation.** If Respondent violates the conditions of his probation, the Commission, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's certification.

Following any violation of these probation terms, the Commission may, in its discretion, notify Respondent in writing that the Commission intends to lift the stay and revoke Respondent's certification after 35 days from the date of mailing of the notification letter. If

Respondent disputes the Commission's determination that a violation of probation has occurred, Respondent shall have 35 calendar days from the date of mailing of the notification letter to file with the Commission a dispute to the action being taken on Respondent's certification, in which the Respondent shall fully explain the factual and legal basis of his dispute to the asserted probation violation, and supply at that time any evidence supporting the dispute as to the probation violation. The Commission shall consider Respondent's argument and evidence before taking action on the Respondent's certification. If Respondent fails to respond, this action shall be placed, in accordance with the Bagley-Keene Act, on the consent calendar at the next regularly scheduled meeting of the Commission. Upon approval of the consent calendar by the Commission, the revocation order shall become final, and the file will be closed.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's certification or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's certification, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Commission.

8. **Certification Surrender.** During Respondent's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his certification to the Commission under Penal Code section 13510.8, subdivision (f). Upon formal acceptance of the surrendered certification, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's certification shall be considered a disciplinary action and shall become a part of Respondent's certification history with the Commission.

9. **Abstain from Alcohol and Submit to Tests and Samples.** Respondent shall abstain from the use of alcohol and, at his expense, shall participate in a random, biological fluid testing program which the Commission approves. The length of time and frequency will be up to 15 times per year on a random basis. Respondent is responsible for keeping the Commission informed of Respondent's current telephone number at all times and in the event Respondent's telephone number changes, Respondent shall update the Commission within 48 hours.

Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Commission, as directed. Any confirmed positive finding shall be reported immediately to the Commission by the program, Respondent shall be considered in violation of probation, and the Commission may, in its discretion, order additional testing or screening, over and above the time and frequency listed above.

If Respondent has a confirmed positive finding for alcohol and the Commission files a petition to revoke probation or an accusation, the Commission may suspend Respondent's Certification pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

This term shall not apply until Respondent secures appointment to a new peace officer position in California. Regardless of the effective date of this agreement, this term shall be tolled until Respondent is appointed to a peace officer position in California, after which this term shall be operative for five years, during which time Respondent will remain on probation.

10. **Tolling of Probation.** Periods of residency outside of California shall not apply toward a reduction of the period of probation. Respondent's probation is tolled if and when he resides outside of California and the period of probation shall be automatically extended for the same period he resides outside of California. Any period of tolling will not apply to the reduction of the probationary term and will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Criminal Court Orders; Comply With Probation; Violation of Probation; and Certification Surrender.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Basic Certificate and Intermediate Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Commission on Peace Officer Standards and Training.

DATED: 08.25.2024

CESAR HAZEL DIAZ
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Commission on Peace Officer Standards and Training.

DATED: 9/4/2024

Respectfully submitted,

ROB BONTA
Attorney General of California
CARL W. SONNE
Senior Assistant Attorney General

DAVID E. BRICE
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 23-11496

ROB BONTA
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Senior Assistant Attorney General
DAVID E. BRICE
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Attorneys for Complainant

BEFORE THE
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CESAR HAZEL DIAZ** **Basic Certificate No. 194077** **Intermediate Certificate No. 149616** Respondent.	Case No. 23-11496 **ACCUSATION**

Complainant alleges:

PARTIES

1. Manuel Alvarez, Jr. (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the California Commission on Peace Officer Standards and Training (Commission).

2. On March 6, 2019, the Commission issued Basic Certificate Number 194077 to Cesar Hazel Diaz (Respondent). On February 28, 2022, the Commission issued Intermediate Certificate Number 149616 to Respondent (collectively "Certification"). The Certification was in full force and effect at all relevant times to the charges brought herein.

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JURISDICTION

3. This Accusation is brought before the Commission under the authority of the following laws. All section references are to the Penal Code (Code) unless otherwise indicated.

4. Code section 830 states:

> Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer. The restriction of peace officer functions of any public officer or employee shall not affect his or her status for purposes of retirement.

5. Code section 830.32, subdivision (b), states that "Persons employed as members of a police department of a school district" are peace officers.

6. Code section 13510.1 states, in pertinent part:

> (a) The commission shall establish a certification program for peace officers described in Section 830.1, 830.2 with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 830.33, or any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program. A certificate or proof of eligibility issued pursuant to this section shall be considered the property of the commission.
>
> (b) Basic, intermediate, advanced, supervisory, management, and executive certificates shall be established for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officer members of city police departments, county sheriffs' departments, districts, university and state university and college departments, or by the California Highway Patrol.
>
> . . .
>
> (e) The commission shall assign each person who applies for or receives certification a unique identifier that shall be used to track certification status from application for certification through that person's career as a peace officer.
>
> (f) Notwithstanding any other provision of law, the commission shall have the authority to suspend, revoke, or cancel any certification pursuant to this chapter. This authority extends to any certificate or proof of eligibility issued by the commission including, without limitation, any certificate or proof of eligibility that is invalid, inactive, expired, or canceled.
>
> . . .
>
> (i) As used in this chapter, "certification" means any and all valid and unexpired certificates issued pursuant to subdivision (b), including basic, intermediate, advanced, supervisory, management, and executive certificates or any proof of eligibility issued by the commission pursuant to this section.

7. Code section 13510.85, subdivisions (a) and (b), state:

(a)(1) When, upon the completion of a serious misconduct investigation conducted pursuant to subdivision (c) of Section 13510.8, the division finds reasonable grounds for the denial, revocation, or suspension of a peace officer's certification, it shall take the appropriate steps to promptly notify the peace officer involved, in writing, of its determination and reasons therefore, and shall provide the peace officer with a detailed explanation of the decertification procedure and the peace officer's rights to contest and appeal.

(2) Upon notification, the peace officer may, within 30 days, file a request for a review of the determination by the board and commission. If the peace officer does not file a request for review within 30 days, the peace officer's certification shall be suspended or revoked, consistent with the division's determination, without further proceedings. If the peace officer files a timely review, the board shall schedule the case for hearing.

(3) The board shall meet as required to conduct public hearings, but no fewer than four times per year.

(4) At each public hearing, the board shall review the findings of investigations presented by the division pursuant to paragraph (1) and shall make a recommendation on what action should be taken on the certification of the peace officer involved. The board shall only recommend revocation if the factual basis for revocation is established by clear and convincing evidence. If the board determines that the facts and circumstances revealed by the investigation warrant a sanction other than revocation, it may recommend that a peace officer's certification be suspended for a period of time. The board shall issue a written decision explaining its reasons for decertification or suspension.

(5) The commission shall review all recommendations made by the board. The commission's decision to adopt a recommendation by the board to seek revocation shall require a two-thirds vote of commissioners present and shall be based on whether the record, in its entirety, supports the board's conclusion that serious misconduct has been established by clear and convincing evidence. In any case in which the commission reaches a different determination than the board's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing.

(6) The commission shall return any determination requiring action to be taken against an individual's certification to the division, which shall initiate proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), which shall be subject to judicial review as set forth in that act.

(b) Notwithstanding Section 832.7, the hearings of the board and the review by the commission under this section, administrative adjudications held pursuant to paragraph (6) of subdivision (a), and any records introduced during those proceedings, shall be public. These public records may, in the discretion of the division, be redacted for the reasons set forth in paragraphs (6) and (7) of subdivision (b) of Section 832.7. This subdivision does not preclude the board or the commission, or both, from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken.

8. On January 17, 2024, pursuant to its authority under Code section 13510.8, subdivision (c), the Peace Officer Standards Accountability Division found reasonable grounds for a disciplinary action against Respondent's Certification. Respondent was properly notified and timely requested a review of the determination under Code section 13510.85, subdivision (a)(2). On March 21, 2024, pursuant to its authority under Code section 13510.85, subdivision (a)(4), the Peace Officer Standards Accountability Advisory Board (Board) determined that clear and convincing evidence existed for a disciplinary action against Respondent. On June 12, 2024, pursuant to its authority under Code section 13510.85, subdivision (a)(5), the Commission directed that counsel for POST explore settlement and report back to the Commission at their next meeting. Pursuant to Government Code section 11415.60, subdivision (b), this Accusation is filed because, in a proceeding to discipline an occupational license, a settlement may not be made before the issuance of the agency pleading. Complainant explicitly reserves all rights to amend this accusation under Government Code section 11507, should a settlement not be reached or adopted by the Commission.

STATUTORY PROVISIONS

9. Code section 13510.8 states, in pertinent part:

> (a) (1) A certified peace officer shall have their certification revoked if the person is or has become ineligible to hold office as a peace officer pursuant to Section 1029 of the Government Code.
>
> (2) A peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct as described in subdivision (b).
>
> (3) The commission may cancel the certificate or proof of eligibility of a peace officer if the commission determines that there was fraud or misrepresentation made by an applicant at any time during the application process that resulted in the issuance of the certification.
>
> (b) By January 1, 2023, the commission shall adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. This definition shall include all of the following:
>
> . . .

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission.

. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 11, section 1205, states, in pertinent part:

(a) Serious Misconduct is:

. . .

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the Commission.

. . .

11. California Code of Regulations, title 11, section 1212 states:

(a) The Commission shall have the authority to suspend, revoke, or cancel any certification issued pursuant to Chapter 1 of Title 4 of Part 4 of the Penal Code.

(b) At the hearing, conducted by the Commission, to review a recommendation made by the Peace Officer Standards Accountability Advisory Board (the "board"):

(1) The Commission's decision to adopt a recommendation by the board to seek revocation shall require a two-thirds vote of Commissioners present.

(2) The decision shall be based on whether the record, in its entirety, supports the board's conclusion that serious misconduct has been established by clear and convincing evidence.

(3) The Commission may conduct deliberations in closed session.

(4) In any case which the Commission reaches a different determination than the board's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing. A copy of the written decision shall be provided to:

(A) The board,

(B) The Peace Officer Standards Accountability Division (the "division"), and

(C) The involved peace officer or designated representative.

(c) The Commission shall return any determination requiring action to be taken against an individual's certification to the division, which shall initiate proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act.

(1) After the hearing, the Commission will receive the proposed decision from the administrative law judge.

(2) The proposed decision shall be reviewed by the Commission in accordance with Government Code Section 11517(c)(2).

(3) The Commission's decision shall be considered final 30 days after the date of service of the decision upon the involved peace officer or their legal representative. A copy of the written decision shall be provided to:

(A) The board,

(B) The division,

(C) The involved peace officer or designated representative, and

(D) The head of the agency that employs or employed the involved peace officer.

(d) The commission shall publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation on the POST website.

(e) The commission shall notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation.

12. California Code of Regulations, title 11, section 1213 states:

(a) In considering whether to take action against a peace officer's certification, and in considering whether a revocation or suspension is appropriate in light of the facts of the particular case, the Commission shall consider any of the following factors:

(1) The nature and severity of the act or omission.

(2) The circumstances surrounding the conduct and the extent to which the act or omission caused any actual or potential harm to or impact upon the victim, the public, other peace officers, the employing agency, or the law enforcement profession.

(3) Whether the involved peace officer is currently employed as a peace officer.

(4) Whether the alleged conduct was committed under the color of authority or while the peace officer was acting in the capacity of a peace officer.

(5) The peace officer's prior conduct, discipline and service record, and any prior instances of misconduct.

(6) The proximity or remoteness in time since the conduct occurred.

(7) Any mitigating or aggravating factors and/or evidence of rehabilitation.

(8) The degree of accountability and cooperation with the investigation evidenced by the peace officer.

(9) The extent to which discipline, or forbearance from discipline, would impact the best interests of the public, the public service, the employing agency, and/or the law enforcement profession.

(10) The motives of the peace officer that resulted in the conduct.

(11) Consistency of the penalty with those imposed upon other peace officers for the same or similar offense.

(12) The clarity with which the peace officer was on notice of any rules that were violated in committing the offense.

(13) The extent to which the act or omission was done intentionally, willfully, or maliciously.

(14) The likelihood of recurrence.

(15) Any other aggravating or mitigating factors relevant to the Commission's determination.

(b) A suspension shall not exceed three years.

(c) A peace officer whose certification has been suspended may not be assigned duties which include the exercise of peace officer powers.

FACTUAL ALLEGATIONS

13. Beginning on or about February 16, 2018, Respondent was employed as a full-time Police Officer with the Los Angeles School District Police Department.

14. On or about October 12, 2022, in the criminal proceeding entitled *People of the State of California vs. Cesar Hazel Diaz, aka Cesar H. Diaz, Cesar Diaz* (Orange County Super. Ct., Case No. 20WM07704), Respondent was convicted by the court on his plea of guilty to violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol with one prior), and 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08% or more with one prior), a misdemeanor. Respondent stipulated to a BAC of 0.14%. The court stayed the sentence on the second count under Penal Code section 654. On the first count, Respondent was sentenced to serve 90 days in jail and placed on informal probation for five years with terms and conditions including: complete 18-month alcohol education program and pay fines, fees, and restitution. The circumstances were that on or about June 13, 2020, Respondent's vehicle was stopped by a police officer from the California Department of Parks and Recreation after the officer observed Respondent travelling at a high rate of speed, driving on the wrong side of the road adjacent to a parking lot, and crossing over solid double-yellow median lines. Respondent also had a loaded firearm in his waistband and several passengers in the vehicle.

15. On or about July 30, 2021, in the criminal proceeding entitled *People of the State of California vs. Cesar Hazel Diaz* (Los Angeles County Super. Ct., Case No. 0SC03424), Respondent was convicted by the court on his plea of nolo contendere to violating Vehicle Code section 23152, subdivision (b) (driving with blood alcohol content (BAC) of 0.08% or higher), a misdemeanor. Respondent stipulated to a BAC of 0.17%. Respondent was placed on probation with imposition of sentence suspended for 36 months on terms and conditions including: serve 15 days in jail, complete an 18-month alcohol education program, installation of interlock device and pay fines, fees, and restitution. The circumstances were that on or about August 27, 2020, two Los Angeles County Sheriff's deputies in Santa Clarita observed a vehicle stop at the end of a parking lot for approximately 30 seconds before accelerating and swerving across four lanes of traffic to the number one lane. The vehicle then swerved across two lanes to the right turn lane without properly signaling. The deputies stopped the vehicle and made contact with the driver, identified as Respondent. One of the deputies detected the odor of alcohol emitting from Respondent's breath, and observed that Respondent's speech was slurred and his eyes were glassy. Respondent admitted to consuming two Coors Lights and White Claws before driving. The deputy explained Field Sobriety Tests, which Respondent performed poorly. Respondent's BAC was measured at 0.17% and 0.19%. The deputy recovered a loaded Sig Sauer handgun, registered to Respondent, from under the passenger seat. A passenger who was not a peace officer had been riding in the passenger seat.

CAUSE FOR DISCIPLINE

(Serious Misconduct – Acts that Violate the Law)

16. Respondent has subjected his Certification to disciplinary action on the grounds of serious misconduct under Code section 13510.8, subdivision (b)(6), and section 1205, subsection (a)(6), of title 11 of the California Code of Regulations, because he committed acts that violate the law and were sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as alleged above in paragraphs 13-15 and as follows:

///

17. Vehicle Code section 23152, subdivision (a) makes it unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle. Vehicle Code section 23152, subdivision (b) makes it unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. Respondent's conduct repeatedly violated this section of the Vehicle Code, violated the trust placed in him as a police officer, and was inconsistent with the obligation of a peace officer to uphold the law and respect the rights of members of the public.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Commission issue a decision revoking the Basic and Intermediate Certificates issued to Respondent Cesar Hazel Diaz, or taking other appropriate disciplinary action according to evidence.

DATED: 08/01/2024

MANUEL ALVAREZ, JR.
Executive Director
Commission on Peace Officer Standards and Training
State of California
Complainant

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BEFORE THE
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CESAR HAZEL DIAZ** **Basic Certificate No. 194077** **Intermediate Certificate No. 149616** Respondent.	Case No. 23-11496

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Commission on Peace Officer Standards and Training as its Decision in this matter.

This Decision shall become effective on 9-12-24.

It is so ORDERED 9-12-24.

Geoffrey Tong

FOR THE COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING
STATE OF CALIFORNIA

AGENDA ITEM REPORT

Title: REPORT ON DATA FOR SERIOUS MISCONDUCT REPORTING, INVESTIGATIONS, AND DISCIPLINARY ACTION OUTCOMES

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Intake and Disposition Bureau	
RESEARCHED BY Chelsea Wijaya		**REVIEWED BY**
REPORT DATE 09/27/2024	**APPROVED BY**	**DATE APPROVED**
PURPOSE		**FINANCIAL IMPACT** No

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

This report provides updates on the operations of the Peace Officer Standards Accountability Division, as well as statistical data and outcomes of serious misconduct cases received by POST and cases that have moved forward with disciplinary action.

This report is presented for information only. No action is required.

BACKGROUND:

On September 30, 2021, Governor Gavin Newsom signed Senate Bill 2, which established the Peace Officer Standards Accountability Division and outlined its primary responsibilities of reviewing cases of serious misconduct that could result in the revocation or suspension of a peace officer's certification, as well as presenting its findings and recommendations to the Peace Officer Standards Accountability Advisory Board and Commission on Peace Officer Standards and Training for their deliberation.

The process for handling serious misconduct cases has been implemented within the Division, which has has been receiving and reviewing cases of serious misconduct for over a year and a half. Pursuant to Penal Code section 13512, POST staff reports on the relevant statistics and outcomes related to cases of serious misconduct that will assist in the Board's evaluation of the Division's operative functions related to certification and decertification.

ANALYSIS: As the final provisions authorized under Senate Bill 2 took effect on January 1, 2023, POST staff reports out on the activities and relevant actions of the Peace Officer Standards Accountability Division, Peace Officer Standards Accountability Advisory Board, and Commission on Peace Officer Standards and Training.

RECOMMENDATION: This item is presented for informational purposes only. No action is required.

ATTACHMENT(S):
October_2024_Board_Meeting_-_POSAD_Stats_09.30.24.pdf

Peace Officer Standards Accountability Division

October 17, 2024

Disciplinary Action Statistics and Outcomes

Professional Conduct Bureau Statistics

AS OF 10/02/24

Reports/Allegations

- 29,531 – Total Agency Misconduct reports received (Approved)
  - 7,567 – 2024
  - 21,964 – 2023
    - 16,682 (56%) are “Retro” (Prior to 01/01/2023)
- 33,655 Reported Allegations
  - 17,954 unique Law Enforcement Officers
- 1,247 – Public complaint

Professional Conduct Bureau Statistics

AS OF 10/02/24

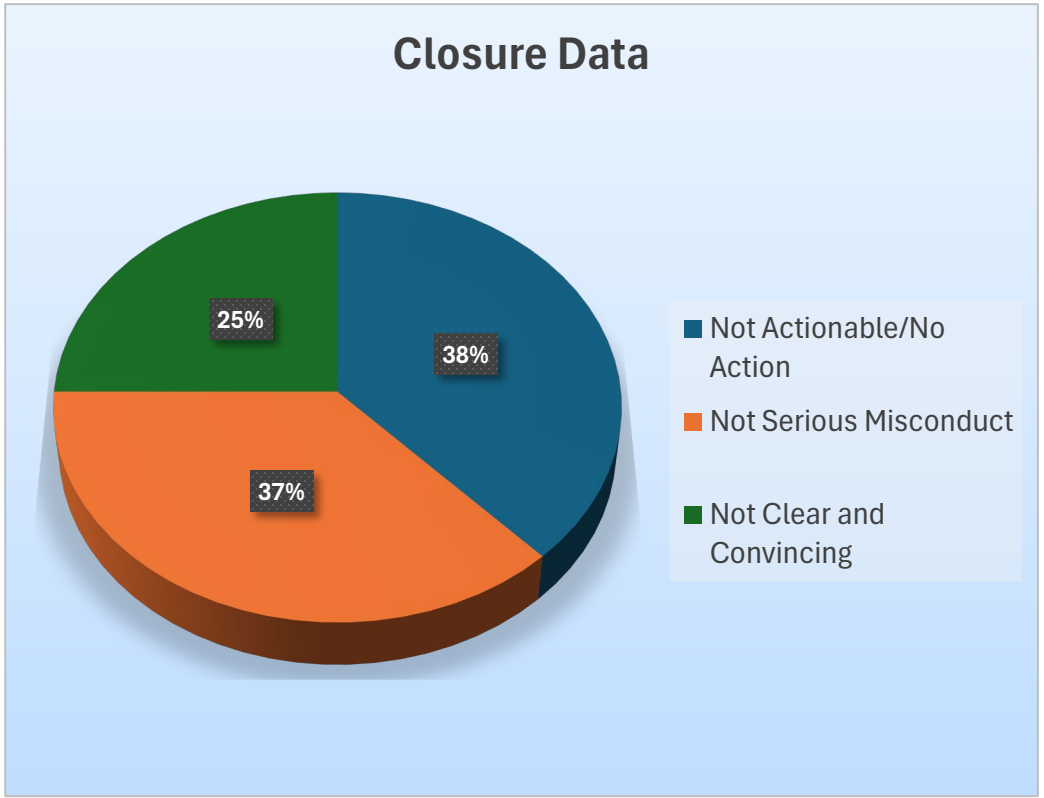
Cases

- 19,935 – Total Cases
  - 11,669 – Open Cases (59% of total cases)
    - 9,134 – Open w/POST (78% of open cases)
    - 2,535 – Open w/Agency (22% of open cases)
  - 8,266 – Closed Cases (41% of total cases)

Cases with Sustained Agency Findings

as of 10/02/24

Total number of cases closed by POST : **929**



Not Serious Misconduct:

347 (37%)

Not Clear and Convincing:

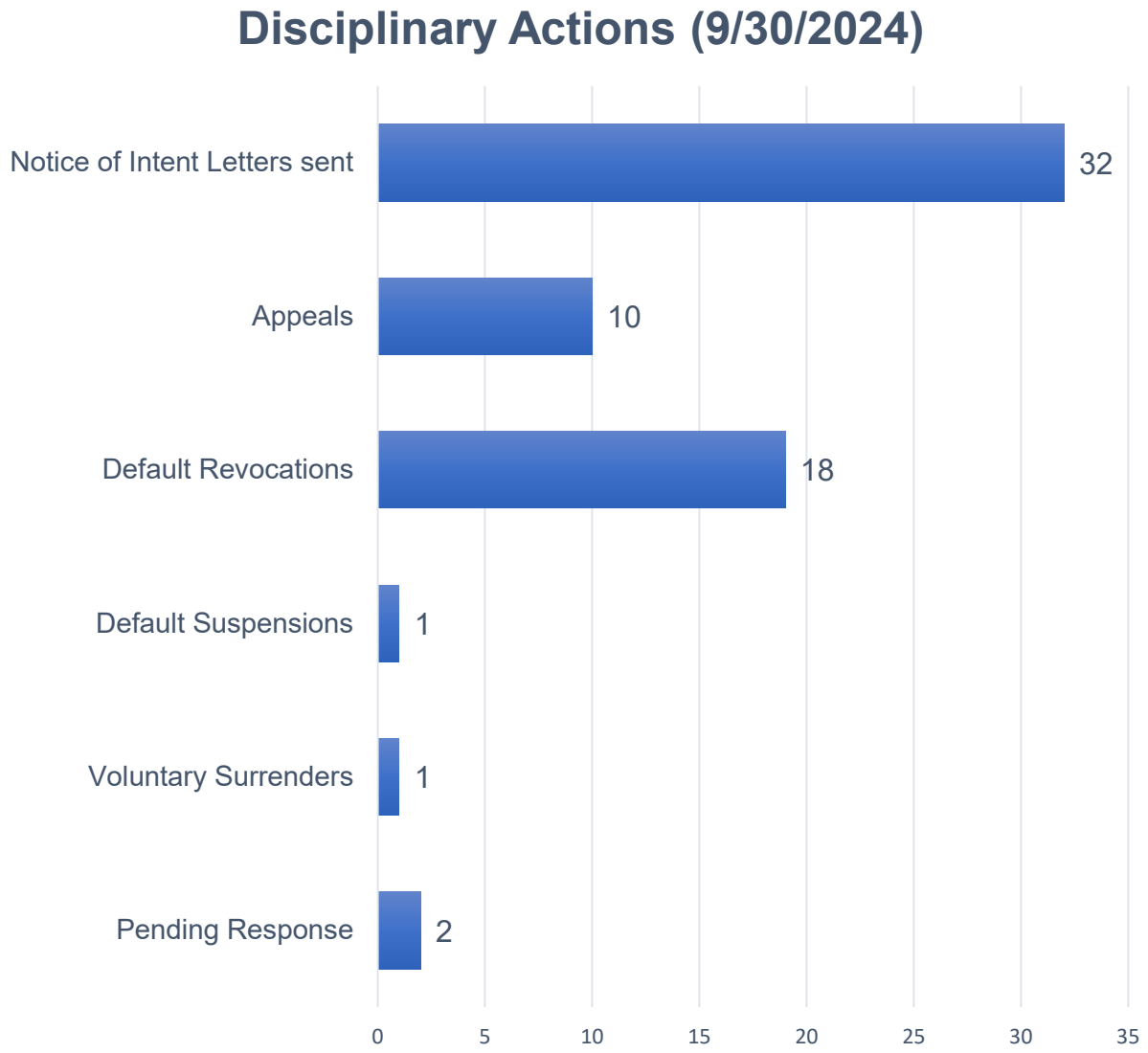
234 (25%)

Not Actionable/No Action:

348 (38%)

DISCIPLINARY ACTION STATISTICS (9/30/2024)

- Total Notice of Intent letters sent: 32
- Appeals: 10
- Default Actions: 19
  - Default Revocations: 18
  - Default Suspensions: 1
- Voluntary Surrenders: 1
- Pending Response: 2

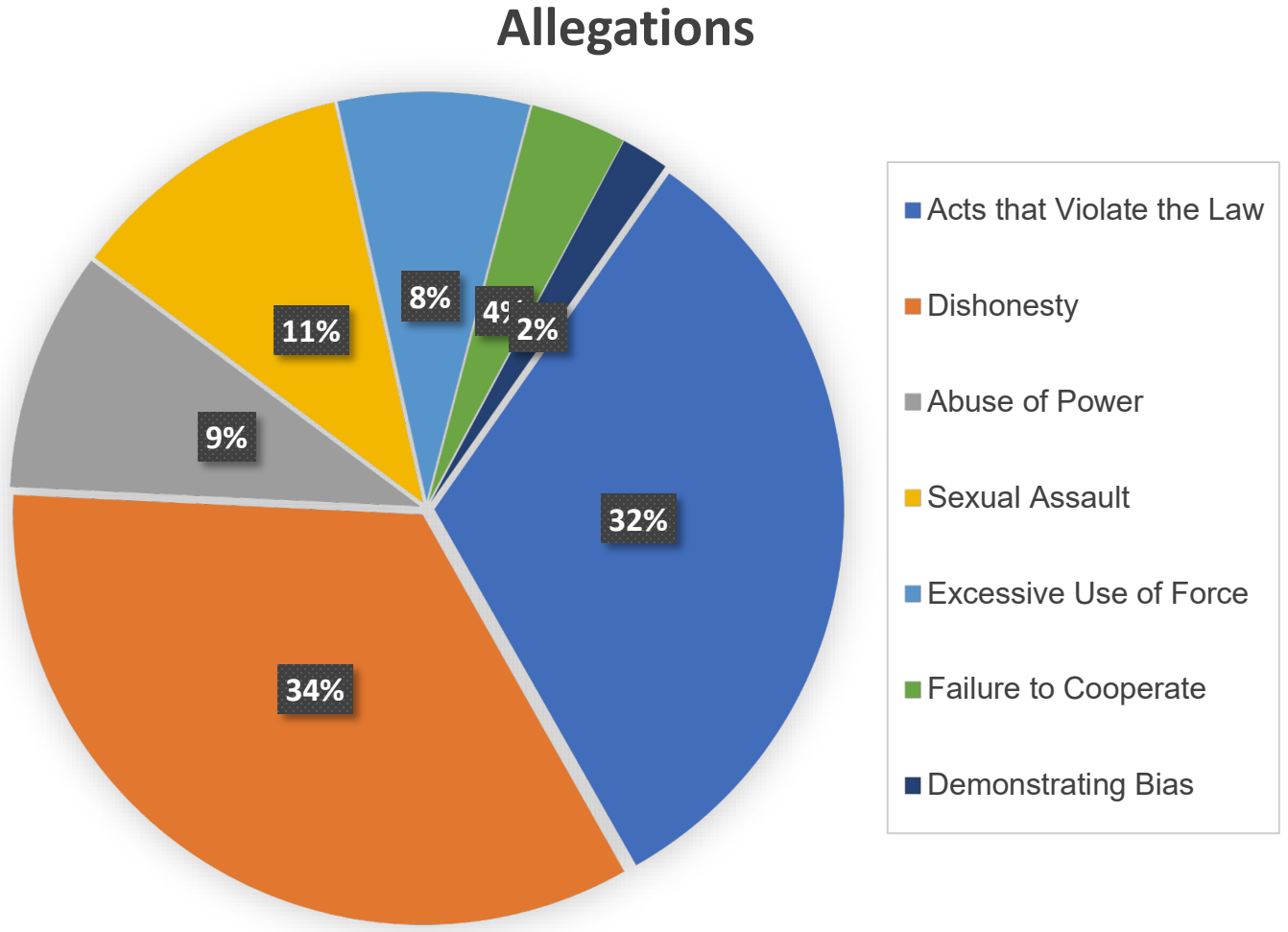


DISCIPLINARY CASE STATISTICS
(9/30/2024)

- Total Notice of Intent letters sent: 32
- Appeals: 10
- Default Actions: 19 (18 Revocations; 1 Suspension)
- Voluntary Surrenders: 1
- Pending Response: 2

Agency Discipline Imposed:
- Termination – 19
- Resigned – 12
- Demotion – 1

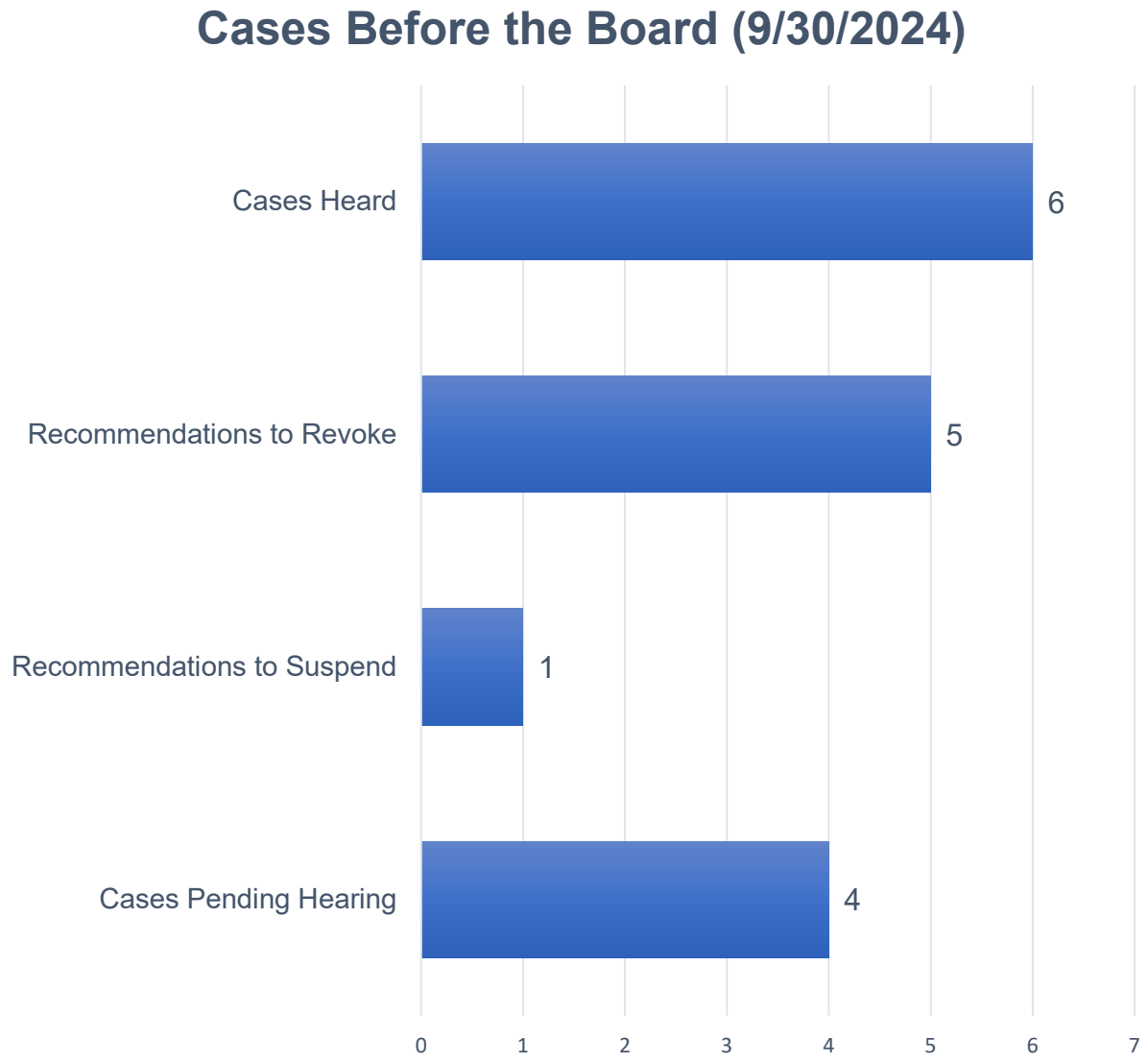
Misconduct Occurred:
- On Duty – 16
- Off Duty – 16



DECERTIFICATION CASES BEFORE THE BOARD (9/30/2024)

- Total Cases Heard Before the Board: 6
- Board Recommendations to Revoke: 5
- Board Recommendations to Suspend: 1
- Cases Pending Hearing: 4

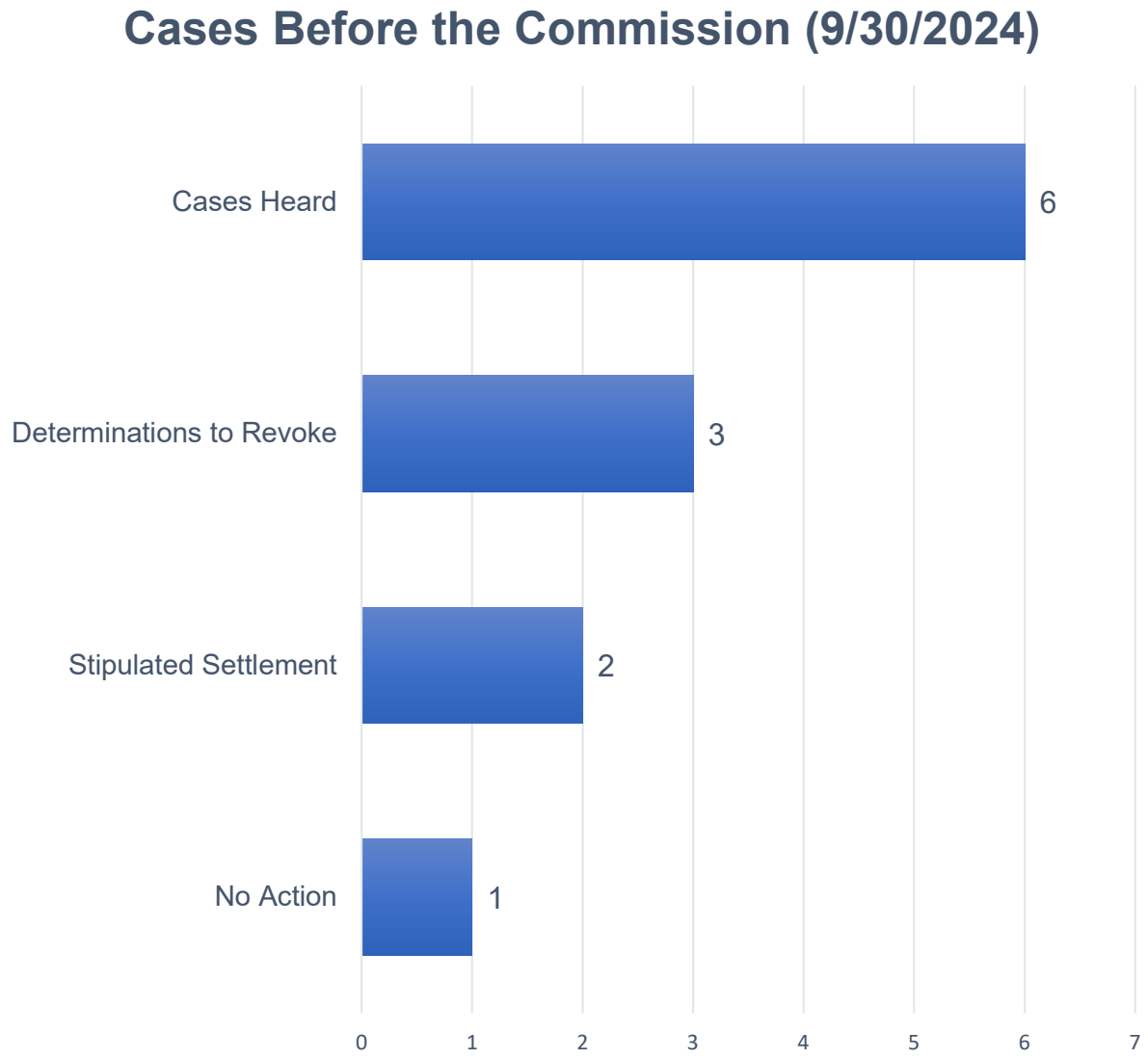
- Times Board has reached a different determination than the Division: 1 (Diaz)



DECERTIFICATION CASES BEFORE THE COMMISSION (9/30/2024)

- Total Cases Heard Before the Commission: 6
- Commission Determinations to Revoke: 3
- Commission Determinations to Enter Stipulated Settlement Agreements: 2
- Commission Determination to take No Action: 1

- Times Commission Reached Different Determination than Board's Recommendation: 3



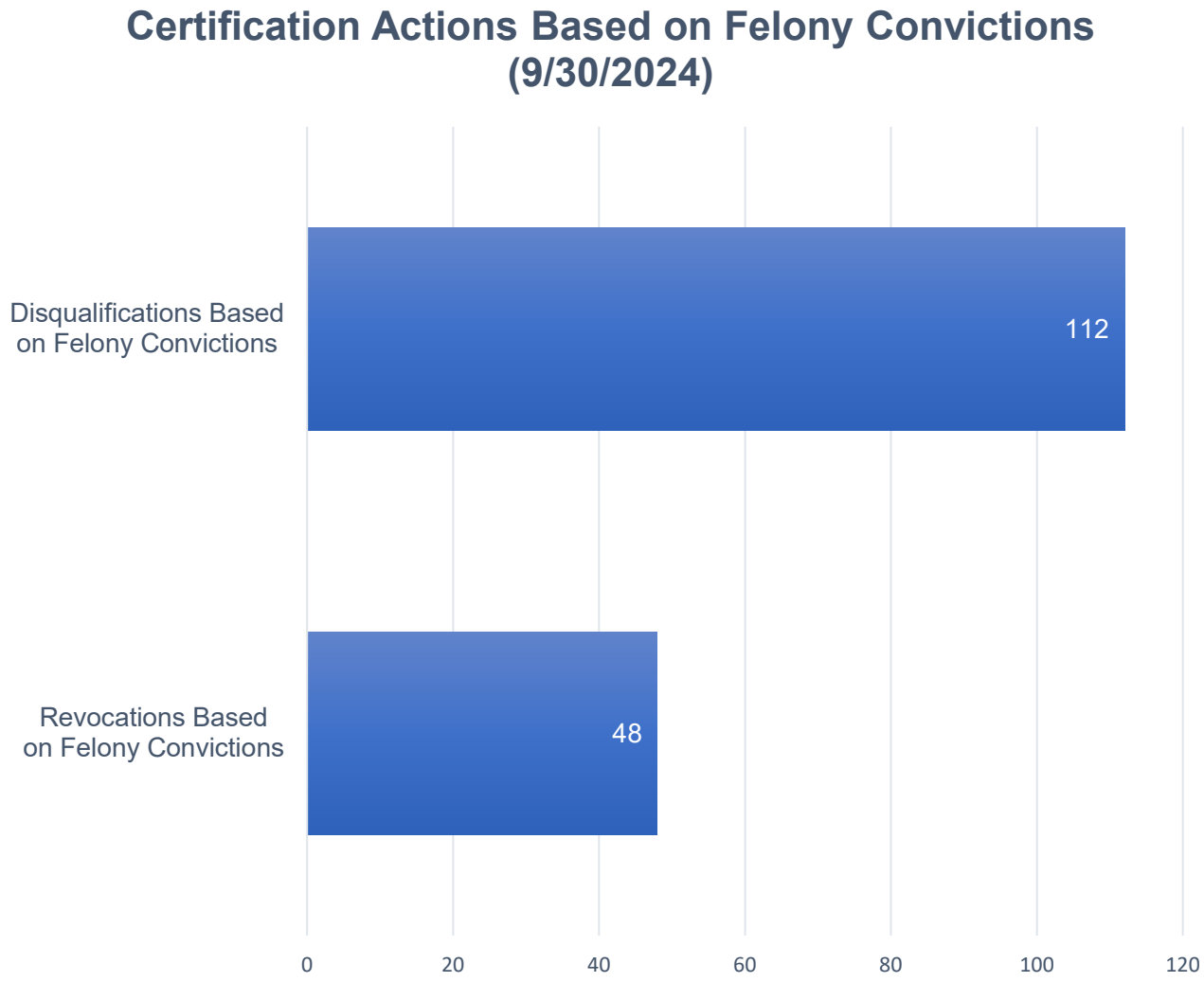
DISCIPLINARY DECISIONS AND OUTCOMES

- Times Board has reached a different determination than the Division: 1
- Times Commission has reached different determination than Board's Recommendation: 3

Subject Officer	Division Recommendation	Board Hearing Date and Recommendation	Commission Hearing Date and Determination	Case Status as of 9/30/24
Ramirez	Revoke	12/14/23 - Revoke	03/07/24 - Revoke	Default Revocation
Fillmore	Revoke	12/14/23 - Revoke	03/07/24 - Stipulated Settlement	Initiating Probationary Monitoring
Diaz	Revoke	03/21/24 - Suspend for Term of 6 Months	06/12/24 - Stipulated Settlement	Initiating Probationary Monitoring
Fuston	Revoke	03/21/24 - Revoke	06/12/24 - No Action	No Action
Hubbard	Revoke	03/21/24 - Revoke	06/12/24 - Revoke	Pending ALJ Hearing
Sarabia-Medina	Revoke	03/21/24 - Revoke	06/12/24 - Revoke	Pending ALJ Hearing

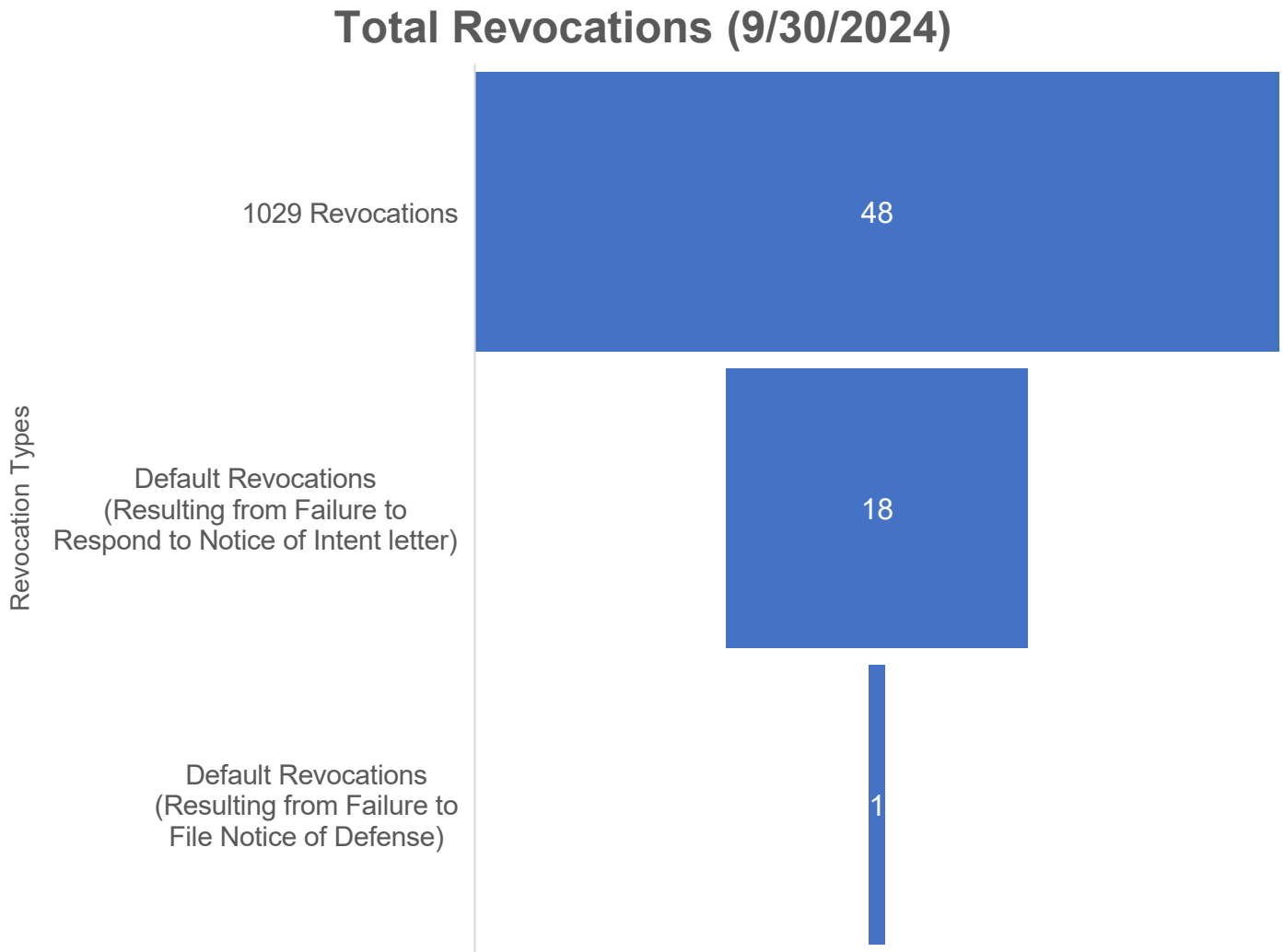
CERTIFICATION ACTIONS BASED ON FELONY CONVICTIONS
(9/30/2024)

- Disqualifications (Ineligibility) based on felony convictions: 112
- Revocations based on felony convictions: 48
- Total number of certification actions based on felony convictions: 160



TOTAL REVOCATIONS
(9/30/2024)

- Revocations based on felony convictions: 48
- Default Revocations (resulting from failure to respond to Notice of Intent letter): 18
- Default Revocations (resulting from failure to respond to Notice of Defense): 1
- Total number of revocations: 67



AGENDA ITEM REPORT

Title: POST2303451 - JAMES MUTUKU (POST ID: C25-A69)
LAST EMPLOYING AGENCY: RIVERSIDE POLICE DEPARTMENT

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Southern Bureau	
RESEARCHED BY David Peletta	**REVIEWED BY** Christine Ford	
REPORT DATE 09/25/2024	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

The Respondent began his employment with the Riverside Police Department on January 12, 2009, as a full-time peace officer. He was promoted to the rank of Police Sergeant on July 10, 2020. At the time of this incident, he was assigned as a patrol supervisor. The Respondent was terminated from the Riverside Police Department on July 12, 2023.

This position is a peace officer position as defined under California Penal Code §830.1(a) and is required to be certified pursuant to California Penal Code §13510.1(a).

The Internal Affairs interview stems from an incident where it is alleged that the Respondent created, printed, and posted flyers with a picture of a crossed-out rat and the words, “Rat Busters” written below that image and placed the “Rat Busters” flyers in a fellow peace officer's (work) mailbox and areas in the men’s locker room where the fellow peace officer frequented. It is alleged that the Respondent had a disagreement with the same fellow peace officer regarding the actions of Respondent's wife. Respondent repeatedly denied creating, printing, and posting the flyers during both the Internal Affairs

investigation and in a separate interview conducted by POST.

Audio Links:

- BR15_POST2303451_Mutuku_James_Redacted Attachment N
- BR11_POST2303451_Mutuku_James_Redacted Attachment J

Audio File Review (Closed Session Only):

- **BR5_POST2303451_Mutuku_James_Closed Session Review_Attachment D**

ANALYSIS:

The Division found that the clear and convincing evidence substantiated that Respondent violated California Penal Code §13510.8(b)(1), in that the Respondent was dishonest in his verbal statements during his two separate interviews with Internal Affairs investigators, and a third time during his interview with the Division.

RECOMMENDATION:

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):

BR1_POST2302451_Mutuku_James_ISF_2_ (1).pdf
BR2_POST2303451_Mutuku_James_Redacted_Attachment_A.pdf
BR3_POST2303451_Mutuku_James_Redacted_Attachment_B.pdf
BR6_POST2303451_Mutuku_James_Redacted_Attachment_E.png
BR4_POST2303451_Mutuku_James_Redacted_Attachment_C_.pdf
BR8_POST2303451_Mutuku_James_Attachment_G.png
BR7_POST2303451_Mutuku_James_Attachment_F.jpg
BR9_POST2303451_Mutuku_James_Attachment_H.jpeg
BR10_POST2303451_Mutuku_James_Redacted_Attachment_I.pdf
BR12_POST2303451_Mutuku_James_Redacted_Attachment_K.pdf
BR13_POST2303451_Mutuku_James_Redacted_Attachment_L.pdf
BR14_POST2303451_Mutuku_James_Redacted_Attachment_M.pdf
BR16_POST2303451_Mutuku_James_Attachment_O.pdf

INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: JAMES MUTUKU

POST ID NUMBER: C25-A69

EMPLOYING AGENCY: RIVERSIDE POLICE DEPARTMENT

POST CASE NUMBER: POST2303451

WRITTEN BY: LAW ENFORCEMENT CONSULTANT DAVE PELETTA

DATE: 6/3/2024

Contents

I. Executive Summary……..……..……...…3

II. Background Information……..……..……4

a. Identity of Respondent……..……..…….4

b. History with Employing Agency……..……...4

c. Prior Employment History……..……..……4

d. Peace Officer Certificate……..……..…4

e. The Present Allegations of Serious Misconduct …..……..5

III. Investigative Process……..……..……....6

IV. Factual Summary……..……..……6

V. Analysis and Findings

a. Does the Alleged Conduct Violate California Regulation 1205(a)(1) Dishonesty?.....19

VI. Supporting Evidence and Documentation……..……....23

VII. Findings……24

I. Executive Summary

The Peace Officer Standards and Accountability Division (hereafter “Division”) finds that Sergeant James Mutuku (hereafter “Respondent”) lied and provided misleading statements to Internal Affairs investigators when questioned about whether he placed threatening flyers directed at an officer he was having issues with at work.

Respondent was questioned by Internal Affairs investigators on two separate dates (January 19, 2023, and February 21, 2023). During the first interview, Respondent denied printing, placing, or even seeing the flyers. Respondent was confronted with the fact that he was seen entering the police station minutes prior to the flyer being saved on a computer and printed. Respondent continued to deny any knowledge or involvement. Respondent was asked if he heard who placed the flyers, Respondent changed his response from “no” to acknowledging he had heard rumors that people believed he had placed the flyers. The Respondent denied that his fingerprints would be located on a flyer.

One day after the initial interview, fingerprint examiners contacted internal affairs to advise they located the Respondent’s fingerprints on the flyer located in a vinyl frame. Respondent was interviewed a second time and maintained he did not print, put up, or place the flyer in the vinyl frame. The Respondent could not provide any explanation as to how or why his fingerprints were found on the flyer and was adamant that he never saw the flyer.

Respondent was terminated for being dishonest surrounding his answers during the internal affairs process.

II. Background

a. Identity of Respondent

At the time of the events at issue, the Respondent was employed as a Police Sergeant with the Riverside Police Department.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

The Respondent began his employment with the Riverside Police Department on January 12, 2009, as a full-time peace officer. He was promoted to the rank of Police Sergeant on July 10, 2020.

The Respondent has no prior allegations of serious misconduct on record with POST.

c. Prior Employment History

The Respondent does not have any additional law enforcement appointments in California.

d. Peace Officer Certification

The Respondent is assigned POST ID C25-A69. He received the following peace officer certificates from the Commission on Peace Officer Standards and Training (POST):[1]

- Basic (March 28, 2011)
- Intermediate (July 28, 2011)
- Advanced (September 14, 2015)
- Supervisory (July 28, 2022)

[1] (Attachment A) Respondent's POST profile

e. The Present Allegations of Serious Misconduct

1. On October 26, 2022, an internal complaint was initiated within the Riverside Police Department.

2. Following an internal affairs investigation, and two interviews with the Respondent, an allegation of dishonesty against the Respondent was sustained.

3. On October 26, 2023, the Riverside Police Department reported the allegations of serious misconduct against the Respondent to POST pursuant to California Penal Code Section 13510.9.

The Riverside Police Department sustained three violations against the Respondent:

330.3.5(z) Performance

Any on-duty or off-duty conduct which is contrary to good order, efficiency or morale, or which reflects unfavorably upon the Department or its members.

322.3.4 Retaliation

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

330.3.5(ad) Dishonesty

Giving false or misleading statements or misrepresenting or omitting material information in connection with any investigation or in the reporting of any department-related business.

An additional allegation of retaliation was also part of the Riverside Police Department's internal investigation. This was specific to the allegation that the

Respondent used his hand to simulate a handgun and motioned as if firing twice at the Complainant[2] in retaliation. This was not sustained.

III. Investigative Process

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of the Riverside Police Department's administrative investigation which included interviews with twenty-one witnesses and four subject officers.

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt."

This report is necessarily summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to that evidence that I believe establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

On October 26, 2022, an internal complaint was initiated within the Riverside Police Department, which concerned a number of allegations, including the allegations relevant to this report. An Internal Affairs investigation followed. The assigned Internal Affairs investigators conducted interviews of twenty-four personnel from the Riverside

[2] The name of the complaining party is not disclosed in this report because the complainant's identity is protected by Penal Code section 832.7, subdivision (b)(6)(B). Additionally, the Riverside Police Department investigated certain allegations concerning the complaining party's own conduct. These allegations are not subject to disclosure pursuant to Penal Code section 832.7. For this separate and independent reason, the name of the complaining party is withheld. (See Pen. Code § 832.7, subd. (b)(5).)

Police Department and prepared an 155-page investigative report, which detailed the investigators' findings.[3] The Respondent became one of the subjects in the Internal Affairs investigation.

The Respondent was sworn in with the Riverside Police Department on January 12, 2009, as a full-time peace officer. He was promoted to the rank of Police Sergeant on July 10, 2020. At the time of this incident, he was assigned as a patrol supervisor.

Officer-1[4] was sworn in with the Riverside Police Department on October 6, 2017, and promoted to the rank of detective on December 22, 2022. She is married to the Respondent. At the time of this incident, Officer-1 was assigned to patrol.

Complainant was sworn in as a peace officer with the Riverside Police Department on November 11, 1999. At the time of this incident, he was assigned to patrol.

Shortly after shift change in July 2022, the Complainant complained to Sergeant Dawson Smith about Officer-1 (who was afforded lactation breaks). Officer-1 was on the same patrol team as the Complainant. During this time, Officer-1 and Officer-2[5] rode together as partners. An arrangement made with supervision was that Officer-2 would leave Officer-1 at the station during these breaks, should a "hot call" come out or if an officer needed back up. Officer-2 would also handle any phone reports or write reports during this time.

[3] (Attachment B) Administrative Memo PA2211047 [Complainant's initials omitted].
[4] The name of Officer-1 is not disclosed in this report because the allegations of misconduct against Officer 1, which are referenced in this report, do not relate to a sustained finding against the officer that is itself subject to disclosure. (See Pen. Code § 832.7, subd. (b)(5).)
[5] The name of Officer-2 is not disclosed in this report because the allegations of misconduct against Officer 2, which are referenced in this report, do not relate to a sustained finding against the officer that is itself subject to disclosure. (See Pen. Code § 832.7, subd. (b)(5).)

The Complainant claimed that when Officer-1 and Officer-2 were not on the street, this created a safety issue for he and his partner (Officer Spencer Weddle). The Complainant went on to claim that he and Officer Weddle were left to handle the beat by themselves. The Complainant said in his interview with internal affairs, “we’re ripping our hair out, because we’re getting our butts kicked.”[6]

On September 16, 2022, the Complainant filed a complaint with Internal Affairs and alleged Officer-1 and Officer-2 failed to take a police report on a call they handled at LA Fitness (occurred on September 15, 2022). The investigation concluded that no policy violation(s) occurred.

On October 1, 2022, the Complainant said he worked at a swap meet and saw the Respondent. The Complainant said, “So I saw (Respondent) Saturday as I walked out at 7:00 o’clock in the morning, and I said, ’Hello,’ and he walked by me, and he said, ’You’ll see, you’ll see.’ And then he walked into the sergeants’ office. So I’m like, ’Here we go.’ He’s gonna retaliate. I know it. I’ve been doing this a long time. He’s going to retaliate. That was Saturday. Sunday, I don’t see it. Monday, I come in. There’s a flyer in my mailbox of a rat and it says, ’Rat Buster.’”[7]

[6](Attachment C) Transcript_ Complainant Interview 11-8-22(1), Pg 2 of 62, Line 14-15 & (Attachment D) _ Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:01:56).
[7] (Attachment C) Transcript_Complainant Interview 11-8-22(1), Pg 10 of 62, Line 2-7 & (Attachment D) _ Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:10:54).



[8]



[9]

[8] N1480020.jpeg (Attachment E)
[9] N1450021.jpeg (Attachment F)



[10]



[11]

The Complainant said he researched the term “Rat Busters” and learned it referred to an exterminator’s rifle used to shoot rats. The Complainant said in his Internal Affairs

[10] N1480022.jpeg (Attachment G)
[11] N1480023.jpeg (Attachment H)

interview, “That-that’s a threat on my life. That’s a rifle used to kill a rat.”[12] The Complainant knew this was retaliatory for him filing the Internal Affairs complaint against Officer-1.

The Complainant said he worked another swap meet on October 8, 2022. He reported to investigators that he saw the Respondent and said, “Hello James, how ya doing?” The Complainant further described the encounter as follows: “And I came-went and changed. When I came back, I said, ‘James, I checked my mailbox, and there’s nothing in it,’ and I walked out. Well, he could fe-he walked out the other door and confronted me and said, ‘Your voice is trembling. What’s wrong with you?’” [13]

The Complainant told investigators that he responded, “My voice is trembling because a ‘Rat Buster’ is a rifle used to kill rats, and you threatened my life.”[14] The Complainant reported that the Respondent then turned, “…he formed a – a handgun with his hand and pointed it at me and acted like he fired it twice.”[15]

In the Respondent ’s Internal Affairs interview (January 19, 2023), Respondent described the encounter differently. According to Respondent, the Complainant said “…something along the lines of, ‘I checked my mailbox. Uh, it’s clear. Thanks, guys.’ something along those lines...”[16] Immediately after the Complainant said this, Respondent then exited the station to confront the Complainant, and said to the Complainant: “Hey, have a good day, [Complainant’s initials omitted]. Have a good

[12] (Attachment C) Transcript__Complainant Interview 11-8-22(1), Pg 34 of 62, Line 10 and 11 & (Attachment D) _ Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:01:56).
[13] (Attachment C) Transcript__Complainant Interview 11-8-22(1), Pg 15 of 62, Line 4-7 & (Attachment D) Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:17:38).
[14] (Attachment C) Transcript_Complainant Interview 11-8-22(1), Pg 62 of 62, Line 6-7 & (Attachment D) Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:17:53).
[15] (Attachment C) Transcript_Complainant Interview 11-8-22(1), Pg 34 of 62, Line 15-16 & (Attachment D) Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:18:02).
[16] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 19 of 38, Line 19-21 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:28:22).

day, dude. Be safe out there."[17] According to Respondent, the Complainant's reaction to Respondent's comment was as follows: "…And then he says-he turns immediately beet red, starts charging at me, but doesn't come all the way towards me…and says, 'I know you put that [expletive] thing in my mailbox.'"[18] According to Respondent, however, Respondent pointed his finger at the Complainant, "'Cause I had pointed at him to have a good day."[19] but Respondent denied he used his hand/finger to simulate a handgun and motion as if firing it.[20] There were no independent witnesses or surveillance videos that captured this encounter.

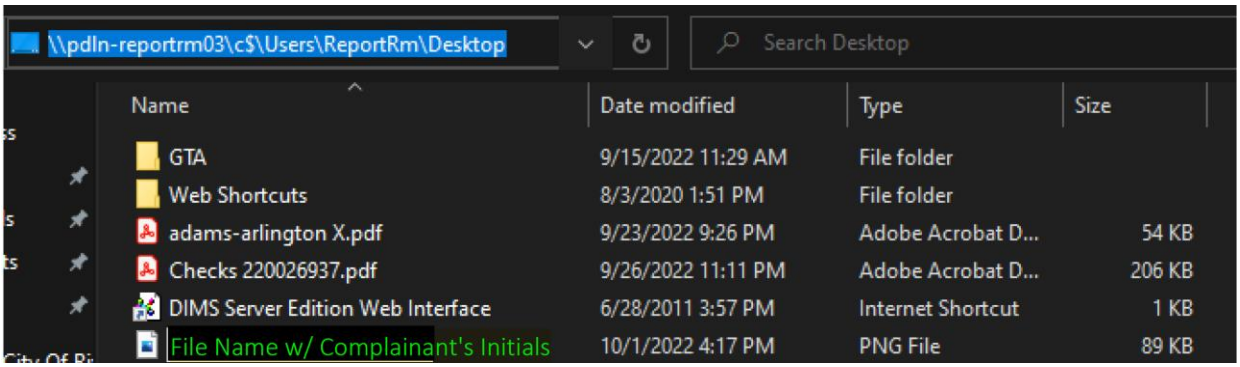
On October 4, 2022, Lieutenant Eric Meier was made aware of the flyer and removed one from the men's locker room and the one from the Complainant's mailbox. When Lieutenant Meier asked if the Complainant wanted to open an (Internal Affairs) investigation, the Complainant responded no, as he feared further retaliation.

That same day, Lieutenant Meier told Division Commander Chad Milby about the incident. Commander Milby directed Lieutenant Meier to investigate 'informally' and outside Internal Affairs Division.

On October 5, 2022, Lieutenant Meier contacted Information Technology (IT) and requested print queues on the Lincoln Street Police Station printers. IT personnel were able to determine the flyer was saved to a computer in the report writing room as a .png file, using the Complainant's initials for the file name on October 1, 2022, at 4:17 pm (below photo).[21] The flyer was printed at 4:36 pm with the printer located inside the

[17] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 20 of 38, Line 1-6 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:28:54).
[18] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 20 of 38, Line 1-6 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:28:54).
[19] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 20 of 38, Line 20-21 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:29:47).
[20] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 31 of 38, Line 13-21 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:43:05).
[21] (Attachment K) Email_from_Meier_re_Print Queue (1)

report writing room. IT staff opened the document, and it was the “Rat Busters” flyer. Lieutenant Meier attempted to determine who had logged into the computer from which the flyer was printed, but the responsible party used a generic log in.



22

Note: On January 4, 2024, I spoke to Internal Affairs investigator (Lieutenant) Karla Corbett who was the lead investigator to get clarification on the generic password. She explained that it is a password given/used by all sworn staff to access the computers in the report writing room. The purpose is to allow officers to write reports with the software on these computers. All sworn staff also have an individual password they use to log into departmental computers that contains personal files/documents and software programs specific to their assignments.

Lieutenant Meier pulled video from the Lincoln Street Police Station. The video showed the Respondent driving into the back lot of the Lincoln Street Police Station. He exited his vehicle at 4:05 pm and walked toward the station. At this point, the investigation was turned over to Internal Affairs.

As part of the Internal Affairs investigation, patrol rosters were inspected for all officers listed as either witness officers or subjects of the investigation, who were working on October 1, 2022. Only three people listed in the investigation were on the roster: the Respondent, and two other officers. The first officer was assigned unit #3839 and GPS

[22] The file name is redacted in order to preserve the confidentiality of the Complainant’s name.

showed her vehicle on a call far from the Lincoln station at 4:17 pm. Telestaff showed the second officer ended her shift at 4:00 pm.[23]

The Internal Affairs investigators also reviewed GPS records to determine what police units were at the Lincoln Street Police Station around the time that the flyer was saved to a computer in the report writing room and printed. The Internal Affairs search of GPS records was broader, and not limited to officers who were listed as witness or subject officers in the investigation. According to the Internal Affairs report, "[t]he only two units with automated vehicle locator (AVL) information at the Lincoln Station between 4:00 pm and 4:30 pm, on October 1, were S30 (Sergeant Tanner Paes) and S53 (J. Mutuku). Paes was not mentioned by any officer interviewed in this investigation."[24]

On December 5, 2022, Internal Affairs investigators met with Supervising Forensic Specialist Reporting Party 1[25] to have her conduct a latent print search of the "Rat Busters" flyers. Reporting Party 1 later processed the two flyers and recovered several latent fingerprints. The fingerprints were later submitted to the Riverside Cal-ID crime lab for direct comparison to the known prints of officers named in this complaint investigation.

On January 19, 2023, the Respondent was interviewed by Internal Affairs regarding this investigation. He made the following statements:

- The Respondent denied he ever saw the flyers but said he heard about them. Respondent said, "I've never… I've never seen this flyer."[26] When the

[23] (Attachment B) Administrative Memo PA2211047 [Complainant's initials omitted] Pg 17 of 155, Line 6-13.
[24] (Attachment B) Administrative Memo PA2211047 [Complainant's initials omitted] Pg 17 of 155, Line 21-25.
[25] The name of Reporting Party 1 is not disclosed in this report in order to preserve the anonymity of a non-peace officer witness. (Penal Code § 832.7, subd. (b)(6)(B).)
[26] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 26 of 38, Line 18 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:36:53).

Respondent was asked if he heard who might have placed them, initially, he said no. The Respondent then said he heard the Complainant placed them. The Internal Affairs investigator then asked, "You didn't place 'em?"[27] The Respondent replied, "No."[28]

- The Respondent said that he used his phone to look up "Rat Busters" and acknowledged it was a gun used by exterminators to shoot rats.
- In response to asking if his fingerprints would be on the flyers, the Respondent answered: "No. They're not going to be on those."[29] The Internal Affairs investigator asked if the Complainant was the only person he heard might have placed the flyers. He answered, "Yeah." The Respondent said everybody was saying the Complainant put the flyers up. The Internal Affairs investigator asked if the Respondent heard anyone say that Respondent might have placed them. He answered, "Yes. I've heard people say I might've placed them."[30] *(This directly contradicted the Respondent's previous two answers regarding who may have placed the flyers.)*
- The Respondent was advised that Lieutenant Eric Meier pulled a print log and was able to determine the flyer was printed on October 1, 2022, at 4:17 pm in the report writing room at the Lincoln Street Police Station printers. The Respondent was informed that Lieutenant Meier also pulled video which showed the Respondent pull into the parking lot and then walk into the station at 4:05 p.m. An Internal Affairs investigator told the Respondent the flyer was printed approximately twelve minutes after he walked into the station. The Respondent can be heard laughing when confronted with this information, and then

[27] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 8 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:37:28).
[28] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 9 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:37:28).
[29] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 11 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:37:34).
[30] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 16 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:38:46).

responding, “Okay.”[31] The Internal Affairs investigator asked if he had any explanation and the Respondent said “no.” The Internal Affairs investigator again asked about the computers in the report writing room and the Respondent said, “I haven’t used those computers in-besides, again, an officer telling me to look over their report or a s-directed reason, I’d never go in and use one of those computers to log onto ‘em or do anything with ‘em.”[32]

- When asked if the Respondent ever manipulated his hand to resemble a firearm and simulate firing at the Complainant, the Respondent said “no” and said he believed this would have been captured on camera. The Respondent said he only pointed at him and was “flabbergasted” when the Complainant suggested that Respondent simulated firing at the Complainant with his hand.[33]

On January 20, 2023, the Internal Affairs investigator received an email from the Riverside County Sheriff’s CAL-ID Unit with an informal report that positive identification was made, and that the Respondent’s latent prints were collected from the “Rat Busters” flyer found in the vinyl frame in the locker room. This directly refuted the Respondent’s statement to Internal Affairs on January 19, 2023.

On January 24, 2023, the Internal Affairs investigator spoke with Fingerprint Expert Reporting Party 2[34] to follow up on the final report. The Internal Affairs investigator asked how certain Expert Reporting Party 2 was that the prints belonged to the Respondent. Expert Reporting Party 2 informed the Internal Affairs investigator that she and two additional fingerprint experts examined the prints and concluded the prints

[31] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 30 of 38, Line 13 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:41:59).
[32] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 30 of 38, Line 20-22 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:42:1).
[33] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 31 of 38 Line 14- 26, Pg 32 of 38 Line 1-2 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:43:10-0:43:50).
[34] The name of Reporting Party 2 is not disclosed in this report in order to preserve the anonymity of a non-peace officer witness. (Penal Code § 832.7, subd. (b)(6)(B).)

belonged to the Respondent.[35]

Note: I spoke with Reporting Party 1, Senior Forensic Specialist with the Riverside Police Department. She confirmed that on the front side of flyer placed inside the vinyl casing, Sergeant Mutuku's left thumb print was found on the upper left corner and his right thumb print was located on the middle edge of that same side of paper.

On February 21, 2023, the Respondent was reinterviewed by Internal Affairs and confronted with the information that his fingerprints were located on one of the flyers. He made the following statements:

- The Respondent could offer no explanation as to why his prints were located on the flyer that had been encased within the vinyl frame found in the men's locker room. [36]
- The Respondent maintained throughout his interview he did not post the flyers and had never seen them.[37]

The following are additional excerpts from the Respondent 's second interview:

- The Respondent admitted he was frustrated with the Complainant and did not like him. When asked if this was enough to drive him to place the flyers, the Respondent denied it was. The Respondent said, "Eh, yeah, I don't-it-it was not and cannot explain why my fingerprints would be on there. I don't-"[38]
- The Respondent was presented with the report from CAL-ID which showed his fingerprints were located on the flyer. The Respondent said, "I understand, but

[35](Attachment L) Email_from_RSO_CAL-ID.
[36] (Attachment M) Transcript Mutuku Interview 2-21-23, Pg 4 of 18, Line 1 - 2, Pg 4 of 18 Line 25 - 26 & (Attachment N) J._Mutuku_Interview_(2),1644KC_02_21_2023_03_00_PM (minute 0:03:52-0:04:33 & 0:05:30-0:06-50).
[37] (Attachment M) Transcript Mutuku Interview 2-21-23, Pg 6 of 18, Line 8 and Line 10 & (Attachment N) J._Mutuku_Interview_(2),1644KC_02_21_2023_03_00_PM (minute 0:05:27-0:08:20).
[38](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 4 of 18, Line 1 and 2 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:05:33).

I'm telling you that I did not put the flyer up. I do not know why my fingerprints are on the flyer. I hadn't seen the flyer. I've never seen the flyer."[39]

- The Respondent maintained he did not print the flyers, put up the flyers, did not put them in the vinyl frame, and did not see them.
- The Respondent said, "I a hundred percent get it, but I… again, I'm standing by what I said. I did… I didn't print the flyer, I've never seen the flyer, and I didn't put the flyer up or touch this vinyl case that you're talking about." [40]
- The Respondent understood the evidence presented against him. He said, "Uh, I-I understand what you're saying. I understand the evidence you've presented reference this. It's black and white. I'm not stupid. I get it. I get all the circumstantial stuff. I understand that, but my answer's not gonna change. From the first interview, from the three times I've said it now, it's gonna be the same answer."[41]

The Internal Affairs investigator advised Respondent that the vinyl frame, in which the "Rat Buster" flyer was found was not an item stocked at the Department. There was DNA found on the vinyl frame; however, no comparative sample. Internal Affairs investigators asked the Respondent if he would be willing to voluntarily supply a sample of his DNA to confirm his DNA would not match the DNA found on the frame. The Respondent said, "(Unitelligible) could -could you just clar-'cause I don't-clarify exactly what this case is, 'cause I don't-location-everything else that you're saying where this thing was posted, at 'cause, gain, I don't-I don't know-it."[42]

[39](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 4 of 18, Line 25 and 26 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:06:42).
[40](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 8 of 18, Line 22-24 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:10:44).
[41](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 11 of 18, Line 1-5 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:14:09).
[42](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 12 of 18, Line 19-21 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:16:26).

The Respondent was again asked later in the interview if he would provide a voluntary DNA sample, he said, “Uh, uh, yes, I-I’d have no (unintelligible) problem doing that, but again, I’m not gonna say that I have never touched a locker in the men’s locker room, walking by, touched a locker. I’m not going to say that. So these are things that are just on these lockers-it’s just on there? A-again, I don’t-I-I may have touched, in my career here, a locker on my way out, walking and touching a locker.”[43]

At the conclusion of the interview, the Respondent stated, “before giving my DNA, I’d like to consult, uh, an attorney, ‘cause that just seems like a lot.”[44] Ultimately, the Respondent never consented to providing this sample.

On May 13, 2024, at approximately 1840 hours, I interviewed Respondent. He was represented by Attorney Wayne Smith with Brad Gage Law, APC. Respondent continued to deny any involvement with printing or posting the flyers.

V. Analysis and Findings

a. Does the alleged conduct violate California Regulation 1205(a)(1) – Dishonesty?

The Serious Misconduct category of Dishonesty is defined in Section 1205(a)(1) as follows:

> Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to false

[43](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 14 of 18, Line 15-19 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:18:19).
[44](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 18 of 18, Line 9-10 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:29:45).

> statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct. …

There is clear and convincing evidence that the Respondent engaged in dishonesty as defined in Penal Code 13510.8(b)(1) and California Regulation 1205(a)(1). For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true." This is based on the facts revealed in Riverside Police Department's Internal Affairs investigation and summarized further below.

California Regulation 1205(a)(1) also provides guidance when deciding whether an act of Dishonesty warrants suspension or revocation of a peace officer's certification. In this regard, California Regulation 1205(a)(1) provides as follows:

> …In considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest, and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.

This investigation revealed the following facts:

- The Respondent allowed his personal feelings of dislike and impulse to defend his wife (Officer-1) to severely impair his judgment.
- The question of who was responsible for posting the "Rat Busters" flyers was the central purpose for Internal Affairs' investigation. Accordingly, getting to the truth

about who posted the flyers was a material and significant fact the investigators sought out to determine.

- The Respondent created, printed, and posted flyers with a picture of a crossed-out rat and the words, “Rat Busters” written below that image.
- The Respondent placed the “Rat Busters” flyers in the Complainant’s (work) mailbox and areas in the men’s locker room where the Complainant frequented.
- The Respondent contradicted himself when asked in his first interview with Internal Affairs if he had heard he placed the flyers. The Respondent initially said “no”, and later admitted in that same interview that he heard rumors that he was responsible for placing the flyers.
- The Complainant saw the flyers and researched the term “Rat Busters”. He learned it was a rifle exterminators used to kill rats.
- The Complainant stated that he took the information on the flyers as a direct threat and feared for his life.
- The Respondent acknowledged that he had a brief conversation with the Complainant on October 8, 2022, and that he asked the Complainant why the Complainant’s voice was trembling. The Complainant reportedly answered: “you threatened my life.”
- The Respondent was a sergeant for approximately two and a half years at the time this incident took place and as such, was held to a higher degree of responsibility and accountability within the Riverside Police Department.
- The Respondent committed these acts while he was on duty as a police supervisor.
- The Respondent was interviewed two separate times by Internal Affairs. In both interviews, the Respondent was dishonest by adamantly denying that he created, printed, saw, touched, or placed the flyers. Respondent continued to be dishonest when I interviewed him on May 13, 2024. The evidence establishes with a high degree of probability that the Respondent willfully denied his involvement with the flyers, with the intent to deceive the Internal Affairs investigators and myself.

- Internal Affairs investigators asked the Respondent if his fingerprints would be found on the flyers and the Respondent said, “no.”
- Fingerprint examiners located the Respondent’s fingerprints on the paper (flyer) that was found inside the vinyl casing.
- When the Respondent was confronted with the fact that his fingerprints were located on the flyer, he could offer no explanation and again willfully attempted to deceive the investigators by insisting he had never seen them.
- The Respondent continued to be intentionally dishonest with Internal Affairs investigators when he said no fewer than ten different times in his second interview that he had nothing to do with the flyers and that his answer would not change.
- During the second interview with the Respondent, Internal Affairs investigators repeatedly asked the Respondent to be honest; specifically, after his responses to questions surrounding his fingerprints being found on a flyer. Despite the investigators’ specific requests for honesty, the Respondent willfully continued to lie. The Respondent was terminated from the Riverside Police Department on July 12, 2023, resulting from three sustained findings (Conduct Unbecoming of an Officer, Retaliation, and Dishonesty).

Prior to Respondent’s termination in light of these sustained findings, Respondent had received no discipline in the past five years.

On October 12, 2023, a *Skelly* hearing was conducted and attended by the Respondent, Saku Ethir (Respondent’s attorney), Deputy Chief Frank Assumma and Police Chief Larry Gonzalez. In a memorandum dated October 19, 2023, Police Chief Gonzalez notified the Respondent that his decision was to terminate Respondent’s employment with the Riverside Police Department. This memorandum was signed by the Respondent on October 20, 2023.

Chief Assumma noted in this memorandum to the Respondent, “Your actions in the related incident amount to serious violations of the trust and confidence our community places in its police department and the integrity expected of a sergeant in the Riverside Police Department.”[45]

On November 29, 2023, POST received a supplement from the Riverside Police Department noting that the Respondent withdrew his appeal to the *Skelly* hearing findings. The withdrawal date was November 7, 2023.

Respondent is not currently employed as a peace officer. This investigation revealed that the Respondent had a motive to place/post the flyers and both circumstantial and direct evidence supported that he was responsible for them. There is clear and convincing evidence that the Respondent repeatedly lied to Internal Affairs investigators. Respondent chose to repeatedly lie again when I interviewed him on May 2024. The motivation for the Respondent to lie was to cover up his actions at work in which Respondent threatened another employee.

The clear and convincing evidence standard was met in determining whether the evidence supports that the Respondent was dishonest in his verbal statements during his two separate interviews with Internal Affairs investigators and again in my third interview with Respondent concerning his conduct.

VI. Supporting Evidence and Documentation

- Attachment A JamesMutuku_ProfileReport (5)
- Attachment B Administrative Memo PA2211047 [Complainant’s Initials]
- Attachment C Transcript_Complainant Interview 11-8-22(1)
- Attachment D Complainant_Interview_1644_11_08_2022_03_43_PM

[45] (Attachment O) Mutuku NOD Signed, Pg 1, Paragraph 3.

- Attachment E N1450020.jpeg
- Attachment F N1450021.jpeg
- Attachment G N1450022.jpeg
- Attachment H N1450023.jpeg
- Attachment I Transcript_Mutuku Interview 1-19-23
- Attachment J J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM
- Attachment K Email_from_Meier_re_Print Queue (1)
- Attachment L Email_from_RSO_CAL-ID
- Attachment M Transcript_Mutuku Interview 2-21-23
- Attachment N J._Mutuku_Interview_(2),1644KC_02_21_2023_03_00_PM
- Attachment O Mutuku NOD Signed

VII. Findings

The evidence meets the clear and convincing standard to support the allegation of dishonesty as defined in Penal Code 13510.8. Based on the Regulation 1205 factors outlined above surrounding willfulness and materiality, the Peace Officer Standards Accountability Division finds that revocation, rather than suspension, is the appropriate sanction in this case. Reasonable grounds, therefore, exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation.

POST PROFILE NAME:

MUTUKU, JAMES M.

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: N/A

DATE: 01/23/2024

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
C25-A69		DOB, GENDER, & RACE		

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
143770	B	03/28/2011	0	47.00	0.00	
102944	I	07/28/2011	BA			EDUCATIONAL INSTITUTION
109248	A	09/14/2015	BA	0.00	0.00	
92034	S	07/28/2022	BA	0.00	0.00	

Total Number of Certificates: 4

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
01/12/2009	07/09/2009	6	TRN	01/12/2009	33130	RIVERSIDE PD	F	P	
07/09/2009	09/09/2016	7	PO	07/09/2009	33130	RIVERSIDE PD	F	P	
07/09/2009	07/10/2020	7	DET	09/09/2016	33130	RIVERSIDE PD	F	P	
07/09/2009	10/20/2023	8	SGT	07/10/2020	33130	RIVERSIDE PD	F	P	

***Reason for Separation: 6 = Other, 7 = Promotion/Demotion, 8 = Involuntary Separation**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
07/09/2009	A	2200-00100-08-003	940		Y	33130	RIVERS SD		BASIC COURSE-INTENSIVE
05/27/2010	K	3140-20801-09-002	27		Y	33130	RPD	*	CRISIS INTERVENTION
03/14/2011	K	3140-32165-10-006	8		Y	33130	RPD	*	FIREARMS-TACTICAL PISTOL/SHOTGUN
03/15/2011	K	3140-21015-10-006	8		Y	33130	RPD	*	DEFENSIVE TACTICS UPDATE
03/16/2011	K	3140-21130-10-006	4	X	Y	33130	RPD	*	DRIVER AWARENESS UPDATE
03/16/2011	K	3140-29505-10-006	4	X	Y	33130	RPD	*	INTCOM(PSP)
03/17/2011	K	3140-22289-10-006	8		Y	33130	RPD		TACTICAL RESP.SCHOOL/COMM.VIOL
03/18/2011	K	3140-23282-10-006	4		Y	33130	RPD		RACIAL PROFILING
03/18/2011	K	3140-23090-10-006	4		Y	33130	RPD		ELECTRONIC WEAPONS
10/28/2011	K	2200-23000-11-001	80		Y	33130	RIVERS SD		SPECIAL WEAPONS & TACTICS
10/04/2012	K	8790-20315-12-005	24	R	Y	33130	CNOA		DRUG ALCOHOL RECOGNITION UPDATE
11/21/2012	K	2200-22289-12-004	16		Y	33130	RIVERS SD		TACTICAL RESP.SCHOOL/COMM.VIOL
03/22/2013	K	2330-21165-12-030	8	R	Y	33130	S BRNDO SD	*	DRIVER TRNG (EVOC) UPD (PIT)
07/12/2013	K	1410-32330-13-001	40		Y	33130	CORONA PD		SCHOOL RESOURCE OFFICER
09/25/2013	K	2200-22650-13-001	16	R	Y	33130	RIVERS SD		PEER COUNSELING
11/18/2013	K	3140-32165-13-004	6		Y	33130	RPD	*	FIREARMS-TACTICAL PISTOL/SHOTGUN
11/18/2013	K	3140-30995-13-004	2		Y	33130	RPD		LESS LETHAL WEAPONS
11/19/2013	K	3140-21015-13-004	8		Y	33130	RPD	*	DEFENSIVE TACTICS UPDATE
11/20/2013	K	3140-21130-13-004	4	X	Y	33130	RPD	*	DRIVER AWARENESS UPDATE
11/20/2013	K	3140-29505-13-004	4	X	Y	33130	RPD	*	INTCOM(PSP)
11/21/2013	K	3140-22289-13-004	8		Y	33130	RPD		TACTICAL RESP.SCHOOL/COMM.VIOL
11/22/2013	K	3140-23282-13-004	4		Y	33130	RPD		RACIAL PROFILING
11/22/2013	K	3140-23093-13-004	4		Y	33130	RPD		ELECTRONIC WEAPONS UPDATE
06/30/2014	K	3140-29000-13-258	2	X	Y	33130	RPD		HUMAN TRAFFICKING: IDENTIFY & RESPOND
09/12/2014	K	9590-31445-14-003	40	R	Y	33130	BAT		INTERVIEW & INTERROGATION
10/19/2015	K	3140-32165-15-003	6		Y	33130	RPD	*	FIREARMS-TACTICAL PISTOL/SHOTGUN
10/19/2015	K	3140-30995-15-003	2		Y	33130	RPD		LESS LETHAL WEAPONS
10/20/2015	K	3140-23270-15-003	4		Y	33130	RPD		CULTURAL DIVERSITY
10/20/2015	K	3140-23093-15-003	4		Y	33130	RPD		ELECTRONIC WEAPONS UPDATE

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
10/21/2015	K	3140-21130-15-003	4	X	Y	33130	RPD	*	DRIVER AWARENESS UPDATE
10/21/2015	K	3140-29505-15-003	4	X	Y	33130	RPD	*	INTCOM(PSP)
10/22/2015	K	3140-22289-15-003	8		Y	33130	RPD		TACTICAL RESP.SCHOOL/COMM.VIOL
10/23/2015	K	3140-21015-15-003	8		Y	33130	RPD	*	DEFENSIVE TACTICS UPDATE
08/30/2016	K	9180-25559-16-061	12	X	Y	33130	POST		FIRST AID/CPR (WEB)
05/22/2017	K	3140-32165-16-009	6		Y	33130	RPD	*	FIREARMS-TACTICAL PISTOL/SHOTGUN
05/22/2017	K	3140-30995-16-009	2	X	Y	33130	RPD		LESS LETHAL WEAPONS
05/23/2017	K	3140-23282-16-005	4		Y	33130	RPD		RACIAL PROFILING
05/23/2017	K	3140-23093-16-009	4	X	Y	33130	RPD		ELECTRONIC WEAPONS UPDATE
05/24/2017	K	3140-21130-16-009	4	X	Y	33130	RPD	*	DRIVER AWARENESS UPDATE
05/24/2017	K	3140-29505-16-009	4	X	Y	33130	RPD	*	INTCOM(PSP)
05/25/2017	K	3140-22289-16-009	8	X	Y	33130	RPD		TACTICAL RESP.SCHOOL/COMM.VIOL
05/26/2017	K	3140-21015-16-010	8		Y	33130	RPD	*	DEFENSIVE TACTICS UPDATE
07/08/2017	K	9180-25575-17-008	3	X	Y	33130	POST		SEARCH WARRANT FUNDAMENTALS (WEB)
08/04/2017	K	9070-26000-17-001	80	R	Y	33130	GTA		CRIM INV INST CORE COURSE (ICI)
08/22/2017	K	9260-22020-17-005	8		Y	33130	DOJ		ELECTRONIC SURVEILLANCE
09/29/2017	K	4530-32650-17-002	80	R	Y	33130	SD MIRAMAR		NARC INVESTIGATION (ICI)
10/25/2018	K	9180-25586-18-117	8	X	Y	33130	POST		FIRST AID/CPR/AED (WEB)
05/09/2019	K	5270-12425-18-020	8		Y	33130	CSU-LNGBCH		PRINCIPLED POLICING
11/01/2020	K	9180-25587-20-124	2	X	Y	33130	POST		VEHICLE PURSUIT POLICY (WEB)
12/01/2020	K	9180-25586-20-154	8	X	Y	33130	POST		FIRST AID/CPR/AED (WEB)
12/03/2020	K	4890-23287-20-019	4		Y	33130	M TOLERNCE		RACIAL PROFILING UPDATE
01/15/2021	D	2330-00400-20-004	80		Y	33130	S BRNDO SD		SUPERVISORY COURSE
02/18/2021	K	2200-32100-20-003	24		Y	33130	RIVERS SD		INTERNAL AFFAIRS INVESTIGATION
02/20/2021	K	9180-25585-20-235	2	X	Y	33130	POST	*	TACTICAL COMMUNICATION (WEB)
02/22/2021	K	3140-32165-20-004	6		Y	33130	RPD	*	FIREARMS-TACTICAL PISTOL/SHOTGUN
02/22/2021	K	3140-30995-20-004	2		Y	33130	RPD		LESS LETHAL WEAPONS
02/23/2021	K	3140-21015-20-004	6		Y	33130	RPD	*	DEFENSIVE TACTICS UPDATE
02/24/2021	K	3140-21135-20-004	4		Y	33130	RPD	*	DRIVER AWARENESS UPDATE
02/24/2021	K	3140-23093-20-004	3		Y	33130	RPD		ELECTRONIC WEAPONS UPDATE
02/25/2021	K	3140-22289-20-004	6		Y	33130	RPD		TACTICAL RESP.SCHOOL/COMM.VIOL
07/14/2021	H	9100-10780-21-001	16		Y	33130	CPOA		OFFICER INVOLVED SHOOTING-SUPV/MGT RESPONSIBILITY
11/24/2021	K	9180-25587-21-147	2	X	Y	33130	POST		VEHICLE PURSUIT POLICY (WEB)
11/17/2022	K	9180-25586-22-140	8	X	Y	33130	POST		FIRST AID/CPR/AED (WEB)
11/17/2022	K	3140-29580-22-004	4	X	Y	33130	RPD	*	USE OF FORCE (PSP)
11/24/2022	K	9180-25587-22-147	2	X	Y	33130	POST		VEHICLE PURSUIT POLICY (WEB)
01/09/2023	K	3140-32165-22-005	6		Y	33130	RPD	*	FIREARMS-TACTICAL PISTOL/SHOTGUN
01/09/2023	K	3140-30995-22-005	2		Y	33130	RPD		LESS LETHAL WEAPONS
01/10/2023	K	3140-21015-22-005	6		Y	33130	RPD	*	DEFENSIVE TACTICS UPDATE
01/11/2023	K	3140-21135-22-005	4		Y	33130	RPD	*	DRIVER AWARENESS UPDATE
01/11/2023	K	3140-23093-22-005	2		Y	33130	RPD		ELECTRONIC WEAPONS UPDATE
01/12/2023	K	3140-29580-22-005	4	X	Y	33130	RPD	*	USE OF FORCE (PSP)
01/12/2023	K	3140-22289-22-005	5		Y	33130	RPD		TACTICAL RESP.SCHOOL/COMM.VIOL

*Meets Perishable Skills

FOOTNOTES

NO FOOTNOTE ON FILE.

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive **R** = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES
This section will only appear if applicable.

FOOTNOTES
This section reserved for additional information.

MEMO

Police Department

DATE: April 10, 2022

TO: Lieutenant Eric Detmer
Office of the Chief, Internal Affairs

FROM: Sergeant Karla Corbett
Office of the Chief, Internal Affairs

RE: Administrative Investigation PA2211047 /
Hostile Work Environment Claim by Complainant

CONFIDENTIAL: ***THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR THE CITY ATTORNEY.***

DATES OF COMPLAINTS: October 26, 2022, and February 20, 2023

DATE OF INCIDENT: August 2022 through February 20, 2022

LOCATION OF INCIDENT: 8181 Lincoln Avenue

COMPLAINANT/SUBJECT: Complainant

SUBJECT OFFICERS: Sergeant James Mutuku #1645
Field Operations / Patrol

Officer 3

Officer 4

WITNESS OFFICERS: Officer Jennifer Cappelen #1706
Field Operations / Patrol

Officer Carrin Christianson #1789
Field Operations / Patrol

Officer 2
Field Operations / Patrol

Officer Shea McMahon #1212
Field Operations / Patrol

Officer Ana Miskulin (formerly Ahumada) #1933
Field Operations / Patrol

Officer Dexter Pattison #2083
Field Operations / Patrol

Officer Spencer Weddle #1718
Field Operations / Patrol

Officer 1
Field Operations / Patrol

Detective Josh Ontko #1351
Central Investigations Bureau / Robbery/Homicide

Detective Dave Riedeman #1077
Central Investigations Bureau / Robbery/Homicide

Investigator Janet Ramos (former RPD Detective)
District Attorney's Office
951-623-3487

Sergeant Nathan Asbury #1368
Field Operations / Patrol

Sergeant Chamroeun Ouk #1615
Field Operations / Patrol

Sergeant Dawson Smith #1275
Field Operations / Patrol

Sergeant Robert Tipre #0152
Field Operations / Patrol

Sergeant William Zackowski #0354
Field Operations / Patrol

Lieutenant Mike Barney #1332
Field Operations / Patrol

Lieutenant Eric Meier #1317
Field Operations / Patrol

Captain [redacted] #1336
Field Operations / Patrol

Deputy Chief Bruce Blomdahl #0604
Chiefs Office / Administration

LEGAL REPRESENTATION:

Attorney Saku Ethir
909-260-9220 (cell)
saku@seepolicelaw.com

Attorney Peter Horton
323-486-6148 (office)
619-347-3935 (cell)
phorton@LFECR.com

RELATED REPORT(S)

220034682 (12/14/22) Missing Person
220036166 (12/26/22) Code 8
220004996 (2/20/2023) Domestic Violence

RELATED INCIDENT(S)

LPD22091500186516 (9/15/22) LA Fitness Call

ALLEGATION(S) INVOLVING SERGEANT JAMES MUTUKU:

ALLEGATION ONE: **DISCOURTEOUS OR DISRESPECTFUL TREATMENT OF DEPARTMENT MEMBER**

It has been alleged Sergeant James Mutuku created a hostile work environment by placing flyers with a picture of a rat and the words "Rat Busters" in the men's locker room and in [redacted] mailbox.

If true, Sergeant James Mutuku's actions would be a violation of Riverside Police Department's Conduct Policy, section 330.3.2(j).

330.2 DISCIPLINE POLICY:

The continued employment of every employee of this department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any employee to meet the guidelines set forth in this policy, whether on-duty or off-duty, may be cause for disciplinary action.

330.3.2 CONDUCT

(j) Discourteous or disrespectful treatment of any member of the public or any member of this department.

ALLEGATION TWO: RETALIATION

It has been alleged Sergeant James Mutuku created a hostile work environment when he placed flyers with a picture of a rat and the words "Rat Busters" in the men's locker room and in [redacted] Complainant mailbox in retaliation for [redacted] filing a complaint against [redacted] Officer 1 and [redacted] Officer 2.

If true, Sergeant James Mutuku's actions would be in violation of Riverside Police Department's Discriminatory Harassment Policy, section 322.3.4.

322.2 DISCRIMINATION POLICY:

The Riverside Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits, and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

322.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

ALLEGATION THREE: RETALIATION

It has been alleged Sergeant James Mutuku created a hostile work environment when he used to his hand to simulate a handgun and motioned as if firing twice at [redacted] Complainant in retaliation for [redacted] Complainant filing a complaint against [redacted] Officer 1 and [redacted] Officer 2.

If true, Sergeant James Mutuku's actions would be in violation of Riverside Police Department's Discriminatory Harassment Policy, section 322.3.4.

322.2 DISCRIMINATION POLICY:

The Riverside Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2

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Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

ALLEGATION FOUR: DISHONESTY

It has been alleged Sergeant James Mutuku provided false or misleading statements in connection with an administrative investigation involving claims of a hostile work environment and acts of retaliation.

If true, Sergeant James Mutuku's actions would be in violation of Riverside Police Department's Conduct Policy, section 330.3.5(ad).

330.2 DISCIPLINE POLICY:

The continued employment of every employee of this department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any employee to meet the guidelines set forth in this policy, whether on-duty or off-duty, may be cause for disciplinary action.

330.3.5 PERFORMANCE

(ad) Giving false or misleading statements, or misrepresenting or omitting material information in connection with any investigation or in the reporting of any department-related business.

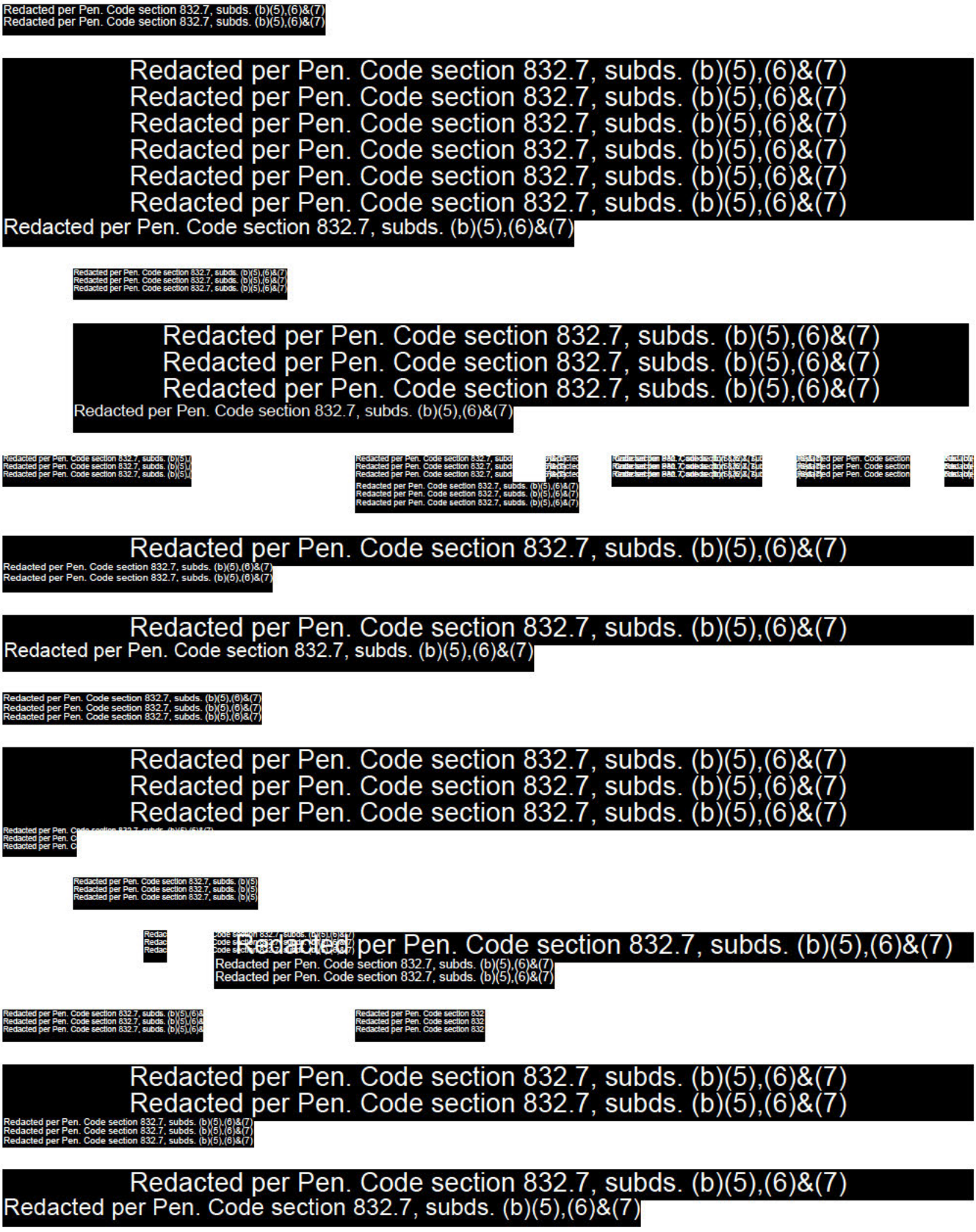
ALLEGATION(S) INVOLVING Officer 3

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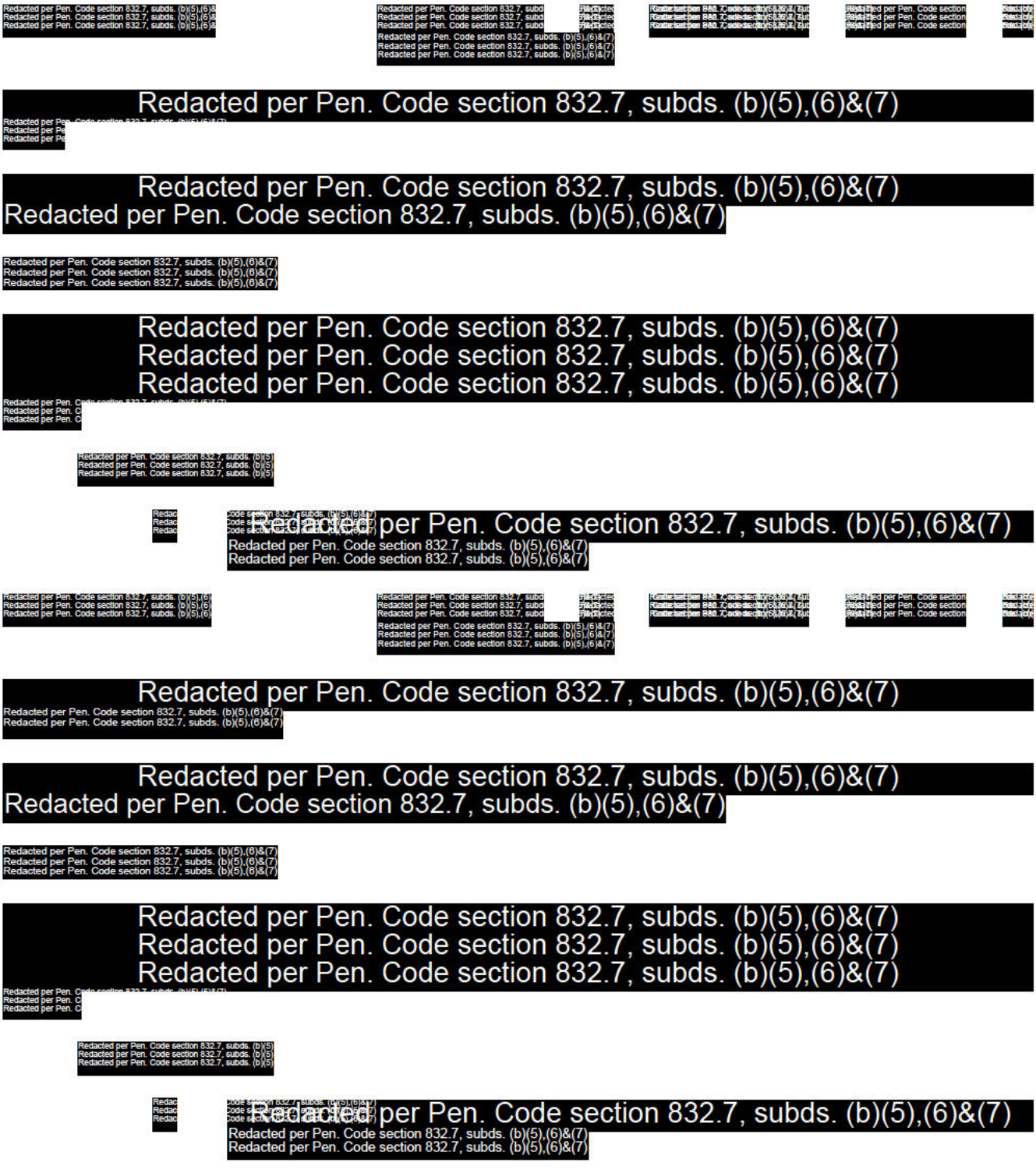
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BACKGROUND:

Sergeant James Mutuku is married to [redacted] Officer 1 was promoted to detective while this investigation was being conducted and may be referred to as an officer in portions of this report.

Shortly after shift change in July 2022, Officer [redacted] complained to Sergeant Dawson Smith about Officer 1 (who was afforded lactation breaks) and Officer 2 [redacted] riding together as partners.

On September 16, 2022, [redacted] filed a complaint with Internal Affairs and alleged Officer 1 and Officer 2 failed to take a police report on a call they handled. Internal Affairs referred his complaint to Field Operations to investigate.

On October 26, 2022, [redacted] filed a complaint with Internal Affairs and alleged he experienced a hostile work environment and was retaliated against after filing the complaint on September 16, 2022. Based on [redacted] interview and the interviews of witness employees, the following personnel were identified as subject officers: J. Mutuku, [redacted] Officer 3 and [redacted] Officer 4 .

On February 20, 2023, [redacted] filed a complaint with Lieutenant Trinidad Lomeli against Officer 3. His complaint was filed during the time the complaint from October 26, 2022, was still being investigated. Subsequently, the two complaints were combined. Based on information gathered throughout this investigation, Officer 5 was also identified as a subject officer.

SUMMARY:

[redacted] claimed he went to supervision on several occasions after shift change in July 2022 and expressed concerns about Officer 1 and Officer 2 riding together as partner officers during the time Officer 1 was afforded lactation breaks. Supervisors continued to allow this, even though [redacted] claimed it was a safety issue for him and his partner, Officer Spencer Weddle. [redacted] also claimed he and Weddle were unfairly left to handle the beat by themselves. [redacted] claimed they were "ripping their hair out and getting their butts kicked." [redacted] and Weddle were supervised by Officer 3.

The sergeants and both watch commanders for Watch C were interviewed as part of this investigation. The consensus amongst supervision was that Officer 1 and Officer 2 rode together prior to Officer 1 maternity leave and she and Officer 2 were productive together. An arrangement was made with supervision, that Officer 2 would leave Officer 1 at the station during these breaks, should a "hot call" come out or if an officer needed back up. Officer 2 would also handle any phone reports during this time or write reports. None of the personnel interviewed, including [redacted] himself, identified an incident in which an emergency call for assistance was not answered.

Sergeant Dawson Smith was Officer 1 and Officer 2's supervisor at the start of shift change, July 22, 2022. (Smith would later assume a squad on Watch A, effective September 9, 2022, and Sergeant William Zackowski would take over as Officer 1 and Officer 2's supervisor.) Smith described Officer 1 and Officer 2 were extremely productive and ran circles around the other officers. He did not want to punish Officer 1 by not letting her ride with her partner, simply because she had a child.

At shift change, Smith worked directly under Officer 4 shared Smith's opinion that Officer 1 and Officer 2 were productive together and should be allowed to ride together. Officer 4 described the amount of work they did in comparison to Officer 5 was "astronomically different." Officer 1 and Officer 2 didn't let calls stack up as Officer 5 did and they didn't avoid calls that required a report be written. They did everything he would expect an officer to do and did it well. Officer 4 advised Officer 5 did, "almost none of those things."

Zackowski did not see an issue with Officer 1 and Officer 2 taking breaks together, but he did not initially know of the lactation breaks. He advised he could see how other officers in the same beat would have an issue with this because "unless one is lactating the other, there's no reason for both of them to sit at the station." However, he did not see Officer 1 or Officer 2 dodge or try to hide from calls. He advised this was unlike Complainant who "stacks every… uh… non-report related call to himself," such as subject bothering calls and similar calls where Complainant can go from one call to the next without ever being dispatched.

During the time Zackowski supervised Officer 1 and Officer 2, he didn't personally observe any issues with their work performance but admitted he did not always work with Officer 1 and Officer 2. He said, "As a matter of fact, I do my best to not work around Complain because he gets… uh… my goat, so to speak. He does nothing but torment… um… the sergeants if it's something that he doesn't agree with. So, I prefer not to work in that area." For these reasons, he could not say with certainty if there were any issues with Officer 1 and Officer 2.

The camera crew from the television show "COPS" also rode with Officer 1 and Officer 2 on multiple occasions during this time. Sergeant Robert Tipre advised it was up to the watch commanders to decide which officers the crew from "COPS" would ride with and typically the watch commanders choose proactive officers. "COPS" wanted as much exposure to our city, our officers, and crime, so their crew was placed with officers that were "very active." They were assigned to ride with Officer 1 and Officer 2 for a period of several weeks, even during the time the lactation breaks occurred.

Complainant frustration continued to build when Officer 1 and Officer 2 were allowed to continue riding together. On September 16, 2022, Complainant filed a complaint with Sergeant Mike Medici in Internal Affairs. Complainant alleged Officer 1 and Officer 2 failed to take a police report on a call they handled at LA Fitness and that the officers showed enroute to the call for over an hour.[1] Medici brought Complainant complaint to Internal Affairs Lieutenant Eric Detmer. Detmer

[1] Refer to the CAD Printout for LPD22091500186516 (LA Fitness Call 9/15/2022).

delegated Complainant complaint to Field Operations to investigate.[2] Complainant alleged this complaint was "swept under the rug."

The investigation was handled informally, without pulling a "PA," which is common for low level policy violations or training issues.[3] Lieutenant Eric Meier pulled the CAD (Computer Aided Dispatch) information and attempted to pull body-worn camera video for the incident. He then informed both lieutenants for Watch C about the allegations and asked them to handle. Officer 4 questioned Officer 1 and Officer 2 about the call and Tipre witnessed the conversation. It was determined no policy violation occurred.

Complainant alleged Officer 3 began "coming after him" after he filed the complaint. He alleged Officer 3 showed up on one of his and Weddle's calls, on September 19, 2022, and informed them their response times were being watched. Complainant alleged this was in retaliation for filing a complaint. Weddle said although this was unusual of Officer 3, he thought Officer 3 was absolutely trying to look out for him and Complainant by sharing this information. Weddle said Officer 3 was being a good supervisor and did not believe Officer 3 was retaliating against Complainant

[redacted] alleged later that same shift, Officer 3 called Weddle twice and questioned why they were at a park for so long and to ask about a stalking call they handled. Complainant said this was unusual for Officer 3 to call and this was done as a form of retaliation. Weddle also said this was unusual. Weddle described the calls were not accusatory but more of an inquiry. He also knew they weren't the only ones that received a phone call; other officers did too.

When interviewed, Officer 3 did not recall showing up to Complainant and Weddle's call but said it sounded like something he would do. He remembered calling Weddle. He said he usually called Weddle, because Complainant would answer like he didn't know who was calling him even though Officer 3 knew Complainant had his number programmed in his phone. He described this as one of Complainant games. In addition, Officer 3 described conversations with Complainant were always "unpleasant" and "adversarial."

Officer 3 advised just prior to calling Weddle, Officer 4 or Lieutenant Mike Barney told the sergeants complaints had been coming in regarding response times. The complaints were not specific to any individual and sergeants were instructed to monitor response times. Officer 3 said after receiving the instruction from Officer 4 or Barney, he called other officers as well. Officer 3 advised the calls were not exclusive to Weddle and Complainant and were not to retaliate against Complainant.[4] Regarding the stalking call, Officer 3 advised there were two stalking calls that night and it turned out Complainant and Weddle's call was unrelated to his inquiry.[5]

Complainant alleged he was split from riding partners with Weddle, on September 21, 2022, in retaliation for the complaints he made against Officer 1 and Officer 2. (Per the Patrol Rosters,

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[2] Riverside Police Department Policy 1009/ Personnel Complaints reads, "Complaints may be investigated by a Department supervisor of rank greater than the accused employee or referred to the Internal Affairs Bureau, depending on the seriousness and complexity of the investigation.
[3] Per RPD Policy 1009, "PA Indicates Internal Complaint/Investigation."
[4] Officer 3 Interview, approximate time index 17:40.
[5] Officer 3 Interview, approximate time index 14:30.

the last date Complainant and Weddle rode as partners was September 20, 2022.)[6] Supervision advised they talked about splitting Complainant and Weddle for months prior to Complainant complaints. They offered Complainant was so negative, they didn't want his negativity to rub off on Weddle. Redacted per Redacted per Redacted per Redacted per Penal Code section 832.7(b)(6)&(7)
Redacted per Penal Code section 832.7(b)(6)&(7)
Supervision did not want to split the officers during these times, because they were looking out for the wellness of both officers. Supervision advised the split was not retaliatory against Complainant but out of concern for Weddle, who was in the process of testing for sergeant. Weddle stated he did not believe the split was retaliatory against Complainant Instead, Weddle believed supervision acted in his best interest.

In addition, just prior to the split, Meier learned Complainant told Officer 3 he expected an exceeds standards or outstanding rating on his evaluation. Complainant request or demand for this rating was witnessed by Tipre.[7] Officer 3 shared Complainant expectation with Barney which prompted Barney to pull stats for Complainant According to Meier, Barney found them to be "lackluster." Barney told Meier he wished he hadn't told him about Complainant complaint regarding Officer 1 and Officer 2, because he and Officer 4 had already planned to split Complainant and Weddle. They discussed the appearance of splitting Complainant and Weddle days after he filed a complaint and how it would look bad. Ultimately, they made the decision they were not going to allow Complainant and Weddle to ride together. Meier said, "Appearance is one thing, but performance is another."[8]

Complainant advised he met with Deputy Chief Bruce Blomdahl on September 23, 2022. Both Complainant and Blomdahl advised their lengthy conversation went well and both mutually respected each other. Both advised Blomdahl asked for Complainant to allow the Department to investigate his complaint about Officer 1 and Officer 2. Complainant had threatened to take this complaint to the Community Police Review Commission (CPRC).

Blomdahl advised when he reached out to Complainant to have this conversation, Complainant had not filed a hostile work environment complaint. Blomdahl's meeting with Complainant was not to dissuade Complainant from filing a complaint, but to allow Internal Affairs to handle his complaint regarding Officer 1 and Officer 2.

Complainant alleged he ran into Sergeant James Mutuku on the morning of Saturday, October 1, 2022. Complainant said this was the first time he had seen J. Mutuku since Complainant filed a complaint against Officer 1 and Officer 2. Complainant advised he said hello to J. Mutuku and J. Mutuku said, "You'll see. You'll see." When interviewed on January 19, 2023, J. Mutuku denied this occurred.[9]

On Monday, October 3, 2022, Complainant located a flyer with a photo of a rat and the words "Rat Busters" in his mailbox at the Lincoln Station. The same flyer was posted in areas of the men's

[6] See Patrol Rosters, Watch C, 9/21/22 and 9/22/22.
[7] Refer to Tipre's Interview, approximate time index 22:30 and Meier's Interview, approximate time index 1:38:10.
[8] Meier Interview, approximate time index 1:39:55.
[9] During my investigation, I was unable to locate any witnesses or evidence to support this occurred.

locker room. Based on interviews, it appears two flyers were posted there. Complainant took photographs of the flyers and left them all in place. He did not notify supervision. In his interview, Complainant advised he probably should have notified supervision, but he wanted to see what J. Mutuku would do next.

On October 4, 2022, Meier was made aware of the flyers and located one in Complainant mailbox and one in the men's locker room which was encased in a frame/document holder. He removed them and collected them. He missed one of the flyers in the locker room and this flyer was removed by *Officer 4* and thrown away. Complainant sent a text to Meier thanking him for removing the flyers. He told Meier he had taken photographs of the flyers and J. Mutuku was responsible.

Meier called Complainant to ask why he thought J. Mutuku was responsible and if Complainant wanted to open an investigation. Complainant told him, "No. Don't do it." He told Meier he wanted to mind his own business.[10]

However, Complainant believes an investigation should have been opened immediately and said, "This is an epic failure of command at the Riverside Police Department in 2022." Complainant said Captain Chad Milby should have taken the initiative to pull a "PA" and initiate a complaint, the day Meier handed him the flyer.[11]

Complainant admitted he did not know what actions, if any, had been taken to identify the source of the flyers. He only speculated no action was taken, just as he speculated his complaint about Officer 1 and Officer 2 had been "swept under the rug."

The same day Meier learned about the flyers and Complainant belief J. Mutuku was responsible for them, he notified Milby. As the division commander, Milby assigned Meier to investigate informally but did not pull a "PA." His rationale was Meier previously worked as an investigator in Internal Affairs and he (Milby) worked in Internal Affairs as the lieutenant. Milby had every confidence in his and Meier's ability to conduct a complete and thorough investigation. He advised another reason he did not pull a "PA," was Meier spoke with Complainant and Complainant indicated he did not want one.

On October 4, 2022, Milby gave clear direction to his command regarding the flyers. He sent an email to his watch commanders and told them to share with personnel during roll call that posting any derogatory, demeaning, or disrespectful comments or material toward another person or group of people at any police facility shall not be tolerated and was a violation of Department policy, specifically 330.3.2(j).[12] He included both deputy chiefs on the email to ensure they knew he was addressing the matter. Milby instructed watch commanders to address this and to note on the rosters it had been discussed. He ensured this was done in roll call for Watches A, B, and C on Wednesday and Saturday.[13]

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[10] Complainant Interview, approximate time index 19:20.
[11] Complainant Interview, approximate time index 56:15.
[12] See Email from Captain Milby (10/4/23).
[13] See Patrol Rosters Provided by Captain Milby.

Milby also spoke directly to Barney and Officer 4 and told them to convey to their troops that disparaging remarks at any level, any rank, shall not be tolerated. Milby specifically pulled in J. Mutuku, with Meier, and made him aware of the same. He reminded J. Mutuku he was a supervisor and disparaging remarks shall not be tolerated, even if there was a difference of opinion. He told J. Mutuku to be professional. For consistency, Milby and Meier brought Complainant in as well and told him the same. Milby told Complainant even if he had a disagreement with someone, or didn't like someone, disparaging remarks would not be tolerated.

Though Complainant did want to go through with a complaint regarding the flyers and did not want to be interviewed, Meier took steps to determine who might have been responsible and to preserve the evidence he located.[14]

On October 5, 2022, Meier contacted Information Technology (IT) and requested print queues on the Lincoln Station printers.[15] He was able to determine the flyer was saved to a computer in the report writing room on October 1, 2022, at 4:17 pm, and printed at 4:36 pm, on the printer inside the report writing room.[16]

Meier also pulled video from the Lincoln Station. The video showed J. Mutuku pull into the back lot at the Lincoln Station, exit his vehicle at 4:05 pm, and walk toward the station.[17]

In addition to pulling video and print logs, and ensuring this information could be saved, Meier preserved the flyer in its original frame, placed it in an envelope, and secured it in his office to maintain the integrity of the evidence. He even attempted to determine who had been logged onto the computer from which the flyer was printed, but the person used the generic log in for the report writing room. Meier learned shortly thereafter that an investigation by Internal Affairs had been initiated and he handed over the evidence he had collected. Meier said, "This thing was never put down."[18]

In his interview, Complainant advised he worked the swap meet on Saturday, October 8, 2022. At about 6:30 am, the officers had left to start their shift, but the sergeants were still sitting up in their seats in the roll call room. Complainant walked by and "sarcastically" said, "Hello James. How you doing?" and then went to change. After changing, Complainant walked out of the station by the watch commander's office. Prior to exiting, he told J. Mutuku, "James, I checked my mailbox and there's nothing in it."[19]

Complainant alleged J. Mutuku walked out and confronted him. J. Mutuku told him, "Your voice is trembling. What's wrong dude?" Complainant told him a "Rat Buster" is a rifle used to kill rats and, "You threatened my life." Complainant called him a punk and a coward. J. Mutuku then turned, and with his right or left hand, simulated a handgun and motioned as if firing twice at Complainant.[20]

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[14] Meier Interview, approximate time index 16:30.
[15] See Email from Meier to IT dated 10/5/2022.
[16] See Report Room Print Log and Emails from Meier regarding Print Queue.
[17] Refer to Video , Lincoln PD – Fleet-2022-10-01_1600min00x000ms.mp4.
[18] Meier Interview, approximate time indexes 17:00 and 23:00
[19] Complainant Interview, approximate time indexes 17:00 and 1:26:20.
[20] Complainant Interview, approximate time indexes 17:00 and 1:26:20.

In J. Mutuku's interview, he acknowledged he exited the station to confront Complainant but denied he used his hand to simulate a handgun and motion as if firing it.

Sergeant Nathan Asbury witnessed part of this incident. Asbury witnessed Complainant address J. Mutuku inside the station and J. Mutuku exit the station to confront Complainant He did not witness what took place outside. I was unable to locate any witnesses or video evidence to verify what took place outside. I did review video, but the cameras in the back lot of the Lincoln Station do not cover the area (as described by both parties) where the incident occurred.

Complainant alleged Officer 4 moved him to Area 5 on October 26, 2022, though he was a senior officer, to retaliate against him and "bully, haze, and intimidate him" for his complaint against Officer 1 and Officer 2.[21]

Officer 4 advised he moved Complainant to Area 5 to keep him separated from Officer 1 and Officer 2.[22] He was clear it wasn't personal and had nothing to do with a creating a hostile work environment. Officer 2 and Officer 1 told Officer 4 that Complainant never drove by any of their traffic stops.[23] According to Officer 4 that can't happen with a beat partner. Officer 4 also advised officers could be moved at his and the sergeants' discretion to cover an area as they saw necessary. He addressed Complainant argument that he had seniority by saying, "He isn't senior to the detectives who are in the room working overtime, he's not senior to the sergeants, and he's sure as hell not senior to me."

Officer 3 didn't know why Officer 4 moved Complainant to Area 5, but Zackowski and Tipre thought it had to do with keeping Complainant separated from Officer 1 and Officer 2. All three sergeants advised Officer 4 readily agreed to move Complainant back to Area 2 when this was suggested by Officer 3 and Zackowski. All three sergeants advised they were not aware of any issues between Complainant and Officer 4 prior to this and they did not believe Officer 4 did this to be hostile toward Complainant

After Complainant was moved back to Area 2, Zackowski went outside to the parking lot to advise Complainant Zackowski said Complainant yelled at him for thirty seconds or more Redacted per Penal Code section 832.7(b)(5),(6)&(7) . He described Complainant was so angry, his face was red, and his lips were quivering. Other officers were in the area getting ready for their shifts when this occurred. Redacted per Penal Code section 832.7(b)(5),(6)&(7) .[24]

Shortly after Redacted per Penal Code section 832.7(b)(5),(6)&(7), Complainant came back into the roll call room. He told Officer 4 he wanted to file a complaint against him. Officer 4 told him he needed to file his complaint with Milby, Internal Affairs, or Human Resources. Complainant contacted Medici in Internal Affairs who in turn notified Detmer. Detmer notified Complainant the following day his complaint would be investigated by Internal Affairs.[25]

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[21] Complainant Interview, approximate time indexes 22:15 and 24:50.
[22] Patrol Rosters from Watch C show 10/19/22 was the last date Complainant worked in the same beat (Area 2) as Officer 1 and Officer 2. Prior to this, the three officers commonly worked Area 2 together.
[23] In their interviews, both Officer 1 and Officer 2 advised Complainant did not come to any of their calls, even if they requested emergency backup, were in a use of force, or had an occupied GTA.
[24] Complainant Interview, approximate time index 26:45.
[25] See Email from Detmer to Complainant dated 10/27/22.

As part of my investigation, I collected and reviewed the evidence previously collected by Meier. I interviewed Complainant and twenty-three witnesses or subject officers. I continued to gather evidence throughout the investigation to include GPS Records, Unit Histories, CAD data, and requested the flyers and the plastic frame/document holder be processed for latent prints and swabbed for deoxyribonucleic acid (DNA).

I checked Telestaff and the Patrol Rosters for all the subject and witness officers listed in this investigation. On the date the "Rat Busters" flyers were printed (October 1, 2022) only the following personnel listed in this investigation worked: J. Mutuku, Officer 2 and Officer Ana Miskulin. J. Mutuku is observed on video entering the Lincoln Station at approximately 4:05 pm (minutes before the flyers were printed). Officer 2 was assigned unit #3839 and GPS records show her vehicle in the area of North High School at 4:17 pm. Telestaff shows Miskulin ended her shift at 4:00 pm. (Miskulin was only mentioned in this investigation as a possible witness to an exchange between Complainant and J. Mutuku in the parking lot.)

I considered at the time the flyers were printed, officers assigned to Watch C would likely have left the station and been in their assigned beats (most units are logged on and in their beats by 3:00 pm). Watch B officers, unless working overtime, would have left the station. In addition to looking at personnel named in this investigation, I also checked Telestaff for any Watch B officers that may have worked overtime. I located two officers: Jennifer Cappelen and Dexter Pattison. When asked, neither Cappelen nor Pattison could recall details from their overtime on October 1, 2022.

Finally, I had GPS records pulled to show what units were at the Lincoln Station on the date/time the flyers were printed. The only two units with automated vehicle locator (AVL) information at the Lincoln Station between 4:00 pm and 4:30 pm, on October 1, were S30 (Sergeant Tanner Paes) and S53 (J. Mutuku).[26] Paes was not mentioned by any officer interviewed in this investigation.

On January 19, 2023, J. Mutuku was interviewed regarding this investigation. The following is an excerpt from his interview:

> **J. Mutuku denied he ever saw the flyers but said he heard about them.**[27]
>
> I confirmed J. Mutuku never saw the flyer. **J. Mutuku said, "I've never… I've never seen this flyer."[28]**
>
> I asked if he heard who might have placed them. Initially, he said no. Then he said he heard Complainant placed them.[29]
>
> I asked, "You didn't place them?" He replied, "No."

[26] Refer to GPS Records At/Near Lincoln Station (10/01/2022, 1600-1630).
[27] J. Mutuku Interview, approximate time index 35:45; page 25 of transcript.
[28] J. Mutuku Interview, approximate time index 36:45; page 26 of transcript.
[29] Question one regarding who he heard placed the flyers. Initially Mutuku said no. J. Mutuku interview, approximate time index 37:10; page 26 or transcript.

In response to asking if his fingerprints would be on the flyers, J. Mutuku said, "No. They're not going to be on those."[30]

I asked if [Complainant] was the only person, he heard might have placed the flyers. He answered, "Yeah." He said everybody was saying [Complainant] put the flyers up.[31]

I asked if he heard he might have placed them. He answered, "Yes. I've heard people say I might've placed them." ***(This directly contradicts his previous two answers regarding who may have placed the flyers.)***[32]

On January 20, 2023, **I received an email from the Riverside County Sheriff's CAL-ID Unit with an informal report that positive identification was made to J. Mutuku reference latent prints collected from the "Rat Busters" flyers found in [Complainant] mailbox and in the locker room. *(This directly refutes J. Mutuku's statement.)***

On January 24, 2023, I spoke with Fingerprint Expert [Reporting Party 2] to follow up on the final report. I also asked to what certainty she was that the prints belonged to J. Mutuku. [Reporting Party 2] informed me that she and two additional fingerprint experts examined the prints and concluded the prints belonged to J. Mutuku.

On February 21, 2023, J. Mutuku was reinterviewed. He could offer no explanation as to why his prints were located on the flyer that had been encased within the frame/document holder found in the men's locker room. He maintained throughout his interview he did not post the flyers and had never seen them. The following is an excerpt from his second interview:

J. Mutuku admitted he was frustrated with [Complainant] and did not like him. I asked if this was enough to drive him to place the flyers. J. Mutuku denied it was. He said, "I cannot explain why my fingerprints would be on there."[33]

J. Mutuku was presented with the report from CAL-ID which showed his fingerprints were located on the flyer. J. Mutuku said, "I understand, but I'm telling you that I did not put the flyer up. I do not know why my fingerprints are on the flyer. I hadn't seen the flyer. I've never seen the flyer."[34]

J. Mutuku maintained he did not print the flyers, put up the flyers, did not put them in the vinyl frame, and did not see them.[35]

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[30] J. Mutuku Interview, approximate time index 37:30; page 27 of transcript.
[31] Question two regarding who he heard placed the flyers. J. Mutuku Interview, approximate time index 37:35; page 27 of transcript.
[32] J. Mutuku Interview, approximate time index 37:40. Refer to footnotes 39 and 40.
[33] J. Mutuku Interview 2, approximate time index 5:30; page 4 of transcript.
[34] J. Mutuku Interview 2, approximate time index 6:45; pages 4 and 5 of transcript.
[35] J. Mutuku Interview 2, approximate time index 8:20; page 6 of transcript.

J. Mutuku said, "I a hundred percent get it, but I… again, I'm standing by what I said. I di… I didn't print the flyer, I've never seen the flyer, and I didn't put the flyer up or touch this vinyl case that you're talking about."[36]

J. Mutuku understood the evidence presented against him. He said, "It's black and white. I'm not stupid. I get it. I get all the circumstantial stuff. I understand that, but my answer's not gonna [*sic*] change. From the first interview, from the three times I've said it now, it's gonna [*sic*] be the same answer." He added, "but my answer is—there's nothing's gonna [*sic*] make me change my answer. Uh, that's—my answer's what it is."

Since the frame/document holder is not an item stocked at the Department, I asked if he would be willing to voluntarily supply a buccal swab to collect a sample of his DNA to show his DNA was not on the frame. Mutuku answered "yes." He said he would have no problem doing that but said he may have touched a locker on his way out of the locker room.[37] At the end of the interview, J. Mutuku stated he would like to consult with an attorney prior to his DNA being collected.[38]

Through the course of this investigation, I found J. Mutuku had a motive to place/post the flyers and both circumstantial and direct evidence to support he was responsible for them.

Complainant **SECOND COMPLAINT:**

Redacted per Penal Code section 832.7(b)(5),(6)&(7)

[redacted]

[redacted]

[redacted]

[36] J. Mutuku Interview 2, approximate time index 10:30; page 8 of transcript.
[37] J. Mutuku Interview 2, approximate time index 18:15; page 14 of transcript.
[38] J. Mutuku Interview 2, approximate time index 22:30; page 18 of transcript.
[redacted] Redacted per Penal Code section 832.7(b)(5),(6)&(7) [redacted]

Redacted per Penal Code section 832.7(b)(5), (6)&(7)

Redacted per Penal Code section 832.7(b)(5), (6)&(7)

Redacted per Penal Code section 832.7(b)(5), (6)&(7)

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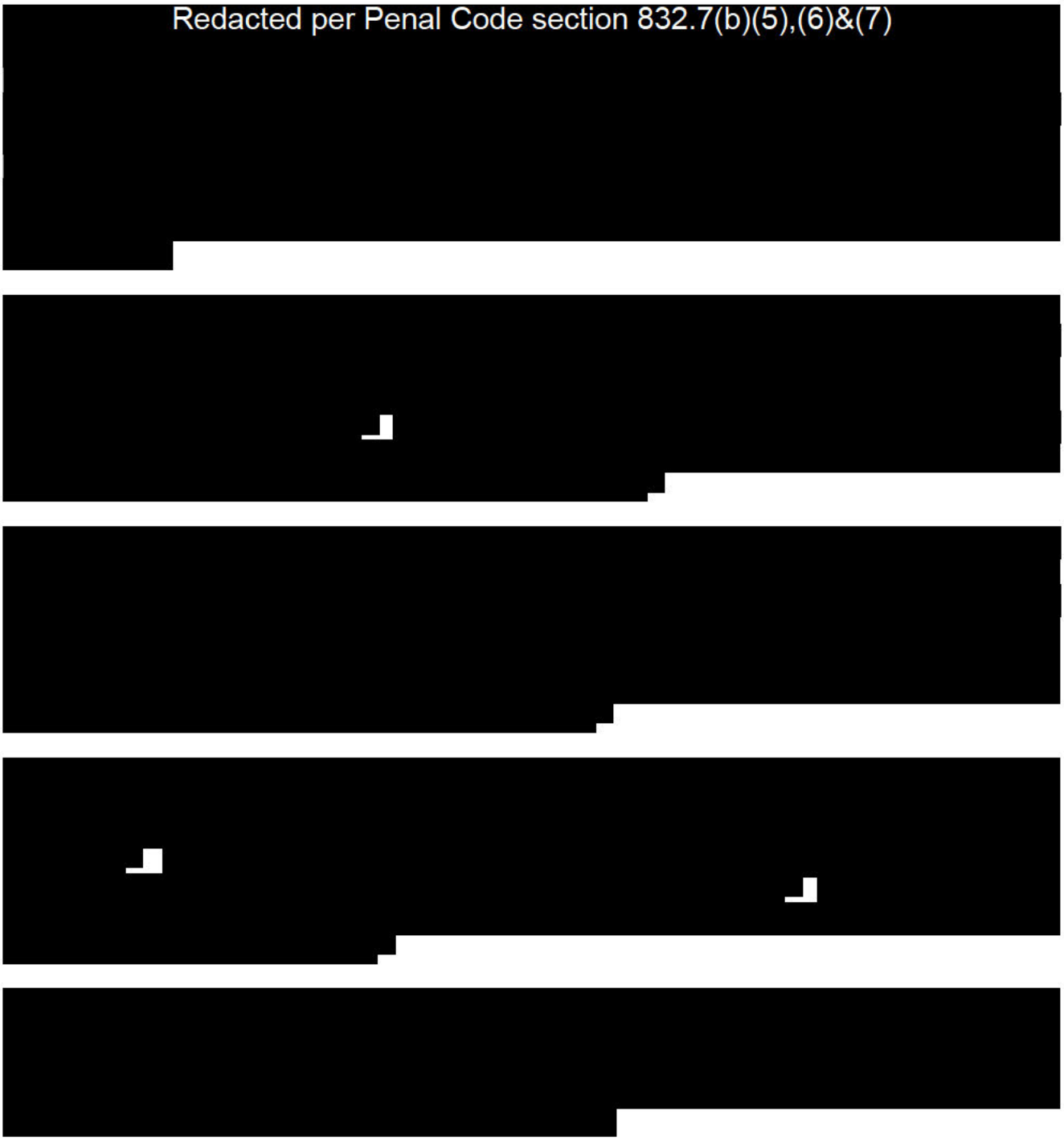
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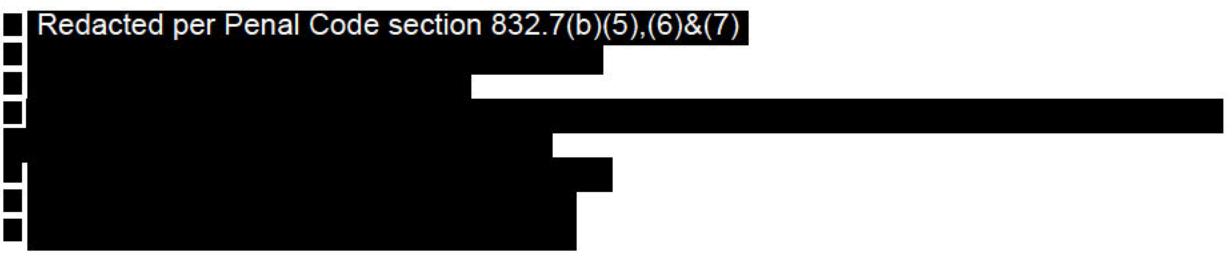
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It's important to note, that although Complainant claimed a hostile and retaliatory work environment, after filing his initial complaint on September 16, 2022 (against Officer 1 and Officer 2), several statements collected throughout this investigation, including Complainant appear to show that Complainant intentionally provoked situations with supervision. For example:

> Complainant advised he did not report the rat flyers to supervision, but instead photographed them and left them in place. He said he "might have" sent via text the pictures he took to other Department members but did not remember. He said he did not remember who he sent or showed the photos, but said he did this to see what people's reactions were and what J. Mutuku would do next. He denied he did this to provoke the situation.
>
> Complainant advised he told J. Mutuku, to "do something" after J. Mutuku told him to log on to the MDC when working overtime at the swap meet. Though Complainant could not identify the exact date, he advised this occurred after he discovered the flyers on October 3,

[55] Redacted per Penal Code section 832.7(b)(5)(6)&(7)

[56] Redacted per Penal Code section 832.7(b)(5)(6)&(7).

2022. He advised he said this because J. Mutuku had "puffed up" and he didn't know if J. Mutuku wanted to fight.[57]

Complainant advised he "sarcastically" said hello to J. Mutuku and told him he checked his mailbox and there was nothing in it on October 8, 2023. Complainant also advised he called J. Mutuku a "punk" and a "coward" when J. Mutuku confronted him directly afterward in the parking lot. Meier, Milby, and Complainant all advised Meier and Milby told Complainant to act professionally and to avoid conflict after the flyers were discovered on October 3, 2022. When presented with this in his second interview, Complainant said he thought the conversation with Meier and Milby in which he was instructed to avoid contact with J. Mutuku occurred after he filed his hostile work environment complaint on October 26, 2022.

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57 Complainant Interview, approximate time index 18:30.
58 Redacted per Penal Code section 832.7(b)(5)(6)&(7)
59 Redacted per Penal Code section 832.7(b)(5)(6)&(7)
60 Redacted per Penal Code section 832.7(b)(5)(6)&(7)

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Many believed Complainant was frustrated with the changes in law enforcement and management from all ranks. They gave examples of how Complainant sat on calls for "unreasonable" amounts of time and assigned calls to himself that would result in an easy report or no report at all. Office and Officer 2 described Complainant had a reputation amongst officers for not showing up to calls that were "buckets."[61] Aside from this, they described they had a normal working relationship with Complainant until approximately three years ago when Officer 1 confronted Complainant after he was rude to Officer 1 on Channel 1. After this, Complainant "never" backed them up in the field, even if they requested emergency backup. In his second interview, Complainant recalled the incident that occurred years earlier with Officer 1 but denied he stopped backing Officer 1 and Officer 2 on calls.

Redacted per Penal Code section 832.7(b)(5)(6)&(7)

Redacted per Penal Code section 832.7(b)(5)(6)&(7)

INVESTIGATION:

On Thursday, October 27, 2022, Lieutenant Eric Detmer assigned me to investigate Complainant Complainant complaint of a hostile work environment and claims of retaliation (see attached email from Detmer). Though the complaint was serious, an arbitration hearing (PA2107041) the following week prevented me from immediately scheduling an interview with the complainant.

On Tuesday, November 8, 2022, Sergeant Mike Medici and I interviewed Complainant Complainant regarding his complaint of a hostile work environment, in the Internal Affairs Conference Room. The interview was audio recorded.

[61] The term "bucket" refers to a call that is complex and generally requires a lengthy report.
[62] Redacted per Penal Code section 832.7(b)(5)(6)&(7)
[63] Redacted per Penal Code section 832.7(b)(5)(6)&(7)

On November 29, 2022, I received a forwarded email from Lieutenant Eric Meier with an attachment titled "Report Room Print Log." The original email is dated October 5, 2022, from IT Technician Reporting Party 3.

On December 1, 2022, I met with Lieutenant Eric Meier and collected two "Rat Busters" flyers (one of the flyers was encased in a vinyl frame/document holder with a magnet attached to the rear) and a thumb drive. The thumb drive contained video footage of the rear parking lot at the Lincoln Station. I loaded the video into RMS.

During the week of December 5, 2022, I met with Supervising Forensic Specialist Reporting Party 1 to have her conduct a latent print search of the "Rat Buster" flyers and swab for DNA. Reporting Party 1 was in the middle of a jury trial and processing evidence from a recent triple homicide. To be discreet, I retained the flyers until she could process them.

On December 6, 2022, Sergeant Mike Medici and I interviewed Officer Spencer Weddle, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On December 7, 2022, Sergeant Mike Medici and I interviewed Sergeant Robert Tipre, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On December 7, 2022, I emailed Police Communications Systems Analyst Reporting Party 4 and requested GPS records and Unit History for 3R24 (Officer 2) for October 1, 2022. I later attached these to the case file.

On December 13, 2022, Sergeant Mike Medici and I interviewed Sergeant Dawson Smith, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On December 13, 2022, Lieutenant Eric Detmer and I interviewed Sergeant William "Billy" Zackowski, as a witness officer, in the Lincoln Station Conference Room. The interview was audio recorded.

On December 14, 2022, Sergeant Mike Medici and I interviewed Officer Shea McMahon, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On December 15, 2022, Sergeant Mike Medici interviewed Officer 4, as a subject officer, in the Internal Affairs Conference Room; Captain Charles Payne ordered Officer 4 to answer questions. The interview was audio recorded.

On December 19, 2022, I interviewed Officer Ana Miskulin (formerly Ahumada) as a witness officer, in my office in Internal Affairs. The interview was audio recorded.

On December 21, 2022, Sergeant Mike Medici and I interviewed Officer Carrin Christianson, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On January 3, 2023, Sergeant Mike Medici and I interviewed Lieutenant Mike Barney, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On January 4, 2023, I provided Supervising Forensic Specialist Reporting Party 1 the two "Rat Busters" flyers for processing. I requested latent prints and DNA swabs of both flyers.

On January 4, 2023, Sergeant Mike Medici and I interviewed Lieutenant Eric Meier, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On January 4, 2023, Sergeant Mike Medici and I interviewed Officer 2, as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On January 11, 2023, Sergeant Mike Medici and I interviewed O Officer 1 as a witness officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On January 19, 2023, Lieutenant Eric Detmer and I interviewed Sergeant James Mutuku, as a subject officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On January 20, 2023, I received an email from the Riverside County Sheriff's CAL-ID Unit with an informal report that positive identification was made to James Mutuku and Compl[Complainant] The email is attached to the case file.

On January 24, 2023, I called Fingerprint Expert Reporting Party 2 with Riverside County Sheriff's CAL-ID Unit to follow up on the final report. I also asked to what certainty she was that the prints belonged to James Mutuku. Reporting Party 2 informed me that she and two other fingerprint experts examined the prints and concluded the prints belonged to J. Mutuku. I asked if this would be in her report. Reporting Party 2 said the final report would indicate she and another examined the prints.

On January 24, 2023, I received an email from the Riverside County Sheriff's CAL-ID Unit with the final report. The email and final report are attached to the case file.

On January 25, 2023, I interviewed Deputy Chief Bruce Blomdahl, as a witness officer, in his office at the Orange Street Station. The interview was audio recorded.

On January 26, 2023, I interviewed Sergeant Nathan Asbury, as a witness officer, in my office in Internal Affairs. The interview was audio recorded.

On January 26, 2023, I interviewed Captain Chad Milby, as a witness officer, in my office in Internal Affairs. The interview was audio recorded.

On January 27, 2023, I attempted to reach Investigator Janet Ramos with the District Attorney's Office by phone to interview her. I received an automated voicemail for "951-623-3487." I left a message and requested she call me.

On January 27, 2023, I interviewed Investigator Janet Ramos with the District Attorney's Office by telephone. The interview was audio recorded.

On January 31, 2023, Lieutenant Eric Detmer and I interviewed Officer 3, as a subject officer, in the Internal Affairs Conference Room. He was represented by Attorney Saku Ethir. The interview was audio recorded.

On February 7, 2023, Supervising Forensic Specialist Reporting Party 1 returned the two "Rat Busters" flyers and possible DNA samples.

On February 8, 2023, I requested Supervising Forensic Specialist Reporting Party 1 process the frame/document holder which previously housed one the "Rat Busters" flyers.

On February 8, 2023, I interviewed Officer Dexter Pattison by telephone. The interview was audio recorded. I also conducted follow-up by email and attached the correspondence to the case file.

On February 9, 2023, Supervising Forensic Specialist Reporting Party 1 took possession of the frame/document holder which previously housed one the "Rat Busters" flyers to process for latent prints and swab for DNA.

On February 9, 2023, I contacted Police Communications System Analyst Reporting Party 4 for GPS records related to October 1, 2022. Reporting Party 4 provided me with the information requested and I attached to the case file.

On February 15, 2023, Supervising Forensic Specialist Reporting Party 1 forwarded me an email from RSO CAL-ID which indicated there was no match made on the plastic frame/document holder and the formal report would follow.

On February 21, 2023, Lieutenant Eric Detmer notified me Complainant filed another complaint against Officer 3 (see attached Complaint Control Form dated February 20, 2023). He informed me this complaint would be added to and investigated under this investigation.

On February 21, 2023, Lieutenant Eric Detmer and I interviewed Sergeant James Mutuku, as a subject officer, in the Internal Affairs Conference Room. The interview was audio recorded.

On February 23, 2023, I emailed Complainant to advise I could not keep his appointment that afternoon and asked to reschedule. I told him he had been identified as possible subject officer and he was welcome to bring a representative. He replied to me minutes later and advised he would speak with Attorney Saku Ethir.

On February 26, 2023, Captain Charles Payne and Lieutenant Eric Detmer placed Sergeant James Mutuku on paid administrative leave and suspended his police powers.

On February 28, 2023, Lieutenant Eric Detmer notified Sergeant James Mutuku he reported this investigation to Peace Officer Standards and Training reference Senate Bill 2 Disclosure.

On February 28, 2023, Lieutenant Eric Detmer and I interviewed Officer 3, as a subject officer, in the Internal Affairs Conference Room. The interview was audio recorded. Attorney Saku Ethir represented him. She told me Complainant had reached out to her for representation, but she told him it would be a conflict for her to represent him.

On March 2, 2023, I emailed Complainant to follow up on his interview. He replied to me minutes later and advised he spoke with Attorney Saku Ethir and would confirm with me once he had a date, she was available. Hours later, he replied he was available to be interviewed March 9, 2023.

On March 8, 2023, I interviewed Sergeant Chamroeun Ouk, as a witness officer, by telephone. I recorded the call with Ouk's permission.

On March 9, 2023, I interviewed Detective Dave Riedeman, as a witness officer, in my office in Internal Affairs. The interview was audio recorded.

On March 9, 2023, I interviewed Detective Josh Ontko, as a witness officer, in my office in Internal Affairs. The interview was audio recorded.

On March 9, 2023, Sergeant Mike Medici and I were prepared to interview Complainant regarding his complaint dated February 20, 2023, against Officer 3, in the Internal Affairs Conference Room. We also planned to interview him as a subject officer regarding allegations made by other parties during the investigation. Complainant arrived early to his 3:00 pm interview with Officer Danny Cisneros as his representative. Upon seeing the Complaint Control Form, Admonition of Rights Packet, and transcript of his first interview, he asked to reschedule so he could bring an attorney. I provided him with the transcript of his first interview and he advised he would reach out to me to reschedule once he had an attorney. He explained Attorney Saku Ethir advised him it would be a conflict to represent him.

On March 14, 2023, I received a phone call from Attorney Peter Horton who advised he was Officer Complainant's Complainant attorney. He requested a copy of the transcript of Complainant interview and the audio recording. I emailed him both items and we scheduled Complainant interview for March 30, 2023.

On March 16, 2023, Supervising Forensic Specialist Reporting Party 1 returned the "Rat Busters" plastic frame/document holder, DNA swabs a copy of her report and the final report from the RSO CAL-ID Unit. I later attached both reports to the case file.

On March 30, 2023, Sergeant Mike Medici and I interviewed Complainant regarding his complaint against Officer 3, in the Internal Affairs Conference Room. We also interviewed him as a subject officer regarding allegations made by other parties during the investigation; Attorney Peter Horton represented him. The interview was audio recorded.

INTERVIEW OF WITNESS Complainant

On November 8, 2022, at 2:51 pm, Sergeant Mike Medici and I interviewed Complainant in the Internal Affairs Conference Room. I explained to Complainant I did not have any questions prepared for him and this interview was to allow him to explain the issues he had been experiencing. Complainant stated he would attempt to identify the issues in chronological order to the best of his ability. The interview was recorded using a department issued digital audio recorder. The following is a summary of Complainant recorded interview. It is not verbatim or necessarily in order but is organized for clarity. (Complainant interview was also transcribed and is attached to the case file.)

Complainant issues began at shift change which occurred in July of 2022. He advised Officers Officer 1 and Officer 2 normally rode as partners and he worked Wednesdays Thursdays with them. Due to staffing levels, the Department "has adopted this philosophy" that somehow, it's okay to put two units on the east side of the city when we used to have five units plus UNET (University Neighborhood Enhancement Team). By August, Complainant and his partner, Officer Spencer Weddle, observed Officer 1 and Officer 2 taking themselves "out of service" frequently. This was due to Officer 1 taking lactation breaks, which she is entitled to do, and Complainant did not have a problem with. However, Complainant did take issue with the fact that whenever Officer 1 exercised this right, Officer 2 was also being taken out of service, because they rode as partners. This left one police unit for 60,000 people. It wasn't safe and it wasn't fair to Complainant and Weddle. Complainant and Weddle were "ripping their hair out and getting their butts kicked."

Complainant went to Sergeant Dawson Smith, who was in the sergeant's office, and requested he split Officer 1 and Officer 2 (Smith supervised Officer 1 and Officer 2. He told Smith it was a safety issue, and the workload was unfair to Complainant and Weddle. Complainant was "basically told no" and "it was implied" that Officer 1 and Officer 2 were going to do whatever they wanted. Officer 3 (Complainant direct supervisor) was present during this conversation. Smith and Officer 3 were not receptive to Complainant request. They looked at him and were like, "Are you nuts? We're not splitting them up. Just deal with it."[64]

Complainant could not believe it. He did not care if Officer 1 used her lactation break her entire shift. His issue was Officer 1 shared a car with Officer 2 so that meant they were both out of service. It was very frustrating to work like that, even though it was only two days per week. Complainant and Weddle were left to handle the beat which is dangerous and large.

When he brought the issue to Smith, Smith and Officer 3 kept saying "they're entitled to it." Complainant disagreed and said Officer 1 was entitled. He had no issue for a woman to take care of her business, but she was not entitled to ride with a partner and have both officers be tied up.

His conversation with Smith "obviously leaked back" to Officer 1 and Officer 2 because the lactation breaks went from thirty minutes to almost an hour and fifteen minutes. Complainant and Weddle felt Officer 1 and Officer 2 were trying to make a point by stretching out the breaks since Complainant said something to a sergeant.

[64] Complainant Interview, approximate time indexes 2:00 and 4:00.

Complainant asked for help, but he and Weddle didn't receive any. The lactation breaks lasted longer and longer, and Complainant frustration continued to build.

Then on September 15, Officer 1 and Officer 2 were dispatched to a burglary or theft that occurred at LA Fitness. The reporting party (RP) advised her locker had been broken into and all her stuff had been taken. "The bad guys" had her key fob and probably used to it locate and split in her car. Complainant was driving and Weddle was watching the computer. Officer 1 and Officer 2 were enroute to the call for almost an hour and thirty minutes. The RP called back numerous times regarding the delay in police response. The RP must have called her father because her father showed up. The father called police, got mad because of the delay, and drove around and found his daughter's car.[65]

Dispatch got upset and "burned" Officer 1 and Officer 2 on Channel 1. Dispatch asked if they were "97" (on scene). Officer 1 or Officer 2 advised they were going to call the RP. Weddle looked at Complainant and asked how they were going to handle the call over the phone. They would have to fill out a CHP 180 Form for the stolen vehicle, have the victim sign it, and then enter the information into California Law Enforcement Telecommunications System (CLETS).

Complainant told Weddle that Officer 1 and Officer 2 were going to "NR" the call. (NR refers to "No Report" meaning they were not going to take a report.) Weddle didn't believe this. Complainant told him, "They know they're untouchable out here. They're doing whatever they want. If the sergeants aren't addressing it, they're not going to go to that call." Complainant and Weddle watched and Officer 1 and Officer 2 cleared without taking a report.[66]

Complainant and Weddle were ripping their hair out. Weddle typed a dispatcher to confirm Office and Officer 2 cleared without a report. The dispatcher responded and advised this was correct, but a report should have been taken.

Complainant sent a text to Public Safety Dispatcher Tanya Richardson. She too confirmed Officer 1 and Officer 2 did not take a report.

It took Officer 1 and Officer 2 an hour and a half to get to the call, Complainant and Weddle were "the ones getting their asses kicked all the time and they just pulled that." Complainant told Weddle, "I've had it." He told Weddle he was going to sleep on it, but if he was still upset in the morning, he was going to call Internal Affairs. He said, "There's nobody addressing these issues out here, and their behavior is getting more and more brazen."[67]

Complainant woke the next day, went to the gym, and was still upset. He sent a text to Sergeant Mike Medici (who works in Internal Affairs) on September 16, regarding the call Officer 1 and Officer 2 didn't take a report on. He provided the incident number to Medici and asked him to look at it. He did not bring the issue to Smith or any other supervisor in Field Operations. He reached out to Internal Affairs as "an act of desperation, because I already felt like I went to

[65] Complainant Interview, approximate time index 4:20.
[66] Complainant Interview, approximate time index 5:00.
[67] Complainant Interview, approximate time index 6:30.

them" and nothing was going to happen. The sergeants sat in the office and watched television, while the officers handled the calls.[68]

Medici responded and said the call didn't look right and he had Lieutenant Eric Meier looking into it. Complainant waited a few days and when he didn't hear anything, he sent a text to Meier. Complainant asked Meier if "you guys" were going to investigate the incident or not. Complainant said it was "sad that this was going to be swept under the rug." He knew as a rep, officers sat in this seat (referring to being interviewed in Internal Affairs) for hours and got accused of doing way less than what they did. Meier told Complainant "We're looking into it."[69]

Complainant said, "And Eric's a good solid guy. So, I trust him. And I look up to him even though he's younger than me. He's a... he's ... I admire the guy."[70]

Complainant relied on Meier. A few days later, Complainant told Meier, "Look man. If you guys are going to cover this up, let me know, because I'm going right to the CPRC."[71] He told Meier Officer 1 and Officer 2 were not getting away with this. Complainant represented guys all the time and Meier had previously worked in Internal Affairs; both knew officers were investigated for way less than this.[72]

It wasn't easy for Complainant to contact Internal Affairs. He knew there would be a consequence for doing so and he would be labeled a rat. Meier told him he would try to protect his name, but Complainant was older and knew it was going to get out anyway.

Some time passed and Complainant had "a good conversation" with Deputy Chief Bruce Blomdahl. Blomdahl asked Complainant to stay away from the CPRC and let the Department handle this internally. Complainant didn't have any problem with that. He admired Blomdahl, looked up to him, and was a role model to Complainant The conversation was face to face, lasted about three hours, and occurred on a Friday, possibly September 30. The two also spoke about retirement and Blomdahl encouraged Complainant to retire with a smile on his face.[73]

On Saturday, October 1, Complainant worked overtime at the swap meet. He wondered what Sergeant James Mutuku (married to Officer 1 would think of "this" and if he would be able to separate his personal life from his professional life. Complainant saw J. Mutuku at 7:00 am and said hello to him. J. Mutuku replied, "You'll see. You'll see." J. Mutuku made this comment in the hall at the Lincoln Station. Complainant had just exited the locker room and ran into J. Mutuku just before J. Mutuku walked into the sergeant's office. Complainant knew J. Mutuku was going to retaliate. Complainant said this was this first time he saw J. Mutuku after filing the complaint against Officer 1 and Officer 2 approximately two weeks earlier.[74]

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[68] Complainant Interview, approximate time index 7:00.
[69] Complainant Interview, approximate time index 8:00.
[70] Complainant Interview, approximate time index 8:30.
[71] CPRC refers to Community Police Review Commission.
[72] Complainant Interview, approximate time index 8:50.
[73] Complainant Interview, approximate time index 9:40.
[74] Complainant Interview, approximate time indexes 10:00 and 1:25:30.

On Monday, October 3, Complainant came into the station and there was a picture of a rat with the wording "Rat Busters" in his mailbox. He went into the locker room and there were framed pictures of rats (the same image and wording). Complainant believed J. Mutuku was responsible and was the only one with motive. He said the "girls" wouldn't have snuck in there to do that. Complainant photographed the images and didn't say anything to anybody. He left the photo in his mailbox and the photos in the locker room. He wanted to see what would happen and what else J. Mutuku would do.[75]

The following day when Complainant arrived at work, the photo from his mailbox was gone and all but one photo in the locker room had been removed. Complainant figured Meier had removed the photos but didn't see the photo that was left because it was covered by shoes. Complainant sent a text to Meier and said he appreciated him removing the photos, but he already had photos of them. He already had it documented.

Meier called Complainant later that day and Complainant told him J. Mutuku did it. Meier asked Complainant why he thought that, and Complainant told him about the conversation two days before the photos appeared in which J. Mutuku told Complainant "You'll see. You'll see."[76]

The Monday after Complainant notified Internal Affairs (September 19), Complainant and Weddle were riding partners. Officer 3 called Weddle to ask why Weddle and Complainant spent forty-three minutes at Bordwell Park. The call from Officer 3 was unusual because Officer 3 rarely called them and was "a hands-off guy." Complainant said they were never at Bordwell Park and thought the call was odd. An hour or two later, Officer 3 called Weddle again and asked why they cleared a stalking call without taking a report. Weddle told Officer 3 they were never on a stalking call. Weddle told Complainant he thought the calls from Officer 3 were because Complainant had gone to Internal Affairs, because previously Officer 3 had never bothered them.[77]

Later that night, they handled a recovered stolen vehicle. Officer 3 showed up and told Complainant and Weddle they were being watched. Officer 3 advised Lieutenant Mike Barney was checking response times and their names had come up. Complainant said his and Weddle's response times were good. He told Weddle, "You're right. They're coming after me." Complainant said he knew it and he shouldn't have said anything. He could not believe this was coming from command, from sergeants.[78]

The following day, the schedule was posted, and Complainant and Weddle were no longer riding together even though they had ridden partners for two years. Complainant told Weddle the Department was going to ruin his life.[79]

These incidents occurred a week or two prior to the rat photos. Complainant reported to Internal Affairs on September 16, and on Monday, September 19 (Complainant estimated September 18), Officer 3 "started coming after us." On Tuesday, September 21, Complainant and Weddle were

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75 Complainant Interview, approximate time index 11:15.
76 Complainant Interview, approximate time index 12:30.
77 Complainant Interview, approximate time index 12:45.
78 Complainant Interview, approximate time index 14:00.
79 Complainant Interview, approximate time index 14:30.

separated from riding partners.[80] Friday, September 23, Complainant met with Blomdahl. Saturday, October 1, Complainant worked the swap meet and J. Mutuku said, "You'll see. You'll see." Monday, October 3, the rat flyers appeared. Tuesday, October 4, the rat flyers were gone. Meier called Complainant and told Complainant he took them down.[81]

Complainant looked up "Rat Busters" and learned it was a rifle used to kill rats. Complainant believed J. Mutuku either got lucky and printed the first thing he saw, or he purposely searched this to send a message.[82]

Complainant believed J. Mutuku was responsible for placing the rat photos, because he was the only one that had motive. Complainant was infuriated J. Mutuku was hiding behind "Hollywood props" and was not going to be intimidated by him.

The following Saturday, October 8, Complainant again worked the swap meet. At about 6:30 am, the officers had left to start their shift, but the sergeants were still sitting up in their seats in the roll call room. Complainant walked by and "sarcastically" said, "Hello James. How you doing [*sic*]?" and then went to change. After changing, Complainant walked out of the station by the watch commander's office. Prior to exiting, he told J. Mutuku, "James, I checked my mailbox and there's nothing in it."

J. Mutuku walked out the other door (in the roll call room) and confronted him. J. Mutuku told him, "Your voice is trembling. What's wrong dude?" Complainant told him a Rat Buster is a rifle used to kill rats and, "You threatened my life." Complainant called him a punk and a coward. J. Mutuku then turned, and with his right or left hand, simulated a handgun and motioned as if firing twice at Complainant did not know who was in the parking lot when he and J. Mutuku were yelling at each other and said the video was probably gone now.[83]

There was another incident in which Complainant did not log on while working the swap meet; he has a bad habit of not logging on when he works the swap meet. Lieutenant Ed Collins told Complainant to log on next time. Complainant said OK and walked outside. Then J. Mutuku "popped off and said something" and Complainant told him, "Do something then."[84]

I asked what J. Mutuku said to him. Complainant couldn't remember, but it was something about logging on. It was similar to the swap meet was in his (J. Mutuku's) area and to log on next time. Complainant told him, "Then do something."[85]

Complainant was trying to listen to Blomdahl because he admired him. Blomdahl told him to retire with a smile on his face, so Complainant was just trying to "take this stuff."

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[80] Patrol Roster shows Complainant and Weddle were separated on 9/21/22. See attached Watch C 09-21-22 (Wednesday).
[81] Complainant Interview, approximate time index 14:40.
[82] Complainant Interview, approximate time index 15:30.
[83] Complainant Interview, approximate time indexes 17:00 and 1:26:20.
[84] Complainant Interview, approximate time index 18:30.
[85] Complainant Interview, approximate time index 19:00.

Meier called Complainant and asked him if he wanted to open an investigation regarding the rat flyers. Complainant told him, "No. Don't do it." He told Meier he wanted to mind his own business but asked if Captain Chad Milby knew about this. Meier told him he did. This made Complainant question why he needed to start the investigation. Upon the captain learning of the incident, an investigation should have been opened immediately.[86]

Complainant stated if Medici or I walked out and had the flyer on our car, there'd be an investigation. If he did that to a sergeant that pulled a "PA" on him, there would be an investigation. But in this case, there was no investigation. He did not see J. Mutuku do it but assumed he did because he had motive. It was crazy to Complainant there was no investigation.

Complainant struggled with what to do and how to play this out. He was upset, J. Mutuku was upset, and it would result in them fighting in the parking lot and losing their jobs, or this needed to be handled so Complainant would have some relief. He stated J. Mutuku could come into Internal Affairs and choose to lie to us, and he would get away with it. J. Mutuku could either lie or tell the truth and either one would have a serious consequence for his career.

Complainant was conflicted on what to do. He is good friends with "Larry" (Chief Lawrence Gonzalez) and now Gonzalez was going to get "sucked into this." Complainant said, "So now I'm getting backed into a corner and I don't know what else to do. So, I swallow it."[87]

Meier told Complainant he suggested in a Command Staff Meeting that they keep Officer 1 and Officer 2 out of Complainant beat; to separate them because there were problems. It was contentious because Complainant Officer 1 and Officer 2 worked together two days a week. However, Meier's recommendation didn't come to fruition. The two Watch Commanders, Officer 4 and Barney decided they weren't going to do that.[88]

Last week, the schedule went up and Officer 1 and Officer 2 were in Area 2 with Complainant there were four officers and a holdover (Officer 1, Officer 2, Complainant Andrew Tai and he believed Michael Leon was the holdover). Sergeant William "Billy" Zackowski, asked to move someone from Area 2 into Area 5. Officer 4 looked and said, "Put Complain over there." Everyone in the room stopped and knew why Officer 4 was doing that. There was no excuse for it. Complainant said, "He was doing it to intimidate me, to retaliate against me, to bully and haze me. And he loved every minute of it." Officer 4 knew he would get a reaction out of Complainant.[89]

Complainant advised Zackowski should have said to move "the girls" because they were his crew, or to split them up. Complainant understood sergeants could move people at will, but if it was done as a form of intimidation, or retaliation, or to embarrass him, then it was wrong.

Complainant walked out and received a text from Officer Carrin Christianson. She told him Officer 3 was standing up for him, arguing with Officer 4 and telling him he didn't agree with what Officer 4 just did.

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86 Complainant Interview, approximate time index 19:20.
87 Complainant Interview, approximate time index 21:00.
88 Complainant Interview, approximate time index 21:20.
89 Complainant Interview, approximate time indexes 22:15 and 24:50.

Zackowski was also upset, but Officer 4 said he could basically do what he wanted and "flexed his muscles" and then they ended up moving Complainant back. It was changed because of Zackowski and Officer 3 stopping him from doing that.[90]

When Zackowski came out, he was upset. He told Complainant he was getting moved (back to his original beat). Complainant told him he was coward, and this was happening because Zackowski wasn't supervising "these people." He questioned Zackowski and told him he should have told the person doing the roster to move "his people" over to Area 5. Complainant said everyone says Officer 1 and Officer 2 are untouchable. He doesn't know why or where this came from. It's not just Complainant that says this about them; other officers do too.[91]

Complainant sat in the parking lot, upset, and tried to decide what to do. Was he going to retire with a smile? He wondered when this was going to stop. He was getting bumped out of beats and "having guys point guns at him." He wondered where this was going to go and what J. Mutuku might do. Would J. Mutuku throw a bag of dope in his locker? Would he key his car? Complainant wondered what potential violence this could bring on him. It was escalating and it was all against him. He believed it was because he brought this to the attention of Internal Affairs.[92]

Complainant decided he had enough and came into Internal Affairs. He advised something bad was going to happen if Internal Affairs did not get involved. Not from him, but J. Mutuku. J. Mutuku was a sergeant and was supposed to be able to separate his personal and professional life. As a supervisor, J. Mutuku has an obligation to separate himself. Obviously, he can't, and Officer 4 can't.[93]

I asked why he believed Officer 4 had an issue with him. Complainant advised Officer 4 was a big fan of Officer 1 and Officer 2 Complainant said, "They actually do good police work. I'm a fan of them too." Complainant knew the suggestion was made to move Officer 1 and Officer 2 but Officer 4 didn't do it. To make a point, when the schedule went up in front of all of Complainant peers, Officer 4 said to move Complainant

Prior to coming to Internal Affairs, Complainant read the retaliation policy and went back into the station. He told Officer 4 "Hey Dan. I'm just letting you know. I'm officially telling you that I'm filing a retaliation complaint against you for reporting police misconduct." Officer 4 told him to "Get out of here" and he wasn't taking it. I asked Complainant if he advised Officer 4 his report of misconduct involved Officer 1 and Officer 2 Complainant said he didn't have to; it was blatantly obvious. He told Officer 4 he was filing a hostile work environment claim for retaliation that he reported possible police misconduct. Officer 4 was still in the roll call room; Zackowski, Officer 3 and Officer Shea McMahon were present, and possibly Sergeant Robert Tipre.[94]

Complainant advised when he left Internal Affairs, he ran into Janet Ramos. They spoke about her leaving the Department. During that conversation, Ramos told Complainant J. Mutuku was "a dirty

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[90] Complainant Interview, approximate time indexes 22:30 and 25:30.
[91] Complainant Interview, approximate time index 26:45.
[92] Complainant Interview, approximate time index 23:00.
[93] Complainant Interview, approximate time index 23:45.
[94] Complainant Interview, approximate time indexes 26:00, 27:30, and 29:00.

fucking cop." Ramos told Complainant when she worked with J. Mutuku in the Narcotics Unit, J. Mutuku didn't test the drugs, though he wrote he did. She also told Complainant that J. Mutuku met with an informant and then told Ramos to write a search warrant and say she had met with him when she did not. She repeatedly said J. Mutuku was "dirty." Complainant said this reeked of police corruption.[95]

I asked if anything else has happened, since Officer 4 told him to go to Internal Affairs, that he considered to be retaliatory or cause him concern? Complainant said no.

I asked Complainant why he chose to photograph the flyers that were posted in his mailbox and in the locker room and not report them to supervision. Complainant answered, "Because I wanted to see what his next move was going to be." (Complainant was referring to J. Mutuku.)[96]

Complainant observed the flyers on Monday afternoon, prior to his shift starting. The following day, he noticed two of them were gone, but one remained. Complainant sent Meier a text saying he appreciated him removing them but told Meier he had already photographed them for documentation. I asked again why he didn't report the flyers. Complainant said he made the decision to photograph and document them. He did not know why he didn't report them. He said this was the first time something like this had happened to him. Complainant said he wasn't shocked He knew J. Mutuku was going to do something after he made the statement "You'll see. You'll see."

I told Complainant I understood him photographing them, but why not photograph them and then go report this to a sergeant or lieutenant. Complainant said, "You're right. I should've. I don't know why."[97]

Complainant has had no further interactions with J. Mutuku or Officer 4 since coming to Internal Affairs to report a hostile work environment.

Complainant advised Officer 1 and Officer 2 were never split from riding as partners. He could not recall if the lactation breaks continued.

When Complainant filed a complaint against Officer 1 and Officer 2 for not taking a report, Medici told him Meier would investigate his complaint. Complainant waited a few days and then followed up with Meier by text to find out what happened. Complainant wanted to know if this was going to get swept under the rug or if someone was going to investigate. They exchanged texts and Meier told Complainant he was looking into it. Complainant said, "Somehow, I don't think it was investigated and I think they just told them not to do any... do it again or something."[98]

I confirmed he did not know that, and he was just assuming. Complainant admitted he didn't know. Meier told Complainant he would investigate, but Complainant had no knowledge what steps were taken to investigate, what discipline if any was issued, if Officer 1 or Officer 2 received a verbal

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[95] Complainant Interview, approximate time index 29:30.
[96] Complainant Interview, approximate time index 32:00.
[97] Complainant Interview, approximate time index 34:20.
[98] Complainant Interview, approximate time index 35:40.

counseling, etc. The only thing Complainant knew was Blomdahl met with him and asked for Complainant to let the Department handle it internally.[99]

I told Complainant the Department tried to keep people's personnel matters as confidential as possible. I explained If Meier had investigated and reviewed computer aided dispatch (CAD), dispatch recordings, body-worn camera (BWC) video, and interviewed Officer 1 and Officer 2 he wouldn't share that knowledge with Complainant said that was fine. I also advised him when someone files a complaint, they are not made aware of the discipline, if any, the officer(s) may receive. Complainant said with the new laws, he believed the public and media would have access to these investigations, but perhaps not the discipline. Complainant stated he was trying to make sure his complaint regarding Officer 1 and Officer 2 would be investigated and "there wasn't going to be a cover up by my police department." He said this is what he was texting Meier about.

I told him I understood, but earlier in his interview he told me he admired Meier and looked up to him. I asked if Complainant had any reason to doubt Meier's word that he would investigate Complainant complaint. He answered, "Yeah. Because I've been told that Officer 1 and Officer 2 are untouchable. So, it way my belief that they were going to sweep this under the rug from the beginning. And I... I don't know if that's true or not, but... that was my belief."[100]

Medici directed Complainant attention back to the call on September 15. He asked how Complainant knew so much about the call. Complainant said he knew what Weddle told him from the computer because Complainant was driving. At one point, Complainant may have looked at the computer. He and Weddle discussed the reporting party kept calling in to find out where the police were. Weddle typed a dispatcher he knew, and the dispatcher told Weddle a report should have been taken on the call. Complainant sent a text to Public Safety Dispatcher Tonya Richardson to find out more about the call. He told Weddle they should find out more information before they started "jumping to conclusions, let's take a breath, because we're upset." Richardson also advised the officers didn't take a report.[101]

Complainant said any beat partner, that watched a computer and saw their beat partners enroute to a call for an hour and a half would be upset. This meant the other officers were getting all the calls. Complainant said he was taught in training to always monitor unit and incident status.

Medici asked Complainant if he ever learned if the Department was investigating the call. Complainant said he just met with Blomdahl who asked to "let us handle it internally." Complainant said he didn't know what that meant. It could have meant anything from, "Hey, don't do this again..." to "there's a complaint." Complainant assumed nothing happened because Officer 1 and Officer 2 were never split up. "So, I could just see, you know, 'Hey don't do that again. Change your ways. Be careful, and then go ahead.'"[102]

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[99] Complainant Interview, approximate time index 37:45.
[100] Complainant Interview, approximate time index 39:50.
[101] Complainant Interview, approximate time index 40:30.
[102] Complainant Interview, approximate time index 43:00.

Medici asked Complainant how much he "poked the bear" after believing nothing happened. Complainant said what he (Complainant described kept building. He didn't know if he was poking the bear, or "they were poking me." He said, "Obviously the frustration's building."

Medici asked if perhaps the issue was resolved, but Complainant "stirred it up again." Complainant said, "No. I... I can't say that, because when I said hello to James Mutuku, he could have easily looked at me and said hello. He said, 'You'll see. You'll see.' And it escalated from that to... to the 'Rat Buster" flyer being in my mailbox."[103]

Complainant said he wasn't the one poking the bear. He notified Internal Affairs about officers not taking a report on a call. When J. Mutuku found out about it, he couldn't separate his professional life from his private life.

Medici asked Complainant if he asked J. Mutuku about the flyer and if he did it. Complainant said, "No, other than confronting him." When asked what he meant, Complainant said he called J. Mutuku a coward, told J. Mutuku he put the flyer in his mailbox, and that it was a threat on his life. Complainant told J. Mutuku it was a rifle used to kill a rat. J. Mutuku formed a "gun" with his hand and simulated firing it twice at Complainant said J. Mutuku did not deny putting the flyer in Complainant mailbox when confronted.[104]

Medici asked if Complainant was sincere when he said hello to J. Mutuku. Complainant said he was very sincere. He was surprised at J. Mutuku's response and denied trying to get a reaction.

Medici asked Complainant if he put himself "10-6" (busy) at Internal Affairs on October 1, purposely, so everyone would know what he was doing.[105] He said he didn't know, but Officer 4 told him to. He said for today's interview, he thought he put himself "10-6 Magnolia" (busy at the Magnolia Station). He could not recall if he put himself "10-6 IA" when he came to Internal Affairs to represent officers. Complainant said he was fifty-three years old, not twenty-five and "pissed off." He was getting ready to retire. He reported something he believed he should have and was timid in doing so because he was afraid this might happen. He said, "That flyer was put in my mailbox. He's the one who said, 'You'll see. You'll see.' Not me. I didn't go up to him and say 'Hey!' I didn't confront him. I didn't cause any problems with him. I wanted to be professional, and I wanted it to be handled..., however. I didn't want this to happen. It was sheer desperation the two times I came here, because nothing is being done out there. Sheer desperation."[106]

Medici asked Complainant why he called Zackowski a coward after Zackowski righted the situation with the roster. Complainant said he called Zackowski a coward because Zackowski could have moved someone on his own. Instead, Zackowski asked to move someone from Area 2. Complainant stated Zackowski could have said those were his people and to move them.

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[103] Complainant Interview, approximate time index 44:30.
[104] Complainant Interview, approximate time index 45:20.
[105] October 1 was a Saturday, so this date is not correct. The date this occurred was October 26, 2022.
[106] Complainant Interview, approximate time index 46:45.

Medici asked, "So you were just mad at Billy?" Complainant answered, "Everyone was mad at each other. It's very contentious. We're shorthanded all the time. Billy's upset. I'm upset. Officer 3's upset. Everyone's arguing."[107]

Complainant said Officer 3 asking about the stalking call was "bizarre" and that Officer 3 asked, "weird questions." Neither he nor Weddle received any discipline about the call and Complainant did not know all that Officer 3 said, as Officer 3 called Weddle.

I told Complainant he brought the issue regarding Officer 1 and Officer 2 not taking a report to Internal Affairs on September 15, 2022. Complainant met with Blomdahl about two weeks later. He also had a conversation with Meier regarding this and/or Officer 1 and Officer 2 riding together with Officer 1 taking lactation breaks. Both Blomdahl and Meier told Complainant this would be handled internally. I told Complainant that unless Complainant told Officer 1 and Officer 2 himself, there had to have been some type of investigation for J. Mutuku to learn of the events. Complainant responded, "Well that's his wife." Complainant was sure "it got out." I told him that was my point.

I told Complainant he said earlier he respected Meier and Blomdahl and they wouldn't have a reason to lie. I told him some type of conversation had to take place with Officer 1 and Officer 2 about the call. Complainant said he didn't know. I asked why else J. Mutuku would say "You'll see. You'll see." the day after he spoke with Blomdahl? Complainant said, "I don't know."[108]

I told Complainant it was obvious he had an issue with J. Mutuku and believed J. Mutuku posted the flyers. Complainant said J. Mutuku had motive. Complainant identified J. Mutuku as a subject officer in this investigation.

I asked about Officer 4 Complainant responded, "Well, he violated… isn't he obligated to take the complaint?" I told Complainant I was trying to narrow down his complaint to identify subject officers in this investigation. Complainant responded, "I can tell you this. To me, this is an epic failure of command at the Riverside Police Department in 2022. When Chad Milby was presented with that, I should've never had to push that issue. It shouldn't… it should've been an immediate PA that was taken right then and there. Those flyers should have been frozen, and this investigation should've never got to this point." Complainant said Milby should have taken the initiative to pull a "PA" and initiate a complaint, the day Meier handed him the flyer. Complainant said this would have prevented the interaction with J. Mutuku over a flyer that J. Mutuku may be responsible for.[109]

I asked if Complainant was saying it was a failure on the captain's part? Complainant said, "It's a failure on everyone's part. I shouldn't have to come in here and push this issue. I should be a protected employee.[110]

I asked if Complainant told anyone about the "You'll see. You'll see." comment. He thought he told Meier. I asked if Meier would then be considered a subject. Complainant answered, "That's for you

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107 Complainant Interview, approximate time index 48:30.
108 Complainant Interview, approximate time index 53:30.
109 Complainant Interview, approximate time index 56:15.
110 Complainant Interview, approximate time index 57:00.

guys to decide. I don't have any opinion on that." Complainant didn't know what Meier did, who he talked to, or how "they" handled any of this "stuff."

Medici asked Complainant if he was assuming Milby didn't do anything. Complainant responded, "I'm just assuming it." He said he didn't know what went on behind closed doors and nobody asked him, "Hey, what do you want done.?" Complainant said Milby met with him last Thursday to ask for everyone to get along during the Internal Affairs investigation.

Complainant agreed he did not know what happened in the layers of command as far what actions, if any, anyone took regarding this investigation. I asked him to keep that in mind and asked who he personally had an issue with as he sat before us. We established J. Mutuku was a subject officer based on the interactions Complainant described.

I asked about Officer 4 Medici interrupted and said Officer 4 felt he was a subject officer which is why he didn't take the complaint. Compl. admitted Officer 4 said something like, "You're accusing me. Go to Internal Affairs." Medici advised Complainant if Officer 4 thought he was the subject he couldn't take the complaint. Complain "Okay, that's fine." Complainant said the only other issue to make Officer 4 a subject officer was Officer 4 moving Complainant out of his beat.

I asked Complainant who were the people responsible for making him feel this way. I told him that it didn't mean if he only named two people, those would be the only two investigated. I told him it was possible for other misconduct to be noted on other officers. Complainant said he's never met a Riverside Police Administrator that admitted they failed, failed to take action, or made a mistake. He said generally they were very bar and stripe heavy; he couldn't imagine anyone in command coming in saying they made a mistake.

I asked if he believed Officer 4 moved him into Area 5 as retaliation even though it got corrected. Complainant said regardless of his opinion, two sergeants recognized what he did was wrong and intervened.[111]

Complainant agreed this entire thing started with a conversation with Smith. I asked it there was anything about that conversation that was hostile or inappropriate. Complainant answered, "No."

I asked about Officer 3 Complainant said we could talk about him. He didn't know who gave him the directive to start calling him and Weddle and asking "bizarre" questions. When Officer 3 came to the GTA recovery, he told Complainant and Weddle their response times were being watched.[112]

I asked if Officer 3 did this more as way to help him and Weddle out by letting them know they were being watched. Complainant said, "Out of the blue, yes." But Complainant questioned why Officer 3 was suddenly looking out for them days after Complainant reported the incident. He described Officer 3 was a hands-off sergeant and had a senior crew. Complainant worked for Officer 3 but did not recall if Officer 3 was assigned to Complainant area during the shift in question. Complainant said Officer 3 "accused" them of doing something they didn't do.

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[111] Complainant Interview, approximate time index 1:04:00.
[112] Complainant Interview, approximate time index 1:05:00.

I clarified that Officer 3 calls were accusatory. Complainant said he didn't really know because he only heard Weddle's side of the conversation. Officer 3 asked why they were at Bordwell Park for forty-three minutes and then later called regarding a stalking call that they did not handle. Complainant thought the calls from Officer 3 occurred the Monday after he had gone to Internal Affairs (regarding Officer 1 and Officer 2

I told Complainant these sounded like "normal course of duty" conversations. Complainant said they were not normal, "because he doesn't call." It was out of the ordinary for Officer 3 to call and very unusual.

I asked if Complainant would consider it unusual if Officer 3 was given a directive by a watch commander to keep an eye on his people. Complainant said he found that highly unusual for this to occur three days after going to Internal Affairs. Complainant has worked for Officer 3 for a long time, and it was rare to get a call from Officer 3 Weddle is the one that pointed this out to Complainant that Officer 3 was "coming after him" because Complainant had gone to Internal Affairs.[113]

I asked if Complainant had any direct conversation with Officer 3 that he found to hostile. Complainant said he could go on and on about arguments, but just found it "awkward and weird" that Officer 3 called three days after going to Internal Affairs.

Complainant was unsure if Meier or Milby would be subject officers in this investigation because he had no idea what action, if any, they took.

When asked if Barney would be a subject, Complainant responded by saying it was "interesting" because if Barney was "barking out these orders" regarding Complainant and Weddle's response times, as the watch commander, Complainant found that "ironic" and "coincidental" that this occurred after he complained about Officer 1 and Officer 2 response times and not taking a report. Complainant acknowledged he and Weddle did have a delayed response to a call that day, but said it was so they could go eat. He said there was no such thing as a delayed response because they were so shorthanded.

Complainant said it was "absurd" and "false" to accuse Complainant and Weddle of delayed responses. He said his response times were never questioned, even as a probationary officer twenty-three years ago when there were only two sergeants. Now twenty-three years later, this started after he went to Internal Affairs. Complainant stated that he went to Medici in Internal Affairs on Friday, the following Monday his response times were questioned, he was split from riding partners with Weddle on Tuesday, and then it progressed to simulated handguns being pointed at him, "You'll see. "You'll see." and then rat flyers were posted. Complainant said he didn't poke any bear; they were poking him.[114]

I asked if Barney did anything to Complainant that made him feel threatened or retaliated against. Complainant said you argue he and Weddle were split form riding partners and Barney was the watch

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[113] Complainant Interview, approximate time index 1:09:00.
[114] Complainant Interview, approximate time index 1:12:30.

commander. Complainant then remembered the watch commander was Officer 4 because Complainant asked Officer 4 if he did anything wrong.[115]

I asked again if there were any actions by Barney that would make him a subject in this investigation. Complainant said there wasn't anything that took place in front of him but was unsure about emails or texts.

Complainant could not narrow down who the subjects in this investigation would be.[116]

Complainant said, "That facts are… there's a flyer in my mailbox, there's motive of the person who did it, there's a gesture with a handgun, and 'You'll see. You'll see.'" Complainant said J. Mutuku could come into Internal Affairs and lie, which is what Complainant anticipated. He said, "But I'm telling you the truth." Complainant said in his twenty-three years at the Department, he's never lied: on a police report, when he's testified in court, to Internal Affairs, or to a sergeant. He's never put himself in a position where he's had to tell a lie.[117]

Complainant said that wasn't the case for J. Mutuku who had two choices. He could come in and tell the truth and suffer the consequence, which should be severe, or lie. Either way there would be a serious consequence.

Complainant said he wasn't being retaliated against by his peers, but by sergeants, lieutenants, and a captain. He said it was an epic failure Internal Affairs didn't know about this. The misconduct was serious, and you could argue criminal conduct (422 PC / criminal threats).[118]

Complainant said the flyers could be checked for fingerprints and DNA, but now so much time passed... He asked why he knew what to do as a policeman, but other leaders that have gone to SLI (Supervisory Leadership Institute), Quantico, and other leadership schools, do not. He said there was no excuse.

Medici asked if things have lightened up since Internal Affairs took over the investigation. Complainant has not directly worked for Officer 4 since but said there have been no more flyers. He said his life has been a little easier since coming to Internal Affairs to file a hostile work environment complaint. He said so far, "they" have put Officer 1 and Officer 2 in Area 5, where they belong.

Medici asked if there were other reasons Officer 1 and Officer 2 were considered a protected class, other than lactation breaks. Complainant said no and that they did good police work. He has heard other people say they're untouchable but did not know why this was said.

The interview concluded at 4:20 pm.

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115 Complainant Interview, approximate time index 1:14:00.
116 Complainant Interview, approximate time index 1:15:50.
117 Complainant Interview, approximate time index 1:17:45.
118 Complainant Interview, approximate time index 1:22:00.

INTERVIEW OF WITNESS OFFICER SPENCER WEDDLE:

On December 6, 2022, at approximately 3:32 pm, Sergeant Medici and I interviewed Officer Spencer Weddle in the Internal Affairs Conference Room. The following is a summary of Weddle's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Weddle stated he and [redacted] rode as partners for one and half to two years. They rode together as often as they could since the most recent shift change and were assigned to the same crew. Their schedules overlapped the schedules of Officers [redacted] and [redacted] who rode together as partners, by two days.

I asked what issues, if any, there were with [redacted] and [redacted] riding together. Weddle advised the issue was when [redacted] took her lactation breaks, [redacted] would go "10-6" (busy) with her, leaving Weddle and [redacted] to be the only police unit on the east side. While [redacted] and [redacted] were on these breaks, [redacted] would monitor and handle any calls for service that could be handled over the phone. However, this happened less frequently as time went by.

[redacted] brought this up to supervision, but nothing happened. Other officers also complained to Weddle and [redacted] that [redacted] and [redacted] also did this on the days [redacted] and Weddle did not work with them.

Weddle reached out to [redacted] shortly after shift change to ask her why they were always going "10-6" and [redacted] told him what was going on.

Weddle did not report any issues about [redacted] and [redacted] to supervision, because he and [redacted] rode as partners. He and [redacted] were "experiencing the same thing" and [redacted] told him he was going to go to supervision. [redacted] addressed their concerns with Sergeant Dawson Smith and possibly [redacted]

Weddle stated [redacted] was entitled to take her breaks, that were protected by federal law. However, [redacted] "solution" and what "we" thought would be best, was to separate [redacted] and [redacted] or make sure [redacted] was doing work when they were on these breaks, or for [redacted] to drop [redacted] at the station for her break and [redacted] to remain in the beat and available "in case something hot came out." Weddle and [redacted] discussed these solutions together, but Weddle never offered these solutions to supervision.

I asked if there was ever a time, Weddle and [redacted] requested a backup unit, but did not receive one, because [redacted] and [redacted] were "10-6." Weddle answered no. He advised generally a back was not sent, because they were a two-man ride, but if they did need one, it would likely be sent from out of beat. He could not recall if this ever happened though.

I asked if he had an issue with how [redacted] and [redacted] handled a theft call that occurred at LA Fitness on September 15. He answered yes. He advised [redacted] and [redacted] were

dispatched to the call in which someone had broken into a women's locker and taken her wallet and keys. When the woman went to the parking lot, she observed her vehicle was gone.

Officer 1 and Officer 2 were enroute to the call for a very long time. So much time had passed that the reporting party called dispatch back to ask if officers were enroute. So much time passed that the woman's father found "his own vehicle" at the Bakers on Arlington. Channel 1 asked Officer 1 and Officer 2 over the radio if they were enroute and one of them responded they were on landline. Then they cleared the call with no report.

Weddle questioned why they did this. He did not understand how they closed out a burglary with no report. This was the straw that broke the camel's back for Complainant told Weddle he was going to report Officer 1 and Officer 2 to Internal Affairs. He later told Weddle he spoke to Sergeant Mike Medici.

Weddle did not ask Officer 1 and Officer 2 about the call, nor did he go to supervision. Complainant told him, he was going to take care of it.

I asked if it was normal to report an issue like this to Internal Affairs, or if standard practice would be to go to your sergeant or the officers' sergeant. Weddle said if it was the first issue he had with the officer(s), he would go to them first, like he did to find out why they were taking so many breaks. He said Complainant kept an eye on everyone and was like the "father of the beat." Complainant did a good job keeping an eye on everyone and assessing who needed help. He was often the most senior person in the room. They routinely pulled up calls for service and to check unit status to see what everyone was doing.

If Weddle called to check on the "junior officers" and didn't feel like the conversation went as it should, then he would probably bring it supervision's attention. If he didn't get anywhere with supervision, then he would escalate it.

If Weddle saw someone do something that was in clear violation of policy, he would confront them and tell them to take a report to keep themselves out of hot water. If the officer told him to pound sand, he would report it. He advised this is how he would handle it.

Weddle was not present when Complainant went to supervision regarding Officer 1 and Officer 2 riding together, nor was he present when Complainant went to Internal Affairs regarding the officers not taking a report on a call. He had Complainant account of what happened during these conversations.

Weddle did not have an issue with Officer 1 taking lactation breaks. The issue was patrol was short staffed. If an arrangement was made for Officer 2 to handle calls over the phone while Officer 1 was taking these breaks, but Officer 2 was not doing so, a supervisor needed to do something.

Weddle agreed Officer 2 was not violating a law or policy by taking these breaks alongside Officer 1 and ultimately it was a supervisor's decision to allow them ride together. I pointed out that when Complainant addressed supervision about Officer 1 and Officer 2 riding together, no

policy violation occurred and there may have been a reason supervision kept the officers together.

In the case where Officer 1 and Officer 2 did not take a report on what appeared to be a crime, that would be a policy violation. I asked why he thought Complainant went to Internal Affairs rather than a supervisor. Weddle believed supervision would have thought Complainant was "just nitpicking" and trying to get them in trouble.

Weddle again reemphasized he and Complainant did not have an issue with Officer 1 taking her breaks. The issue they both had was that nobody held Officer 2 accountable for holding up her end of the bargain which was to handle things over the phone. He learned of the arrangement that Officer 2 was supposed to handle phone reports from Complainant who spoke with their supervisor.

In September, Complainant and Weddle were separated from riding partners. Weddle did not know why this occurred and said he was not told anything by a sergeant or a lieutenant. He was puzzled because they were the senior officers on their crew and were doing good police work. They were doing everything they were supposed to. On the night they were separated, he could not recall who the watch commander was.

I asked Weddle if he asked why they were separated. Weddle said he asked Officer 4 "off the record" and Officer 4 told him he believed Complainant was becoming "toxic" and he didn't want that negative energy cast upon Weddle. Officer 3 came to Weddle and told him the same. Weddle described this conversation as just two men talking on the side.

At the time, he and Complainant were both testing for sergeant. Complainant however did not show up for his interview, "as he's done several times in other ways." Weddle's understanding was Complainant had done things like this several times throughout his career. People looked at Complainant now as being disgruntled, mad, at a low point in his career, and "doing whatever he can to get other people in trouble to cast the light off himself." Weddle did not believe this about Complainant and said Complainant was different inside the police car than he was inside the police department. He said Complainant had the best interest of everybody at heart. The things Complainant brought to light were not meant to make Complainant look better, but to better the Department.

I asked if it was possible Complainant suggestions to better the Department were shadowed by his delivery. Weddle laughed and said, "Absolutely." Weddle has had conversations with Complainant about this and has told him it was all about his delivery. He has made suggestions to Complainant about how to deliver messages. However, Complainant has been around longer than most officers and was beat partners with many of the supervisors and has a different history with them. Weddle has a military background and is a little more "tactful" when he talks to a someone of higher rank whereas Complainant "doesn't see the military bearing and tact side of things." Complainant sees it as, "We're just two policemen" and he is providing solutions to his past beat partners. He said Complainant didn't disrespect the rank.

I asked Weddle if he would call a supervisor by his first name and call that person a coward. Weddle said it would depend. If he had a lot of history with that person and that person trusted his opinion….depending on how he worded it…. (Weddle then chuckled.) He said he

wasn't the type of person to call anybody a coward, "because that's pretty abrasive." He would probably try a different word.

Weddle thought it was different to address someone of a higher rank by their first name, call them a coward or confront them in a private setting versus in front of other people. I asked if he thought it was disrespectful to do/say those things when other people were present. He answered, "Yeah, absolutely."

Weddle agreed Complainant had a history of not showing up for things such as the sergeant interview. Weddle gave Complainant "crap" and joked with him about not showing up for his sergeant interview. He told Complainant that he (Complainant had such a problem with everybody, and the way things were done, and Complainant had an opportunity to put himself in a position where he could influence and make changes. Instead, Complainant got scared and backed out for whatever reason. Complainant response was he could not be "part of the enemy." Weddle said this wasn't what Complainant truly believed. Complainant didn't want to go into an interview for a supervisory position with twenty-three years' experience and not have anything on his resume to say why they should make him a sergeant.

While they studied for the sergeant's test, he and Complainant started prepping for the interview and would meet up with sergeants who would give them ideas. Complainant would absorb the information but didn't have any input. Complainant realized others had been Field Training Officers and he had been a policeman for twenty-three years but hadn't done anything more than be a policeman. Weddle tried to get Complainant to realize he had other qualities that set him apart from his peers and that Complainant was a gang expert. These are the conversations Weddle and Complainant had, but not conversations Complainant would have with others; others he didn't trust. Instead, Complainant would answer he couldn't be part of the enemy.

I asked Weddle if he believed Officer 4 and Officer 3 had his (Weddle's) best interest in mind when they separated him and Complainant as partners to keep Complainant negativity away from Weddle. Weddle said he told them, "If you think Complainant toxic now, you wait until he doesn't have somebody to vent to in the car. When he has the whole shift to sit in the car and stew about it. If you think he's bad now, you just wait until you put him in a car by himself." Weddle described he was the sounding board for Complainant while they rode partners and would have to tell Complainant to stop talking about things that were "jacked up" here, because no department was perfect. He would redirect Complainant attention and tell him they should try to find someone they could take to jail. He told Complainant they didn't really need anybody else in the beat. They were two capable policemen, and they should go be policemen. When he and Complainant were split, Weddle told Officer 4 and Officer 3 to "stand by."

I asked Weddle again if he believed Officer 4 and Officer 3 had his best interest in mind when they separated him and Complainant or if they were trying to get a dig on Complainant Weddle replied, "I truly believe that they had my best interest at heart." He thought they all had everyone's best interest at heart but said there were a lot of different leadership styles. He then said, "Yes, they had my best interest at heart… I… it… it appears at face value, that they did it as a dig on him." He did not know if this was their intention.

Weddle has known Officer 3 his entire career and advised Officer 3 would have no reason to lie to him about why he and Complainant were separated. Weddle knew Complainant had issues in the past. He mentioned Complainant and Officer Evan Wright used to ride partners, there was a lot going on, and Complainant got blamed for a lot of things. Weddle claimed this was all second, third, fourth and fifth hand information.

He restated he truly believed Officer 4 and Officer 3 had his best interest at heart and did not think they split him and Complainant as a dig on Complainant. Weddle believed he was a younger policeman with a lot of time left here and Officer 4 and Officer 3 didn't want any negative light shined on him.

I asked if Complainant was negative in the weeks leading up to their split. Weddle said a lot of things were negative on patrol and they were seventy-three officers short. Things that have never happened in Complainant career are happening and Complainant is not very kind to change because Complainant sees the benefit in how things were done culturally at the Department. Weddle said there's "a negative end-product" that's taking place. Probationers are riding two-man and officers are in a hurry to get in a car together. One could argue it's safer to have a two-man ride, but with two probationers, it's the blind leading the blind. As a seasoned officer, you can see that these probationers are spending a large amount of time on simple calls; they aren't being productive or efficient. Over time, you can see the problem with it, but it's not being addressed and is being allowed to continue. He advised you can get more done with more cars in a beat and police presence is greater which would deter crime. Weddle said it was not his job to tell lieutenants how to run their watch and it wasn't his job to tell sergeants how to run their crews. This was just his insight and things that he and Complainant talked about in the car.

Weddle didn't notice a change in Complainant behavior in the weeks prior to their separation.

He wasn't present when Complainant asked supervision Officer 1 and Officer 2 be split from riding together. He said knowing Complainant it would have been "very blunt, straight forward, to the point and probably didn't pull any punches, didn't use any tact, and gave it to them the way it comes out of his mouth. Compl doesn't have much of a filter."

Shortly before being split from Complainant they were on a GTA recovery. Officer 3 showed up and told them, "Just so you know… you guys are being watched, because of your response times." Later, they received a phone call from Officer 3 asked why they were at Bordwell Park for an hour and a half. Weddle told him they were never at Bordwell Park. Officer 3 then asked about a fraud call and Weddle told him they didn't handle a fraud call. This was the first time Officer 3 had ever called him. Officer 3 calls were not accusatory, but more of an inquiry. It was unusual though, because no sergeant had ever called in all the time he and Complainant rode together.

Officer 3 did not say who was watching them when he showed up on their call. Weddle believed Officer 3 was absolutely looking out for them when he showed up on their call. The conversation was short and Officer 3 said their response times were being watched. Weddle was shocked because nobody ever said anything about their response times.

I asked if he thought Officer 3 showing up on their call and calling during their shift was done to retaliate against Complainant for notifying Internal Affairs about the LA Fitness call handled by Office and Officer 2 Weddle initially said he didn't see the relevance, but then said he guessed it could have been. He thought this happened after the LA Fitness call and if it did, then it could easily be construed as being retaliatory. If Complainant made a complaint about officers taking an hour and a half to respond to a call and then not taking a report, perhaps that's why Complainant and Weddle were being questioned. Or maybe supervision just started looking at everybody. Weddle said he knew they weren't the only ones that received a phone call and that other officers did too.

I asked if he thought the actions by Officer 3 were retaliatory, or if Officer 3 was being a good supervisor and looking out for his people. Weddle said Officer 3 was being a good supervisor. He did not believe Officer 3 was retaliating against Complainant

Weddle initially said he has not personally witnessed any retaliatory behavior by supervision toward Complainant He then said he remembered an incident that occurred a long time ago involving Sergeant Emilio Angulo. Complainant was "kicked out" of his beat because Angulo wanted his people to work east. Everybody was shocked that Complainant who was the most senior officer, was "booted" from his beat. Weddle said this occurred prior to him and Complainant riding partners, so more than one and half years ago.

I asked about hostile or retaliatory behavior and confirmed with Weddle that Complainant did not own the city. I explained to Weddle that just because an officer was senior, did not mean that the officer could always stay in their beat. Supervisors try their best to accommodate them, but it wasn't a God given right. Weddle replied, "That's not true." He said when you sign up for patrol, you sign up north or south. He said officers were told "your juice" will determine what beat you want to work. He said they were told if you were the most senior person, you got to pick where you wanted to work. He said you had the right as the most senior officer to pick your beat. I asked if there was a policy or something in our standing operating procedures that said this. He answered no but said that's what they were told.

I told Weddle although it may be customary, sometimes things may come up and supervision could not accommodate the norm. I asked if he agreed. He answered, "I guess, sure." He said anybody could make up anything.

Weddle said the incident more than a year and a half ago was the first time he witnessed a supervisor do something questionable or "retaliatory" toward Complainant Then recently, when Weddle was away at SWAT training, Complainant was "again kicked out of his beat" to go to the south end of the city.

I told Weddle Complainant claim was that he was being retaliated against after bringing up issues concerning Officer 1 and Officer 2 He said he would feel the same way. I asked if he personally witnessed anything. Weddle then described an incident that did not even involve Complainant He told me about a time he was the most senior person and was riding with Officer Andrew Liss. For some reason, he and Liss got split up so Officer 1 and Officer 2 who were junior to him, could ride together. Weddle did not know why this occurred and said it

happened two years ago at Zackowski's direction. He said these are just things that have happened over a span of time that have come to a head.

Weddle never had a conversation with Zackowski about why this was done. He didn't question sergeants because it wasn't going to get him anywhere. He said, "I have a long.... I believe I have a future here" and he didn't think questioning sergeants would be productive. He didn't see a point in "arguing" because it would just delay him going "10-8" (in service). He would rather just do what they wanted and go do his job. He said, "I don't necessarily always agree with it, but that doesn't mean that it's not right." I told Weddle it didn't have to be an argument; he could ask a question in a non-confrontational way to find the reason for a decision. Weddle said he was old enough and had been around long enough to know when a sergeant was open to suggestion. He said if he felt like he could have asked why, he would have.

Weddle said there were certain ways "supervision projects to you" and as long as you weren't "wet behind the ears" you knew when things were open for suggestion or not. I told him I agreed, however there could have been a reason the decision was made that had nothing to do with him. He agreed and said even if he had asked, he may not have been told why. I told Weddle he described it though as hostile, and it may have had nothing to do with him. He said, "I wouldn't describe it as being hostile," he was just taking "like situations and putting them together." He said, "We're talking about moving senior people out of their beats, splitting up senior two-man rides, in favor of... another option. What... what that option is, we don't know. We could ask, but we could be told, 'Don't worry about it. I... I chose to.'" He asked, "Why even fight that battle?" when you see that stuff happen several times. He said, "Almost like shut up and color. I'm OK with that. I don't have a problem with that. Some other people are a little less receptive to that."

Weddle advised he was still in the military and held the rank of Senior Master Sergeant. He said he didn't have a problem with any of the supervision here but thought they could do things better. He agreed with Medici that it was not wise to disrespect a supervisor because a supervisor has the ability to make decisions that could impact you. Medici told Weddle, based on Weddle's statement thus far, his personality was slightly different than Complainant Weddle responded, "I would say drastically different." and then chuckled. Weddle said one would "definitely not get their way approaching it that way" in response to Medici telling him Complainant called a supervisor a coward.

Weddle stated Complainant was just as respected today as he was years ago as an officer. He did not know if Complainant felt this way.

Weddle was not present when Officer 4 moved Complainant to Area 5, but he heard both Zackowski and Officer 3 told Officer 4 it wasn't right and Complainant got his beat assignment back. Weddle knew Complainant was moved to Area 5 to separate Complainant from Officer 1 and Officer 2 and to keep them out of the same beat. He agreed with separating them, to eliminate tensions in the beat, but not how they did it. He said they didn't have to start with the most senior person in the beat and move him.

Weddle said in patrol, seniority was the only thing a patrol officer had. To strip someone of that, was to strip them naked. Taking Complainant out of his beat and putting him somewhere he never worked was as egregious as calling someone a coward. Officer 4 was basically "fronting off" Complainant when he moved him to the west end. Weddle considered this to be the same as one firing off at a supervisor in defense of themself.

Weddle did not know why supervision allowed Officer 1 and Officer 2 to ride together while Officer 1 was lactating and required lactation breaks. He knew Barney and Officer 4 were trying to improve morale on patrol because everybody knew patrol was "overwhelmed."

Weddle believed several incidents have occurred which led up to this point, not just Officer 1 and Officer 2 taking extended breaks and not taking reports. Complainant took pictures "of all these calls" and not just those assigned to Officer 1 and Officer 2 Complainant questioned why they were being dispatched to certain calls, questioned how long officers took on calls, and many more things.

Weddle was never provided an explanation as to why Officer 1 and Officer 2 did not take a report on the call at LA Fitness. Weddle was asked if it would have made a difference if the woman's items had been taken by a family member and nobody wanted to press charges. Weddle said, "Yeah. That would explain it." He said if that is what happened, it would explain it and it wouldn't be an issue. Weddle said Complainant "kind of bypassed the supervisors on it" and this explanation was never provided to him or Complainant

Weddle said Complainant told him if Officer 1 and Officer 2 failed to take a report, Complainant was going to report them to the Community Police Review Commission and report police misconduct. Weddle said he talked Complainant out of this. Weddle did not know if Officer 1 and Officer 2 were ever talked to about the call at LA Fitness. Complainant told him after he reported the call to Medici, Medici told him the complaint would be handled by patrol. Weddle did not know if Officer 1 and Officer 2 were ever talked to or received any discipline from the incident, but said his opinion was nothing happened to them. He said maybe this was above his paygrade, maybe it was because he wasn't the one to make the complaint, and maybe he wasn't entitled to know.

Weddle said it was weird because when he and Complainant were split from riding partners, they weren't even allowed to work the east side together, yet Officer 1 and Officer 2 were not separated. This furthered Weddle's belief that supervision was doing this to keep him out of the drama that was going on between Complainant and Officer 1 and Officer 2

Weddle did feel impacted by supervision's decision because he got to go back to the west end and work where he wanted to work. He preferred to work the east side and ride partners with Complainant but if he couldn't do that, he would rather be a "single-man ride" on the west end.

Weddle had good relationships with Officer 4 Officer 3 and Smith and had no reason to believe they would be targeting him, secluding him, or punishing him in any way. He advised they were letting him do what he wanted to do. He said he signed up north and they were letting him work in the south. He had nothing negative to say about any of them. He said if they

really wanted to punish him, they would put him in the north end. That would be punishment to Weddle.

Weddle agreed a hostile work environment involved more than a single incident of being assigned an unpleasant task. He said there was no hostile work toward him and could not, or would not, give his opinion about whether or not [redacted] was experiencing a hostile work environment. He stated [redacted] believed it was a hostile work environment.

Medici asked how accountable [redacted] was for this current situation and creating more issues based on how [redacted] approached things. Weddle said he talked to [redacted] frequently about [redacted] delivery. Weddle said "absolutely" things could be better for [redacted] if [redacted] handled things differently. Weddle said there were things he thought [redacted] could do better to get his concerns brought to light and supervision could do a better job listening and understanding [redacted] position on things as abrasive as it may be that he's delivering it. Weddle said it was the supervisor's job to figure out if there was truth to what [redacted] said.

Weddle said there were a lot of things [redacted] could have done better. He said even when "they" (he seemed to refer to [redacted] and supervision) had conversations, or [redacted] brought up a confrontation, they would yell and scream for a little bit and then it was done. When I asked him who he meant by "they," Weddle said senior officers and that this was how "old policemen are."

Medici said he could go into his lieutenant's office and argue with him, but he knew where the limit line was. Weddle said [redacted] was in the gray in terms of the limit line, didn't recognize it, and sometimes went over it.

Weddle did not know why [redacted] called someone a coward. He said [redacted] was battling hard for everybody. [redacted] was known to patrolmen as someone that stands up for everybody and is a rep, so everybody goes to him with their issues. [redacted] hears this stuff and tries to make arguments for everybody, not just himself. The things that [redacted] brings up, would affect everybody. He listens to everyone's problems, tries to come up with solutions and then brings the issues up. The problem is, after [redacted] brings it the sergeant's attention, that sergeant will go address it with the officer that reported to [redacted] and the officer will deny there is a problem.

He gave an example of [redacted] Redacted per Penal Code section 832.7(b)(5)(6)&(7) [redacted] Weddle claimed officers regularly complained to [redacted] but would later deny their complaints when asked by supervision. Weddle said this made [redacted] look like an "asshole" and like [redacted] was complaining just to complain. Everybody knew [redacted] was not afraid to bring up issues with supervision.

Weddle said [redacted] was very passionate about fixing things for the Department and it was never just about [redacted] He claimed it was the response [redacted] was given when [redacted] brought up issues that turned the interaction confrontational or hostile.

Weddle saw a Rat Buster flyer in the locker room and saw Officer 4 remove it. The flyer was on the end of a row of lockers, behind a boot rack. It was not on an individual locker and he only saw one flyer. Weddle asked Complainant if he saw the flyer and Complainant told him the "rest of it." Complainant shared with Weddle he believed he was the target of the flyers , and J. Mutuku posted them because Complainant had reported J. Mutuku's wife for a possible policy violation. Weddle did not know who posted the flyers and nobody has told him they saw someone post them.

INTERVIEW OF WITNESS OFFICER ROBERT TIPRE:

On December 7, 2022, at approximately 4:03 pm, Sergeant Medici and I interviewed Sergeant Robert Tipre in the Internal Affairs Conference Room. The following is a summary of Tipre's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Tipre has worked for Riverside Police Department for more than twenty-seven years and has been a sergeant for more than ten years. He is currently assigned to Watch C but does not directly supervise Complainant Complainant

Tipre recalled a recent shift in which Officer 4 asked the officer preparing the roster to move Complainant to Area 5. He advised they were dealing with staffing issues, the "COPS" crew riding with officers, and separating some of the officers into different beats due to tension between them. (Tipre advised he learned third hand the tension was between Complainant and Officers Officer 1 and Officer 2 He heard Complainant had an issue with Officer 1 taking her lactation breaks, being out of her beat, and not responding to calls or backing other officers.) Complainant who normally worked Area 2, was moved to Area 5. The roster went up on the overhead for officers to see and assignments were given. Sergeant William Zackowski turned to Officer 4 and asked if they could revise the assignments since Complainant was senior. Officer 4 said he didn't care provided there was equal coverage in the beats. Zackowski made changes to the roster, so Complainant could remain in Area 2.

Tipre said it was common to move officers from the north end of the city to the sound end of the city or vice versa for staffing purposes, but this was the first time he had ever seen Complainant be moved. Tipre did not know why the decision was made to move Complainant to Area 2, but once Zackowski saw it, he asked to make changes so Complainant could remain in Area 2. Officer 4 agreed to this provided there was adequate coverage amongst the beats.

Tipre did not observe or hear of any conflict between Complainant and Officer 4 prior to, or during, roll call, nor was he aware of any issues between them.

Tipre advised several factors are considered when moving officers to other beats. For example, he currently has six officers assigned to him, but generally the beat he has only requires four officers. Depending on staffing levels, they might get doubled up or they might be moved into another beat that is short staffed. If Area 5, which is busy, only had three officers, then two of Tipre's officers would be assigned to Area 5 that shift. This was done for staffing purposes. Other factors included areas, calls for service, the number of officers available to deploy, and whether they were deploying single officer rides or two-person rides.

Today, two of Tipre's officers were assigned to different beats. He explained these moves could be based on seniority, but also the city's need for deployment purposes. He doesn't always move the junior officer because he may have a senior officer that likes to work the opposite end of the city. In this case, he would move the senior officer and allow the junior officer to remain in their beat.

There are many factors that are considered, and they try to figure these out at shift change. They consider the needs of the Department and where officers like to work. As a sergeant, Tipre tries to keep his officers close to him for supervision purposes. However, this is not always the case.

Tipre was aware Complainant had gone to supervision with concerns about Officer 1 and Officer 2 riding together because of Officer 1 lactation breaks. He advised it was relayed to him, but he did not have any direct knowledge. His understanding was this issue was addressed with Complainant

Tipre advised he was very familiar with both Complainant and Officer 4 He did not believe Officer 4 moved Complainant into Area 5 as a form of retaliation for complaining about Officer 1 and Officer 2 riding together.

Tipre was aware Complainant came to Internal Affairs to complain about a call Officer 1 and Officer 2 did not take a report on. He did not believe Officer 4 moved Complainant to Area 5 as a form of retaliation for taking this potential misconduct to Internal Affairs instead of handling it in Field Operations.

Tipre acknowledged shift change occurred in July and it was common for Officer 1 and Officer 2 to ride together and common for Complainant and Weddle to ride together. He did not know why Complainant and Weddle stopped riding together. He never had a conversation with Officer 4 or Lieutenant Mike Barney about this, nor did he hear any of the other sergeants talk about this.

After Zackowski asked Officer 4 about changing the roster to move Complainant back into Area 2, changes were made to the roster. Since Complainant and other officers had already left the roll call room, Tipre and Zackowski began to notify the officers of the changes. Zackowski went into the parking lot to notify the officers that were affected. Tipre was unaware if Complainant had been notified, so he called him. As Tipre made the call to Complainant he exited the roll call room door that leads into the parking lot. Complainant answered and Tipre asked if Zackowski had gotten ahold of him yet. At this time, Tipre could see Zackowski approaching Complainant in the parking lot. Tipre was on the phone with Complainant when words were exchanged between Complainant and Zackowski. Tipre hung up the phone, turned around, and went back inside the station.

I asked Tipre what he heard prior to hanging up the phone. Tipre stated after he asked Complainant if Zackowski had gotten ahold of him, Complainant answered no. Complainant then said, "No, no. I don't want to talk to you. Get away from me. You're a coward. You're the reason why things happened." Tipre realized Complainant was no longer talking to him, but to Zackowski who was in front of Complainant so Tipre hung up.

When Zackowski came back into the station, he told Tipre all he did was tell Complainant he had been moved back into his beat and Complainant blew up.

Tipre has not witnessed any behavior by supervision toward Complainant that he considered to be hostile or retaliatory for complaining about Officer 1 and Officer 2 riding together and/or for reporting to Internal Affairs Officer 1 and Officer 2 did not take a police report. Tipre advised he hasn't observed any changes this entire shift or since he's been back to patrol.

Tipre recalled Complainant and Officer Even Wright used to ride partners together but had no knowledge as to why they stopped riding together. He speculated it could have been because Wright made the SWAT Team. Tipre was not certain though and advised he wasn't in patrol at that time.

Tipre stated it is common to move people out of their assigned beats to cover other areas. Especially when working with holdovers or backfills, it was important to not put them all in the same beat. On the shift where Complainant had been moved into Area 5, Tipre was more focused on the south end of the city, because that's where he was assigned (Area 4). He could not recall why Complainant was moved but said ultimately it was Officer 4 decision. However, this was the first time Tipre had observed Complainant be moved from his beat since Tipre came back to patrol a year and a half ago.[119]

Tipre was initially unaware Officer 1 and Officer 2 would show themselves as busy, so Office could take her lactation breaks. Tipre learned later that this had been discussed with the north end supervisors and arrangements had been made. I asked Tipre if, considering the staffing shortages he previously mentioned, this was prudent and fair to the other officers to take both officers out of the field so one could take a lactation break. Tipre was unaware of what arrangements had been made, so he could not answer. He did not know the reasons behind the decision or what specifically was discussed. His understanding however was that Officer 2 would still be taking phone reports and working while Officer 1 took her lactation break. Ultimately, it was Officer 1 and Officer 2 supervisor and the watch commander that made the decision to allow them to ride together.

Since shift change, Tipre has not observed any rat photos in the locker room or anywhere else at the station. He heard something mentioned about them but did not have a direct conversation with anyone that saw them, nor did he hear who put them up.[120]

Tipre is not personal friends with any of the parties we talked about. He knows them all as acquaintances but does not hang out with any of them outside of work.

In Tipre's ten-year experience as a sergeant, he has never had Complainant assigned to work for him. He stated Complainant was very active in his career and did a lot of proactive police work when he was a young officer. Now, Complainant shows up on time, handles his radio calls, and goes home on time.

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[119] Tipre's Interview, approximate time index 16:30.
[120] Tipre's Interview, approximate time index 20:10.

I asked if [redacted] had a reputation for being a difficult employee. Tipre answered, "yes" based on conversations he has had with other supervisors. He said [redacted] liked to challenge things, so it was becoming a little more difficult to supervise him. However, Tipre has not witnessed this behavior on scenes. [121]

I asked Tipre if he ever witnessed [redacted] speak to a sergeant in an antagonistic or inflammatory manner. Tipre said he would not describe it as either of those terms, but instead provided an example of behavior he had witnessed firsthand that he had never seen before. He described [redacted] walked into the sergeant's office, walked up to Officer 3 told him his evaluation was due, and he expected an outstanding rating. Tipre had never witnessed an officer come to a sergeant with an expectation of their evaluation. Officer 3 told [redacted] he was sure [redacted] would have supporting documentation to justify this rating. [redacted] told Officer 3 he was his supervisor so he should know what [redacted] does. Tipre described words were exchanged back and forth between [redacted] and Officer 3 This took Tipre by surprise. He again said he had never seen this before and described it as "unique." Tipre said this occurred around September of this year.[122]

Tipre said he witnessed this firsthand, but only heard thirdhand about other incidents involving [redacted] I asked if the people who shared with him incidents involving [redacted] would have any reason to lie. He answered, "No."

I asked Tipre if based on his personal observations of [redacted] and what he has heard, he would want to have [redacted] on his crew. I mentioned [redacted] was knowledgeable in case law and very knowledgeable about the gangs in the city, especially Casa Blanca. Tipre acknowledged that [redacted] was very knowledgeable but said he was headstrong, condescending, and liked to challenge things which could be detrimental to younger officers. It was also very time consuming to deal with this as a sergeant. If he had a senior officer that was a very good mentor, he would want them on his crew, to help mentor the younger officers. But this was not the case when you had a senior officer that was very headstrong and condescending. He advised [redacted] comes off as negative and disgruntled to the junior officers and would be a negative influence.[123]

Tipre has not witnessed any behavior by supervision toward [redacted] that would be considered hostile or retaliatory. Other than [redacted] interaction with Zackowski in the parking lot, Tipre has not witnessed any actions by [redacted] toward supervision that he would consider hostile or inflammatory.

Tipre described there was also a confrontation between [redacted] and Officer 4 that took place after the confrontation between [redacted] and Zackowski. He advised [redacted] returned to the roll call room and approached Officer 4 with some paperwork. Tipre and Zackowski were seated in the elevated positions in the roll call room and Officer 4 stood in front of them. [redacted] told Officer 4 he was putting him on notice he felt retaliated against. Officer 4 told [redacted] he could take that to the captain. [redacted] told him per policy, he had to notify him. Officer 4 advised [redacted] since his complaint was against him, he could take it to the next level. [redacted] left the roll

[121] Tipre's Interview, approximate time index 21:55.
[122] Tipre Interview, approximate time index 22:30.
[123] Tipre Interview, approximate time index 27:30.

call room and Tipre assumed he was going to the captain's office. A short time later, Complainant came back in and advised the captain was not in his office. Officer 4 told Complainant he could call the captain or wait for him to get back. Complainant asked Officer 4 "You're not going to help me with this?" Officer 4 told Complainant he already helped him and told him he could take his complaint the captain or the City of Riverside's Human Resources Department. Tipre said Officer 4 could not accept the complaint against himself.

Tipre was asked if he knew whether the issue of Officer 1 and Officer 2 not taking a police report was addressed. Tipre said it was. He advised Officer 4 brought him in as a witness when Officer 4 discussed the issue with the officers. Tipre was made aware of the call, the officers were interviewed, and they established why a report was not taken. Tipre stated the RP either left the call, would not provide enough information to draft a report on the vehicle theft, or they had found the vehicle. He couldn't recall, but said the officers tried to obtain the information to take the report, but the victim would not supply enough information. Tipre did not review the information in CAD, but Officer 4 confirmed the information in CAD, and it was consistent with the information the officers provided. Tipre stated the issue was addressed through that conversation. He did not know if Complainant was made aware of the conversation, but said, "We don't go back and discuss that with him."

Over the course of his career, there have been times Tipre hasn't agreed with decisions command has made, but he also didn't have all the information or facts as to why those decisions were made. He said there have been occasions where a lieutenant has moved an officer out of a beat and when Tipre asked if they could be moved back, he has been told no. Tipre stated this did not constitute a hostile work environment and he has not witnessed any behavior which would indicate anyone was out to get or retaliate against Complainant or create a hostile work environment.

Tipre has not witnessed any issues between Complainant and Sergeant James Mutuku. He heard of an incident that occurred when Complainant worked an overtime shift at the swap meet, didn't log on, and Lieutenant Ed Collins told J. Mutuku to head to the swap meet and tell Complainant to log on. When J. Mutuku did this, there was a verbal altercation or confrontation between J. Mutuku and Complainant However, this occurred on Tipre's day off, so he didn't witness it, nor did he hear any specific details. The watch commander could have called Complainant and told him to log on. Tipre did not know why Collins told J. Mutuku to drive over there to do this.

Tipre starts his shift as J. Mutuku ends his. He has not witnessed J. Mutuku speak ill of Complainant and has not witnessed any deterioration in the relationship between J. Mutuku and Complainant

Tipre described Officer 1 and Officer 2 as workers; they handled their area, responded to radio calls, and generally took more reports in their beat since they were a two-person unit. He was aware they took the lactation breaks but was not aware of any other officers that had an issue with this. He advised that in addition to working the same beat with Complainant they also worked other beats and there were no complaints about their breaks or their work ethic. Tipre was not aware of the exact length of the breaks, but thought they were about thirty minutes and immediately afterward, the officers were back in service. He was not aware of the breaks

increasing in length since shift, nor was he aware of any other officer or supervisor that had an issue with them.

Tipre advised it was up to the watch commanders to decide which officers the crew from "COPS" would ride with and typically the watch commanders choose proactive officers. "COPS" wanted as much exposure to our city, our officers, and crime, so their crew was placed with officers that were "very active." They were assigned to ride with Officer 1 and Officer 2 for a period of several weeks, even during the time the lactation breaks occurred.

I told Tipre it wouldn't make sense to have the crew from "COPS" to ride with Officer 1 and Officer 2 if they were taking extended breaks. He agreed and said it would reduce their exposure to what they were trying to capture.

INTERVIEW OF WITNESS OFFICER DAWSON SMITH:

On December 13, 2022, at approximately 7:08 am, Sergeant Medici and I interviewed Sergeant Dawson Smith in the Internal Affairs Conference Room at the Magnolia Street Police Station. The following is a summary of Smith's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Smith has worked for the Department for almost twenty-one years. He has been a sergeant for almost six years and is currently assigned to patrol on Watch A. At shift change (July 2022), he was assigned to Watch C and was the direct supervisor for Officer Officer 1 and Officer 2 However, the first week of September 2022, Sergeant Celeste Neiman (assigned to Watch A) went on light duty and Smith assumed her shift/crew. Smith explained based on staffing levels, Captain Chad Milby believed it would be better for the Department if Smith went to Watch A.

During the two months Smith supervised Officer 1 and Officer 2 Complainant approached him regarding Officer 1 and Officer 2 riding as partners. Smith said he and Complainant had a few, brief conversations about this. Complainant concern was Officer 1 and Officer 2 were riding as partners, but during their shift Officer 1 had to take lactation breaks. Smith said he and Complainant discussed the policy, Smith's belief in troop welfare, and Smith's belief that Officer 1 and Officer 2 productivity outweighed their small break. Smith compared the lactation break to Complainant lunch break at El Pollo Loco or Complainant going to get a drink at a gas station for fifteen to twenty minutes.

Complainant believed the lactation breaks were extended and took officers off the street. Complainant was not aware that Smith had a meeting with Officer 1 and Officer 2 regarding their breaks. It was agreed Officer 1 would take her first lactation break right after roll call at the Lincoln Station. Officer 1 would store her milk there and then immediately go 10-8. Officer 1 would then only take one additional break around 1800 or 1900 hours, depending on the shift, at the Orange Station. During this break, Officer 2 was instructed to stay inside the vehicle and take phone reports. She was also instructed to respond to any emergency requests or hot calls; she was directed to leave Officer 1 at the station and immediately respond. Complainant also did

not know that on several occasions Smith authorized Officer 1 to drive her pumped breastmilk home since she lived in the same beat she was assigned, because Smith thought Officer 1 storing her breastmilk at the Orange Station was "absurd." Smith said he would order Officer 1 to drive her breastmilk home, so it wouldn't be left at the Orange Station unprotected. Complainant also did not know that Officer 1 refused to do this, because she didn't want to take any more time from being on the street. Officer 1 wanted to get back to work. Complainant was not aware of these conversations or Officer 1 desire to get back to work.

Smith's meeting with Officer 1 and Officer 2 occurred immediately at shift change. He discussed this with Officer 4 and both Officer 4 and Smith completely agreed with their prearranged schedule. Smith thought it was fantastic. It was a celebration of life for Officer 1 and her family and nothing negative should come of it. Smith was kind of bothered Complainant was turning something so positive into a negative when it didn't affect anybody.

Smith did not monitor Officer 1 break immediately after roll call, but said within thirty minutes, Officer 1 and Officer 2 were logged on and headed toward the eastside (their assigned beat). Smith appreciated that but did not ask for that. To him, it was the same as getting your gear together. He advised Officer 2 would get the unit ready and log on while Officer 1 took her break. Officer 2 knew if there was a hot call, an officer needed assistance, or anything that required multiple officers, to just leave Officer 1 at whatever station she was at. Smith said, "Therefore, I had a car 10-8 no matter what occurred." Smith did not see anything negative to such a positive thing.

Smith did not witness any delays with Officer 2 getting the unit ready and the officers going in service. He advised officers routinely used the time after roll call to load their gear, conduct training, write past reports, finish traffic accident reports, etc. It was all part of the process and not once in the two months he supervised Officer 1 and Officer 2 did he ever wonder why they were still at the station. Not once did he ever feel they were taking advantage of him or the Department. Smith said, "I didn't keep tabs. I didn't need to." He never wondered what they were doing.

I asked about the second lactation break that occurred at the Orange Station and if he ever observed they were there for an extended period. Smith answered, "Absolutely not." He advised he was often at the Orange Station for an arrest review, while Officer 1 took her break. Smith would talk to Officer 2 either in the station or while Officer 2 was in the car; he advised she was usually writing a report. While at the station, he would see Officer 1 running down the hall to store her breastmilk. That's why he had the conversations with her about taking her breastmilk home. He told her just to take it home. Officer 1 response was, "No sir. I can come back later. I'll just get it at the end of the shift." Smith thought this was absurd. Officer 1 lived in her beat. Even if she didn't, there wasn't anything going on and nobody was screaming for help on the radio. He believed she should be able to take this home. Even if someone needed help, Smith could respond. Smith appreciated how much Officer 1 did not take advantage of the policy, or him as a supervisor.

I asked Smith if he believed the arrangement made with Officer 1 and Officer 2 was in the best interest of the watch and fair to the other officers. Smith answered, "Absolutely." He

explained a two-person ride still allowed for one officer and their car to be available. He gave an example of a two-person ride booking someone into custody and/or doing the paperwork. The other officer would still technically be available. Also, Smith has supervised Officer 1 and Officer 2 in the past. He knows how much they appreciate working together. He described them as "a super productive two-officer ride." To him, a thirty-minute lactation break in the middle of the shift and never taking a lunch break which they are authorized to do, was no different than an officer going to In-N-Out or El Pollo Loco for thirty-minutes to an hour. He said Officer 1 and Officer 2 never put themselves on lunch or showed themselves as busy at any station to take a lunch break. Smith did not see the problem with Officer 1 and Officer 2 taking this break, so Officer 1 could take care of her family. In addition, he could always help if needed as he was an additional car. He could back Officer 2 and he also went to calls. Officer 1 and Officer 2 always let him know when they would go 10-6 and it was always when there was a lull in the shift. It was never when things were "jumping off." He never once questioned when they took the break; calls were never stacked on the board and there was never a hot call.

I told Smith we heard from two officers that in the months that followed shift change, Office [redacted] and Officer 2 breaks became longer. Smith did not notice but said every two days Complainant would remind him that he did not approve of Officer 1 and Officer 2 riding together and kept track of them. A couple times Complainant had come to Smith and told him Officer 1 and Officer 2 had taken thirty-five minutes; one time it was forty minutes. To Smith, anything under an hour was reasonable. It was the same as taking a lunch break and she was taking care of her family. He said, there was never a critical incident that made him ask where Officer 2 or Officer 1 were. For the two months Officer 1 and Officer 2 worked for him, their breaks were always reasonable. If the lactation break took twenty-five minutes and they wanted to spend another ten minutes at the station to warm their food and eat, he was good with it. It was Smith's opinion that mattered. He was their supervisor. He knew if anything happened, Officer 2 would leave Officer 1 at the station to go and handle. He also knew Officer 2 was taking phone reports during Officer 1 lactation breaks.

I asked Smith to describe the conversation he had with Complainant about Officer 1 and Officer 2 riding. Complainant and Smith had a couple conversations, but the first one was the "bigger one." Complainant and Smith have known each other a long time and Smith believed Complainant had some level of respect for him; Smith said Complainant didn't show a lot of respect for most supervisors. Smith tried to explain to Complainant policy, law, his belief in troop welfare, and his belief that a two-officer ride was greater for the Department versus splitting them up. Smith believed it was more productive for the Department to keep them together. Smith said, "So the conversation starts with he (Complainant did not believe they should ride together, but I felt it was personal." Smith did not know if it was because Complainant was a senior officer and felt Officer 1 and Officer 2 weren't doing enough. He did not know what Complainant issue was, but felt it was personal. He has known Complainant a long time and never really thought, "Oh, that's what I should do." when Complainant gave his opinions. The conversation was really Complainant voicing his opinion that they shouldn't ride together, it wasn't fair, and they were taking a car out of service. After Smith explained policy, law, and his opinion on the matter, in "normal Compl. fashion" they were good for about a week or so. Then something must have happened, like Complainant had to take a report, because Office [redacted] and Officer 2 were on a lactation break. Complainant brought it to Smith's attention again.

Smith let him know that while he supervised them, nothing was going to change. It was Smith's decision, it was approved by Officer 4 and it was best for the Department.

They also talked about staffing shortages, but not once were they understaffed. They may have had backfills or holdovers, but they had the officers required for the shift. They also met the staffing for Watch C which is twenty officers.

The first conversation took place in the sergeant's bay and Officer 3 was there. Smith did not know if anyone else was in the bay. Officer 3 supported Smith's decision but didn't say anything while Complainant was present.

I asked Smith what he meant by typical "Complainant fashion. Smith did not believe Complainant had respect for the rank and most of the people in it. He said, "You almost just waive it off, because his opinion doesn't matter." Smith has always tried to support Complainant to the best of his ability but did not agree with Complainant opinions because they were usually too far off to take seriously. Complainant brought Smith his concerns; Smith listened and talked to him about policy, law, and troop welfare, and told him it was going to continue whether he liked it or not. They agreed to disagree, and it was cordial. Complainant did not yell at Smith and tell him ge was an unfit supervisor like he has done before.

Complainant worked for Officer 3 but Smith worked with Complainant two or three days per week.

Complainant was the only officer to complain about Officer 1 and Officer 2 He said Weddle, who rode with Complainant at the time, never complained to him either and Smith and Weddle were on SWAT together. Smith and Weddle had candid conversations all the time related to patrol and SWAT, and he never mentioned a concern about Officer 1 and Officer 2 riding together.

Smith did not know if Weddle didn't say anything because he truly did not have an issue or he learned Complainant had gone to Smith and Smith told him nothing was going to change. Smith did not know, but said Weddle knew if Smith made a decision, Weddle wouldn't likely change it.

Smith was not aware of any issues Complainant had with Officer 1 and Officer 2 Smith heard rumors Complainant felt he had been split from riding as a two-officer unit, because Officer 1 and Officer 2 were getting pushed to ride together. Smith said he would have done this too (split Complainant a lot earlier, because Officer 1 and Officer 2 were more productive as a two-person unit than Complainant was in Smith's opinion. Officer 1 and Officer 2 were definitely higher in stats and calls for service; they were the leaders. Smith thought there was just something there, a "distaste" Complainant had for them; a belief "they weren't good enough." Smith couldn't put his finger on it, but believed it was personal. He described it as some "negativity" between Complainant and Office and Officer 2 riding together. I asked if it was possible Complainant was jealous. Smith answered, "Jealous (in the affirmative) and I mean you gotta [*sic*] remember that Complainant thinks everyone's under him." He added, "Compl. thinks everyone has to answer to him." This included sergeants, where everyone went, parked, what beats they were assigned. Smith

said, "He feels like somehow, he's in charge. Somewhere in his head, he thinks he is part of the supervision."

I told Smith Officer 4 moved Complainant to Area 5 during a roll call in September and asked if he was present. Smith did not recall Complainant being moved to Area 5. He said he may have been gone and thought he would have heard about that. I asked if he had been present if he would have found that unusual. Smith answered, "No, because people move around all the time." He had senior officers on graveyard that they had to move and when he was on swing shift, he had to move Officer Phil Sears, who is a fifteen-year plus officer. Smith liked Sears, but in order to keep Smith's squad together, there were a couple times Smith would "bump" him. Sears like to work east but was assigned to north or vice versa. Smith told him sorry, but explained he wanted to keep his squad together under his supervision. Smith heard Sears had an issue with it because he was a senior officer. Smith totally understood, but he spoke to Sears about it. He said, "Actually Compl. came to me about that one as well." Smith explained he had just started with his squad, needed to see them, he liked to ride with them, be in the same beat with them, and Sears was the odd man out. Smith moved Sears for a couple weeks in a row, until they were able to dial in where everyone would work.

I asked if it would be unusual to move a senior officer into a beat they were not assigned to work. Smith said it wasn't common and you usually asked for volunteers. However, if it was on the senior side of the week and there were shortages, it would be the senior officer that would be moved. Smith wasn't there, so he couldn't say why Complainant was moved. Senior officers had "pull" and supervisors tried to accommodate them. If it was the senior end of the week, all officers were senior, but Complainant was probably the most senior. Smith said it was uncommon to move a senior officer, but not unheard of. Supervisors tried to keep senior officers in their assigned beats or allow them to work a different beat if they chose, however there could be occasions when a senior officer was moved out of their beat for a number of reasons. For example, Smith was south, but on his Monday, he came in when a senior crew was south. In this case, Smith and his entire crew were "bumped" to east. Then Officer 3 crew came in, but only Complainant and Weddle from the crew would go east and Officer 3 would take them. Smith wanted to keep his crew together, so he would move Sears. He reiterated it was not unheard of for senior officers to be moved, whether they liked it or not, even though supervisors did try to accommodate them.

I confirmed Smith's crew was assigned west on the south end of the city, but regularly worked east, because there was a senior crew (a sergeant senior to Smith) that worked west on Smith's and his crew's Monday. Smith said yes, west was taken by Tipre's crew and Smith ended up being a "floater" and was spread out. Kouroubacalis, Officer 1 and Officer 2 would work together in east even though Smith would have to bounce around. He added swing shift was kind of a mess because you had sergeants moving around and a lot of seniority. He said Kouroubacalis was a twenty-year officer and she "bounced around every single shift." She worked every beat in the city. She understood they needed to move people and she was fine with moving.

Smith has worked with Officer 4 a long time. Officer 4 was "absolutely" professional and Smith thought he did what was best for the watch, to include where he placed people on the roster.

Smith said, "I think Lieutenant Officer 4 sees everything in whole, takes everything into account, uh… believes in troop welfare. Um… tries to make accommodations when he can." Smith said Officer 4 was always very accommodating when people wanted to ride together in certain areas. He said, "Swing shift is a mess. The roster is a mess. I feel bad for anybody that goes up there and tries to put that thing together." But Officer 4 knows exactly what is going on in the city, knows exactly what is going on with all the officers and sergeants assigned to him, is well aware of everything going on, and is in control. Smith said Officer 4 was probably the best watch commander we had.

I asked if he thought Officer 4 moved Complainant to Area 5 to retaliate against him for reporting an issue to Internal Affairs about Officer 1 and Officer 2 not taking a report, or if Officer 4 did this simply because he was trying to put the roster together. Smith said he did not believe for any reason Officer 4 did this as a form of retaliation. Officer 4 was one of the smartest people Smith knew, extremely professional, and Smith didn't think he would ever do anything to compromise this shift or any of the officers. Smith did not think he would do anything out of spite or revenge, or to prove something. Smith has observed Complainant and Officer 4 speak on numerous occasions. He described these as normal conversations and said Officer 4 was always very approachable, easy to talk to, didn't get too caught up in the rank, and you could have a normal conversation with him as an officer. Smith said they moved people around constantly and he thought maybe it was just Complainant turn to get moved. He again mentioned Sears and Kouroubacalis regularly getting moved and both were senior officers. Smith said, "And Compl would come up to the bench, every single time, almost every single day, and ask about the roster." He would question why Sears was going to the eastside and why the "two girls" (Officer 1 and Officer 2 were working "there when they could work west." He said, "Everyday it's like we almost had to approve the roster through him." Smith wasn't there, but thought Complainant was moved probably because they needed someone east to go west. He said Officer 4 probably looked around the room, saw he had previously asked other officers to move, so he chose Complainant because it was his turn. Smith said that's how he would've done it if he were the watch commander. This was similar to how we assigned holdovers. In the past when we needed holdovers, we always used to only use the junior officers, but now we use the officers on their Mondays. Smith now has senior officers that have to holdover.

Complainant came up to Smith and Officer 3 who were seated at the front of roll call to ask about Sears being moved. This conversation occurred on or about the second time they moved Sears and Complainant advised them Sears had an issue with being moved. Smith tried to explain to Complainant that Sears was not assigned to that beat, Sears just preferred to work there. Sears was assigned east with Officer 3 and he needed to work there, so Smith could keep his crew together under his supervision. Smith had six officers assigned to him and he was trying to keep at least four of them in the same beat under his supervision. Though Sears did not come to Smith with the issue, Smith talked to Sears about a week later. He told Sears he would try to keep him north as much as he could, and Sears appreciated it. It was Complainant though that told Smith he was wrong for moving Sears and that designators were everything to senior officers. Smith told him he was once a senior officer and understood, but moves were going to be made.

Two to three days per week, sergeants had to talk to Complainant about the roster, who should ride as partners, and where officers should be assigned to work. Smith said this occurred at least

half of each work week. I asked if any other officer ever came to ask these types of questions, and he answered, "Never."

Smith had no information as to why Complainant and Weddle were separated from riding partners. I asked if he believed this was done in retaliation for Complainant going to Internal Affairs about Office and Officer 2 not taking a report on a call. He answered, "No. The officers involved… the supervision involved in this case are smart, respected supervisors." He did not believe they would do anything to harm this agency or any of its officers. He also did not believe Complainant and Weddle were separated from riding partners because Complainant requested Officer 1 and Officer 2 be split from riding partners.

Smith observed a single rat photo in the men's locker room on his Monday night which would have been a Sunday. It was on the second row of lockers on the east wall, and it read "no rats." Smith had no idea Complainant had made a complaint. Smith, who was now on graveyard, dressed out. He talked to the other graveyard guys, but they didn't know what he was talking about. Smith said the flyer was down the next day. He heard rumors that Complainant may have taken a complaint to Internal Affairs about Officer 1 and Officer 2 not taking a report. This rumor was sixth, seventh, eighth hand information.

The photo Smith saw was in an area where flyers were normally placed to sell items or offer classes. There was always something funny there and Smith thought perhaps officers were just messing with each other. He had seen worse in the past. He didn't think anything of it and didn't think it was hostile. None of the other graveyard sergeants knew anything about it either. They speculated if someone had snitched on someone or if someone was just messing with someone because "they post some funny things in there sometimes." He advised the officers would post memes and gave an example of someone posting a photo of our two thinnest officers in the entire Department doing a "pose off" with them boxing. It wasn't anything crazy, just locker room stuff. It was nothing inappropriate, just in jest. When the other sergeants didn't know anything about the rat photo he saw, Smith didn't think it was a big deal.

Smith did not hear who might have placed the flyers and was surprised to hear they may have involved Complainant has "always been loud and confrontational with the sergeants and other officers." He was "blindsided" this involved Complainant and that other officers would "have a response to him." He said, "Almost like….Oh! I think the officers are finally put up… are done too." He said the sergeants were always trying to work with Complainant the best they could. And "for the first time," "the officers are actually done with Compl. too."

I asked if there was a level of frustration amongst supervisors with Complainant based on Complainant actions and he said yes. He believed this level of frustration was now carrying over to the officers. Complainant was one of our most senior officers, and there was time he was one of the most respected officers through the ranks. Smith was "shocked" that one of Smith's peers did this. He assumed it was a peer because there was no way a sergeant would do that. I asked why it would not have been sergeant. Smith said he had the upmost respect for his peers, he's observed every one of them, and has trained the last six of them. He described them as professional, respectful, and said they would never compromise their rank. Half of them were

on probation and that's not how sergeants carried themselves. They would not risk their careers or discipline. He could not imagine a sergeant or above would do anything like that.

I asked specifically about J. Mutuku, being that Complainant issue involved J. Mutuku's wife. Smith said, "I would be absolutely shocked." He described J. Mutuku as very sharp, extremely professional, and wanted to be an all-star and leader at the Department. J. Mutuku was also a grown man and if he had an issue with Complainant he would pull him in and have a conversation with him. Smith has never witnessed J. Mutuku engage in childish pranks. J. Mutuku just bought a home and had a baby. J. Mutuku would just go talk to Complainant if he had an issue with him. Smith has witnessed J. Mutuku talk to other sergeants, counsel officers, and had no problem discussing an issue with someone. Smith works with J. Mutuku a lot and considers him a friend. Not once, has J. Mutuku ever said anything to Smith about Complainant J. Mutuku was focused on family and Smith would be "blown away" if J. Mutuku had anything to do with the flyers.

Smith has never witnessed any behavior by supervision toward Complainant that was hostile or retaliatory. Smith said everyone knew Complainant and everyone was used to Complainant Smith tried to remember him as the guy that was out chasing bad guys, even though "that's getting farther and farther away." Supervisors and lieutenants always treated Complainant with respect and had conversations with him. There has never been any hostility. Complainant worked for Officer 3 and Officer 3 was doing his best with Complainant Smith said, "There's nothing hostile around [redacted]" He added Complainant was working as a two-person ride, not taking anybody to jail, and wasn't being productive yet he was still allowed to work as a two-person ride and work where he wanted to work. He was still allowed to call dispatch and buy his "459" (burglary) calls. Complainant ran his own little world in his ten-hour shift. I asked the significance of Complainant handling the burglary calls. Smith advised Complainant bought the calls he wanted to handle. Smith agreed burglary calls were easy reports to take. A more significant call would be something "active" such as a domestic violence call, in progress crime, or a sex crime that would involve getting additional investigators involved; anything that time consuming. Smith said Complainant likely has bought one of these calls, "but his (Complainant reputation is grabbing like the past GTA's, past 459's, past 488's. He grabs the past calls." Smith agreed these calls were not high priorities or complex to investigate. Complainant controlled the calls he responded to.

In Smith's opinion, more was expected of a two-person ride, and it was a perk for being a hard worker. A two-person ride should be handling in progress calls, taking as many reports as everyone else in the beat, and actively looking for self-initiated activity. Smith said in the two months prior to him going to graveyard, he rarely heard Complainant and Weddle on the radio, so he knew they were buying calls off the board and controlling their shift. He could not recall them being very proactive, but they did occasionally take someone to jail. In Smith's opinion, a two-person ride should be taking someone to jail once or twice per shift. Riding as a two-person unit was a perk for working hard and this was far and few between for Complainant and Weddle compared to other two-person rides.

Smith had no knowledge of Complainant and Wright riding as partners or if and why they were separated.

Smith is personal friends with Officer 4 and hung out with him outside of work. He considered J. Mutuku a work friend but did not hang out with him outside of work. I asked if Smith's relationship with Officer 4 affected what he shared during his interview to make things more favorable for Officer 4. He answered, "This is my honest opinion and observations during that period of time."

I asked Smith to describe Complainant as an employee. Smith believed Complainant had some level of respect for him and outside of their disagreement about Officer 1 and Officer 2 riding together, they got along just fine. Smith can see Complainant doesn't respect the other sergeants, would be happy not having a sergeant and believed he would be a better sergeant. Smith told Complainant to become a sergeant and come help. Complainant is difficult because he questions decisions constantly and this becomes problematic. During roll call, Complainant will challenge sergeants in front of other officers. Smith has had conversations with him about this and asked Complainant to talk to the sergeants and maybe add his additional information at a future roll call. However, that is not Complainant style and Smith believes Complainant believes "he's just better than us." Smith doesn't find him difficult because he doesn't care about Complainant opinion. He said, "Unfortunately, this is how bad it's gotten. But he... yeah, I don't want him to work for me. And like I said, I... I get along with him for the most part, but I don't want to supervise him." As a supervisor there are so many moving parts and things that require your attention. With Complainant this is difficult because he challenges everything. There are new officers that need to be taught officer safety, case law, policy, arrest, and control procedures, etc. Smith said he could not constantly be worried about Complainant opinion or unhappiness with Smith's decision. There are times as a supervisor you need to make command decisions and you don't need to be questioned constantly.

Smith and Complainant worked out at the same time and during these times, Smith told Complainant he should take on more of a leadership role. Smith talked to him about working with the sergeants and also offered to read Complainant opening and closing statement for the sergeant's interview. Complainant told him he was still working on it. Smith and Officer 3 also gave him a date and time so they could do a mock interview with Complainant and sent a text reminding him of the mock interview the day before, but Complainant called in sick. Smith and Officer 3 took time out of their day to make a series of questions, discuss them, and print them out for Complainant but he never showed. They did this for both Complainant and Weddle. It was obvious to Smith that Complainant was not going to interview for the position even though Complainant had not officially withdrawn from the process. Smith described Complainant as ungrateful and said he did not realize the time and effort made by him and Officer 3 to help him. Smith was done helping Complainant with the testing process after that. Smith heard Complainant sent an email to personnel just before his interview and withdrew from the process. However, Complainant never sent a text or email to Smith about the mock interview before or after he called in sick. He never apologized or asked if he could reschedule.

While Smith was on the SWAT Team, Complainant put in for the SWAT Team one or two times and failed to show up for the physical fitness test. Smith also heard Complainant had put in for the POP (Problem Oriented Policing) Team but withdrew prior to the interview. While Smith was the sergeant for the PACT Team, Complainant told him he was going to put in to be on that team, but never ended up putting in for the position. Smith didn't know if Complainant did these things to get a rise out of people but said Complainant follow through has always been incomplete.

Smith has not observed any hostile or retaliatory behavior by a supervisor toward Complainant He has not observed any inflammatory behavior by Complainant toward supervision, but said Complainant was "argumentative" with supervision. He has heard rumors of confrontations but has never witnessed this.

Smith recalled being moved around (from beat to beat) as an officer, even a senior officer. He thought staffing levels were probably at their worst in 2017 and were headed in that direction today with officers being on light duty, away at training, promotions, etc. Backfills are used to meet minimum staffing levels for each watch. Supervisors are constantly shuffling officers to determine what beats they will work. The officers' pay and duties are the same, they just may be working in a different beat. Smith sometimes moves a senior officer so he can keep his officers together to train and mentor them. He doesn't move them to upset them, and it is not personal. He said there were also officers that like being moved and he found this productive. Senior officers were shown as much respect as possible, but they still might be asked to hold over or change beats. It's not personal. It's just moving officers to make the shift work. Smith added, "The mission comes first."

Smith did not know if Complainant and Weddle ever put themselves "10-6" (busy), but said he knew them and knew they took lunch and snack breaks. It was absolutely ok to take a lunch break.

Nobody from command approached Smith and told him he needed to let Officer 1 and Officer 2 ride together because they feared if they didn't allow this, the Department would get sued. Smith said it was his decision to allow them to ride together and he would be blindsided if anything negative ever came from Officer 1 or Officer 2 There was never any mention about either of them being a protected class. Smith had an agreement with them at shift change and they stuck with the agreement. There was no issue, except for Complainant complaint.

In closing, Smith said has not heard from Complainant since Smith moved to graveyard. Complainant has not sent him a text and they don't see each other in the gym anymore. Complainant was the only one that expressed any issue with Officer 1 and Officer 2 riding together. Smith even asked Maggie Kouroubacalis, while he was still on swings, if any of the other officers expressed concerns. She assured him nobody else had an issue with the arrangement. All the sergeants on swing shift and Officer 4 supported Officer 1 and Officer 2 riding together. Smith didn't think Complainant had an issue anymore either since he hadn't heard from him since moving to graveyard. Smith was surprised when he learned he would be called as a witness in this investigation.

Medici asked Smith if he would split a two-person ride if they were not productive. Smith answered, "Immediately." Smith said he would separate a two-person ride if they were not productive or if one officer was not a good influence on the other. He has done it before and would do it again. This is common sense and taking care of your officers, this is not indicative of a hostile work environment. It is not a right to ride as a two-person ride and supervisors switched officers around constantly. In Smith's opinion, a two-person ride should be the hardest working unit in the beat. Based on his observations, Officer 1 and Officer 2 were running circles around the other officers. They were on the radio the entire shift, they were

buried in reports, they were getting (occupied) GTA's, they were chasing people. He said, "I've got an officer with a six-month-old child, that's chasing people down alleys." Smith said he told Complainant that Officer 1 and Officer 2 had ridden as partners three years earlier and were productive. Smith was not going to punish her because she had a child.

After the initial conversation Complainant had with Smith about Officer 1 and Officer 2 riding together, Complainant continued to voice his issues with this to Smith on several occasions. The conversations were not as long as the initial conversation. Smith described them more as "jabs." He said this is how Complainant tries to break people down, but it doesn't work.

INTERVIEW OF WITNESS OFFICER WILLIAM ZACKOWSKI:

On December 13, 2022, at approximately 3:02 pm, Lieutenant Eric Detmer and I interviewed Sergeant William "Billy" Zackowski in the Conference Room at the Lincoln Station. The following is a summary of Zackowski's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Zackowski started with the Riverside Police Department in June of 1998 and was promoted to sergeant in May 2018. He is currently assigned to Watch C and has been on this watch for the past three years.

Zackowski was present in roll call when Officer 4 moved Complainant to Area 5. There were a lot of holdovers that shift and Officer 2 Officer 1 and Complainant had "difficulties" working together. As a result of these difficulties, supervision had them working different beats. On the shift in question, Complainant was assigned to the same beat as Officer 1 and Officer 2 and there were holdovers that were involved. The roster had already gone up on the overhead for officers to see and last minute, the sergeants talked and said someone needed to be moved. Officer 4 said to move Complainant to Area 5. At that time, Zackowski said Complainant was senior and said they should move someone else. Officer 4 agreed and Zackowski left the roll call room to go tell Complainant Zackowski did not recall the date this occurred, but said he only worked with Complainant two days per week (Wednesdays and Thursdays).

Zackowski said this was the only time he had seen Complainant be moved into another area. I asked if Officer 4 said why he moved Complainant Zackowski said Officer 4 moved Complainant because somebody needed to be moved; he thought it was to keep him apart from Officer 1 and Officer 2 Zackowski was not aware of any conflict between Complainant and Officer 4 prior to or during that roll call. Zackowski said the watch commander had control over the roster and sat next to the person doing the roster so they could easily make comments to them about changing things. Zackowski thought Officer 4 was just trying to get rid of one problem and did not think he would be creating another.

Zackowski said Complainant had been split up before, but to his knowledge had never been moved from Area 2. When asked if he thought Officer 4 did this in retaliation for filing a complaint against Officer 1 and Officer 2 and complaining about them riding together, Zackowski said he was unaware of these two incidents.

Complainant historically gets up from roll call quickly and leaves to go in service. After the roll call in question, Complainant got up and said, "thanks" or made some other comment to the sergeants and lieutenant. After discussing it with the other sergeants and Officer 4 Zackowski said he would go tell Complainant he had been moved back to Area 2 before he got out into the field. Zackowski walked to the far corner of the lot, by the exit gate near the gas pumps where Complainant parked. As he approached him, Complainant began to yell at him. Complainant yelled something like, "Don't talk to me." or "I don't want to talk to you." Complainant then started calling Zackowski a coward. There were a lot officers in the area, because they had just left roll call. Zackowski told Complainant he had been moved back to Area 2, but Complainant continued to yell at him for at least thirty seconds or more. Complainant was so angry he was red, and his lip was quivering. Complainant had a hard time hearing anything Zackowski said. Zackowski told him he came out to tell him like a man he had been moved back to Area 2 and Officer 1 and Officer 2 were getting moved. Complainant called him a coward approximately five times. Complainant was so angry; Zackowski didn't think Complainant could hear or focus.

Afterward, Zackowski returned to the roll call room. Complainant also returned and tried to hand Officer 4 a complaint against Officer 4. Zackowski could not recall if Complainant said it was a retaliation complaint, but Officer 4 directed Complainant to the captain or Internal Affairs because he could not take a complaint against himself. Complainant was still so angry that he could not really focus. Complainant wasn't yelling or screaming but was loud. I asked if Complainant was disrespectful toward Officer 4 Zackowski said Complainant was not as disrespectful as he had been toward Zackowski in the parking lot. Zackowski thought Complainant came in from the parking lot, went to a computer, and looked up the policy for whatever he was complaining about. Complainant walked in with papers and tried to hand them to Officer 4 Complainant had screamed at Zackowski in the parking lot, but that didn't happen in roll call. I asked again if Complainant was disrespectful toward Officer 4 Zackowski said, "I guess on the Compl. scale, it's kind of par for the course." and added, "Not overly." I asked if it were any other employee, speaking in that tone, would Zackowski have considered it disrespectful. Zackowski said, "Then yes." It was common for Complainant to be disrespectful toward supervision and referred to sergeants as "the enemy" openly to other officers and in front of them. Complainant freely speaks to whomever will listen to him to express his dislike for the way things were done here. Everybody knew of Complainant friendship with the chief. Zackowski often tells Complainant if he didn't like the way things were done, he had an open door to the boss' office. Complainant always said he didn't want to put the chief in that spot.

Zackowski knew Complainant and Weddle regularly rode as partners at the beginning of shift change. He did not know why they were separated. They did not work for him and this wasn't discussed with him. He guessed this decision was made by their sergeant (Officer 3 and/or the lieutenant. Zackowski did not know if they were split as a form of retaliation as he was not aware of the complaints Complainant had made about Officer 1 and Officer 2 and said this was never discussed with him.

Zackowski was aware Complainant and Officer Evan Wright used to regularly ride as partners but had no knowledge as to why this stopped. He heard they had a falling out but did not know why. Zackowski was aware Officer 1 and Officer 2 commonly rode as partners at the start of shift change. Initially, he was unaware Officer 1 was taking lactation breaks, but learned of this later after there were some "grumblings." Complainant was "angry," and Weddle was "not so excited

about it either," because Officer 2 would "sit around and do nothing" while Officer 1 took her break. Zackowski did not hear of any grumblings until a couple months after shift change.

Zackowski began to supervise Officer 1 and Officer 2 after their sergeant (Smith) went to graveyard. I asked if he had any issues with their work performance. He answered, "No. They work constantly." Zackowski did not pay attention to how long their breaks were, but this is one of the issues he had with Complainant somehow knew what everybody in the city was doing, how long they were on calls, whatever, "except for himself." Complainant doesn't realize he does all the things he accuses other people of doing. Complainant was a hypocrite.

Zackowski said he did not see an issue with Officer 1 and Officer 2 taking breaks together, but he did not initially know of the lactation breaks. He could see how other officers in the same beat would have an issue with this because "unless one is lactating the other, there's no reason for both of them to sit at the station." The other officer could get in the police car and drive, there was no reason for the other officer to sit there. However, he did not see Office or Officer 2 dodge or try to hide from calls where "Compl stacks every... uh... non-report related call to himself;" subject bothering calls and similar calls where Complainant is able to go from one call to the next without ever being dispatched. Complainant also goes to any beat in the city he chooses to if he deems fit.

Zackowski has had issues with Complainant because of this. He described one incident that occurred in Casa Blanca where two people were sitting in a car and got shot at. Complainant is very familiar with that area. Complainant showed up to the scene, walked into the scene, talked to the two people on the ground, and then left. Complainant did not provide any assistance on the call and did not take a supplemental report. Zackowski said, "He just came to get information for himself and bounced." Things like this with Complainant are what Zackowski had issue with and tried to point these things out to Complainant Zackowski said the fact that Complainant wanted to complain about other people, was hypocritical.

Zackowski said if someone needed a backup officer, he would go himself. I asked if there was ever time, someone called for an emergency back-up and Officer 1 and Officer 2 did not response. He said no. I asked if he personally observed any issues with their work performance. Zackowski said he would like to think he would notice, but there were six sergeants assigned to swing shift and there was supposed to be eight. He had two crews; one is north, and one is south, so he is all over the city. He did not always work with Officer 1 and Officer 2 He said, "As a matter of fact, I do my best to not work around Complain because he gets... uh.. my goat, so to speak. He does nothing but torment... um... the sergeants if it's something that he doesn't agree with. So, I prefer not to work in that area." For these reasons, he could not say if there were any issues with Officer 1 and Officer 2

Zackowski did have a conversation with Weddle where Weddle told him he did not know why Complainant hated Officer 1 so much. When I asked about this, Zackowski said he wasn't sure if it was Officer 1 or Officer 2 but Complainant wasn't a fan of one of them. Zackowski said he could not see Complainant rushing to help Officer 1 or Officer 2 and vice versa. He hoped this would not be the case if the situation were life threatening. He didn't know and said he hadn't had conversations with them about that.

Zackowski was "thankfully" in Arizona when the rat flyers appeared at the station. He did not see them and did not hear who put them up.

I asked if he was personal friends with anyone we had talked about. Zackowski said, "I thought I was personal friends with [redacted]

I asked how he would describe [redacted] overall. Zackowski said he thought [redacted] has the potential to be a very good policeman. He didn't know why [redacted] focused so much on what others did, instead of focusing on what he did. He said, "I would say it's obsessive." Zackowski said he never cared to the degree that [redacted] does. He said, "To [redacted] disadvantage, I worked with him as a beat partner. I never worked with [redacted] and [redacted] as beat partners. Um… so, I know exactly what it's like working with [redacted] and he has a great ability to… uh… turn things around as to… to your fault, not his… like you're the one that's causing the problems."

Zackowski has heard grumblings that there are cliques on swing shift and none of them get along with each other. He hasn't experienced this firsthand, because as a sergeant, officers keep these things amongst themselves.

I asked if [redacted] had a reputation for being a difficult employee. Zackowski said, "My personal experience… he's been difficult with me." Zackowski said he still considered [redacted] a friend. He didn't know why [redacted] has been so angry lately. He added, "But like I said, he took this up with Kendal Banks eight years ago." Zackowski said [redacted] confronted and harassed Banks and did not know if this resulted in an investigation handled by Internal Affairs. [redacted] would question Kendal on everything. He described an incident he heard about in which [redacted] was off-duty and in a restaurant with his wife in Area 5. Banks and some other sergeants walked in and [redacted] wife went up to Kendal and "demeaned him." Zackowski wasn't there but the story had gotten around.

Zackowski said he would not want to have [redacted] on his crew. He said, "When I tried to supervise him, he would question and challenge everything." [redacted] would say he needed to know things because he was taking the sergeant's test. Zackowski would print out the policy and provide it to him. Zackowski did this at least three times. The last thing that happened between them "that I was just over with" involved a pursuit of three minibikes. The primary officer lost them after they started going through yards but was picked up later by a secondary unit that had a ride along. In roll call the next night, Zackowski said he was not a fan of chasing motorcycles although policy permitted it. However, the policy also stated you couldn't pursue people if you had a ride along. [redacted] went to everyone in roll call that day that would listen and told them Zackowski was wrong. [redacted] said there wasn't anything in the policy that said you couldn't be in pursuit if you had a ride along. Zackowski said there was a ride along policy and a pursuit policy. He thought the ride along policy said you couldn't do anything overtly dangerous that would put a ride along in danger. In Zackowski's opinion, this included a pursuit. The pursuit policy advises you should take into consideration who is in the car with you, it includes civilians and talks about people that are in custody; it doesn't say ride alongs. Zackowski said his discussions in roll call were not to get anybody in trouble, but to prevent people from getting into trouble in the future. He said his day went better when he wasn't questioned by somebody that wasn't involved anyway.

I asked if he has witnessed any hostile or retaliatory behavior by supervision toward Complainant since shift change. Zackowski said the only thing he could think was if a senior officer wanted to ride with someone but wasn't allow to...but said ultimately, it was the watch commander's decision. The watch commander ran the watch and made these decisions. Zackowski said staffing and other issues were factors in these decisions by the watch commander.

I asked if Zackowski ever witnessed hostile or retaliatory behavior by supervision toward Complainant prior to shift change. Zackowski answered, "No." He said he didn't deem Complainant getting moved to the five beat as hostile or retaliatory. He just thought there were other people that weren't senior that could've been moved. He suggested this and Officer 4 agreed right away and said, "Go switch them."

I asked if, since shift change, Zackowski witnessed any behavior by Complainant toward supervision that would be considered hostile or inflammatory. Zackowski said Complainant just questioned and challenged everything. He said his first confrontation occurred when the "dope team" called Complainant and Weddle to do a wall stop. Zackowski was not notified until they had arrested the suspect and had him in custody. Weddle called Zackowski for an arrest review and told him it was a wall stop and they were at the Orange Station. Zackowski explained to him that per policy, he had to let a supervisor know. Zackowski looked up the policy, "because that's what Compl wants every time, even though he's been a cop for twenty years, he needs you to prove it to him."

The policy states the detective needs to notify the watch commander, but Zackowski said something to Complainant for officer safety. He told Complainant the supervisor needed to know in the event something happened on the stop, such as a pursuit or other safety concerns. Complainant response to Zackowski was that supervisors only muddied the waters or something similar. Supervisors "foul it up" when they get involved.

Zackowski did not think any sergeant had ever called Complainant to address the way Complainant talked to supervision and how he constantly questioned them.

Detmer asked Zackowski if Complainant ever apologized for any of the things he did, to include calling Zackowski a coward. Zackowski said he did not think Complainant was capable of apologizing.

Complainant has never threatened anyone with his friendship with the chief. Zackowski said Complainant has never used his friendship with the chief, at least with him. Zackowski has referred Complainant to the chief, the one that could make changes, when Complainant brought up problems, instead of Complainant "beating us up at our level."

Detmer asked Zackowski what other officers in patrol thought of Complainant He answered, "As a supervisor, I didn't want to put them in a bad spot, so I would never ask."

Zackowski did not observe any issues with having the "COPS" crew ride with officers.

Zackowski answered, "yes" he believed splitting squads was a considerable challenge for supervisors to keep track of their people, especially the new sergeants. He said he and the new sergeants were more inclined to want to have their own people work with them. More senior sergeants didn't feel that way and felt they should let officers work where they wanted to work. Zackowski doesn't agree. He didn't want to do something, just because it was past practice, and tried to be flexible. He didn't agree with who should be able to ride as partners, where they worked, but he wasn't the watch commander. He said there was a watch commander that thought everyone should ride as partners. Zackowski thought two-person rides in busier beats was fine, but not everyone should ride as partners. There are more "dead calls" than live or hot calls. He also talked about unit shortages and how this could be a factor. He said there were a lot of things here he would change, but ultimately it was the watch commander's decision. He thought the new sergeants wanted to be more hands on than Zackowski thought they should be, but said it was not his place to tell them otherwise. He said he didn't claim to be the best sergeant and had his flaws too.

The new sergeants wanted to monitor their people better and we had some officers that were making mistakes that needed to be corrected.

In closing, I asked Zackowski if there was anything he thought we should know while investigating Complainant complaint of a hostile work environment. He answered, "I… I think Compla makes it hostile for the supervisors. Um… I don't know if you can be hostile up, but it seems to go more that way and be accepted. Um… like I said, he talks to the other officers that are working. The ones that he thinks he has their ear and poisons us with them. Um… I know he called me 'cancer' to Officer 3 Uh… which I find completely ironic, uh… but… I don't feel like anything's being done to correct that behavior." (Zackowski referred to Complainant behavior.)

INTERVIEW OF WITNESS OFFICER SHEA MCMAHON:

On December 14, 2022, at approximately 7:36 am, Sergeant Medici and I interviewed Officer Shea McMahon in the Internal Affairs Conference Room. The following is a summary of Smith's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

McMahon has been with the Department for twenty-one years. He is currently on patrol and assigned to Watch B. It was common for officers to write reports in the roll call room, after their shift, provided roll call for the next watch had been dismissed. He was in the roll call room when Complainant Complainant walked in and told Officer 4 he wanted to file a complaint against him. Complainant was talking and joking with Sergeants Robert Tipre and Officer 3 ; Sergeant William "Billy" Zackowski may also have been present. Complainant handed Officer 4 a packet and told him he wanted to file a hostile work environment against someone; McMahon didn't hear who the complaint was against. Officer 4 seemed to get "pretty upset" with Complainant and told him he needed to take the complaint higher up the chain. Officer 4 told Complainant not to call the sergeants a coward in front of anyone ever again or he would be sent home. Complainant asked Officer 4 if he was refusing to take his complaint. Officer 4 said yes and told him to get out of there.

McMahon could tell Officer 4 was "pretty pissed off." McMahon did not know where the coward comment came from. He also did not know who Complainant wanted to make the complaint against.

McMahon has not witnessed any behavior by supervision toward Complainant that he considered to be hostile or retaliatory. He has not witnessed any behavior by Complainant toward supervision that he would consider to be hostile, disrespectful, or inflammatory. He said, "I think Complain when he does his, whatever he's doing, he… he's pretty smart about it." Complainant does not lose his temper and is "pretty smart when he does stuff."

McMahon did not witness any rat photos at the Lincoln Station. He advised he was off work but did hear about it. He heard there was an exchange between Sergeant James Mutuku and Complainant over the weekend but did not hear details. He heard shortly after some Rat Busters photos appeared in some of the mailboxes; one of them being Complainant McMahon said everyone assumed it was J. Mutuku, but he didn't know.

McMahon is not personal friends with any of the parties but described them as acquaintances. He described Complainant as a "known prankster" and has been since Complainant started. He gave examples of eating half a cookie and putting "snot rockets" on the walls in the bathroom. McMahon said Complainant was a hard worker but has slowed down – perhaps due to issues with supervision. Complainant is very smart and probably knows case law better than most sergeants and lieutenants.

When asked if Complainant had a reputation for being a difficult employee, McMahon answered, "I think he does." McMahon didn't think this was the case years ago but said as Complainant has gotten older and closer to retirement, he seems like he is more of "a thorn in everyone's side." Complainant does it to "piss people off or ruffle feathers." McMahon said, "He's going to be known as a hard, and difficult employee" and Complainant used to be known as a hard worker. He said, "I think that's more his legacy now, unfortunately."

For most of McMahon's career, he has worked day shift and Complainant has worked swing shift. They have worked overtime shifts together though. McMahon has noticed Complainant has become more difficult over the years.

McMahon has worked under Officer 4 supervision or command and described him as jokester and one that would make "off-color" jokes occasionally. The things that Officer 4 may say do not affect McMahon because he knows how this profession is but said some of the things may offend some of the newer officers. He could not give a specific example, but said Officer 4 just had an old school mentality and was former military. McMahon has never seen Officer 4 treat someone in an unprofessional or hostile manner. Officer 4 did raise his voice at Complainant when he told Complainant to get out of the roll call room, but McMahon said it was obvious there was an issue between them. He did not think Officer 4 was being hostile or disrespectful to Complainant

I asked McMahon if it was acceptable behavior for an officer to yell at a sergeant and call him a coward multiple times. He said no and these conversations should be held in private.

McMahon said it was not out of line for Officer 4 to raise his voice at Complainant in light of what occurred, but perhaps it could have been handled better. McMahon was the only officer in the roll call and did not know if Officer 4 even knew he was in there. McMahon thought Officer 4 should have taken the complaint, because by not doing so, it "added fuel to [redacted] fire." McMahon speculated that if Officer 4 had taken the complaint, it would have perhaps prevented the issue from ending up in Internal Affairs. McMahon heard Officer 4 tell Complainant to take his complaint to the captain or Internal Affairs.

McMahon said Officer 4 runs a good ship and is a professional. It is common for lieutenants and sergeants to joke around after everybody leaves roll call. McMahon is not offended by the things said, but others could be. He wondered if maybe this wasn't the place to joke around, and supervision should go for coffee to have these conversations. He has never seen Officer 4 flirt with a female officer or be offensive to the point it created a hostile work environment. If this was the case, McMahon was sure we would be looking into claims from other employees and not just Complainant In addition, being moved out of a beat did not constitute a hostile work overornament.

McMahon advised he is good friends with Officer Spencer Weddle. Weddle has shared things with him about Complainant and some of the things that have been going on when they hang out. Weddle told McMahon supervision was "pissed off" at Complainant so they split Complainant and him up. McMahon didn't really care what was going on with [redacted] but said this was not hostile. He said, "If you're having issues and problems with a specific person, you're taking… you're fix… you're trying to fix it as a supervisor or as a watch commander. You're trying to alleviate any more problems by doing that, splitting them up, or…whatever else. That's not hostile, that's acting as a boss." McMahon also expected if he was doing something wrong, for his boss to raise his voice at him and tell him.

McMahon did not know whether someone could accept a complaint against himself. But if this was case, explained why Officer 4 did not accept Complainant complaint.

McMahon did not know who placed the Rat Buster photos and did not hear who placed them. He only heard rumors that it was possibly J. Mutuku. He heard about the exchange between J. Mutuku and Complainant from Weddle, but also other officers. He said Weddle likely heard about the exchange directly from Complainant McMahon did not hear anybody else say they witnessed the exchange between [redacted] and J. Mutuku.

INTERVIEW OF SUBJECT [redacted]OfficerOfficer 4

(Prepared by Sergeant Mike Medici)

On December 15, 2022, at approximately 1445 hours, Sergeant Mike Medici interviewed Lieutenant Officer 4 in the Internal Affairs Conference Room. The interview was audio-recorded and then downloaded into Laserfiche under PA2211047. The following is a summary of the interview, prepared by Medici. It is not verbatim or necessarily in order, but it is organized for clarity.

Before any questioning, Medici told Officer 4 he was being interviewed as a subject officer of a complaint made by Officer Complainant Complainant alleging a hostile work environment. According to Officer 4 he was already aware of Complainant complaint. Medici provided Officer 4 with a POBR packet which they reviewed together, and Officer 4 signed. Officer 4 declined to have a representative with him during his interview. Because Officer 4 holds the rank of lieutenant, Captain Charles Payne was present to order him not to disclose details of the investigation to anyone else. After Officer 4 signed the Peace Officer Order Not to Disclose Form, Captain Payne excused himself and was not present for the remainder of the interview.

Officer 4 told Medici he started his law enforcement career over 23 years ago. He is currently a Lieutenant -Watch Commander in Field Operations. Medici asked Officer 4 if he remembered being present in roll call a few months earlier when he had Complainant reassigned to a beat he doesn't normally work. Officer 4 said he didn't remember which beat he sent Complainant to, but he admitted that he did have him moved. According to Officer 4 he, Lieutenant Barney, and Captain Milby got together and decided that Complainant would no longer be allowed to work the same beat as Officer Officer 2 and Officer Officer 1 Officer 4 said he noticed during that specific roll call, Complainant was scheduled to work the same beat as Officer 2 and Officer 1 so he moved Complainant to a different beat.

Officer 4 confirmed that Officer 2 and were riding together as partners in the same beat as Complainant and Officer Weddle were working as a two-man unit. Officer 4 indicated that Complainant had issues with Officer 2 and Officer 1 but he didn't know exactly what those issues were. According to Officer 4 Officer 2 and Officer 1 are hard workers. He said they were always looking for bad guys they could take to jail. Officer 4 also told Medici that the Department entrusted Officer 2 and Officer 1 to drive around with the film crew from the "COPS" television show because they always do their job well. Officer 4 felt, "On the other hand there is Weddle and Complainant Officer 4 feels Weddle and Complainant are not a great representation of what the Department is trying to show as an agency. According to Officer 4 Complainant is a minimalist, and he only does a "bare bottom" amount of work. Officer 4 felt Complainant is not a good beat partner and he never drives by Officer 2 and Officer 1 calls or stops.

Officer 4 believes that Complainant was upset because Officer 1 is a "lactating mother" which makes her entitled to lactation breaks. When she takes those breaks, Officer 2 goes with her. The arrangement was set so that when Officer 1 is pumping her milk, Officer 2 takes phone reports. Officer 4 told Medici that Complainant was upset, and alleged Officer 2 did not take a police report on a reported crime when she should have. Although Officer 4 knew Complainant was upset about it, he said it was "below his level of giving a shit."

Officer 4 relayed to Medici that at the end of the day, Complainant was just complaining about "the new mother and the Hispanic lesbian." According to Officer 4 Complainant alleged that Officer 2 and Officer 1 don't do their job. Complainant told Officer 4 that they suck, and he doesn't want to work around them.

Officer 4 completely agreed Officer 1 has the right as an employee and as a new mother to take lactation breaks. Medici asked Officer 4 if those breaks have ever been an officer safety issue for their beat partners. Officer 4 answered that Officer 2 and Officer 1 work well together.

It's Officer 4 belief that the only people that decide who gets to ride together, are the sergeants and him. Medici asked Officer 4 if he knew how long Officer 1 lactation breaks were. He felt that the time they spent on the lactation break seemed reasonable to him. Officer 4 paused briefly to recall a time his wife was lactating. Then Officer 4 said that he remembered it took as much time as needed before "they were both empty." He believed it was reasonable for the breaks to take 30-60 minutes.

According to Officer 4 the difference between the amount of work that Officer 2 and Officer 1 do in comparison to Complainant is "astronomically" different. Officer 2 and Officer 1 don't let calls stack up as Complainant does. They don't avoid paper calls and they do everything he would expect an officer to do, and they do it well. Officer 4 told Medici that Complainant does, "almost none of those things."

Medici asked Officer 4 if he was aware of Complainant allegation that Officer 2 and Officer 1 NR'd a crime report over the phone. According to Officer 4 members in command looked at the allegation from the patrol level and it proved to be inaccurate. After looking into the matter, it was determined that Officer 2 and Officer 1 did the right thing because it was a family problem and there was no crime.

Medici re-visited an earlier discussion when Officer 4 admitted he moved Complainant from his beat into another. Officer 4 told Medici that Complainant doesn't have his own beat. He went on to say twenty officers are working on the swing shift. At both his and the sergeants' discretion, Officers can be moved around to cover an area as they see necessary. According to Officer 4 officers get moved around all the time. He addressed Complainant argument that he has seniority. Officer 4 told Medici, "He isn't senior to the detectives who are in the room working overtime, he's not senior to the sergeants, and he's sure as hell not senior to me."

Officer 4 felt that Complainant negative and challenging attitude began to rub off on Weddle when they began riding together. Officer 4 and the rest of the swing shift management team noticed it happening. According to Officer 4 it's the reason they broke Complainant and Weddle up and kept them from riding together in the same car. Officer 4 believes that Complainant problem is that he doesn't want to be supervised. Officer 4 thinks Complainant feels he can do whatever he wants. Officer 2 and Officer 1 told Officer 4 that Complainant never drives by any of their traffic stops. According to Officer 4 that can't happen with a beat partner.

Officer 4 told Medici that the only reason he moved Complainant to another beat, was to keep him separated from Officer 2 and Officer 1 He was clear it wasn't personal and had nothing to do with a hostile work environment. Instead, it had everything to do with having proper coverage and keeping Complainant in a separate beat away from Officer 2 and Officer 1 Officer 4 told Medici that Complainant ended up working in his beat of choice that day anyway. According to Officer 4 Sergeant Zackowski moved a couple of other officers with less seniority around to other beats. Complainant was able to work the beat he preferred while Officer 2 and Officer 1 worked in another. According to Officer 4 he was fine with the way Zackowski worked things out. He said he doesn't care where Complainant works, as long as it's not with Officer 2 and Officer 1

One of the sergeants told Officer 4 they witnessed Complainant having an argument with Sergeant Zackowski in the parking lot after the roll call. Officer 4 didn't witness it but heard Complainant called Zackowski a coward. Officer 4 advised Medici that he spoke to Complainant about it in the Rollcall Room. According to Officer 4 he warned Complainant that if he ever witnessed him disrespecting a sergeant, he'd suspend him for the day and send him home. Officer 4 said he'd treat any other employee the same way.

Officer 4 told Medici that Complainant walked up to him after a recent roll call holding a policy in his hand. It was the same day Officer 4 wanted Complainant to move to a different beat. According to Officer 4 Complainant said he wanted to make a complaint against Officer 4 and Lieutenant Mike Barney for harassment. Since Complainant identified Officer 4 as being the subject of his complaint, Officer 4 instructed him to take his complaint to the captain because he can't take a complaint against himself. Officer 4 also gave Complainant other options including bringing his complaint to the captain, Human Resources, or Internal Affairs.

Medici asked Officer 4 about the Rat Buster pictures found in the men's locker room. Officer 4 confirmed he saw the photos, but he had no idea who put them there. Officer 4 believed they were meant for Complainant after he initiated a complaint against Officer 2 and Officer 1 for not taking a police report. All Officer 4 could confirm was that Lieutenant Meier and Captain Milby investigated the photos and determined they originated from a community computer in the Report Writing Room. They have not been able to determine who made the rat buster photographs. According to Officer 4 he heard that Complainant was accusing Sergeant James Mutuku of posting the photographs. Officer 4 claimed he doesn't believe it was true.

Medici asked Officer 4 if there was any decision he made or was directed to make regarding Complainant that could be mistaken for being a hostile work environment. Officer 4 described law enforcement as being a hard enough job, so he doesn't want anything to be hostile.

Officer 4 believes that Complainant needs to be examined to determine if he's fit for duty. Officer 4 gave examples including when Complainant recently tested for a sergeant promotion. He passed the written exam, and then pulled his name after deciding he couldn't "work for the enemy." Officer 4 went on to say Complainant argues with supervisors, doesn't cover his beat partners, and just isn't cut out for this job anymore. When asked about Complainant allegations regarding Officer 4 creating a hostile work environment, Officer 4 called it "silly."

INTERVIEW OF WITNESS OFFICER ANA MISKULIN (FORMERLY AHUMADA):

On December 19, 2022, at approximately 1312 hours, I interviewed Officer Ana Miskulin in my office in the Internal Affairs Bureau at the Magnolia Street Police Station. The following is a summary of Miskulin's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Miskulin has been a police officer for three and a half years and is currently assigned to Watch B; Complainant is assigned to Watch C. She wasn't positive, but said their schedules overlapped on

Mondays and/or Tuesdays. She occasionally observed Complainant would log in to work overtime at the swap meet or Sandals Church on the weekends but did not see him.

Miskulin did not witness an argument or loud conversation between Complainant and Sergeant Mutuku in the parking lot at the Lincoln Station. She could not recall ever seeing Complainant leave to start his shift when she ended hers. She worked the west end of the city and usually when she got back to the station at the end of her shift, Complainant had already left for his.

Since shift change, she has never seen a heated exchange or argument between Complainant and Sergeant Mutuku and did not know anything about their relationship.

When asked about the relationship between Complainant and Officer 1 and Officer 2 Miskulin advised she thought they "worked well together," but "not really." She clarified by saying Complainant was an "old school" officer and goes "by his own tune." She was not aware of any conflict between the officers.

Miskulin worked swing shift with Complainant two years ago, but they didn't always work the same beat. She advised she wasn't really sure about him, but he "was a super senior officer and you take care of your super senior officers." She explained by taking care of them, you don't let them take reports and try to help them out as much as you can. She said he was good about backing her up on calls (she was a solo officer in these instances and was not riding with a partner) and always had a lot of good insight on gangsters, particularly in Casa Blanca. He was known for this.

I asked what she meant by Complainant being an old school officer. She gave an example of a shift in which she and another officer had to hold over and ended up working with Complainant She and the officer that held over were going from call to call trying to clear the board. Complainant was on a found property call for an extended period. She said it was well over thirty minutes and it seemed "unreasonable" to her. She called dispatch to check on him. Complainant advised he had to book the property. Miskulin said the property was not evidence and could have been held until the end of his shift. She also advised Complainant was "old school" with his equipment and how he used it. She said he did not wear an earpiece, or use Bluetooth, and still carried around his baton.

Miskulin never observed any behavior by supervision toward Complainant that she considered hostile. She never observed Complainant speak to supervision in an inflammatory manner or be disrespectful toward them. She never observed any rat photos at the Lincoln Station, nor did she hear of them.

I asked if she was aware of any issues supervision may be having with Compl. recently. Miskulin was not aware of anything directly, but said everyone was saying Complainant was not happy, disgruntled, and two days away from retiring. Complainant hasn't been happy, and this is known by all. Miskulin believed it was because policing has changed. Officers today must wear body-worn cameras and must record their contacts. Officers today have to take reports that maybe ten years ago, you wouldn't have to. She did not believe Complainant cared for these changes.

Miskulin was unaware of any issues between [redacted] and Officers [redacted] and [redacted] She was unaware of any issues between [redacted] and Sergeants J. Mutuku, [redacted] Zackowski, Tipre, any other sergeant, or Lieutenant [redacted]

She heard [redacted] and Weddle were no longer riding together, because they got into trouble and were doing too many stupid things. She said she did not ask for clarification when she heard this, because she did not want to get involved.

INTERVIEW OF WITNESS OFFICER CARRIN CHRISTIANSON:

On December 21, 2022, at approximately 3:07 pm, Sergeant Medici and I interviewed Officer Carrin Christianson in the Internal Affairs Conference Room. The following is a summary of Christianson's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Christianson was hired in April 2014. She is currently assigned to Field Operations, Watch C.

Christianson was in roll call when [redacted] was moved from Area 2 to Area 5. She did not know the reason or whose decision it was to move him, but assumed it was Lieutenant [redacted] When the roster went up (on the overhead) everyone gasped.

She thought it was "fucked up" because [redacted] who was senior, was moved instead of the junior officers that remained in Area 2. She said everyone knew Area 5 was busy and where someone was sent if they were "in trouble."

After roll call, Christianson observed Sergeant Zackowski looked upset. Changes were made to the roster and [redacted] was moved back to Area 2. Zackowski went into the parking lot to advise [redacted] of the changes, but she did not witness this conversation.

Christianson did not witness any conflict between [redacted] and any level of supervision. She never observed [redacted] say or do anything to provoke supervision and did not observe any behavior by supervision toward [redacted] that she considered to be hostile.

Christianson had no knowledge of the relationship between [redacted] and Officers [redacted] and [redacted] other than they worked the same beat.

She did not observe any rat flyers at the Lincoln Station. She did hear officers and sergeants talk about them and saw a photo of the flyer on someone's phone. She did not know who placed the flyers, but said people speculated it was a male because the flyers were in the men's locker room.

INTERVIEW OF WITNESS OFFICER MIKE BARNEY:

On January 3, 2023, at approximately 3:25 pm, Sergeant Medici and I interviewed Lieutenant Mike Barney in the Internal Affairs Conference Room at the Magnolia Street Police Station. The following is a summary of Barney's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Barney has twenty-nine years of service and is currently a watch commander assigned to Watch C. He works with Complainant two days per week and every other week on Wednesday. He works with Officer 1 and Officer 2 three days per week and every other Wednesday. Barney is aware Officer 1 takes lactation breaks and his understanding is Officer 2 takes phone reports while this occurs. This arrangement was made with their supervisor, Smith, at the beginning of shift change. Barney was not sure if the decision was made with Officer 4 but knew that was the arrangement. Smith later went to graveyard and Zackowski then supervised Officer 1 and Officer 2 Zackowski has since retired. On the days Barney worked with Officer 1 and Officer 2 he had zero issues with this arrangement.

Barney previously worked with Officer 1 and Officer 2 on his side of the week. He said they worked hard, did a lot of on-sighting, and stayed active. They were young officers and not without flaw, but overall, they were hard workers and did a good job.

Barney said Complainant was perfectly capable of doing the job, has seen videos of Complainant doing some great stuff, but thought Complainant was ready to retire. Barney's opinion was Complainant had not evolved with police work, how officers are today, and how we must do things today. It seemed difficult for Complainant to understand how things worked today. Police work changes and has been changing as long as Barney has been on the job and will change long after he leaves it. You must evolve with it, but Barney did not believe Complainant wanted to evolve; Complainant was ready to retire.

Complainant was "sometimes" proactive, handled his calls, and wrote police reports, but was not setting the world on fire and taking people to jail every night. He was a good police officer and perfectly capable, but "tapped out."

Initially, Barney was not aware of any tension between Complainant and Officer 1 and Officer 2 He learned about it later after the complaint by Complainant was made and it was decided keep the officers from working the same beat. Barney's understanding of the tension was due to Complainant not agreeing with Officer 1 and Officer 2 riding together because of the lactation breaks. Complainant did not have an issue with Officer 1 taking a lactation break but believed Officer 2 should be out working and not on a break. Barney did not know if Complainant was aware of the arrangement that Officer 2 would handle phone reports but said that was none of Complainant business. The arrangement was made between supervision and Officer 1 and Officer 2 Complainant was only their peer.

I asked Barney if he ever observed Complainant speak to a supervisor or do things to cause or provoke tension. Barney witnessed a "confrontation" that occurred two to three years ago in roll call between Complainant and Sergeant Emilio "Milo" Angulo, but said Angulo shut it down fast. Barney

was aware of other sergeants having issues with Complainant most recently Officer 3 but did not personally witness the incidents. Barney has had discussions with Officer 3 about the issues.

Barney heard Complainant complained to Smith about Officer 1 and Officer 2 riding together and complained to Internal Affairs about the officers not taking a report on a call. Barney heard about these things well after they occurred. I explained Complainant complaint is that after these two incidents, he has been retaliated against and is experiencing a hostile work environment. Barney has not witnessed any hostile or retaliatory behavior toward Complainant since Complainant reported those two things.

Barney was not present in roll call when Complainant was moved to Area 5 and did not know why Complainant was moved. Prior to Complainant being moved, Barney was unaware of any conflict between Complainant and Officer 4 Barney did hear what happened afterward. He learned of this when he had a meeting with Milby and Officer 4 It was Milby's directive that he did not want the officers to work the same beat. Barney said this might be why Complainant was moved, but he did not know. Then he said he heard that the officers were in the same beat, and it was just easier to move Complainant (a single unit) vs. Officer 1 and Officer 2 (who rode as partners).

Barney said it was the watch commander's discretion and he put out the schedule the way he saw fit, not to make the officers or the sergeants feel comfortable. It was his job to put the roster together and deploy the officers. There were a lot of times, he would try to give senior officers a particular beat or ride with someone, but that wasn't a right. It was just something they sometimes did, but it didn't always happen. For the good of the watch, the senior officer doesn't always get their pick, but they try to accommodate. Barney heard Complainant tried to file a hostile work environment complaint against Officer 4 with Officer 4 after this occurred.

Barney did not see any rat photos at the Lincoln Station but did hear about them. He did not know who placed them, nor did he hear who might have placed them. Barney said Complainant believed the flyers were placed by J. Mutuku. Meier investigated but was unable to determine who placed the flyers.

Barney said there was a difference in Complainant today, compared to how he was in the past. Barney thought Complainant was very frustrated with how we are today in law enforcement and how we are managed from all ranks. It's common when people get further into their careers, to not want to change with the times. Barney did not think Complainant could grasp the fact that law enforcement is not the same as it was when he started. Barney thought it was starting to affect him personally. He has had conversations with Complainant and told him if he thought it was that bad, he should just retire. Barney said it was Complainant personal preference when to retire, but if he was going to be here, he needed to just go do his thing.

Complainant was not a supervisor but was very opinionated. He has crossed the line several times with supervisors and has had "knock down drag outs." Barney said these conversations were not always bad, but there was a time and place to have these conversations and to stop. Roll call was not the place. Barney again mentioned the incident between Complainant and Angulo a few years ago. He said he was fine with their conversation, but not in roll call which is why he told them to stop and told both to leave. The time and place to have these conversations

were not in roll call, not in the parking lot with a bunch of officers around, or in the field with a bunch of citizens around. A private conversation or "banter" was totally fine, but there had to be a certain level of respect. Barney said, "At some point, if I'm not asking you to do something illegal, immoral, or unethical, I really didn't care what your opinion is. Go do it. Simple as that." That was in line with our rank structure even though someone may not like it at times. He said he has not liked it at times, but he also knew it wasn't his choice; he wasn't asked to do anything illegal, immoral, or unethical, so he did it.

Barney said he could "100%" see how Complainant was the problem here and said he believed it was just Complainant frustration with the way things were run today. Barney has told Complainant he couldn't look at it like that. He had a really good conversation about two weeks ago. He described he heard something happened between Complainant and Officer 3 He asked Officer 3 about it and Officer 3 told him he handled it and it was fine but was frustrated because he shouldn't always have to justify himself to his officer. Barney called Complainant and asked him how he was doing and what was going on. He told Complainant "This isn't the Compla I remember." They had a good conversation and Barney told him at the end of the day, Complainant needed to follow direction as long as it wasn't illegal, immoral, or unethical. He told Complainant he was leaving in six months and to "stop arguing with my sergeants please." Complainant shook his hand before he walked out and hasn't done it since.

Barney has always gotten along with Complainant even though he doesn't always agree with his thinking. He said not that it won't happen again, but Complainant hasn't with Barney's sergeants since that conversation.

Barney thought it was good Complainant and Weddle were separated from riding partners. He and Officer 3 had talked about this before. It was their job to guide and manage the officers and make decision in the best interest of their careers. Weddle started to take on some disgruntled traits. Barney thought they were separated before any of these other things came to light and said it had nothing to do with that. Barney and Officer 3 had been about it for months. They were trying to see how things went, because Complainant and Weddle were both senior officers, but it was constant with little things here and there. Officer 3 thought they should be separated, and Barney told him to do it. Barney thought the separation occurred prior to Complainant coming to Internal Affairs about Officer 1 and Officer 2 but wasn't sure.

As a watch commander, Barney likes two-person rides and would let them all go that way. He said it was proven to be safer and he preferred it. He didn't mind having as many as he could go out there. It wasn't a right to ride with a partner and he didn't have to give you a reason why. People have been split before for a variety of reasons. He gave examples of wanting more cars in a beat and officers not doing what they should be doing when riding as partners. As a two-person ride, you should be faster than somebody riding solo and handling more reports. There were numerous reasons to separate a two-person unit and there wasn't anything that said someone had a right to ride as a two-person unit.

I asked if there was an expectation of being more proactive as a two-person unit. Barney said there was nothing on paper in terms of expectations. As a watch commander, his perception of what a productive two-person unit looked like could be different than his five

counterparts and could be different than his four sergeants. Some might say that they wanted the two-person unit to be hard chargers taking people to jail and others might want the unit to handle the beat. Barney said it wasn't fair to answer this question because it was only his perception of what made a productive two-person car.

I asked if seniority was a factor in terms of who rode together. Barney answered, "Not really." He said it could, and traditionally sometimes it did, but what happened fifteen years ago had nothing to do with how he was going to run his shift or how the other watch commanders would run their shift. A lot of times, the senior officer would take the most junior officer and have the junior officer write all the reports. Barney wasn't going to let that happen. Supervision paid attention to who wrote the reports and he asked them to monitor this. He was more lenient, than other watch commanders when it came to two-person units. Some might have an issue with two, two-person units in a single beat and want more cars; Barney did not mind this if the officers worked hard together. It was his watch and he could run it the way he saw fit.

Typically, he doesn't care who rides together. But if a sergeant came to him and gave a reason for not liking certain officers riding together, Barney would split them up. Barney and Officer 3 talked about splitting Complainant and Weddle up for months, for a myriad of reasons, and should have done it sooner. It finally happened.

Barney has been a watch commander for four to five years. Complainant and Weddle were not the first officers he split up. He has had other times where a sergeant has come to him to request this or he himself made the decision to do so. The reasons were many to include: taking long to perform tasks, taking an extraordinary amount of time to get to a call (which meant the officers were trying to onsite), a ton of pre-empting calls, not being a good beat partner, etc. Or like in this case…you have someone who is ready to retire and someone who is trying to promote. Splitting Complainant and Weddle was done to help Weddle. When asked why he thought Complainant was a negative influence on Weddle, Barney answered he's worked with Weddle a long time and Weddle wasn't confrontational or someone that questioned things. However, some of that started to go on; things that weren't typical to Weddle's character. He said that happened sometimes in partnerships….where sometimes the traits of one partner started showing in the other. Barney said Weddle worked Area 5 now and took three people to jail last night. Weddle has been much more productive on his own or riding with a different partner.

Morale was important to Barney. He said, if you're happy to come to work, you work harder. When you're unhappy, it tends to affect your performance and can also affect others. This was yet another reason to separate people.

INTERVIEW OF WITNESS OFFICER ERIC MEIER:

On January 4, 2023, at approximately 9:49 am, Sergeant Medici and I interviewed Lieutenant Eric Meier in the Internal Affairs Conference Room. The following is a summary of Meier's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Meier has been with the Riverside Police Department for approximately twenty years and is currently the Executive Lieutenant assigned to Field Operations and handles administrative tasks related to patrol. He is not in daily roll calls but does attend roll call periodically when he fills in as Watch Commander or to provide an update to patrol. Prior to promoting to lieutenant, Meier worked as an investigator in Internal Affairs for approximately three and a half years and is comfortable with these types of investigations.

Meier learned from Medici that Complainant had come to Internal Affairs regarding Officer 2 and Office [redacted] not taking a report on a call they handled. To Meier's knowledge, Complainant information was limited to what was in CAD and CAD showed the call was cleared with no report. Meier shared this with Milby and both lieutenants for the watch, Barney and Officer 4 spoke with Officer 1 and Officer 2 about the incident. Meier did not know the details of that conversation but knew it was investigated and addressed by Officer 4

Sometime later, Meier received a call from Lieutenant Kevin Kauk. Kauk asked if there were flyers going around the station. Meier could not recall the exact conversation but remembered something came up about Complainant When Meier hung up with Kauk, he walked to Complainant mailbox and saw a flyer in his box. The flyer was of a cartoon rat and said rat busters. Meier removed the flyer from Complainant box and went to the locker room to see if there were more. He observed another flyer in a protected cover that was taped to the end of a row of lockers. He removed this flyer as well and took them back to his office.

He notified Milby of what he found and where. He also notified Officer 4 who was about to start his shift. Officer 4 located a third flyer in the locker room, that Meier didn't see. Officer 4 immediately took it down and threw it in the trash.

Later that day, Meier received a text from Complainant with a picture of the flyer that was in his mailbox. Complainant told Meier if he took down the flyer, "thanks, but I already got pictures of it. James Mutuku did that."[124]

Meier called Complainant and asked him why he thought J. Mutuku was responsible. Complainant told him of an incident that happened over the weekend, just prior to the flyers being discovered on October 4. Complainant worked overtime on either the Saturday or Sunday prior to the flyers. He greeted J. Mutuku and J. Mutuku ignored him. Complainant asked J. Mutuku if it was going to be like that or something similar. J. Mutuku told Complainant "You'll see. You'll see." Therefore, Complainant believed J. Mutuku was responsible.

In addition to collecting the flyers and notifying Milby, Officer 4 and Barney, Meier placed the flyers he collected into an envelope and locked them in his office. The following day, he asked Reporting Party 3 in Information Technology to pull the printer logs to see if they could determine if the flyers were printed at the station. Printer logs were pulled for the report writing room and the sergeant's bay. The printer logs will show the number of pages of each document, the date and time it was printed, and the title of the document, if titled. It will not show a picture of the document.[125]

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[124] Meier Interview, approximate time index 8:00.
[125] Meier Interview, approximate time index 10:00.

Meier reviewed the printer logs and easily located a possible match. A document titled "[redacted] had been printed on October 1, 2022. Meier asked RP 3 to see if he could determine what computer the document had been printed from. RP 3 was able to determine the document was printed from a computer in the report writing room, specifically the computer located on the east wall of the report writing room, and the furthest north. RP 3 logged into that computer remotely and located the document titled "[redacted]PNG" which was saved October 1, 2022, at 4:17pm. This was the same file name that showed on the printer log. RP 3 clicked on the document and confirmed it was the same image as the one shown to him by Meier.[126]

Meier then logged on to the City's camera system to see if there was video footage that might be useful. He explained there are no cameras in the station, but there are cameras in the lobby, back lot, and front parking lot. The cameras are activated by motion and are not great quality. However, Meier did see J. Mutuku pull into the back parking lot a few minutes before the file in question was saved. The video showed J. Mutuku park his marked unit, exit his vehicle, and walk toward the station. Meier knew J. Mutuku was there, but said it was hard to make out other people. There were personal vehicles and he also saw a Dodge truck pulling away around the same time. Meier said J. Mutuku would have had to move very fast to get into the building, print the flyer, and save it, if he was the one that did it.[127]

Meier informed Milby about the things he had done and what he learned. He said short of calling someone in and making them a subject officer and doing a formal investigation (which is normally routed through Internal Affairs), he felt this was as far as he could go. He also understood the more he did, could complicate things for the investigator that would be assigned to handle. Meier did not have a conversation with J. Mutuku about the flyer.[128]

Meier knew the flyers were printed on October 1, and he discovered them on October 4, but did not know when they were posted. Meier asked Complainant what he wanted to do, since Complainant believed J. Mutuku was responsible. Complainant initially said he didn't want to go through with a complaint and did not want to be interviewed. Even though Complainant did not want a formal investigation, Meier took steps to determine who might have been responsible and preserve the evidence he located.[129]

A couple days later, Complainant asked Meier if Complainant needed to file a complaint, since Meier saw the flyers. Meier discussed this with Milby. Meier did not contact Internal Affairs and was not sure if Milby did. He was not sure if Milby brought it up in a meeting with Command Staff and could not recall if he talked to Detmer about it. Meier said over the last couple months, he could not recall if he had this conversation with Detmer, Medici, or "anyone of you guys" about how Complainant changed his mind. However, he learned shortly thereafter that an investigation by Internal Affairs had been initiated and handed over the evidence he had collected. Meier said, "This thing was never put down."[130]

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[126] Meier Interview, approximate time index 11:10.
[127] Meier Interview, approximate time index 13:00.
[128] Meier Interview, approximate time index 14:45.
[129] Meier Interview, approximate time index 16:30.
[130] Meier Interview, approximate time indexes 17:00 and 23:00

Meier said on the day they found the flyer, Milby sent an email to all the watch commanders and copied both deputy chiefs. The email was titled, "Derogatory Posting Material at the Lincoln Station." Milby directed watch commanders to remind personnel of policy 330 and advise them that this type of behavior "shall not" be tolerated. This was addressed in the roll calls the following day and the following Saturday.[131]

Meier and Milby learned of a couple encounters between Complainant and J. Mutuku at the station. Milby asked Meier to sit in on a conversation with J. Mutuku, but they did not discuss the flyer. Milby addressed his expectations of a sergeant and told J. Mutuku not to get involved in any confrontations with Complainant The flyer was not mentioned at all. J. Mutuku was receptive to the conversation and appeared to appreciate the candor of the conversation. J. Mutuku was reminded to keep his personal life separate from his professional life and was also reminded that he was a sergeant and Complainant an officer.[132]

Meier and Milby also called Complainant in and told him they did not want there to be any conflict. They told him they would look into the things he brought forward, but to not engage in any conflict with J. Mutuku or any other sergeant. Meier did not know details, but knew Complainant also had an issue with Officer 3 and Zackowski, recent to these events, based on conversations he had with Complainant and other sergeants. Complainant seemed receptive to the conversation.[133]

Meier heard from Complainant and others that Complainant had issues with Officer 1 and Officer 2 riding together and Complainant took his concerns to Smith; this was prior to the flyers being discovered. Complainant told Meier he had no problem with Officer 1 taking her lactation breaks but was upset that Officer 2 was at the station while this occurred. Complainant believed Officer 2 should be handling calls in the beat. I asked Meier for his thoughts on the issue. Meier advised this was a supervisory decision made by the sergeant and the watch commander who work with those officers daily. He stated if their decision wasn't something morally questionable or violated policy, it was well within their right to make that decision. In talking with Barney and Officer 4 Officer 1 and Officer 2 worked well together, were active police officers, and this wasn't Complainant concern.

Officer 1 and Officer 2 were efficient. So much so, that Barney assigned the "COPS" crew to ride with them. The "COPS" crew rode with officers a year ago and mentioned they enjoyed riding with Officer 2 Barney assigned the "COPS" crew to ride with Officer 1 and Officer 2 on multiple shifts. Barney was confident in their ability to handle their business in front of a camera.

Officer 1 had a right to these breaks. Complainant perception was he had to handle more calls because Officer 1 and Officer 2 took these breaks together. Meier was confident if the supervisors had an issue with Officer 1 and Officer 2 performance, or if calls weren't getting handled, they would have addressed it.

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[131]Meier Interview, approximate time index 17:20.
[132] Meier Interview, approximate time indexes 18:15 and 20:15
[133] Meier Interview, approximate time indexes 19:30 and 21:30.

I asked Meier if he knew why Complainant referred to Officer 1 and Officer 2 as untouchable. Meier said Complainant himself acknowledged Officer 1 was entitled to take her lactation breaks and that these breaks were far beyond Complainant business. Complainant was fixated on this and it wasn't his decision.

I explained Complainant filed the complaint about Officer 1 and Officer 2 violating policy (by not taking a report with Internal Affairs, because Complainant claimed he knew nothing would be done if he took it to a supervisor. I asked Meier if he would have investigated and addressed that possible violation if Complainant had brought it to him. Meier said he would have investigated, just like he did when Medici called him about it.[134]

Meier said every single day something comes up in patrol and traffic, which totals approximately 140 employees. There is always an incident where someone could have done something better or they made a mistake. He spoke with Detmer daily about things that may not necessarily rise to the level of a complaint but could be training issues. There were certain things per policy that required them to take a complaint, such as external or citizen complaints. Internally, sometimes the most efficient way to deal with an issue, is to quickly address it. He gave an example of a call that recently occurred and some of the questions he had regarding it. He said these issues didn't always rise to the level of a formal complaint. There were also many factors to consider such as if the behavior was repeated by the officer in question. Often, a discussion is had with the officer to correct the behavior, without pulling a PA.[135]

When these issues come up, they are often given to the officers' supervision chain. This is what happened in this case regarding Complainant complaint about Officer 1 and Officer 2

Meier agreed there were several layers of supervision at the Lincoln Station to whom Complainant could have reported the possible policy violation. Meier would have investigated it or had another supervisor investigate it, if Complainant had brought the complaint to him. He believed Barney, Officer 4 and any of the sergeants would have investigated as well. If Complainant had called a sergeant the night it occurred, instead of calling dispatch and conducting his own investigation, Meier had every confidence in the world it would have been investigated that night.

Meier did not know that outcome of Complainant complaint or if there was a valid reason a report was not taken. He only knew from Milby, that Officer 4 talked to Officer 1 and Officer 2 and addressed the issue with them.

In response to Complainant saying his complaint about Officer 1 and Officer 2 would get swept under the rug, Meier told Complainant it was a personnel matter. He told Complainant he would not learn of the results of the investigation and he was not entitled to know. Complainant has been a rep and knows he is not entitled to this information. Meier said there is no playbook on how personnel

[134] Meier Interview, approximate time index 31:30.
[135] Meier Interview, approximate time index 32:30.

matters should be handled. There wasn't anything someone could do in this case that would satisfy [redacted][136]

As an officer, Meier worked with [redacted] for years and often worked the same shift together. In total Meier has worked with [redacted] for approximately twenty years. Meier felt he knew [redacted] well but did not hang out with him outside of work. When asked how he would describe [redacted] as an employee, Meier said [redacted] had some good characteristics about him, things he admired, especially as a new officer. [redacted] started at the Department a few years prior to Meier, and was "a good street cop." Meier learned some things from [redacted] such as developing contacts in the field. The two rode partners a couple times in Casa Blanca. [redacted] knew more about this area than anyone in the Department and probably still did. This knowledge and his contacts in that area allowed [redacted] to play a significant role in solving some serious crimes.[137]

Meier continued and said, "But I think anybody that's worked with [redacted] knows that [redacted] going to do what [redacted] wants to do."[138]

[redacted] has a certain niche and goes to that niche. He reads a lot of police articles and tries to stay current on case law. He has the skills and the competency. Meier said, "Where I think he's had trouble, is… with supervision. Uh…. And I don't think that's a secret to anybody."

Meier saw this when he was an officer, a sergeant, and now as a lieutenant. [redacted] could have good relationships with people but could sometimes be resistant to how certain sergeants wanted things done.

Meier didn't know if [redacted] thought he knew better than some of the sergeants because he had more time on them but said this has been an issue dating back several years with senior sergeants. He thought some of these incidents were investigated by Internal Affairs.

Meier could not think of a time where he personally witnessed [redacted] be confrontational with supervision, but "certainly heard about it" from [redacted] and other sergeants. Recently, Zackowski came to [redacted] defense on something and [redacted] called him a coward. He's heard of the things, "beat politics," and routine things that aren't necessarily big deals, but "that's [redacted] world and he latches on to those things."

He's heard [redacted] recently "butted heads" with Zackowski and Officer 3 He heard from [redacted] that he previously "butted heads" with Kendal Banks (former sergeant, now retired) a couple different times. Meier could not recall details, and wasn't there, but heard it involved [redacted] and Banks yelling at each other. He said, "It's no secret to anybody that [redacted] had confrontations with sergeants and I think anybody that's worked out of Lincoln Station in the last twenty years knows that."[139]

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[136] Meier Interview, approximate time index 36:50.
[137] Meier Interview, approximate time index 37:45.
[138] Meier Interview, approximate time index 39:00.
[139] Meier Interview, approximate time index 41:50.

Meier agreed the confrontations [redacted] has had with supervision date back years, prior to his issues brought up in his complaint.

Recently, when Smith was on swing shift, Smith had a conversation with Milby and advised [redacted] was "resistant" and "questioning" every decision the sergeants made. Meier also heard from dispatchers that [redacted] and another employee called down there frequently and questioned why certain calls were being dispatched and others not. Meier believed this was true because he's heard this from [redacted] himself. Sometimes [redacted] was right. [redacted] looked at things from a different perspective and was very vocal about his opinions. However, [redacted] must understand that if a sergeant is giving a lawful order or directive and it is within policy, that is their job. Meier didn't think [redacted] always understood what a sergeant's job entailed.

I told Meier it seemed [redacted] took on more of a supervisory role rather than that of an officer. Meier agreed and said [redacted] was good at finding flaws, or what [redacted] perceived to be flaws. [redacted] questioned everything such as, "why is somebody 10-6, why are they going to training, this is a joke, why is this person doing that, why…" [redacted] was always looking and monitoring. Meier said sometimes however, it was good to have someone paying attention.

I asked if Meier ever witnessed [redacted] say or do anything to a supervisor to cause or provoke tension. Meier couldn't think of an incident off the top of his head, but said it was certainly possible.[140]

I asked Meier why he thought [redacted] reached out to him or talked to him about things when they were not friends outside of work and Meier was not [redacted] direct supervisor. Meier advised although he and [redacted] have not seen each other for years outside of work, there is some friendship between them. [redacted] will reach out to him at times regarding the stock market and things that are law enforcement related, but not directly related to the Department. They also spoke about scheduling and [redacted] was a proponent of moving to a 3-day,12-hour shift schedule.

In the past, [redacted] had quite an audience in patrol. He was a senior officer that was doing the fun stuff such as pursuits, foot pursuits and getting bad guys with guns. Meier said, "I know that there were people out there that respected him and I know there are still some that do, but um… I think that he's losing that audience…" Meier advised [redacted] no longer does the things he did fifteen to twenty years ago and most of our patrol officers only have five years' experience.

Meier learned from Officer 4 and Barney that Officer 1 and Officer 2 were productive officers, but never worked directly with the officers himself. Since [redacted] complaint about them riding together and his complaint to Internal Affairs regarding the officers not taking a report, Meier has not observed any hostile or retaliatory behavior by supervision toward [redacted].[141]

Meier was aware [redacted] was moved to Area 5 during a roll call but did not know why this was done. He knew after the complaints were made, there were issues with [redacted] and Officer 1

[140] Meier Interview, approximate time index 45:30.
[141] Meier Interview, approximate time index 49:30.

and Officer 2 Milby and Meier talked about this and decided it wasn't a good idea to allow the three officers to work in the same beat together. Especially considering Area 2 was a busy beat and it would likely only be these three officers and one or two additional officers. Meier said there were four other beats in the city the officers could work and "we don't have the conflict with other officers that we do with them right now."[142]

They didn't want issues with one of the officers not showing up when another one needed help, being slow to respond to a call, or the more likely example of "dodging paper" on each other. To avoid those issues, they didn't want them working in the same beat. Meier said, "And nobody's entitled to a certain beat anyway." It was the watch commander's discretion. Milby and Meier spoke to Officer 4 and Barney. Everyone was in agreeance to split the officers from working together.[143]

Milby told Meier he talked to Officer 4 advised he had a conversation with Officer 1 and Officer 2 and told them he was going to put them in a different beat (separate from Complainant Officer 1 and Officer 2 were receptive to the idea and were willing to work wherever they were needed.

Meier's understanding was Officer 1 and Officer 2 were moved the first few shifts after this decision was made. The day Complainant was moved to Area 5, Milby and Meier were in Meier's office with the door closed discussing a personnel issue. A few minutes after roll call ended, Officer 4 or Zackowski came into the office and advised Complainant was upset and was going to Internal Affairs. They looked at the CAD screen and observed Complainant had put himself "10-6 going to IA." Officer 4 advised he had moved Complainant to a different beat and Complainant stormed out of roll call. Zackowski said he told Officer 4 they should probably move Officer 1 and Officer 2 since Complainant was senior and Officer 4 agreed. They changed the roster and put Complainant back in Area 2 and moved Officer 1 and Officer 2 into a different beat. Zackowski went to the parking lot to advise Complainant and Complainant yelled at Zackowski and called him a coward.

Later in the shift, Meier received a text from Complainant who advised Officer 4 moved him out of his beat, but Zackowski and Officer 3 stood up for him.

Meier confirmed there was no policy or standard operating procedure regarding riding as partners; it was the watch commander's discretion. I asked Meier what the standard practice was, if there was one, for senior officers in terms of riding with a partner. Meier explained several senior officers like to ride solo, especially officers that have Complainant level of tenure. There have been senior officers that have ridden together, but these officers "made good decisions, handled their beat, and nobody ever complained about them riding together…"[144]

As a watch commander, Meier considered work performance, efficiency of the officers, and staffing levels when determining who he would allow to ride together. He encouraged two-man rides, but said it was performance based. There were also times newer officers may need additional training and would benefit from riding with a senior officer. However, there wasn't

[142] Meier Interview, approximate time index 50:10.
[143] Meier Interview, approximate time index 51:00.
[144] Meier Interview, approximate time index 55:00.

anything in the policy that said you had to ride as partners and it didn't go by seniority, though people felt "entitled" by their time at the Department.

In terms of what beat an officer works, Meier said officer generally sign up to work the north or south end of the city at shift change. As a general practice, but not a rule, the senior crew will work the beat of their choice it there is another crew assigned to the same area. Meier said he likes to keep crews together if possible. There may be an odd man out if depending on the needs of another beat. Meier agreed supervision tries to accommodate officers based on seniority, but there are many variables supervision considers when determining where someone will work.

To Meier's knowledge, there was an agreement between the watch commander and supervision to keep Complainant from working in the same beat as Officer 1 and Officer 2 and vice versa. I asked if it was fair to always move Officer 1 and Officer 2 from their beat in order to comply with the agreement made by supervision. Meier did not know Officer 4 thought process when he moved Complainant the night in question but said this would not be unreasonable.

Complainant is known to be assigned to a particular beat (Area 2), yet somehow, he is always on a call in Casa Blanca (Area 4) right away; no matter where he works in the city. For this reason, Complainant argument "didn't hold a whole lot of water" and Meier didn't think a beat meant that much to Complainant He certainly didn't think Complainant was wronged by getting moved to another beat. Obviously, Zackowski didn't agree with it and got Officer 4 to move Complainant back. Meier said seniority did have a place, but it wasn't the only thing considered. If someone got moved, he certainly wouldn't expect it to be something that is "grieved, or somehow harmed, or that it's hostile to you, because you're working a different area."[145]

Prior to the roll call where Complainant was moved, Meier was not aware of any conflict between Officer 4 and Complainant He learned from Officer 4 after roll call, Complainant wanted to file a complaint against him (Officer 4 and Complainant had gone to Internal Affairs. Meier did not think Complainant made an exhaustive effort to look for Milby. Milby's car was in the parking lot and his office door was open and the light was on. Meier said, "Quite frankly…. (he) made a show of it and put himself 10-6… wrote 'IA.' He didn't have to do any of that."[146]

Meier said it would have been obvious to any officer at the station that Milby was at the station. His car, which everyone knows, was parked right outside the doors used by officers to enter and exit the station and his office door was open. Meier also added that nobody, except Officer 4 knocked on his door either. Meier's car was parked right next to Milby's so it would have been obvious to any officer that both Meier and Milby were at the station.

Officer 4 made no attempt to dissuade Complainant from filing a complaint, and Meier wouldn't expect Officer 4 to take out a complaint control form to fill it out about himself.

Prior to Complainant making a complaint on Officer 1 and Officer 2 and even after, Meier was unaware of any issues between Complainant and J. Mutuku. The first time he became aware of any

[145] Meier Interview, approximate time index 1:01:30.
[146] Meier Interview, approximate time index 1:02:50.

issues, was when [redacted] told him J. Mutuku put the flyer in his mailbox. Meier's asked him why he thought this. [redacted] told him he believed this based on the interaction he and J. Mutuku had in the hallway. The way [redacted] described it, [redacted] was simply greeting J. Mutuku which would suggest they didn't have an issue with each other. After the greeting, J. Mutuku didn't respond. [redacted] asked J. Mutuku if that was how it was going to be and J. Mutuku responded something similar to, "You'll see."[147]

The flyers appeared one or two days after this interaction. Meier and Milby pulled both [redacted] and J. Mutuku in separately to have conversations with them about engaging one another. After that, [redacted] told Meier about another encounter between him and J. Mutuku that occurred approximately one week later. [redacted] told J. Mutuku, who was in the roll call room, that there weren't any flyers in his mailbox. J. Mutuku didn't deny he placed the flyers. Meier said it was possible J. Mutuku didn't respond because of the conversation Meier and Milby had with him.[148]

Meier thought [redacted] confronted J. Mutuku after the conversation he and Milby had with him telling him not to engage J. Mutuku. However, he was not sure if that conversation occurred prior to or just after this second interaction.[149]

[redacted] also told Meier J. Mutuku followed him out into the parking lot and there was another exchange between the two of them. They "got into it" and [redacted] called J. Mutuku a coward and told him he put the flyer in his mailbox. [redacted] told him J. Mutuku asked [redacted] why his voice was rattling. [redacted] told him it was because J. Mutuku was threatening him. J. Mutuku then simulated a firearm with his hand and pointed it at [redacted] Meier asked [redacted] if anyone was in the parking lot that may have witnessed this. [redacted] told him "Ana Ahumada" (now Miskulin) was against the station waiting for a car and had to see it since a sergeant and officer were yelling at each other. That was the last thing Meier heard about any issues between them.

Meier thought it was a very stupid thing to do on the part of the person who placed the flyer. Up to this point, there wasn't really anything that [redacted] had been harmed by. [redacted] could argue perhaps he had to handle more calls while Officer 1 and Officer 2 took their breaks, but that was more "beat politics" between beat partners.[150]

Meier said the flyer was "stupid" and knew [redacted] would come in and say that he was being "threatened and it's um... retaliation and all that other stuff. It's a cartoon type caricature and it's stupid. It was dumb." It should have never been put in place by anyone. Meier did not think the rat looked threatening or menacing but said everyone knows what a picture of a rat implies. It gave [redacted] something to talk about. Meier was sure [redacted] was now saying someone was trying to dissuade him or these were repercussions from contacting Internal Affairs.[151]

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[147] Meier Interview, approximate time index 1:05:45.
[148] Meier Interview, approximate time index 1:07:10.
[149] Meier Interview, approximate time index 1:08:20.
[150] Meier Interview, approximate time index 1:11:00.
[151] Meier Interview, approximate time index 1:11:50.

Meier never heard of "Rat Busters" prior to this. He learned from Complainant after this happened that Rat Busters was an extermination tool or company. He agreed it was odd Complainant even looked up Rat Busters. I asked Meier if he would have Googled Rat Busters if the flyer had been placed in his mailbox and he said no. Meier said it looked like a cartoon character of a rat and he would not have taken it as a death threat if he received it.[152]

Meier did not know if Officer 2 was given direction by supervision to take phone reports, while Officer 1 was on her lactation break. He was aware officers in the field did take phone reports and advised there were people on light duty who did it every day.

Internal Affairs did not investigate every internal complaint or issue in patrol. Meier advised issues came up every day in patrol and they tried to handle them as quickly and efficiently as possible. It happened every day, on every crew, and the sergeant had to be a supervisor and address the issues. Complainant would not be privy to the outcome of the investigation where he alleged Officer 1 and Officer 2 did not take a police report on a crime.[153]

Meier acknowledged Medici contacted him after Complainant filed a complaint regarding Office and Officer 2 Since it was a patrol issue, Medici asked Meier to investigate. Complainant called Meier and implied that if Officer 1 and Officer 2 were anyone else, more action would be taken and more resources would have been utilized. Meier asked Complainant if he was kidding. Meier told Complainant someone not taking a report was something they dealt with every day. He told him it wasn't an "IA call out thing" and if somebody was wrong, they were going to correct it.[154]

Meier explained multiple issues came up with officers and he has had discussions with all the sergeants in Internal Affairs about them and routinely speaks with Detmer since he is the lieutenant in Internal Affairs. Not all issues rise to the level of a complaint (administrative investigation) investigated by Internal Affairs. Instead, Meier will have discussions with the officer or will ask a lieutenant or sergeant to handle.

To Meier's knowledge, Officer 1 and Officer 2 riding together never posed an officer safety issue and he never heard anyone complain about this except Complainant brought his concern to Smith. Meier has worked with Smith who is a very capable and attentive supervisor. Meier had no doubt if Officer 1 and Officer 2 riding together began to create any officer safety issue, Smith would have stepped in. The same was true for Officer 4 and Barney. Meier also advised if the workload increased for Complainant and Weddle due to Officer 1 and Officer 2 taking these breaks, this too would have been addressed. He bet if stats were pulled for the officers, they would show Officer 1 and Officer 2 were probably pulling more reports than Complainant and Weddle.

Meier said it was possible Complainant was jealous of Officer 1 and Officer 2 because they had the "COPS" crew riding with them. He also dismissed Complainant claim that a sergeant or someone at Lincoln would address the possible policy violation of Officer 1 and Officer 2 not taking a

[152] Meier Interview, approximate time index 1:12:40.
[153] Meier Interview, approximate time index 1:15:30.
[154] Meier Interview, approximate time index 1:16:30.

report. He said this was evidenced by the fact immediately reported to Milby [redacted] wanted to file a complaint against him. Meier said if [redacted] had contacted a sergeant the night of the LA Fitness call, a sergeant would have addressed it right away. Like external complaints, sometimes there is just a misunderstanding. If every complaint went to a formal investigation, the Department would be inundated. Had [redacted] addressed the issue the night it occurred, it likely could have been cleared up in five minutes. This was more productive than having [redacted] come in to give a statement as a witness when all he did was look at the information in CAD. Then interview three or four more people, before calling in [redacted] and [redacted] to collect their statements. This wasn't a call in which the officers failed to take a report on a domestic violence call or left a sexual assault victim on the side of the road. It was a report of a stolen vehicle that was recovered a short time after. The call was not egregious.

Meier took the rat flyers seriously, especially considering [redacted] accused a sergeant of placing them. Meier removed the flyers, contacted IT to pull print logs and pulled video. Meier has been in his current position for more than a year and has never pulled print logs or video prior to this. He could not remember all the people he had to get involved to acquire this information, but he told them he needed access to this information right away. Meier did not dismiss the flyers. If he would have been able to determine who was responsible for the flyers, he would have dealt with that person.

Meier did not know if J. Mutuku was responsible for the flyers but said he could have been. However, there were other people at the station that also had an ax to grind with [redacted] Meier said it was important to let the investigation run its course to determine who was responsible.

In addition to pulling video and print logs, and ensuring this information could be saved, Meier preserved the flyer in its original frame, placed it in an envelope, and secured it in his office to maintain the integrity of the evidence. He even attempted to determine who was logged onto the computer from which the flyer was printed. Whoever it was, they used the generic log in for the report writing room. Meier did not ignore the flyers.

The only reason [redacted] was moved from Area 2, was because the decision had been made not to allow [redacted] to work around [redacted] and [redacted] and vice versa. They didn't want anyone to get hurt.

Medici asked if there was anything we were missing in terms of a potential hostile work environment toward [redacted] Meier said no. He said whoever was responsible for the flyer, was wrong and they violated policy. That should be addressed. That's the only thing Meier thought [redacted] was somehow wronged in any of this.[155]

[redacted] could have handled [redacted] and [redacted] not taking a report in other ways. He could have gone to a sergeant. Meier speculated [redacted] didn't go to a sergeant because "he butted heads with almost all the sergeants on that watch and presumably the lieutenants too." [redacted] also didn't go to Meier to report [redacted] and [redacted] did not take a report; he went straight to Internal Affairs. Meier said this probably wasn't the best way to report this, but certainly nobody prevented him from doing it or tried to talk him out of it. Just like nobody

[155] Meier Interview, approximate time index 1:32:45.

tried to talk him out of filing a complaint against Officer 4 Complainant was very familiar with Internal Affairs and has been a representative for officers. Complainant has also threatened to go the CPRC with different things and knows how to file a complaint. To Meier's knowledge, nobody has ever told Complainant he could not file a complaint for employee misconduct.

Unless it was a supervisor that put the flyer in Complainant mailbox, Meier did not think any of this "beat stuff" or anything else is a hostile work environment for Complainant Sergeants and lieutenants must manage their watch and sometimes there are personality conflicts. It appears that was at play here and it was the right thing to do by moving people. Meier said they had to protect all employees.[156]

Meier knew Weddle and Complainant commonly rode as partners at shift change and probably before. He did not know exactly when they were split. When asked if he knew why they were split, Meier recounted a past conversation with Medici. Meier advised Medici called him (he believed on a Friday) to let him know Complainant had come to Internal Affairs and requested he look into the call at LA Fitness. Medici asked Meier to investigate this and Meier did not share this information with anyone other than Milby. Officer 4 and Barney didn't know anything about it. Meier got the impression Complainant wanted to keep the fact that he had gone to Internal Affairs quiet. It was rare for an officer to file a complaint with Internal Affairs against another officer and Meier did not want to broadcast it. Meier only shared the information with Milby because he thought the captain should know.[157]

The following Wednesday, (he knew the day because it was the day Officer 4 and Barney's schedule overlapped) he brought Complainant allegation about Officer 1 and Officer 2 not taking a report to Officer 4 and Barney and let them know there was a conflict between Complainant and Office and Officer 2 Meier had also pulled the call in CAD and tried to pull body-worn camera video. He asked them to look into what Complainant was alleging.

Meier could not recall if he shared this with them first, "but they had both already discussed… and it was apparent that they had already talked about this issue with… not necessarily Officer 1 and Officer 2 but they both had an issue with the way that Compla and Weddle were working together."[158]

Initially, Meier could not recall why they had an issue with Complainant and Weddle. He then recalled Barney shared with him Complainant had told Officer 3 he wanted an "exceeds" standards or "outstanding" on his evaluation the night before. Officer 3 told Complainant to give him some supporting information as to why he deserved this. Meier was told Complainant responded by telling Officer 3 he was his sergeant and he should figure that out. When Barney learned of this from Officer 3 Barney pulled Complainant stats for the previous night or the night of and saw that they were "lackluster." Complainant and Weddle weren't responding to calls quickly and they weren't taking a bunch of reports. Meier did not know how detailed Barney was in reviewing Complainant stats, but Complainant evaluation request is what prompted him to look at Complainant performance. This and whatever other issues they have had over the past year with all these other things. Barney

[156] Meier Interview, approximate time index 1:34:20.
[157] Meier Interview, approximate time index 1:35:30.
[158] Meier Interview, approximate time index 1:37:40.

and Officer 4 had already decided that they were no longer going to allow Complainant and Weddle to ride together.

Barney told Meier he wished he hadn't told him about Complainant complaint about Officer 1 and Officer 2 because they had already planned to split Complainant and Weddle. The timing was bad and it would look bad. (A couple days after Complainant went to Internal Affairs, he would be split from riding with Weddle.) They talked about the appearance of it. Ultimately, it was Barney's and Officer 4 Watch and they made the decision they were not going to allow Complainant and Weddle to ride together. Meier said, "Appearance is one thing, but performance is another." Meier said that was his understanding as to why Complainant and Weddle were split. It was also his understanding the conversations between Officer 3 Officer 4 and Barney about splitting Complainant and Weddle took place prior to Complainant coming to Internal Affairs to complain about Officer 1 and Officer 2[159]

Meier has been a supervisor for the Department for almost six years (he was promoted to sergeant at the end of 2016 or beginning of 2017). In that time, he has never had an employee demand or tell him they expect an outstanding or exceeds standards on their evaluation. He did not know if Complainant requested this in jest. He said it was sometimes hard to read Complainant could be funny and sometimes sent "stupid shit" over the phone. Complainant could be "a jokester." Meier did not know if Complainant was joking with Officer 3 if he was trying to be difficult, or if he really believed he deserved an outstanding. Meier was sure there was a time in Complainant career that he did receiving outstanding evaluations and did do outstanding work, but said, "I don't know that he's there right now, but I'm also not his supervisor every day."

INTERVIEW OF WITNESS OFFICER Officer 2

On January 4, 2023, at approximately 3:37 pm, Sergeant Medici and I interviewed Officer Officer 2 in the Internal Affairs Conference Room at the Magnolia Street Police Station. The following is a summary of Officer 2 recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Officer 2 has five and half years of service and is currently assigned to patrol on Watch C. Since shift change in July, she commonly rides as partners with Officer 1 The two signed up for the same shift and crew in hopes of being able to ride together as partners. They were initially under the supervision of Smith. They discussed with Smith their desire to ride as partners and how to make this feasible since Officer 1 needed to take lactation breaks. There was nothing official, but they discussed Officer 2 would still handle calls (phone reports) and if hot calls came out, or if someone needed backup, she would go by herself and then come back to pick up Officer 1 Officer 2 would handle citywide phone reports if her beat wasn't busy. Smith didn't ask her to do this, it was something she wanted to do on her own to stay efficient and to help.

During the time they rode together, they also had the "COPS" crew ride with them. Officer 2 didn't know how they got picked but said she and Officer 1 agreed. Officer 2 had the

[159] Meier Interview, approximate time indexes 1:39:55 and 1:41:30.

"COPS" crew ride with her last year as well. There was no real direction given when the "COPS" crew rode with them other than just to go out and work and give them something to record. She said she and Officer 1 liked to work and maybe that's why they were chosen. Maybe they would get something through on-sighting. She remembered a "COPS" crew member say that the crew from last year mentioned Officer 2 name and recommended her as someone the new crew should ride with. Officer 2 agreed the crew wanted to ride with officers that were active to better their chances of something to record for their show.

I asked Officer 2 if the amount of phone reports she took stayed consistent over the months following shift change, while Officer 1 took her lactation breaks. Officer 2 said no. She advised when the "COPS" crew rode with them, they ate dinner during these breaks and Officer 2 ate with them. She recalled one incident where she and the crew left Officer 1 at the station to respond to a hot call. Officer 2 estimated the breaks were thirty minutes to an hour. When asked if they took more than one break in a shift, Officer 2 advised Officer 1 was pumping more at the beginning of shift change than present day. Officer 2 admitted she wasn't as productive taking phone reports during the months November and December, when the "COPS" crew wasn't riding with them; she handled pressing phone reports.

Officer 2 has had Smith and Zackowski as sergeants this rotation. Neither have spoken to her about her productivity. She was not aware of any of her beat partners having issues with her productivity and said they would say something if they did. Nobody questioned them and everybody knew Officer 1 was taking lactation breaks. After the breaks, they would text their crew, find out how many reports everyone was down, and catch up and take care of their beat. They stayed in contact with their partners and shared the workload.

At the beginning of shift change, she and Officer 1 worked two days per week with Complainant in the same beat. A couple months after shift change, supervision split her and Officer 1 from working in the same beat as Complainant Supervision didn't say why, only that they didn't want any issues with Complainant Officer 2 thought it was to alleviate tension, but said she never had a personal issue with him.

When asked how she would describe Complainant as a beat partner, she said she didn't like to work with him. Complainant liked to sit on calls for hours, went "10-6" (busy) or showed himself as busy for hours, went out of beat to Casa Blanca for hours, didn't show up to your calls, wasn't reliable, and didn't share the workload. She said before she started to work with him, she was warned by other officers about him and told to be careful because he was a "certain way." They told her all the things she just described to me. They told her not to trust him. He was "definitely not" to be trusted if someone needed backup and "never" sent a text to find out if his beat partners were down reports. Officer 2 didn't keep track of Complainant workload and never cared because it was never reciprocated. Everyone was on their own when they worked with Complainant Officer 2 and Officer 1 both didn't care to work with Complainant They talked and knew if they needed a back, someone else would come to help them.

I asked Officer 2 if she ever observed Complainant speak to supervision in a manner that was confrontational. Officer 2 began to laugh and said yes. She said, "multiple, many, many, multiple times, very disrespectful. Yes, I have." This was not normal for an officer to do that,

young or old. She was taught to respect your supervisor whether they were younger or older than you and said they were a supervisor for a reason. Whether she agreed with a supervisor or not, she would never disrespect them. She has observed other officers make respectful comments or ask questions if they disagreed, but they were always respectful and had a conversation.

I asked if she ever observed any behavior by Complainant toward supervision that would be considered hostile. Officer 2 witnessed Complainant go up to supervision at the front of the room where supervision sat and "yell" and "go off, pissed off, yelling," so Officer 2 would leave because she didn't want any part of that. She said you would hear people talk about it. She also heard about an incident in the parking lot but didn't see it. I asked if she witnessed Complainant yell at supervision on more than one occasion and she said yes. I asked if she witnessed this more than five times. She answered, "Absolutely. It was like every week was something new he didn't like or didn't agree with. And every week was something…he would complain and yell and bitch about." In addition to Complainant going up and yelling at the sergeants (after roll call), Complainant would yell at sergeants from the back of the room where he sat during roll call. Complainant would make comments or remarks about things he didn't agree with.

Officer 2 could not recall when she and Officer 1 were split from working the same beat as Complainant It wasn't that she didn't care. She liked to work Area 2 and had done so for a long time prior to this. They were told they were going to work a different area. Officer 2 didn't care. She just wanted to work with her partner. She could not remember who said they weren't going to work together, it just changed on the roster. Officer 2 had worked in Area 2 with Complainant for years prior to this.

Officer 2 did not understand why this decision was made "all of a sudden." She didn't question her supervisors. She said, "OK" and went on about her day. She would rather work Area 2, but if it would alleviate tension and make work easier, she and Officer 1 would go to Area 1 or 3. On the two days they did not work with Complainant she and Officer 1 would work Area 2.

Officer 2 was in roll call the day Complainant was moved to Area 5. She didn't know why he was moved but thought the numbers (personnel) weren't even. It didn't go well, and Complainant was moved back. I asked what she meant by it not going well. Officer 2 said Complainant was "pissed, I think he made some remarks, yelled." She left roll call because she didn't want to be part of it. She said, "I was like… oh fuck. Here he goes again." She and Officer 1 received a call a little later advising they would be in Area 5. Officer 2 said OK and went about her day. She was unaware of any conflict between Complainant and Officer 4 prior to this.

We talked about a call that she and Officer 1 were assigned a few months ago involving a theft at LA Fitness on Arlington. Officer 2 remembered the call. Officer 4 and Tipre called her and Officer 1 to ask them about it, because a complaint was made that they did not take a police report and should have. I asked if they were told to take a report or if they provided additional information that warranted not taking a report. Officer 2 advised this was one of the calls she took while Officer 1 was on a lactation break. She wasn't going to "get lazy" just because it was over the phone. She spoke with the reporting party, and it sounded a little

fishy. The reporting party also didn't want a report. She shared what she learned with [redacted] and Officer 1 told her to call the reporting party back to get additional information. Officer 2 called back and determined the call was unfounded. She cleared the call but didn't add any notes to the call. She didn't think Officer 4 said anything about her response time. Officer 4 had pulled up the call and gave them the CAD printout. At the end of the conversation, Officer 4 and Tipre were satisfied with the action that was taken. They were just advised to add notes to the call because sometimes they might have questions and those notes would alleviate those questions.

Officer 2 said she and Officer 1 learned [redacted] was the one that made the complaint but could not remember if it was from Officer 4 and/or Tipre. She could not remember if they mentioned this or if she learned it elsewhere. She did not know if other people knew.

Officer 2 thought it was silly that [redacted] complained and said it was crazy. I asked if she would have appreciated [redacted] reaching out to her directly to find out what happened. She answered, "I mean he's not my supervisor. I mean if he really wanted to take a report, he could've taken a report or handled that call." She handled calls all the time and did what she had to do. She didn't go babysit him and check on his call status and times. She didn't think he should be one to complain.

Officer 2 did not see any of the rat flyers hanging at the station, but she did see a picture of one on Christianson's phone. She learned of the flyers at roll call and wanted to know what people were talking about. She did not hear who was responsible. Nobody said who was the target, but during roll call [redacted] was yelling and Officer 2 assumed he was the target because he was offended. [redacted] was yelling at Officer 4 about finding out who was responsible and wanting to know what was going to be done.

The female officers talked about it in the locker room; Christianson, Aguirre, Officer 1 Iniguez, possibly Cruz, and herself. They didn't know who the flyers were meant for or why they were placed, but speculated it was [redacted] because of how upset he was.

I asked if she or Officer 1 ever mentioned to any other officers [redacted] had gone to supervision about them not taking a report. Officer 2 thought they did speak about it and make comments to their small circle to include the girls in the locker room and Maggie Kouroubacalis. Officer 2 said they also mentioned it in passing, at the station while typing, with a couple of the male officers. The consensus amongst those that they shared this with was it was silly, and [redacted] was not one to complain. Officer 2 said she didn't want to talk (bad) about anybody. She followed this by saying [redacted] just wasn't a good beat partner.

Officer 2 did not know for a fact if Officer 1 shared that [redacted] complained about them with her husband, J. Mutuku, but assumed she did. Officer 2 said J. Mutuku was Officer 1 best friend, and she told him everything. Officer 2 knew J. Mutuku was upset that [redacted] tried to "punk" his wife. She knew this because she and Officer 1 had girl talk every day in the locker room, gym, etc. She did not know if J. Mutuku was responsible for the flyers and said she didn't want to know. Officer 1 never told Officer 2 J. Mutuku hung the flyers, and Officer 2 didn't ask. Officer 1 and Officer 2 also hung out together outside of work and sometimes J. Mutuku

was present. J. Mutuku has told Officer 2 things about Complainant in the past such as not to trust him, he was crazy, a jerk, etc. I asked if any of these conversations took place right before the flyers were posted or shortly thereafter. Officer 2 was sure they did, because she was very close with Officer 1 and J. Mutuku and would visit them at their home and work out with them. She said the conversations about Complainant were brief because they focused more on talking about positive things, personal things, and their goals. J. Mutuku never told Officer 2 he placed the flyers. Officer 2 did not believe J. Mutuku would do this, but said, "you never know."

When asked when the issues with Complainant and Weddle began between her and Officer 1 Officer 2 advised she never had an issue with Weddle. Officer 2 said she and Weddle worked together and rode with "COPS" together. She believed the issues with Complainant begin in 2019 or 2020. She described an incident where Complainant was being "rude" to her and Officer 1 on the radio. Once they arrived on the call, they kind of "got into it." Ever since then, it has been "awkward and weird."

Officer 2 agreed it was unusual for an officer to complain about another officer. After it was learned by other officers that this happened, other officers made remarks such as, "that's fucking crazy" or "that's ridiculous," they did not have in depth conversations about it.

Medici asked if the other officers on patrol shared her opinion about Complainant not working hard. He asked if she knew patrol officers' overall opinion of Complainant She answered, "I feel like… I don't like saying this… but I feel like we all have a general opinion and it's consistent. Meaning not good." Officer 2 felt this opinion was primarily about Complainant not Weddle.

Medici asked about the call that occurred at LA Fitness and asked if it involved a stolen car. Based on her conversation with the reporting party, Officer 2 did not believe the car was stolen. The car was located at the gas station down the street, with keys, and the reporting party did not want a report. Officer 2 shared this with Officer 4 and Tipre. She did not share this with Complainant and said it was none of his business; he was not her supervisor.

Officer 2 did not notice any change in the relationship with Complainant after he complained about her and Officer 1 and did not think anybody "joined teams or sides." Nothing changed with Complainant they didn't talk, and he didn't show up to their calls. Officer 2 thought it was ridiculous and crazy that Complainant complained about her and Officer 1 When asked if she and Officer 1 were pissed he complained, she answered, "Oh yeah."

Officer 2 heard the rumor that J. Mutuku placed the flyers. When she heard the rumor, she told Officer 1 she didn't want to know. She didn't want to know because she didn't want to get "caught up in some bullshit." Officer 2 did not know if Officer 1 knew who placed the flyers.

Initially, nobody knew who the target of the flyers was. There was talk about some of the guys on graveyard, playing a trick on some of the "SWAT guys." Officer 2 said they had some "clowns" on their crew and didn't know if it was one of them doing that to some of the "SWAT

boys." It wasn't until roll call when Complainant was obviously upset and yelling across the room, did they learn who the target was.

Officer 2 was familiar with rats being associated with someone that snitched. She had never heard of rat busters. She did not hear anything from anyone about rat busters or what it might mean. She saw the photo and laughed. She described the flyer as a cartoon and more of a joke. She said if the flyer had been meant for her, she would have laughed and just thrown it in the trash. She did not think it was that serious. She was unaware the flyer was placed in Complainant mailbox.

Officer 2 did not question Complainant after learning he complained about her and Officer 1. She never talked to him. She said, "I'll be honest. He just never shows up to our calls." When they did run into him, Complainant would turn away and do some "silly stuff" to avoid them. I asked if she ever went to his calls. Officer 2 said, "If they ask for a back, yes." I asked if Complainant responded when they asked for a back. She said no. She said an officer out of beat would respond and get there before Complainant even if Complainant was down the street.

Officer 2 did not think Officer 1 questioned Complainant after learning he complained but did not know. She did not know if J. Mutuku questioned Complainant after learning of the complaint. She was not aware of J. Mutuku exchanging words at the station but said Officer 1 told her J. Mutuku had said something to either Complainant or Weddle about them having an issue with his wife taking lactation breaks to feed his son. She could not recall if this occurred prior to or after being called in by supervision to discuss the call at LA Fitness.

I asked if Officer 1 ever shared with her that Complainant had fronted off J. Mutuku at the station. She said Officer 1 did and described an incident that occurred when Complainant worked overtime. J. Mutuku told Complainant to log on and "Complainant fronted him off" and they got into it. She thought this occurred on a Sunday, which was her day off. She was unaware of any other incidents between Complainant and J. Mutuku.

Officer 2 said Christianson showed her a photo of the rat flyer which was on her phone.

Prior to ending the interview, I asked if there was anything she thought we should know. Officer 2 said, "I don't think so. I mean, I don't like to talk bad about anyone, but I don't think [redacted] is one to complain. Like I said, he's a horrible beat partner. He doesn't show up to our calls. We get into uses of force… he never makes it. We have occupied GTA's, never shows up. 11-11, never shows up. He goes 10-6 for unknown reasons. I never question him. He likes to go to CB and 10-6 on… for whatever reason. He logs off early. Like… I don't get it. He sits on tree hazards that are NR's for over an hour. I don't…. I don't get it. I don't… understand why he's complaining. He's the problem. And like he needs to go home and retire. I don't know why he's making work… nuts! We all get along. We all work well." She said, "I don't know if it's his time on, that he thinks he can get away with that, but it's gotten this far. That's ridiculous. He's the one that needs to be checked. That's the way I really feel, to be honest with you without saying too much."

I told Officer 2 we talked earlier about some the ways Complainant has been disrespectful to sergeants and maybe even lieutenants. Officer 2 shook her head as to say "yes" and said, "Yeah. He yells at them from across the room." I asked if that was common. Officer 2 said it was. She said, "Honestly, I'm not even exaggerating, I feel like it happens once a week." Now that she knew about this investigation, she believed this was the reason Complainant has been a little quiet in roll call and "hasn't popped off" for the that month or so, or a little longer. She said he has been "really hush, hush" and "surprisingly doesn't say anything in roll call."

Officer 2 has never witnessed a supervisor be hostile toward Complainant She said every time Complainant yelled at one of them, they had an answer for him. She said there were so many incidents, and the supervisors would just talk back to Complainant It got loud in roll call, and she didn't stick around to hear everything that was said. She added, "but, personally, like bullying him (Complainant no."

Medici asked Officer 2 if she and Officer 1 came to the Magnolia Station on the day Complainant put himself 10-6 at Internal Affairs to complain about Officer 1 and Officer 2 not taking a report. Officer 2 asked when this was and did not recall her and Medici seeing one another in the hall. Officer 2 was unaware at that time that Complainant was filing a complaint or that he had put himself 10-6 to come to Internal Affairs. She said maybe they were here to turn in evidence, maybe a cell phone on a sales case, or meet with a detective, but could not recall. She had no idea Complainant was here and said she and Officer 1 did not keep tabs on Complainant

INTERVIEW OF WITNESS OFFICER Officer 1

On January 11, 2023, at approximately 3:08 pm, Sergeant Medici and I interviewed Officer Officer 1 in the Internal Affairs Conference Room. The following is a summary Office recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Officer 1 has been a police officer for seven years. She was recently promoted to detective and is currently assigned to patrol.

In July 2022, Officer 1 signed up for swing shift under the supervision of Dawson Smith and commonly rode partners with Officer 2 Smith was aware that Officer 1 required lactation breaks. During these breaks, Officer 2 took it upon herself to take phone reports not only for their beat, but for citywide. Officer 2 also used this time to write reports.

At shift change, and in the months that followed, Officer 1 and Officer 2 had the "COPS" crew ride with them on several occasions. She estimated they rode with them about ten to fifteen times. Officer 1 wasn't sure how they were selected to have the "COPS" crew ride with them; she thought supervision selected them. Officer 1 agreed it wouldn't be productive for the "COPS" crew to ride with officers that didn't work and spent their shift on breaks at the station. She said the "COPS" crew wouldn't want to ride with them. Yet the "COPS" crew did ride with Officer 1 and Officer 2 even though Officer 1 took lactation breaks. During these breaks, the "COPS" crew would get food and eat. She estimated the

breaks were approximately forty-five minutes in length. She took one break at the very beginning of her shift, right after roll call and before the "COPS" crew arrived, and then one later in the shift at around 7:00 or 8:00 pm. At the very start of shift change, she sometimes took three breaks.

Officer 1 was aware Complainant had an issue with her taking lactation breaks. She heard from her husband that Complainant and Weddle were asking other sergeants about her and Officer 2 taking breaks. Weddle got ahold of Officer 2 to ask why they were taking breaks. Officer 2 initially told Weddle it was none of his business but ended up telling him why they were taking breaks. Even other officers came up to Officer 1 and told her they were aware Complainant had an issue with her taking these breaks. To Officer 1 knowledge, Complainant was the only one that had an issue.

I asked Officer 1 what if anything she and Officer 2 did to make up for going out of service two to three times per shift. Officer 1 said she and Officer 2 would stack or assign calls to them and Officer 2 would handle calls over the phone if she could. Depending on who they worked in the beat with, it wouldn't matter if they stacked the calls to themselves or not because the same calls would be holding when they finished their break, and they would handle the calls at that time. Their supervisor never had an issue with their work performance.

Officer 1 and Officer 2 worked with Complainant two days per week. I asked her to describe Complainant as an employee/beat partner. Officer 1 said, "Um…we never see him in the beat, so he's just there." They never went to calls together. I asked about the two days per week they didn't work with Complainant and if they saw the officers, they worked the beat with. She said they did, and the officers would back them on calls and vice versa. It was a normal working relationship.

Officer 1 and Officer 2 did not see Complainant or Weddle on their calls. Officer 1 felt it was courtesy to stop by someone's call, even if they rode with a partner, especially if it sounded like "a bucket of a call." She said they all usually went to these calls to help each other out and make sure everything was okay, but this was not the case with Complainant and Weddle. Complainant had a reputation for doing this and this wasn't exclusive to Officer 1 and Officer 2 calls. What Officer 1 thought was exclusive to Officer 1 and Officer 2 was the fact Complainant did not come to fights, 11-11's, or occupied GTA's. She wasn't sure though, because she never asked other officers if Complainant went to their 11-11's if they needed help.

Complainant "never" showed up to her emergency backup requests, ever since he had an issue with her. The "issue" occurred approximately three years ago. Complainant got upset because she confronted him after he was rude to her on Channel 1. She went to his call and asked him what his problem was. Ever since then, he has not liked her. Prior to this, he was friendly and would respond to her emergency backup requests.

Officer 1 has witnessed Complainant speak to supervision in a way that would cause or provoke tension. She described him as argumentative and said he always challenged them. He would do this from the back of the roll call room and would also go up to supervision afterward as well. She said it sounded like arguing, but she didn't try to listen. She also heard he yells at

them in the parking lot too but did not witness this. It was common for Complainant to challenge supervision from the back of the roll call room, but recently he's been quiet. She has never witnessed any behavior by supervision toward Complainant that she would consider to be hostile.

Officer 1 was present in roll call when Complainant was moved to Area 5. She did not know the reason he was moved. She was unaware of any conflict between Complainant and Officer 4 but said she knew Complainant had problems with supervisors; she did not know which ones specifically.

During the last shift change, Officer 1 and Officer 2 were split from working the same beat as Complainant Approximately two months ago, Zackowski told them he didn't want them anywhere near Complainant because he feared Complainant could hurt them. Zackowski also said he was worried about Complainant mental stability and worried about Officer 1 family.

Officer 1 never said anything to supervision about Complainant not responding to hot calls or emergency backup requests. She said it wasn't her place and she didn't want to "tattle" on somebody. Complainant was a grown man. She didn't necessarily want him on her calls because she felt he caused more issues. She said, "But also, it's... it's just kind of crazy, because we could be like getting beat up and he wouldn't show up."

Officer 1 confirmed Officer 4 spoke to her and Officer 2 about the call at LA Fitness; Tipre was there as a witness. They showed Officer 1 and Officer 2 the call text and asked them what happened. Officer 2 explained. Officer 4 and Tipre told them to make notes in the call going forward so they would not have questions. They seemed satisfied with Officer 2 explanation as to why she did not write a report. She thought they mentioned they were made aware of the call from Internal Affairs. She could not remember who told her Complainant brought the issue to Internal Affairs but was aware it was Complainant prior to going in to speak with Officer 4 and Tipre. Office could not provide many details about the call, because Officer 2 handled it.

Officer 1 heard about the rat flyers but did not see them. She saw a photo of the rat on someone's phone but could not remember whose phone she saw it on. She first learned of the flyers when Complainant said something in roll call about them being posted. Nobody knew what he was talking about. Her and other officers thought the flyers were a "joking thing." She acknowledged rats were associated with snitches. The rat photo she saw wasn't threatening but did have a red "X" through it. She thought it was a "funny thing;" she didn't think it was a "serious thing." I asked about rat busters. She said she didn't know if that was even a thing.

When asked what she knew about the relationship between Complainant and her husband, Office Office said she knew they didn't get along. This was due to Officer 1 lactation breaks. was aware of a couple of incidents that had occurred between Complainant and J. Mutuku. She described one incident that occurred when J. Mutuku pointed at Complainant and told him to have a good day. Complainant asked him if he was pointing a finger gun at him. J. Mutuku didn't know what he was talking about and went inside. Another incident occurred when supervision asked J. Mutuku to follow up on the officer working an overtime event. Complainant had worked the event, but J. Mutuku did not see him there; J. Mutuku saw him in the parking lot at Lincoln. J. Mutuku told him he needed to log on. Complainant asked him what he was going to do

about it and called him a punk. Those were the only two incidents she was aware of, and she learned of these from J. Mutuku.

On the first incident, she couldn't remember who greeted who first. The incident just stood out to her, because J. Mutuku told her Complainant had asked if he was pointing a finger gun at him. (Officer 1 smiled at this and then chuckled.) She said, "It's just ridiculous." She did not know if anyone was in the parking lot, J. Mutuku didn't say.

She did not hear rumors that J. Mutuku hung the rat flyers and did not have any conversations with anybody about this. I asked if she thought this was something J. Mutuku would do. She said no. When asked why, she said, "Well first of all, I don't think James cares that much about Compla to take time out of his day and Complainant not worth getting in trouble over."

We spoke again about the call at LA Fitness. Officer 1 said neither Complainant nor Weddle, ever asked them about the call. She thought it was silly Complainant had gone to Internal Affairs, because Complainant had nothing to do with the call. She didn't know why he even cared to look at the call. Medici asked if Complainant had a habit of knowing what other units were doing. She said he did and he had a habit of calling people out all the time over silly little things which is probably why he had problems with everyone. When asked what she thought Complainant motivation was, she answered, "Honestly, I think he's just a miserable person."

Zackowski told Officer 1 he has known Complainant for a long time, and he didn't think Complainant was mentally there anymore. Zackowski didn't know what Complainant would do to her and Officer 2 and told them, "I don't want him to hurt you girls." He worried Complainant might hurt her family which Officer 1 took to mean J. Mutuku and their son.

During the lactation breaks, if there was a hot call, Officer 2 would leave the station and respond. Officer 2 had left Officer 1 at the station a few times to respond to a hot call and then return to pick up Officer 1 There was never a problem, and nobody ever got hurt. If there was a problem, Smith would have addressed it.

Officer 1 did not know specifically what issues Complainant has brought to supervision. Recently, with Officer 1 lactation breaks, Complainant focus seemed to be on Officer 1 and Officer 2 Medici asked if she thought Complainant might be jealous that the "COPS" crew rode with her and Officer 2 Officer 1 said she didn't think so because she didn't think Complainant wanted the "COPS" crew to ride with him.

After she confronted him a few years ago, they still worked together but just didn't talk. It wasn't until she came back from maternity leave, that Complainant had "all these issues with us."

Aside from the call at LA Fitness, Officer 1 was unaware of any other calls that she and/or Officer 2 handled that Complainant had an issue with it.

Medici questioned Officer 1 earlier statement that she had not heard people say J. Mutuku may have hung the rat flyers. Officer 1 maintained she had not heard that and said perhaps people didn't say it around her because she was married to him. She said J. Mutuku told her

people were saying they thought he did it. Officer 1 didn't ask him if he did it because she felt he would have told her if he did. Officer 1 did not know who put the flyers up.

When Smith went back to graveyard, Zackowski became her and Officer 2 sergeant. Zackowski never had an issue with her or Officer 2 work performance. He never said anything to her or Officer 2 about taking breaks or about any of their calls.

Officer 1 thought Officer 2 mentioned to Officer 4 and Tipre that Complainant never backed them when they discussed the call at LA Fitness. She did not know if this was mentioned to Zackowski. She didn't say anything to Zackowski. She wasn't sure if Officer 2 said anything to Zackowski.

I asked if it was possible Officer 4 or Tipre mentioned it was Complainant that had reported them to Internal Affairs, and this was why Officer 2 mentioned Complainant never backed them. Officer 1 said she didn't think Officer 4 or Tipre said anything about Complainant and she didn't think Officer 2 said anything about Complainant She could not remember. She said she felt like everyone knew Complainant had gone to Internal Affairs.

Medici asked if Officer 1 remembered seeing him in the hall (this occurred the day Complainant came to Internal Affairs). Officer 1 recalled seeing Medici and said she thought she and Officer 2 were at Magnolia for a radio call or to download a cell phone. She had no idea Complainant was here and said they do not look at Complainant status.

INTERVIEW OF SUBJECT OFFICER JAMES MUTUKU:

On January 19, 2023, at approximately 10:26 am, Lieutenant Eric Detmer and I interviewed Sergeant James Mutuku in the Internal Affairs Conference Room. Prior to the interview, we provided J. Mutuku an Admonition of Rights Packet and reviewed it with him. J. Mutuku understood his rights and did not have any questions. He elected not to have a representative present and signed the packet in our presence. The following is a summary of J. Mutuku's recorded interview. It is not verbatim or necessarily in order but is organized for clarity. (J. Mutuku's interview was also transcribed and is attached to the case file.)

J. Mutuku has been with the Department since 2009 and was sworn in as a police officer in July of that year. He promoted to sergeant about two and half years ago and is currently assigned to patrol on Watch B.

As a new officer, J. Mutuku primarily worked Watch C in patrol and worked with Officer Complainant "Complainant Complainant J. Mutuku said Complainant would commonly seek out new officers and try to mentor them. Back then, J. Mutuku worked for Sergeant Kendal Banks and Complainant sought out J. Mutuku and other new officers and tried to mentor them. J. Mutuku said his relationship with Complainant was good. However, when J. Mutuku left patrol for special assignments and then promoted to detective, J. Mutuku had limited interaction with Complainant Since promoting to sergeant, J. Mutuku has not supervised Complainant

J. Mutuku advised issues between Complainant and his wife, Officer Officer 1 started about two and half years ago. When Officer 1 first started here, she worked the eastside with Officer Officer 2 and Complainant and Officer 1 talked a lot as he tried to mentor her and the relationship between the three officers was good. J. Mutuku warned Officer 1 to be careful around Complainant because he had seen this play out before. He was specifically referring to Complainant and Melissa Cunningham (former officer). This was also a situation where Complainant tried to mentor a young female officer. It was known Complainant and Cunningham were very close initially and they rode as partners. The two had a difference of opinion about something, but Cunningham held her ground. This soured the relationship between them, and it got ugly. Complainant would publicly bash Cunningham all the time and talk about her fertility issues. J. Mutuku told Officer 1 and Officer 2 to be friendly toward Complainant but to be careful. He said they shouldn't think for one second that just because they were females, Complainant wouldn't become malicious with them like he would with a male.

The relationship changed when Officer 1 and Officer 2 failed to respond to a call fast enough for Complainant who had requested a camera. When they arrived, Complainant "barked" at them and they "barked back." J. Mutuku believed the relationship soured from that point. J. Mutuku told Officer 1 and Officer 2 to stay away from Complainant and not try to mend the relationship. He told them Complainant would never get over "two twenty-year-old girls fronting him off."

After that incident, Complainant began to call them out over the radio and was very rude and brash toward them. Officer 1 and Officer 2 thought Complainant was trying to bully them out of the eastside, but they continued to work there anyway.

When J. Mutuku first started, he heard about "the legend of Complainant in a positive way, but never witnessed it. Though Complainant was disgruntled, J. Mutuku gave him a little respect based on what older officers said about him. J. Mutuku noticed immediately however, Complainant would bash J. Mutuku's supervisor, Sergeant Kendal Banks. Complainant would constantly ask J. Mutuku what Banks said to him or advised him to do and then tell J. Mutuku that Banks was wrong or oppose what Banks had advised. J. Mutuku tried to distance himself from Complainant but not disrespectfully. He was new and didn't want to be around Complainant negativity. There was never a confrontation between them, but J. Mutuku would steer clear of places where Complainant was. J. Mutuku described Complainant as disgruntled and very negative.

I asked J. Mutuku to describe Complainant today, over thirteen years later, leaving out the issues with Officer 1 and Officer 2 J. Mutuku answered, "He's toxic." As a supervisor, J. Mutuku has a good relationship with the officers, especially those with less than five years of service. He said the general consensus is that most of the officers do not respect Complainant think he is toxic, and he is in this category with only two or three other officers in the Department. Officers try to stay far away from Complainant and know that if they need an emergency back, Complainant won't come. Complainant is a toxic employee to young officers, but fortunately the young officers today recognize he is toxic faster than the officers of J. Mutuku's generation. There aren't many officers sharing the legend of Complainant anymore; that generation has died out. J. Mutuku said one hundred percent, if a blind survey of patrol officers was taken, officers would rank Complainant as a toxic employee.

J. Mutuku said it was probably even worse amongst supervisors. When asked why, Mutuku said, "Unfortunately for a lot of them, they've had to supervise him." These sergeants have seen firsthand Complainant toxicity and Complainant is known for being an "anti-supervisor" employee. Complainant prides himself on that and is confrontational with supervisors when unnecessary. Multiple sergeants had stories about Complainant J. Mutuku observed Complainant confront supervisors as an officer but has not witnessed this as a sergeant.

Complainant never said anything to J. Mutuku about Officer 1 lactation breaks. J. Mutuku learned Complainant had an issue with these breaks when he overheard sergeants talk about it in the sergeant's bay. He learned Complainant had gone to multiple supervisors and complained about it. J. Mutuku never confronted Complainant and never made any comments to him. He denied he ever confronted Complainant by saying, "I heard you had an issue with my wife feeding my son." or something similar.

J. Mutuku learned Complainant also filed a complaint against Officer 1 and Officer 2 for not taking a report on a call they handled. J. Mutuku also heard this in the sergeant's bay. He claimed initially he did not know the complaint was against Officer 1 and Officer 2 he only heard the complaint was against a couple of officers. He learned a day or two later the complaint was against Officer 1 and Officer 2 He could not remember if Officer 1 told him or if he heard it from someone in the sergeant's bay.

J. Mutuku stated it wasn't normal for on officer to complain to Internal Affairs about an officer taking a report. He has seen a junior officer just take a report on a call that a senior officer wasn't going to, or a senior officer pull a junior officer aside and tell them they should probably take a report. Normal practice was for officers to address it amongst themselves, or if it was egregious, the officer might go to a sergeant; he added it could be a training issue.

Complainant and J. Mutuku were on different shifts and rarely saw one another. J. Mutuku usually saw Complainant on weekends when Complainant worked overtime. Prior to learning about the complaint, Complainant and J. Mutuku were on speaking terms. When J. Mutuku learned Complainant filed the complaint, he was upset. J. Mutuku did not confront him but recalled a couple negative interactions that took place between them.

The first incident occurred when they crossed paths and Complainant greeted him or gave him a head nod. J. Mutuku ignored him and went into the sergeant's bay. Complainant said something to J. Mutuku about ignoring him or dismissing him. It wasn't confrontational.

The next one occurred one or two weeks later. J. Mutuku was in the roll call room after Watch B roll call had been dismissed. Complainant walked in to work his overtime shift and sarcastically greeted everyone. After Complainant changed, he walked back and said something about checking his mailbox and it was clear. J. Mutuku told us, "I don't know what he's talking about… completely confused." (He then paused, to gather his thoughts.)[160]

Only J. Mutuku and Asbury were in the roll call room. J. Mutuku asked Asbury what he was talking about, and Asbury said it was the flyer that was posted in the locker room. J. Mutuku

[160] J. Mutuku Interview, approximate time index 28:15.

knew [redacted] was accusing him because [redacted] did not have an issue with Asbury. J. Mutuku opened the side door in the roll call room and yelled out to [redacted] He told [redacted] to have a good day and to be safe out there. [redacted] turned beat red and charged at J. Mutuku. He stopped about ten feet from J. Mutuku and told him he knew J. Mutuku put the flyer in his mailbox.

J. Mutuku then told us, "I did know, sitting up at that podium, that there was, uh, a flyer that had been distributed, 'cause [sic] when Nate said (unintelligible) about the flyer, I knew that what he was… I didn't have to ask him what… what flyer are you talking about. So, I must've had knowledge… that… about that flyer at that point."[161]

[redacted] told J. Mutuku he knew he put the flyer in his mailbox, and it was a threat on his life. J. Mutuku asked what he was talking about. Then [redacted] asked if he was pointing a gun at him. J. Mutuku described how he pointed at him with his finger when he told him to have a good day. J. Mutuku asked if [redacted] was joking. J. Mutuku said [redacted] was being silly accusing him of this and walked back inside. Asbury told J. Mutuku to leave it alone and J. Mutuku said it was his fault for going out there. J. Mutuku said Asbury would have heard the exchange, and possibly someone in the parking lot, but he did not recall seeing anyone.

There was another negative incident that occurred after this. J. Mutuku was assigned Central, and nobody was logged on to the swap meet for overtime. (J. Mutuku took it upon himself to drive to the swap meet, he was not directed or ordered to. However, Lieutenant Ed Collins asked J. Mutuku who was working because nobody was logged on.) J. Mutuku went to the swap meet to see if anyone was there. J. Mutuku said [redacted] usually worked this overtime. He passed [redacted] as J. Mutuku drove into the swap meet and [redacted] drove out. It took J. Mutuku some time to drive in and then back out the swap meet. He drove to the Lincoln Station and told [redacted] he needed to log on when he worked there; the swap meet was in J. Mutuku's beat. [redacted] called him a punk and told him he didn't have a beat. [redacted] told him he wasn't going to log on and asked J. Mutuku what he was going to do about it. J. Mutuku could not recall seeing anyone that might have witnessed the conversation. J. Mutuku was not disrespectful, but admitted he was sarcastic because of their "history." [redacted] exploded during this interaction like he did the previous one. Since then, they have seen each other, but have not engaged in conversation. J. Mutuku denied he ever told [redacted] "You'll see. You'll see." during any of their conversations.[162]

J. Mutuku denied he ever saw the flyers but said he heard about them. He also denied seeing a photo of the flyer. After the conversation with [redacted] outside the roll call room, he used his phone to look up "Rat Busters" to see what [redacted] was saying was a weapon. [redacted] yelling made sense to him after he looked everything up. "Rat Busters" was a gun used by exterminators to shoot rats. [redacted] was crazy though for saying J. Mutuku's finger was a gun.[163]

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[161] J. Mutuku Interview, approximate time index 29:15.
[162] J. Mutuku Interview, approximate time index 31:20.
[163] J. Mutuku Interview, approximate time index 35:45; page 25 of transcript.

I confirmed J. Mutuku never saw the flyer. **J. Mutuku said, "I've never… I've never seen this flyer."**[164]

I asked if he heard who might have placed them. Initially, he said no. Then he said he heard Complainant placed them.[165]

I asked, "You didn't place them?" He replied, "No."

In response to asking if his fingerprints would be on the flyers, J. Mutuku said, "No. They're not going to be on those."[166]

I asked if Complainant was the only person, he heard might have placed the flyers. He answered, "Yeah." He said everybody was saying Complainant put the flyers up.[167]

I asked if he heard he might have placed them. He answered, "Yes. I've heard people say I might've placed them." ***(This directly contradicts his previous two answers.)***[168]

I asked if he ever used the computers in the report writing room. J. Mutuku said no, but then in a stuttered response said he sometimes sat down to edit officers' reports.[169]

I told J. Mutuku flyers were posted in the men's locker room and one flyer was placed in Complainant mailbox and that Complainant alleged J. Mutuku was responsible. J. Mutuku said, "I heard that." I continued and advised Lieutenant Eric Meier pulled a print log and was able to determine the flyer was printed on October 1, at 4:17 pm in the report writing room at the Lincoln Station. Meier also pulled video which showed J. Mutuku pull into the parking lot and then walk into the station at 4:05 pm. I told him the flyer was printed approximately twelve minutes after he walked into the station. J. Mutuku laughed and said, "OK." I asked if he had any explanation and he said no. I asked again about the computers in the report writing room and he said he didn't use those computes other than to review an officer's report. He said he had no reason to use one of those computers.

J. Mutuku said he asked Complainant why his voice was trembling every time they talked because Complainant would turn red immediately and his voice would start cracking. Mutuku said he asked Complainant why he was scared and why was his voice cracking every single time he talked to him. This made Complainant even more angry when J. Mutuku asked this to the point Complainant was shaking with anger.

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[164] J. Mutuku Interview, approximate time index 36:45; page 26 of transcript.
[165] Question one regarding who he heard placed the flyers. Initially Mutuku said no. J. Mutuku interview, approximate time index 37:10; page 26 or transcript.
[166] J. Mutuku Interview, approximate time index 37:30; page 27 of transcript.
[167] Question two regarding who he heard placed the flyers. J. Mutuku Interview, approximate time index 37:35; page 27 of transcript.
[168] J. Mutuku Interview, approximate time index 37:40. Refer to footnotes 39 and 40.
[169] J. Mutuku Interview, approximate time index 38:15; page 27 and 28 of transcript.

I asked if he ever manipulated his hand to resemble a firearm and simulate firing at Complainant J. Mutuku said no and said he believed this would have been captured on camera. He said he only pointed at him and was confused and flabbergasted when Complainant suggested this.[170]

Since Complainant has voiced concerns about Officer 1 and Officer 2 riding together and since filing a complaint against them, J. Mutuku denied he has done anything to retaliate against Complainant or create a hostile work environment for him. He has not observed any behavior by supervision toward Complainant that he would consider hostile or retaliatory, nor has he heard of anything.

As a sergeant, J. Mutuku has not witnessed any behavior by Complainant toward supervision that would cause or provoke tension, but did witness this as an officer; specifically, Complainant was confrontational with Banks. He also personally observed incidents involving Cunningham and many others when he was an officer. This led to him warning his wife about Complainant when she first started.

J. Mutuku agreed that most people in patrol were no longer amused by Complainant When asked who Complainant allies or closest friends were, J. Mutuku only provided Weddle's name. J. Mutuku thought the fact that Complainant no longer had a following of officers, created most of Complainant current issues and possibly issues he might have in his home life.

In closing, J. Mutuku wanted it on the record that the consensus in patrol is that Complainant is not the same person today as he was when he was coming up in the Department. A lot of people think there is a "mental issue" going on with him. J. Mutuku spoke again about the conversation he had with Complainant when J. Mutuku told him to have a good day. Although the statement was sarcastic, J. Mutuku was shocked at how instantaneously red and filled with anger Complainant became, to the point he could not control his body. His whole body was shaking, including his voice. J. Mutuku said this was not out of fear, but anger. He has seen the smallest things trigger Complainant It's to the point where sergeants have told his wife to be careful around Complainant that he is not safe. The sergeants have told her they are worried about her safety. J. Mutuku said he and other sergeants could not pinpoint what Complainant issue was, but the consensus was Complainant was not safe. Whether this meant not backing up officers and/or harming us with Complainant "anti-supervisor" mentality. J. Mutuku expressed concerns that Complainant was a "safety hazard" in a police station and stated the consensus amongst supervisors was Complainant "may harm one of us."

J. Mutuku said most supervisors tried to avoid Complainant and many of the issues Complainant has had with supervisors, involved a supervisor other than his own.

J. Mutuku advised Officer 1 and Officer 2 have shared with him on multiple occasions that Complainant did not respond to their request for an emergency back up or respond to a hot call they were sent to. He said it was not surprising, considering Complainant had been reported in the past for driving the opposite direction of emergency backup requests. Officers reported this to supervision and J. Mutuku thought Internal Affairs investigated this.

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[170] J. Mutuku Interview, approximate time index 43:10.

J. Mutuku again advised that officers with five years or less of tenure knew that Complainant would drive the opposite way if they requested an emergency backup. This was not exclusive to Office and Officer 2 J. Mutuku said, "If he has an issue with you, which it's a long list, he's not coming."

In addition to the safety concerns about Complainant not backing officers, there was talk and concern that Complainant may intentionally harm someone. J. Mutuku said when he saw the anger that instantaneously filled Complainant over minute things, coupled with statements, from people that have known Complainant for years, saying that Complainant today was a completely different person, was concerning to J. Mutuku.

J. Mutuku said officers and supervisor alike, absolutely do not want to work around Complainant

INTERVIEW OF WITNESS OFFICER BRUCE BLOMDAHL

On January 25, 2023, at approximately 9:51 am, I interviewed Deputy Chief Bruce Blomdahl in his office at the Orange Street Police Station. The following is a summary of Blomdahl's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Blomdahl is the Administrative Chief and part of his responsibilities are overseeing Internal Affairs, but he works collectively with Deputy Chief Frank Assumma and Chief Larry Gonzalez on organizational matters and the three keep each other abreast of issues withing the Department. Although he oversees Internal Affairs, Community Services, Accounting ,the budget, etc., he described this group of chiefs will often overlap into each other's commands and make recommendations. This year he will have thirty years of service, all with the Riverside Police Department, and he has both administrative and operational experience.

Blomdahl has known Complainant for more than twenty years. Blomdahl was on the full time METRO Team when Complainant was a new officer, but supervised Complainant for a short time after Blomdahl was promoted to sergeant and prior to going back to the METRO Team. Later, Blomdahl promoted to lieutenant, went back to patrol, and had conversations with Complainant To Blomdahl's knowledge, the two never worked as officers together.

I asked Blomdahl to describe Complainant when he supervised him as a sergeant. Blomdahl answered, "Opinionated." He described Complainant has always been this way, but back then he was not disrespectful. Complainant was very into case law and the two had some lengthy conversations. It was challenging as a new supervisor to try to get Complainant to understand, from a level higher than officer, the interpretation of policy or case law. They had great conversations and Complainant called it "going to church." Complainant would ask questions about why supervisors did things and why the policy read the way it did. He was never disrespectful and more times than not, after lengthy conversations Complainant would understand the different perspective. As the years progressed however, Complainant felt his way was the right way and everyone else was messed up. Blomdahl said sometimes Complainant was right and Complainant knew case law better than some of the supervisors, both new and tenured.

Complainant never took a disrespectful stance with him, but Blomdahl heard through the rumor mill that progressively Complainant got a little more confrontational as the years passed. Blomdahl also heard that Complainant who was known to challenge things, became disrespectful.

Blomdahl described Complainant as a productive officer when Blomdahl was a sergeant. He has heard that Complainant is no longer as productive as he once was. Blomdahl and Complainant have talked about this. Complainant was involved in an incident off Miami Street in the Casa Blanca Area. In that incident, Complainant was talked to by supervision and the incident may have been referred to Internal Affairs. Complainant take was he was disciplined, although Blomdahl advised there was no discipline in that incident. Since then, Complainant has changed and is not as proactive. Complainant still has a good understanding of Casa Blanca and gets involved in the things that interest him.

Blomdahl was aware Complainant had issues with Officer 1 and Officer 2 riding as partners and later learned Complainant had gone to Internal Affairs about a call Officer 1 and Officer 2 did not take a report on. Blomdahl was not upset Complainant had reported a possible policy violation but thought there were other avenues through Complainant chain of command to address this.

There was no issue with Internal Affairs referring this to patrol to handle/investigate and this is commonly done. If a complaint is small or not complex, it's a good opportunity for a patrol supervisor to investigate and work out the personnel issue.

Blomdahl advised he "absolutely" wanted officers to bring any potential police misconduct forward. However, there could be many reasons why a report may not have been taken. He also clarified he considered police misconduct to be a violation of law or something more serious than failing to take a report, which would be a policy violation. Policy violations could be addressed within the command and police misconduct or a complaint that was more complex, time consuming, or involved command would be handled through Internal Affairs.

Blomdahl heard rumors that Officer 1 and Officer 2 might be "ducking" calls as well as Complainant It started to become an organizational and morale issue. Blomdahl and Deputy Chief Assumma discussed ways they could address this, since it didn't appear it was being addressed at the captain, lieutenant, and sergeant level. They kept hearing rumors about the effects on morale in patrol these issues were causing. Usually, employees accusing each other of not taking a police report, would be addressed by the sergeant.

Blomdahl heard Complainant wanted to complain about being split from his partner and being moved out of his beat. Later, he heard Officer 1 and Officer 2 claimed Complainant didn't take a report and there were issues between the three officers. He thought command was going to handle this. Chief Larry Gonzalez, Assumma, and Blomdahl heard from Milby in their command staff meetings, that Complainant was being difficult and challenging command in patrol. Blomdahl knew Complainant didn't respect every member of the rank, but felt he had a positive relationship with Complainant and Complainant might listen to him. To try to circumvent a morale issue in patrol, Blomdahl wanted to have a conversation with Complainant to see if they could work through some of the concerns and get Complainant to be more respectful and follow the chain of command. He hoped he could get Complainant to understand where the organization was coming from, but also wanted to get his side of the story.

When Blomdahl reached out to him, Complainant had not filed a complaint. Complainant had reached out to Detmer about his issues, but indicated he wasn't ready to file a complaint; however, he made comments about going to the press and human resources.

Blomdahl and Complainant had a three-hour conversation. Blomdahl's conversation with Complainant was not to dissuade him from filing a complaint, but to allow the Department to investigate his concerns rather than going to the press and human resources about adults acting like children. Blomdahl did not have specific behaviors that supervisors were doing toward Complainant but what Complainant was doing.

They talked about many things to include retirement, the profession, and Complainant feeling he was being harassed by supervisors. Blomdahl told Complainant to do what he needed to do, but he preferred if Complainant would allow Internal Affairs to investigate his allegations. He told Complainant he didn't need to go to the press and if he went to Human Recourses, they would just refer it back to Internal Affairs anyway. This was a small part of their overall lengthy conversation. In their conversation, Blomdahl made it clear to Complainant it was his decision. Blomdahl did not believe Complainant was ready to file a complaint at that time. Blomdahl told Complainant if he felt he was bullied or harassed by supervision, he needed to go to Internal Affairs to file a complaint. He told Complainant this several times.

The rat flyers appeared after Blomdahl and Complainant talked. Blomdahl heard one was placed in Complainant mailbox and others in the locker room. Complainant sent Blomdahl a picture of the flyer and told him this just happened. Blomdahl contacted Meier to alert him and to remove the flyers. Blomdahl did not direct Meier to investigate; he believed Meier knew this was something that needed to be investigated. Meier began to investigate on his own. Meier did not pull a "PA" (file number for administrative investigations), but it is not uncommon to begin an investigation prior to pulling this. Internal Affairs took over Meier's investigation after Complainant went to Internal Affairs to file a complaint.

Blomdahl concluded by saying he considered Complainant a friend and was very clear with him. He was specific when he told Complainant he needed to do what he needed to do if he felt he was being harassed. It didn't serve anyone well in the organization to go to the press, but our Internal Affairs Unit could handle his concerns. All Blomdahl asked of Complainant was the opportunity for Internal Affairs to investigate. He never tried to dissuade him from filing a complaint.

INTERVIEW OF WITNESS OFFICER NATHAN ASBURY

On January 26, 2023, at approximately 9:17 am, I interviewed Sergeant Nathan Asbury in my office in Internal Affairs. The following is a summary of Asbury's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Asbury has been with the Riverside Police Department for fifteen years and has been a sergeant for two years. He has known Complainant since he started with the Department and has known J. Mutuku since J. Mutuku started with the Department, approximately thirteen years.

As an officer, Asbury never directly worked with Complainant was known to work Casa Blanca and had good relationships with that community. Complainant had a reputation for that and "for being Complainant Complainant did things his way and if someone didn't like it, he'd tell you about it. There was never a question about how Complainant felt about something, and it didn't matter if you were an officer or a sergeant. Complainant was open to tell you about it and that hasn't changed. Complainant would bring up things to supervisors in roll call that he didn't agree with and have discussions with supervisors and officers about things he didn't agree with. As a sergeant, Asbury has had minimal interaction with Complainant and he is not personal friends with him.

Asbury is personal friends with J. Mutuku; they were on the collateral SWAT Team together and worked together as detectives. Asbury is aware of issues between J. Mutuku and Complainant and said J. Mutuku has shared things with him. Asbury could not recall if J. Mutuku shared this with him, or if he heard from someone else, but heard Complainant had complained to Internal Affairs about Officer 1 lactation breaks and/or Officer 1 and Officer 2 not taking a report on a call. Asbury said this did not affect J. Mutuku at all.

He first noticed an issue between Complainant and J. Mutuku after a Watch B roll call. Asbury and J. Mutuku were the only ones in the room and sitting up at the front. Complainant walked down the hall, stuck his head in the door, and said something about his mailbox being clean and it better be clean when he got back. Asbury said it wasn't just "a typical Complainant and it wasn't a normal officer and sergeant contact. It was very rude, Complainant was yelling, and you could tell very clearly Complainant was mad.

Asbury and J. Mutuku didn't know what Complainant was talking about. Complainant walked out the door by the Watch Commander's Office and J. Mutuku went out the side door in roll call. Asbury heard J. Mutuku yell something to get Complainant attention and then J. Mutuku walked out the door. Asbury didn't hear anything else. J. Mutuku then came back inside and looked bewildered. Asbury asked what was going on and J. Mutuku said he didn't know. J. Mutuku said he went out there to talk to Complainant and Complainant accused him of pointing a gun at him. J. Mutuku said Complainant kept asking him if he was pointing a gun at him. J. Mutuku said Complainant voice was cracking, he got weird, and wouldn't talk to him.

Asbury asked J. Mutuku about the "mailbox thing." Not then, but later, the two found out that flyer had a rifle and a double meaning. Someone was calling Complainant a rat. Asbury didn't know if Complainant accused J. Mutuku of pointing a gun at him because of the flyer; he didn't know if the two were related. Asbury assumed Complainant had an issue with J. Mutuku and perhaps Complainant thought J. Mutuku placed the flyer in retaliation for his wife, because Complainant has never said anything to him, and they were the only two people in the roll call room.

Asbury could not recall if J. Mutuku left the door open when he called out to Complainant or if the door closed behind him, but Asbury did not hear Complainant say anything about a gun. He also did not see if J. Mutuku did anything with his hands when he first called out Complainant

Prior to this interaction, Asbury saw one flyer in the men's locker room near the boot rack. It was a picture of a rat with a circle around it and a line through it, "basically a rat extermination or no rat type of thing." He only saw one flyer and did not hear of any other flyers. When he

saw the flyer, he did not know it was related toward anybody. It was an ad for rat extermination with other ads. He could not recall if it said anything, but possibly "rat extermination" and a phone number; nothing outside of a normal ad. He only saw the flyer one time, so he wasn't sure.

Later, he was told the same flyer was put in Complainant mailbox. He could not recall who told him this.

Asbury clarified his earlier statement and said he didn't think Complainant ever said J. Mutuku pointed a gun at him. J. Mutuku told him Complainant kept asking, "Is that a gun in your hand?" Asbury and J. Mutuku talked about this. Asbury joked and asked if Complainant said that because J. Mutuku's hand was black like our guns. He could not recall if they talked about the flyers then, or later.

J. Mutuku never told him he placed the flyers and Asbury never heard who might have placed them.

Either the day of the exchange between Complainant and J. Mutuku or later, somebody told them that the flyer was a rifle, or a pistol used to shoot rats. It wasn't just a rat trap type of company. Asbury could not recall who shared this with him. When they learned this, they speculated this was why Complainant talked about a gun. Asbury said, "Maybe he's accusing you, of pointing a gun at him, because you put a flyer in his… in his mailbox." Asbury said he hated saying that, but that's what they were thinking; they were confused, or at least he was.[171]

Asbury could not recall if he asked J. Mutuku or if J. Mutuku asked him what Complainant was talking about it when he stuck his head in the door and mentioned his mailbox. They were both confused and shocked. When J. Mutuku opened the side door to address Complainant he initially popped the door open. Asbury could not recall if the door stayed open or not, but said he never heard Complainant response.

Asbury could not recall who told him about the meaning behind the flyer. He did remember speaking to J. Mutuku and realizing that maybe this was more than just Complainant thinking "we put…there's a flyer… that somebody in the Department put in his mailbox, but hey, this is like a threat on his life or something like." It was more than calling Complainant a rat. Exterminating a rat was a bigger deal. He and J. Mutuku wondered if Complainant was trying to allege a bigger thing besides someone putting a flyer in his mailbox.[172]

Asbury worked Watch B and Complainant Watch C, though Complainant like to work swap meet overtime. The exchange between Complainant and J. Mutuku would have occurred on a weekend, likely when Complainant was on his way to the swap meet.

From July 2022 to present day, Asbury has not witnessed a supervisor of any rank be hostile toward Complainant nor has he heard of a supervisor of any rank be hostile toward him. When asked if he heard of any actions by supervision toward Complainant that would be considered retaliatory, Asbury said he heard things that he didn't consider (to be retaliatory), but he heard Complainant was

[171] Asbury Interview, approximate time index 16:00.
[172] Asbury Interview, approximate time index 20:30.

moved out of an area by a lieutenant. Asbury heard the move was based on staffing, but [redacted] said it was retaliation.

Asbury said he believed the retaliation was the other way around; [redacted] retaliating against supervision. On several occasions after this incident, Asbury heard [redacted] on the radio take his sergeant ([redacted] to Channel 4 to ask his ETA or estimated time of arrival. Asbury has never been asked as a sergeant his ETA to go to a call, nor in his fifteen years at the Department has he heard an officer do this. However, [redacted] did this numerous times in a row. Asbury asked what [redacted] was doing. Everybody told him [redacted] was playing games and was mad at them. One incident occurred on an excited delirium call. As soon as it was dispatched or just a few minutes later, [redacted] took [redacted] to Channel 4 to ask his ETA. Asbury said this was [redacted] way of messing with [redacted] and it was weird. He asked [redacted] what that was all about. He thought [redacted] mentioned he had talked to [redacted] about his response times to calls, so now this is [redacted] retaliating and questioning [redacted] response times to calls.

Asbury said the reputation [redacted] has always had, was he tried to poke and get people mad. However, [redacted] has never done this to Asbury, and he has never witnessed this aside from the radio incidents he just described.

INTERVIEW OF WITNESS OFFICER CHAD MILBY

On January 26, 2023, at approximately 2:14 pm, I interviewed Captain Chad Milby in my office in Internal Affairs. The following is a summary of Milby's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Milby has been with the Riverside Police Department since January 2003. Prior to that he had a little more than five years of sworn experience with Oceanside Police Department. He is currently the captain of Field Operations and held this assignment during the dates involving this incident.

When Milby started with RPD, he worked with [redacted] as an officer. He described they had a good relationship and were like minded; they wanted to do good police work and look for bad guys. [redacted] typically worked Casa Blanca, rode with newer officers, and was known for taking people to jail. He had a lot of knowledge about the Casa Blanca area, and he liked to train officers to get to know people in their beats. [redacted] formed good relationships within this community which allowed him to develop information. He was hardworking, proactive, and a mentor to newer officers.

I asked if this is how is how he would describe [redacted] today. Milby said he knew [redacted] sometimes rode with Weddle and it appeared, when time permitted, they were taking people to jail. There were layers of separation between him and [redacted] now, so he didn't have a lot of direct conversations with [redacted] However, Milby's supervisors informed him [redacted] did have a change in his disposition. Over the last twelve months, Milby got reports that [redacted] would become confrontational at times, challenge the process, and ask questions of supervisors. Milby didn't have an issue with [redacted] questioning supervisors if it pertained to case or state law, changes

in legislation, or policy, but there were supervisors and managers who told Milby that these behaviors were beginning to get worse.

Around the time Complainant tested for sergeant, Milby heard Complainant did well on the written exam. Milby was happy for him and thought Complainant was finally going to get his name on the list. Then Milby heard he didn't show up for his oral interview.

Following that, Smith reached out to Milby. Smith told him he noticed a change in Complainant behavior and that Complainant seemed more confrontational, seemed to challenge supervision more, and was not reasonable when the supervisors provided him with answers. Smith said Complainant often asked questions and wanted answers to things that didn't involve him but were supervisor and management decisions.

Milby was concerned for Complainant welfare. It appeared to Milby, Complainant was having conflict with most supervisors and most lieutenants. He wanted to get to the root of Complainant problem. He knew the Chief had a relationship with Complainant so he brought this to the Chief's attention. The Chief had a different relationship with Complainant than Milby; the Chief and Complainant played baseball together. He hoped the Chief could identify why there was so much tension with Complainant so they could resolve it and make the work environment better. He asked if either the Chief or Deputy Chief Bruce Blomdahl, who had a similar relationship with Complainant would have a conversation with Complainant His priority and intent were Complainant wellbeing and to make things better for him. Milby also let his boss, Deputy Chief Frank Assumma, know about the issues and his hope the Chief or Blomdahl would have a conversation with Complainant Milby said his conversations with the chiefs to get one of them to speak to Complainant were not in any way to sweep any of Complainant issues under the rug, but to get him some help and to make things more positive for him at work. He didn't want it to get to the point where Complainant was insubordinate and would violate policy.

I asked if he learned Complainant had an issue with Officer 1 and Officer 2 riding together. Milby said he learned this from Barney. He said the deployment of personnel was left up to the watch commander. Milby advised he had conversations about this with Barney and Officer 4 He also heard from Smith that Complainant had an issue with this. He reiterated that these decisions were made at the supervisory and watch commander level; they decide who ride as partners based on performance, number of personnel, and the needs of the city.

Milby also learned from Meier that Complainant had gone to Internal Affairs to file a complaint against Officer 1 and Officer 2 Once Milby became aware of it, he asked Officer 4 to investigate. Milby said there might have been a reason the officers didn't take a report and they didn't do anything wrong. Officer 4 investigated and reported to Milby that the reporting party had been contacted and no longer wanted to file a report; it turned out a family member had taken the vehicle. That was the explanation Milby received for a report not being taken.

Complainant complaint occurred following the testing process for sergeant.

Milby was not upset Complainant filed a complaint against Officer 1 and Officer 2 but said it was a personnel matter. If an officer made supervision aware of a potential policy violation, they

would investigate. However, there was no obligation to notify the complaining officer of the findings of that investigation. Supervision has an obligation to investigate, and that's what they did in this case.

Milby heard [redacted] had an issue with the length of time [redacted] lactation breaks were and the fact [redacted] took these breaks with her. Supervision was dealing with those things. When [redacted] was taking her breaks, [redacted] would write reports. [redacted] may not have known this or been provided with his information. [redacted] voiced his concerns to supervision, but supervision advised [redacted] and [redacted] were not abusing the situation. This is the feedback Milby received. Milby did not know every problem [redacted] had with [redacted] and [redacted]

Milby's understanding was that Blomdahl met with [redacted] and the meeting was fruitful. Milby spoke with Blomdahl briefly following Blomdahl's conversation with [redacted] Blomdahl didn't provide details, but advised he had a long conversation with [redacted] and [redacted] admitted he could make some changes. Following the meeting, it appeared [redacted] made these changes and wasn't confrontational and challenging. This lasted a short period, until the flyers were posted.

Milby became aware of the flyers on October 4, 2022. Meier informed him he found one in [redacted] mailbox and one in the locker room. [redacted] found an additional one in the locker room and brought it to Meier's attention. Meier showed Milby the flyer which had the words, "Rat Busters" on them. Milby said they were discourteous in nature, and he asked Meier to investigate to determine who was responsible for them. Meier told Milby that [redacted] thought J. Mutuku was responsible for them based on [redacted] going to Internal Affairs and a conversation between J. Mutuku and [redacted] Meier told Milby that [redacted] and J. Mutuku exchanged words at the Lincoln Station. This conversation occurred after [redacted] complaint to Internal Affairs and prior to the flyers being posted.

I asked Milby if he pulled a "PA" (file number for an administrative investigation) after learning about the flyers. Milby said he did not. His rationale was Meier previously worked as an investigator in Internal Affairs and he (Milby) worked in Internal Affairs as the lieutenant. He described he and Meier were more than competent to conduct the investigation. As the division commander, he assigned Meier to investigate which included contacting Information Technology to see if it could be determined if/when the flyers were printed at the Lincoln Station and to review video from the cameras there. Milby had every confidence in his and Meier's ability to conduct a complete and thorough investigation and he had no intention of sweeping the matter under the rug.

Milby advised another reason he did not pull a "PA," was Meier spoke with [redacted] and [redacted] indicated he did not want a "PA." Milby said that didn't mean that he and Meier were not going to investigate, because this type of conduct could not be tolerated in the workplace and wouldn't be. Even though [redacted] did not want it investigated at that time, Milby said they were still going to investigate and make every effort possible to identify the person who created the flyers. Meier began to informally investigate and kept Milby abreast of his investigation.

Milby also felt it was extremely important to get out in front of this and give clear direction to his command. The same day he learned of the flyers, he sent an email to his watch commanders and told them to share with personnel during roll call that posting any derogatory, demeaning or disrespectful comments or material toward another person or group of people at any police facility shall not be tolerated and was a violation of Department policy, specifically 330.3.2(j).[173] He included his bosses, both deputy chiefs, on the email to ensure they knew he was addressing the matter. Milby instructed watch commanders to address this and to note on the rosters it had been discussed. He ensured this was done in roll call for Watches A, B, and C on Wednesday and Saturday.[174]

Milby also spoke to Barney and Officer 4 and told them to convey to their troops that disparaging remarks at any level, any rank, shall not be tolerated. They had to ensure their supervisors did not get into any confrontations with any officer. Milby specifically pulled in J. Mutuku, with Meier, and made him aware of the same. He reminded J. Mutuku he was a supervisor and disparaging remarks shall not be tolerated, even if there was a difference of opinion. He told J. Mutuku to be professional. For consistency, Milby and Meier brought Complainant in as well and told him the same. Milby told Complainant even if he had a disagreement with someone or didn't like someone, disparaging remarks would not be tolerated. Milby felt by doing all these things to put everyone on formal notice and to do this early, would prevent this type of behavior from continuing and escalating to workplace violence. Milby advised no other flyers appeared after this.

Milby believed there was one negative incident between Complainant and J. Mutuku that occurred after this. (As Milby continued, it appeared he was confused as he described the confrontation between J. Mutuku and Complainant occurred prior to his conversations with them.) Milby didn't know details, but heard words were exchanged between J. Mutuku and Complainant who was working overtime at the swap meet. J. Mutuku was told by a watch commander (Collins) to contact Complainant and tell him to log on. Milby said this is what prompted Milby to have conversations with J. Mutuku and Complainant Milby told J. Mutuku he needed to use better judgement and should have considered sending someone else since there were issues between him and Complainant Milby said J. Mutuku never should have got sent to the swap meet to do this. He thought the lieutenant who did this was aware there were issues but wasn't sure. Milby said it could have been an oversight. (During J. Mutuku's interview, J. Mutuku said the watch commander did not send him to the swap meet. J. Mutuku made the decision himself to go there to tell Complainant to log on.)

Milby advised as soon as he learned there was a confrontation between J. Mutuku and Complainant he pulled J. Mutuku in, within a day or two, to have the conversation with him. He spoke to Complainant a few days after his conversation with J. Mutuku. He advised it was shortly after the flyers were posted. He wasn't positive on the timeline.

I asked Milby if he personally witnessed any behavior by a supervisor of any rank that would be considered hostile or retaliatory toward Complainant He said he didn't witness anything but did hear of an incident. He said he met with Officer 4 and Barney and advised he didn't want

[173] See Email from Captain Milby (10/4/23).
[174] See Patrol Rosters Provided by Captain Milby.

Complainant to work with Officer 1 and Officer 2 and vice versa. He said it could create an officer safety issue if people weren't getting along, talking to each other, and showing up on each other's calls. The lieutenants agreed with him. Officer 4 sat down with Officer 1 and Officer 2 to advise of this and ask how they felt. Officer 1 and Officer 2 were fine with this and since they were junior said they would work somewhere else. After this, there was a roll call in which the roster showed the three officers working in the same beat. Officer 4 recognized this and told the officer doing the roster to move Complainant to a different area. Complainant got upset. The sergeants recognized this and asked to move Complainant back. Complainant was moved back and Officer and Officer 2 were moved. Zackowski went out into the parking lot to advise Complainant and there was an altercation. Complainant called Zackowski a coward. Milby didn't witness this event but heard about it and notified his boss. He was instructed to let the investigation take its course because at that point, they determined there would be a formal investigation through Internal Affairs. Milby knew this would come out in the Internal Affairs investigation.

Milby has known Officer 4 for twenty-three or twenty-four years; they previously worked together at Oceanside Police Department. I asked Milby if he thought Officer 4 moved Complainant to another area to retaliate against him. Milby said no; Officer 4 was following his directive and the management decision to not allow Complainant to work with Officer 1 and Officer 2 and vice versa. If these officers could not get along, there could be an officer safety issue. Milby talked to Officer 4 after this occurred. Officer 4 told him it was an oversight on his part, the sergeants immediately brought it to his attention, and it wasn't personal against Complainant Up to that point, Officer 1 and Officer 2 had been the ones that were moved. Milby said Officer 4 was "fair and right and would do what was right." He wouldn't move Complainant for a personal issue. Milby believed this about Officer 4 He said Officer 4 would say what the truth is and what is right even though people may not agree with him. Milby said if Officer 4 had done this as a personal thing, he would've drawn a hard line and kept the change that moved Complainant Instead, Officer 4 immediately agreed to move Complainant back.

Milby said although the seniority of an officer is taken into consideration when making decisions about where an officer would work, or who they would work with, there were absolutely no property rights to any of those things. The watch commander makes the ultimate decisions to manage the watch and deploy resources as they see accordingly, based on the need.

In closing, Milby advised his current management team and supervisory group immediately addressed issues as they arose. This is not the first time Milby has served in a management capacity in Field Operations. Milby was the Executive Officer in 2020, which was a challenging year. There were issues that came up then, COVID-19, George Complainant etc. Having been in that position for about a year and now with almost a year in his current assignment, Milby knows the importance of dealing with issues immediately to avoid compounding the problem. That's always been his nature and he believes this to be Meier's nature. They always do what is in the best interest of the organization and its employees. Milby wants people to be safe and wants people to be happy when they come to work. However, sometimes no matter what you do to try and make things more enjoyable, you can't always make everybody happy. He said, "But I can tell you one thing…." he continued, "We do not ignore any issues… um… out there in Field Ops." He said they addressed things daily. Some things could be

addressed through conversations and other things had to be addressed more formally, but nothing got ignored.

I asked Milby if he knew if Complainant ever changed his mind about wanting a formal investigation. Milby recalled Complainant would reach out directly to Meier, but it wasn't until Complainant was moved from his beat and came to Internal Affairs that Complainant decided he wanted a formal investigation. Milby said he heard Complainant looked for him after the roll call in question, but Milby was in Meier's office with the door closed dealing with another personnel issue. Milby said both his and Meier's car were parked in their reserved stalls just outside the station, near the doors the officers used to enter and exit the station, and Milby's door was open. As soon as Milby and Meier got done with their meeting, Officer 4 made him aware Complainant wanted to talk to him (Milby) to file a complaint against Officer 4. Milby told Officer 4 Complainant didn't contact him. Officer 4 told Milby he instructed Complainant to go to Milby (Officer 4 boss), Human Resources, or Internal Affairs if he wanted to file a complaint against him. By the time Milby and Meier's meeting was over, and Officer 4 advised what happened, Complainant was already showing "10-6" (busy) at Internal Affairs. Milby never had the opportunity to talk to Complainant didn't text or call him, knock on the door, or wait for him at his office even though Milby had an open-door policy. Complainant never came to Milby.

After Complainant came to Internal Affairs to report a hostile work environment, Meier turned his investigation into the rat flyers over to Internal Affairs.

INTERVIEW OF WITNESS OFFICER JANET RAMOS:

On January 27, 2023, at approximately 12:40 pm, I interviewed District Attorney Investigator Janet Ramos by telephone. The following is a summary of Ramos' recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Ramos recalled a conversation she had with Complainant near the locker rooms at the Magnolia Street Police Station shortly before she left the Department. She told him how she was treated by J. Mutuku when she worked in the Narcotics Unit and said it was very difficult to work with that group. She worked with J. Mutuku, Nathan Asbury, Roger Serrato, Scott LeVesque, and Christie Arnold; Sergeant Joe Miera was their sergeant. She spent ten to eleven "painful" months there.

I asked if J. Mutuku ever asked her to do something she was uncomfortable with. She said it wasn't so much J. Mutuku, but more Asbury.[175]

Ramos said she knew what I was getting at. I told her Complainant shared their conversation, but rather than ask her questions, I'd rather she tell me about their conversation and then I would follow up.

Ramos agreed. She advised on her first arrest in the unit, J. Mutuku was supposed to test the drugs from her arrest. Ramos didn't see him perform the test, so she asked him if he did.

[175] Ramos Interview, approximate time index 3:00.

Mutuku told her he did, but the way he answered made Ramos question if he did. She asked Asbury if J. Mutuku tested the drugs. Asbury shrugged, implied he wasn't sure and left Ramos with the impression that Mutuku may not have tested them; it appeared Asbury didn't want to say yes or no. Ramos thought Asbury knew he didn't test them, but didn't want to throw him under the bus, since they "were boys." Ramos did not feel comfortable writing in her report the drugs had been tested. The drugs had already been booked into evidence, so Ramos went to the Property Unit the following day so she could test them herself. After that, Ramos never trusted J. Mutuku to test drugs from her arrests.

Ramos also mentioned an incident in which she was tasked to write a search warrant after J. Mutuku, Asbury, and Roger Serrato met with a confidential informant. Ramos claims she was told to write she met with the informant but could not recall who asked her to write that. Ramos questioned why she couldn't just write they had met with the informant and refused to write the warrant the way it was suggested to her. She could not recall if Arnold was there when this happened but was sure she told Arnold about it.[176]

J. Mutuku learned Ramos had retrieved her evidence from the Property Unit to test it. After the test and search warrant incidents, J. Mutuku got the message that she would not work the same way he did or "play the way they play." The guys excluded her from anything they did, and she and Arnold were often left out of operations and confidential informant meetings.

Asbury, J. Mutuku, and Serrato ran the unit; Sergeant Joe Miera was just "there, mouth breathing." Ramos said working in that unit was "horrible" and a "nightmare."

Ramos confirmed she called J. Mutuku a dirty cop when she spoke with Complainant She explained the reasons for having this opinion of J. Mutuku stemmed from her experience working with him. She wasn't going to lie in a police report or search warrant.[177]

Prior to working with J. Mutuku in the Narcotics Unit, she had never worked around him. Arnold told her J. Mutuku used to be a good cop when he was a School Resource Officer, and she didn't know what happened to him. I asked if Arnold also thought J. Mutuku was a dirty cop. Ramos didn't know. She knew Arnold didn't like the way he did things and Arnold also "covered her ass" working with J. Mutuku. Ramos said, "It was just like…. He didn't give a shit! Like…so insubordinate to Miera."[178]

Ramos claimed J. Mutuku ordered a cocktail while on-duty during a meal at the Roadhouse Grill in front of Miera. Ramos claimed the entire unit was present, except Detective Scott LeVesque, who was considered an outcast by other members of the unit. Miera, pretended not to notice J. Mutuku ordered the drink.

When asked if she considered J. Mutuku, Asbury, or Serrato to be unethical, she answered in the affirmative to J. Mutuku. She said Asbury wasn't unethical, but he cut corners, was lazy, and sloppy; she ended by saying she couldn't confidently tell me he wasn't ethical. Serrato

[176] Ramos Interview, approximate time index 7:45.
[177] Ramos Interview, approximate time index 15:45.
[178] Ramos Interview, approximate time index 17:45.

was good. He was nice to her one on one, but around the rest of the guys, he was more of a follower. He was the nicest one in the group, and she never saw him do anything that was unethical. LeVesque was fine; he was nice and tried to mentor her and Arnold. The guys didn't like him, so he was an outcast like her and Arnold.[179]

Ramos mentioned some of her concerns to Miera and Lieutenant Mark Rossi shortly before she left the unit. She told them the guys in the unit were "a-holes," they "half assed everything" and she didn't care if they sent her back to patrol. She ended up joining Arnold (who also left one or two months prior to her) in the Sexual Assault and Child Abuse Unit. Ramos said both Miera and Rossi dismissed her concerns and attributed her leaving the unit to childcare issues. Ramos said Rossi had one foot out the door because he was nearing retirement and didn't want to deal with any issues and Miera was just "there, mouth breathing."

Throughout the interview, she said J. Mutuku was insubordinate. In addition to ordering a cocktail on duty, she described an incident that occurred shortly after Sheriff Chad Bianco was elected. Her unit was going to take part in a multi-agency operation targeting marijuana grows. J. Mutuku was adamant he would not participate. He said, "Fuck that" and told Miera he would call in sick and Miera could write him up. Miera told J. Mutuku he was going to participate and J. Mutuku told him he would not. Ramos said Serrato, who is best friends with J. Mutuku, had to talk some sense into him.

She also advised J. Mutuku would often disappear. At the time, he lived down the street from the station. The rumor (and running joke) was he was at home when he should have been at work.

Ramos is not personal friends with Complainant or J. Mutuku.

INTERVIEW OF SUBJECT Officer 3 :

On January 31, 2023, at approximately 4:10 pm, Lieutenant Eric Detmer and I interviewed Officer 3 in the Conference Room at the Magnolia Street Police Station. Officer 3 elected to have Attorney Saku Ethir as his representative. Prior to the interview, Officer 3 and Ethir had an opportunity to review the Admonition of Rights Packet which we went over and signed. The interview was recorded using a department issued digital audio recorder. The following is a summary of the interview. It is not verbatim or necessarily in order but is organized for clarity.

Officer 3 has been a police officer for twenty-five years and a sergeant for ten years, all with Riverside Police Department. Officer 3 supervised Complainant about one year ago for six months. After Sergeant William McCoy was promoted, Officer 3 took over McCoy's crew and supervised Complainant for the remainder of that shift (approximately three months). Then Officer 3 had Complainant again at the following shift change (July 2023). Officer 3 also supervised Complainant several years ago, in 2014, for six months.

[179] Ramos Interview, approximate time index 10:45.

In January 2024, the Department had shift change. Complainant signed up to work for Officer 3 so Officer 3 is again Complainant direct supervisor.

Over the past twenty-five years Officer 3 worked with Complainant both as an officer/beat partner and supervised him on and off over the past ten years. As a new sergeant, Officer 3 gave Complainant an "Exceeds" or "Outstanding" on his evaluation; Complainant did outstanding work. This past year, Officer 3 noticed a change in Complainant behavior and work habits; "more complaining, more adversarial interactions."

Officer 3 was made aware of issues Complainant had with Officer 1 and Officer 2 Officer 1 and Officer 2 did not work for Officer 3 but Officer 3 learned of these issues by talking to other sergeants in the sergeant's bay. Officer 3 learned Complainant had a problem with Officer 1 lactation breaks during a conversation with Smith who sat next to Officer 3 and worked the same shift. Complainant had gone directly to Smith about this issue and then came back to Smith a day or two later and brought it up again. This time, Officer 3 was present. Officer 3 told Complainant his issue with Officer 1 lactation break wasn't going to go anywhere.

Complainant said he didn't have a problem with the lactation break but had an issue with Officer 2 was supposed to take phone reports, while Officer 1 was on break and the breaks should only be twenty or thirty minutes. He told Officer 3 the last few breaks were thirty-one and thirty-three minutes. Complainant was keeping track of the female officers, down to the minute. Officer 3 thought it was ridiculous. He told Complainant they weren't going to interfere with the breaks and if there were no phone reports to take, it was what it was.

Officer 3 never heard Officer 1 and Officer 2 were "untouchable" as Complainant claimed everyone said.

Initially, Officer 3 was not aware of the arrangement Officer 1 and Officer 2 had with their supervisor in terms of them riding together and Officer 1 taking her lactation breaks. He told Complainant it was a federal law and Complainant would have to suck it up.

Officer 3 did not observe any issues with Officer 1 and Officer 2 riding together. He did not hear of any other officer or supervisor that had an issue with them riding together, only Complainant When asked if he was aware of any issues or tension between Complainant the female officers, Officer 3 replied, "I'm aware of Compl having tension and issues with pretty much everybody." Officer 3 said he could provide numerous examples and said Complainant had issues with everyone but Complainant This has been the "overall trend" for Complainant but it has increased in intensity and frequency over the last year. Officer 3 was unaware of any other issue Complainant had with Officer 1 and Officer 2

Officer 3 learned Complainant filed a complaint against Officer 1 and Officer 2 about one week after Complainant filed the complaint. Officer 3 was pretty sure he heard it was for the officers not taking a report. He did not know the outcome of this complaint and thought Complainant retracted it; Officer 3 didn't know.

I told Officer 3 Complainant alleged he began to "come after" Complainant after he filed this complaint and started calling Weddle (Complainant partner) about their response times and how they handled

certain calls… specifically a call at Bordwell Park and a stalking call. Officer 3 remembered the calls. Just prior to this, either Officer 4 or Barney told the sergeants complaints had been coming in regarding response times. The complaints were not specific to any individual and sergeants were instructed to monitor response times. Officer 3 said this was something he already did anyway. As far as the stalking call, there were two that night and it turned out Complainant and Weddle's call was unrelated.[180]

Officer 3 advised if he had called anyone else, it would've been, "OK sarge, no problem" but with Complainant it was always adversarial. It didn't matter if he asked Complainant to fix a report or if he had questions about a call. He said, "It's always an unpleasant, adversarial conversation."[181]

Therefore, Officer 3 usually called Weddle. When Officer 3 called Complainant he answered like he didn't know who was calling him even though Officer 3 knew Complainant had his number programmed in his phone.

Officer 3 said after receiving the instruction from Officer 4 or Barney, he called other units as well; the calls were not exclusive to Weddle and Complainant Officer 3 did not make the calls to Weddle to retaliate against Complainant.[182]

Officer 3 did not recall showing up on a call that Weddle and Complainant were on and advising them response times were being watched. He said if lieutenants were questioning response times, he had no problem immediately addressing this and this is consistent with something he would do. He gave examples of how officers "played" the game to take extended breaks and how he monitored this and overcame these issues with those officers. This is in Officer 3 normal course of duty as a sergeant.

Officer 3 tried to recall all the reasons Complainant and Weddle were split from riding partners. He knew he had a conversation with Weddle the same night Sergeant Matt Lewis was killed. (Lewis was killed August 2, 2022). Officer 3 told Weddle he had a future at the Department and had fifteen to twenty years left in his career whereas Complainant was over fifty years old and could leave whenever he wanted. He told Weddle he should consider riding with someone else. Officer 3 could not remember all the issues, but said Complainant and Weddle were "beefing" with other officers.[183]

Weddle was a good cop in Officer 3 opinion and Officer 3 thought it would be a good idea for Weddle to separate from Complainant Weddle had time left in his career and could be mentored; this was not the case with Complainant Officer 3 believed Complainant negativity was beginning to rub off on Weddle, who was testing for sergeant, and thought it was in Weddle's best interest for him not to ride with Complainant anymore.

The discussions to separate Complainant and Weddle started well before Complainant made any complaints. There were reasons why they weren't separated sooner. First, Weddle was going through

[180] Officer 3 Interview, approximate time index 14:30.
[181] Officer 3 Interview, approximate time index 16:40.
[182] Officer 3 Interview, approximate time index 17:40.
[183] Officer 3 Interview, approximate time indexes 21:00 and 30:15.

some personal issues at home. Officer 3 didn't think it would be good to separate them at that time, when Weddle wasn't on his "A game." Then, Lewis was killed, and Officer 3 didn't want to split them because people's heads weren't in the right spots. Supervision elected not to separate them during these times for safety and morale reasons. When Complainant and Weddle were split, Officer 3 was off.

In addition to Weddle, Complainant was also testing for sergeant. Officer 3 and some of the other sergeants offered to do mock oral interviews with the officers that were testing. Officer 3 took the time to create questions and conduct the interviews. Complainant scheduled a mock oral interview but called in sick on the day of the interview. He never called or sent Officer 3 a text to advise he wasn't going to make the interview, nor did he ever ask to reschedule. At the time, Complainant and Weddle were still riding together. Officer 3 took time with both officers in the back lot at the Orange Street Station to prepare them for their interviews. He gave them information on how to score high on interview questions. He offered to review their opening and closing statements. Weddle accepted the offer and Officer 3 helped Weddle with both statements. Complainant never participated in the conversation and never had anything to offer. Officer 3 was not surprised Complainant did not show for the mock oral interview, nor was he surprised Complainant walked away from the testing process and withdrew his name the day before his actual oral interview.

Officer 3 stated Complainant and Weddle were not split out of retaliation. In addition to the reasons already provided, there were complaints coming in about Complainant and Weddle. Other officers hated working with them, and that was not the case when Weddle was by himself.[184]

Officer 3 denied retaliating against Complainant in any way. He also denied observing any hostile or retaliatory behavior by any supervisor toward Complainant.[185]

When asked if he ever observed Complainant speak to supervisors in a manner that would cause or provoke tension, he answered, "Yes." Officer 3 advised Complainant was good at walking the line of insubordination. The times Complainant pushed Officer 3 buttons, they both "went at like men." Officer 3 said it was difficult to explain, but every interaction with Complainant was unpleasant. Complainant was "very immature" especially for someone of his age and tenure. Officer 3 did not witness it, but heard Complainant called Zackowski a coward. Officer 3 could not think of any other officer that behaved the way Complainant did or walked the line of insubordination the way Complainant did.[186]

Officer 3 said Complainant reputation years ago was he was very proactive and had extensive knowledge of Casa Blanca; Officer 3 considered Complainant knowledge of Casa Blanca gangs to be expert level. However, Complainant always had a complaint. Twenty years later, it appears the complaints Complainant has had, have consumed him. Officer 3 said, "He doesn't like the direction law enforcement is going, he hates the leadership at RPD, he refers to RPD as a circus, he makes fun of the command staff…" Officer 3 asked why he didn't retire if he hated it here so much. Complainant responded by asking why he would retire when he could get paid to watch the circus under the big top. Officer 3 found this interesting because he thought Complainant was friends

[184] Officer 3 Interview, approximate time index 30:30.
[185] Officer 3 Interview, approximate time index 31:45.
[186] Officer 3 Interview, approximate time index 32:00.

with the Chief. Complainant would bash the command staff and how RPD operated but claimed to be friends with the Chief of Police.[187]

Detmer asked Officer 3 if he ever heard Complainant refer to sergeants as the enemy. Officer 3 said, "Yeah." Officer 3 said he knew Complainant did well on the written exam for the position of sergeant. He asked Complainant about his sergeant interview and Complainant said something similar to he decided he couldn't sleep with the enemy. Officer 3 told him usually people figured that out prior to taking the test.

Officer 3 was present in roll call when Complainant was moved to Area 5. He didn't know why Complainant was moved, but when Officer 3 saw this, he said Complainant needed to be moved back to his area and Complainant was usually 3R28. Zackowski also said something, but Complainant stormed out. Officer 3 thought it was an oversight on Officer 4 part. As soon as it was brought to Officer 4 attention, he readily agreed to move Complainant. Zackowski went out into the parking lot to notify Complainant and Officer 3 heard it went "real shitty" and there was name calling. Officer 3 said Zackowski had been advocating for Complainant and it got fixed immediately.[188]

Officer 3 was unaware of any issues between Complainant and Officer 4 prior to that and did not believe this was done in retaliation. He believed there were some personnel issues and Officer 4 moved someone to avoid this but happened to pick the wrong officer. Officer 3 knew a decision was made by supervision to not allow Complainant to work in the same beat as Officer 1 and Officer 2 and vice versa. I asked if Area 5 needed an additional officer the night Complainant was moved, so Officer 4 moved Complainant. Officer 3 said this sounded right and could have been the issue, but he was not positive.[189]

Officer 3 knew officers were moved for various reasons but could not recall ever having a personnel issue like this where supervision felt officers could not work in the same beat as one another and therefore would not allow it.

After Zackowski came back inside from letting Complainant know he had been moved back to Area 2, Complainant came back into roll call to file a complaint against Officer 4 with Officer 4. Complainant tried to hand some forms to Officer 4 but Officer 4 told Complainant he needed to go to the captain, Internal Affairs, or Human Resources since the complaint was against him. Complainant left then returned a couple minutes later saying the captain wasn't in his office. Officer 4 directed him to Internal Affairs or Human Resources.[190]

Complainant appeared to have a "fight or flight" look when this occurred. He was very agitated, red faced, and shaking. Officer 3 said, "That's how he gets." He didn't remember Complainant yelling.[191]

Officer 3 observed one or two rat flyers in the locker room. He didn't know what they meant. He knew the flyers said something but didn't recall they said Rat Busters; he didn't know what

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187 Officer 3 Interview, approximate time index 33:45.
188 Officer 3 Interview, approximate time index 36:30.
189 Officer 3 Interview, approximate time index 38:30.
190 Officer 3 Interview, approximate time index 41:00.
191 Officer 3 Interview, approximate time index 41:45.

Rat Busters meant. When he first saw the flyers, he didn't know if the flyers referred to anyone or not. He didn't think anything of them and just dismissed them. There wasn't anything about the flyer that grabbed his attention, and the flyer didn't appear threatening.[192]

The flyers were taken down and he never saw them again. He didn't draw a connection between the flyer about someone ratting someone out. He didn't give the flyer much thought and didn't cross his mind this may be a form of retaliation or harassment.[193]

Officer 3 did not print or post the flyers. He did not hear who might have placed them.[194]

Officer 4 (or Barney) addressed the flyers in roll call the next day. He advised they would not tolerate that behavior and were investigating. Complainant from the back of the room, said he wanted to know the outcome of the investigation. That's when Officer 3 made the connection the flyers may have something to do with Complainant Later, Officer 3 also heard one of the flyers was placed in Complainant mailbox.

At the time the flyers were posted, Officer 3 did not know anything about the relationship between Complainant and J. Mutuku. Officer 3 later learned there was an issue between J. Mutuku and Complainant regarding Complainant not logging on for a swap meet shift. Officer 3 heard J. Mutuku was directed by the watch commander to go tell Complainant who was working the swap meet, to log on. Officer 3 was not present for this conversation, he only heard they had a "beef."

Officer 3 never heard J. Mutuku say anything about Complainant having an issue with Officer 1 and Officer 2 riding together and he never heard J. Mutuku say anything about Complainant filing a complaint against Officer 1 and Officer 2 with Internal Affairs. He never heard J. Mutuku say anything negative about Complainant having issues with Officer 1

Officer 3 acknowledged at shift sign up, sergeants sign up first, followed by officers. With Complainant tenure, Complainant could sign up for any crew he wanted, but still signed up to work for Officer 3 Detmer asked Officer 3 if he would sign up (as an officer) to work for a sergeant that was causing him a hostile work environment. Officer 3 answered, "Not at all. I would not sign up on that crew."[195]

In closing, Officer 3 mentioned Complainant had blocked his cell phone number. Officer 3 would have to have Tipre call Complainant to reach him. This was another example of some of the games Complainant played.

I told Officer 3 I heard Complainant would ask for Officer 3 ETA over the radio and asked if this was normal. Officer 3 confirmed Complainant would ask for his ETA over Channel 1 and said this was not normal. Other than Complainant Officer 3 has never had another officer ask for his ETA. Occasionally an officer might have a need to do this, but there was no need the amount of times Complainant did this. Officer 3 take was Complainant did this "more as a probing." The only time Officer 3 could see an

192 Officer 3 Interview, approximate time index 42:45.
193 Officer 3 Interview, approximate time index 44:45.
194 Officer 3 Interview, approximate time index 45:35.
195 Officer 3 Interview, approximate time index 49:30.

officer asking for an ETA, is if the other unit had an asset that they might need. In these cases, Officer 3 didn't have anything Complainant needed. This was done officer to officer.

Officer 3 agreed a lot of communication today between officers and their sergeants was handled by cell phone. I asked Officer 3 if he thought this was a game Complainant played with supervision. Officer 3 answered, "Yes. It's nothing but a game with him." I asked if he would call it poking the bear and Complainant trying to antagonize. Officer 3 answered, "Yes."

When asked if Officer 3 had anything else, Officer 3 said, "We could go on and on, but there's no need." He said, "He likes to poke the bear. He likes to walk that fine line between insubordination." He continued, "And he's good at it. He's very good at it."

Officer 3 opinion was Complainant had something else going on and needed assistance elsewhere.

INTERVIEW OF WITNESS OFFICER DEXTER PATTISON:

On January 8, 2023, at approximately 7:57 am, I interviewed Officer Dexter Pattison by telephone. The following is a summary of Pattison's recorded interview. It is not verbatim or necessarily in order but is organized for clarity.

Pattison could not recall any details regarding the overtime he worked on October 1, 2022. He said it was common for him to stay late and write reports on Watch B.

(Later, through email communications, Pattison advised he typically wrote his reports in the report writing room at the Lincoln Station.)

SECOND INTERVIEW OF SUBJECT OFFICER JAMES MUTUKU:

On February 21, 2023, at approximately 3:01 pm, Lieutenant Eric Detmer and I interviewed Sergeant James Mutuku in the Internal Affairs Conference Room. Prior to the interview, we provided J. Mutuku an Admonition of Rights Packet, an audio recording and transcript of his interview on January 19, and video footage from the Lincoln Station from October 1, which captured him walk into the Lincoln Station at 4:05 pm.

J. Mutuku declined to listen to his previous interview or review the transcript; he advised he recalled what he previously said. He also declined to review the video. Together, we reviewed the Admonition of Rights Packet. J. Mutuku understood his rights and did not have any questions. He elected not to have a representative present and signed the Admonition of Rights Packet in our presence.

The following is a summary of J. Mutuku's recorded interview. It is not verbatim or necessarily in order but is organized for clarity. (J. Mutuku's interview was also transcribed and is attached to the case file.)

J. Mutuku could offer no explanation as to why his prints were located on the flyer that had been encased in a frame and found in the men's locker room. He maintained he did not post the flyers and had never seen them.

He admitted he was frustrated with Complainant and did not like him. I asked if this was enough to drive him to place the flyers. J. Mutuku denied it was. He said, "I cannot explain why my fingerprints would be on there."[196]

J. Mutuku was presented with the report from CAL-ID which showed his fingerprints were located on the flyer. Detmer explained it looked bad. J. Mutuku said, "I understand, but I'm telling you that I did not put the flyer up. I do not know why my fingerprints are on the flyer. I hadn't seen the flyer. I've never seen the flyer."[197]

I asked if there would be any reason why his prints or DNA would be on the frame that the flyers were in. Mutuku replied, "I mean, you have to—uh, where is this frame at, uh, 'cause [*sic*] you… you (unintelligible) in some vinyl frame. I don't know what you're talking about, 'cause [*sic*], again, I didn't… I haven't… so I don't… where's this… I… I don't know where you're talking about location-wise, anything else."[198]

J. Mutuku maintained he did not print the flyers, put up the flyers, did not put them in the vinyl frame, and did not see them.[199]

I reminded him we also had video of him entering the station minutes before the flyer was printed. I asked if he remembered that day and if he could remember seeing anyone else at the station… someone else that we could investigate. J. Mutuku could not recall and said he would have to look at his log and everything else.

Detmer and I both told J. Mutuku we were surprised by the results from CAL-ID.

J. Mutuku said, "I a hundred percent get it, but I… again, I'm standing by what I said. I di… I didn't print the flyer, I've never seen the flyer, and I didn't put the flyer up or touch this vinyl case that you're talking about."[200]

I told J. Mutuku I looked at every possibility in terms of who was responsible for the flyers to include who worked that day. I explained several names were mentioned in the sixteen interviews that were conducted for this investigation and only three of those individuals worked the day the flyers were printed: J. Mutuku, Officer 1 (but she took the day off), and Officer 2 but her unit GPS showed her on the east side. He replied, "Okay."

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[196] J. Mutuku Interview 2, approximate time index 5:30; page 4 of transcript.
[197] J. Mutuku Interview 2, approximate time index 6:45; pages 4 and 5 of transcript.
[198] J. Mutuku Interview 2, approximate time index 7:15; page 4 of transcript.
[199] J. Mutuku Interview 2, approximate time index 8:00 page 6 of transcript.
[200] J. Mutuku Interview 2, approximate time index 10:30; page 8 of transcript.

I explained I also looked at who could have been in the station at the time the flyers were printed, because after 4:00 pm, dayshift would have likely gone home. He agreed and said, "Yeah, the majority of them, yeah."[201]

I told him I pulled Telestaff and GPS records to see who might have been at the station at the time the flyers were printed. Telestaff only showed two officers, Pattison and Cappelen that held over and neither of them were mentioned by anyone interviewed. GPS records only showed two units at the station at the time the flyers were printed. (*One of these units was J. Mutuku; the other was Sergeant Tanner Paes who was not mentioned by anyone interviewed in this investigation.)* I told him there weren't many people at the station that would have had an opportunity to print the flyers. He replied, "Okay."

I told J. Mutuku I knew from personal experience how hard it was at times to work with your spouse. I could see why he would be frustrated and I didn't understand why he never reported Complainant for not backing his wife on calls. I told him I just wanted him to be honest.

J. Mutuku replied, "I understand what you're saying. I understand the evidence you've presented reference this. It's black and white. I'm not stupid. I get it. I get all the circumstantial stuff. I understand that, but my answer's not gonna [*sic*] change. From the first interview, from the three times I've said it now, it's gonna [*sic*] be the same answer."[202]

J. Mutuku said he respected Detmer and me, "but my answer is—there's nothing's gonna [*sic*] make me change my answer. Uh, that's—my answer's what it is."

I explained prints had not yet come back on the frame of the flyer, but all the evidence items collected had also been swabbed for DNA. I explained the frame was not an item stocked at the Department. Since J. Mutuku maintained he was not responsible for the flyers, I asked if he would be willing to voluntarily supply a buccal swab to collect a sample of his DNA to show his DNA was not on the frame. Mutuku answered "yes." He said he would have no problem doing that but said he may have touched a locker on his way out of the locker room.[203]
He continued, "But usually, like, special cases that somebody brought and put, that aren't… don't usually belong there, then, then, there's no reason for me… my DNA to be anywhere on there, and I have no problem with providing a buccal swab.[204]

Detmer explained to J. Mutuku three different fingerprint examiners compared and confirmed J. Mutuku's prints were located on the flyer inside the vinyl or plastic frame.

I moved on and asked J. Mutuku why he drove to the swap meet to tell Complainant to log on instead of calling him on the phone or radio. J. Mutuku said he wanted to make sure Complainant was physically there. I told him I was curious about this because when he did that, there were

[201] J. Mutuku Interview 2, approximate time index 12:30; page 10 of transcript.
[202] J. Mutuku Interview 2, approximate time index 14:00; page 11 of transcript.
[203] J. Mutuku Interview 2, approximate time index 18:15; page 14 of transcript.
[204] J. Mutuku Interview 2, approximate time index 18:45; page 14 of transcript.

already issues with Complainant and he agreed. I asked why he didn't just call him and ask then. He replied, "The only reason is to make sure he's physically there."[205]

I began to ask if he doubted and J. Mutuku interrupted. He said, "Not… I didn't doubt. I just wanted to make sure." He said it was odd someone didn't log on for overtime. I told him I understood it was common for Complainant to do that and it was a repeated problem. J. Mutuku said he had never seen Complainant do that before, but he may have. He explained he (J. Mutuku) usually worked Area 5, but that particular day he worked Area 4 (swap meet is located in Area 4).

J. Mutuku said since his first interview, there have been no verbal disputes with Complainant but Complainant has continued with the "silliness…" the puffing on the chest…

I asked if J. Mutuku had any questions for us. J. Mutuku did not have any questions but advised he would like to consult with an attorney prior to his DNA being collected.[206]

We ended the interview at 3:24 pm.

After the interview, I downloaded the audio recording and added it to the thumb drive that contained the audio recording from his first interview and the video footage from the Lincoln Station. I provided the thumb drive to J. Mutuku along with the transcript of his first interview. I also scanned his Admonition of Rights Packets and emailed him a copy. J. Mutuku thanked me and left.

On February 22, 2023, Attorney Saku Ethir notified me J. Mutuku had reached out to her. She inquired about J. Mutuku's interview recordings and transcripts. I informed her I provided everything to J. Mutuku except the transcript of his second interview. She acknowledged J. Mutuku had them and said she would review them. I told her I would forward the transcript of the second interview once it was available. I emailed her and J. Mutuku the transcript of the second interview and the Complaint Control Form on February 23, 2023.

INTERVIEW OF SUBJECT Officer 3 :

On March 1, 2023, at approximately 3:08 pm, Lieutenant Eric Detmer and I interviewed Officer 3 in the Internal Affairs Conference Room. Officer 3 elected to have Attorney Saku Ethir as his representative. Prior to the interview, Officer 3 and Ethir had an opportunity to review the Admonition of Rights Packet which we went over and signed. They were also given the opportunity to review audio of Officer 3 interview on January 31, but they declined. The interview was recorded using a department issued digital audio recorder. The following is a summary of the interview. It is not verbatim or necessarily in order but is organized for clarity.

[205] J. Mutuku Interview 2, approximate time index 21:00; page 16 of transcript.
[206] J. Mutuku Interview 2, approximate time index 22:30; page 18 of transcript.

Officer 3 did not know why Complainant filed the second complaint, other than "this is what he does," but said Complainant told him he was going to file it.

On February 20, at approximately 10:15 pm, a violent domestic violence was broadcast over the radio. Complainant beat partner, Officer Daniel Covarrubias, was dispatched to the call. The dispatcher advised the male suspect in that call, broke into the residence and was assaulting his wife/girlfriend and the children. Officer 3 could not recall all the details broadcast, but it was enough that Covarrubias copied the call and put himself enroute to the call Code 3 (emergency response with lights and sirens).

Officer 3 observed two other Area 2 officers were responding to the call to assist Covarrubias. In addition, two officers from Area 1 were also responding to assist based on the circumstances of the call. Complainant was on Code 7 (meal break).

When Covarrubias arrived on scene, he asked how far out his back up was. That was a clue to Officer 3 that Covarrubias either had something in front of him that needed to deal with right then, or he heard something and something wasn't right. Officer 3 asked over the radio for the nearest unit. Officer Tai got on the radio and advised he was two minutes out. To Officer 3 two minutes is a long time to wait for back up. Officer 3 didn't think two minutes was good and that officers needed to get there to help that family out. Officer 3 asked over the radio if there were any other units closer. He asked if "28" (Complainant was closer. Officer 3 looked at the board again and observed Complainant had not cleared himself from Code 7. Officer 3 advised over the radio, "10-22, he's on Code 7."[207]

Officer 3 advised this was his way of hinting to Complainant to clear Code 7 and put himself enroute to the call. That's what is expected at the Department, it's in the policy, it's a matter of practice, it's standard operating procedure and it's a well-known practice in the law enforcement profession. Complainant didn't do that and this irritated Officer 3 He said it was 10:15 pm and, "we all know that he's not on Code 7. He's not eating. He's not doing anything."

Right after Perkin's radio traffic, he received two text messages from Complainant Officer 3 read aloud the first message received at 10:36 pm. Officer 3 said it read, "I guess you didn't watch the city harassment video." Officer 3 ignored this text as he was still trying to manage the call and getting ready to respond to the call. At 10:37 pm, Officer 3 received a second text from Complainant that read, "And I apologize for taking my lunch. I didn't realize that was prohibited." Officer 3 ignored this text as well.

Within minutes and as Officer 3 gathered his things to respond to the call, Complainant came into the sergeant's bay. (A graveyard sergeant put himself enroute to the call so that alleviated the need for Officer 3 to respond.) Complainant asked if he wasn't allowed to take his Code 7. Officer 3 told him nobody said Complainant couldn't take Code 7, but Complainant was expected to clear Code 7 immediately when something was going down in his beat. This was especially true when a unit was rolling Code 3 to a violent domestic violence call. Complainant took issue with that.[208]

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[207] Officer 3 Interview 2, approximate time index 5:10. "10-22" is the radio code for cancel last transmission/request.
[208] Officer 3 Interview 2, approximate time index 8:15.

Officer 3 told Complainant that wasn't how we did business. He explained there was a reason we got a paid lunch and we were sworn employees. We get a paid lunch because we can be dispatched to, and expect to respond to, calls for service even if we are sitting down eating food.[209]

Officer 3 said, "So yeah… I was a little irritated that… here's a guy that proclaims to be… uh… the best policeman RPD has ever known and yet he can't get off his ass and go respond to help his beat partner." Officer 3 said the young officer that responded could have been involved in a major physical fight with someone. Not only did Complainant fail to respond to help his beat partner, but he also took time to send Officer 3 two text messages within a short time span. Shortly after sending the messages, Complainant came into the sergeant's office and decided to have a verbal confrontation with him. This told Officer 3 Complainant was in the parking lot when he sent the messages. Also, another sergeant told him they had just seen Complainant in the parking lot.[210]

Officer 3 told Complainant he was wrong and he was "a shitty beat partner" for doing that. This led to "a big shouting match" in the office. Complainant told Officer 3 he was career dead like he was. Complainant called Officer 3 a loser because he couldn't get promoted. Officer 3 had enough. He told Complainant "Get the fuck out of this office." He told Complainant he was done talking to him. Complainant told him he was going to file a complaint for cursing at him. Officer 3 told him he didn't care what he did. He told him to file a complaint, nobody cared what he did, and this was Complainant new thing…to file complaints on people.[211]

Officer 3 also told Complainant he was the most immature fifty-three-year-old he had ever met in his life. Complainant wiped boogers on the walls and took a bite out of every donut in the breakroom if a church brought them in for the officers. Officer 3 said Complainant has been doing these things for over twenty years.[212]

There wasn't anyone else in the sergeant's bay when Officer 3 and Complainant exchanged words. However, Sergeant Ouk walked in briefly, grabbed something off desk, and left.

Officer 3 believed the domestic violence call came out around 10:15 pm. He said Officer Daniel Covarrubias handled the call and it made the graveyard shift summary. Officer 3 said the suspect broke the window to the house, attacked the mother, attacked all the kids, and it was a big mess.[213]

Officer 3 said Complainant typical practice is to put himself on Code 7 during the transition period between swing shift and graveyard. Officer 3 has observed Complainant do this several times and doesn't care that he does it, but when something is going on in the beat, Officer 3 expects Complainant to clear Code 7 and put himself enroute to the call. Officer 3 didn't think this expectation was unreasonable. He did not know if Complainant asked if he was clear to take Code 7, but never

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209 Officer 3 Interview 2, approximate time index 8:45.
210 Officer 3 Interview 2, approximate time indexes 9:15 and 12:08.
211 Officer 3 Interview 2, approximate time index 9:45.
212 Officer 3 Interview 2, approximate time index 11:00.
213 Officer 3 Interview 2, approximate time index 11:00.

hears him ask over the radio. As far as Officer 3 knew, Complainant just puts himself Code 7 from his MDC.[214]

Complainant level of disrespect and insubordination has gotten to the point where it cannot be tolerated anymore, but it appears it is being tolerated. Officer 3 doesn't tolerate it. This is his second time in Internal Affairs for the same individual.

Prior to the domestic violence call, there was another incident that happened earlier in the shift. At approximately 9:30 pm, dispatch put out information from Fullerton Police Department regarding a suspect vehicle involved in the robbery of a Game Stop. Dispatch advised the vehicle was tracking eastbound on SR-91, provided a vehicle description, partial plate, and suspect descriptions. Officer 3 did not initially copy the call, but began to hear radio traffic, specifically Complainant that he was on the freeway attempting to locate the vehicle.[215]

Officer 3 received a call from dispatch and they asked if he copied the call. They provided additional details to include there was a device in the suspect vehicle that was allowing law enforcement to track the vehicle. The call was beat info only, but Officer 3 was good with Complainant attempting to locate the vehicle.

Eventually however, dispatch advised the vehicle was tracking in Colton. Officer 3 confirmed with dispatch the vehicle was no longer in our city, then told all RPD units to clear and return to the city. Officer 3 said Complainant probably took issue with that, and thought Officer 3 was singling him out. Officer 3 wasn't singling him out but was acting in his normal course of business as a field supervisor. In addition, Complainant was not the only unit that was attempting to locate the vehicle.[216]

There have been additional incidents involving Complainant since February 20. For example, yesterday, during roll call, Detectives Josh Ontko and Dave Riedeman (Riverside Police Officer's Association Vice President and President) came in to give a brief about some of the things that have been going on. The presentation was helpful. Ontko and Riedeman extended an olive branch for officers that may need assistance. At the end of their presentation, Ontko and Riedeman asked if anyone had any questions. Complainant raised his hand and asked if they ever found out why the gun wasn't found on "that dead kid out in the field" and "whatever happened with that. (The incident Complainant asked about occurred on December 26, 2022.)[217]

Complainant knew what happened, because Officer 3 was on that call and provided a brief to roll call following it. Officer 3 was the supervisor on scene when he, the officers, and the coroner did not find the gun. He said the coroner didn't "find the hole in the guy's head either," and they didn't look for a gun other than what they could see. The gun was in the bushes, it was dark, and the coroner literally placed a body bag on top of it which likely further pressed the gun into the weeds.

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214 Officer 3 Interview 2, approximate time index 13:05.
215 Officer 3 Interview 2, approximate time index 16:15.
216 Officer 3 Interview 2, approximate time index 18:25.
217 Officer 3 Interview 2, approximate time indexes 20:40 and 23:20.

Officer 3 said it was a clear "jab" and "dig" at him by Complainant when Complainant asked these questions, because Officer 3 briefed the call during roll call the same day he learned of the information. The day after the body was located, the coroner's officer discovered a hole in the guy's head and contacted RPD's Robbery Homicide Unit. They in turn contacted Officer 3 and asked him to respond to help locate the possible crime scene in the field. Officer 3 met detectives in the field at approximately 10:00 am and they located the gun. Officer 3 then briefed everyone in roll call hours later about what happened. Complainant sat in the back "laughing and smiling."[218]

Complainant was also "laughing and smiling" now that J. Mutuku was "on the ropes now." That's the way Complainant is and that is what he does. He takes these jabs, constantly skirts the line of insubordination, and clearly had crossed it many times now. It's reached a point where Complainant is incapable of being supervised by a sergeant.[219]

Officer 3 said Complainant believes he could do no wrong and when he does do something wrong and someone calls him on it, "he loses his marbles." Officer 3 said, "But he, himself, can attack every bureau he's ever worked in, every supervisor that he has to answer to… every… any time his actions are called into question or even remotely challenged… he flies off the rails."[220]

On February 20, Complainant got under Officer 3 skin when he called him a loser for not being able to get promoted. These were conversations Officer 3 had with Complainant "as a friend" in the past. Officer 3 had expressed his frustrations to Complainant about his profession. For Complainant to then use that against him, was "kind of a low blow, very immature, and unprofessional." Officer 3 said, "And I thought…you know what? I'm done with you. Get the fuck out of this office. And I had to tell him more than once."[221]

Officer 3 was fine afterward. He said he could "go toe to toe with anybody if we're yelling and screaming at each other and we're done." That was fine and he was cool with that. Then Complainant went off and filed a complaint with Internal Affairs, which was "entertaining."

Officer 3 advised Complainant used profanity during their exchange (but could not recall specifically what Complainant said) and without a doubt both Complainant and Officer 3 voices were raised. Officer 3 has heard Complainant use profanity in the past and said it was common for Complainant and most officers to use profanity. Officer 3 agreed it was common for personnel within the Department to use profanity and said it was not always used in a confrontational manner but in normal, routine discussions. Most of the time, it's not used in a confrontational manner.[222]

Officer 3 believed Complainant sole purpose for going into the sergeant's bay that night was to start a confrontation with him, because Officer 3 did not reply to Complainant text messages. Officer 3 said, "He boils over that. He stews and boils. This is a guy that should not have a gun and he shouldn't have a badge. He's mentally unstable and I'm putting it on record. I think he's

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218 Officer 3 Interview 2, approximate time index 21:40.
219 Officer 3 Interview 2, approximate time index 22:45.
220 Officer 3 Interview 2, approximate time index 23:45.
221 Officer 3 Interview 2, approximate time index 24:20.
222 Officer 3 Interview 2, approximate time index 25:20.

going to walk into roll call and start blasting people and I'm going to be the first one. That's… that's what we're dealing with here and I've made that point to several people."[223]

When asked if Officer 3 noticed anything about Complainant when he came into the sergeant's bay, Officer 3 advised Complainant doesn't use any rank or titles when addressing people to show respect, at least at the sergeant level. He further described Complainant face gets red, he appears to break out in hives and he is unable to control his emotions. Officer 3 admitted he was "pissed" that day after Complainant said what he did. It's a problem that Complainant behavior has been allowed to continue. Officer 3 realizes there is an on-going investigation but believes Complainant behavior needs to be addressed more than just being told by lieutenants to not talk to sergeants the way he does. Officer 3 knew of two lieutenants who had conversations with Complainant telling him he couldn't talk to sergeants the way he does, but it continues to happen.

Officer 3 asked if Complainant was being investigated as a subject officer for failure to take action or dereliction of duty regarding Complainant not clearing Code 7 and responding to the domestic violence call discussed earlier. Detmer advised we couldn't give specifics, but it was obvious why Complainant had gone from a complainant to a subject officer. He explained we were addressing concerns brought to light by multiple witnesses. Officer 3 wanted to be sure this issue would be addressed, otherwise he wanted to file a complaint on Complainant for dereliction of duty.

Officer 3 agreed that he and Complainant have used profanity around one another and have had heated discussions prior to February 20. Complainant has also had these types of exchanges with other supervisors and other officers. Complainant remembered having a similar exchange with Complainant about fifteen years ago, when Officer 3 was still an officer; when Complainant questioned how Officer 3 managed a beat. Officer 3 said, "But then… then you find out… oh… he's done that with the Gang Unit, Aviation, and the more you talk to people… it's like… wow! Everywhere this guy goes… he has a problem with everything everybody does but he doesn't have a problem with himself." Complainant is incapable of doing a self-evaluation of his own career path and behavior which is something we all must do. Officer 3 said, "It's just impossible for him to do that, which is unfortunate."[224]

When Complainant first came into the sergeant's bay, he confronted Officer 3 about taking Code 7 but then switched gears and began to personally attack Officer 3 by telling him he was career dead and called him a loser because he couldn't get promoted. Officer 3 is currently on the promotional lieutenant's list and this is the fourth list he has been on. Complainant knows that. That was the final straw that prompted Officer 3 to tell him to "get the fuck out of the office." It started though over Complainant failing to clear Code 7 to respond to a violent domestic violence call in which an inexperienced officer was responding to Code 3.[225]

Ethir mentioned Officer 3 stated in his last interview, he did not allow Complainant to get under his skin. She said there was only so much someone could take however, and this personal attack on Officer 3 was what pushed Officer 3 to the point where he allowed Complainant to get under his skin.

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223 Officer 3 Interview 2, approximate time index 26:40.
224 Officer 3 Interview 2, approximate time index 29:50.
225 Officer 3 Interview 2, approximate time index 31:00.

Officer 3 agreed and said he has seen Complainant get under the skin of others to include Zackowski. He used to tell Zackowski to let him deal with Complainant because Complainant was on his squad and was his problem. Officer 3 acknowledged he has had heated debates with Complainant and was totally fine with that. He said, "But, you know… I just have had enough of it. It's just gotten to be out of control." Officer 3 has been a sergeant for almost ten years. He has had thousands of interactions with police officers and subordinates and "none of them go this way. None of 'em [*sic*] go this way. They never go this way." [226]

Officer 3 doesn't nitpick people, pick battles, or pick battles with Complainant In fact, Officer 3 often leaves things alone with Complainant because it's not worth it to address minor issues with him; issues he would definitely address with a younger officer. Officer 3 said at this point, Complainant is career dead. He has an issue with his career path, or lack thereof.

Officer 3 is the first-person Complainant must deal with in terms of the face of the Department regarding authority and Officer 3 has to "take the brunt of all his BS." Officer 3 is a representative of the Chief, but Complainant just walks all over all the sergeants "unchecked." It's gotten to be a "bit ridiculous" and has "reached a boiling point." There have been times, when a lieutenant planned to write Complainant up but was overridden by the captain or someone above him. There has been a long period where nothing has happened to Complainant and there isn't anything in writing to document his behavior.

Officer 3 believed Complainant was still on Code 7 when he sent the text messages but did not know where Complainant was. He presumed he was in the parking lot based on how quickly Complainant made it into the sergeant's bay after sending the messages.

INTERVIEW OF WITNESS OFFICER JENNIFER CAPPELEN:

On March 2, 2023, I called Officer Jennifer Cappelen to interview her as a witness in this investigation. I asked if she recalled any details from October 1, 2022, specifically the overtime she worked that day (1700-1830 hours). Cappelen reviewed Telestaff, CAD and the calendar from her phone, but was unable to recall any details from this day.
I recorded the call with her permission.

INTERVIEW OF WITNESS OFFICER CHAMROEUN OUK:

On March 8, 2023, I called Sergeant Chamroeun Ouk to interview him as a witness in this investigation. I asked if he recalled an argument that may have occurred between Complainant and Officer 3 on February 20, 2023.

Ouk advised in roll call, he heard a domestic violence call dispatched and a unit respond Code 3. He did not hear where the call was located, so he wanted to log onto his unit quickly in the event he needed to respond. Ouk walked into the sergeant's bay to grab his keys where he encountered Complainant and Officer 3 Both had raised voices and were standing near

[226] Officer 3 Interview 2, approximate time index 32:55.

Officer 3 desk. Ouk could not recall what was said and left immediately after grabbing his keys. He worked Area 5 that shift, so he did not respond to the domestic violence call and had no further information.

I recorded the call with his permission.

INTERVIEW OF WITNESS OFFICER DAVE RIEDEMAN:

On March 9, 2023, at 11:34 am, I interviewed Detective Dave Riedeman in my office in Internal Affairs as a witness in this investigation. The interview was recorded using a department issued digital audio recorder. The following is a summary of the interview. It is not verbatim or necessarily in order but is organized for clarity.

Riedeman advised he and Ontko gave a presentation to Watch C roll call on February 28, 2023. Riedeman and Ontko are both robbery / homicide detectives and are also Riverside Police Officer Association Board Members Their presentation was geared toward their role as detectives, evidence collection, etc. At the end of their presentation, they asked if anyone had any questions. A few people asked questions, to include Complainant

asked about a recent suicide in which the subject died from a self-inflicted gunshot wound, but the firearm was not discovered when the body was recovered. Riedeman was familiar with this case as he responded to the scene the day after the body was recovered.

Riedeman believed there were several reasons why the firearm was initially missed and not recovered the night the body was located officers and later recovered by the coroner's office. His following account of events is based on his visit to the scene the following day and speaking with the coroner and RPD personnel. Riedeman advised it was dark and there was some brush in the area (open field) the body was located. When the officers arrived and located the body, they backed away and waited for the coroner to arrive. The coroner assessed the body and did not locate a gunshot wound to the head. The coroner placed the body into a body bag and left the scene.

The following day, the coroner's office contacted RPD personnel and advised the subject had died from a gunshot wound. Riedeman and other members of the Robbery/Homicide Unit responded to the scene to see if they could locate a firearm. Officer 3 who was off duty, also arrived to assist. RPD personnel recovered the firearm.

Complainant question about how the firearm was missed, felt like Complainant was pointing out a mistake made by Officer 3 (Officer 3 was the scene supervisor the night the body was recovered and was also in roll call when Complainant asked the question.) Riedeman said, "It did feel like that. I think… not just to me, but to… to anybody in there that knew about the case."[227]

[227] Riedeman Interview, approximate time index 5:00.

"At a minimum," Riedeman "definitely" took Complainant question as Complainant pointing out a mistake Officer 3 made and Officer 3 was in the room.[228]

After the homicide presentation, Riedeman and Ontko also discussed some RPOA issues.

Riedeman has been with the Department since October 2000. He is friends with both Officer 3 and Complainant but does not hang out with them outside of work. Riedeman and Complainant have each other's cell phone numbers and have communicated in the past about RPOA issues. (Complainant was formerly an RPOA board member.)

I asked if there was anything else that stood out about the presentation given in roll call. Riedeman answered he found it odd that Complainant and Officer Andrew Tai were the only two officers seated on one half of the roll call room. Riedeman was present during a swing shift roll call a few weeks ago but could not recall if Complainant was present. Riedeman has not been in Field Operations and part of roll for eleven years. When he was, certain officers had certain seats or areas within the room they preferred to sit. He did not know if this was the case today. He could not say if the officers that were seated in roll call during the recent presentation where seated where they normally sat.

INTERVIEW OF WITNESS OFFICER JOSH ONTKO:

On March 9, 2023, at 12:05 pm, I interviewed Detective Josh Ontko in my office in Internal Affairs as a witness in this investigation. The interview was recorded using a department issued digital audio recorder. The following is a summary of the interview. It is not verbatim or necessarily in order but is organized for clarity.

Ontko has been with the Department since 2003. He started after Complainant and Officer 3 and is not personal friends with either. He attended a lot of training with Officer 3 when he was on the Sniper Team and they would hang out socially after training. He has also hung out with Officer 3 on RPOA sponsored fishing trips. Ontko has talked to Complainant "a lot" both on and off-duty, but it has always been work-related. Currently, Ontko is a detective in the Robbery/Homicide Unit; he is also a Detective Representative for the RPOA (Riverside Police Officers Association) and is assigned as the Grievance Chair. Riedeman is the current RPOA President.

Ontko and Riedeman gave a presentation to Watch C roll call in the last week or so, possibly February 28. Ontko advised his unit was asked to give the presentation regarding trends detectives were seeing and issues they were dealing with in court. Ontko and Riedeman volunteered to give the presentation.

At the end of the presentation, a few officers asked questions to include Complainant asked about a specific investigation in which a subject was found deceased in a field. Ontko knew right away what he was referring to. The coroner's initial assessment was wrong. The subject had a self-inflicted gunshot wound which was originally overlooked, and the gun was "missed." The case was talked about a lot in the beginning.

[228] Riedeman Interview, approximate time index 6:10.

Ontko said, "If I'm being honest…. I thought it was…" pretty interesting that Officer 3 was the scene supervisor and Complainant was asking the question. "It just felt, like there was more to the question than a general interest on how the gun got missed."[229]

Ontko couldn't say if it was a personal attack or dig on Officer 3 He said, "I just can only talk about what I felt, which was… it was an awkward question."[230]

Ontko knew there were issues with the case. The fact that Officer 3 was the scene supervisor and was present in roll call, made it even more awkward. He did not know if he was just projecting this because he knew Complainant and Officer 3 were having "issues" (did not know the details) and he knew Complainant personality.

Ontko explained to roll call the importance of scene security. He also explained what happened in the case where a gun was not recovered which had been next to a deceased body in a huge field. Officer 3 mindset was to approach the body to determine the condition of the subject (medical aid or deceased). Once Officer 3 determined the subject was deceased, he did the correct thing; he backed out the same way he had come in, locked down the scene, and called the coroner. It was dark, there was tall brush, and the coroner advised it appeared to be an overdose. The coroner's transport crew inadvertently placed the body bag on top of the gun. Ontko advised nobody from the Department would have had a reason to search for a gun. He acknowledged mistakes were made. This is what he explained to those in roll call.

Ontko did not remember Complainant having additional comments after the explanation was given. Ontko said he hesitated to say and wondered if he was making more of it. He described the "awkwardness" could have just been "from me, knowing the information I had."[231]

I asked Ontko if it was his opinion, based on knowing Complainant for twenty-three years, Complainant question was meant to "poke" at Officer 3 Ontko answered, "My honest opinion, was that… yeah. I felt like he was trying to throw Officer 3 under the bus, because he was the scene sergeant that day and there were mistakes made.[232]
Complainant had Ontko's cell phone number. Complainant has called or texted Ontko to follow up on cases in the past. Most notably was a homicide that occurred at a gas station in Casa Blanca. When this case went to court, it was livestreamed. Complainant followed the case and reached out to Ontko.

There was another homicide that occurred at the dead end of El Sol in Casa Blanca. Complainant also communicated with Ontko regarding this case. Ontko described between these two cases, it was the most communication he had ever had with Complainant also reached out to Ontko to talk about cases when Ontko worked in the gang unit.

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[229] Ontko Interview, approximate time index 05:55.
[230] Ontko Interview, approximate time index 06:20.
[231] Ontko Interview, approximate time index 11:45.
[232] Ontko Interview, approximate time index 12:00.

I asked, "So there's no hesitation on his part to contact you, or reach out, if he had a question or information related to an investigation?" Ontko answered, "No. None whatsoever and I've never known Compla to hold back either."[233]

Ontko stated Complainant was not afraid to give his honest opinion, even if it "hurt feelings."

Ontko said Complainant "definitely could have" contacted him in the weeks prior to roll call on February 28 to ask questions about how the gun was missed versus doing it in front of an audience.[234]

I asked if there was anything else about that roll call that stood out or he found unusual. Ontko said he noticed all the officers were sitting on one side of the room except for Complainant and another officer. In his time working patrol, certain officers routinely sat in the same spot. He said as far back as he could remember, once you had your spot, you always went to the same spot. I asked if it was possible the officers in roll call that day were seated where they normally sat. He said, "That's definitely possible because that's the first roll call, I've been to… especially for that shift… um, in years."[235]

INTERVIEW OF WITNESS/SUBJECT OFFICER Complainant "Complainant Complainant

On March 9, 2023, at 3:02 pm, Sergeant Mike Medici and I interviewed Officer Complainant "Complainant Complainant in the Internal Affairs Conference Room regarding the complaint he filed against Officer 3 on February 20, 2023. I explained his recent complaint was going to be investigated alongside the complaint he filed in October 2022 and based on interviews conducted thus far, he had been identified as a possible subject officer by the involved parties.

Complainant elected to have Attorney Peter Horton as his representative. Prior to the interview, I provided Complainant and Horton with an audio recording and transcript of Complainant first interview. I also provided an Admonition of Rights Packet which we reviewed and signed. The interview was recorded using a department issued digital audio recorder. The following is a summary of the interview. It is not verbatim or necessarily in order but is organized for clarity. (Complainant interview was also transcribed and is attached to the case file.)

I asked Complainant to explain what happened on February 20, 2023, which caused him to file a second complaint. Complainant explained he was on Code 7 and parked on St. Lawrence. He heard a domestic battery call broadcast over the radio. A unit went on scene and other units were responding. Officer 3 asked if another unit was closer and asked if Complainant was on Code 7. Complainant said this was "unprovoked" and he didn't know what he did wrong.

Complainant went into the sergeant's office and asked Officer 3 if he did something wrong. Officer 3 told him he saw on the monitor Complainant was on Code 7. Complainant asked him why he went on the

[233] Ontko Interview, approximate time index 14:40.
[234] Ontko Interview, approximate time index 15:40.
[235] Ontko Interview, approximate time index 16:00.

radio and "burn me like that." Officer 3 exploded and told him repeatedly, "Get the fuck out of the office."

Officer 3 told him he was "fucking his beat partners" by taking Code 7. They yelled and screamed some more and Complainant walked out.

Complainant acknowledged he sent Officer 3 a couple text messages prior to going into the office. He advised he apologized to Officer 3 for taking Code 7.

Complainant denied he called Officer 3 any names, but then said he may have. When asked if he called Officer 3 a loser, Complainant advised Officer 3 called him a loser. Complainant said he agreed and told Officer 3 they were both losers; Complainant was a loser because he was a lifetime patrol officer and Officer 3 was a loser because he was going to be a lifetime patrol sergeant, because of his bad temper. Complainant acknowledged he told Officer 3 he was "career dead." He did not recall telling him he would not get promoted.

I asked if he considered it disrespectful when Officer 3 called him a loser. Complainant explained he and Officer 3 have a "love hate relationship" and have had arguments over the years. They were friends and had been to each other's houses. On the night in question, Complainant thought they were just arguing. Complainant didn't have a problem with this and could tolerate this type of behavior. The reason he filed a complaint, was so he "could get out in front of it," because he believed Officer 3 would go to a lieutenant like he had in the past.[236]

Complainant feared Officer 3 would imply he did something wrong. Complainant advised he waited until graveyard was going to 10-8, before he took Code 7, so he wouldn't "fuck" his beat partners. Complainant did not know why Officer 3 got on the radio that night, other than to create a hostile work environment and "stroke it up."

Complainant said Officer 3 radio traffic was discourteous and disrespectful. He also said it was discourteous or disrespectful when Officer 3 called him a loser. When asked if it was discourteous or disrespectful, he called Officer 3 a loser, he answered, "Absolutely not, because I was responding to him." I asked if two wrongs made a right, and he answered, "Sometimes."[237]
Complainant advised he has used Code 7 for twenty years but did not always put himself Code 7 to take a meal break. He advised he has used Code 7 more frequently now that he is older, to "relax." On the night in question, Complainant put himself on Code7 through his MDC, but did not request clearance from the Communications Center prior to doing so. He advised he does not normally request clearance from the Communication Center prior to taking these breaks.[238]

On the night of the incident, Complainant put gas in his car and parked on St. Lawrence. He heard the domestic violence call being broadcast. When asked, he said he did not put himself on Code 7 to avoid being dispatched to the call. He claimed he put himself on Code 7, prior to

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236 Complainant described an incident that occurred in August 2022.
237 Complainant Interview 2, approximate time index 9:30.
238 Complainant Interview 2, approximate time index 11:30.

it being dispatched. He advised a graveyard unit was dispatched but never responded, nor did Officer 3

Complainant heard his beat partner, Covarrubias, put himself enroute to the call Code 3. Complainant did not clear from Code 7, because four other units were responding. I told him some of the units were graveyard units that would be responding from the station. He said, "Where I'm at." He said this "could have been" out of the area of the call. He agreed there would have been a delay in their response based on their location. I mentioned his unit was ready to respond, but graveyard units would have to get their units ready. He answered, "I don't know." Complainant advised they had assigned units, so they jump in their units and go. I asked about officers loading their gear, performing a shot gun and unit inspection, etc. Complainant said he hasn't seen anyone do a unit inspection in years and advised "guys get in those cars and go."

I asked if anyone else Complainant worked with put themselves on Code 7. Complainant said probably not; he was the oldest guy on patrol. I asked the last time he ever observed anyone, besides himself, take Code 7. Complainant said he had no idea and didn't look for this. I reminded him he told us in his first interview that he continually monitored the unit status. He said, "I do." I asked if he recalled ever seeing anyone, except himself, take Code 7. Complainant said, "I don't recall." He then said he would not be surprised if he was the only one that took Code 7.[239]

Complainant agreed the domestic violence call was active. He heard dispatch advise the male broke the window, assaulted the female, and was "415 verbal" with neighbors. He did not recall hearing children were in the home but said he would take my word for it. He also did not recall hearing the first officer on scene ask how far out his back up was. I asked the significance of asking this and what it meant. Complainant said he didn't know because we weren't trained that way. He said we were trained to use 11-10 and 11-11. He said if someone needed another unit, they should ask for one properly. Instead of asking how far their back was, Complainant said they should immediately ask for an 11-10 or an 11-11 and agreed this an indicator that they needed assistance."[240]

I told Complainant multiple units responded to the call from both shifts and from multiple beats, but he never cleared from Code 7 or left the area of the station. Complainant said, "That's correct and neither did the graveyard unit that was 10-8 the entire time." I told Complainant it was his beat partner that was first on scene. He replied, "We're all beat partners. We all work in Area 2. Graveyard and us." I told Complainant it was a swing shift unit that was first on scene. Complainant said that unit was dispatched to the call. I told Complainant the unit needed help. Complainant said, "I don't know if he needed help or not. He should have used 11-11." Complainant also said Officer 3 could have cleared him from Code 7 and had him respond to the call. And Officer 3 himself could have responded.[241]

Complainant said if Officer 3 had not involved a lieutenant in the argument that took place between him and Officer 3 back in August, he would not have had an issue with the argument they had

239 Complainant Interview 2, approximate time index 14:50.
240 Complainant Interview 2, approximate time index 15:30.
241 Complainant Interview 2, approximate time index 17:15.

on February 20, 2023. Arguments happened between people all the time. He would much rather have an argument with someone than, "do this."[242]

I asked if the issue Complainant had was the fact Officer 3 used profanity. Complainant said, "No." Complainant said he spent an hour and a half watching the workplace harassment video the night before and less than 24 hours later, Officer 3 was violating every one, or most of, of the policies. That was the issue.[243]

Complainant believed Officer 3 actions that night on the radio were retaliatory. Officer 3 could have called him on the phone or simply cleared Complainant from Code 7 and had him respond. Complainant said, "He did what he did, to make a fool out of me, because he's upset with me."[244]

Complainant said Officer 3 "exploded" and "blew up" after Complainant asked him if he did something wrong by taking Code 7.

I told Complainant several people alleged that he routinely stacked calls to himself that generated no reports. Complainant said this wasn't true and he handled more reports than anybody in his beat. He said this has been the case for the past five years. He stacked calls based on his direction and where he was going.[245]

I asked Complainant the average length of his police report, specifically the narrative. He answered, "It depends." He explained if it was a report without follow up, then "not much" but if it was an in-custody or something like that, then he would put as much effort as he could into it.

I asked if he recalled a conversation he and I had when I was in patrol after I kept kicking back his reports. He did. I asked what this issue was. Complainant said he thought the issue was the amount that was taken or stolen was five dollars. He thought I was "really disconnected" from what was going on in patrol.

I told him I recalled kicking back several of his reports that were three sentences at best. I reminded him I told him he could spend a minute or two to look for cameras and note whether he located any in his report. I also explained he was working the opposite end of the city from our detectives and this would save them from driving across town to look for cameras. I asked if he recalled that. Complainant said, "Yeah. That's what I want to do. I want to save them time."[246]

I asked for Complainant response regarding people advising he liked to conduct business anywhere in the city, regardless of the beat he was working. Complainant said he developed several relationships in Casa Blanca and that community relied on him. He often receives calls from people there and will respond to assist. Complainant also advised he would handle calls in other beats because they were so busy, such as a "license plate" call that he would handle over the phone.[247]

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[242] Complainant Interview 2, approximate time index 19:20.
[243] Complainant Interview 2, approximate time index 22:00.
[244] Complainant Interview 2, approximate time index 23:00.
[245] Complainant Interview 2, approximate time index 24:30.
[246] Complainant Interview 2, approximate time index 26:00.
[247] Complainant Interview 2, approximate time index 27:45.

Complainant agreed he was out of his beat when he was in Casa Blanca. I asked if by doing that, he was then leaving calls in his beat to be handled by his beat partners. Complainant answered, "Maybe."[248]

I asked Complainant if he recalled the presentation by Ontko and Riedeman that occurred approximately one week after he filed the complaint against Officer 3 on February 20, 2023. Complainant recalled the presentation but did not recall what it was about. I asked if he remembered what he asked at the end of the presentation. He asked me to refresh his memory and I did. I asked why he asked the question about the dead kid in the field and the gun that was not found. Complainant then recalled what the presentation was about. He could not remember his exact question, but knew it involved the crime scene where the gun was not recovered. I asked again why he asked this. Complainant said he thought it was important and they were talking about crime scenes.

I asked if Officer 3 already addressed this the day after it happened in roll call. Complainant said, "Yeah. He blamed the coroner." I told Complainant the information had already been provided to him back in December. Officer 3 explained what happened in roll call. Complainant agreed and said he was present. I asked why he asked about it then. Complainant said it was a good training point and not everybody that day was present in the previous roll call. There were a lot of young "policemen" in roll call and there wasn't anything wrong with saying you made a mistake. Complainant denied he asked the question to embarrass Officer 3[249]

Complainant has been with the Department for 24 years and has represented officers who are the subjects of complaints or administrative investigations for five or six years. I asked if there would be anyone at the Department (aside from Officer 3 J. Mutuku, Officer 4 Officer 1 and Officer 2 that would have a reason to lie or say things about him that weren't true. Complainant answered, "I don't have any idea." People had their opinions and could say whatever they wanted. I asked if they would have a reason to lie. Complainant said he didn't know. I asked if Weddle, his former partner, would have a reason to lie about him. Complainant had no idea. He had no idea about McMahon, Riedeman, and Ontko.[250]

Complainant affirmed he believed Officer 3 started coming after him after he filed his first complaint. I asked if this was true, why did Complainant sign up to work for Officer 3 in January at shift change. Complainant said he wanted the days off and would tolerate his behavior. I told Complainant I pulled this sign-up list and found he was the third officer of 147 to sign up. Complainant had his choice to work any shift, on any crew, but chose to work for Officer 3 Complainant said he signed up for the days off and if Officer 3 signed up that was his choice. I told Complainant Officer 3 signed up before he did. Complainant said Officer 3 should have been prevented from signing up for that crew. "They" should have gone to Officer 3 and told him he had to pick to another crew. Complainant said, "I'm the victim in this. I was retaliated against. I need to be protected by my employer." I told Complainant he signed up to work for the person he alleged was victimizing him. Complainant said he already answered the question and said yes.[251]

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248 Complainant Interview 2, approximate time index 29:00.
249 Complainant Interview 2, approximate time index 32:00.
250 Complainant Interview 2, approximate time index 34:00.
251 Complainant Interview 2, approximate time index 35:00.

Complainant said he "might have" sent via text the pictures he took of the rat flyers to members of the Department or at least shown them to them. He did not remember. He did not remember sending it to Christianson. Complainant could not remember who he sent it, or showed it, to. Complainant didn't know why he did this but wanted to see what people's reactions were. He denied he did it to provoke the situation. Complainant said he didn't know what to do when this happened and he didn't want to cause a bunch of problems for "Larry."[252]

I asked Complainant if he considered it discourteous or disrespectful when he called Zackowski a coward. Complainant answered, "Yes."[253]

Complainant recalled an incident that occurred two or three years earlier that involved Officer 1 and Officer 2 I told him I heard he was rude to Officer 1 on the Channel 1 and Officer 1 showed up to his scene, with Officer 2 and confronted him. I told him Officer 1 and Officer 2 advised after this incident, Complainant no longer backed them on their calls to include occupied on GTA's, use of force, etc. Complainant denied this. He said he went on all the calls, but when officers advised 10-34, Complainant did not go. He wasn't going to "loiter" on calls.[254]

I told Complainant several people advised he sat on calls for "unreasonable" amounts of time to include found property calls and took time to book the property when there were more pressing calls holding. Complainant said he was trained to book evidence, not drive around with it. I reminded him it was found property, not evidence. Complainant asked what it was. Was it a knife? He advised he has always done that.[255]

Complainant acknowledged he took the promotional sergeant's test last year and passed. He also acknowledged Officer 3 offered to help him with his oral interview. Complainant wasn't sure but did not think Officer 3 was required to do this. Officer 3 sent him a date for a mock oral interview. I asked if he agreed to the date. He said, "I don't know." Complainant had never participated in a mock oral interview before. He didn't think he had ever conducted one for another employee. I asked if he understood one would have to take time from their regular duties to prepare questions, conduct the interview, and provide feedback. He said he guessed but didn't really know. Complainant did not make it to his interview. He didn't remember calling in sick that day. I asked if he ever apologized for not showing up or if he asked to reschedule. Complainant said he didn't remember it being formal.[256]

Complainant sent an email to Human Resources withdrawing from the process. I asked if he told people he couldn't be part of the enemy afterward. Complainant said, "Oh, I've said that for years." I asked if he sometimes referred to sergeants as the enemy. He answered, "Yes." I asked why. He asked if he was wrong and told me to look at what they've done to him. He went on to say he formed that opinion over a long period of time. He said sergeants used to be helpful, but now they just made his job more difficult.[257]

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252 Complainant Interview 2, approximate time index 36:30.
253 Complainant Interview 2, approximate time index 39:00.
254 Complainant Interview 2, approximate time index 42:50.
255 Complainant Interview 2, approximate time index 45:55.
256 Complainant Interview 2, approximate time index 46:55.
257 Complainant Interview 2, approximate time index 49:30.

I asked Complainant if he realized that he could have changed this, had he promoted. Complainant said there was only a handful of people he respected here. He named Detmer as one of them. Complainant said he took the sergeant test, though he was reluctant, and did well. Afterward, he ran into Detmer. Detmer told him he was glad to hear Complainant had put in for sergeant and told Complainant he was going to hate it. Detmer told Complainant officers were a nightmare and you couldn't get them to do anything. Complainant said the wind was taken out of his sails after that. Complainant knew he wasn't going to fit in with the other sergeants that liked to watch television in the sergeant's office.

Complainant also had a conversation with Sergeant Andrew Leyva about a month ago. They talked about how sergeants used to be in the field. Leyva told him now that he is back in the field, sergeants texted him and told him they managed from the office. Complainant claimed those are things that made him realize it wasn't going to work out well for him. I told Complainant he brought up that Leyva was in the field, so not every sergeant was in the office.

Complainant acknowledged Weddle, an officer with less tenure and his former partner, completed the testing process and made the sergeant's list. I asked if he ever asked why he and Weddle were split. Complainant said he didn't, but Weddle did. Weddle told Complainant that Officer 3 said they were split because Complainant was "toxic." Complainant thought it was odd, because for two years they rode together without issue. Then three days after going to Internal Affairs they were split because Complainant was toxic.

Complainant agreed that he and Weddle had many conversations while they rode together as partners and spoke about work and some personal issues. I asked if Weddle shared he was having problems at home last year. Complainant thought Weddle shared a step-son was causing some problems and guessed it was last year. He did not know if this was prior to Lewis being killed in a traffic accident. I asked if it was possible these two incidents delayed supervision from splitting Weddle from Complainant didn't know.[258]

Complainant did not recall that he and Wright, a younger officer with less tenure, were split from riding partners. Complainant thought they both just went to graveyard, but on different shifts.

I asked if supervisors or other officers had ever talked to him about his delivery when speaking to supervision. Complainant answered, "I'm too honest. I think is what they say." Complainant said was told he had a good message, but a bad delivery. Complainant didn't know how to "sugar coat" things. I asked how many people have talked to him about this and he said he didn't know. He remembered Gary Toussaint (retired sergeant) did but didn't recall officers say anything to him. I asked about Weddle. Complainant said Weddle had brought it up. I asked about any others. Complainant said he didn't know.[259]

I asked if anyone ever told him he came off as abrasive and/or borderline insubordinate. Complainant said, "No." He went on to say he guessed people insinuated this when they told him "Good message, bad delivery." I told him Weddle told us he had numerous conversations with him about this. Complainant answered, "OK."

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258 Complainant Interview 2, approximate time index 53:30.
259 Complainant Interview 2, approximate time index 55:15.

I asked Complainant about taking a bite out of every cookie or donut when these items were brought in by the public. Complainant said he didn't take a bite out of each one, but one or two as a joke. In response to asking him about wiping boogers and shooting snot rockets on the locker room walls, Complainant said "yes," he was "part of that." Complainant said he had been accused several times of defecating in the toilet and not flushing, but he hadn't even been at work. I told him all of these had come up and people told us he had been doing these things for over twenty years. Complainant said, "Joking around, yeah. I joke around."[260]

Complainant said he didn't do these things to anger, provoke, or disrespect people. He did it because it was fun. Complainant said there was a big difference between doing this in someone's house versus the police station.

Complainant admitted he has used profanity in front of another officer and in front of another sergeant. He said it was common for officers, sergeants, and lieutenants to use profanity in front of one another. On February 20, 2023, Complainant was more offended by Officer 3 radio traffic, not the fact Officer 3 used profanity.

I asked Complainant if his second complaint against Officer 3 was to further provoke Department members. Complainant advised a couple days prior to Officer 3 second interview, Officer 3 called Complainant and asked if Complainant could represent him in his interview. Officer 3 asked would it not be funny if Complainant represented him in the complaint in which Complainant named Officer 3 as a subject officer. Complainant told Officer 3 this was a serious situation and wasn't a joke. Complainant took that as another direct assault and attack by Officer 3 to intimidate Complainant

Medici asked if there were any sergeants today Complainant had respect for, other than Detmer. Complainant named a few retired sergeants. He also mentioned William McCoy, Blomdahl, Officer 4 and Officer 3 Complainant said he didn't dislike supervision; he dislikes incompetent supervisors. Complainant said he always admired Officer 4 and Officer 4 was a good street sergeant.[261]

Complainant said the first few years he worked here, except for when he crashed his car, everything he touched was "golden." Things changed when Steve Van Etten (retired 12/29/2009) got promoted to sergeant. Complainant alleged Van Etten tried to get officers to lie in police reports. Complainant said when he refused, "The screws got put to me." Complainant said this was his third or fourth year of his career and he realized the sergeants were not out there to protect or help him. He felt this was when the level of supervision declined. Complainant also immediately "butted heads" with Kendal Banks. Complainant believed it was because Van Etten told Banks that Complainant was a problem employee. It was during this time, Complainant began to believe that in some instances, supervision was the enemy.[262]

Complainant talked about his relationships with Department members over the years. He drank beer with some of them, went to their houses, etc. Complainant stated he realized these relationships may have affected how he addressed certain supervisors, but stated it went both ways. He gave the example of Officer 3 yelling at him in the park.

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260 Complainant Interview 2, approximate time index 57:20.
261 Complainant Interview 2, approximate time index 1:01:00.
262 Complainant Interview 2, approximate time index 1:04:00.

Complainant said for the last ten years, he has not been a problem employee. He has not had PC's or PA's (external complaints and internal investigations) pulled against him. For the last two years, he and Weddle rode as partners and did their job. When Complainant went to Internal Affairs, "this all fell apart." Complainant said there was history behind everything and there wasn't anything in his evaluations. Complainant questioned why he didn't get an evaluation from 2020-2021 if he was a terrible employee. Complainant also said he still didn't have his evaluation from 2021-2022. Complainant thought there would be documentation if he was a terrible employee. He mentioned Van Etten was able to put his personal feelings aside and gave him an "exceeds" on his evaluation. He also advised one of the best evaluations he ever received was by Banks and they butted heads all the time.

Complainant said he wouldn't do anything different regarding the domestic violence call on February 20, 2023. He said the graveyard unit that did not respond was 10-8 longer than he was on Code 7.[263]

Complainant stated he has always been involved in the Department, but the older he has gotten, he has taken the position of minding his own business.

Complainant stated if he felt he needed to go to the call, he would have gone. He said if the five or six units that responded couldn't handle the call, something was wrong.[264]

Medici told Complainant he was trying to figure out when Complainant went from a hunter to one that minded his own business. Complainant said, "I got split up from my partner." Complainant said, "I'd still be doing my job… with him." Complainant said if someone asked for help, he went.[265]

Complainant acknowledged Meier and Milby called him to speak to him a couple days after Meier discovered the flyers to keep things from "boiling over." I asked Complainant why he confronted J. Mutuku the week after the flyers were discovered by sarcastically saying hi to him. Complainant said he didn't sarcastically say hi to J. Mutuku and he didn't say that in his interview. I directed his attention to pages 15 and 60 of the transcript of his first interview. Complainant acknowledged he did say hi to J. Mutuku sarcastically to let J. Mutuku know Complainant knew what he did. I asked Complainant would this not go against the direction given by Meier and Milby? Complainant advised he believed this exchange with J. Mutuku occurred prior to the conversation with Meier and Milby. Complainant did not think Meier and Milby called him in to have that conversation until after Complainant filed a hostile work environment claim.

Complainant acknowledged he told Meier he did not want to file a complaint and did not want to cause any problems in the days that followed Meier discovering the flyers. I told Complainant this conversation occurred prior to the one with Meier and Milby. I told him that his actions when he confronted J. Mutuku seemed to contradict what he told Meier. Complainant said as far as he could remember, these conversations occurred after he said hello to J. Mutuku.[266]

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263 Complainant Interview 2, approximate time index 1:14:45.
264 Complainant Interview 2, approximate time index 1:19:20.
265 Complainant Interview 2, approximate time index 1:19:30.
266 Complainant Interview 2, approximate time index 1:23:50.

Complainant recalled sending Meier a text after the flyers were taken down and he recalled a conversation he had with Meier when Meier asked him why he thought J. Mutuku was responsible for the flyers. I told Complainant during that conversation, Meier asked him if he wanted anything done and Complainant told him he didn't want anything done. Complainant agreed.

Complainant stated the incident where J. Mutuku told him to log on to the computer when working overtime at the swap meet occurred after the flyers were posted. I told him during that exchange, he told J. Mutuku to "do something." Complainant said, "Yeah, because the way he said it. He was puffing up." Complainant could not recall the exact date, but it was after the flyers were posted.

I told Complainant if a supervisor told me to log on, my response would not likely include telling the supervisor to do something. Complainant said when he told J. Mutuku to do something, there was already tension there. Complainant and J. Mutuku both knew what J. Mutuku had done. Complainant described J. Mutuku was "puffing up" and he didn't know if J. Mutuku wanted to fight.

I told Complainant it seemed that Complainant was further provoking the situation by responding this way. Complainant said the smart thing for J. Mutuku to do would have been to go to Lieutenant Ed Collins and have Collins address him, since there was already tension between the two.

ATTACHMENTS:

1. Complaint Control Forms
    a. Complainant Complainant
    b. Mutuku, James
    c. Officer 3
    d. Officer 3, Additional dated 02/23
    e. Officer 4 Dan
2. Employee Histories
    a. Complainant Complainant
    b. Mutuku, James
    c. Officer 3
    d. Officer 4 Dan
3. Admonition of Rights Packets
    a. Complainant Complainant (Second Interview)
    b. Mutuku, James
    c. Mutuku, James (Second Interview)
    d. Officer 3
    e. Officer 3 (Second Interview)
    f. Officer 4 Dan
4. Letter from Complainant to HR
5. Recorded Interviews

a. Asbury, Nathan
b. Barney, Mike
c. Blomdahl, Bruce
d. Christianson, Carrin
e. Complainant Complainant
f. Complainant Complainant (Second Interview)
g. Officer 2
h. McMahon, Shea
i. Meier, Eric
j. O6 O6
k. Miskulin, Ana
l. Mutuku, James
m. Mutuku, James (Second Interview)
n. Officer 1Officer 1
o. Ontko, Josh
p. Ouk, Chamroeun
q. Pattison, Dexter
r. Officer 3
s. Officer 3 (Second Interview)
t. Ramos, Janet
u. Riedeman, Dave
v. Smith, Dawson
w. Tipre, Robert
x. Officer 4 Dan
y. Weddle, Spencer
z. Zackowski, William

6. Transcribed Interviews
    a. Complainant Complainant (11/08/2022)
    b. Complainant Complainant (Second Interview)
    c. Mutuku, James (01/19/2023)
    d. Mutuku, James (Second Interview) (02/21/2023)
7. Patrol Rosters
    a. Watch B 10/01/2022 (date flyer was printed)
    b. Watch C 10/01/2022 (date flyer was printed)
    c. Provided by O6 (showing RPD Policy 330.3.2(j) was debriefed)
        i. Watch B 10/05/2022
        ii. Watch C 10/05/2022
        iii. Watch A 10/07/2022
        iv. Watch B 10/08/2022
        v. Watch C 10/08/2022

vi. Watch A 10/09/2022

d. Watch C 10/26/2022 (date Complainant was moved to Area 5, then back to Area 2)
e. Watch C 12/27/2022 (date Officer 3 debriefed Code 8 from 12/26/2022 where firearm was missed)
f. Watch C 2/20/2023 (date of call 230004996 & Complainant second complaint against Officer 3
g. Watch C 2/21/2023 (DV call from 2/20/2028 debriefed)

8. Emails
    a. From Detmer – Case assignment
    b. From O6 (10/04/2022)
    c. From Meier regarding Print Queue
    d. From Meier with Print Queue Report
    e. From Reporting Party 4 regarding GPS Records at Lincoln on 10/01/2022
    f. From RSO CAL-ID (1/20/2023)
    g. From RSO CAL-ID with Final Report (1/24/2023)
    h. From RSO CAL-ID (2/24/2023)
    i. From Detmer – RE Watch A Shift Summary ~ Tuesday, February 21, 2023
    j. From North – RE Shift Change Sign Ups January 2023

9. Reports
    a. Report Room Print Log
    b. Supervising Forensic Specialist Reporting Party 1
    c. RSO CAL-ID 1/17/2023 Packet 1
    d. RSO CAL-ID 2/15/2023 Packet 2
    e. RSO CAL-ID 2/24/2023 Packet 3
    f. Telestaff Exceptions Report, 10/01/2022
    g. Unit History Reports
        i. 3R24, Officer 2 10/01/2022
        ii. 3R20, Covarrubias, 2/20/2023
        iii. 3R24, /Pa'u, 2/20/2023
        iv. 3R28, Complainant 2/20/2023
10. GPS Records
    a. Officer 2 Unit 3839 (10/01/2022, 1600-1630)
    b. At/Near Lincoln Station (10/01/2022, 1600-1630) ***FILE TOO LARGE TO ATTACH TO RMS***
    c. Complainant Unit 3172 (2/20/2023)
11. Video, Lincoln PD – Fleet-2022-10-01_1600min00x000ms.mp4
12. Radio Traffic, Channel 1, 230004996, 2/20/2023
13. CAD Printouts
    a. 230004996 (Domestic Violence Call 2/20/2023)

b. LPD22091500186516 (LA Fitness Call 9/15/2022)

14. Riverside Police Department Polices
    a. 330 / Standards of Conduct
    b. 322 / Discriminatory Harassment
    c. 1009 / Personnel Complaints
    d. 1015 / Fitness for Duty
    e. 1016 / Meal Periods and Breaks
    f. 1017 / Lactation Break Policy
15. Radio Codes
16. Patrol Seniority List 1/3/2023
17. J. Mutuku Admin Leave
18. Mutuku SB2 Notification


Complainant's Inbox

INTERVIEW OF OFFICER C1 C1

PA2211047 Date/Time: 11-8-22/1451 Hours
Sergeant Karla Corbett = CORBETT
Officer C1 C1 = C1
Sergeant Michael Medici = MEDICI

The timing of the recording, at intervals of approximately one minute, is shown in boldface type, in brackets.

CORBETT: Okay. Today is Tuesday, November 8th. It's 2:51 p.m. I'm Sergeant Karla Corbett. I'm in the Internal Affairs conference room with my partner for the afternoon, Sergeant Mike Medici, and we are about to interview, uh, Officer, uh, C1 C1 C1 right?

C1 Yeah.

CORBETT: Okay, and, um, there's not a, um—a complaint or an admin investigation at this point in time. Um, it was just brought to my attention that you had some concerns and things like that, so, real—really, this is just an opportunity for you to kind of go over, um, things that have been troubling you or—or certain issues that you might have. So, um, I don't have, um, any questions that are prepared for you, 'cause I'm really just here to kind of get a—a general understanding of—of what, um, complaints or issues you might have. So, um, with that said, um, I'll let you go ahead and kind of tell me why we're here.

C1 Okay. So I'm gonna try to do this as chronologically as I can.

CORBETT: Thank you.

C1 It might be difficult, so some of the dates I might screw up.

CORBETT: **[1:00]** Okay.

C1 But I'll start at shift change. So shift change was in July. Um, Officer 01 and O2 normally ride together. They come in on Wednesdays. I work Wednesdays an d Thursdays with them.

CORBETT: Okay.

C1 Our Department, because of staffing issues, has adopted this philosophy that somehow it's okay to put two units on the Eastside, when we used to have five plus UNET. So now we have two. So, by August, my partner officer Weddle and I had noticed that they're taking themselves out of service quite a bit, and it was because she was taking lactation breaks, which she's entitled to do, and I don't have any problem with that.

CORBETT: "She"—you mean 01 right?

C1 01

CORBETT: Okay.

C1 So that's fine. Well, now, when they take themselves out of service, there's two of 'em in that car, so they're both out of service. So now you have one police car for 60,000 people, and it just—it's not safe. It's not fair to us, to the people that are waiting. So, at some point, we're ripping our hair out, because we're getting our butts kicked, and I went to Dawson Smith, who was the sarge, and I said, "Hey, man"—**[2:00]** I said, "Can you split these guys—the—the girls up, because we're getting worked."

CORBETT: Mm-hm (affirmative).

C1 "Like, this is a safety issue. You can't put 'em both together in a car." Through that conversation, I was basically told no, and I got the im—it was implied that they're—they're gonna do whatever they want, and that's just the way it's gonna be.

CORBETT: Who's gonna do whatever they want?

C1 01 and— 01 — 01 and O2

CORBETT: Okay.

C1 So—

CORBETT: And you got that impression from—from Dawson Smith?

C1 Dawson Smith, and O3 O3 was in there, too.

CORBETT: Okay.

C1 In other words, they weren't receptive to me. They looked at me, and it was like, "Are you nuts? We're not splitting 'em up. Just deal with it."

CORBETT: I see.

C1 And I couldn't believe that that was what we were gonna do.

CORBETT: Okay. Did they—did they share with you, at that time, that she was taking lactation breaks or—

C1 No, I heard—

CORBETT: --did you learn of that later?

C1 --on day shift, some of the officers were complaining about it. But I'm—I'm a fan of that. Like, that's her—uh, she can do it; do it. I don't care. Do it all—the—the whole shift. But the problem I had was when she was in the car with someone else.

CORBETT: Another officer.

C1 Now they're both out of service.

CORBETT: Sure.

C1 So it was very, **[3:00]** very frustrating and stressful to have to work like that, even though it was two days a week.

CORBETT: Mm-hm (affirmative).

C1 So Officer Weddle and I are out there, running around in the Eastside, trying to handle this beat, which is a dangerous beat.

CORBETT: Mm-hm (affirmative).

C1 It's big, and it's just us. So that obviously leaked back to them somehow, because then the lactation breaks went from 30 minutes to almost an hour and 15 minutes,

and I just got—I felt and Officer Weddle felt like, all right, now they're making a point, because why did they stretch it out after I brought it to the attention of the sergeants? By the way, when I brought it to the sergeants and I try to make it clear to them that they're entitled to—or she is entitled to this, they kept saying, "They're entitled to it." And Dawson said he was—they're enti—I said, "They're not entitled to that. She's entitled to that." This is—I don't have any problem with her. I underst—I want my daughter, my wife, whatever—whoever it is—you—to do whatever they need to do to take care of their business. That's fine. What they're not entitled to do is ride around together and then be—both be tied up.

CORBETT: Mm-hm (affirmative).

C1 So, um—

CORBETT: And I'm sorry—real quick—**[4:00]** was—was, uh, Sergeant Smith your sergeant—

C1 No, their sergeant.

CORBETT: --their serg—it was their sergeant.

C1 Yes.

CORBETT: And you addressed him in the sergeants' bay?

C1 Yes.

CORBETT: And then O3 just happened to be in there—

C1 He was there, too.

CORBETT: --while you were discussing it with—

C1 Yes.

CORBETT: --Sergeant Smith.

C1 Yes.

CORBETT: Okay, okay. Go ahead. I'm sorry.

C1: So, um, let me try to get my train of thought. So I make—I make the al—I—I—I go in there and ask for some help. We don't get it. The lactations get—breaks get longer and longer. The frustration's building and building.

CORBETT: Hm.

C1: So, on September 15th, they were dispatched to the, uh, gym on Arlington, next to Target, for a burglary or a theft. Some lady was in there, and she (unintelligible) came to the—her locker. Her locker was broken open, and her—all her stuff was gone. So then the bad guys probably had her car keys, and they key-fobbed her car and then split in her car. So I'm driving, and Weddle's watching the computer, and they're en route to that call for almost an hour and 30 minutes. The RP kept calling back, asking for—"Where are the police? Where are the police?" **[5:00]** So the girl—and I don't know how old she was, but she must have called her father, 'cause then her father showed up, and then he called in, and then he got mad because there's a delay, and then he drove around and found the car. So Dispatch got upset and, on one, burned 'em and said, "Are you guys 97 on that call?" And I don't—I don't know which—if it was, uh, 01 or O2 that answered, but they said, "We're gonna call the RP." And Weddle looked at me and said—and he's naïve, and he said, "How are they gonna call? It's a stolen car. They have to fill out the 180. They have to have 'em sign it. They have to put it in and remove it." And I said, "They're gonna NR that call. You watch." And he goes, "No way." And I said, "I—you mark my words. They know they're untouchable out here. They're doing whatever they want. If the sergeant aren't addressing it, they're not gonna go to that call. Mark my words." He goes, "No way." And we watched that, and they just NR—no—no report, nothing.

CORBETT: Hm.

C1 So he's ripping his hair out. I'm ripping my hair out. I said, "Hold on. Maybe there's more to this. I've been doing this a long time. Maybe it was a civil issue—you know, the daughter needed the car—whatever." And he's like, "Dude, they broke **[6:00]** into the locker. They—this is not a fam—a fa—you know, the dad showed up and needed the car and split in the car. This is a crime." So he ty—he typed one of the dispatchers he knows and said, "Just confirm they R—NR'd that." And the—and the dispatcher responded and said, "Yes, and it should have been a report." So I texted Tanya, eh, uh—

CORBETT: Richardson?

C1 --Richardson, and I texted her and asked her, "Hey, just confirm they didn't take a report on that." And she said, "No, they—no report." So him and I are just like—an hour and 30 minutes en route to that call. We're the one getting our asses kicked all the time, and they just pulled that. So I looked at Weddle. I said, "Look, man, I'm—I've had it." (Unintelligible) I said, "I'm gonna sleep on this, but in the morning, if I'm still upset, I'm gonna call—I'm gonna call Internal Affairs." I said, "There's nobody addressing these issues out here, and their behavior's getting more and more brazen." And so I—I—I s—I went home. I slept on it. I woke up. I came to the gym. I was still upset, and I sent you that text, and I said, "Hey, this is the incident number."

CORBETT: You sent—you said, "I sent you," **[7:00]** but you looked at Medici.

C1 Sergeant Medici.

CORBETT: Okay.

C1 The text.

CORBETT: You sent Sergeant Medici a text about what had happened the day before.

C1 The night before, which was—

CORBETT: Okay.

C1 The 15th was the call. September 16th was when I sent the text.

CORBETT: Okay.

C1 So he's—he—I—I still have it. I think you responded, said you're busy but you'll take a look at it, and you'll look into it. And—and my—I think my text to him was, "Here's the incident number. I'm not sure how the re—a report wasn't taken."

CORBETT: Can I ask, did you—did you talk to—aside from texting Sergeant Medici, did you go back to Sergeant Smith or another sergeant in Field Operations about the call on the 15th?

C1 No.

CORBETT: Okay, all right, sorry. Go ahead.

C1 I reached out to Internal Affairs as an act of desperation, because I already felt like I went to them. I got the im—I—I was m—that nothing was gonna happen.

CORBETT: Sure.

C1 I'm gonna go there and tell 'em, and they'll say, "Oh, yeah, whatever. We'll—we'll handle it," and nothing's gonna happen.

CORBETT: Okay.

C1 'Cause they're sitting in the office, watching television. We're the ones out there handling these calls.

CORBETT: Mm-hm (affirmative).

C1 And it's frustrating to work a beat when someone's en route to a call for an hour and 30 minutes. And it happens—people eat or get stuck or whatever they do, but it's happening more and more, and it's getting more and more frustrating. **[8:00]** So I sent him a text. He called me back in a little while and said, "Yeah, this—you know, this looks like"—I don't know what your response was, but you said something about it looks like there's something wrong here, and, um, I think you said Eric Meier's gon—"I have Eric Meier looking into it."

MEDICI: Yeah.

C1 So I said, “Okay.” So I waited a few days. I didn’t hear anything, so I started texting Eric, and I s—I told him—I’m like, “Hey, are you guys gonna investigate this or not, because, if you’re not, I mean, it’s sad that this is gonna be swept under the rug, because I’m a rep, you guys work in here, and cops sit in this seat for hours and get accused of doing way less than what they did.”

CORBETT: Mm-hm (affirmative).

C1 So I said, “Are you guys gonna handle this or not?” “Well, we’re looking into it. We’re looking into it.” So—and Eric’s a good solid guy, so I trust him, and I look up to him, even though he’s younger than me. He’s—he’s—I admire the k—the kid.

CORBETT: Mm-hm (affirmative).

C1 So I relied on him, and I—so a few days went by, and I said, “Look, man, if you guys are gonna cover this up, let me know, because I’m going right to the CPRC.” I said, “They’re not getting away with this.” I said, “I rep guys all the time, and you were in Internal Affairs, and you guys investigate **[9:00]** people that do way less than what they’re being accused of doing—way less.” But—and by the way, when I did this, it wasn’t easy to contact Internal Affairs. So when I say “an act of sheer desperation,” it was, because I understand, when you do that, unfortunately, in our profession, even in today’s age, if you’re labeled as a rat or someone that’s gonna do that, there’s gonna be a consequence to all that. So I—I knew that, and he said he’d protect my name, but I’m older, and I’m like, “It’s gonna get out anyway. You don’t have to go out of your way and protect my name, because it’s gonna get out.”

CORBETT: Mm-hm (affirmative).

C1 And I’m not embarrassed at what I’m doing.

CORBETT: Nor should you be.

C1 Exactly.

CORBETT: Mm-hm (affirmative).

C1 So there was a gap between that—and I'm not sure how long—but then, uh, you guys know I met with Chief Blomdahl. Do you know that?

CORBETT: I heard there was a phone call or something, but I—I don't—

C1 I met with him—

CORBETT: Okay.

C1 --and we had a good conversation, and I won't go into everything that was said, but basically, the conversation was, "How about you let us handle this internally and just stay away from the CPRC?" And I said, "I don't have any problem with that." Again, I admire Bruce Blomdahl. I've looked up to him. **[10:00]** He's a role model. I'm like, "I don't have a problem with that."

CORBETT: Okay.

C1 We spent three hours talking. Um, he encouraged me—so that was on a Friday the f—I think, Friday the 1st—no, the 30th—when I met with Blomdahl—September 30th. If that's a Friday, that's the day I think it was. So I said, "Okay." I said, "No problem." And he—and he encouraged me to re—I—we talked about retirement, like I did with you before we went on tape, and I—

CORBETT: Mm-hm (affirmative).

C1 --said, "You know, maybe next year, maybe another year, maybe two years," and he said, "You try to retire with a smile on your face. It's frustrating out there, like all of us. Just—let's just try to have a good retirement so we can leave and be happy." Okay. That was Friday. Saturday I worked swap meet, again, which is the 1st of October. Uh, so now I'm thinking, "What's James Mutuku gonna think of this?" I don't know him very well, but is he gonna be able to separate his personal life from his professional life? Is he gonna be able to separate those two?

CORBETT: Mm-hm (affirmative).

C1 So I saw him Saturday as I walked out at 7:00 o'clock in the morning, and I said, "Hello," and he walked **[11:00]** by me, and he said, "You'll see, you'll see." And then he walked into the sergeants' office. So I'm like, "Here we go." He's gonna retaliate. I know it. I've been doing this a long time. He's gonna retaliate. That was Saturday. Sunday I don't see it. Monday I come in. There's a flyer in my mailbox of a rat, and it says, "Rat Busters."

CORBETT: On Monday, the following—the following Monday?

C1 Yes, yes.

CORBETT: So maybe the s—3rd?

C1 Third—it's the 3rd. I can't be positive on the date. It's just going on my memory.

CORBETT: That's fine. I'll look, but okay. So there was a picture of a rat in your mailbox.

C1 Yes, and, uh, the name "Rat Busters." So I go in the locker room, and then there's framed pictures of rats, the same "Rat Busters."

CORBETT: Mm-hm (affirmative).

C1 So I'm like, "All right. Now he did it." He's the only one with motive. It's not gonna be the girls that are gonna sneak in there and do it. He did it. That's my belief.

CORBETT: Mm-hm (affirmative).

C1 I—that's what I believe, based on motive. So I—I—quickly, I go take pictures for my record, and I don't say a word to anybody. I leave it in the box, I leave 'em hanging up, and I just want to watch what's gonna go on; what else is he gonna do? So, the next day when I come in, which is Tuesday, I believe, the 2nd, **[12:00]** the flyer's gone, and one of the flyers was—was gone in the locker room. The other one was still there, but—but Eric Meier, who removed 'em, didn't see the other one, 'cause it was covered by shoes. Someone had moved something over and covered it up.

CORBETT: Okay.

C1 So I figured—just instinct, I figured Eric must have saw 'em, so I sent Eric a text, and I said, "Hey, Eric, I appreciate you removing that from my mailbox, and I rep—I appreciate you, uh, taking 'em down from the locker room, but I already got photos of it, so I already have it for—I already have it documented." And then he—he called me later that day, and I told him Mutuku did it—James—and he goes, "Why do you think so?" And I said, "He threatened me. You know, he gave me a veiled threat. He goes, 'You'll see, you'll see,' and then, the next—two days later, this rat thing's in my mailbox." So now—um, so let me go back a little bit. So, after—I'm sorry. After I notified Internal Affairs, that Monday, Officer Weddle and I were—were riding together—

CORBETT: Mm-hm (affirmative).

C1 --**[13:00]** and O3 who's a hands-off guy, never bothered—rarely ever bothers us—I can't say never—rarely—so he takes a call, and he calls Weddle, and I—I don't hear what O3 is saying, but I hear Weddle saying, "Sarge, we weren't at Bordwell Park. I don't know what you're talking about." So he hangs up, says, "O3 called and said we were at Bordwell Park for 43 minutes tonight." And I said, "We haven't been to Bordwell Park." And he goes, "I know. You heard what I told him." Okay. That was odd. So, about an hour or two later—this is—I went—I talked to you on Friday. Monday—an hour or two later that Monday, O3 calls Weddle again and says, "Hey, you guys were on a stalking call. Why'd you NR that call?" And Weddle goes, "Sarge, we weren't on a stalking call. I don't know what you're talking about." And it was Weddle that picked up on it. He hung up, and he goes, "I think these guys are starting to s—uh, come after you because you—you went to Internal Affairs." And I said, "There's no way. There's no way." And he goes, "I don't know, man. When does O3 ever bother us?" So then,

later that night, **[14:00]** um, we handle a GTA recovery, and we're sitting there. O3 drives up to us, which he never does, and he goes, "Hey, I'm just letting you know you guys are being watched." And he goes, "Barney's checking response times, and your name came up." And our response times are good. So I was—and then I told Weddle—I go, "Yeah, you're right." I go, "They're—they're coming after me." I said, "I knew—I knew they're—I knew I shouldn't have said anything. I knew it." I just couldn't believe it was coming from comman—from command, from sergeants. So the next day I come in, the schedule goes up, and Weddle and I aren't riding together. So, after two years of him riding together, the next day—now we're not riding together. So Weddle—I'm like, "Yeah, you're right, dude. I'm done. They're gonna—they're gonna ruin my life. I guarantee it." So that's before—just to make it clear. Those incidents occurred before the "Rat Buster" thing. The "Rat Buster" thing happened a week or two later.

CORBETT: Okay.

C1 If you—if you look at the dates, I reported it on the 15th—no, I'm sorry. The call was on the 15th. I reported it to you on the 16th. **[15:00]** That Monday, which would be, like, the 18th, is when O3 started coming after us.

CORBETT: Okay.

C1 The 19th, if those are the correct dates, is when I got separated. That Friday is when I met with Blomdahl. Saturday's when I worked the swap meet, and that's when he—he, uh—James Mutuku said, "You'll see, you'll see." Monday's when the rat flyer's in my mailbox. Tuesday's when I call—when I come back to work and it's gone. Um, and then I looked up "Rat Buster," and "Rat Buster" is a rifle that's used to kill rats. So now it's not a picture of a rat—you know, a rat—just a rat—he—he searched it and pulled up "Rat Buster." Now he could have been

lucky and just hit "print" on the first thing he saw when he researched it, or he could have purposely searched that to send a message.

CORBETT: So was it a—um, do you have a picture of it? Are you able to—

C1 Here.

CORBETT: You want to air-drop it to me?

C1 Um, I don't know how to do that.

CORBETT: Do you have an iPhone? Is that an iPhone?

C1 Yeah.

CORBETT: Okay. Actually, if you want to just show it to me real quick, just so I see what we're talking about, **[16:00]** and then, when we go off tape, I'll show—

C1 How do you get off this without making it stop?

CORBETT: Uh, well, we'll do it after.

C1 All right.

CORBETT: I don't want to mess up your recording. We'll do it after. That's fine.

C1 So Eric has 'em. I—I hope he still has 'em, but Eric has 'em, because he's the one that removed 'em from my mailbox and took 'em down from the, uh—from the locker room.

CORBETT: Okay.

C1 Um, so where was I? I'm trying to do this as chrono—as best I can in the order it occurred.

CORBETT: So, on Tuesday, October 4th, that's when you think—

C1 Eric removes 'em.

CORBETT: Okay.

C1 Friday I meet with Blomdahl. Saturday the swap meet, uh—

CORBETT: I thought the—I thought the swap meet was on October 1st.

C1 It was.

CORBETT: Okay. So then—

C1 October 3rd's when the flyer was in my mailbox.

CORBETT: Uh-huh (affirmative). October 4th is when—

C1 (unintelligible)

CORBETT: --someone takes 'em down.

C1 Eric did, 'cause he told me.

CORBETT: Okay, okay. He told you.

C1 He—he—he called me and said, "I—I—I saw 'em, and"—

CORBETT: Oh, okay.

C1 --"I—I removed 'em." 'Cause I told—I sent him a text. I sent him the pictures. I said, "Yeah, you probably took 'em down." And he called me up—

CORBETT: Got it.

C1 --and said, "Yeah, I took 'em down," and I told him what happened—

CORBETT: Mm-hm (affirmative).

C1 --and he said, "Why do you think it's James?" And I said, "He's got the motive. He told me, 'You'll see, you'll see.'"

CORBETT: Okay.

C1 So now I'm **[17:00]** infuriated, because cowards hide behind Hollywood props like that. Like, I've worked here a long time, and you guys have, too, and I was never one to—if I had an issue with someone, I would just tell 'em. I'm not gonna put some weird f—flyer in their mailbox or shove a bunch of report forms in their mailbox to send a point. That's never how I—I—I work.

CORBETT: Mm-hm (affirmative).

C1 So now I'm infuriated, because now he's hiding behind the cover of, you know, a prop, the—the—the flyer.

CORBETT: Mm-hm (affirmative).

C1 So I'm not gonna be intimidated by him. So the next Sunday—Sunday or Saturday—I work swap meet again. So I walk by at 6:30. Everyone's out of there, but the sergeants are sitting up there like they do, and James is in there. I said, "Hello, James, how ya doing?" And I came—went and changed. When I came back, I said, "James, I checked my mailbox, and there's nothing in it," and I walked out. Well, he could fe—he walked out the other door and confronted me and said, "Your voice is trembling. What's wrong with you?" I said, "A 'Rat Buster' is a rifle used to kill rats." I said, "You threatened my life." And I said, "You're a punk and a coward." And then, uh, **[18:00]** he turned and he went, with either his right or left hand, and simulated a handgun and went like that, like he fired it twice at me. So I go get in my car, and, uh, I—I go to the swap meet.

CORBETT: That was outside the Lincoln rollcall room?

C1 Yeah, yeah.

CORBETT: Okay.

C1 So you know the s—the—the—where you guys sit, there's that door. He walked out of that door, and I walked out of the door that is—

CORBETT: By the watch commander.

C1 --where the watch commander is.

CORBETT: Okay.

C1 So we're exchanging words out there.

CORBETT: Okay.

C1 And then I leave. And then, um, (pause) was there another incident? There was another incident where I—I didn't log on at the swap meet, and that's my fault, and I have a bad habit of not doing it. And then Ed Collins said, "Hey, next time, uh, tell me about this—you know, log on." And I said, "Okay," and I walked outside,

and Mutuku popped off and said something. I said, "Do something, then. Do whatever you need to do." And I just kept walking.

CORBETT: What did he say to you, if you can remember?

C1 Uh, I don't remember what he said. S—it was something about logging on.

CORBETT: **[19:00]** Mutuku told you something.

C1 Yes, James.

CORBETT: Okay.

C1 He said something about logging on. I think he said, "It's my area. Next time, log on." I said, "Then do something." I said, "I'm not, uh—I'm not gonna hide behind props. You do whatever you need to do."

CORBETT: Okay. (pause) Okay.

C1 So I'm trying to listen to Bruce Blomdahl, because I admire the guy, and he told me, "Retire with a smile on your face." So I'm t—I'm trying to take this stuff. Eric Meier actually called me. He goes, "Do you want an IA on this poster or not?" And I said, "No." I said, "Don't do it. I want to mind my own business." I said, "Does k—k—Milby know about this?" He said, "Yeah." So now I'm thinking, "Well, why do I have to have an IA?" These guys should—well, as soon as that flyer's presented to the captain, I mean, there should be an immediate investigation. If I—if I did that to you guys—if there was a—flyers hanging—there'd be an immediate investigation. If you walked outside and your car had that flyer on your—on your, uh, windshield, there'd be an investigation. If I did that to a sergeant that pulled a PA on me, there'd be an investigation. And then there's no investigation **[20:00]** on this. So it's crazy that you have a sergeant that's—again, I didn't see him do it. I'm assuming he did it, 'cause he has the motive to do it—that there's no investigation.

CORBETT: Mm-hm (affirmative).

C1 So I go back and forth. Now I'm starting to play with this in my head. What do I want to do? How am I gonna play this out? I'm upset. Mutuku's upset. It's gonna lead to either us fighting in the parking lot, which is gonna cost us both our jobs, or this needs to be handled, so that way I have some relief that, all right, at least he's gonna be in here, and he could sit here, and he could choose to lie to you. He's gonna get away with it, 'cause it's gonna be impo—well, I don't know. You guys could figure that stuff out. But he's got two choices if he comes in here. He's either gonna lie or tell the truth, and either—either one is gonna have a serious consequence for his career, 'cause, if he admits to it or if he lies about it and you prove it, then he's gonna have to—there's a serious consequence about what he's about—what—what he's getting himself into.

CORBETT: Mm-hm (affirmative).

C1 So, again, I'm going back and forth with this, and Eric s—Eric asked me, and I said, "Don't do it. Don't do it. I just—I don't want to cause any more problems." **[21:00]** And then my—my good friend's Larry. So now Larry's gonna get sucked into this. So now I'm in a bad spot, and I'm getting backed into a corner. I don't know what else to do, so I swallow it. I just forget it. So, two weeks ago or last week, we're in rollcall. Oh, I'm sorry—and then Eric Meier had told me that they had a command staff meeting at Lincoln, I think, and the suggestion that he made was to keep Mu—um, not James, but 01 and O2 out of my beat. Just separate 'em, because there's problems. They know what I did.

CORBETT: Who made the recommendation?

C1 Er—I think Eric did. He said—

CORBETT: Okay. Did he tell you this?

C1 Yes.

CORBETT: Okay.

C1 Because it was—now you've got to remember, I'm working with them, going through all this, two days a week.

CORBETT: I see. Mm-hm (affirmative).

C1 So it's very contentious.

CORBETT: Mm-hm (affirmative).

C1 Um, and that's—so, anyway, Eric says that, and then that doesn't happen. The—the schedule's going up. They're still working (unintelligible). So the two watch commanders decide—O4 and Mike—Mike Barney decide, yeah, we're not—**[22:00]** we're not doing that. So they keep us—they keep us together. I'm trying to deal with my—I'm—I'm handling my business. I'm trying to get through it, and then—I think it was last week—it was two weeks ago, I think, or last week, the schedule goes up. They're in Area 2 with me, and there's four of us, and Billy Zackowski looks and goes, "Would you mind putting someone from Area 2 into Area 5?" And O4 looks up and goes, "Put C1 over there." And everyone in that room stopped and knew why he was doing what he was doing. There was no excuse for it. He was doing it to intimidate me, to retaliate against me, to bully and haze me, and he loved every minute of it. And he knew he was gonna get a ra—a reaction out of me. And I understand sergeants can move people at will, but if it's done to do that as a—as a form of intimidation or retaliation, then it's not right. And that's why he did that. So I walk out, and then, um, Christianson—Chri—Officer Christianson sends me a text—says, "Hey, O3 is standing up for you. He's arguing with O4 saying he doesn't agree **[23:00]** with what he just did to you." And then Billy was upset, too. Anyway, to make a—uh, O4 basically said, "I could do whatever I want" and flexed his—his muscles and—which—whatever. And then they end up moving me back. So, after that, I sat out in the parking lot, and I was upset, and I was debating, "What am I gonna do? Am I

gonna retire with a mi—a smile on my face, or how—when is this gonna stop?" So now I'm getting bumped out of beats. I've got guys pointing guns at me. What's—what's—what are these—what's Mutuku gonna do? Where is this gonna go? Is he gonna throw a bag of dope in my locker? I mean, who knows what can happen? He's gonna key my car? Is he gonna—who knows what potential violence this could bring, uh, on me now? This is just escalating, and it's all against me, and I feel like it's all against me because I brought this to the attention of Internal Affairs. So that's when I decided, "That's it." I came in, and you were—you were here, and I said, "I've had enough. Like, this is where this is going, and if you guys don't get involved, this—something's—bad's gonna happen. I'm telling you. And not from me—from James, 'cause he can't—he's the sergeant. **[24:00]** He's supposed to be able to separate his professional and personal life. Not me. I mean, I'm a professional, too, but I'm the policeman. I'm the peon. He's the supervisor.

CORBETT: Mm-hm (affirmative).

C1 He has an obligation to separate himself, and he c—and obviously, he can't, and then O4 can't, and, you know, you can just look at how this progressed so quickly. I couldn't believe it.

CORBETT: Let me ask you, um—and sorry to interrupt, but why—why do you think, um, O4 has an issue with you?

C1 So O4 a big fan of the two, Mutuku and them—

CORBETT: Okay.

C1 --which is—they actually do good police work. I was—I'm a fan of 'em, too.

CORBETT: Mm-hm (affirmative).

C1 I want 'em to go out there and work. He's a fan of them, and I know that suggestion was made that they move 'em, and he wasn't gonna do it. So, to make a point, what that schedule goes up in front of all my peers, he goes, "Oh, move C1

CORBETT: And then why—why do you think, uh—and because it's hard just listening to you—like, in rollcall, when Zackowski looks up at the roster, there was only the two girls—**[25:00]** right?—and then was it you and Weddle? There was just—

C1 No, they split us up. Weddle—Weddle went to Area 5. It was—it was, uh, hold over Leon, the two girls, I think, Tai, and me.

CORBETT: Okay. And so—so Zackowski wanted someone moved out of Beat 2 into Beat 5.

C1 Yes.

CORBETT: Okay.

C1 So his crew's the girls. So, obviously, the—

CORBETT: Zackowski's?

C1 Yes, so, obviously, he should have said, "Well move—either split them up or"—and the call—the—the schedule guy, who's new—he moved—

CORBETT: (sneezes) Excuse me.

C1 --the hold-over—

CORBETT: Okay.

C1 --into Area 5, and then O4 said, "No, move C1 over there." So they made me 3R50.

CORBETT: I see.

C1 So, obviously, it's—you guys work out there. You—you know. I mean, that—Area 5—I've been here 20—almost 24 years. I'll—I'll work wherever. I don't care, but when you do it to embarrass me, and you do it to retaliate against me, then it's wrong.

MEDICI: It was changed, though; right? Yeah.

C1 It was changed. It was changed—Bill—as a result of Billy and, um, O3

CORBETT: O3

C1 --**[26:00]** stopping him from doing that, and he—he bent. He—he—he—he took it.

CORBETT: Okay.

C1 And then I went back in. I sat out in the car, debated on what I was gonna do for probably 30 minutes. I tried to calm down, and I just—I—I—I was like it's—it—this is it. This—I'm—I'm going to Internal Affairs, and I'm gonna allege whatever I need to allege, because this is not gonna stop. So, um, I went back in. I had the policy, 'cause I read the retaliation policy, and I said, "Hey, O4 I'm just letting you know I'm of—I'm officially telling you that I'm filing a retaliation complaint against you for reporting police misconduct." And he goes, "Get out of here," you know. "I'm not taking it." And, um, uh—and then he goes, "I'm not—I'm not taking it." So, when Billy came out, he was upset. He was the one that told me I'm getting moved. So looked—I go, "Billy, you're a coward." I said, "This is happening because you're not supervising these people. Why—why did they even get to me? You should have said, 'Move my people over to Area 5.' Why didn't you"—and it's because, no—**[27:00]** everyone says they're untouchable, the two—t— 01 and O2 are untouchable. I don't know why. I don't know where this came from, but it's not just me. I was in the gym today, and cops are telling me how they've gotten into a big argument with 'em over the phone about some of the things they were doing out there. So it's not just me.

CORBETT: Okay. Has anything happened since—so (unintelligible) since the—about two weeks ago, when you were moved to Beat 5 and then they moved you back, you actually worked, um, Beat 2 that shift; correct?

C1 Yes.

CORBETT: And then, uh—but while you were kind of trying to calm yourself in your vehicle before going 10-8, you did pull the policy, and then you went back into the station

and, uh, said something to Lieutenant O4 about you felt that him doing that was retaliation for reporting the misconduct of the two female officers a couple weeks earlier. Is that right?

C1 I didn't have to tell him, like, "This is why I'm here, because of what you just did." It was blatantly obvious, and then he—

CORBETT: So what did you say to him when you went in there?

C1 I said—**[28:00]** I had the policy. I said, "I'm reporting"—uh, uh, I said, "I'm ret—reporting a retaliation or a hostile work environment, um, to you, because I feel like it's happening because I reported possible police misconduct."

CORBETT: Okay.

C1 That's (unintelligible)—

CORBETT: Was he in the watch commander's office or rollcall?

C1 No, he was in there with all the sergeants.

CORBETT: Oh, he was still in the roll—

C1 Yeah.

CORBETT: --in—still in rollcall. So, when you said that to him, who—who was present, if you can remember?

C1 O3 Zackowski, and maybe Tipre, but I'm not sure if Tipre was there or not.

CORBETT: Were any officers present, if you know?

C1 Uh, yeah, uh, Shea McMahon.

CORBETT: Okay, and—and what happened after you said that to him?

C1 He said, "I'm not taking your complaint." He said, "Go to Internal Affairs." I said, "You want me to go to Internal Affairs?" He said, "Yeah, go to Internal Affairs."

CORBETT: Okay.

C1 And so I said, "Okay. I'll go to Internal Affairs."

CORBETT: Got it. And then, um, is that the day that you drove here? You were parked out back, 'cause I think I w—actually may have passed you coming out the—

C1 You were walking out.

CORBETT: Okay.

C1 We're walking in.

CORBETT: Okay.

C1 **[29:00]** And I met with Sergeant Medici.

CORBETT: I understand. Okay. (pause) Okay. I want to—um, has anything happened since then?

C1 So, remarkably and unbelievably, I walked out of this—I walked out of here, and I meet Uninvolved Party. So I said, "Hey, I'm glad to see that you're leaving. It's probably a good move for you. You're gonna make a lot more money." And she said, "Yes." And she's, "Oh, yeah, I am so upset about this—the promotions around here." She has no idea why I'm here—none. I don't talk to her. I just wished her luck, and she goes, "Yeah, these promotions around here are really, you know, bad." And she goes, "That James Mutuku"—she goes, "That guy's a dirty cop." She goes, "He's a dirty fucking cop." And I said, "What are you talking about?" She goes, "Yeah, sh—he's dirty, man." He go—she goes, "I was in [unintelligible]—I worked with him in—in Narcotics, and he would meet with informants and then try to make me write that I met with the informants." And she goes, "I wouldn't do that." She redu—she refused. And she goes, "He's dirty, he's **[30:00]** dirty." And I was like, "All right. This is weird, but okay." And then she said, "He doesn't test the drugs. Rarely does he test it. He writes in these police reports he tests those drugs, and he doesn't test 'em. He doesn't use a test kit. That's his M.O."

CORBETT: Hm.

C1 So now this turns into—I mean, this reeks of, like, police corruption in that Nar—who knows what those guys are doing in there, or him, or who else he influenced to do stuff like that? This is nuts, but sometimes—this is why departments should never persuade police officers for bringing potential misconduct forward and retaliate against people, because this is the type of stuff that comes out. I walk out there. I say hello. I don't—she doesn't know I'm here or why, and after she told me, then I go, "It's weird you're telling me all this, 'cause I'm here right now complaining about James Mutuku and all these guys retaliating against me because of what went on." And then I said—that was it. Uh, she walked off, and I said, "Have a good—you know, good career" or whatever, and that was it.

CORBETT: And **[31:00]** where did you run into her? Was it—was—

C1 You saw me. I was standing at the water fountain.

CORBETT: Oh, so just down here by the restrooms—

C1 Yeah.

CORBETT: --and all that? Okay.

MEDICI: Did you see O2 and 01 walk by?

C1 No.

MEDICI: Okay.

CORBETT: Okay. Anything since then that has happened that, um, has caused you concern or maybe you feel is in retaliation for some of the things we've talked about?

C1 I'm sorry. Say that one more time.

CORBETT: So, after—after Lieutenant O4 told you to go to Internal Affairs, has there been—that was about two weeks ago; right?—

C1 Yeah.

CORBETT: --has there been anything else that has happened that you feel has been, um, in retaliation for you, um, bringing questions about the two female officers or anything

else that has caused you concern about what someone might be doing in—in relation to, like, what we've been talking about?

C1 No.

CORBETT: Okay. Um, I just want to, uh, back up. When—when you saw the stuff posted, um, on your locker—

C1 **[32:00]** It wasn't on my locker. It was in the locker room—

CORBETT: Oh, in the locker room.

C1 --right when you walk in. I'll show you pictures.

CORBETT: Okay.

C1 And it was in my mailbox.

CORBETT: Okay. You said that you—you took a picture of it, but you left 'em there. Um, why didn't you go to, like, a sergeant or a lieutenant at that point? Why d—like, I'm just trying to understand, what was your motivation for just taking a picture and—and leaving 'em up?

C1 Because I wanted to see what his next move was gonna be. What—what was he g—

CORBETT: Whose?

C1 Mutu—James Mutuku.

CORBETT: Mutu—Mutuku? Okay.

C1 What was he gonna do? Was he gonna feel—was he gonna remove 'em? What was he gonna do? Was he gonna put more in there? I just left it there.

CORBETT: Okay, and s—

C1 That was my decision I made, to photograph 'em and then leave 'em.

CORBETT: Leave 'em in place. Okay. I was just curious why. Um, and was that—when you walked in there, was that, like, r—um, let's see—so it would have been on a Monday, so that would have been in the afternoon, then. It wasn't swap meet,

where you're coming in early; right? It would have been in the afternoon that you s—

C1 I came in after—when, uh—on Monday, I came to work. That's my regular workday, so I went to the gym, and I walked in, and I saw it in the locker room.

CORBETT: Right. So it would have been, like, in the **[33:00]** afternoon that you saw 'em.

C1 Yeah, like—yeah, like, 1:30, 1:00, or something, 12—12:45.

CORBETT: Okay. You take a picture; you leave it. The next day, you go in, um, Tuesday for your regular shift, and now you notice that some of 'em are gone.

C1 All of 'em. Well, no—I'm sorry. Two of 'em.

CORBETT: The one that was—

C1 Yes.

CORBETT: --the boots or whatever covered, maybe. Okay, um, and—and then—I'm sorry—you said Lieutenant Meier reached out to you, or you called him?

C1 I sent him a text and said, "Hey, uh"—

CORBETT: Oh, 'cause you kind of figured—

C1 --"if you removed this stuff, I appreciate it, but I already took photographs of it, um, and I have a record of it for documentation."

CORBETT: Okay. I'm just trying to understand why you—why you didn't immediately go to a supervisor at that point. Like, why let it stay there before d—to kind of see what his next move was gonna be? I'm—I'm just—

C1 That's just a decision I made—photograph it, so, if they disappear, I have documentation. I don't know. I can't tell you. That's the first time it's ever happened to me. You don't know how you're gonna react when you see something like that. **[34:00]** I wasn't in shock, because I—I felt, after the statement, that he was gonna do something.

CORBETT: Mm-hm (affirmative).

C1 So, when I saw it, it was almost like, well, I knew it. I knew it. Why I didn't remove it, I don't know.

CORBETT: Okay. I—'cause I w—I'm thinking, like—I get, like, taking a picture, because, as soon as you walk out, someone could have just torn them down, but, like, take a picture and then go get, you know, a—a—a sergeant or a lieutenant or something and—and show 'em, but everyone—

C1 I—you're right. I should have. I don't know why.

CORBETT: Okay.

C1 I don't know.

CORBETT: I'm just—I'm just curious. Um, have you had any more interaction with, uh, Sergeant Mutuku?

C1 No.

CORBETT: And any further interaction with, um—with Lieutenant O4 after him telling you to come to Internal Affairs?

C1 Uh, he was—have I worked for him since then? 'Cause he went on vacation, I think. I've—I saw him—

CORBETT: Mm-hm (affirmative).

C1 --but I don't think I've worked for him yet since, 'cause I think he was gone, but I'm not sure.

CORBETT: Okay, and you said that you and **[35:00]** Weddle were, um, split up; right?

C1 Yes.

CORBETT: Were, uh, 01 or O2 ever split?

C1 No.

CORBETT: Okay, and, um, so then was she—when they were riding together, were they st—were the lactation breaks still taking place where two officers were being pulled out of service in the weeks that followed, or do you remember?

C1 I don't remember. I'm—I'm sure they were. I don't remember, though.

CORBETT: Okay, all right. Um, (pause) and the last time you spoke with Lieutenant Meier, what's your understanding of, uh, what it is that he's looking into, if anything, or do you know?

C1 So, when I talked to Medici when he called me, he said that you re—he referred it to Lieutenant Meier to look into it or investigate it. I don't know if you used "investigate," but to look into it.

CORBETT: To look into **[36:00]** what Lieutenant O4 had told you to go to Internal Affairs or to look into the, um, postings in the locker room, or all of it, or—or do you know?

C1 Uh, it was the complaint.

MEDICI: Initially, it was the, uh, NR'ing the call.

C1 Yes.

CORBETT: Okay. (pause) Okay. (pause) Has Lieutenant Meier ever had a conversation with you about, um—and I don't know that he would even need to, but, um—regarding the call that was NR'd by the two female officers?

C1 There were texts back and forth, (unintelligible) because I was k—you know, asking, "Are you guys gonna investigate this, or—or was it gonna get swept under the rug?" 'Cause, generally, when someone calls in and complains, you know, the watch commander pretty much—if it's—(unintelligible) they—they put pen to paper. They might send a sergeant out here and there, but if it's something—an allegation where somebody calls and goes, "Hey, my daughter waited an hour and a half, **[37:00]** and I found the car, and the cops never showed up," they'd probably put pen to paper right there, and they hadn't—what I assume.

CORBETT: Okay. I'm sorry. What—what—what text messages are you referring to?

C1 S—so, after Sergeant Medici informed me that Eric Meier was gonna look into it, I waited a few days, and then I sent him a text—

CORBETT: You sent who a text?

C1 Eric Meier.

CORBETT: Okay.

C1 Lieutenant Meier—and said, "Hey, are you guys—is this gonna get swept under the rug, or is anyone gonna look into this?" And I don't remember—I mean, we would just text back and forth. I don't know exactly what he said, but he said he was looking into it or—or whatever they just decided to do. Somehow, I don't think it was investigated, and I think they just told him not to do any—do it again or something.

CORBETT: Okay, but you don't know that. You're just kind of assume—

C1 I don't know that.

CORBETT: Okay, but—but Lieutenant Meier did tell you he was gonna look into the call that, um—that was NR'd by the two females.

C1 Yes.

CORBETT: Okay, but you don't have any knowledge **[38:00]** of what he did for—for that investigation or what discipline, if any, which could have been a—a verbal counseling or anything—you don't know of any of that that took place with the girls.

C1 I have no idea. All I know is that Deputy Chief Blomdahl met with me and asked to let him handle it internally.

CORBETT: Okay.

C1 So that's where—that's where it died.

CORBETT: And as a rep, you know that, I mean, we try to keep people's, um, personnel matters as confidential as possible, so, even if Lieutenant Meier had, you know, reviewed the CAD, dispatch recordings, BWC video, if there was any, uh, interviewed the girls, like, you wouldn't have—he wouldn't share that knowledge with you. You understand that; right?

C1 That's fine.

CORBETT: Okay, and then, also, like, if, um—if anyone is ever disciplined, it's not—generally speaking, that information isn't shared, even with, um, someone who calls in to file a formal complaint. They're—like, **[39:00]** they're never, um, informed of any discipline, if any, that would be imposed. You—you're—you're aware of that; right?

C1 Well, when you say "generalize," I think, now, with the laws changing, I think the public gets a group of type of complaints, or the media can get those. Now, I don't know if the discipline's involved, but I know that I think they can get the access to the investigations now.

CORBETT: Well, they w—they will be able to, going forward, but I'm saying, like, it's—it's pretty common, and, like, you've been here a long time. We don't—when we investigate something, um, we don't share with other people what we learned in that investigation and what discipline, if any, was—was given to the employees.

C1 And, uh, my—what I was trying to do and accomplish was to make sure that an investigation was gonna take place, that there wasn't gonna be a coverup by my police department. That's what I was calling—or texting him about.

CORBETT: Right, but you said earlier that you really admired, um, Lieutenant Meier and you look up to him, even though he's younger than you. So would there be any reason **[40:00]** that, um, you would doubt what he was saying to you? Like, when he's—when you sent him a text and he told you he was gonna look into it, would you have any reason to—to doubt his word?

C1 Yeah, because I've been told that 01 and O2 are untouchable, so it was my belief that they were gonna sweep this under the rug from the beginning, and I—I don't know if that's true or not, but that was my belief.

CORBETT: Okay, okay, all right. Um, Sergeant Medici, do you have any questions (unintelligible)—

MEDICI: Yeah, let—let's just go back to the cember—the, uh, September 15th call that you texted me on with the NR and all that stuff, the Arlington call, the Arlington gym call. You—you followed that call. You and Weddle kind of followed that call as it unfolded. How did—how did you know so much info on the call? Did you pull the CAD or—

C1 I just listened to Weddle tell me. I'm dri—I was driving, so I wasn't staring at the computer.

MEDICI: So just the fact that everything happened—they broke into **[41:00]** the locker, the—the—the dad or something, uh, uh, recovered the car—how did you know all that?

C1 He—he may, at one point, spun the computer towards me, 'cause I remember seeing—or maybe I looked over—seeing that—he goes, "Look, the RP keeps calling back in, wondering where the police officers are." So that's what I remember.

MEDICI: Uh, how much info did a—a dispatcher give you, not that there's anything wrong with that? But did you guys call Dispatch and find out more info on what's going on with this call?

C1 Officer Weddle typed one of the dispatchers that he knew and asked, and then she responded and said, "Yeah, a report should have been taken on that."

MEDICI: Okay.

C1 And I told him, (unintelligible) "Hold on. Let's—I'll—I'll send Tanya a text and find out if—if it was a—if there was anything else to this call that—before we start jumping to conclusions, let's take a breath, 'cause we're upset, and then I think Tanya had said, "No, it's—they—they didn't take a report."

MEDICI: And that's kind of what I'm trying to clarify—is, uh, clearly you were upset. Clearly, there was some kind of thing going on with, um, **[42:00]** you, Weddle, and—and the girls not doing their part, whatever the case may be, and I'm not—I'm not

suggesting this was a vindictive thing at all, but you clearly wanted to find out what the hell was happening with these girls on this call, because it was bullshit; right? (unintelligible)

C1 Yeah, I think any beat partner that's watching a computer and seeing their beat partners en route to a call for an hour and a half is gonna be upset, because, obviously, if you're available, you're getting all the calls and they're not. (chuckles) So—

MEDICI: Yeah, uh—

C1 I mean, uh, we do it all the time. We wat—where—I was taught that way in training here. You ever—always—unit status, incident status, where are you guys at, what's holding. Constantly, I'm always doing that.

MEDICI: So, um, you call me. Eric ultimately gets the information from me, um, and he looks into the call, and a couple days goes by, and you didn't really hear, so—I don't know how to describe it—you're anxious. You just want to know for sure if someone's looking into it, like O2 asking, and ultimately, **[43:00]** do you find out they're looking into it at all, or do you not know?

C1 I just met with Sergeant Blom—or Chief—Chief Blomdahl.

MEDICI: Okay.

C1 We met, and he told me, "Just let us handle it internally." And I said, "Okay." So I don't know what that meant. That could have been everything from "Hey, don't do this again" to "There's a complaint." I—I don't know.

MEDICI: So, from the time you talked to Chief Blomdahl—Eric first, then Blomdahl—then you were under the impression we're gonna handle this internally or they're gonna handle it out there internally somehow.

C1 Yeah.

MEDICI: You're not a huns—hundred percent positive whether or not that was handled in whatever way it was handled, but you—did you say you're assuming it—nothing happened?

C1 That's—well, the only reason I'd say that—well, one of the reasons I say that is because they—they were never split up. They just kept riding together. So I could just see, you know, "Hey, don't do that again. Change your ways. Be careful, and then go ahead."

MEDICI: So, honestly, at this point, when you're not sure if anything **[44:00]** happened to them or not, how—how much did you poke the bear, still? How much did this continue with you, 'cause you weren't sure if anything was done? You know what I'm saying?

C1 Uh, well, all of—I—what I've described kept building, so, you know, the term "poke the bear"—I don't know if I was poking anybody or if they were poking me, but of—of—obviously, the frustration's building.

MEDICI: Okay. So fair to say, then, it's kind of a mutual thing—they're tagging you, you're tagging the situation? I'm trying to figure out if, maybe, it was resolved and you stirred it up again, I guess.

C1 No, I can't say that, because, when I said, "Hello," to James Mutuku, he could have easily looked at me and said, "Hello." He said, "You'll see, you'll see," and then it escalated from that to—to the "Rat Buster" flyer being in my mailbox. Um, so that—I mean, the poking the bear is not me. I mean, you can say whatever you want, because I—I believed there might have been s—s—an NR on a call and I notified Internal Affairs, but obviously, when it got to **[45:00]** him and he found out about it, he couldn't prevent himself from s—he couldn't separate himself from his private life and—and his personal—I mean, and his—and his professional life. That's obvious. He could have easily said, "Hey, how you doing?" Or he could have just

said, "Hello." But when he doesn't say anything, and then—now remember, when I walked out, it wasn't like we were walking in the hallway together. I just happened to walk out. He walked by, and I said, "Hello."

MEDICI: Did you ask him about the "Rat Buster" thing—if he did it?

C1 No.

MEDICI: Never—

C1 No, other than confronting him.

MEDICI: Well, what does that mean?

C1 Well, like I said earlier, I said, "You're—you're a coward. I—you know, you put that 'Rat Buster' thing in my mailbox. That—that's a threat on my life. That's a rifle used to kill a rat."

MEDICI: Did he respond, other than—

C1 He did.

MEDICI: --"You'll see, you'll see" and the—

C1 He forma—he formed a—a handgun with his hand and pointed it at me and acted like he fired it twice.

MEDICI: Did he deny putting those flyers up?

C1 He did not deny that.

MEDICI: And I just want to clear this up, because people are gonna wonder. Uh, just—just knowing you've been here a long time, you're a tenured guy, you think someone's, um—**[46:00]** I don't know if "disrespecting"—the word is, but when you say, "Hello, James," down the hallway, are you sincere?

C1 I was very sincere, and I was surprised. Like I said, we weren't walking at each other and decided, "All right. We're two bulls—gonna go at it." It wasn't like that. I walked out of that locker room, I turned and he was right in front of me. I said, "Hello."

MEDICI: Okay, and you understanding it wouldn't change anything. It's not a—a—a problem for you. I'm just trying to figure out the dynamic of you knowing all this shit's going on and, again, maybe just trying to get a reaction from him.

C1 No.

MEDICI: Okay. You put yourself 10-6 in IA, uh, when you came here to visit me. Is that just something you would normally do, or again, I need to ask you, is that something you wanted everybody to know you were doing? (laughs) Because everybody knew that you were here. I don't know how.

C1 Uh, well, O4 told me to, and then I found out from another officer, as soon as he told me to and I walked out, him and all the sergeants went into the watch commander's office. He jumped on the phone.

MEDICI: Okay. Uh—

C1 But I—today, I **[47:00]** think I put myself 10-6 Magnolia. I don't know. I put myself here before, I think. Maybe when I rep people, I might put myself 10-6 IA. I don't know. It's—

MEDICI: Right. So, in this case, this wasn't an intentional, uh—

C1 I'm not—I—I'm 53 years old. I'm not 25 and pissed off. I'm an older guy that's getting ready to retire. I—I reported something that I thought I should report, and I was timid in doing it, because I felt like this might happen, and it did. That flyer was put in my mailbox. He's the one that said, "You'll see, you'll see"—not me. I didn't go up to him and say, "Hey"—I didn't confront him. I didn't cause any problems with him. I wanted to be professional, and I wanted it to be—be handled however. I didn't want this to happen. It—it was sheer desperation, the two times I came here, because nothing is being done out there. Sheer desperation.

MEDICI: And so were clear, I'm not suggesting anything's your fault. I'm just—I just know how it can be when people rustle your feathers, you know.

C1 Yeah.

MEDICI: It—it's like you might **[48:00]** poke a little bit here and there, and it turns into a bigger thing than it needed to be. Um, Billy—you—you mentioned that, uh, when Billy—I'm gonna say—righted the situation and you ended up where you wanted to be, you still called him a coward. What—why?

C1 I said, "Billy, you're a coward. You could have moved 'em on your own." He said, "Can you move someone from Area 2 over there?" Just say, "Those are my people. Move 'em." I mean, that was my—that's what I—that's what I said.

MEDICI: Okay. So you were just mad at Billy 'cause it—it—it—

C1 Everyone was mad at each other. It's very contentious. We're shorthanded all the time. Billy's upset, I'm upset—

MEDICI: Sure, yeah.

C1 -- O3 upset, everyone's arguing.

MEDICI: Uh, you think Janet found out you were here because you put yourself 10-6, or that's not the reason—she just ran into you?

C1 I don't have any idea.

MEDICI: Okay.

C1 That would be a total guess.

MEDICI: And I only bring that up because, like I say, I think, after you left, um, seems like almost everybody I ever ran into knew that you **[49:00]** were in IA, and I don't—I don't know why that happened. Do you?

C1 Yeah, because that happened in rollcall, and then O4 told me that, and I'm sure it spread like wildfire amongst all the police officers.

MEDICI: Yeah, it's funny how that happens, but, uh—okay. So the swap meet thing I think I have an understanding of. Um, this stalking call you mentioned that they claim you NR'd—was that ever rectified somehow? Does anyone know what happened?

C1 Weddle didn't know what he—I remember Weddle said, "Well, maybe it was the one call where the lady was"—I—I forget. He—he—he tried to justify it in his head, and I was like, "Well, that doesn't make any sense. We didn't—there's no stalking call. We didn't go to stalking calls today. There was no"—I—it was just bizarre. It was bizarre behavior and weird questions.

MEDICI: Any counseling, talking-to, discussions about why you NR'd a specific call?

C1 I don't know what he said to Weddle on the other end of the phone.

MEDICI: Okay, but there was no discipline, there was (unintelligible)—

C1 No, no, it was just he—I just remember **[50:00]** Weddle being—and just saying, "Sarge, we didn't go to a stalking call. I'm not sure what you're talking about."

MEDICI: I think that's all I got.

CORBETT: I want to just back up, um, to your first, um, interaction with Mu—Sergeant Mutuku. Um, just so we distinguish which 01 we're talking about, I'll—

C1 James.

CORBETT: Right—so Sergeant Mutuku. Um, you—you had gone with some concerns prior to that. Um, on 9-15 is when you first brought up issues that you had with the two female officers, um, and you mentioned that you—I think you met with, uh, Deputy Chief Blomdahl about **[51:00]** two weeks later, and—and you had had a conversation with, um, Lieutenant Meier, as well—

C1 Mm-hm (affirmative).

CORBETT: --kind of about what was going on. Um, would—so they knew—Lieutenant Meier and deputy chief—they knew that you had an issue with—with the girls, um, either riding together and/or the NR'ing of that call; right?

C1 They could ride together all they—well, yeah, I had an issue, because of the lactation (unintelligible)—

CORBETT: Because—and I understand that, and—and I—yeah, I don't—if—if I was running that watch, maybe there were some other circumstances that I'm unaware of, but it—it doesn't seem prudent to take two officers out of the field when—when, really, there's—it should be one. But again, I don't know all the information. But both Lieutenant, um, Meier and Deputy Chief Blomdahl indicated that they would handle this internally, and it sounds like, I mean, unless you **[52:00]** went and told the girls themselves that you were doing this, there had to have been some conversation or some sort of investigation or talking-to for Sergeant Mutuku to learn of the events; right?

C1 Well, it's his wife, so I'm sure it got out, and then th—they—they're obviously married, so—

CORBETT: But that's my point. You didn't go to—to 01 or O2 or did you?—and say, "Hey, why are you both coming in for these breaks?" or "Why did you NR this call?" Did you have either of those conversation with them?

C1 I didn't say anything to them about NR'ing that call. I went to Internal Affairs the next day after I slept on it. W—Weddle had—Weddle had a c—uh, a conversation with O2 texting, months before. I don't remember when. You'd have to ask him.

CORBETT: Okay.

C1 I don't have any idea what they—he said something about, "Why are you guys always 10-6? We're getting our asses handed to us," or something like that. I can't—I don't remember, and I don't know what her response was.

CORBETT: Okay. It just seems **[53:00]** likely to me that, somehow or another, someone at the Department had a conversation with the girls, because that's how Sergeant Mutuku learned that there was an issue; right?

C1 You're right.

CORBETT: I mean, would you agree?

C1 And when it was handled internally, they learned of this, I'm sure, and they probably—I told you in the beginning—you said, "I'll k—I'll keep your name clean." I said, "You don't—you don't worry about it. I'll"—

CORBETT: That didn't last long.

C1 "It's gonna get—it's gonna get out." So they kn—it—it got out quick.

CORBETT: So all—all I'm—all I'm getting at is that you—you said earlier that you respected, um, both the lieutenant and the—and the deputy chief that we're talking about, and they wouldn't really have a reason to lie, but you didn't understand, like, what happened in the investigation. My point that I'm trying to make is some sort of conversation had to have taken place, because that's kind of what perhaps kicked off Sergeant Mutuku, like, the following day, seemingly; right?

C1 Uh, you said "conversation" between who?

CORBETT: Whether it was Lieutenant Meier who maybe addressed the girls, or maybe **[54:00]** Lieutenant Meier asked someone else to address or look into that call—

C1 I don't know.

CORBETT: But why else would Sergeant Mutuku, um, respond to you, "You'll see, you'll see," the day after you spoke with the deputy chief?

C1 I don't know. He—he—they—they knew about it. I can't speak for that.

CORBETT: Okay. Um, all right, and then—so we've talked about a lot of names here. Um, it's very clear to me that you have an issue with some of the things that were said by Sergeant Mutuku, and I understand you saying that there's motive on his part to—to post those things in the locker room. So would it pair—be fair to say that, um, he would certainly be one of the subjects in this investigation?

C1 Yes.

CORBETT: Okay, and then there were some sergeants that were mentioned. There was also, um, um, **[55:00]** a couple of lieutenants that were mentioned. One that stands out is Lieutenant O4 how—because you said that you had gone to him and you felt that him moving you to Beat 5 was in retaliation for the things that you brought forward, um, prior to that. Um, so would you consider him to be a—a subject employee in this investigation, as well, for—

C1 Well, he violated—didn't he—isn't he obligated to take the complaint? I mean—

CORBETT: Okay.

C1 --according to that policy, you could go to HR, the city manager, the chief. There's no chain of command with that type of stuff.

CORBETT: Right. I'm just trying to figure out—I don't want to—ah—and the reason I do this—it might sound kind of silly—is—I'll use the—the most simplest example I—I have is, um, sometimes, like, someone will call in to file a complaint, like, after the Gang Unit or the SWAT Team goes and serves a warrant at their home; right? And then they—they write this complaint, and they—they list, um, the SWAT Team **[56:00]** as the subject officer or the entire Gang Unit, and really, after talking with the person, maybe they only had issue with two of the 20 people that were at their house that day. So I try to narrow down, you know, who—who the complainant has the issue with; right?

C1 I—I could tell you this. To me, this is an epic failure of command at the Riverside Police Department in 2022. When Uninvolved Party was presented with that, I should have never had to push that issue. It should—an immediately com—it should have been an immediate PA that was taken right then and there. Those flyers should have been frozen, and this investigation should have never got to this point. If he takes the initiative that day that Eric Meier gives him that flyer, and he pulls a PA, Mutuku and I aren't having any issues, 'cause now there's no reason for me to go

to him, and there's no reason for him to come to me, because he knows there's a complaint over a flyer that he may be responsible for, so he's gonna keep his mouth shut, and so am I.

CORBETT: Okay. I—I'm gonna stop you real quick, if I might. **[57:00]** So that's the first time you've mentioned Uninvolved Party name.

C1 No, I mentioned it earlier.

CORBETT: Did he? (unintelligible)

C1 I said that Eric had given him the flyer.

CORBETT: Maybe I missed it. Okay, so—okay, so I—I—I missed that, then. So you're saying Lieutenant Meier brought this to the attention of Captain Milby.

C1 That's what he told me.

CORBETT: Okay, okay. Um, so, if—if that happened, then you're saying that's a failure on—on the captain's part to address the situation.

C1 It's a failure on everybody's part.

CORBETT: Okay.

C1 I shouldn't have to come in here and push this issue. I should be a protected employee.

CORBETT: Okay, and then the flyers, though, happened, uh, a couple days after the "You'll see, you'll see" comment by Mutuku. So that, um—

C1 Two days.

CORBETT: Right. Did you—and ri—maybe we talked about it—I—I don't remember. Did you tell anybody about the "You'll see, you'll see" comment?

C1 Uh—

CORBETT: Or did you wait until after the—**[58:00]** the conversation with Lieutenant Meier on the 4th?

C1 I think—I think I told Eric Meier what he had done.

CORBETT: Okay. (pause) Okay. So then, based on that, would—in your opinion, and—and we'll review this, but would, um, Eric Meier, then, also, in your opinion, be a subject in this investigation?

C1 That's for you guys to decide. I don't have any opinion on that.

CORBETT: Okay.

C1 I don't know what he did or who he talked to or how they handled any of this stuff.

CORBETT: Okay.

MEDICI: Let me ask about the Uninvolved Par thing one more time. Um, a—again, are—are we assuming Uninvolved Par didn't do anything or—just because it—it appears nothing was done there? Is that why you're assuming it, or you knew he just—he didn't, uh—

C1 I'm just assuming it. I—I don't know what went on behind closed doors.

MEDICI: Okay.

C1 I wasn't in the meetings.

MEDICI: Okay. You've—

C1 Had he brought me in and asked me, I would know. If they said, "Hey, what do you want done?" or "We're gonna do this," you know, **[59:00]** but to just k—knowing Uninvolved Party didn't do—he met with me once the other day and said, "Hey, I just—why this thing's in IA—I want you guys to all get along." And I said, "Okay."

CORBETT: Uninvolved Par said that to you?

C1 Yeah, last week, or this—what's today? Uh, maybe it was last Thursday.

CORBETT: Okay. Well, let—let's do this, then. So there's a lot of, um—there's a lot of what-ifs because, um—like, there's obviously layers of command—right?—and so you don't really know kind of what happened in some of those layers. You're just kind of assuming, based on actions or lack thereof, that that took place. Is that—

C1 Yes.

CORBETT: --kind of true? Okay. So, through the course of this investigation, all that stuff's going to come out; right? But as you sit here today, um, who is it specifically that you personally have issue with, based on all that we've talked about? So, like, with—with Uninvolved Party, obviously, **[1:00:00]** he failed to take any action, but you don't know if he was in the middle of—of an investigation or not. So we don't really know that for certain at this point. So—but as you sit here right now, um, it's obvious there's the, um—the issue with James, because that's something that you have firsthand knowledge of. You were there when he made those comments and made the gestures with his hand.

C1 Yes.

CORBETT: Um, um, Lieutenant O4 because you—when you went to him to tell him that you felt that him moving you to another area was, um, uh, in retaliation for what you had brought up earlier, and he told you to go to Internal Affairs—is that—

MEDICI: Although let me stop you there, because I think, when you and I had talked at some point afterwards, you mentioned that O4 felt he was a subject officer. Therefore, he couldn't take the complaint. Does that—does that make sense to you? Do you remember that? He thought he was being the subject of a hostile work environment or that kind of thing, because, um, he just added to the mix by putting you **[1:01:00]** in a beat you didn't want to work in. So, if you had gone to him—

C1 You know what I think he—

MEDICI: --suggesting he was a subject, I could see where he would divert you to go to Internal Affairs or another commander.

C1 He—he said something about that. I don't remember exactly what he said. He said, "You're accusing me. Go to Internal Affairs" or something.

MEDICI: Okay. So you understand what I'm saying. If he thinks he's a subject, he can't take the complaint.

C1 Okay. That's fine.

MEDICI: I—I—I just wanted to clarify that, 'cause I think that's what you and I talked briefly about.

C1 Yeah.

MEDICI: Okay.

C1 You'd have to ask him, but—

MEDICI: Is that the only issue, other than he—he, uh, moved you to another beat and then that got corrected? Is there anything else that would make him a subject officer at this point?

C1 No.

MEDICI: Okay.

CORBETT: Okay, and the reason I'm trying to, like, wrap my head around this, too, like I said, is, obviously, we're gonna have to talk to, you know, everybody that we've—we've talked about in here, but just trying to, um, understand, like, from you, from your point of view, **[1:02:00]** your perspective, like, who is the—who is the person or the persons that are responsible for making you feel the way that you feel today? Like, um, it's obvious—Mutuku. I—I kind of see now that you frame it that way, Sergeant Medici, about—about Lieutenant O4 um, and I—and I think you agree, too, that that—that makes sense. Now, that's not to say that, as we investigate—I could have—we could talk about 20 people, and—and maybe you—you only have two people who really are the ones that are, uh, making your life m—miserable right now, um, and we talk to these other 18 people, and that's not to say that, when the captain, um, or someone higher reads this—that they might—they might say, well, based on the actions of these supervisors, um, you know, they note some other misconduct. Does that make sense? So, for ex—

C1 There's not a doubt in my mind they're gonna come in—they're not gonna—I've never met a Riverside administrator that has—have ever admit they failed **[1:03:00]** or failed to take action or even made a mistake. Generally, they're very bar-heavy and stripe-heavy and whatever else, and I don't imagine anyone coming in here, going, "Oh, yeah, I'm sorry. I—I shouldn't have done that." They're not—that's not gonna happen.

CORBETT: Well, whether that happens or not, it's—it's not to say that, once it gets to a higher level—that they don't say, "You know what? Um, that person should have—you know, it might be a failure to supervise, because they were notified of these issues on this date, and they didn't do anything about it."

C1 Yeah.

CORBETT: Does that make sense?

C1 Yeah.

CORBETT: But that's not for, um—that's not for you or me to, um—to decide. Um, I'm just trying to figure out who are the people who caused you to come in here today, and, um—and then, through that, all these other people that we've talked about—that's not to say that command isn't gonna potentially find that there was some violation of policy, because, maybe, someone should have taken some action sooner. Does that make sense?

C1 Yes.

CORBETT: Okay. So, um, **[1:04:00]** James Mutuku. Um, is Lieutenant O4 um—do you believe that he, um, moved you into Area 5—that that was like a—or was that, I mean, a fluke thing? I mean, it got corrected. I mean, I don't know. I'm not out there. I'm just—I'm trying to get a feel for—'cause I want to do right by you and—and make you feel comfortable in that we're gonna look at this, um, from all angles.

C1 Well, regardless of my opinion, two sergeants recognized what he did was wrong, and both intervened.

CORBETT: Okay. Um, this thing s—first started off by you going to Sergeant Smith.

C1 Yes.

CORBETT: Um, now that—(unintelligible) I mean, I wasn't there. I wasn't part of that conversation. I know that there's a lot of times, um, **[1:05:00]** communication between a—a sergeant and an officer, um—and on both sides it may not always be, like, uh, what we want to hear or the response that we want to be given, but was there anything that you feel that was, um, hostile or inia—or inappropriate, um, based on your interaction with—with Sergeant Dawson Smith?

C1 No.

CORBETT: Uh, Sergeant O3 ?

C1 Well, you—we can talk about him. I mean, I don't know who gave him the directive to start calling us and asking us these bica—bizarre questions, but like I said earlier, when he came to the GTA recovery, he said, "You're being watched. Lieutenant Barney's watching your response times. Your names came up"—which is—whatever. They c—you can—you can look into all that stuff, all the reports we take. Everything's gonna come back. You'll see.

CORBETT: But do you think that he was maybe trying to do you a solid to let you know, like, "Hey, people are starting to watch you, so make sure, like, you're minding your P's and Q's," or—

C1 Out of the blue, **[1:06:00]** yes. After the Friday ins—where I reported it, and then, now, all of a sudden, he's doing me a solid out of nowhere, I mean, O3 is O3 He's—he's a hands-off sergeant. He has a senior crew.

CORBETT: Mm-hm (affirmative).

C1 We don't bother him much. He doesn't bother us much.

CORBETT: Were you working in his area that night that he was calling to find out about these calls that you and Weddle may have gone to or—

C1 I can only assume so. I don't know, but he—he's the one calling us, so I would assume yes.

CORBETT: Okay. I mean, but—but the call itself, like you said, it's—it's not a call that you would normally get, but as you sit here, you don't know if he was the sergeant in charge of the area you were working that night.

C1 They switch a lot, the sergeants, so I don't remember if he was assigned to us or not. I'm only gonna say I assume he was, because he was the one calling us. It wasn't the sarge—uh, any other sergeant. It was him.

CORBETT: Okay.

C1 And we're on his crew.

CORBETT: So he is your sergeant.

C1 **[1:07:00]** Oh, yeah, Sergeant O3 is our sergeant. You're asking me about what area he was assigned to.

CORBETT: Well, I saying—'cause you—you were saying, uh—and my mistake. I didn't realize he was your sergeant. You were saying it was unusual for him to call. So, I mean, I look at that, quite honestly, like, um, you know, everyone always wants to kind of look out for their people, so, if I knew, um, you know, maybe someone had an issue—someone higher up had an issue with Medici, um, I might say, "Hey, you know, you might want to—like, whatever"—like, maybe he wasn't coming in on time or whatever the reason might be. I might say, "Hey, just so you know, I—I heard—I heard them talking about that. You might want to make sure you're here on time." I look at that as kind of, maybe, helping him out or, uh—I mean, I don't know. Maybe it's—

C1 But you understand that—

CORBETT: --right; maybe it's wrong. I—I—

C1 You understand that what he was calling us about were f—were false. He—he accused us of doing something that we didn't do. So—

CORBETT: Oh, so the—so they were a—accusatory-type phone calls.

C1 Yeah, he's—he's—well, again, it's hard for me to say anything, 'cause Weddle's **[1:08:00]** the one on the line with him. I can only hear one end of the conversation, and when Weddle hangs up, tells me what happened. And he said the first call was, "Why were you guys at Bordwell Park for 43 minutes?" And Weddle—I remember Weddle said, "We weren't at Bordwell Park at all tonight." And then the next call was, "Why did you guys NR that, uh—you know, that stalking call?" We hadn't gone to a stalking call, so I don't know—

CORBETT: But the—

MEDICI: Do you remember the date of those calls?

C1 No.

CORBETT: But that—

C1 Well, no, it was—it was probably Monday. So I—I talked to you Friday. I think it was that Monday.

CORBETT: And I'm just trying to—I'm just trying to get this right. But those are normal course-of-day, um, conversations.

C1 It's not normal, no.

CORBETT: Why not:

C1 'Cause he doesn't call.

CORBETT: Okay, and how long had he—

C1 It was out of the ordinary—

CORBETT: Okay.

C1 --that he called us.

CORBETT: Okay. So it was—it was unusual for him to do that.

C1 Very.

CORBETT: Okay. (pause) Okay. Would it be—let—let's say that he got a directive—and I—and I don't know—I'm just kind of spitballing here, **[1:09:00]** but the lieutenant who's working that night says, "Hey, I want you to keep an eye on, you know, your guys tonight"—whatever—and—and, um—because of everything that's going on—whatever—I want to make sure that—whatever it is. So, if he was given that directive, then would that make sense why he's calling and asking, 'cause he's been told to pay close attention to your and Weddle's activities?

C1 Three days after I (unintelligible)—I speak with Internal Affairs, I find it highly unusual, and I've worked for O3 a long time, and it's highly unusual to get a phone call from O3 He does call, but it's usually, "Hey, I need you to send a SAR" or—or something like that. It's very, very rare to get a phone call from O3 O3

CORBETT: Okay.

MEDICI: And he specifically asked you if you guys NR'd a call?

C1 Again, I'm talking about what Weddle told me, and Weddle was the one that spoke with him, but yes, he—I could hear Weddle say, "We didn't go to a stalking call tonight." And then he—like, he hung up, and then he said—Weddle was like, "He's asking us **[1:10:00]** about a stalking call now." And it was when Weddle put two and two together. I really didn't put two and two together. It was him, and he goes, "I think they're coming after you because you went to Internal Affairs." And I objected. I said, "There's no way. I—I—I—there's no way." And then he goes, "No, man." He goes, "When does—we don't ever get phone calls from O3 O3 Like, this is weird."

MEDICI: Well, uh, it—it is true. It's—it's possible that, (unintelligible) them knowing that O3 you sergeant, to say, "Hey, call them and find out w—what happened on this call"; right?

C1 Sure.

MEDICI: Okay. So we don't really know the dynamics—

C1 We don 't. It just—

MEDICI: --'cause you—you're not remembering a stalking call.

C1 No.

CORBETT: But for you personally, like, you didn't have any interaction with Sergeant O3 that, um—or have you?—that you would deem to be, like, hostile or inappropriate or anything like that, directly with Sergeant O3

C1 Uh, well, there's always arguments and things like that. We can go on and on forever, uh, but overall, I just thought it was awkward and weird **[1:11:00]** that he was calling three days after I went to Internal Affairs.

CORBETT: Okay.

C1 It was out of the blue.

CORBETT: Okay. Um, so no on—no on Smith. Possible on O3 right?

C1 Yeah.

CORBETT: Um, how about Lieutenant Meier?

C1 No, you asked me about him.

CORBETT: Oh, I'm sorry.

C1 I don't—I don't know what went on in—

CORBETT: Questionable 'cause you don't know the—and same with—with Uninvolved Party.

C1 Yeah.

CORBETT: You don't really know, like, what action, if any, they took.

C1 Yeah, I wasn't in any of these meetings they had or any discussions or text messages (unintelligible) or e-mails. I don't have any idea what they did.

CORBETT: And what about, um—what about Lieutenant Barney?

C1 Well, that's interesting, because he's the watch commander, and if he's barking out those orders and then to say that our response time—he's watching our response times, which is another false—it's false. Earlier that day, we did take time to get to a call 'cause we went to eat, **[1:12:00]** um, but there's no—there's no response times where we work. We're so shorthanded.

CORBETT: Mm-hm (affirmative).

C1 That's absurd to even think that that's something that he would bring up. So I don't know if he did that because I mentioned to you, and how fast things go, that it took, uh, 01 and, uh, O2 so long to get to that call, and it's—now it's ironic that we're being called out on our response times. Just—it's very coincidental, but I've been here a long time, and this is very, very rare—

CORBETT: Mm-hm (affirmative).

C1 --for any of this to happen three days after an Internal Affairs investigation. When I was a probationary employee 23 years ago, I didn't have sergeants calling me, asking me questions. You didn't even see 'em. There's two of 'em. And now, 23 years later, after I go to Internal Affairs, this progression starts. That's when it started. It didn't start before that. It started—I went to you on Friday. This started Monday. I was split up on Tuesday, and then it progressed. Now I'm getting, uh, **[1:13:00]** simulated handguns pointed at me, "You'll see, you'll see." I'm getting rat flyers. This—that's how that progressed. I wasn't poking any bear. They were poking me.

CORBETT: Mm-hm (affirmative). Okay. Back to Lieutenant Barney. Do you know if he was working that night that O3 made these calls, or was it Lieutenant O4 or do you know?

C1 I think Lieutenant Barney was there.

CORBETT: Okay. So, again, like, obviously, we're gonna talk to everybody that we've talked about. I'm just trying to determine who do I need to give POBR rights to and—and who not. So, on, um, Lieutenant Barney—did he specifically do—do or say anything to you that would make you feel, um, um, like, threatened in any way or that you were—d—that he was—

C1 (unintelligible)

CORBETT: --retaliating against you for anything?

C1 Well, you can argue the fact that Weddle and I rode together and then—so the Monday this goes on, **[1:14:00]** Tuesday we're split up. So I don't know who was the watch commander that day. Generally, O4 or Barney switch—

CORBETT: Mm-hm (affirmative).

C1 --on Wednesday. So Tuesdays, Barney would be there.

CORBETT: Okay.

C1 And I don't remember (unintelligible)—so these guys work out weird deals. I don't know what they do, but sometimes they're here when they're not supposed to be here, but they're here for somebody else, and so you get mixed up. So I don't remember who the watch commander was, um, that day.

CORBETT: Okay.

C1 So I don't know what—what they went on and decided. I—you know what? I think it was O4, 'cause I walked up to him afterwards, and I said, "Did Weddle and I do something wrong?" And he said, "No." And I said, "Well, all right." And

he didn't an—like, he didn't say, "Well"—he just—"No," and I just walked out. So it was Lieutenant O4 I'm almost positive.

CORBETT: Okay. Um, anything that you can think of, specifically, that involves Lieutenant Barney? I mean, we're still gonna interview him, but was there any actions that he took or anything he said **[1:15:00]** or did that—

C1 In front of me, I—I don't know.

CORBETT: Okay.

C1 Now, e-mail-wise, text-wise, meme-wise, I don't know.

CORBETT: And that—that's fair. I understand that. Okay. Um, so I'm not—I'm not trying to—I'm not trying to minimize this by any means, but I'm also trying to kind of rein it in so that we don't list 20 people as subject officers. Obviously, if—if, through the course of the investigation, you know, something comes up that—that—you know, like, let's say I interview—we interview five people before we get to the next five, and in those five interviews, we learn some things that—you know what?—maybe—maybe one of these—one or two of these next five potentially are—are going to be a subject, where we didn't identify that initially in our interview with you. That's kind of how I—I—I see this thing going, but I'm trying to—to narrow down as much as possible, like, who our subject employees are, because I'd like to interview **[1:16:00]** our witness officers first and gather as much information as possible. Of course, we could identify more subjects through—through those interviews, but, um, I don't what to have, like, a—a—a—a shotgun approach, if that makes sense.

C1 And I don't want you to, either, but I can tell you this. You guys work in here, and I've been a rep for a long time and been here a long time. When allegations come in, you rep people, and you don't know if they're a witness or s—a subject officer.

CORBETT: Mm-hm (affirmative).

C1 And that's where your investigation's gonna have to take over. I can't answer those questions and what people are gonna say, other than, like I said, when I rep people, sometimes they're witnesses, sometimes they're subjects. You don't know until they start talking.

CORBETT: Right.

C1 So I can't—I know it's a big investigation, because it involves a lot of people, and I wish I could narrow it down, but again, I can't—from my perspective, I've laid out what happened to me. The rest of that has to be handled by you guys, and let them determine—let them sit here and then tell you why they did what they did.

CORBETT: Right, and while we're talking about that, just to—just, you know—I hope you realize, too, that, as we—as we **[1:17:00]** talk to everybody that, um, we've talked about, maybe more people will come up as we interview other people. I don't know. But as that happens, I'm sure there's always two sides to every story; right?

C1 Of course.

CORBETT: And so, um, it's very likely that, at some point, we may need to bring you back in to talk to you.

C1 Of course, I fully expect it.

CORBETT: So I just—you know, I just want to let you know, and then, based on whatever we learn, we may do it just like we did today, or if they make some allegations against you, then we would give you your POBR rights, because—just for your protection, but, um, I'm just trying to get as much information as—as possible, and then, once this goes through, I—I—I feel like there's probably gonna be some questions that we have for you after speaking with some of the other parties involved.

C1 I full—fully expect that.

CORBETT: Okay.

C1 But we can't argue about the facts.

CORBETT: And—no, no. And—

C1 The facts are there's a flyer in my mailbox, there's motive, uh, of the person that did it, there's a gesture with a handgun, and "You'll see, you'll see." Those are the f—those are the **[1:18:00]** facts. Now, he can come in here and sit here and say, "I never said any of that. I don't know what C1 s talking about"—which I anticipate—

CORBETT: Mm-hm (affirmative).

C1 --and that's up to him, but I'm telling you the truth. I've been here 23 years. I've testified in court. I've never lied in a police report. I've never lied in court, never lied to Internal Affairs, never lied to a sergeant, never had to, 'cause I never put myself in the position to have to tell a lie.

CORBETT: Mm-hm (affirmative).

C1 'Cause I try to f—do my job properly. People like this have put themselves in positions to have to walk in this room and fabricate a story, because that's the only way they can get out of it. Earlier I said he has—he has two choices. He's either gonna come in here and tell you, "Yeah, I did it," and suffer the consequences, which should be severe—

CORBETT: Mm-hm (affirmative).

C1 --or come in here and lie and say, "I don't have any idea what you're talking about." And then you guys could determine if he did it or not, but either way, if you determine who did that, and he—he—there's gonna be a serious consequence.

CORBETT: I agree with you one hundred percent, and—and I think that that is, um—for me, I think that's the easiest part of—of this investigation. We have a—a clear, um, **[1:19:00]** person of interest, if you will, which kind of kicked this whole thing off, um, and so it's—it's very (unintelligible)—without a doubt, I realize, like, okay, he's—he's a subject officer, and now we want to try to gather as much information

to either prove or disprove that he did or didn't do these things. Um, it's the other pieces, and I understand where, you know—(unintelligible) no employee should ever be put in a situation where they come forward with something, um, they bring it to someone's attention, then it's kind of left flat, um, and so, um, if that—if that happened, and I don't know if it did or not, I—like I said, I told you earlier—Sergeant Medici and I started talking—I said, "No, no, no, I don't—I don't want to know. I want to just hear straight from"—from you, like, kind of what has happened, um, and I'm trying to—again, I don't want to minimize this. If—if what you're telling me is true—and I don't have any reason to doubt you about the actions of Sergeant Mutuku—um, it's completely uncalled for, and—and—and, **[1:20:00]** you know, we'll have to—we'll have to deal with that. Um, it's the other layers, I guess. So, um, this is the first I've learned of—of all of these things. Um, at first, the way you—you described to me, uh, Lieutenant O4 kind of brushing you off and telling you to go to Internal Affairs, I was like, "Ooh, that doesn't really sound right," but then, when Sergeant Medici brings up the fact, well, he thought he was a subject officer and it would make sense that he couldn't take the complaint from you, because he's a subject, and that's why he said—that—that also makes sense to me. So I just—I want to do right by you, as best as I possibly can, um, but I'd like to, if—if we can, kind of look at who was the—who was the focus of this investigation, and then we—we'll still talk to everybody, so—

C1 Let me ask you this. There's no dispute that that flyer was in my mailbox on the 3rd of October.

CORBETT: Mm-hm (affirmative).

C1 What's the date today—the 8th?

CORBETT: Yes.

C1 When I walked in here, did you have any idea that that flyer was in my mailbox?

CORBETT: **[1:21:00]** I heard—I did hear about a flyer, yes. Mm-hm (affirmative).

C1 Okay. So you had an idea. Had you—have you seen it?

CORBETT: No.

C1 You haven't. So it wasn't presented to you officially.

CORBETT: No.

C1 Okay.

CORBETT: But I only got, um—I only got assigned this investigation, uh, last week, and so—

C1 Because I forced the issue. But my point is—is no commander's walked in here and said, "Hey, this needs to be looked into. This is not right. This needs to be investigated."

CORBETT: Right, but I also—I haven't talked with any of the other parties involved, Lieutenant Meier and Uninvolved Party—

C1 I know.

CORBETT: --so I don't know what steps, if any, they've—they've taken.

C1 If it got lost in interoffice mail or whatever. I'm—I'm kidding, but my point is you didn't know about it.

CORBETT: I knew—

C1 The Internal Affairs is the heart of a police station—of a police department. That's the heart. Without you guys, you can have corruption and all kinds of things going on in law enforcement. You're the heart of this police—you're the heart of the police department. If there's misconduct—and we can consider this pretty serious misconduct, I would think, 'cause you're intimidating someone—**[1:22:00]** and you didn't know about it, there's a failure—an epic failure from where this occurred to this—to right where we're sitting.

CORBETT: Mm-hm (affirmative).

C1 There's no way in the world I sh—it's so crazy. You've been here a long time, and so have I. I'm not being retaliated against my—by my peers. You—in the old days, it was your peers. I'm being retaliated against by sergeants, lieutenants, and captains. Now you can argue the level of retaliation, um, all day long, but the point is—is nobody brought that flyer here and said, "Hey, this needs to be looked into." There's possible criminal conduct. You could argue 422, terrorist threats, "Rat Busters." There's all kinds of things. You can DNA that—you can DNL—DNA those flyers. You can fingerprint those flyers. There's all kinds of things you guys were able to do, but there's been so much time, because no one knows what to do. Why do I know what to do, and I'm a police officer, and commanders that go to SLI and Quantico and all these leadership schools not know what to do? **[1:23:00]** There's really no excuse.

MEDICI: Have you noticed things subside a little bit since you and I spoke two weeks ago?

C1 What do you mean by that, "subside"?

MEDICI: Has the same crap been going on, or do you think it's lightened up because they know now it's in Internal Affairs?

C1 Uh, it's—again, when it happened, I haven't seen O4 Or did I see him Saturday? I think I walked by. I worked swap meet or something, and he was in the watch commander's office, but I haven't directly—again, don't quote me on this. I haven't directly worked for him since then, because he was gone.

MEDICI: Okay, but no more "Rat Busters," no more any of that kind of shenanigans—

C1 No, no.

MEDICI: --from the couple weeks ago, so—

C1 No.

MEDICI: --um, (unintelligible) life's been, uh, just a little easier since you came to Internal Affairs.

C1 Yes, and since—I can say this, on Wednesdays and Thursdays so far, they've put 01 and, uh, O2 in Area 5, where they belong—another reason **[1:24:00]** why I was so upset when I got moved.

MEDICI: And—and is there any other reason besides your experience with, um, O2 and 01 NR'ing a call and all that stuff—is there any other reason that you feel they're a protected class, other than the lactation stuff and all that?

C1 No.

MEDICI: Okay.

C1 I—I don't have any idea. They do good police work. I don't know where this happened at. I don't—I don't—I just—that's just what I got. When you go to a sergeant and you ask him or tell him, and you—they're just—they brush you off, like you're wasting their time, you just—and I've heard that, too. Other people that have worked with them have said that, nah, the—no one's touching them. They can do whatever they want out here.

MEDICI: And why is that? You still—you—you—you literally—

C1 I don't know.

MEDICI: --don't know?

C1 I don't have any idea.

CORBETT: Hm.

MEDICI: Okay.

CORBETT: Is there anything else, um—I mean, it's a lot of information, but is there anything else, um, that you can think of that—that we should know before we start calling people in to talk to 'em? Anyone else—and we've **[1:25:00]** mentioned a lot of names, but anyone else that might have information about this or, um, people who were present when certain things were said—anything like that?

C1 I don't know who was in the parking lot when James and I were yelling at each other or when he did that with the thing—and don't they have video there? I mean, how long does it last? It's probably gone now, but, um—

MEDICI: That's all the stuff we'll have to check on in the parking lot.

CORBETT: Okay, and in the parking lot, that's when it was the "You'll see, you'll see" that—

C1 No, it's when I walked by in the hallway and I said, "Hello," to him. That was the first time I'd seen him, um, since I went to Internal Affairs, which is about two weeks after I went to Internal Affairs, but again, those are estimates. But that was in the lock—that was—as I walked out of the locker room, he happened to be right in front of me, and I just looked at him and said, "Hello."

CORBETT: Okay. I'm—I'm confused. Um, oh, I see. On—so this was a Saturday.

C1 **[1:26:00]** Yes.

CORBETT: Um, it was October 8th, approximately.

C1 No, October 1st. Again (unintelligible)—

CORBETT: You—okay. I just want to—so, on 10-1—you said it was a Saturday, and that's when—

MEDICI: Swap meet (unintelligible).

CORBETT: --he said, um, "You'll see, you'll see."

C1 Yes.

CORBETT: But then, on 10-8, the following Saturday, um, you said hi to him—

C1 No. Oh, yes, I did—

CORBETT: And he called you a—

C1 --sarcastically, yes.

CORBETT: --um—you called him a punk and a coward—

C1 After I—

CORBETT: --and he—

C1 Yes.

CORBETT: Okay, and, um, what did he tell you, if you can remember? Is that when he made the—

C1 So the first—again, these are all estimates. I'm just trying to go by my memory—

CORBETT: That's fine.

C1 --because there's so much t—time that's went by. The first was when I walked out in the morning and saw him, and I said, "Hello," **[1:27:00]** and he said, "You'll see, you'll see." The 3rd is when I came to work, which was a Monday, and that's when I saw—

CORBETT: The flyers.

C1 --the flyer.

CORBETT: Mm-hm (affirmative).

C1 So now I'm infuriated because he's hiding behind props like a coward, and I made a decision that, when I see him, I'm gonna tell him. And I walked by, and I saw him. I said, "Hi, James." I wanted him to know I was there. When I came back, I said, "I checked my mailbox. There's nothing in it." And that's when he walked out. When I walked out, he walked out the other door.

CORBETT: And so that occurred outside.

C1 Yes.

CORBETT: Okay, and when he said, "You'll see, you'll see," on the 1st, is that when he also made the—

C1 No.

CORBETT: Oh, that was on the 8th.

C1 Yeah.

CORBETT: Okay. You called him a punk and a coward, and he said what as he made, like, the gun gesture?

C1 He first said—he came out and s—and confronted me, and I don't know what he said, but he—

CORBETT: Okay.

C1 --and I responded. He said, "Why is your voice trembling?"

CORBETT: Oh, okay.

C1 And I said, "My voice is trembling because a 'Rat Buster' is a rifle used to kill rats, and you threatened my life."

CORBETT: Okay.

C1 And then he—that's when he went with the gun. As he—he's standing right by the door, he went twice.

CORBETT: **[1:28:00]** Got it. Okay, all right. Anything else?

C1 No.

CORBETT: Sergeant Medici?

MEDICI: Nope, not right now.

CORBETT: Okay. So, um, it's 4:20. Uh, in just a minute, we're gonna go off tape, and then, if you don't mind, then maybe you can air-drop the, um, photos you have that you took.

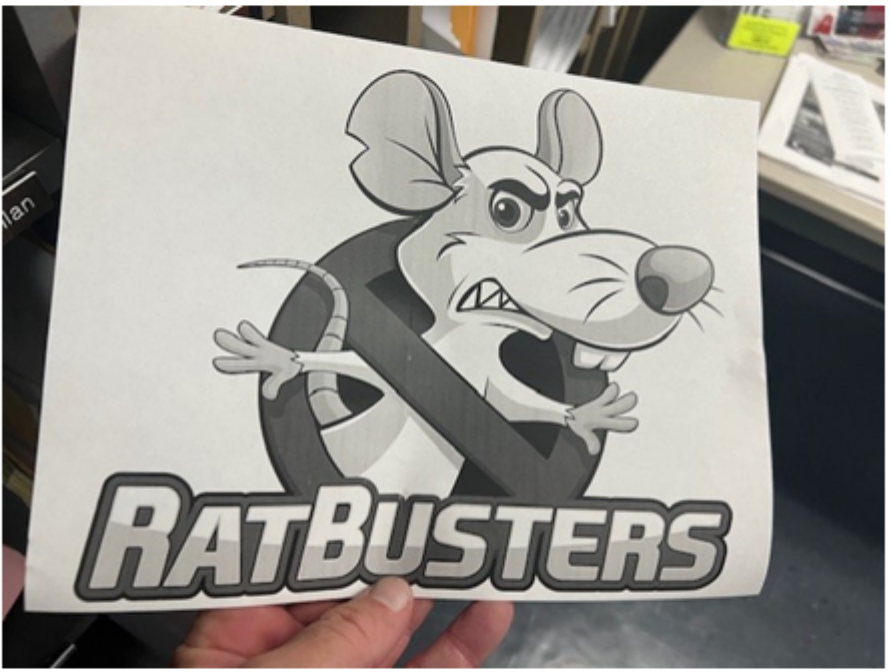
C1 Okay.

CORBETT: I just don't want to interfere with your recording. So, if no one has anything else—everyone good?

C1 Yup.

CORBETT: All right. It is 4:20.

End of recording.


RATBUSTERS


RATBUSTERS


Document #1
Asset: N1450009
Case: 221104700
User: twest
Agency: Riverside PD
Date: 2024/1/4 15:28:0

INTERVIEW OF SERGEANT JAMES MUTUKU

PA2211047 Date/Time: 1-19-23/1026 Hours
Sergeant Karla Corbett = CORBETT
Sergeant James Mutuku = MUTUKU
Lieutenant Eric Detmer = DETMER

The timing of the recording, at intervals of approximately one minute, is shown in boldface type, in brackets.

CORBETT: Okay. Good morning. Today is Thursday, January 19th. It's, uh, 10:26 a.m. I'm Sergeant Karla Corbett. I'm in the Internal Affairs conference room with Sergeant James Mutuku, um, and we are going to be interviewing, uh, James this morning, uh, regarding a hostile work complaint filed by Officer C1 C1 Assisting me in today's interview is Lieutenant Eric Detmer, and this investigation is documented in PA2211047, and, James, we spent a couple minutes, uh, off tape going over the fact that you are here as a—as a subject officer, um, and so, at this time, we'll just go through your admonition-of-rights packet. Uh, let's see. The first, uh, couple of pages go over your—your rights as a peace officer. **[1:00]** Um, are you aware of your—your rights?

MUTUKU: Yes.

CORBETT: Okay, and, um, I did provide you this packet prior to going on tape. Do you have any questions about any of your rights?

MUTUKU: No, I do not.

CORBETT: Okay. If I could just get your signature and—and the date here, that you have read and understand your rights. (pause) Thank you. You want to sign that, too, sir? (pause) Okay, then, continuing on, um, if you could just read the top three questions. They talk about if you're taking any medication or anything that would cause you to be unanswer—unable to answer truthfully. If you could just initial—thank you. (pause) **[2:00]** All right, and then, of course, you do have the right to

have a representative present with you while being questioned. Do you wish to have a representative present with you today?

MUTUKU: No.

CORBETT: Okay. Um, (unintelligible) mark this for you, and then it's, um—I'm gonna ask you to print and sign your name here, um, to acknowledge that I am, uh, order—ordering you to answer truthfully and completely questions relating to this investigation. (pause) (unintelligible)

DETMER: Is that right?

CORBETT: Well, it says "person giving advisement."

DETMER: I'll give it to him.

CORBETT: Okay.

DETMER: Okay

CORBETT: Oh, I'm sorry. (unintelligible)

DETMER: I'm hereby ordering you answer truthfully and completely questions relating to this interview and investigation. Do you understand that?

MUTUKU: Yes.

DETMER: Okay.

CORBETT: Sorry. That's the whole reason he's here. I'm just used to reading that.

MUTUKU: No (sighs). No worries.

CORBETT: Thank you, sir. **[3:00]** This is not a criminal investigation, so, uh, I'm not gonna read you Miranda. Uh, I am gonna order you not to disclose any of the information, uh, that we talk about here today, um, so you're directed not to discuss this investigation with anyone other than your attorney, representative, personal clergy, or psychological counselor until the investigation has been completed. Uh, failure to abide by this directive could result in a charge of insubordination and subject you to disciplinary action up to and including termination from the employment of

the Department. If you could just sign and date, and the reason for that is we're just trying to keep things, um, quiet and prevent this from kind of snowballing, if you will.

MUTUKU: Okay.

CORBETT: Thank you, and then I'll get you a copy before you go.

MUTUKU: Okay.

CORBETT: All right. So, to start, if you would, **[4:00]** um, please tell us how long you've worked for the Department and how long you've been a supervisor.

MUTUKU: Um, so I've worked for the Police Department since s—2009, so, I guess, roughly 13, I think get—almost 14 years this July. Um, I've been a sergeant for about—a little bit over two and a half years now.

CORBETT: Okay, (unintelligible) and—

MUTUKU: On patrol.

CORBETT: Okay, and you are assigned to day watch right now; right?

MUTUKU: Correct.

CORBETT: Watch B, and were you also on Watch B this last rotation, so July 2022 through this most recent shift change?

MUTUKU: Um, so shift change is tomorrow, so—

CORBETT: Oh.

MUTUKU: --uh, starting tomorrow, I'll be assigned to shift—to swing—Watch C, swing shift.

CORBETT: Okay.

MUTUKU: Uh, so, but—yeah, my current—from—I'm currently assigned to Watch B. This is the last day of it, so—

CORBETT: Okay, okay. My mistake. All right. Thank you, and then, um, as you know, we—we are here because, uh, C1 has filed a complaint. Um, I want to ask **[5:00]** a little bit about your—your history with him, you know, like how well do you know

him, have you ever worked with him as a, um—as an officer on patrol, have you ever supervised him?—that type of thing.

MUTUKU: So, yeah—so, when I was, uh—when I got off training, I went to swing shift, uh, which is mostly what I worked for my patrol—as a patrol officer, for that part of my career. Uh, C1 was on swing shift at the time. Um, I worked the West End, predominately. I want to say he either worked Central or West, but we would have overlap, uh, so, uh, I—I—I wasn't, uh, best friends with, uh—I wasn't friends with him, uh, on patrol, but he—C1 has this thing where he seeks out younger officers when they first get here—

CORBETT: Mm-hm (affirmative).

MUTUKU: --and tries to act as a mentor. So, uh, I specifically worked for Sergeant Banks at that time—Kendall Banks—and he did, amongst other officers, I'm sure, uh, seek me out and try to offer words of wisdom and/or mentorship through my young patrol career.

CORBETT: Okay.

MUTUKU: **[6:00]** Um, that's mostly the interaction I had with him. From that point—after leaving, going on to special assignments and promoting to detective, very limited, if at all—any interaction with him at all. Uh, as a supervisor, I worked mostly graveyard for that two and a half years, all—all the shifts but one.

CORBETT: Mm-hm (affirmative).

MUTUKU: So, uh, again, limited interaction with him at that time, just 'cause how the shifts work. Maybe during the crossover, but that's it.

CORBETT: Okay. So, when you did work patrol with him as an officer, um, fair to say you had a relatively good relationship with him?

MUTUKU: Yes.

CORBETT: Okay, and, um, you are married to, um—to O1 O1 (unintelligible) um, who's also kind of involved in this. Um, we've—we've talked to her. We interviewed her as a—as a witness in this investigation, but, um, (unintelligible) at some point or another, um, some issues started to, **[7:00]** um, come about between C1 and—and your O1 O1 Is that right?

MUTUKU: Yes.

CORBETT: Okay. Um, when—when did these issues start?

MUTUKU: Um, they started probably about before she got pregnant, so I'd say—I mean, from now, um—I don't know—maybe two years ago, two and a half years ago.

CORBETT: Okay, and—and what was the issue, or what were the issues, if you know?

MUTUKU: Uh, so, early on, when she got here, um, her and Officer O2 O2 uh, worked the East Side. Uh, she specifically was—uh, her (unintelligible) talked a lot, uh, again, C1 trying to mentor younger officers—whatever. Um, back then, I specifically told her, "Be careful. I've seen this play itself out before." I was specifically talking about him and Missa— O5 O5 **[8:00]** So a—a previous relationship where C1 s trying to mentor a younger female officer because he thinks that they're trying to do good police work and trying to put his input on—on them. I said, uh, "Be friendly with him, but just—you and O2 be careful." So I told her that back then.

CORBETT: Mm-hm (affirmative).

MUTUKU: So they had—they were—they had a good relationship, a good working relationship. He worked the East Side, they worked the East Side, and they'd—whatever—common—he'd commonly try to mentor them, uh, in the effort of doing what he considered good police work.

CORBETT: Mm-hm (affirmative).

MUTUKU: Um, a situation happened where there was a call, him and—again, this is all relayed to me. I don't know—

CORBETT: Sure.

MUTUKU: --uh, all the facts of everything, but a call where they requested assistance, and a—apparently her and O2 didn't respond in a time—quick enough for him, for—I think he was—he needed a camera. So, when they got to scene, he kind of barked at them about A, B, C, and D.

CORBETT: Mm-hm (affirmative).

MUTUKU: Uh, they didn't appreciate that, so they **[9:00]** barked back. Um, but some type of verbal confrontation or altercation or whatever it may have been, and I think that's where the—their relationship soured, from that point on, um, from that shift. Again, it was, I'd say, (unintelligible) probably about two—more than two years ago, at this point. Um, after that happened, I said it was only a matter of time for something like this to happen, 'cause I've seen it happen before. Um, "You guys"—I told both, "You guys just do your job. Just stay clear of him. It—it's happened. It is—just do whatever you guys—you guys are partners. You should—you don't need him for anything. Just do your job, but just—that's who he is. Just know that, going forward. Don't try to mend anything. Just be done with it, 'cause he will never—he—he thinks you fronted him off."

CORBETT: Mm.

MUTUKU: "He thinks two 20-year-old girls fronted him off. That's never—he's never gonna get over it, so just let it be." So that's—as far I know, that's when the relationship, uh, soured between them two.

CORBETT: Okay, and did—did O2 **[10:00]** or O1 um, say what, if anything, changed with him after that point?

MUTUKU: Yeah, there would be—speaking with O1 specifically, there'd be times where he'd call 'em over the—call them out over the radio or Channel One, uh, o---o—ob—just very, uh, mean and—and brash towards them, uh, in different ways, and all things—again, this is all relayed to me, but things that they just—they were—they were over it, and in their minds, it's a bitter old man. Let's go on to the next thing. Like, they didn't think anything of it. Uh, they thought he was trying to pull them out of the—the beat, the East Side, but—

CORBETT: Mm-hm (affirmative).

MUTUKU: --they didn't care to leave, and there's—"We'll stay—we'll st—we're gonna stay here." So—and at that time, I know the supervisor they had was supportive of it, so he's like, "You guys just do whatever you guys do." So—

DETMER: He was supportive of them staying there?

MUTUKU: Yes.

DETMER: Okay.

CORBETT: And you mentioned, um, a little bit ago, you saw something similar play out **[11:00]** with, uh, O5 O5 What—what was that about?

MUTUKU: And (unintelligible)—a lot of this—this was never relayed to me, either via O5 and/or C1

CORBETT: Sure.

MUTUKU: --but it—it—it—it—it was known that they were close, initially, and he'd try to ride—or he'd ride with her and be a mentor to her. Um, there was a f—a fronting-off or a disagreement where she basically—she kept her opinion, whatever sh—they were—the issue was—

CORBETT: Mm-hm (affirmative).

MUTUKU: --and that was kind of the, uh—the souring of that relationship, and it got ugly, where C1 would, I mean, just bash her publicly all the time and talk about her

fertility issues, just as—it got—it got to the point where it was an ugly thing, so, uh, but again, a—and I just—not like—I'm not com—really comparing it to O1 I—the more—reason why I kind of—that was my advice to her was more so 'cause if it was a—a female that he was, uh, mentoring, and my thing was more so, "Don't think for a second, 'cause you're a female, that he won't get **[12:00]** malicious like he would with a male."

CORBETT: Mm.

MUTUKU: Just—that—that was the comparison of it—

CORBETT: Okay.

MUTUKU: --not the exact, uh, dynamics of the relationships.

CORBETT: Okay, but you had seen something before, and that's what made you, uh, warn both O1

MUTUKU: Yes.

CORBETT: --and O2 about—about working—

MUTUKU: Yes (unintelligible)—

CORBETT: --with him.

MUTUKU: Just the more so, like—"Just 'cause you're females, don't think he won't get malicious with you. He will get malicious with you"—

CORBETT: I understand.

MUTUKU: --"uh, male or female, period."

CORBETT: Okay.

MUTUKU: So—

CORBETT: And then, um, when—when you worked with him, um—and this would have been prior to you and O1

MUTUKU: Yes.

CORBETT: --um, your relationship—when you worked with, uh, C1 um, how would you describe him as, um, an employee, um, and/or a beat partner?

MUTUKU: Uh, uh, he—he—he was—so, when I got here as a cop, I'd always heard about, uh, for lack of a better term, the—the—the **[13:00]** legend of C1 Uh, I never saw this, so I never saw who this cop ever was that people talked about, 'cause when I got here, he's extremely disgruntled and didn't really do anything, uh, by the time I got here. So I'd always heard of him being A, B, C, and D of a cop—

CORBETT: Mm-hm (affirmative).

MUTUKU: --uh, (unintelligible) in—in a—in a positive way.

CORBETT: Okay.

MUTUKU: So, uh, for that reason, I—I gave him—even though he was disgruntled, I gave him, in my mind, a little bit of respect, 'cause of what other offi—older officers said about him—

CORBETT: Okay.

MUTUKU: --um, none of which I had seen, but nonetheless, so that—that—that myth was in Patrol—or that—not myth, but that story was in Patrol.

CORBETT: Mm-hm (affirmative).

MUTUKU: So I—I lent him an ear, but immediately, he started—and I didn't really know him, but he started immediately bashing my supervisor at that time, who was Sergeant Banks, saying—it was about reports getting kicked back—is how I vaguely remember it. Uh, he can't do A, B, C, and D. This is out of policy, A, B, C, and D. So, immediately, I started—I already started to try to distance myself back **[14:00]** then, not disrespectfully, just I—I was a brand-new cop. I didn't want to—the negative, negative, negative was—I was—I wasn't trying to be around that kind of atmosphere in general.

CORBETT: Mm-hm (affirmative).

MUTUKU: So that's the immediate interactions that we had—were just about—and I don't remember him talking about other sergeants, speci—specifically my sergeant at the time, who was Sergeant Banks. He—what—he'd—he'd ask me, like, fish—like, "What'd he say for you guys to do on that call?" or "What did he do on—what did he kick back that report for?"—just fishing for anything opposing, uh, Sergeant Banks at the time, who was my supervisor. So—and I think, at—from that point on, we never really ever—'cause I started—uh, he probably saw I started distancing myself from that—

CORBETT: Mm-hm (affirmative).

MUTUKU: --kind of environment, so—or if—if he was at Mag and Jurupa, I would not—I'd—I'd drive away from there, just in general. I just—

CORBETT: Mm-hm (affirmative).

MUTUKU: Like, again, maybe he—maybe he felt it, but I never—there was never any confrontation between us, ever, at any point, so, uh, I—I might have gone off. What was the initial question?

CORBETT: That's okay. Just how he was as an employee or as a partner, but—

MUTUKU: Oh, okay. So—so, to answer your—your question in short, I guess it'd be, **[15:00]** from the onset, he was disgruntled—

CORBETT: Okay.

MUTUKU: --and very negative.

CORBETT: All right. So you saw that as a brand-new officer—

MUTUKU: A brand-new cop.

CORBETT: --and—and tried to distance yourself from him.

MUTUKU: Yes.

CORBETT: And now that you've been here, you know, a little over 10 years—well, actually more. You've been—it's been—

MUTUKU: (Unintelligible) 13 and a half, 14—yeah.

CORBETT: Yeah, okay. So what is your—and now that you're a supervisor, what is your, um—a—and I know it's—it's—you're gonna be kind of—leaving O1 and O2 outside of this, how would you describe him as—as an employee?

MUTUKU: He's toxic. (unintelligible)

CORBETT: Why do you say that?

MUTUKU: It's—so, becoming a supervisor, I've had the—basically, I guess—I don't know—opportunity, I guess you could call it, or, um—my mentorship of a—of a newer, younger officers—I'd like to say I think I have probably one of the better pulses on cops with five years or less on here, as far as a supervisor, on the general **[16:00]** consens—general feeling they have of this Department, and he's often put in a category with probably two or three only other officers here who they consider as toxic, who they don't respect, who they try to get away from as far as possible, who they've said they have—they've—they know, if they call for help, he's not coming, uh, and—and it's just—so I—I'd say "toxic"—is what I'd say. He's a toxic employee to young cops, but fortunately, I think—unlike my generation of young cops, I think these young cops know that, though. They—they can see it quicker than, I think, my generation of cops saw it.

CORBETT: Okay, and is that, do you think, because, like you said, when you first got here there was that talk about C1 once being like a—an all-star, if you will—

MUTUKU: Mm-hm (affirmative).

CORBETT: --of a police officer? Even though you didn't see it, that story was out there.

MUTUKU: Yes.

CORBETT: Bot now, fast-forward 13 years later, that—that—**[17:00]** that former officer of—of C1 being an all-star, it's—(unintelligible) some of those same officers aren't here anymore to kind of tell—share those stories, where—

MUTUKU: I think that's exactly what it is.

CORBETT: And people haven't seen him for so very long.

MUTUKU: Yes, I—I think the stories died out, and there's no generation—there's very few people pushing it, and probably even fewer people pushing it that these cops care to listen to, so it—it's a nonexistent thing.

CORBETT: Okay. So (unintelligible)—and you've answered this. I was gonna ask what—what his reputation was, if you knew, um, and this—again, not—not your opinion and—or your O1 but what—what the general consensus out there is of him or—or what his reputation is, but you said it's—

MUTUKU: Uh, yeah, a hundred percent, if a—if a blind survey was taken of patrol cops, he—they'd rate him as a toxic employee.

CORBETT: Okay. What about supervisors?

MUTUKU: It—it's probably even worse with supervisors.

CORBETT: And why is that?

MUTUKU: Because—uh, well, unfortunately, for a lot of 'em, they've had **[18:00]** to supervise him, so they know firsthand, um, some of which—we used to obviously work patrol with him, so know even more firsthand, but it—it's—I mean, it—it—it's—they've had firsthand knowledge of—of, I guess, the—his toxicity, um, amongst not just towards them. I mean, he's known for being the anti-supervisor employee. He—he prides himself on that, so, um, I—I—I—he's known for just being confrontational when unnecessary with sergeants, and there's multiple sergeants who have multiple stories, so—

CORBETT: Okay. Have you witnessed any—any actions by C1 toward supervisors that would, like, provoke or cause tension, or just heard stories?

MUTUKU: Yeah, of—of—just—I guess this is just stories. I—I—have I ever seen C1 I mean, (unintelligible) my seeing him confront **[19:00]** supervisors was more so back in the day when he—

CORBETT: As an officer.

MUTUKU: As an officer, was an—when I was an officer.

CORBETT: Okay.

MUTUKU: Those are the confrontations I saw.

CORBETT: Okay.

MUTUKU: Yeah.

CORBETT: All right. Um, now you mentioned that issues began to arise between, um, C1 and then, um, your O1 and—and probably O2 in there, too, 'cause they rode as partners—

MUTUKU: Yes, they were partners.

CORBETT: --all the time; right? Like, two and a half years ago or so; right?

MUTUKU: Yes.

CORBETT: But recently, well, in the last six months or so, um, another issue came to light, which was, um—was—a—apparently, he had some sort of an issue with the—with the two female officers riding together.

MUTUKU: Mm-hm (affirmative).

CORBETT: When did you become aware of that, and how did you become aware that he had an issue with that?

MUTUKU: Um, he never said anything to me about it, but I—I mean, it was just the general talk in the ser—**[20:00]** uh, you know how the sergeants' bay is. There's—uh, during shift changes, there's six, eight sergeants back there and—or more. Um, yeah, it's just—I don't think I—I can't pinpoint the exact time I heard about it—

CORBETT: Mm-hm (affirmative).

MUTUKU: --but I did know—and I—I don't think I even heard of he had an issue with them riding. I think, when I initially heard about it, it was an issue with her lactation breaks. Uh, I—I don't—I don't remember hearing the issue about them riding, but I specifically did remember hearing, in the sergeants' bay, um, that there was an issue—he was having an issue with the lactation breaks—

CORBETT: Okay.

MUTUKU: --and complained to a supervisor about it or—

CORBETT: Okay.

MUTUKU: --multiple supervisors, I guess.

CORBETT: So, at some point, you did learn of that, uh, in the sergeants' bay—that—that he h—had complained about her lactation breaks.

MUTUKU: Yes.

CORBETT: Okay. Did you ever, uh, confront him about this or—or ask him about what his problem was or anything like that?

MUTUKU: With the lactation breaks?

CORBETT: Mm-hm (affirmative).

MUTUKU: No.

CORBETT: Did—did you ever make any comments to him, um—something similar to, "I heard you had an issue with my O1 feeding my son" or anything like that?

MUTUKU: No, **[21:00]** no.

CORBETT: Okay. Um, so no conversations with C1 about—about the lactation breaks.

MUTUKU: No.

CORBETT: Um, and so (unintelligible), just so you know, one of the issues he—ee—ee—well, he claims that he didn't have an issue with her taking lactation breaks, but it was more that O2 would also participate in these breaks, so, um, he didn't feel that they should ride together—

MUTUKU: Okay.

CORBETT: --is—is really what he says his—his—his issue was, but, um, nonetheless, O2 and O1 worked some arrangement out with their supervisor, and—and at the end of the day, he was okay with it, as was the watch commander. Um, let's see—now, (pause) aside from—well, let me ask you—so this starts after **[22:00]** July of last year, and then, at some point, um, C1 also, um, notified Internal Affairs about a call that—that O1 and O2 responded to or—or handled, but they didn't take a report on. Um, did you—did you learn about—about that from somebody?

MUTUKU: Yes.

CORBETT: Okay. Ha—who—who said something to you about that?

MUTUKU: Again, I—I don't think anybody specifically told me. I think it was, again, just sergeants' bay—just supervisors talking.

CORBETT: Okay.

MUTUKU: And I—that I—I wasn't even—wasn't ever even confirmed to me. It was just—the thing that I heard was C1 went to I.A. about some cops not taking a report, then later learned specifically who the cops were.

CORBETT: Oh, I see. So you—

MUTUKU: Yeah.

CORBETT: --just heard that he had complained about some officers, and when you first—

MUTUKU: NR'ing a call—

CORBETT: Okay.

MUTUKU: --is exactly what was said.

CORBETT: But you didn't know initially that it was about O2 and O1

MUTUKU: No, shortly after—probably the—either that day or the next day, I learned exactly who it was about.

CORBETT: Okay, and how **[23:00]** did you learn who it was about?

MUTUKU: I can't—I don't—(unintelligible) it's—maybe O1 said that C1 went to I.A. about us. I—I don't—I can't even—I don't—it was either O1 and/or somebody—a s—a sergeant in sergeants' bay.

CORBETT: Okay.

MUTUKU: Yeah.

DETMER: In your experience, is that normal for an officer to go to I.A. and complain about other cops NR'ing a call?

MUTUKU: No.

DETMER: Okay.

CORBETT: What—what is the normal practice, or have you even—

MUTUKU: I don't—I mean, I guess, if a cop had an issue with somebody NR'ing a call, that th—I mean, I guess, if a cop was on—I've seen cops have issues with the cops entering a call—one that they're on—they just take the report.

CORBETT: Mm-hm (affirmative).

MUTUKU: Or—or if they're senior officers, they just pull the cop aside, say, "You should probably take a report on this."

CORBETT: Mm-hm (affirmative).

MUTUKU: Um, so, yeah, I guess it's—if it's a call he was on, I guess he should just pull the report or—and—I guess they addre—address it amongst themselves, I guess—is probably what the normal **[24:00]** practice would be. Uh, if it's something egregious, uh, uh, I—I don't think there's anything to say about normal practice. I don't think it's just a normal thing for a—a cop to have such an issue with, but I guess he could just, I assume, maybe go to the sergeant, if it's something that you think it's—that needs (unintelligible) called attention to, maybe get—to get corrected.

CORBETT: Mm-hm (affirmative).

MUTUKU: Um, more so, just, yeah, if it's—I gue—it's—I guess this is all circumstantial, if you think that the cop is—just doesn't know—it's a newer cop and just got off training and they just don't know you're supposed to take a report. If you can't—if you—if they're not taking your mentorship, maybe could have a sergeant have them—just say, "You want to talk to him about A, B, C, and D," so I guess that'd be normal, but—

CORBETT: Okay. Now, after this, after learning that he, um, filed a complaint, um, against O1 and O2 did you—did you confront him about this?

MUTUKU: No, I was upset by it, but I didn't confront him about it.

CORBETT: Okay. Um, **[25:00]** did you have any negative interactions with him after this?

MUTUKU: Yes, we had a negative interactions [sic].

CORBETT: Tell—tell us about those.

MUTUKU: So, again, that—that—that—the lactation break thing—and again, I'm not sh—I think the lactation break allegations happened before, uh, the report one, if I remember it correctly, but that's the sequence I remember 'em, and so, after the report-writing thing, like I said, I was upset by that, um, more so 'cause it was my O1 involved.

CORBETT: Mm-hm (affirmative).

MUTUKU: Um, I—again, we wouldn't see each other a lot. I worked day shift, but I specifically remember one time, uh, walking out of roll call, walking down the hallway, and he works overtime a lot on the weekends. So that's usually the only time I ever see him. And he's walking—we're crossing paths, and he said something to me, and I just ignored him. Uh, there wasn't any interaction at all. Like, there was no talking. He just said something. I just ignored him. Maybe he probably greeted me, 'cause, like I said, before **[26:00]** this, we were on speaking terms. We were—see each other at the gym, talk all the time. It wasn't like any—

CORBETT: Mm-hm (affirmative).

MUTUKU: --kind of animosity at all. So that's probably when he first knew that I was not okay with any of this, obviously. Um, went into the sergeants' office. That's probably our first interaction, at—post—I'm pretty sure that was after the—the NR—the NR—

CORBETT: Okay.

MUTUKU: --allegations.

CORBETT: So, prior to that, if you would—if you would see him at the station, um, it—it was normal that you guys would say hi to each other—

MUTUKU: Yes.

CORBETT: --and stuff. Okay. Um, but on that particular day, when he greeted you, you didn't acknowledge him. You just ignored him.

MUTUKU: Yeah, I'm not sure ne even greeted me. He pau—I think (unintelligible)—I don't want to misquote him, but something along the lines of, like, a—he didn't say, "You—oh, you're gonna ignore me," but just like something along lines of, like, like, "You're not—like, you're not gonna address me?"—like, "You're not gonna"—again, I don't want to—it wasn't like he said, "Hello." It was like he said—either gave me a head nod or said, **[27:00]** like, something like in—in a greeting form, and I ignored him, and his response was something like, "Oh, you're just ignoring me?"—s—ma—something, like, along those lines of—

CORBETT: Okay.

MUTUKU: --"You're just gonna, like, dismiss me," but not—those weren't his words—"just dis—dismiss me"—but it's like, "Oh, like, oh, really?"—like one of those kind of things.

CORBETT: Okay.

MUTUKU: Yeah.

CORBETT: And so, um—

MUTUKU: It wasn't confrontational, though, in any way. It was—that—that—that—that was it.

CORBETT: Okay.

MUTUKU: Went to sergeants' office, and he—he left.

CORBETT: Okay. Um, any other negative interactions?

MUTUKU: So that was the first interaction. Um, after that—and I might get these next two out of sequence—but I want to say the next one was, uh, maybe the week later or maybe two weeks later, again, a weekend. Uh, we're sitting up in the sergeants'—sergeants', uh, uh, like, the podium after roll call. Again, Watch A, (unintelligible) B Watch. He's coming to work his overtime. Again, swap meet overtime or either—I'm not sure what overtime—the swap meet or, like, a (unintelligible)—like, a community events type thing.

DETMER: Special overtime or something.

MUTUKU: Yeah, one of those. It was in the morning, so one of those, eh, overtimes. **[28:00]** Walks in, greets—sarcastically greets all of us up there. Um, I di—I don't greet—I didn't greet him, but nonetheless, he doesn't—that's all that—that's all that part is to it. He changes out, comes back. At this point, everybody's left the podium, besides me and Asbury. We're just sitting there, talking. Uh, he says something along the lines of, "I checked my mailbox. Uh, it's clear. Thanks, guys." Something along those lines. Uh, I don't know what he's talking about—completely confused. Yeah, 'cause that was—okay. So he says, "I checked my mailbox. It's completely clear." Walks out. So I—I asked Nate—I'm like, "What—what was all that about?" And then he says, "That poster. That's what he's talking about." So I'm like, "Oh." So now I'm putting two and two together like—he's basically, like, accusing us—accusing me—I mean, he hasn't had any issue with Nate. So I go

out—out of the door, the side door to roll call. I say, "Hey, have a good day, C1 Have a good day, dude. Be safe out there." I—I yell at—**[29:00]** he's just in the parking lot, so I'm yelling at him. And then he says—he turns immediately beet red, starts charging at me, but doesn't come all the way towards me. He's probably 10 feet away—or so away from me, and says, "I know you put that fucking thing in my mailbox." A, B, C, and D. Um, now he's saying, like, I put the—"You put the flyer in my mailbox." Uh, do you want to—uh, just before I go too far on this story, I didn't know, sitting up at that podium, that there was, uh, a flyer that had been distributed, 'cause, when Nate said it's about the flyer, I knew that—what he was—I didn't have to ask him, "What—what flyer are you talking about?"

CORBETT: Okay.

MUTUKU: So I must have had knowledge that—about that flyer at that point.

DETMER: Okay.

MUTUKU: So he says, "I know you put that fucking flyer in my mailbox." A, B, C, and D. "That's a fucking threat on my life." A, B, C, and D. I'm like, "What are you talking about?" And then he yells at me, "Are you pointing a gun at me? Are you pointing a gun at me?" 'Cause I had pointed at him to have a good day. I'm like, "You're joking; right?" Like, that's why I'm like, "C1 you're—you're—you're h—you're joking."

DETMER: So you're using one finger like (unintelligible)—

MUTUKU: My finger's like—my finger's a gun now? I'm like, "S—st—like, stop. [Unintelligible] you're being **[30:00]** silly now." And then he's—again, he's going off about the poster, A, B, C, and D. "You're threatening my life. You're threatening my life. Are you threatening my life?" I said, "Have a good day," and I walked back in to the—the—the si—the same side where I came through. I walked back in. I'm like, well, is—(laughs) I said—I asked—and then Na—and Nate's just like, "Just leave

it alone." I said, "Okay." I was like, "That"—I was like, "It's my fault for even going out there." And that was—we didn't have any more interactions that—that day, so—

CORBETT: When you walked out the, um—I'm assuming it's the door right there by the—

MUTUKU: Yeah.

CORBETT: --podium—right?—did—did you walk free of the door and it closed behind you, or did you have to close it?

MUTUKU: I—no, I was—I—I was—I never broke that—I was holding the door open.

CORBETT: Oh, okay. So—

MUTUKU: Yeah, I didn't—I didn't walk all the way out to where he was at.

CORBETT: So—so Asbury heard the conversation (unintelligible).

MUTUKU: Yeah, he'd have heard this exchange, yeah, 'cause the door's open.

CORBETT: Okay. Did you see anyone else in the parking lot who may have witnessed—

MUTUKU: There may have been people (unintelligible), but I didn't—I didn't see anybody.

CORBETT: Okay.

MUTUKU: But I gue—(unintelligible) 'cause we just broke roll call, so **[31:00]** somebody might have been out there.

CORBETT: But you don't remember seeing—

MUTUKU: I don't remember seeing anybody.

CORBETT: --anybody, but—but the door was open, so Nate—

MUTUKU: Yeah.

CORBETT: --would have heard everything. Okay. Um, so you—you brought up the—well, let me ask you before we talk about the—the—the rat flyers or whatever. Um, were there any other negative interactions between you two?

MUTUKU: Um, yeah, there's another one. Uh, again, I don't know the timing, but it's for sure it was after this one, uh, within a couple weeks, (unintelligible) maybe even a

month. Who knows? Um, where I was the Central supervisor for the Central beat, and again, h—he works the swap meet overtime a lot, so one day, he—nobody's logged on for the swap meet, but—and I—I—I'm sure I—I—I'm assuming it was him working it, 'cause he works it all the time, uh, but I wasn't sure, but it—nobody was logged on, so I drove to the swap meet to see if anybody was there or if—if they were there and/or Code 4, **[32:00]** and nobody was there, but as I was driving there, I saw him, uh, driving out, so that was that.

CORBETT: Driving out where?

MUTUKU: Driving out, like his shift is o—like he's just leaving, like his—we were—'cause we're passing each other, basically. There's a gate between us, but we're passing each other. Like, his shift was over. Like, he's going back.

CORBETT: Oh, he's leaving the swap meet.

MUTUKU: It was probably towards the end of—yeah, it's probably towards the end of his shift.

CORBETT: Okay.

MUTUKU: So he's driving back to the station, presumably. Um, so, by the time I get back to the station, he's changed out and leaving. So he's walking out the front door now—

CORBETT: Mm-hm (affirmative).

MUTUKU: --of Lincoln, and I say, "Hey, if you're gonna work my beat, make sure you're gonna—you log on. Make sure you log on. I got to account for everybody on my beat." And then he flips again. Um, "That's not your beat. You don't have a fucking beat." A, B, C, and D. "You're a punk. You're this, you're that." So—and—and that was that. He—he said—he said, "It's not your beat. I'm not gonna log on. What are you gonna do about it?" And he stormed off.

CORBETT: That conversation occurred at Lincoln Station.

MUTUKU: Yeah, right at the doors.

CORBETT: Was anyone present?

MUTUKU: Uh—

CORBETT: Were—was anyone there that you can remember?

MUTUKU: There's cars **[33:00]** rolling around (unintelligible) the parking lot, but I don't remember seeing anybody like "That person was there," so—

CORBETT: And he called you a punk?

MUTUKU: Yeah.

CORBETT: Okay. Did anyone ask you to go drive over to the swap meet, or is that something you did on your own?

MUTUKU: Yeah, it's something I did on my own. I—I—I—I'm sure—I—I—no—no, I'm sure—I—I know that, uh, lieutenant and I had a conversation about, uh, just, like, the accountability, but it was not a direction of him to go over there. That—I did that on my own.

CORBETT: And what lieutenant are you talking about?

MUTUKU: Collins.

CORBETT: Okay. So you—you and Collins had a discussion about some—

MUTUKU: I think he asked me, "Who's working the swap meet today, 'cause nobody's logged on?"

CORBETT: Okay.

MUTUKU: Something like that, but he did not direct me to go to the swap meet.

CORBETT: Okay.

MUTUKU: Yeah.

CORBETT: Okay. So he asked you who was working the swap meet, 'cause nobody was logged on, and then, after that conversation, you took it upon yourself, as part of your duty as a supervisor, to drive over there—

MUTUKU: And see if anybody was working.

CORBETT: --make sure there was an officer—

MUTUKU: Yes.

CORBETT: --all of that. Okay, and—and at that point, **[34:00]** as you get to the swap meet, he was—

MUTUKU: He's—he's leaving.

CORBETT: --he's leaving the swap meet.

MUTUKU: I can see, on the other side of the gate, he's just leaving.

CORBETT: Okay.

MUTUKU: Yeah.

CORBETT: Got you. Okay. So you—you ask him about that, and—

MUTUKU: At that point, there's no interaction between us at all, at the swap meet. I just happened to see him when I got back to Lincoln.

CORBETT: Okay.

MUTUKU: And that's when I just said, "Next time you're working—if I'm working it, I'm the supervisor, then [unintelligible] make sure you log on."

CORBETT: Okay. Were—were you, um, demeaning when you told him that, or was it just—"Okay, next time"—

MUTUKU: I'm sure I was sarcastic, maybe.

CORBETT: Uh-huh (affirmative).

MUTUKU: I—I wasn't demeaning.

CORBETT: Okay.

MUTUKU: I just—"Next time you work"—yeah, I wasn't—I didn't—there's no disrespect or demeaning in anything, but obviously, there's a background of what's going on currently.

CORBETT: Yeah.

MUTUKU: I mean, yeah.

CORBETT: Okay. So you tell him to do that, and then that's when he tells you that it's not your beat or you don't have a beat and—

MUTUKU: Yeah, he just explodes, um, like he did the first time, so—

CORBETT: Okay. Um, and then any other, um, negative interactions?

MUTUKU: **[35:00]** I'm—I think that was—I'm pretty sure that was the last one.

CORBETT: Okay.

MUTUKU: Like where we're actually—yeah. I can't think of—I've seen him since then, but there's been no interaction. I'm trying to make sure I don't misspeak, but I can't think of any other time—

CORBETT: Okay.

MUTUKU: --I came across him and that we spoke words.

CORBETT: Um, the first interaction you mentioned, where he kind of gave you a head nod or something, um, and you said that you just ignored him—did you ever, um, tell him, "You'll see, you'll see"?

MUTUKU: No.

CORBETT: Okay. Have you ever said that to him?

MUTUKU: No.

CORBETT: Okay, and then you mentioned the, um—the—the flyers. Did you ever see the flyers?

MUTUKU: No.

CORBETT: Okay. You heard about 'em, though?

MUTUKU: I heard about 'em.

CORBETT: Okay. Did you ever see a picture of it after the fact, **[36:00]** or anything?

MUTUKU: I bare—I looked it up, 'cause Nate told me, uh—'cause he was yelling about, uh, a rat buster or rat (unintelligible) being a weapon, 'cause that—I was—that first interaction between him and I in the parking lot—

CORBETT: Mm-hm (affirmative).

MUTUKU: --I was confused about. When I came back in, Nate said A, B, C, and D. This is—what he's talking about is the flyer that had A, B, C, and D on it, and I looked it up on my phone to what—what he was talking about that was a weapon.

CORBETT: Okay.

MUTUKU: And then his yelling made sense, once I looked everything up.

CORBETT: Okay. So what—what did you find when you looked it up?

MUTUKU: Well, (unintelligible) rat buster, it was—it's a—it's a—like a—a gun you shoot rats with—

CORBETT: Okay.

MUTUKU: --like an exterminator thing.

CORBETT: Okay.

MUTUKU: So—so it was like he's talking about this with my finger, then think it's just like he's just crazy, dude.

CORBETT: I see.

MUTUKU: Yeah.

CORBETT: Okay. So you never saw any of the—

MUTUKU: I've never—I've never seen this flyer.

CORBETT: Okay. So that was—I was gonna ask you that—that, um—that first day that you **[37:00]** had that, did you see any f—flyers in the locker room when you left—

MUTUKU: No.

CORBETT: --or anything like that?

MUTUKU: No.

CORBETT: Okay. Um, you heard people talk about the flyers. Did you hear who might have placed 'em?

MUTUKU: No.

CORBETT: Okay.

MUTUKU: Well, I did hear who might have placed it, but I just never—it's just the myth of Lincoln or just—people just talking.

CORBETT: And what did you hear?

MUTUKU: That C1 placed 'em.

CORBETT: Okay. So you heard that C1 placed 'em.

MUTUKU: That's what I heard, yes.

CORBETT: Okay. Um, you didn't place 'em?

MUTUKU: No.

CORBETT: Um, your fingerprints aren't gonna be on 'em or anything like that?

MUTUKU: No, they're not gonna be on those.

CORBETT: Okay. Um, and the only person that you heard, um, who might have printed or placed 'em was—was C1

MUTUKU: Yeah, that's what everybody was saying, that C1 put them up.

CORBETT: Did you hear you might have placed 'em?

MUTUKU: Yes, I've heard people say I might have placed 'em.

CORBETT: Okay. Um, you looked up "rat busters," and you said, after you looked it up, it—it—what C1 said to you **[38:00]** made sense, where he was say—saying, like, you threatened his life or something.

MUTUKU: Exactly.

CORBETT: Okay.

MUTUKU: And if you look at my phone, I looked up "rat busters" the day after we had our—our incident with each other.

CORBETT: Okay. Do you ever use the computers in the—in the report writing room at Lincoln?

MUTUKU: No, I—I mean, (unintelligible) when you asked me (unintelligible), in my head, it mainly was (unintelligible) an officer asked me to look over his report and, sitting

down, looking over his report and making edits to his report while sitting down there.

CORBETT: Okay, but you—

MUTUKU: But, uh, me, myself, no, I don't go in there.

CORBETT: So you have a computer in the back that you share with another sergeant; right?

MUTUKU: Yes.

CORBETT: Okay. Um, that first, um—well, let me see—C1 of course, claims that you, um—you printed the flyers. Let me ask you this. The—that Sunday that you went to tell C1 **[39:00]** to log on, do you remember what time it was that you ran into him at the station?

MUTUKU: It must have been—so that overtime is worked till 2:00 p.m.

CORBETT: Mm-hm (affirmative).

MUTUKU: So the fact that he was leaving, it—it had to be around—between 1:00 and 2:00, I'd imagine, because that's—if he was leaving the swap meet at that time, I think it—they usually leave around—around that time. So it was between 1:00 and 2:00 is—is the time that our interaction would have been.

CORBETT: Okay, and I know sometimes he likes to work out at the station. Would—would this have happened—when you saw him drive out of the swap meet—

MUTUKU: Uh-huh (affirmative).

CORBETT: --did you immediately go back to the station?

MUTUKU: I mean, it took me a while, 'cause he was on—leaving on the exit. He was in the exit lane. It just took me a while to—

CORBETT: To go in—

MUTUKU: --to—and turn—

CORBETT: (unintelligible)

MUTUKU: --all the way around with all the traffic and everything, but, yes, I didn't stop anywhere else. I went straight—

CORBETT: Okay.

MUTUKU: --to the station.

CORBETT: Okay. So then that conversation took place then, so I'm saying, like, he didn't go work out and then you had it later. It was—

MUTUKU: No, no, it was—it was, like, pretty fresh afterwards.

CORBETT: --right after.

MUTUKU: Yes.

CORBETT: Okay. Um, that—**[40:00]** hm, okay. So—and then he—and then he leaves; right?

MUTUKU: Yeah, I—I—I just went—I just went inside, so, I mean, he might have—at that point, I guess she might have gone to work out or whatever, but—

CORBETT: Okay. Then, after that, did you go back out, um, you know, driving around or anything like that, if you can remember?

MUTUKU: No, if I'd have gone back out, it would have been to—to leave, to go home, because I'd already—the reason why I would have came through that way was 'cause it was the end of my day, so I had already downloaded my car. Okay. I was—I had (unintelligible)—had no reason to go back out there until I'm going to leave to go home—

CORBETT: Okay.

MUTUKU: --uh, maybe an hour or so later.

CORBETT: All right. Um, so C1 he—he finds a flyer in his mailbox, and there's some, uh, flyers that were posted in the men's locker room. They were taken down by other supervisors who—who saw them, but, um, **[41:00]** his allegation is that you—you posted the flyers. He wanted to—

MUTUKU: I've heard that, yeah.

CORBETT: Yeah, he wanted to make a complaint about that. So, um, Lieutenant Meier actually, before we got this, started looking into who might have—who might have—

MUTUKU: Mm-hm (affirmative).

CORBETT: --done this. Um, he was able to—to pull a print log from—from Lincoln, and it shows that the—that the flyer was actually printed from one of the computers in the report writing room at Lincoln.

MUTUKU: Okay.

CORBETT: Okay? Um, the flyer was—was printed on October 1st at 4:17. Um, he pulled video, and video shows you coming—driving into the station, the back lot, at about 4:05 p.m. on that day and—and going into the station, um, at that time. So, about 12 minutes after you go into the station, the—the flyer is printed.

MUTUKU: (laughs) Okay.

CORBETT: **[42:00]** Yeah.

MUTUKU: (laughs)

CORBETT: Um, any explanation for—

MUTUKU: No.

CORBETT: --for that? Okay, and you—and as you sit here before us, you—you're saying that you don't use those computers (unintelligible)—

MUTUKU: I haven't used those computers in—besides, again, an officer telling me to look over their report or a s—directed reason, I'd never go in and use one of those computers—

CORBETT: Okay. Um—

MUTUKU: --to log onto 'em or do anything with 'em.

CORBETT: Okay. One of your—one of your confrontations or negative interactions with him—he—do you remember him asking you why your voice was trembling?

MUTUKU: I asked him.

CORBETT: Oh, you asked him.

MUTUKU: Yeah, every single time we got into it, I always asked him that, 'cause he turned red immediately, and his voice would start cracking. So I'd always ask him, "Why are you scared? Why is your voice cracking?" Every single time—asked him every single t—every single question I got into with him, I'd always ask him that, every time. (chuckles) So that's funny. (chuckles)

CORBETT: What did he say?

MUTUKU: He'd get even more mad. He'd—he'd go through the roof every time I asked him that.

CORBETT: **[43:00]** Okay.

MUTUKU: And he'd literally be shaking of anger.

CORBETT: Okay. Um, and you said that that conversation where you opened the—the back door of the roll call room, you kind of pointed at him to have a good day. Did you ever—

MUTUKU: Yeah.

CORBETT: --manipulate your hand to make it resemble a firearm and—

MUTUKU: No.

CORBETT: --(unintelligible) simulate you were firing a—a—a gun at him?

MUTUKU: No, and I think that door is on video, so, no, it'd show. I pointed at him with my finger.

CORBETT: Okay, and is that why you were confused when he said you were threatening his life, like you had no clue what you were tal—

MUTUKU: Yes.

CORBETT: --what he was talking about?

MUTUKU: When he said that, "Why are you pointing a gun?"—that's why I was flabbergasted that he'd even make a jump that crazy.

CORBETT: Okay. Let's see. Since C1 has voiced issues about, uh, O2 and O1 **[44:00]** riding together or—or your O1 lactation breaks, um, and since he's filed a complaint, um, with, initially, Internal Affairs about them not taking a report, have you done anything to retaliate against him?

MUTUKU: No.

CORBETT: Have you done anything to create a hostile work environment for him?

MUTUKU: No.

CORBETT: Have you observed any behavior, um, by any other supervisors toward C1 that you would consider hostile or retaliatory?

MUTUKU: No.

CORBETT: Have you heard of anything that they might have done?

MUTUKU: No.

CORBETT: And I already asked you earlier if—if you've ever observed C1 um, speak to supervision or do things to cause or provoke tension. You said you've never personally witnessed anything as a supervisor. You witnessed things early on as an officer where he was confrontational with, at least, Sergeant Banks; right?

MUTUKU: Mm-hm (affirmative), yes.

CORBETT: Okay. **[45:00]** Lieutenant, uh, Detmer, do you have any questions?

DETMER: Um, yeah. So, obviously, when, you know—back in the day, C1 had a lot of friends, like, when he was in his glory days and doing a great job—

MUTUKU: Mm-hm (affirmative).

DETMER: --but it seems like that relationship, as you say, has soured with a lot of different people; right?

MUTUKU: Yes.

DETMER: So, in this—in this investigation, we've interviewed a ton of people, as you probably know.

MUTUKU: Mm-hm (affirmative).

DETMER: Who are his close allies and friends, because, a lot of times, people who are really close kind of get—don't get as much credit as people that aren't, so who—are you aware of any people that work around him that are very close with him, that would stick up for him, or—

MUTUKU: Uh, Weddle.

DETMER: Other than Weddle—

MUTUKU: Uh, Spencer.

DETMER: --is there anyone else?

MUTUKU: No.

DETMER: Okay. So you would say that the—the consensus in Patrol is most people are not amused by him anymore.

MUTUKU: Yes.

DETMER: And do you think that has caused some of this anger and resentment and—

MUTUKU: I think it's caused all of it.

DETMER: Okay.

MUTUKU: Or—and/or private-life stuff, but for sure, police-wise, yes.

DETMER: So, just to be very clear, you have **[46:00]** done nothing to create a hostile work environment for C1

MUTUKU: Nothing.

DETMER: Have you seen other supervisors do that?

MUTUKU: No.

DETMER: Have you seen him create hostile work environments for other people?

MUTUKU: (unintelligible)

DETMER: C1

MUTUKU: Me see him?

DETMER: Yes.

MUTUKU: Uh, uh, again, just bes—besides just what's talked about and relayed—

DETMER: Yes.

MUTUKU: --in the comment, have I personally ever seen him do A, B, C, D to somebody? No, I've never seen C1 specifically cause harm or go and tell—again, me as an officer, I saw it all the time.

DETMER: Well, that's what I mean, so—

MUTUKU: Oh, okay. Yes, that way I've seen it.

DETMER: --so, like—so, since you've started, you've—you've—'cause you—

MUTUKU: I'm sorry. I thought you asked me as a supervisor.

DETMER: (Unintelligible) well, no, I'm just saying—

MUTUKU: Okay.

DETMER: --because you—you referenced O5 O5

MUTUKU: Yes.

DETMER: --and what happened with that, and the warning you gave your O1

MUTUKU: Yes.

DETMER: --who, I'm sure—she told O2 O2

MUTUKU: A hundred percent, yes.

DETMER: --and you've seen this occur—

MUTUKU: (unintelligible)

DETMER: --time and time again—

MUTUKU: A hundred percent, yes.

DETMER: --and—and so you have witnessed it—

MUTUKU: Yes.

DETMER: --maybe not all the instances, but you have witnessed—

MUTUKU: Incidences.

DETMER: --incidences. Yes.

MUTUKU: True.

DETMER: And then the way he's treated you, and I'm sure you've heard of some of the other, um, **[47:00]** discussions he's had with other supervisors that didn't go so well, either.

MUTUKU: Correct.

DETMER: So, okay. Thank you. I have nothing else.

CORBETT: Um, we've asked a lot of questions, um, but is there anything that we haven't touched on, um, or asked you about that you think's important that we know?

MUTUKU: Um, a—again, I just really more so just want it on record, 'cause it's—it's something that it's a general consensus, um, and, again, just as—as supervisors at Lincoln, um, a lot of which just retired, um, but, again, it's just a feeling, um, a—and it's—it's hard to just say something so vague about having to pinpoint it, but this—people—a lot of people—a lot of supervisors there have known C1 for a long time, and this person that's here today is not who they consider the C1 that they knew coming up this Department. **[48:00]** A lot of people think that there is a mental issue going on with C1 The C1 who I saw that immediately with a "have a good day" comment—uh, again, it's—sure, it's whatever may—(unintelligible) he may have taken it sarcastically or (unintelligible) A, B, C, and D, but how instantaneously red and just filled with anger and—to a point where he couldn't control his body. His whole body was shaking, uh, including his voice when he's—is trying to project it. Now, I don't think it was—uh, uh, it's—I don't think it's out of fear. I think it was out of anger, actual—just the smallest things I've seen trigger him to a point where somebody who—I mean, that, coupled with what people

say—uh, he might be going through a mental issue, and sergeants telling my O1 to be careful around him; he is not safe; like, "I am worried for your safety." Just the fact that you can walk back there—and again, a lot of us can't pinpoint it, but if a general consensus among supervisors that he's working for **[49:00]** is that he is not safe and he's going to be an issue, uh, whether that's backing officers up for safety-wise and/or harming any of us with his whole anti-supervisor rhetic [sic] that—that just encompasses all of C1 that, to me, is—is—is an issue, if that's a general consensus of supervisors and a station—at a police station, that an officer's going to be a safety hazard and/or an issue for us, uh, where people are like, "He may harm one of us." That—that, to me, is a problem, so—and again, uh, that's just not my—my opinion. Again, I—(unintelligible) I don't—it's not lost on me that I have a personal connection to this whole thing—

CORBETT: Mm-hm (affirmative).

MUTUKU: --but (unintelligible) that's just everybody's general consensus. It's at a point where sergeants try to avoid supervising him and try to pawn him off to maybe more junior sergeants so they don't have to deal with him. Um, a lot of issues that he's had when they have arised [sic], it wasn't even with his sergeant. It was with other sergeants. That's—he got **[50:00]** moved to a different beat to avoid certain things, so, uh, th—that's—(unintelligible) again, uh, it's—can I pinpoint one thing exactly? No, but just the totality of everything, um, is worrisome.

CORBETT: Okay. So (unintelligible) you're saying, though, that he's unsafe because he's maybe not backing other officers in the field; right? Okay. You're shaking your head "yes"; right?

MUTUKU: Yes—I'm sorry—yes.

CORBETT: Okay. So—and, although, maybe, you haven't witnessed it firsthand, you—you've—you've heard—well, let me ask you. Has O2 or O1 ever shared

that they requested an 11-11 or had some significant incident or a hot call where they worked the same beat with—with—with C1 and he didn't show up?

MUTUKU: Yes, they have.

CORBETT: More than once?

MUTUKU: Multiple times, and I hate to say it, but it's not surprising, because you've heard of the previous incidences where an 11-11's requested, and I know somebody's already been brought—complaints have already been brought **[51:00]** to I.A.'s, uh, attention where he's driving the—driving the opposite ways, and officers seeing this and reporting it to the supervisors, and so it's—again, it's not—it—it's—it's almost—a—again, young cops with five years or less on say, if you call for an 11-11, they know C1 s gonna drive the opposite way. Like, they know that. It's not even like a—it's almost like an ongoing joke.

CORBETT: So it's not exclusive to O1 and O2

MUTUKU: No.

CORBETT: Okay.

MUTUKU: If—if—and again, I think it's—it's a—if he has an issue with you, which this long list, he's not coming.

CORBETT: Okay, and then you also said s—something in there that, um—so a safety issue (unintelligible) for maybe failing to back someone who needed help, but also, are you saying that there's concerns that—because of some possible issues that he's having, that he could intentionally harm someone he works with?

MUTUKU: Ye—yes, uh, it's—it's—again, it's th—the person—and I—I've heard of these things, but when I **[52:00]** saw—seeing it physi—seeing the—the anger that—that instantaneously fills him, uh, over minute things, that's (unintelligible)—that, again, coupled with people who actually know C1 like, knew C1 or the old C1 and,

like, saying, “This isn’t him. This is a different, completely different person from the person we used to know.”

CORBETT: Okay.

MUTUKU: So—

CORBETT: And so it—it’s maybe gotten to the point to where, um, it sounds like, not only officers don’t want to work around him, but supervisors also don’t want to work around him or have to—

MUTUKU: Abso—

CORBETT: --supervise him.

MUTUKU: Absolutely not—they do not.

CORBETT: Okay. Um, and that’s—that’s talked about in—in the sergeants’ bay, where just issues—like, you’d never—you’d—like you said, you’d never personally saw it till it happened to you where you saw him turn red and all of these things, but you’ve heard of other, um, instances **[53:00]** where it has happened, and you’ve—and you’ve heard about those.

MUTUKU: Yes.

CORBETT: Okay. Anything else? Anything else, James?

MUTUKU: No.

CORBETT: All right. Well, we appreciate you—you coming in, and we’ll go ahead and end the recording. It’s 11:19 p.m. [sic].

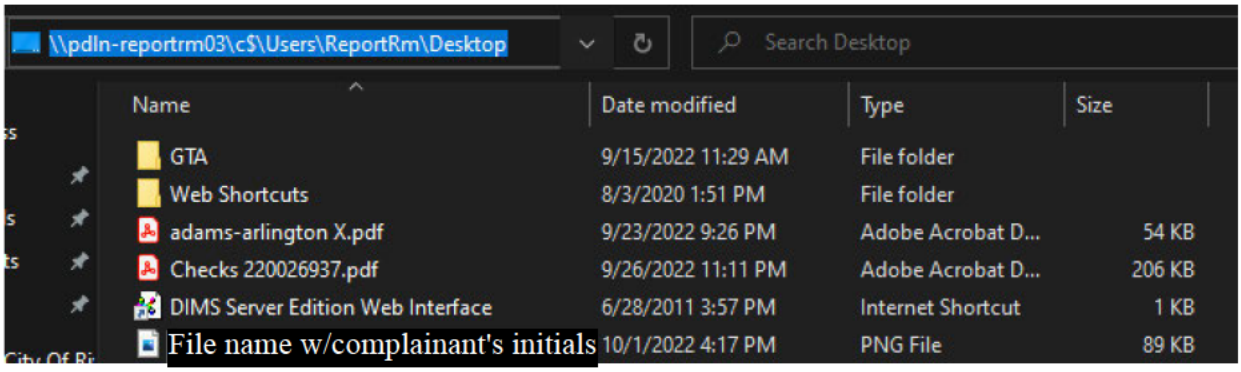
End of recording.

From: Meier, Eric
To: Corbett, Karla
Subject: FW: Print queue
Date: Tuesday, November 29, 2022 2:31:50 PM
Attachments: image001.png

RP3 was able to determine the file titled *DJ* on the print log was saved on the computer listed below. He opened the file and confirmed it was the same rat picture that was printed. The file was saved on the computer on 10/1/22 at 1617. That computer is located in the Lincoln report writing room.

From: RP3 @riversideca.gov>
Sent: Wednesday, October 5, 2022 9:24 AM
To: Meier, Eric <EMeier@riversideca.gov>
Subject: RE: Print queue

Report room 3 findings. Used reportrm03 desktop and logged in using reportrm login.



From: RP3
Sent: Wednesday, October 5, 2022 9:06 AM
To: Meier, Eric <EMeier@riversideca.gov>
Subject: RE: Print queue

Report room Print queue

From: Meier, Eric <EMeier@riversideca.gov>
Sent: Wednesday, October 5, 2022 8:46 AM
To: RP3 @riversideca.gov>
Subject: RE: Print queue

Thanks RP3

From: RP3 @riversideca.gov>
Sent: Wednesday, October 5, 2022 8:45 AM
To: Meier, Eric <EMeier@riversideca.gov>
Subject: Print queue

Here is the print queue from 10/01/2022 till now on the sharp machine.

Thank you,

RP3
PD Systems Tech
City of Riverside
Innovation & Technology, Client Services
Main: RP3
Direct: RP3
Cell: RP3
RP3@Riversideca.gov



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From: RP2
To: Corbett, Karla
Cc: RP1
Subject: [External] CASE# PA2211047
Date: Friday, January 20, 2023 11:10:30 AM
Importance: High

CAUTION: This email is originated from OUTSIDE of City of Riverside and was not sent by any City Officials or City Staff. Do not click on links or open attachments unless you are expecting the email and know that the content is safe. If you suspect this is a phishing or malicious email, please contact the helpdesk.

From the desk of Fingerprint Examiner RP2 *(CAL-ID). If this e-mail has reached you by error and you are not assigned to the above referenced case or you are not the intended recipient, please contact the sender by reply e-mail and if known provide contact information for the correct recipient and destroy all copies of this original message.*

I have completed work on the above referenced case and the following is an informal report of the findings for this case. A formal report for this case to follow.

__X__ POSITIVE IDENTIFICATION was made to:

1). (OFCR) MUTUKU, JAMES / DOB: [redacted] / CII# [redacted]

2). (OFCR) C1 / DOB: C1 / CII# C1

RP2
FPE II

Riverside County Sheriff's Department
CAL-ID Unit
1260 Palmyrita Ave. Suite A
Riverside, CA 92507

Desk Phone: RP2
Main Office: RP2
Fax # : RP2
Mail Stop # RP2

Assignment: 0600-1630
RDO: Saturday-Monday

CHAD BIANCO
SHERIFF-CORONER
RIVERSIDE COUNTY, CALIFORNIA

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INTERVIEW OF SERGEANT JAMES MUTUKU, VOLUME 2

PA2211047 Date/Time: 2-21-23/1501 Hours
Sergeant Karla Corbett = CORBETT
Sergeant James Mutuku = MUTUKU
Lieutenant Eric Detmer = DETMER

The timing of the recording, at intervals of approximately one minute, is shown in boldface type, in brackets.

CORBETT: Okay. Good afternoon. Today is Tuesday, February 21st. It's 3:01 p.m. I'm Sergeant Karla Corbett. I'm in the Internal Affairs conference room, about to interview Sergeant James Mutuku, um, regarding a hostile work environment claim filed by Officer C1 C1 It's documented in PA2211047, and assisting me in today's interview is Lieutenant Eric Detmer. Uh, prior to going on tape, uh, we gave you the opportunity to review your admonition-of-rights packet; correct?

MUTUKU: Yes.

CORBETT: Okay. You were also, um, given transcripts of your, uh, previous interview and also, um, a flash drive which contained audio of your first interview and video from the Lincoln Street Station that we had mentioned in the first interview, and you elected not to review those items; right?

MUTUKU: Yes.

CORBETT: Okay, all right. So we'll go ahead and get started, uh, **[1:00]** go through your packet. Same as before—today's date, parties present, regarding the hostile work environment claim. Pages 2, 3, 4, and the (unintelligible)—actually, just 2, 3, and 4 now cover your rights, um, and do you have any questions about those rights?

MUTUKU: No.

CORBETT: Okay. If you could sign for me on the top line, please.

DETMER: Today's the 21st.

CORBETT: I like having you here 'cause you sign. Lieutenant Detmer will witness. Thank you. And then page 5—at the top, there's three questions, um, same as before. If you could just read through those and initial your response.

The participants are silent for 20 seconds.

MUTUKU: **[2:09]** Just are we gonna be si—first three?

CORBETT: Uh, yes, please.

MUTUKU: Okay.

CORBETT: Okay, and then you do have the right to have a representative present with you today. You know that; right?

MUTUKU: Yes.

CORBETT: Okay. Do you wish to have one with you?

MUTUKU: No.

CORBETT: Okay, and re—(unintelligible)

DETMER: Okay, James. Uh, obviously, it's an admin investigation, so I'm gonna—hereby ordering you to answer truthfully and completely questions relating to this interview and investigation. Do you understand?

MUTUKU: Yes, sir.

DETMER: Okay.

CORBETT: And then just print, sign, and date, please.

The participants are silent for 13 seconds.

CORBETT: Thank you, sir. **[3:00]** Excuse me. This is not a criminal investigation, so we're not gonna read you, um, Miranda, but just like before, uh, this is the order not to disclose. If you could just, um, read through the top and sign and date. Basically, you're ordered not to discuss the investigation with anyone other than the parties that are listed at the top there.

The participants are silent for 10 seconds.

CORBETT: Thank you. (pause) And just like before, I'll get you a copy before you go. Okay. So we brought you back in today. Uh, last time we were here, we talked about a lot of things. Um, today, really, um, you know, through—throughout this investigation, C1 has alleged that you are responsible for—**[4:00]** for printing and—and posting those flyers, and when you were here last time, you told us that you did not do that. Um, i—in fact, I think you said that you had never seen the flyers. If asked you if your fingerprints would be on them, and—and you said no. Um, the day after, uh, we interviewed you—the following day, I received notification from Cal-ID that you prints had, in fact, uh—they were located on—on at least one of the flyers, so I was hoping that you could explain that.

MUTUKU: I can't explain that.

CORBETT: Okay. Uh, I know that there's been a lot of issues between C1 and O1 Um, you know, you had mentioned that he hadn't backed her on calls, um, for the last couple of years. Um, he was complaining about her lactation breaks and her riding with—with O2 and, uh—and then going to Internal Affairs **[5:00]** to file a complaint. So I understand that there possibly could be some frustration there, and I think that I would—would feel frustrate—frustrated and maybe even a little bit of contempt for the guy if—if that's how he was treating my—Uninvolved Party.

MUTUKU: No, that's for sure. It's frustration. Yeah, I don't like him.

CORBETT: So—

MUTUKU: A hundred per—I'm not—a hundred percent.

CORBETT; Okay.

MUTUKU: Yeah.

CORBETT: So I don't—I don't, um—I don't have an issue with that, and I think that most people would understand that. Um, I'm just trying to figure out, was it enough to—to drive you to do that?

MUTUKU: Eh, yeah, I don't—it—it was not, and I cannot explain why my fingerprints would be on there. I don't—

CORBETT: Okay. What about the, um—what about the vinyl? They were encased in a vinyl, like, sheet-protector-type thing with a magnet on the back. What about that?

MUTUKU: Are you asking me or—

CORBETT: Yeah.

DETMER: So, James, we're j—we're just—okay. Just show him the (unintelligible). We're not making this up. Like, that's not how we roll, and—

MUTUKU: (Unintelligible) no. I—I—I know you wouldn't.

DETMER: --and, like, this is very uncomfortable **[6:00]** for all of us. We hate coming in here and, you know, having to bring this forward in front of you, but like—like Karla saying, I mean, we—we le—legitimately got notification the day after your interview, and it—it's not a trick. I mean, your fingerprints are on the flyer. So, I mean, everything points to the possibility that you put the flyers up—okay?—and I understand that you don't—you're saying you don't know how that happened, but this is, like, your—your—your opportunity to be forthcoming with us and explain it—like, explain it to the people that are listening on the tape, you know, command, stuff like that, like, what happened. I mean—

MUTUKU: (Unintelligible) and—and I—

DETMER: --I'm j—I'm just saying because it looks bad, dude.

MUTUKU: I a hundred percent understand that, and I know you guys aren't making this up.

DETMER: We're not.

MUTUKU: Yeah, I—I understand that.

DETMER: I—I hate this, dude.

MUTUKU: I understand, but I'm telling you that I did not put the flyer up. I do not know why my fingerprints are on the flyer.

DETMER: Okay.

MUTUKU: I hadn't seen the flyer. I've never seen the flyer.

DETMER: Okay.

MUTUKU: So—

DETMER: Okay.

CORBETT: Um, well, I'll ask you this. Any reason, um—you say the flyer, no, you **[7:00]** don't have an explanation for why your prints would be on that. Would there be any reason why your prints or DNA would be on the frame that the flyers were in?

MUTUKU: I mean, you have to—uh, where is this frame at, uh, 'cause you—you (unintelligible) in some vinyl frame. I don't know what you're talking about, 'cause, again, I didn't—

CORBETT: Right.

MUTUKU: I haven't—so I don't—where's this—I—I don't know where you're talking about location-wise, anything else.

DETMER: So—yeah, so—so, to explain it to you, whoever did this put the flyer inside of, like, a plastic, like, vinyl-ish frame, and it was, like, mounted on the locker.

MUTUKU: Okay.

DETMER: Okay? And there's prints on that, as well. Um, there's DNA, although, to be completely forthcoming, we don't have a comparative sample, so we—

MUTUKU: Mm-hm (affirmative).

DETMER: --can't say if it's your DNA or somebody else's, but your prints are on that, and I'm just saying—

MUTUKU: On the vinyl case, where the flyer was in.

DETMER: (Unintelligible) your—yours are on the flyer inside of that case.

MUTUKU: Okay. Got you.

DETMER: So it looks bad, dude—

MUTUKU: (unintelligible)

DETMER: --and that's why, if—if you did it, dude, I just want you to be honest with us and provide an explanation and—and—and—and—and maybe make people understand why it came to that. And if you didn't do it, then **[8:00]** I—I—I understand that, so—

MUTUKU: I di—uh, I didn't do it.

DETMER: Okay.

MUTUKU: I didn't put those flyers up.

DETMER: You never touched them, saw them.

MUTUKU: I didn't see those flyers. I didn't put them up. I didn't put them up in this vinyl case. I di—uh, I don't—

DETMER: Okay.

MUTUKU: If my prints are on this vinyl case, and it's in the locker room, then I—I—I had—I had no—I haven't had—I had no reason to touch a vinyl case in the—in the men's locker room.

DETMER: Okay.

CORBETT: The, um—the other thing that's interesting—I told you last time—was the fact that the date and time that the flyers were printed, video shows you going in—

MUTUKU: Correct.

CORBETT: --like, minutes before the flyers—

MUTUKU: Mm-hm (affirmative).

CORBETT: --were printed. Um, do you remember that day in question, and I know it's been a long time, but one thing that might jog your memory—and we can watch on the video—is you actually pulled into the station late for that shift, 'cause it was after 4:00 o'clock when you pulled into the back lot, and you still were in uniform, so you would have had to change out. Um, can you think back to October, to that—

MUTUKU: You say it was after 4:00 o'clock?

CORBETT: October 1st (unintelligible)—

MUTUKU: **[9:00]** But you said it was after 4:00 o'clock—the time, you said?

CORBETT: Mm-hm (affirmative), after 4:00 p.m., 'cause I know most—more times than not, you know, working patrol, people will go back to the station—

MUTUKU: Early, yeah.

CORBETT: --prior to the end of shift, and then they're—they're changed out, you know, well before their shift ends. So, um, is there something—(unintelligible) that particular day, because of the fact you came back to the station late, is there—do you remember that day, coming back?

MUTUKU: Uh, there's—on day shift, there's so many days I came back to the station after 4:00. That's a—that's—that would have been a common thing, and I'm also not sure if I came from the sergeants' bay, just taking my car around to park it, 'cause—

CORBETT: Right. That could be, too.

MUTUKU: Yeah, I might have been at the sergeants' office.

DETMER: (Unintelligible) sergeant, yeah.

MUTUKU: Yeah.

CORBETT: I'm just wondering, 'cause I'm trying to find out if you remember that day, if you remembered seeing some—somebody else in the station, um, you know, somebody else—

MUTUKU: (unintelligible)

CORBETT: --that maybe we—we could be looking at.

MUTUKU: Uh, I—I—I don't remember that day. I—I'd have to (unintelligible)—again, I'd have to look at my log and everything else, calls I was on, and, uh, it's—if—if I came around, I'd assume it's from the sergeants' office **[10:00]** is why I came around,

but I could have been late on a call. Again, I'd have to look at what call—if I was on a call, what call I was on, everything else, so—

CORBETT: Okay, all right. Um, so I—you know, I'm trying to do everything I can to—

MUTUKU: I—I understand.

CORBETT: --to give you the benefit of the doubt, and, you know, when you—when you said that you hadn't even seen the flyers, this—this surprised me.

MUTUKU: Okay.

CORBETT: Um—

DETMER: Yeah, we were both very surprised.

MUTUKU: Yeah.

DETMER: Like, we did not expect that to come back.

MUTUKU: Okay.

DETMER: That's why we asked the question in the first one—is there any reason your prints would be on the flyer, 'cause we had al—you know, we'd known—we'd already printed it, but we were waiting for it to get—to come back.

MUTUKU: Yeah.

DETMER: And I mean, it—it sucks. It came back literally—

MUTUKU: No, I understand. It's black and white.

DETMER: It is.

MUTUKU: I—I—I—I—like, I get it.

DETMER: Yeah.

MUTUKU: I a hundred percent get it, but I—again, I'm standing by what I said. I di—I didn't print the flyer, I've never seen the flyer, and I didn't put the flyer up or touch this vinyl case that you're talking about.

DETMER: Okay.

MUTUKU: If—if—if—I mean, if it's just a vinyl case, uh, a random vinyl ca—I would have no reason to touch a vinyl case in the locker room. Uh, it—

DETMER: Okay.

MUTUKU: I—I don't—I—I haven't put anything up in the locker room, **[11:00]** so—

DETMER: Okay.

MUTUKU: Yeah.

CORBETT: All right. Um, the—you know, I was—I was scratching my head, getting this back, and so, again, trying to look at every possle—possible avenue, as far as who—who could have printed and posted those flyers. One of the other things that I did was I looked at, um, who was working that day.

MUTUKU: Okay.

CORBETT: Um, so, I mean, I think, in total, I interviewed, whether it's with Detmer or—or Sergeant Medici, probably 16 people so far.

MUTUKU: Okay.

CORBETT: Um, of the—of the people that have been talked to, the on—there was only, I think, three people who were working that particular shift, that their names had even come up in this investigation. You were one of the three. Um, O2 O2 also worked that day, but at the time the flyers were printed, her—her **[12:00]** GPS in her car shows her on the east side of town. So—

MUTUKU: Okay.

CORBETT: --there's no way that she could have printed the flyer. Um, oh, I don't remember off the top of my had—

DETMER: The only other, I think, was O1 but I don't think she was here that day.

CORBETT: O1 wasn't working that day.

MUTUKU: Okay.

CORBETT: Um, so then I looked at, okay, well, who could have been in the station at that time, because, after 4:00 p.m., day shift would likely have gone home; right?

MUTUKU: Yeah, the majority of 'em, yeah.

CORBETT: Um, and swing shift would already be in their beats. So I pulled Telestaff records. There were two people who held over that day, Pattison and, uh, Jennifer, uh—

DETMER: Cappelen.

CORBETT: --Cappelen. Thank you. Um, so those two individuals were working day shift, and they—they held over, Jennifer till 4:30 and Cappelen—or, excuse me—and Pattison worked until, like, 10:00 p.m., but neither of those names had come up by anybody—

MUTUKU: Mm-hm (affirmative).

CORBETT: --in this investigation, so I'm thinking, okay, probably not them. Um, **[13:00]** the other thing I did was I—I had, uh, GPS records for all the units—

MUTUKU: Okay.

CORBETT: --pulled. Uh, there were only two units that showed at the station at—at that time. Now I get that maybe some—there could have been one or two swing-shift sergeants who hadn't logged on yet. I haven't dug too deep to really, like, analyze those, but there's not a lot of people who were even at the station and would have had an opportunity to print the flyers.

MUTUKU: Okay.

CORBETT: And so, um, that's why I said earlier, you know, I—I get it. Um, like you, Uninvolved Party works here, and when things happen, it's—you know, sometimes it's hard, u—um, and so I—there's a part of me where, um, I could see, like, being so frustrated, especially, like, I think—I don't know how you waited so long, like, not to even report him to someone or to say something to him for not backing her on calls. **[14:00]** Um, I just—I just want you to be honest.

MUTUKU: Uh, I—I understand what you're saying. I understand the evidence you've presented reference this. It's black and white. I'm not stupid. I get it. I get all the circumstantial stuff. I understand that, but my answer's not gonna change. From the first interview, from the three times I've said it now, it's gonna be the same answer. So I'm not trying to be disrespectful in any way.

DETMER: No, I get it, and I—I get it.

MUTUKU: I respect both of you.

CORBETT: I—I (unintelligible)—

MUTUKU: I respect both of you.

DETMER: I get it.

MUTUKU: I get your investigation you did. I—I resp—again, I'm not trying to be disrespectful, but my answer is—there's nothing's gonna make me change my answer. Uh, that's—my answer's what it is.

CORBETT: Okay.

MUTUKU: So you're asking me to explain something that I can't explain. Uh, there's—I cannot explain. (Unintelligible) it's—again, it's your investigation, so I don't want to—I don't know who else's fingerprints would have been on this, or if it was just (unintelligible) for just (unintelligible). I don't know, but I—I get the totality of everything. It's not lost on me, so—

CORBETT: Okay, and I hope you understand, also—I—I mean, I appreciate you—you know, what you just said, um, and like Detmer said earlier, this is not comfortable for— **[15:00]** for us, either. I mean, uh, I hated seeing this the day after we talked. I hope you know that.

MUTUKU: Yeah, uh, I—I—I get it.

CORBETT: Okay. Um, you don't have an explanation for your prints on there. You know, paper's paper. We have paper in every station here at the Department. These

particular cases or, uh, frames or whatever, if you will, that were affixed to the—or, um, to the lockers, it's not—it's not an item that we stock here at the Police Department. It's not, um—you know, we have booties and gloves and things like that. We don't have these particular—I've never seen 'em in all my time here—

MUTUKU: Okay.

CORBETT: --at the station. So this is something that someone would have had to—to purchase or have at home and—and bring in to put the flyers in. Um, one way I—I think that could possibly help your—your case would be to, um, **[16:00]** show that, you know, your DNA is not on—on those. Like Detmer said, we don't—we don't have a sample. Um, we did have them swabbed for DNA, but we don't have officers' DNA like we do the prints. Is that something that you would be willing to do—is provide a voluntary sample?

MUTUKU: For what?

CORBETT: A—a buc—a buccal swab—

MUTUKU: For—

CORBETT --a voluntary DNA sample, to compare it against the—the frame.

MUTUKU: For this case you're talking about.

CORBETT: Yes.

MUTUKU: (Unintelligible) could—could you just clar—'cause I don't—clarify exactly what this case is, 'cause I don't—location—everything else that you're saying where this thing was posted at, 'cause, again, I don't—I don't know—it—

CORBETT: Okay.

MUTUKU: --it's almost like talking about this (unintelligible)—

CORBETT: Okay. So, to be clear, there were four—a total of four flyers.

MUTUKU: Okay.

CORBETT: One of 'em was just a piece of paper that was put in C1's mailbox.

MUTUKU: Okay.

CORBETT: Three of them were—were encased in these vinyl, um—

MUTUKU: Cases.

CORBETT: --frames that had a magnet to the back, and they were stuck to the ends of the lockers.

MUTUKU: Okay.

CORBETT: So I guess, in the men's locker room, there's rows of lockers—

MUTUKU: Uh-huh (affirmative).

CORBETT: --and on the end of them, um, there were—I don't know exactly where they were placed—I—I didn't **[17:00]** take them down—but at the end of the lockers; okay? So, like I said, the prints—and you can read it in the report—the—the one that was in the actual mailbox, um, did not have your fingerprints on 'em.

MUTUKU: Okay.

CORBETT: But the one that was—(unintelligible) I don't have all four. I had two. But one of the three that were, uh, in a frame on the lockers had your fingerprints on that—inside the frame.

MUTUKU: So a frame that you say somebody brought with them.

CORBETT: Yes.

MUTUKU: Okay.

CORBETT: So, initially we didn't have the, um—I don't have the report back for the frame, because I thought—you know what?—I just need the paper.

MUTUKU: Yeah, I—I—I got you.

CORBETT: Um, but if you're telling me, "I don't know," then—then the next thing I want to do is look at the frames. So—

MUTUKU: Mm-hm (affirmative).

CORBETT: --I have them—I have them analyzing the frames right now.

MUTUKU: Okay.

CORBETT: Um, but I'm saying, like, one of the things, um, would also be, uh, DNA.

MUTUKU: 'Cause there's DNA on the frames, you need DNA from me. I—I get that.

CORBETT: And there's DNA on the pa—on the paper.

MUTUKU: **[18:00]** Okay.

CORBETT: But I didn't have a swab, and I wasn't gonna go that route—

MUTUKU: Yes.

CORBETT: --because, to be honest with you, I wasn't expecting to get this.

MUTUKU: Got it, yeah.

CORBETT: So that's what I'm saying. If you're still telling me that you—you didn't do it and you don't have an explanation—

MUTUKU: Mm-hm (affirmative).

CORBETT: --then I'm asking, would you be willing to provide a voluntary sample so that it would show that your DNA is not on that item?

MUTUKU: Uh, uh, yes, I—I'd have no (unintelligible) problem doing that, but again, I'm not gonna say that I have never touched a locker in the men's locker room, walking by, touched a locker. I'm not gonna say that. So these are things that are just on these lockers—it's just on there? A—again, I don't—I—I may have touched, in my career here, a locker on my way out, walking and touching a locker.

CORBETT: I understand.

MUTUKU: Uh, if this is—if this would be just hanging on the locker. But usually, like, special cases that somebody brought and put, that aren't—don't usually belong there, then, yes, there's no reason for me—my DNA to be on anywhere on there, and I have no problem with providing a buccal swab.

CORBETT: Okay, all right. Lieutenant Detmer, do you have anything else?

DETMER: No, I just want to point out—okay, so (unintelligible)—like, I don't believe in blindsiding you. That's why I don't want to come in here and play a game with you. Like, me and O2 talked about it. We just wanted to come in here and **[19:00]** just start with this—you know what I mean?—and—and just tell you what—what you were here for. We didn't want to beat around the bush, you know.

MUTUKU: Mm-hm (affirmative).

DETMER: I know it sucks to come into this. It sucks for us, too, you know, and—and, um, so this—this fingerprint—just so you're aware of it—the fingerprints that were lifted off the paper—the other one that was in C1s box had C1s fingerprints on it, 'cause, obviously, he was manipulating it and all that, and then yours, it was—it was confirmed several times by several different fingerprint examiners before we would actually even more forward with even presenting this to you.

MUTUKU: No, (unintelligible) yeah.

DETMER: And I—I just want you to know, like, this isn't just like one person did it. There was, like, three independent layers of review that independently, uh, looked at the fingerprints and—and certified that—that they were saying that that—it's a match to you.

MUTUKU: Okay.

DETMER: So I—I just want you to know that—that we wouldn't even present this to you without—

MUTUKU: Without certainty. I got you.

DETMER: --being a hundred-percent sure that—of what they were saying.

MUSUKU: Okay.

DETMER: So—

CORBETT: Mm-hm (affirmative).

DETMER: --that—that's all I wanted to add, so—

CORBETT: There were—there were two on there, and there were—uh, there was a—they collected four, um, but two of 'em were not suitable for comparison. **[20:00]** Um, actually—um, actually, on—on the one inside the frame, there were, yeah, I believe, four, and two were not suitable for comparison. The other two came back two you on the front of the document, um—

DETMER: Inside the plastic.

CORBETT: Inside the plastic. Switching gears real quick, (unintelligible) I just want to go back to—the first interview, we talked to you about, uh, an incident where C1 worked overtime at the swap meet, and he didn't log on to the MDC for his shift. Um, you—you told us that you, on your own accord, went over there to have him log on. Like, you weren't asked to do that—that you—you took it upon yourself to go do that, but when you got to the swap meet, he was already coming out. Do you remember that?

MUTUKU: Yes.

CORBETT: Okay. Why—**[21:00]** why did you drive there, versus calling him on the phone or the radio?

MUTUKU: I—I wanted to make sure that he was physically there, to begin with, 'cause I—I didn't know if he was there.

CORBETT: Okay. Um, had you—had you ever done that before? Like, I'm just wondering, because, when that happened, you guys were already—there were already issues—

MUTUKU: Yes.

CORBETT: Okay. So I'm just wondering, why not—why not just call him and ask?

MUTUKU: The only reason is to make sure he's physically there. That's—that's the reason.

CORBETT: Okay. You doubted he—he was (unintelligible)—

MUTUKU: Not—I didn't doubt. I just wanted to make sure.. I just wanted to make sure, 'cause it was odd somebody didn't log on—

CORBETT: Okay.

MUTUKU: --when they're collecting overtime.

CORBETT: Right, but my understanding is it's pretty common for him to do that, that that's a repeated problem.

MUTUKU: I've never seen him do that before.

CORBETT: Okay.

MUTUKU: But may—maybe unbeknownst to me. I don't know, 'cause I usually work Area 5, so that day I was working Area 4, so—

CORBETT: Oh, I see.

MUTUKU: --that's not—that might not—it—he may always do that. I don't know.

CORBETT: And you just never paid attention to it before 'cause (unintelligible)—

MUTUKU: Oh, 'cause it wasn't my area, yeah.

DETMER: I also wanted to ask you—so, since our last **[22:00]** conversation, has there been any more incidents with him, like, any more issues with him?

MUTUKU: Yeah, there's—there's dumb stuff with him every day. There's a dumb thing from last night.

DETMER: So he's still—

MUTUKU: Yes.

DETMER: Yeah, I heard about last night, but, I mean, towards you directly, has he done anything else to you directly?

MUTUKU: Uh, just a nonverbal, but not—not—

DETMER: Just, like, ignoring you, like—

MUTUKU: Not even just—(sighs) yeah, just the nonverbal, the non—the nonverbal, the—the—the puffing of the chest, uh, like, if you keep walking towards me, I'm gonna

bump you. Just th—the silliness. It—it's—it's—it's child—childish. I mean, that's—but no verbal, no, no verbal disputes.

DETMER: Okay, okay.

MUTUKU: Yeah.

CORBETT: Do you have any questions for us?

MUTUKU: No, the only thing I'll say that I just want—uh, 'cause this is all kind of just popped up on me—

CORBETT: Mm-hm (affirmative).

MUTUKU: --before getting my DNA, I'd like to consult, uh, an attorney, 'cause that just seems like a lot.

CORBETT: Sure.

DETMER: Completely understand that—

MUTUKU: Sure, okay.

DETMER: --a hundred percent. Don't you (unintelligible)—

MUTUKU: Yeah.

DETMER: Don't ever think—

MUTUKU: Okay.

DETMER: You know, we like you, James. It's not—you know, this sucks for both of us. It really does. I didn't—I didn't—I didn't want to bring this to you.

MUTUKU: Yeah.

DETMER: I didn't, **[23:00]** so—

CORBETT: Okay, all right. Um, well, if no one has anything else, uh, we'll go ahead and end the recording. It's 3:24 p.m.

End of recording.

MEMO

Police Department

DATE: October 19, 2023

TO: SERGEANT JAMES MUTUKU #1645
FIELD OPERATIONS DIVISION

FROM: **LARRY V. GONZALEZ**
CHIEF OF POLICE

RE: **NOTICE OF TERMINATION – PA2211047**

This memorandum is to notify you of my decision regarding your discipline in this matter. Before I made this decision, you were previously served with a *Notice of Intent to* Discipline, with a recommendation of Termination, on or about July 12, 2023 by Captain Charles Payne. A *Skelly* hearing was conducted on October 12, 2023. Both you and I were present, along with Deputy Chief Frank Assumma. You were represented at the hearing by your attorney, Saku Ethir.

Upon consideration of the entirety of the evidence provided during this investigation, I have decided that it is appropriate to proceed with the termination of your employment as a Police Sergeant with the City of Riverside.

In reaching my decision to terminate your employment, I reviewed the listed personnel complaint investigation, your employment history, and considered your statements during the Skelly Hearing. Your actions in the related incident amount to serious violations of the trust and confidence our community places in its police officers and the integrity expected of a sergeant in the Riverside Police Department. Your actions fall far below the expectations I set for supervisors of the Riverside Police Department, and as the Chief of Police, I would be remiss in allowing you to continue serving as a member of the Department.

As the Chief of Police, I have an obligation to the residents of the City of Riverside, State of California, and the law-enforcement profession to uphold certain standards of professionalism and conduct among the employees of the Riverside Police Department, particularly at the supervisory rank. Your conduct, as documented in this investigation, falls far below those standards. I believe it would be a disservice to our community to allow you to continue in your current position.

In accordance with the City of Riverside's Human Resources Policy and Procedures Manual and the Memorandum of Understanding between the City and the Riverside Police Officers' Association Supervisory Unit, Article 16, you have the right to proceed to a Step Two (2) Grievance of this separation. If you wish to file a grievance, it must

be done within ten (10) working days after receipt of this notice. Your grievance must be in writing and must be delivered to the City Manager, Mike Futrell.

A failure to submit said written grievance to the City Manager's Office within the prescribed time limit shall result in the waiver of your right to grieve this action and the forfeiture of all your rights to a hearing.

Larry V. Gonzalez
Chief of Police

I acknowledge receipt of this notice:

Sergeant James Mutuku — Date: 10/20/23

Order of Separation delivered by:

Frank Assumma
Deputy Chief of Police — Date: 10/20/23

Witnessed by:

E. Charles Payne
Captain, Support Services Division — Date: 10/20/2023

AGENDA ITEM REPORT

Title: POST2307511 - SIFREDO CANO (POST ID: C03-G01)
LAST EMPLOYING AGENCY: LOS ANGELES COUNTY SHERIFFS DEPARTMENT

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Los Angeles Bureau	
RESEARCHED BY William Imboden	**REVIEWED BY** Mike Radford	
REPORT DATE 07/29/2024	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

Respondent Sifredo A. Cano began his employment with the Los Angeles County Sheriff's Department (LASD) on November 30, 2007, as a full-time Deputy Sheriff. At the time of the events at issue, Respondent was employed as a Deputy Sheriff with the LASD. Respondent was discharged from his position with LASD on March 22, 2023. The Respondent is not currently employed as a peace officer in the State of California.

This position is a peace officer position defined under California Penal Code §830.1(a) and is required to be certified pursuant to California Penal Code §13510.1(a).

The case before the Board alleges the Respondent attempted to engage in a sexual relationship with an arrestee (referred to herein as Victim), used his position as a peace officer to further his romantic pursuit of the Victim and used his partner's law enforcement credentials to access criminal and DMV information about the Victim. It is also alleged that the Respondent was dishonest about his interactions with the Victim during the course of an internal affairs investigation.

The circumstances surrounding the initial encounter between the Respondent and the Victim involve the victim being

arrested after colliding with multiple vehicles and appearing to be under the influence of alcohol at the time of the collision. The Victim was arrested by another Deputy on scene for Driving Under the Influence of Alcohol. Subsequent to the initial encounter, Respondent sent numerous text messages and met with the Victim on multiple occasions attempting to pursue a romantic relationship with the Victim.

ANALYSIS:

The Division found that the clear and convincing evidence substantiated that Respondent's conduct amounted to sexual assault as described in Penal Code section 832.7(b)(1)(B)(ii) in that he attempted the initiation of a sexual act with a member of the public while on duty and through offer of leniency or other official favor. Between May 14, 2021, and July 22, 2021, Respondent and Victim exchanged approximately 100 texts messages, many of which are the Respondent asking Victim to meet with him, asking her out on dates, telling her how sexy she is, asking for pictures of her, and on one occasion reminding Victim that she was not wearing underwear the night she was arrested. The Division also established by clear and convincing evidence that Respondent abused the power of his position as a peace officer, in violation of POST Regulation 1205(a)(2), by leveraging his position as a peace officer to attempt to enter into a romantic relationship with an arrestee, and inappropriately accessing confidential information for personal gain. Finally, the Division found by clear and convincing evidence that Respondent was dishonest in violation of POST Regulation 1205(a)(1) during the Internal Affairs investigation into the alleged misconduct.

RECOMMENDATION:

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):

BR1_POST2307511-Cano_Sifredo-ISF.pdf
BR7_POST2307511-Attachment B_Cano_Sifredo-GPS_Locations.pdf
BR6_POST2307511-Attachment A_Cano_Sifredo-Defense_Attorney_Email_REDACTED.pdf
BR3_POST2307511-Attachment C_Cano_Sifredo-Text_Messages_REDACTED.pdf
BR5_POST2307511-Attachment E_Cano_Sifredo-Witness_Dep_Texts_REDACTED.pdf
BR4_POST2307511-Attachment D_Cano_Sifredo-Warrant_and_Registration_checks_REDACTED.pdf
BR2_POST2307511-Attachment F_Cano_Sifredo-IA_Transcripts_REDACTED.pdf

BR8_POST2307511-Cano_Sifredo-ExO_Review_and_Recommendation_UNREDACTED.pdf

INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: SIFREDO A. CANO

POST ID NUMBER: C03-G01

EMPLOYING AGENCY: LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

POST CASE NUMBER: POST2307511

WRITTEN BY: William Imboden

DATE: 7/29/2024

Contents

I. Executive Summary I-2

II. Background Information 2

a. Identity of Respondent 2

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline 2

c. Prior Employment History 2

d. Peace Officer Certification 2

e. The Present Allegations of Serious Misconduct 2

III. Investigative Methodology 3

IV. Factual Summary 3

V. Analysis and Findings 13

a. Does the alleged conduct violate California Regulation 1205(a)(2) – Abuse of Power? 13

b. Does the alleged conduct violate California Regulation 1205(a)(4) – Sexual Assault? 15

c. Does the alleged conduct violate California Regulation 1205(a)(1) –Dishonesty? 17

VI. Supporting Evidence and Documentation 26

VII. Findings 26

I. Executive Summary

On May 3, 2023, the Los Angeles County Sheriff's Department (LASD) reported to POST allegations of serious misconduct against Respondent pursuant to California Penal Code Section 13510.9. It was alleged Respondent was dishonest during an investigation into whether he violated multiple LASD Policy sections stemming from his contact with an arrestee after her release from jail. Further investigation by POST determined clear and convincing evidence exists to show Respondent abused the power of his position as a peace officer, in violation of POST Regulation 1205(a)(2), by leveraging his position as a peace officer to attempt to enter into a romantic relationship with an arrestee, and inappropriately accessing confidential information for personal gain; and committed sexual assault in violation of POST Regulation 1205(a)(4) in that he attempted the initiation of a sexual act with a member of the public while on duty and through offer of leniency or other official favor.

II. Background Information

a. Identity of Respondent

At the time of the events at issue, Respondent Sifredo A. Cano was employed as a Deputy Sheriff with the Los Angeles County Sheriff's Department. Respondent was discharged from his position with LASD on March 22, 2023, in a disciplinary action arising out of the events at issue in this Investigative Summary and Findings.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

Respondent began his employment with the LASD on November 30, 2007, as a full-time Deputy Sheriff.

Respondent's department records indicate he had one prior sustained allegation of misconduct:

In March of 2017, Respondent received a two-day suspension for policy violations when he failed to document a crime and book evidence in a timely manner. Respondent received a fictitious $100 bill from a business owner but did not write the report or book the evidence until after the victim followed up with the agency days later and it was discovered Respondent still had the evidence in his possession.

c. Prior Employment History

Respondent does not have any additional law enforcement appointments in California.

d. Peace Officer Certification

Respondent is assigned POST ID C03-G01. He received the following peace officer certificates from the Peace Officer Standards and Training (POST):

- Basic (December 26, 2008)
- Intermediate (January 21, 2010)
- Advanced (June 29, 2015)

e. The Present Allegations of Serious Misconduct

1. Filing of Complaint With Agency
   February 25, 2022

2. Agency Determinations on Complaint, Discipline, and Any Appeals
   Investigation closed February 16, 2023
   Final Discipline imposed March 22, 2023

3. Date of Receipt By POST
   May 3, 2023

III. Investigative Methodology

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of Los Angeles County Sheriff's Department's administrative investigation which included transcripts of interviews of 8 witnesses and the Respondent, over 100 text messages between the Respondent and the arrestee, and correspondence between the District Attorney's Office and the Sheriff's Department.

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt."

This report is necessarily summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to that evidence that I believe establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

On February 25, 2022, LASD Temple Station Captain Mark A. Reyes received an interdepartment email from Los Angeles County Deputy District Attorney Victor Rodriguez, from the Alhambra Courthouse. The email indicated Respondent communicated via text message and met with a female arrestee (hereafter referred to as Victim) while he was on duty, approximately three times between May 14, 2021, and July 22, 2021. Respondent and Victim met on May 23, 2021, outside of Victim's friend's house in the city of San Gabriel and Respondent greeted Victim with a hug. During this meeting Respondent told Victim he could make her driving under the influence case go away if she would go out on a date with him. Respondent told Victim, "Believe me, I'll try my best to get Chen not to show up to court".

Additionally, in the presence of Victim, Respondent utilized the patrol vehicle's Mobile Digital Computer (MDC) to query personal information via various law enforcement applications and obtained her criminal history. Respondent then discussed her criminal history with Victim. Following that meeting with Respondent, Victim became uncomfortable with Respondent's persistent continuous contact and attempts to go out on a date with her. Victim reported the inappropriate behavior to her attorney, Levon Kyurkchyan, who then reported it to Deputy District Attorney Iliana Alverez via email.

DDA Rodriguez provided Captain Reyes screen shots of the text message communication between Respondent and Victim.

The initial contact Respondent had with Victim began May 13, 2021, when Victim was involved in a traffic collision in the city of Rosemead. Respondent responded to the traffic collision call for service along with additional Deputies. Victim was the driver of a vehicle that collided with multiple other vehicles, and she appeared to be under the influence of alcohol at the time of the collision. Victim was detained and Respondent contacted Reserve Deputy Edward Chen who responded to the scene to conduct the Driving Under the Influence investigation. Victim was subsequently arrested by Deputy Chen for Vehicle Code (VC) Section 23152(a), Driving Under the Influence and Respondent wrote the traffic collision portion of the report.

Deputy Chen transported Victim to Industry Station to administer the Breath Alcohol Analysis Test to her and then transported and booked her at Temple Station Jail. Respondent and Deputy Samuel Moon then transported Victim to the medical center for an in-custody medical clearance and then transported her back to Temple Station Jail where she remained until she was cite-released at 0836 hrs. on May 14, 2022.

Beginning on May 14, 2021, at approximately 2306 hours, Respondent initiated a text conversation with Victim. The contact between Respondent and Victim lasted for 3

months, during which approximately 100 text messages were exchanged until Victim stopped replying to Respondent on July 22, 2021. The LASD Internal Affairs report (IA) contained screen shots of the text messages.

As will be described in greater detail below, the text messages generally show a pattern of Respondent reaching out to Victim and her responding. In them, Respondent asks to meet with her, asks her out on dates, tells her how sexy she is, reminds her of the fact that she was not wearing underwear at the time of her arrest, and asks her for pictures of herself.

On three occasions, Respondent met with Victim after asking where she was via text. One time was to return property she left in his patrol car at the time of her arrest (items that were not booked into property as they should have been). Through GPS tracking data on Respondent's patrol vehicle, LASD was able to determine he met with Victim on May 21, 2021 for 18 minutes, May 23, 2021 for 40 minutes, and again on May 23, 2021 for 21 minutes, all while on-duty.

During the ensuing IA investigation, Deputy Chen was interviewed regarding his involvement in the arrest of Victim and his observations of Respondent during the event. Deputy Chen's statement was that he didn't see any inappropriate behavior by Respondent but during a follow up interview of Deputy Chen he stated he had a conversation with Respondent where Respondent mentioned Victim had hired a lawyer and was looking at her second or third DUI conviction. These comments made Deputy Chen suspect Respondent was having inappropriate contact with Victim. Deputy Chen said Respondent never explicitly asked him to miss his court date so Victim would avoid the DUI conviction.

Deputy Chen said he also received a phone call from the Respondent on November 14, 2022. At that time Deputy Chen thought the administrative investigation was over so it was okay to talk to Respondent. Respondent began asking Deputy Chen about prior

conversations they had about Victim. At that time Deputy Chen realized the investigation must still be ongoing so he ended the call with Respondent. Deputy Chen said he was well aware he was not allowed to talk about the investigation with Respondent, which was why he ended the conversation. Deputy Chen provided the LASD IA investigator screen shots of his cellphone's call log for Monday November 14, 2022, which showed two calls: One missed call from Respondent and one call back to the Respondent from Deputy Chen that lasted 7 minutes and 20 seconds.

During the investigation, IA discovered that on May 23, 2021, someone accessed the Mobile Digital Computer (MDC) in the patrol vehicle Respondent was assigned to and accessed the DMV database to check a license plate of a vehicle belonging to Victim, and then a few hours later checked Victim for criminal history and warrants. May 23, 2021, was the same date Respondent met with Victim in person twice while on duty. Respondent's partner on May 23, 2021, was Deputy Elizabeth Tarin. Deputy Tarin's credentials were used to log into the MDC on May 23, 2021.

On September 6, 2021, Deputy Tarin stated in her IA interview that she did not remember checking the license plate of Victim's vehicle or running a criminal history check for Victim using Victim's full name and personal information. She stated she would not conduct criminal history inquiries on people unless it pertained to work. She also did not recall Respondent mentioning that he conducted a criminal history check on Victim. During a follow-up interview, Deputy Tarin did recall while parked near "the Hilton" Respondent had her run the license plate of a car (Victim's) and then stated he was going to eat Pho. He left her in the car to write a report. Deputy Tarin estimated he was gone less than an hour.

During a cell phone interview with POST on July 15, 2024, Victim stated she met with Respondent twice one day but could not remember the date. She said it was the day they met outside the Hilton Hotel. After the first meeting (at the Hilton), Respondent called her and asked where she was. She told him she was at a friend's house in Rosemead and

gave him the address. Respondent showed up at the friend's house and Victim came out to meet him. He invited her to sit in the front passenger seat of his patrol vehicle. During this meeting, among other things, Respondent checked Victim for warrants on his vehicle computer and then showed her the results. He also showed Victim her driving record and said it was not good.

On October 13, 2021, LASD IA interviewed DDA Victor Rodriguez, who told them he had received an email through his Assistant Head Deputy District Attorney from Victim's defense attorney Levon Kyurkchyan, stating Respondent was having inappropriate contact with his client (Victim) and at one point in front of friends of Victim's told her he could get her DUI arrest to go away if she went out with him. He stated, "Believe me I'll try my best to get Chen not to show up in court".

As a result of the inappropriate contact between Respondent and Victim, DDA Rodriguez believed he would have a difficult time achieving a conviction in Victim's case and agreed to a plea bargain of a "wet reckless" conviction (California Vehicle Code section 23103). DDA Rodriguez believed Respondent's actions, in addition to being policy violations, could amount to obstruction of justice and violate the law. DDA Rodriguez contacted Captain Reyes and notified him of the allegations against Respondent. He also provided a copy of the email from Victim's defense attorney.

On September 27, 2022, LASD IA investigators interviewed Respondent. Specific instances of dishonest statements made by Respondent will be outlined in greater depth below. A summary of Respondent's interview is as follows. At that time, Respondent recalled responding to the collision involving Victim and was able to describe her but even after looking at her photograph could not remember her name.

Respondent said he assisted other Deputies with the investigation but did not have any other contact with Victim that night. Respondent did not recall transporting Victim to be

medically cleared even after being reminded and shown corresponding paperwork with his name and signature on it.

Investigators asked Respondent if he contacted Victim on the day after her arrest. Respondent said he only had contact with Victim several weeks after her arrest when he was on a traffic stop while on patrol in Temple City. Victim approached him and asked if he remembered her. Respondent said he didn't recognize her at first and then remembered her from the collision on May 13, 2021. Victim asked him to help one of her friends who had some DJ equipment confiscated by El Monte PD. Respondent agreed to help her and contacted El Monte PD to gather information. He then texted Victim who asked him to meet her in the city of Rosemead. Respondent said he drove to Rosemead and met with Victim and her friend and that was the last time he had contact with her.

Victim was interviewed by a POST Law Enforcement Consultant as part of this investigation. During her POST interview, Victim stated she never approached Respondent at a traffic stop in Temple or anywhere else. Victim said Respondent texted that he had her Airpods to give to her. She asked where he was, and he said he was at Temple High School. When they met at Temple High School, she brought up her friend's DJ equipment.

During the IA, Respondent was provided with a 28-page document which contained screen shots of over 100 text messages exchanged between Respondent and Victim beginning May 14, 2021, and ending July 22, 2021. After reviewing the entire document Respondent admitted he started communicating with Victim via text message on May 14, 2021. He stated he got Victim's phone number from Deputy Chen's DUI report.

Respondent stated he initially reached out to Victim to return ear buds he found in the back seat of his patrol vehicle which he assumed were hers. Respondent admitted asking Victim for photographs of her and for her Instagram username, and then "friend requested" her on Instagram.

Through text messages, Respondent also spoke to Victim about the events that led up to her being arrested for DUI and reminded her that she was not wearing underwear that night. Respondent told the IA investigator that Victim was moving around in the back seat of the patrol car with her legs up while wearing a dress with no underwear on. Respondent denied ever discussing specifics about Victim's criminal case or any court proceedings.

Over the course of the next few days Respondent and Victim exchanged several texts trying to meet Respondent to retrieve her ear pods. They agreed to meet on May 21, 2021, at Temple City High School while Respondent was on-duty assigned to Temple City. Respondent stated he drove around the city of Temple in his patrol vehicle and "on a whim" decided to meet with Victim. They met for, "maybe five minutes" and remained inside their respective vehicles.

According to the GPS tracking unit in Respondent's patrol vehicle, the vehicle was in the Temple City High School parking lot for approximately 27 minutes while Respondent was on-duty.

Respondent stated that on May 23, 2021, he agreed to meet with Victim to give her what little information he was able to gather regarding her friend's pending criminal case with El Monte PD. He said he met with Victim and her friend in the area of Del Mar Ave and Valley Boulevard for five or six minutes. Respondent said they met on the sidewalk outside the Hilton Plaza and he greeted her with a handshake. She introduced him to her friend.

GPS tracking of his patrol vehicle during that time period showed his vehicle parked in that area for 40 minutes. This was during the shift where someone conducted a criminal history check on Victim and ran her license plate through the DMV while Deputy Tarin was logged into the MDC.

After meeting with Victim near the Hilton Plaza, Respondent continued to exchange text messages with her and agreed to meet her again that day in San Gabriel. Respondent confirmed they met a second time on May 23, 20221, for approximately five minutes. He said he never exited the patrol vehicle and Victim stood on the sidewalk. GPS tracking of Respondent's patrol vehicle showed the vehicle was parked at that location for 19 minutes.

Respondent said Victim did not get into the patrol vehicle, and he did not use the MDC to check Victim's criminal history record on May 23, 2021. He then said, "I don't recall running her name at all. Or her being in the car. I don't know. Because I don't recall running her name. If it comes out, then yeah. Maybe I did, but I don't recall."

Respondent said Deputy Tarin was with him the first time he met Victim, but he couldn't recall if she was there the second time.

Victim stated when she met with Respondent the second time, he invited her into the front passenger seat where she sat while he checked her for warrants and showed Victim her driving record.

Between May 14, 2021, and July 22, 2021, Respondent sent Victim numerous text messages. Victim often did not reply or sent minimal responses. After July 22, 2021, no further messages were sent. Respondent said he stopped texting because Victim's court date was approaching, and he did not want to be involved anymore. Respondent stated despite three months' worth of texting he realized he should not have been talking to her.

Respondent indicated he was aware per Department Policy he was not supposed to associate with individuals with pending criminal charges filed against them and/or released from jail within 30 days of the arrest date. Respondent said he never had physical contact

with Victim other than to shake her hand on the occasions when they met, and he had not followed up with any other female arrestees in the past, but he became physically attracted to and fond of Victim; therefore, he pursued her with intentions of starting a romantic relationship.

On November 14, 2021, Respondent had a second interview with LASD IA investigators. He was shown a printout of the unit history report for his patrol vehicle on May 23, 2021. At 1609 hours a Department of Motor Vehicles vehicle inquiry was conducted on Victim's vehicle and at 2126 hours a criminal history inquiry was conducted with Victim's full name and date of birth.

Respondent said he did not recall running an inquiry on Victim's vehicle and Deputy Tarin was not with him during the second meeting with Victim on May 23, 2021, therefore he assumed he was the one who conducted the criminal history inquiry. Respondent did not give Deputy Tarin Victim's personal information to have her conduct a criminal history check.

Respondent denied ever telling Victim that he would try to get her DUI to go away or get Deputy Chen to not show up in court. He also denied talking to, suggesting, or alluding to Deputy Chen he should not show up for Victim's court hearing.

(During her interview Victim stated when Respondent met with her outside the Hilton Hotel he greeted her with a hug. She asked Respondent if there was any way her DUI could "go away". He responded that he would try but did not elaborate on how.)

Respondent said he had no contact with or engaged in any conversation with Deputy Chen after Victim's arrest on May 13, 2021. Respondent also denied telling Deputy Chen the May 13, 2021, arrest was Victim's second or third DUI arrest.

During his IA interview on November 17, 2021, Deputy Chen contradicted this, stating Respondent approached him at the station some weeks after Victim's arrest, let him know he had been in contact with Victim, stated this was her second or third DUI arrest, and alluded to the idea Chen should miss his court date. Additionally, Chen stated Respondent called him on November 14, 2021. Respondent told Chen his IA case was concluded and he was returning to work, so Chen thought it was okay to talk to him until Respondent started talking about the investigation, at which time Chen ended the conversation.

On November 21, 2022, Respondent had a third interview with LASD IA. Respondent started the interview by clarifying the statement he made about not having any contact with Deputy Chen. Respondent admitted he did have one contact with Deputy Chen after Victim's arrest, but the conversation did not pertain to the administrative investigation. Respondent said between May 14, 2021, and July 22, 2021, he had a telephonic conversation with Deputy Chen in which they discussed the fact that neither he nor Deputy Chen searched Victim on the night of her arrest. Additionally, they had a face-to-face meeting during which Deputy Chen asked if Respondent had completed the traffic collision report for Victim's case. Respondent did not address the phone conversation he had with Chen four days before this interview on November 14, 2021.

Respondent admitted contacting Deputy Chen despite knowing Deputy Chen was interviewed as a witness in the Administrative Investigation. Respondent said the purpose of the call was to gain insight into the process of the administrative investigation since he knew Deputy Chen had been through a "similar situation" in the past. Respondent denied having any conversations about the details of the administrative investigation.

LASD IA investigators attempted to interview Victim and/or her attorney but they both declined to be interviewed for the investigation. Consequently, Victim's friend who allegedly witnessed Respondent stating he would try to get Deputy Chen to not show up for court was never identified or interviewed.

V. Analysis and Findings

a. Does the alleged conduct violate California Regulation 1205(a)(2) – Abuse of Power?

Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the abuse of power was a knowing abuse of the power and authority of a public office.

Clear and convincing evidence exists to show that Respondent abused his power in his position as a law enforcement officer by initiating and maintaining inappropriate contact with an arrestee with the purpose of establishing a romantic relationship; attempting to use his position of authority to further that romantic pursuit by offering to make the Victim's arrest "go away"; and in using his partner's law enforcement credentials to access Victim's criminal and DMV history.

Here, Respondent met Victim in his capacity as a peace officer during her arrest for driving under the influence of alcohol. He then used this position of power and influence to initiate personal contacts with Victim to leverage his position as a peace officer to obtain a romantic relationship with Victim. Indeed, on May 23, 2021, Respondent told Victim he could make the DUI go away if she would go out on a date with him, saying, "Believe me I'll try my best to get Chen not to show up to court". **(Attachment A)** The evidence demonstrates that Respondent attempted to make good on this promise when he approached Deputy Chen and informed him that he had spoken with Victim and learned that this would be her second or third DUI. Deputy Chen interpreted the conversation to mean that he should not attend the court hearing. Deputy Chen ended the conversation stating that attends all of his court hearings.

Between May 14 and July 22, 2021, Respondent initiated and maintained a text and phone relationship with Victim after getting her cell phone number from Deputy Chen's DUI report. The initial text message from Respondent to Victim was sent the day after she was arrested and shortly after she was released from Respondent's jail. **(Attachment C) (Attachment F, Pages 182 and 223)**

> **Rodriguez:** Okay. When did you get her phone number initially?
> **Respondent:** I believe that night of the -- the traffic collision. For the report.
> **Rodriguez:** You got for -- her phone number for the report?

Respondent: I believe I got it from the handling unit (Deputy Chen). Because we -- I couldn't – we couldn't understand at the beginning what -- to talk to her. So I -- I believe I got if from my partner.

Rodriguez: Okay. And then, once again, you -- she was arrested on May 13th --
Respondent: Yes.
Rodriguez: -- 2021 -- 2021?
Respondent: Yes, ma'am.
Rodriguez: And you contacted her via one of your burner phones -- that's what you called it -- on May 14th, 2021?
Respondent: Yes, ma'am.
Rodriguez: Okay. So literally just like a day after she had been arrested. Or the morning after; right? She had been --
Respondent: After she got released. Yes

May 23, 2021, Respondent deceitfully had his partner **(Tarin)** access the DMV database to run the registration on Victim's vehicle before meeting with Victim for lunch, and then later the same date, after Deputy Tarin went off shift, Respondent used Deputy Tarin's secure log-in information to access CLETS to check Victim for warrants or wants while meeting with her a second time that date. He then showed Victim the confidential results of the query **(Attachment F, pages 132 - 134) (Attachment F, pages 216 and 246)**

IA Interview of Deputy Tarin dated 10/13/2022 (While showing Dep. Tarin the vehicle license plate belonging to Victim that was queried on the MDC)

Rodriguez: So, I'm going to show you a photocopy of it's a CLETS return for a vehicle registration, okay. So, there's four pages, but you know, the rest of the pages are pretty much SVS had zero messages that might come back, okay? Do you remember running that plate?
Tarin: I ran a lot of plates. So, -
Rodriguez: Well, the name is kind of, so, if you focus on the you know, the registration. It's a leased vehicle, but if you focus on the registration and the information of the person that's you know, under the lease, if you notice it's the same name that was ran later on.
Tarin: Yeah.
Rodriguez: Right?
Tarin: Correct, correct, yeah.
Rodriguez: So, again, you don't remember running anything like that with that name or anything?
Tarin: No.

Tarin: After our first interview, I was like a little bit like what's going on. So, I drove that way and it, I remembered stopping there and I remember the whole situation.
Rodriguez: Let's talk about that.
Tarin: So, we ran the car, he said he was going to go have pho there. And he asked me if I wanted to go eat and I was, I was writing the Big 5 report. And again, I'm a newer deputy. So, I'm not going to, I didn't feel comfortable going to eat with him. I just wanted to get the report done and then go home. So, he, he told me that he was going to go eat pho, to which he left. And I stayed in the car and wrote the report.

Respondent: I don't recall.
Rodriguez: You don't recall --
Respondent: No. I --
Rodriguez: -- or you didn't run her?
Respondent: I don't recall running her. Or running her name. No

Rodriguez: Did you give Miss Tarin her information? Victim's information to run?
Respondent: No, I did not.
Rodriguez: So if -- if Tarin wasn't with you -- Deputy Tarin wasn't with you, then who ran Victim?
Respondent: Oh, it had to be me because it's my -- my unit, but I don't recall running her. But it's -- I mean, it's got to be me.

b. Does the alleged conduct violate California Regulation 1205(a)(4) – Sexual Assault?

Sexual assault as described in subdivision (b) of Penal Code Section 832.7.

Cal. Penal Code § 832.7 (b)(1)(B)(ii)-(iii)

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

Clear and convincing evidence exists to show that Respondent's conduct amounted to sexual assault as described in Penal Code section 832.7(b)(1(B(ii) in that he attempted the initiation of a sexual act with a member of the public while on duty and through offer of leniency or other official favor. Between May 14, 2021, and July 22, 2021, Respondent and Victim exchanged approximately 100 texts messages, many of which are the Respondent asking Victim to meet with him, asking her out on dates, telling her how sexy she is, asking for pictures of her, and on one occasion reminding Victim that she was not wearing underwear the night she was arrested. **(Attachment C)**

The IA investigators showed Respondent the 28 pages of text messages. Only then did Respondent admit to initiating contact because he was attracted to Victim and wanted to establish a relationship with her. He said he knew it was a violation of Department Policy and was wrong.

Luna: You had said, "I'm serious." "I want to be with you." What did you mean by that first bubble? "I'm serious." "I want to be with you."

Respondent: Just to be with her. Just us.

Luna: Did you want to engage in some sort of romantic relationship with her?

Respondent: I believe so, sir. Yes.

Luna: Okay.

Rodriguez: So you believe so or --

Respondent: Yes.

Rodriguez: -- yes? Okay. Is that why you keep telling her that she's sexy and that you want --

Respondent: Yes.

Rodriguez: -- that you want her to take you home with her?

Respondent: Yes.

On May 23, 2021, according to the attorney representing Victim, Respondent implied to Victim he could make her DUI arrest "go away" if she would go out on a date with him, saying, "Believe me, I'll do my best to get Chen not to show up to court." At that meeting Respondent was on duty in his patrol vehicle and met Victim outside a restaurant where she was with friends. The friends witnessed the statement, however they were not made available to be interviewed by IA.

Later that day Respondent met with Victim again while on duty, in front of her friend's home. Victim got into the patrol vehicle and sat in the front passenger seat while Respondent accessed the Mobile Digital Computer (MDC) to check Victim for warrants and wants. At one point Respondent asked Victim to go out with him. When she said no, Respondent touched her face and told her he wanted "to be with her", with a clear meaning he meant in a sexual way. **(Attachment A)** He then kissed her cheek and told Victim, "You're so sexy". **(Victim interview)**. This account was corroborated through an audit of the MDC usage in Respondent's patrol vehicle for May 23, 2021, showing someone had used Respondent's computer to check Victim for wants and warrants, **(Attachment D)** and through an interview with Victim on July 15, 2024.

c. Does the alleged conduct violate California Regulation 1205(a)(1) –Dishonesty?

Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

Clear and convincing evidence supports dishonesty occurred in relation to the investigation of misconduct by a peace officer, in the form of false and misleading statements made by the subject officer, Respondent. This is supported by text messages between Respondent and Victim, GPS timelines of Respondent's movements and call logs from a witness cellphone, as well as statements from Victim. This evidence is corroborated by statements from witness Deputies and Los Angeles County Head Deputy District Attorney Victor Rodriguez.

On May 3, 2023, LASD reported this case to POST pursuant to the requirements of Penal Code section 13510.9. POST obtained the administrative investigation completed by LASD and conducted a review of the evidence and a thorough analysis of all the relevant facts. On July 15, 2024, POST conducted a cellphone interview with the Victim as well.

Respondent was dishonest during his compelled interviews (3) until he was confronted with physical evidence contradicting his statements. The following examples highlight this pattern:

Respondent told Internal Affairs he had no contact with the victim after the night of her arrest for DUI (May 13, 2021), until she contacted him several weeks later, a statement the Victim said was false. IA presented Respondent with 28 pages containing over 100 text messages between Respondent and Victim that Respondent initiated, beginning within hours of her release from jail on May 14, 2021. Only then did Respondent admit to his interactions with Victim.

Relevant excerpts from Respondent's interview relating to this aspect of his dishonesty are as follows:

> **Rodriguez**: Did you see her after that night? *(After the DUI arrest)*
> **Respondent**: After -- no.

Rodriguez: After --

Respondent: I did not.

Rodriguez: I mean, after the 13th you didn't see her at all?

Respondent: No. That night, no.

Rodriguez: Okay. So did you see her any day after that?

Respondent: Yes.

Rodriguez: Okay. When was the next time -- the -- the next time you saw her after the 13th?

Respondent: It had to be several weeks after. I -- I was working overtime. The same city. She lives borderline Temple City and Arcadia. And I was working the same city that night I believe. And she flagged me down. I was on a stop. She flagged me down. I told her that I would talk to her after I finished with the traffic stop. I came over once I was done and she asked me if – if I remembered her. She told me if I remembered her. I said, "No." I -- I don't." She said, “you and -- you and your partner stopped me for a crash and a DUI." I said, "Well, where was it at?" And she said she told me it was in -- on Rosemead and Giraldi a couple of weeks back. I don't remember how long exactly. I said, "Oh, yeah. I remember." I said, "I remember. Deputy Chen is the one that arrested you for the DUI." And I said “I -- I wrote the -- the traffic report." She said, "Yes." And that's when she told me if -- if I could help one of her friends. I guess one of her best friends is a famous DJ that plays and flies all over the country doing DJ stuff. And she told me that they were doing an underground party in El Monte during COVID and that her stuff were taken away. Their equipment. DJ equipment. And that he was trying to find out what was happening with the case. If -- she said if I can maybe help her get some information about the case. She didn't have any information on it. She said she will get me the case number. I told her that I didn't really know anybody in El Monte. I said, "We don't really see them on this side." I said, "But I can find out."

See if there's any information on the case. And that's -- that was the last -- last time I saw her.

Rodriguez: That the last time --

Respondent: Yeah.

Rodriguez: -- you saw her or talked to her?

Respondent: No. When she told me the -- that she was going to get me the -- the case numbers -- I don't remember if she ever texted me back that she was -- that she had the case number. Several weeks later -- I don't remember how -- how the timeframe, but I did call El Monte P.D. and just to find out if they had anything on that case and they told me that -- that it was still open. That they didn't -- they didn't -- they didn't know what court date or anything like that. That they were behind. And that they just had to wait. And then I let her know. I believe I -- I don't remember if I called her or texted her and I -- hey -- hey, I -- "I have some information regarding your friend's case." And I was working Rosemead that day. And she told me, "Oh, I'm -- I'm in Rosemead can you come meet my friend? He's over here." I was on -- I believe I was on Valley and either San Gabriel or Valley and Walnut Grove. Somewhere around there. And they were there. So it was my RD. I drove through there and I -- I spoke to her friend and I just told him I said, "Hey, they said that the case is still open." "That you have to wait." And, "They don't know when it's going to go to court." And that was that.

Rodriguez: Okay.

Respondent: And that was the last time that I saw her.

(Attachment F, pages 169-170)

Respondent told IA very explicitly that he had no memory of transporting the victim to the hospital the night of her arrest. Although they showed him hospital paperwork he signed for her release, agency call logs showing he transported her

to the hospital, and transcripts showing he and his partner were transporting “a female” to the hospital. Yet in the very first text to victim on May 14, 2021, Respondent reminds her he was the Deputy who transported her to the hospital.

Relevant excerpts from Respondent’s interview relating to this aspect of his dishonesty are as follows:

> **Luna:** Did you transport her to the hospital?
> **Respondent:** No, sir.
> **Luna:** Okay
>
> **(Attachment F, page 171)**

Respondent denied using the patrol vehicle computer (MDC) to check the victim for warrants or run her driver’s license on May 23, 2021. In a subsequent interview, the IA investigators were able to present Respondent with records showing his MDC was used to check the Victim for warrants and license status at a time when only the Respondent was using that vehicle, even though the log-in information was Respondent’s partner’s information. Respondent told IA he must have “ran her” then but he didn’t remember doing it. In her interview the Victim stated she sat in the front seat of the patrol car on May 23, 2021, while Respondent checked her for warrants and ran her driver’s license and gave her the results. During her POST interview Victim said she was sitting in the patrol car while Respondent checked her for warrants, “on the computer”.

Relevant excerpts from Respondent’s interview relating to this aspect of his dishonesty are as follows:

> **Rodriguez**: On the 23rd that -- that day when you go in to -- you meet her outside of the apartment complex --
> **Respondent**: Yes.
> **Rodriguez**: -- did she ever get back in her car with you?
> **Respondent**: No.

Rodriguez: Okay. Did you ever run her -- her name on your M.D.C.?
Respondent: No. Not -- not -- well, if I ran her maybe for the report, but not for nothing after that.
Rodriguez: What do you mean "for the report"?
Respondent: Like at night -- the night of the traffic collision maybe. But not for – not after -- after that.
Rodriguez: So I'm asking specifically for the 23rd.
Respondent: For this date?
Rodriguez: Yes.
Respondent: No.

(Attachment F, pages 215-216)

Respondent stated he met the Victim on three occasions, but stated each time was brief, only around 5 minutes each. However, GPS tracking on his patrol vehicle showed Respondent met with the victim on May 21, 2021, at Temple High School for 18 minutes. He then met with the Victim on May 23, 2021, outside the Hilton Hotel for 40 minutes, and then again on May 23, 2021, in Rosemead for 21 minutes.

Respondent denied speaking to the Deputy that arrested Victim for DUI in an attempt to dissuade him from testifying against Victim. Respondent said he had not talked to that Deputy at all or engaged in any type of conversation with him since the night of Victim's arrest May 13, 2021.

Relevant excerpts from Respondent's interview relating to this aspect of his dishonesty are as follows:

Rodriguez: Noted. Okay. So after you – Victim was arrested and you went to go see her that day on the 23rd, one of the days -- one of those locations, did you ever suggest to Victim that if she went out on a date with you that you could make the case go away?
Respondent: No, I did not.

Rodriguez: Did you ever tell Victim, “Believe me, I’ll try my best to get Chen” -- Deputy -- Deputy Chen -- “not to show up to court”?
Respondent: No, I did not.
Rodriguez: After Victim was -- was arrested and during the time you were communicating with her, did you ever speak to Deputy Chen regarding Victim’s case?
Respondent: No, I did not.
Rodriguez: Did you ever, at any point -- at any point or in any way suggest to Deputy Chen that he should not show up to court for Victim’s case?
Respondent: No, I did not.
Rodriguez: Did you ever have any type of conversation with Deputy Chen after Victim’s arrest?
Johnson: About the case or just about anything?
Rodriguez: Just any type of conversation or any contact with him after?
Respondent: Just during the incident.
Rodriguez: Okay.
Respondent: During --
Rodriguez: After the arrest, did you have any contact --
Respondent: No.
Rodriguez: -- with him?
(Attachment F, pages 249 – 250)

Deputy Chen was interviewed during the IA investigation. In his interview, Deputy Chen provided a screen shot of his cell phone showing he missed a phone call from Respondent on November 14, 2022 **(Attachment E),** and a screen shot of a connected call with Respondent one hour later that lasted 7 minutes and 20 seconds **(Attachment E)**. (The missed call came in at 1205 hours, 1 hour and 10

minutes after Respondent finished his second IA interview where he stated he had not talked to the arresting Deputy about Victim or her case).

Deputy Chen was asked about his interactions with Respondent. Relevant excerpts from this interview are as follows:

(Deputy Chen IA interview dated 11/17/2022) **(Attachment F)**

Rodriguez: After you arrested her, did you have any type of contact with Deputy Cano?

Lawrence: Regarding?

Rodriguez: For now, any type of contact with Deputy Cano?

Chen: I have. He works here at the station. In passing, we see each other, we converse.

Rodriguez: So, between May 13th, when's the last time you talked to him?

Chen: It would be before, it'll be a few days ago on a phone call when I believe that he had informed me that the case was over, that he was coming back, so I picked up the phone. But that was not the case.

Rodriguez: Did you guys discuss anything pertaining to the case?

Chen: It was to refresh what we had discussed about Victim and a possible direction of what he's being questioned about. I thought my part of the interview is over.

Rodriguez: And you said this happened a few days ago?

Chen: Yes.

Rodriguez: So, would it be safe to say that within the last week?

Chen: Within the last week, yes.

(later in the same IA interview referring to a meeting with Respondent at the station a few weeks after Victim's arrest)

Chen: He brought up the fact that he's spoke to Victim and learned that this would be her second or third DUI. I interpreted that to mean, from a deputy to another, that if I were to not attend the court hearings, but he never specifically requested that of me. I ended the conversation by stating that I attend all my court hearings and subpoenas and I don't believe it ever got to a point where he crossed the line or made that request, or I responded in any way that would indicate that I understood what he was asking.

Rodriguez: So, you never asked for clarification what he was asking? That conversation that-

Chen: No, because I did not like what that implied. He never asked.

Rodriguez: Uh huh.

Chen: I want to be clear. But when you bring up a suspect's record and indicated that you've spoken to her, my interpretation of that encounter would be that, if there's anything I could do as the arresting officer to impact or influence that case, which I don't believe I had the opportunity to do, because as a reserve deputy, I attend all my subpoenas. I attend all on-call or in court hearings by the court as when I'm subpoenaed to. I even attend most traffic citations that I issue. I even attend most traffic court subpoenas.

Rodriguez: So, if I'm understanding you correctly, I don't want to put words in your mouth, you interpreted that conversation that you had with Deputy Cano and he came up to you, right?

Chen: Yes. We were in the secretary's office when that conversation occurred.

On November 21, 2022, Respondent had a third interview with IA where he changed his answer and admitted having conversations with Deputy Chen, but not about her case or his on-going IA. **(Attachment F, page 253 – 254)**

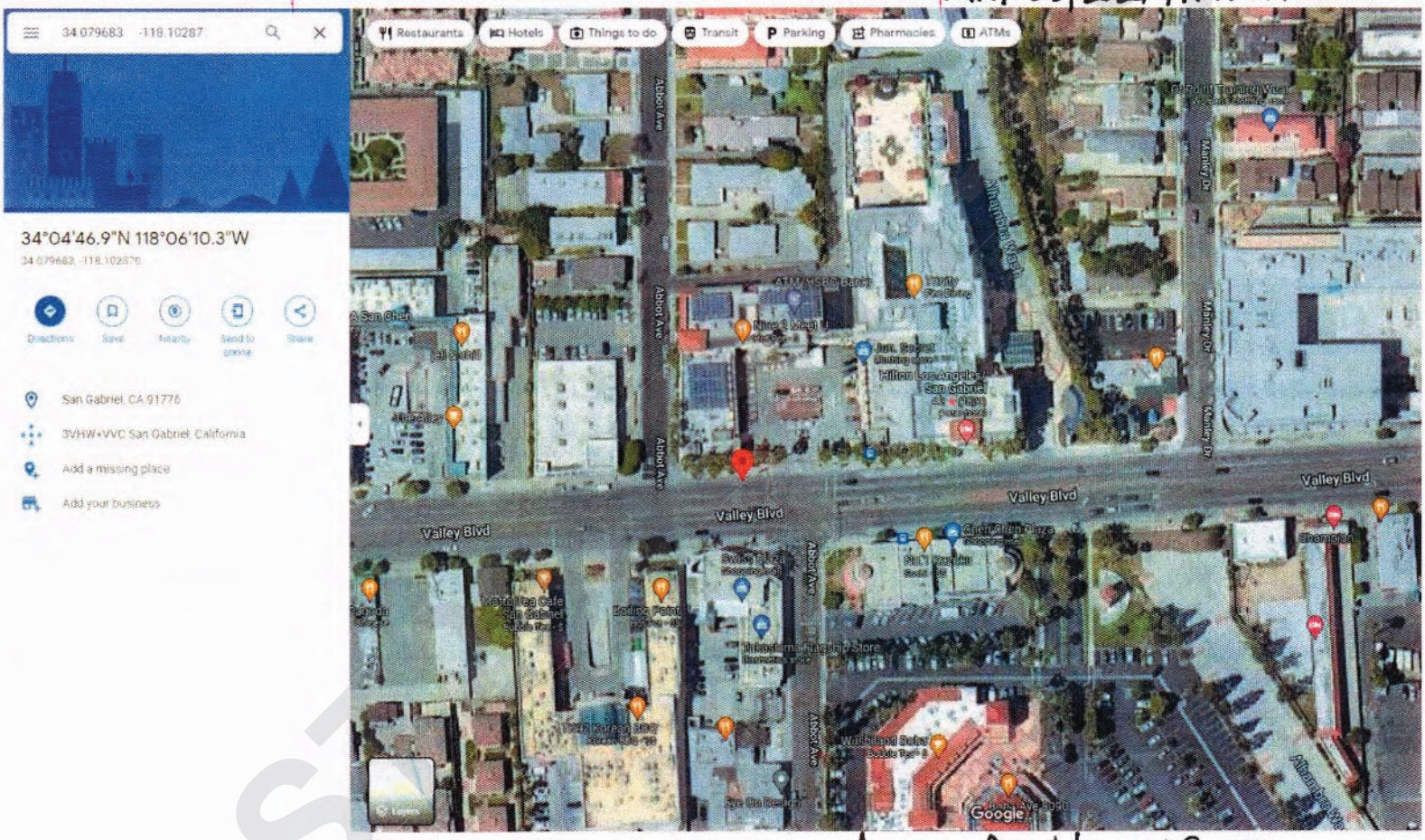
VI. Supporting Evidence and Documentation

- Attachment A – DA Complaint Email Dated 2/25/22
- Attachment B – Respondent Vehicle GPS Locations
- Attachment C – Respondent Text Messages
- Attachment D – Warrant & Registration Checks
- Attachment E – Witness Deputy Text Message
- Attachment F – Interview Transcripts

VII. Findings

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code 13510.8.

MAY 23, 2021, APPROX. 1837HRS.

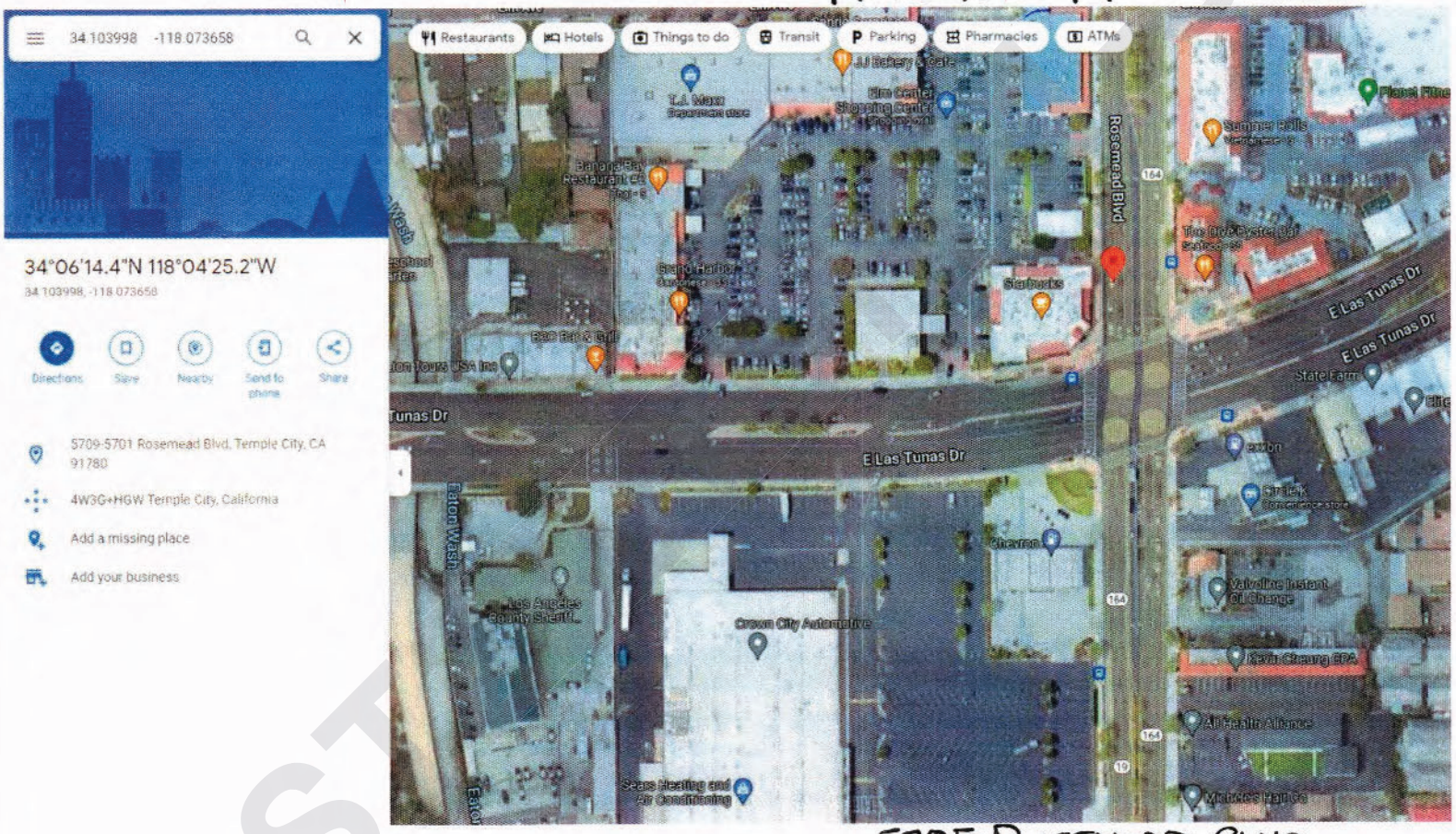


ABBOT AVE. / VALLEY BLVD.
SAN GABRIEL, CA 91776

POST SB2

10B-22ET

MAY 23, 2021, B/T 211 2 HMS AND 21B HMS.



5705 ROSEMEAD BLVD.
TEMPLE CITY, CA 91780

CT 10-B-22

POST SB2

MAY 23, 2021, B/T 2115 HRS AND 2134 HRS



4951 NORTH ROSEMEAD BLVD.
SAN GABRIEL, CA 91776

POST SB2

ET 10-13-22

LASD-000396 RELEASE DATE: 6/2/2023

Rodriguez (Esquivel), Sara E.

Subject: FW: People v. V1 [redacted]

From: Victor Rodriguez <VRodriguez@da.lacounty.gov>
Sent: Friday, February 25, 2022 1:41 PM
To: Reyes, Mark A. <MAReyes@lasd.org>
Subject: FW: People v. V1 [redacted]

From: Iliana Alvarez <ialvarez@da.lacounty.gov>
Sent: Wednesday, February 23, 2022 10:36 AM
To: Victor Rodriguez <VRodriguez@da.lacounty.gov>
Subject: FW: People v. V1 [redacted]

I have the screenshots and I'm reading through them now.

Let's talk about my response.

From: Levon Kyurkchyan <levon@ladefenseteam.com>
Sent: Tuesday, February 22, 2022 6:07 PM
To: Iliana Alvarez <ialvarez@da.lacounty.gov>
Subject: People v. V1 [redacted]

Dear Ms. Alvarez,

Thank you for your time at our video meeting on this matter last week. I recently received an evidence.com link from Mr. Sanchez but all the videos downloaded were the same ones provided in the past, there was nothing new so I'm not sure if there are additional videos or not.

Nevertheless I've had a chance to speak with my client and the officer's conduct is much, much worse than I was purview to when we spoke. I am going to attach all the text messages for your review. What's happened is disturbing and I'm asking for a dismissal.

As soon as my client told me about these text messages I advised her that she is not obligated to speak with or meet with the officer and to stop responding so she just stopped responding at that time but I didn't know how bad it was until now.

POST230711-1-SB2

LASD-000265 RELEASE DATE: 6/2/2023

Here is what transpired after my client's arrest. Officer Cano met with her a total of 3 times and his advances were escalating. He made suggestive and sexual advances towards her, asked for "pictures" (we know what that means) and used his position to manipulate my client into going out with him and "getting together". Luckily he was unsuccessful.

He texted her directly the next day after her arrest about returning her earbuds and when she asked when to go to the station he deliberately met with her at a parking lot so they could be alone together. My client felt like she had no choice but to communicate and go along with his requests until things became extremely uncomfortable for her and that's when she mentioned this to me. At the initial meeting he gave her the earpods they spoke for a few minutes and he got a call so he had to leave.

Second meeting happened when he texted her asking where she was and went to the restaurant to meet with her. My client had 3 of her friends with her, they all went outside to meet with Officer Cano and were present when they met, they were present when he gave her a hug and when he told her that he can make this case go away, implying that is, if she would go out with him. He said: "believe me I'll try my best to get Chen not to show up to court" when asking to go out with her. I haven't reached out to her friends but I'm told they will corroborate what she has told me.

the 3rd meeting was when he again asked [V1] where she was and went to see her at her friend's house, my client went outside and they sat in the police car talking, he ran her information in the cars computer, looked over her records and mentioned some issues he was seeing about her being uncooperative [V1] doesn't know what that was about) but then asked her to go out with him again, my client said no, he reached over and touched her face and told her he wants to be with her but given the extreme circumstances my client felt she had to leave and did so as things were getting extremely uncomfortable for her. Since his behavior was escalating, that's when she decided to mention their contact to me. At which point I didn't know that much had happened but told her to stop answering his texts.

When my client stopped responding he called her multiple times and texted her as well but then eventually stopped attempting to contact her. So here we are. Please see attached screenshots, I don't believe they are in exact order but you can see what I'm talking about.

If there is outstanding discovery please let me know, otherwise, I look forward to hearing from you about your thoughts in this matter. Please see attached.

Respectfully,

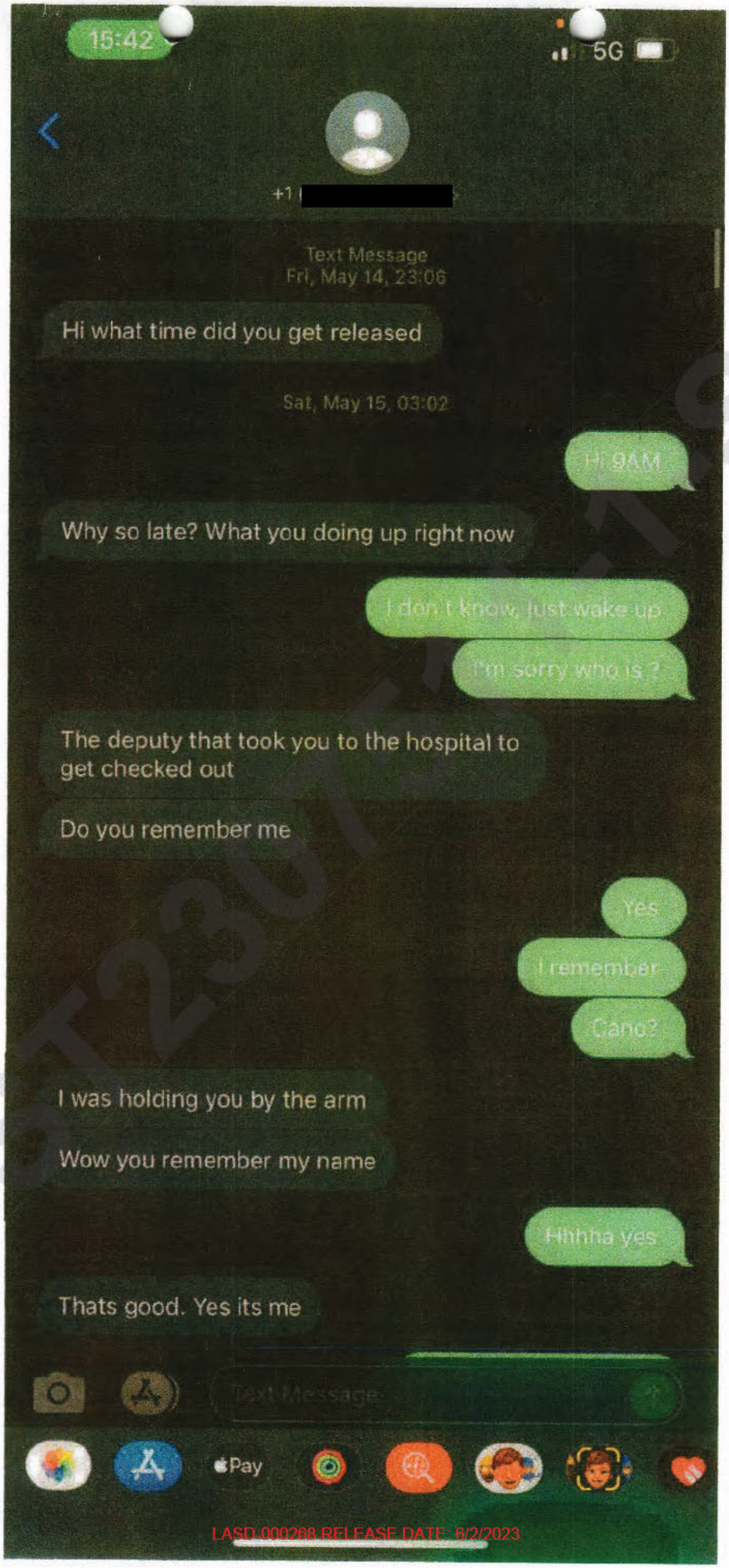
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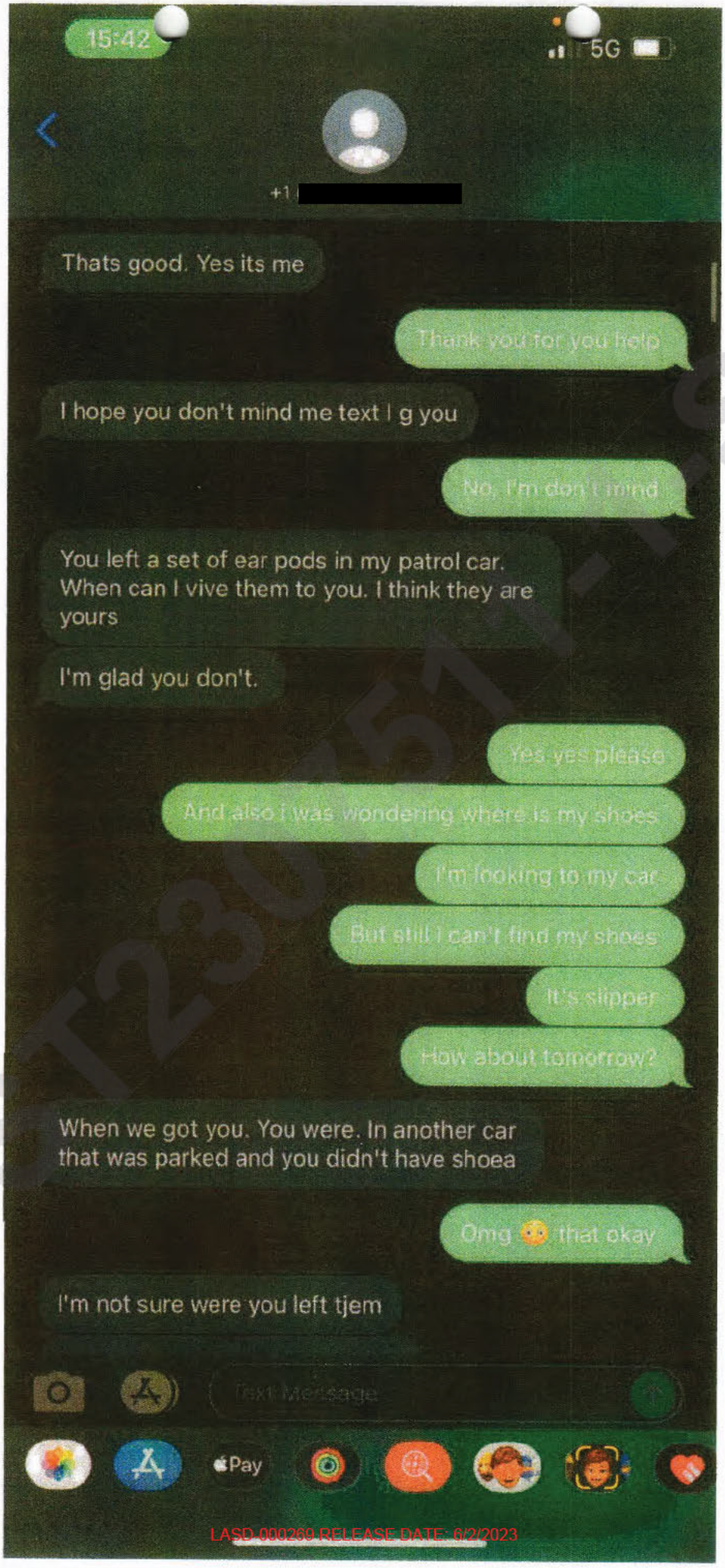
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9/27/22

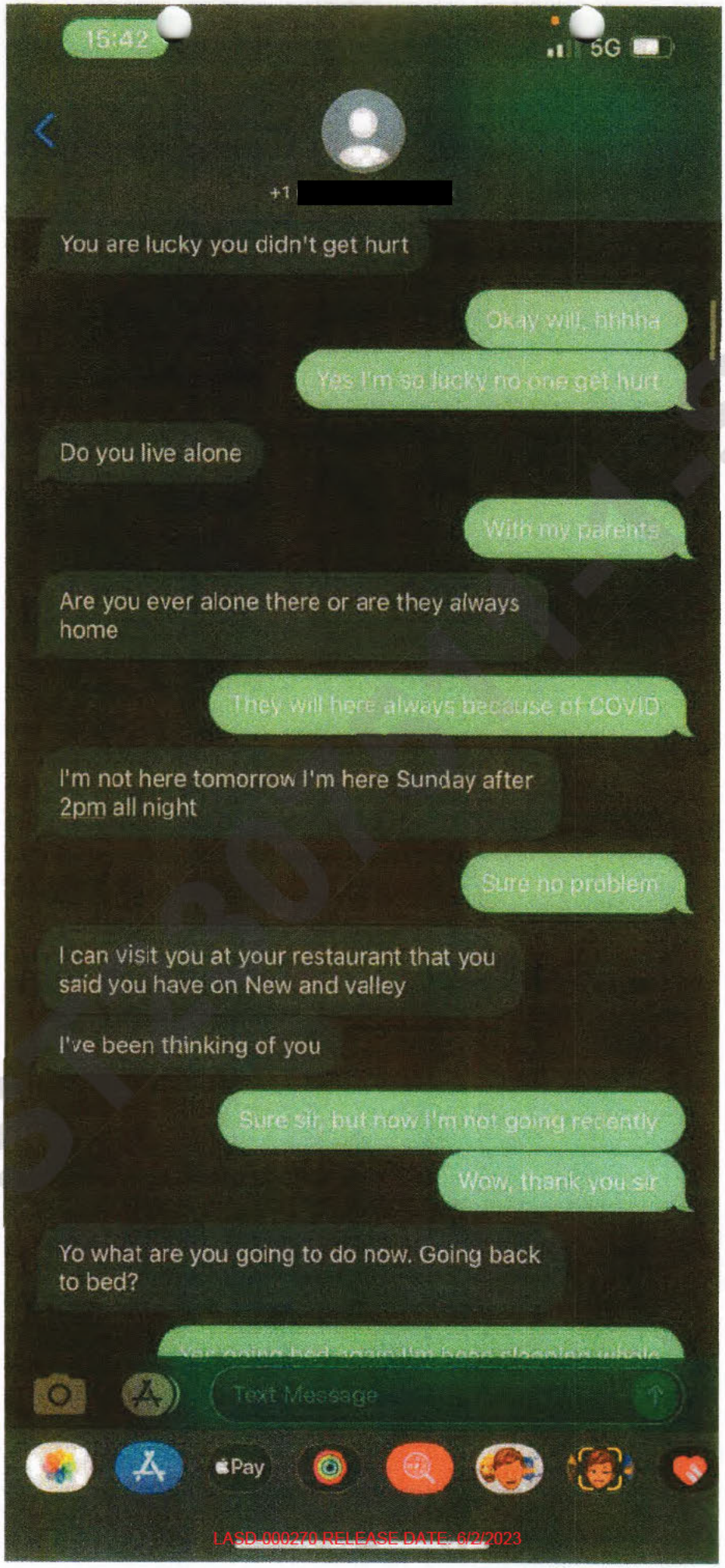
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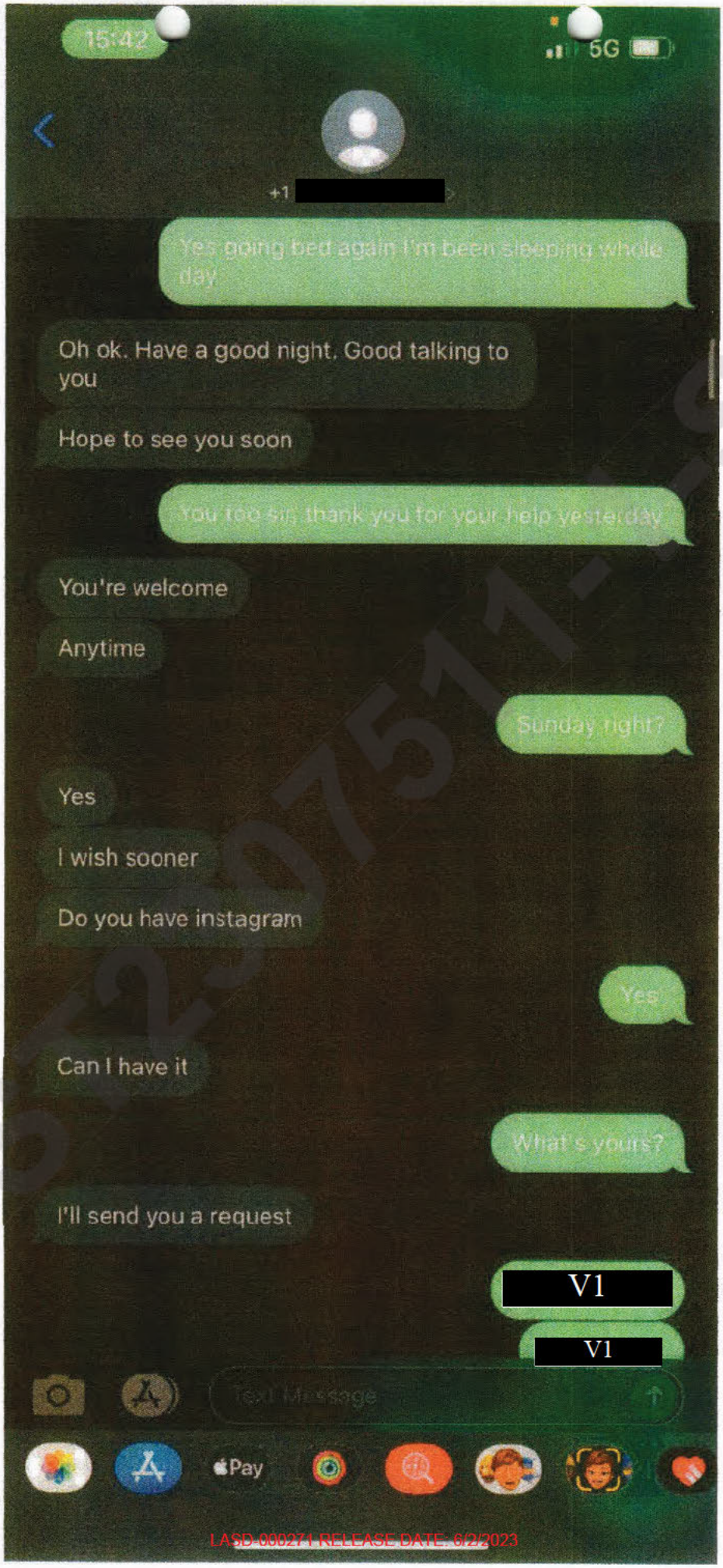
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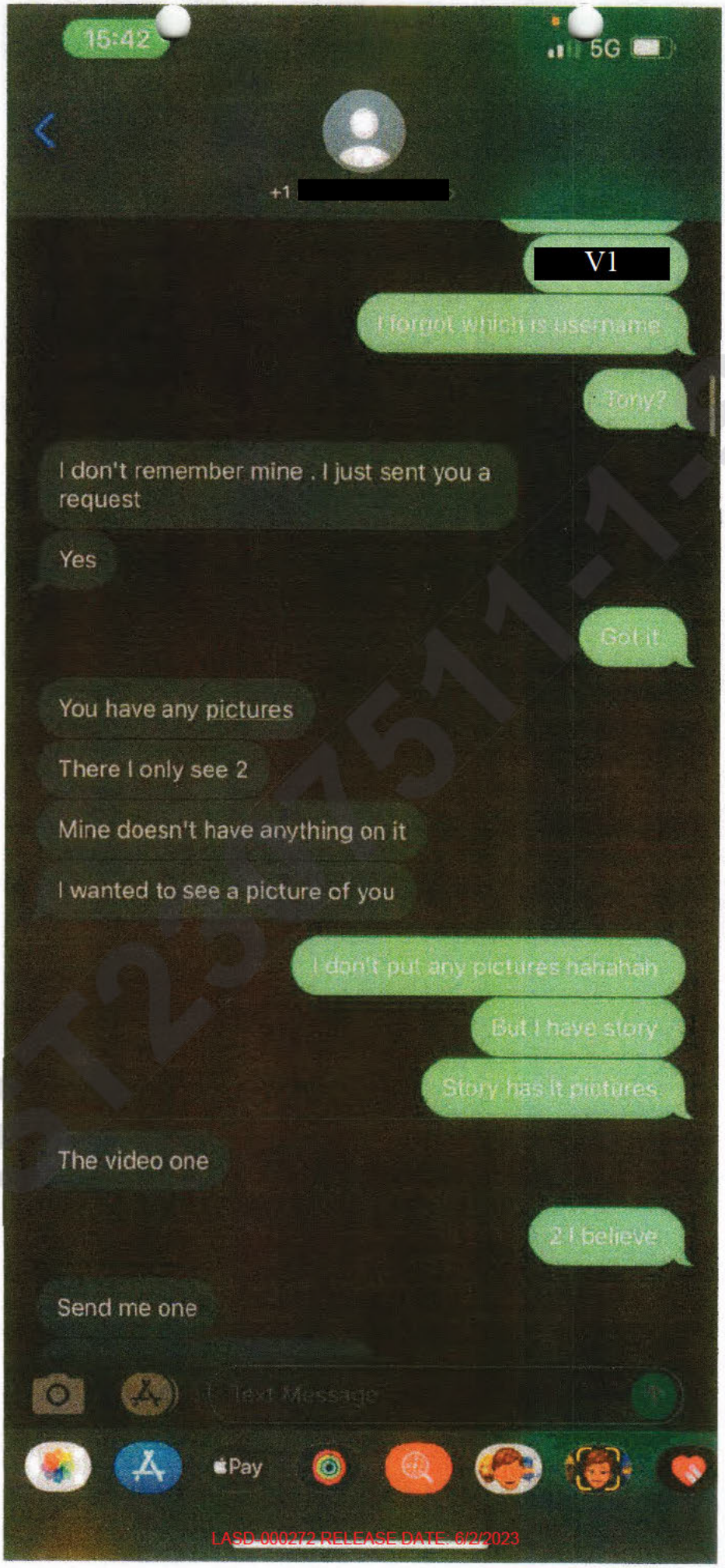
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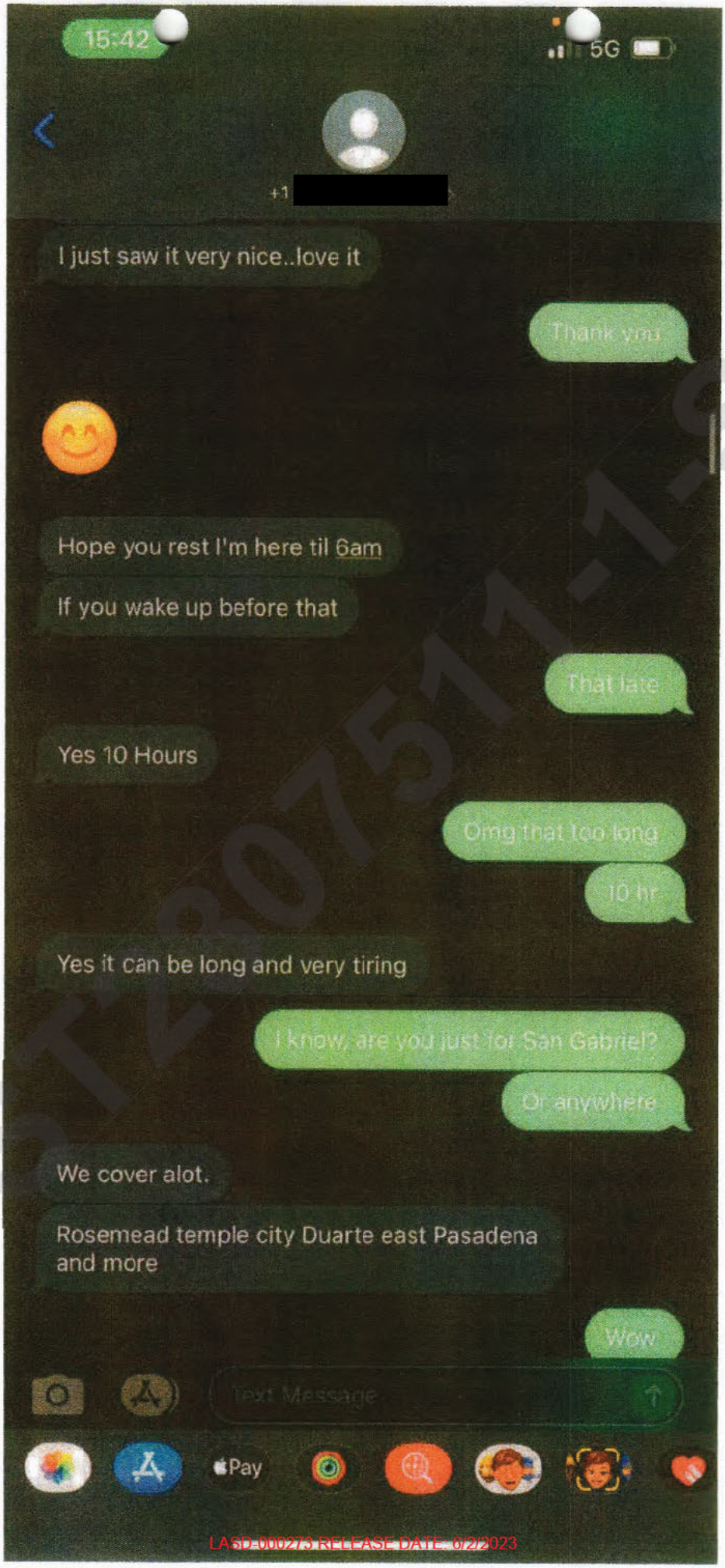
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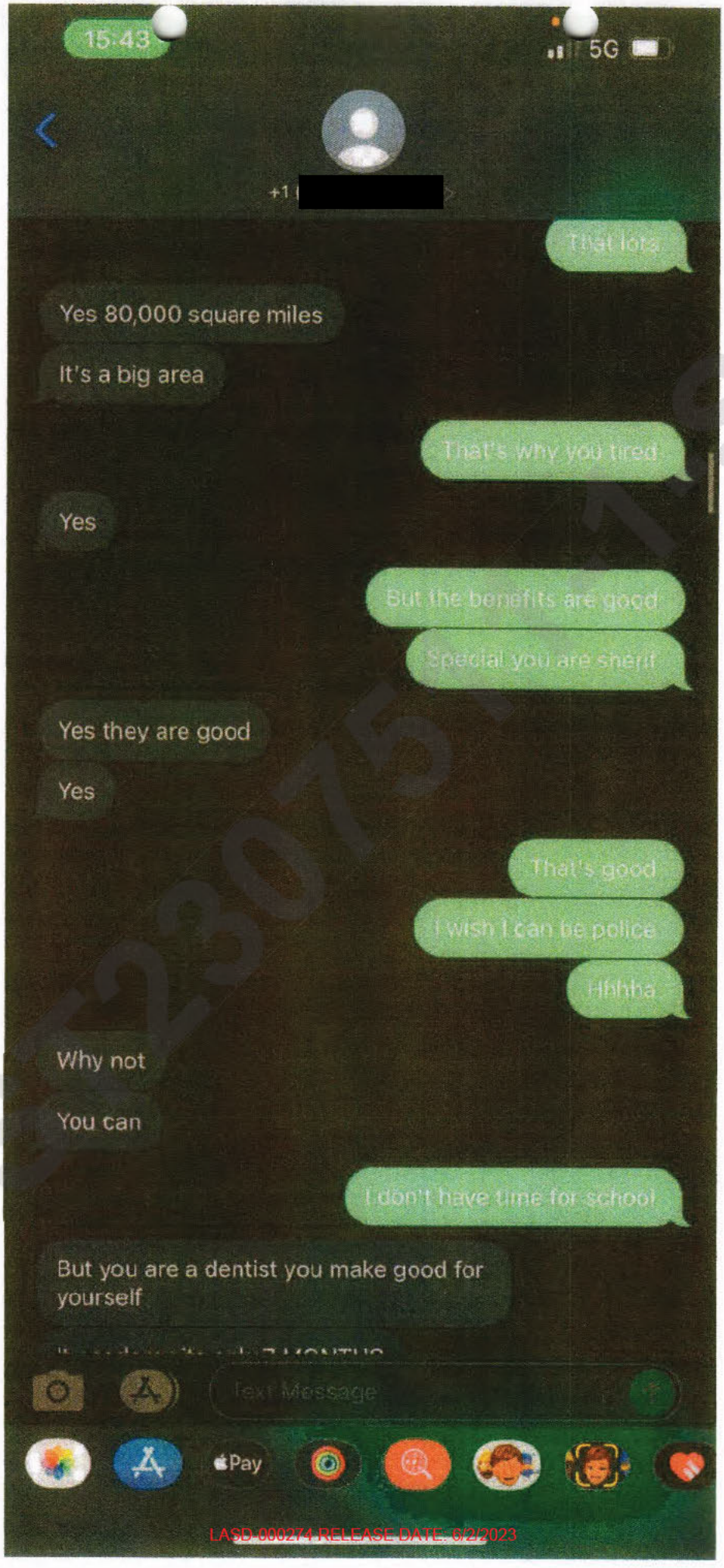
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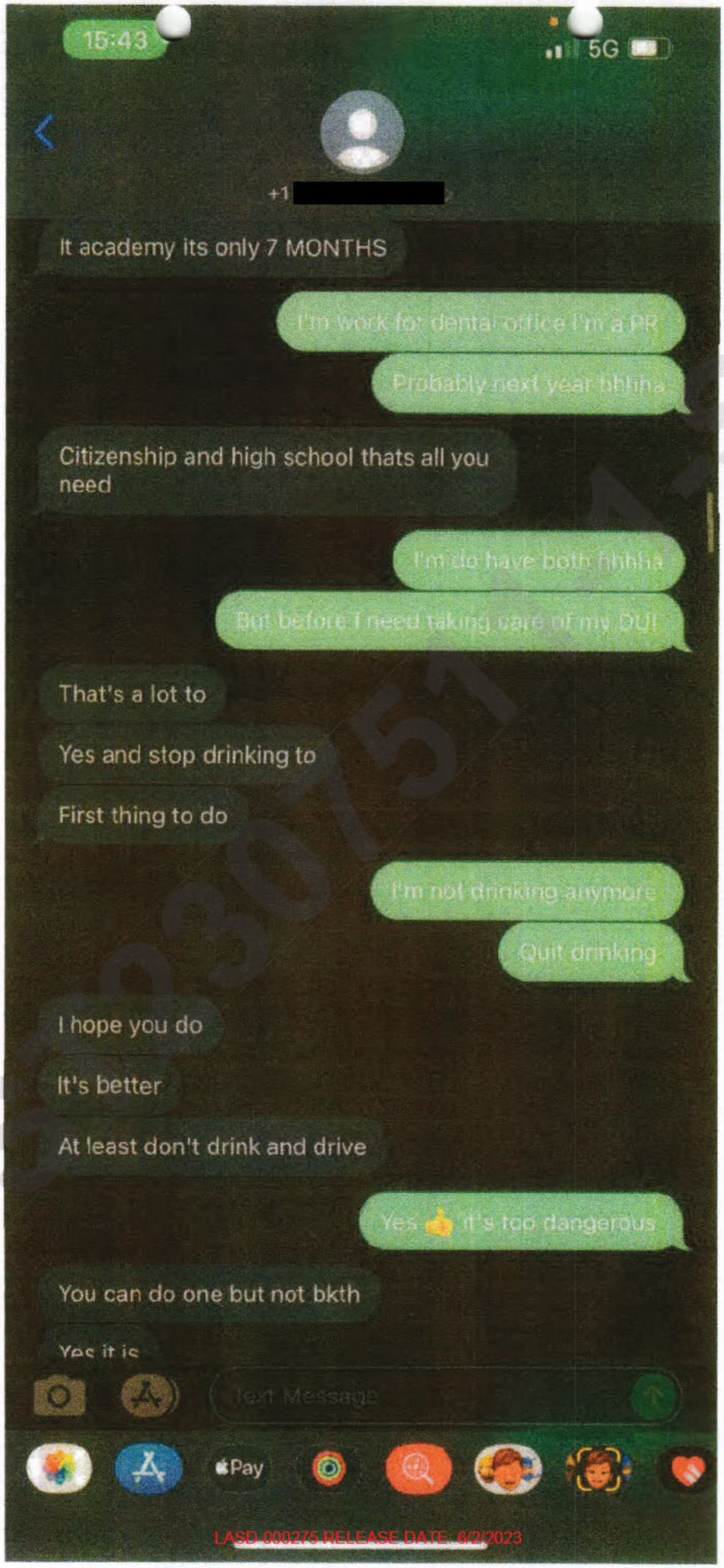
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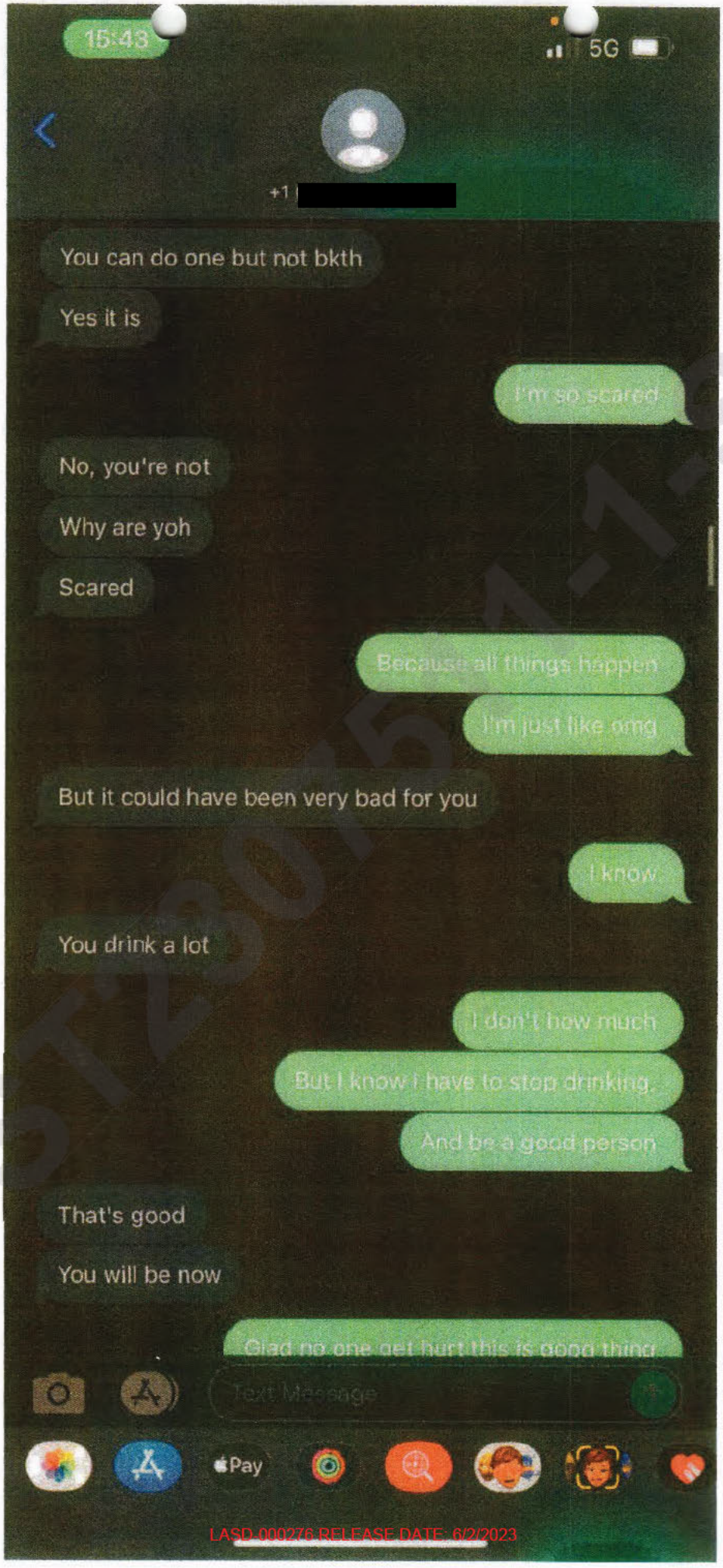
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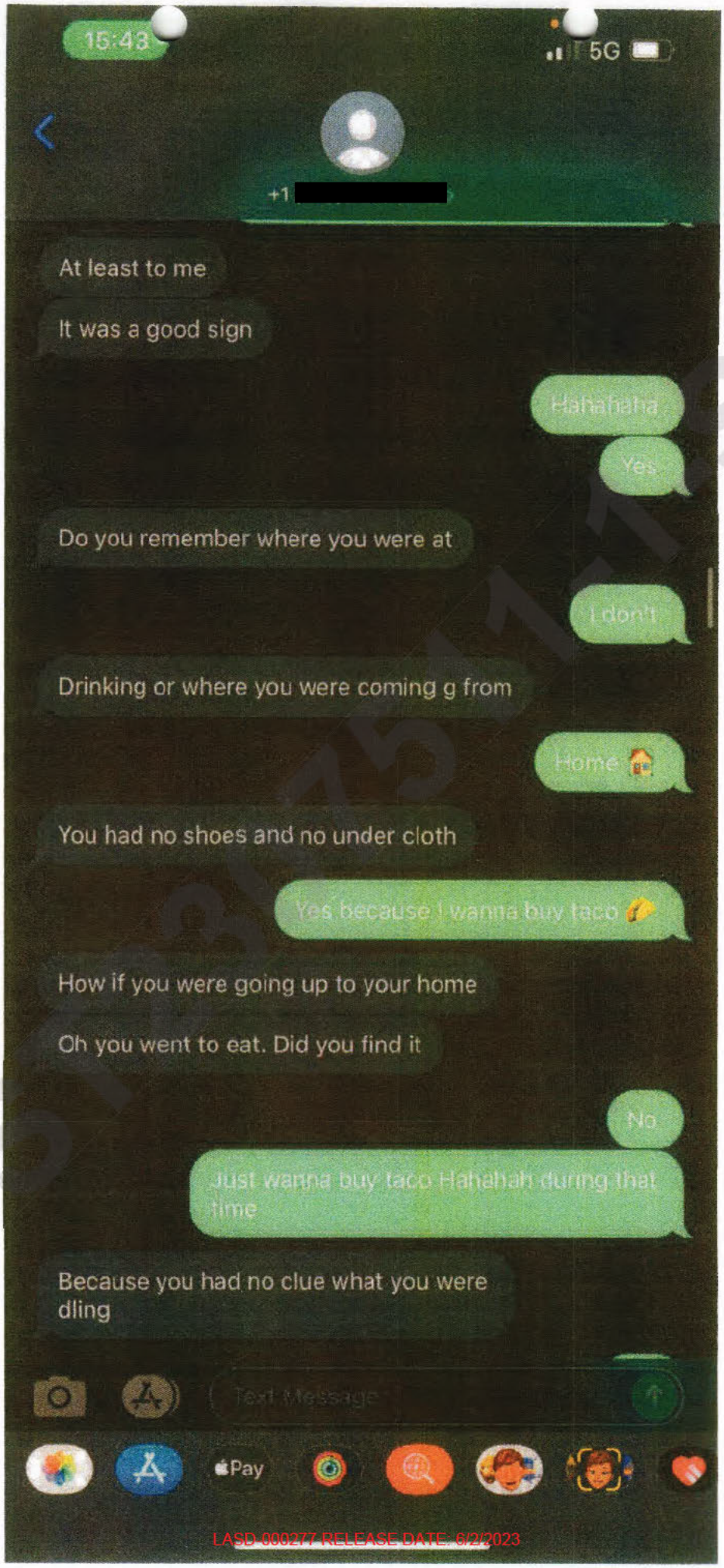
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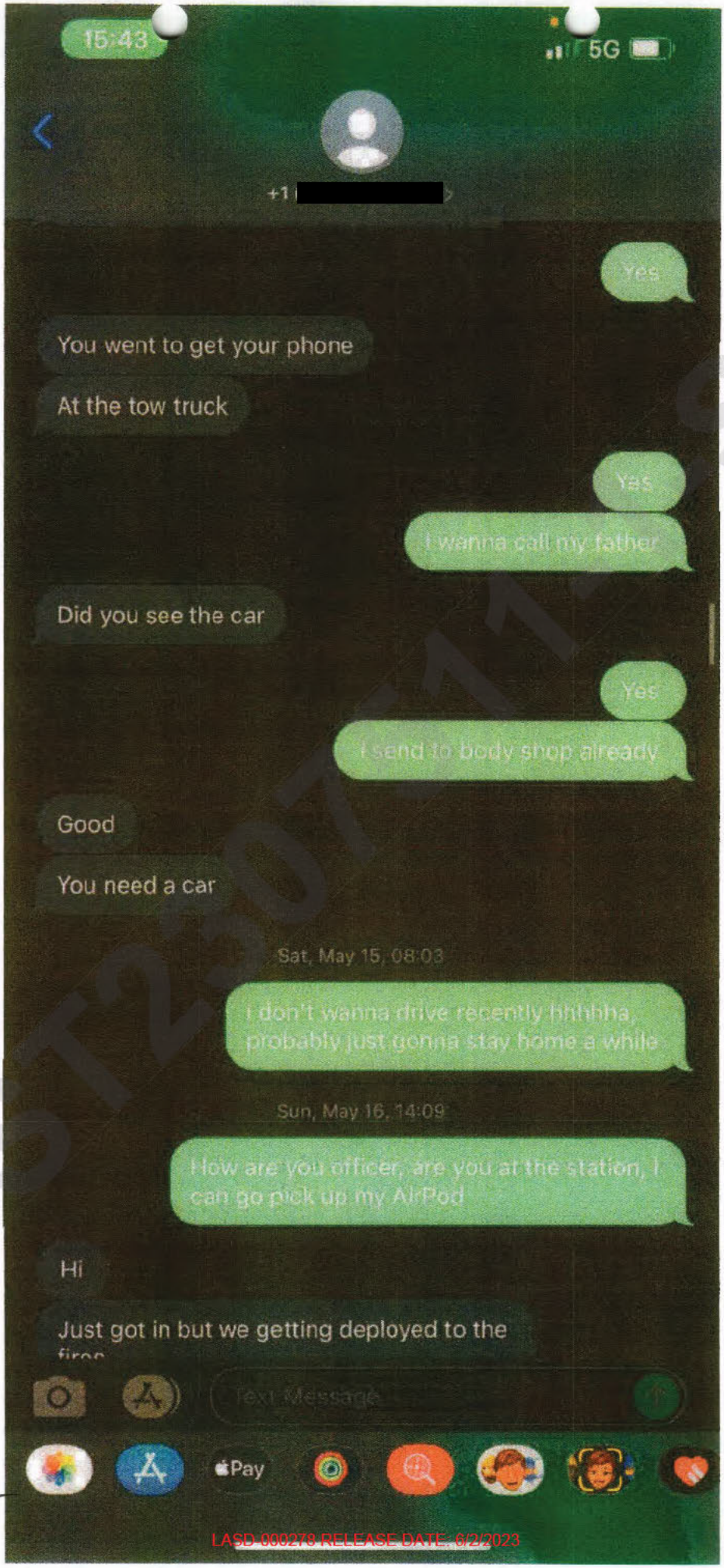
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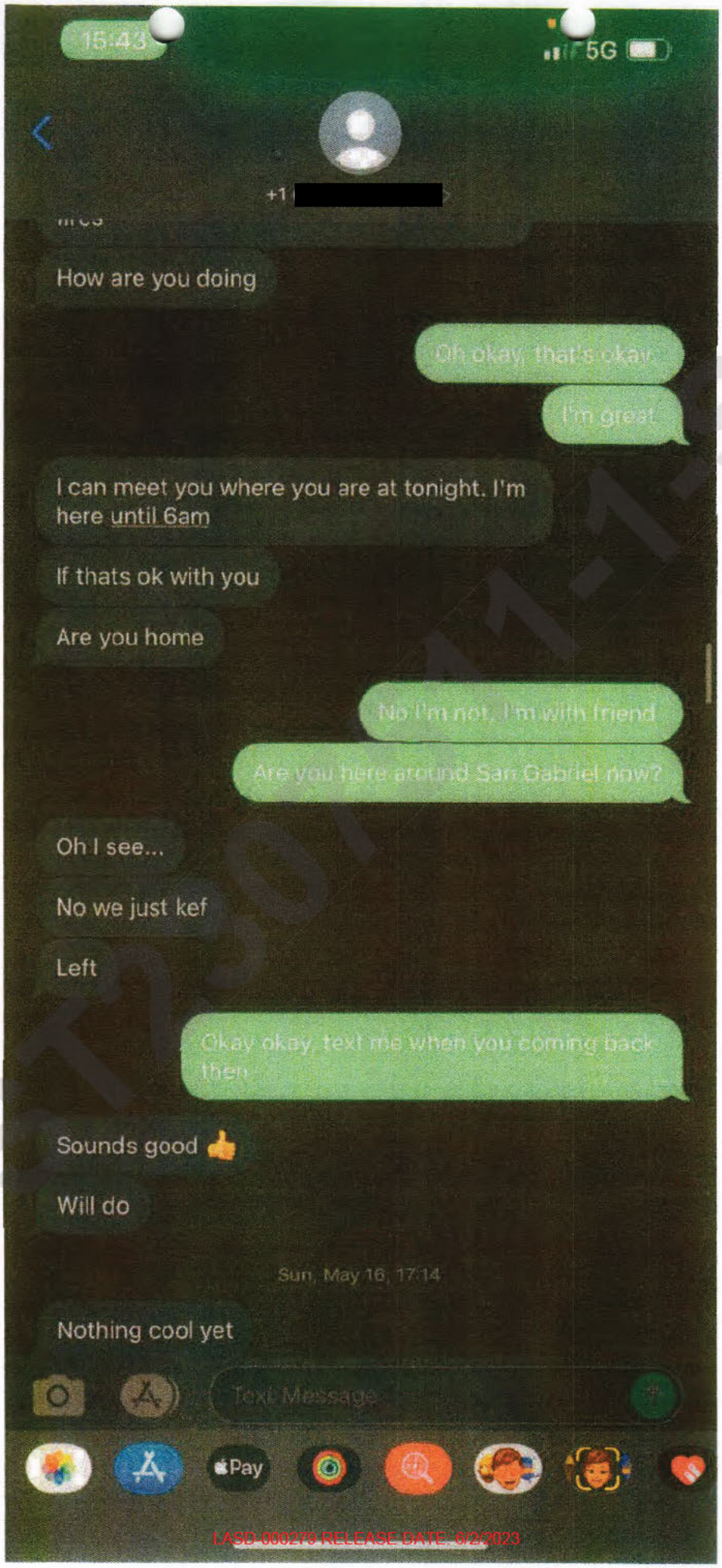


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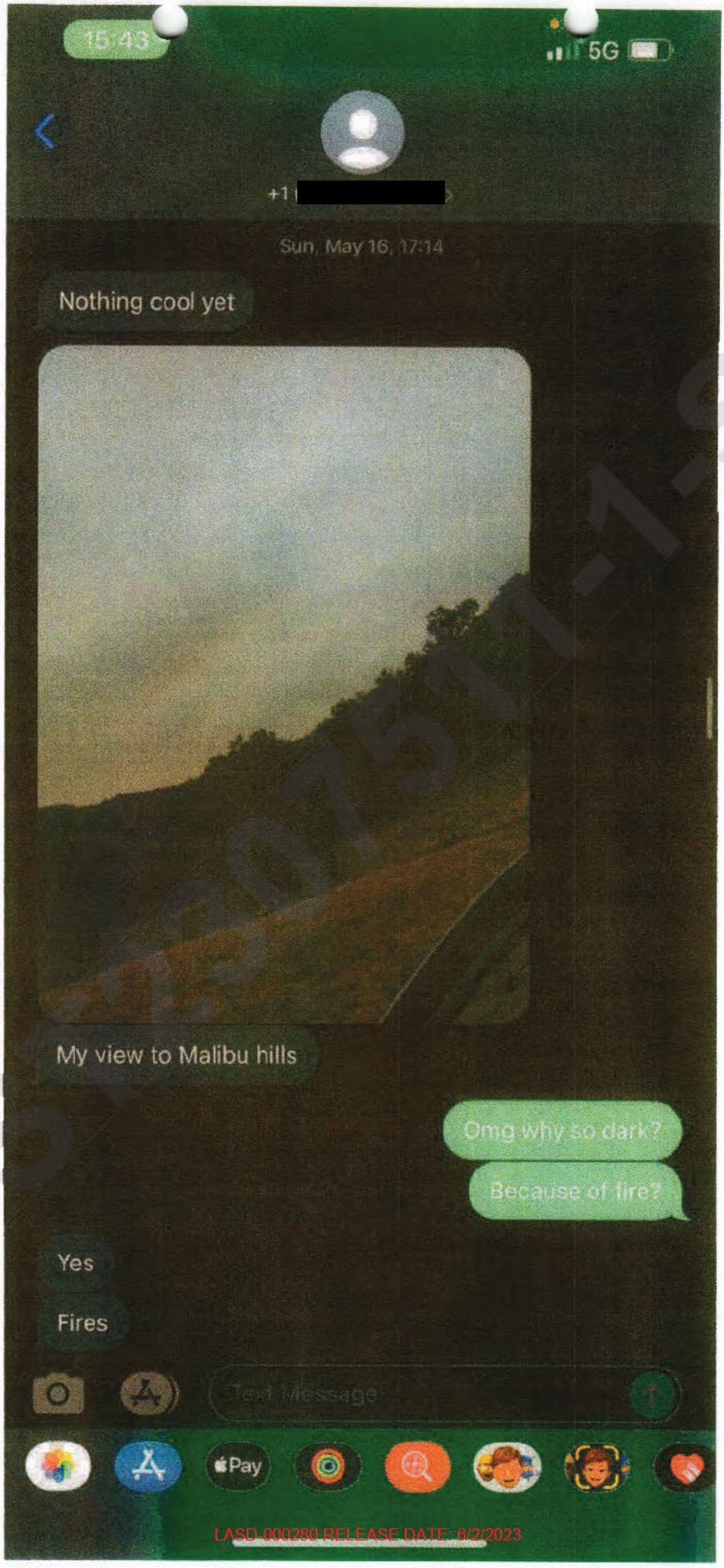
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POST SUIT 11-1-SB2

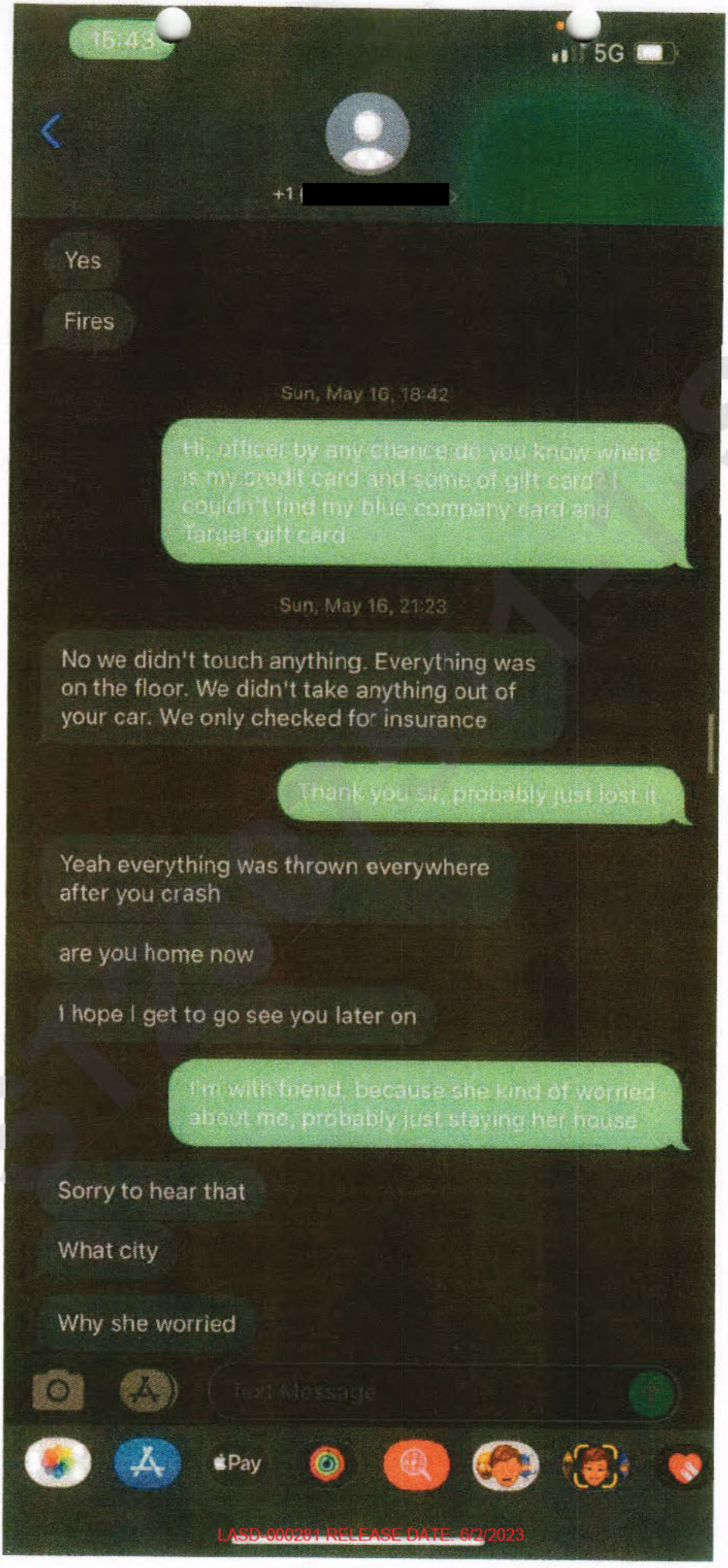
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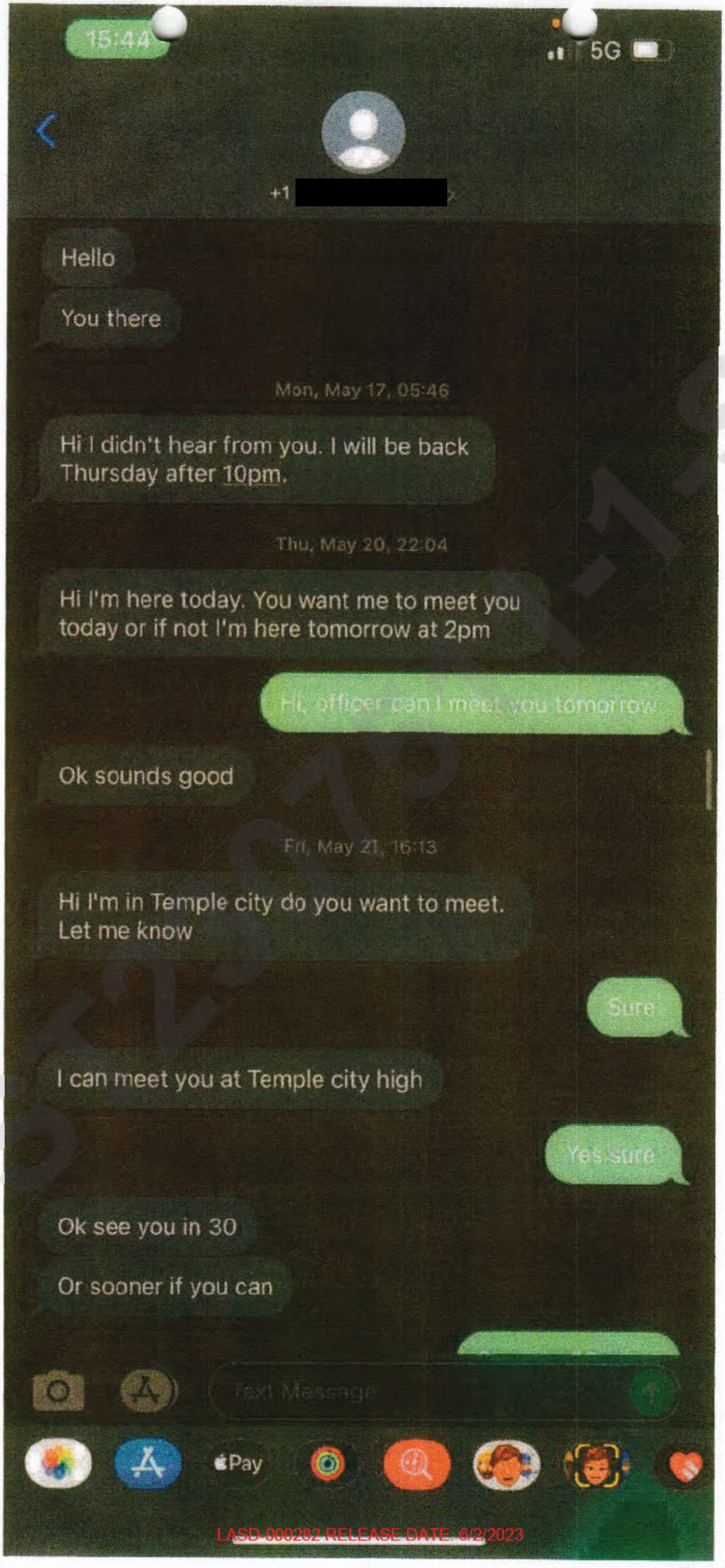
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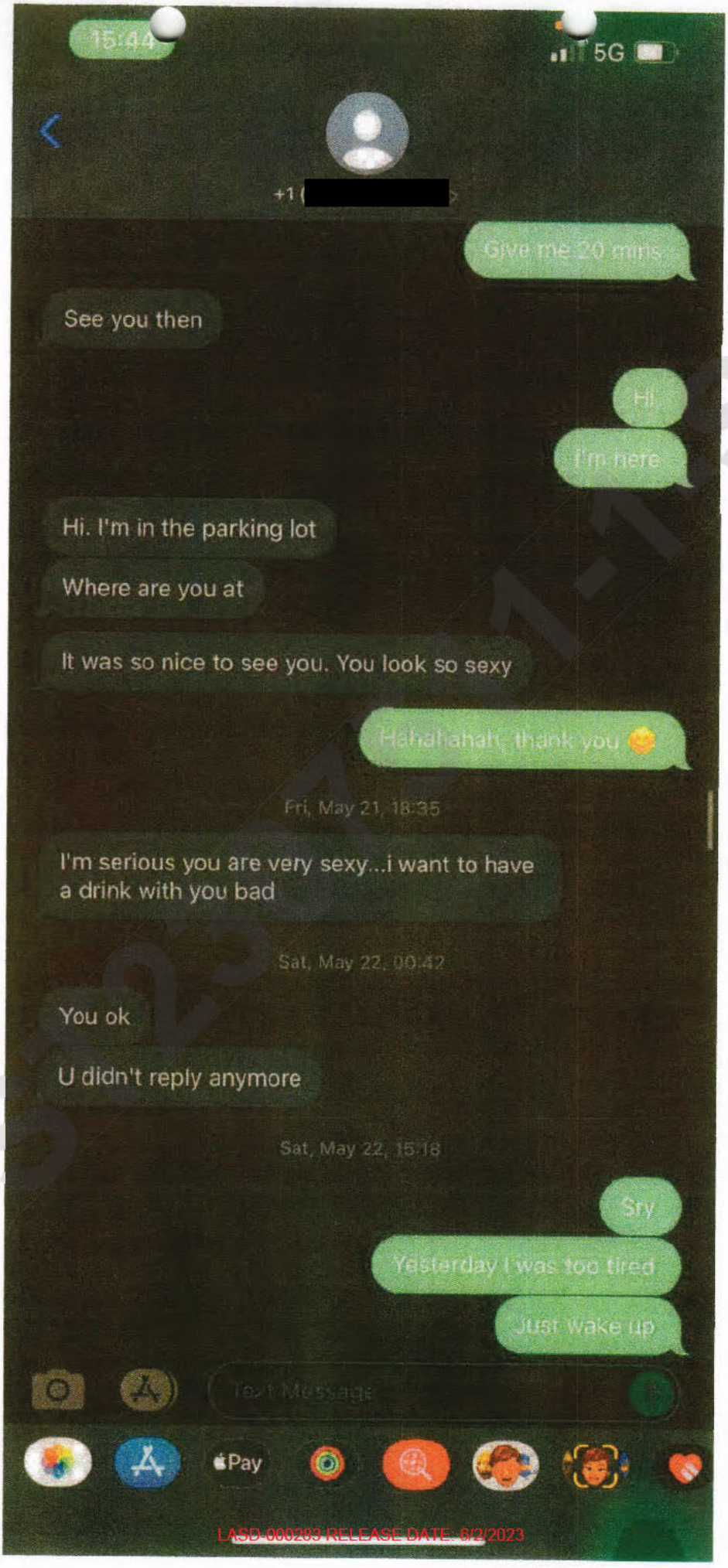
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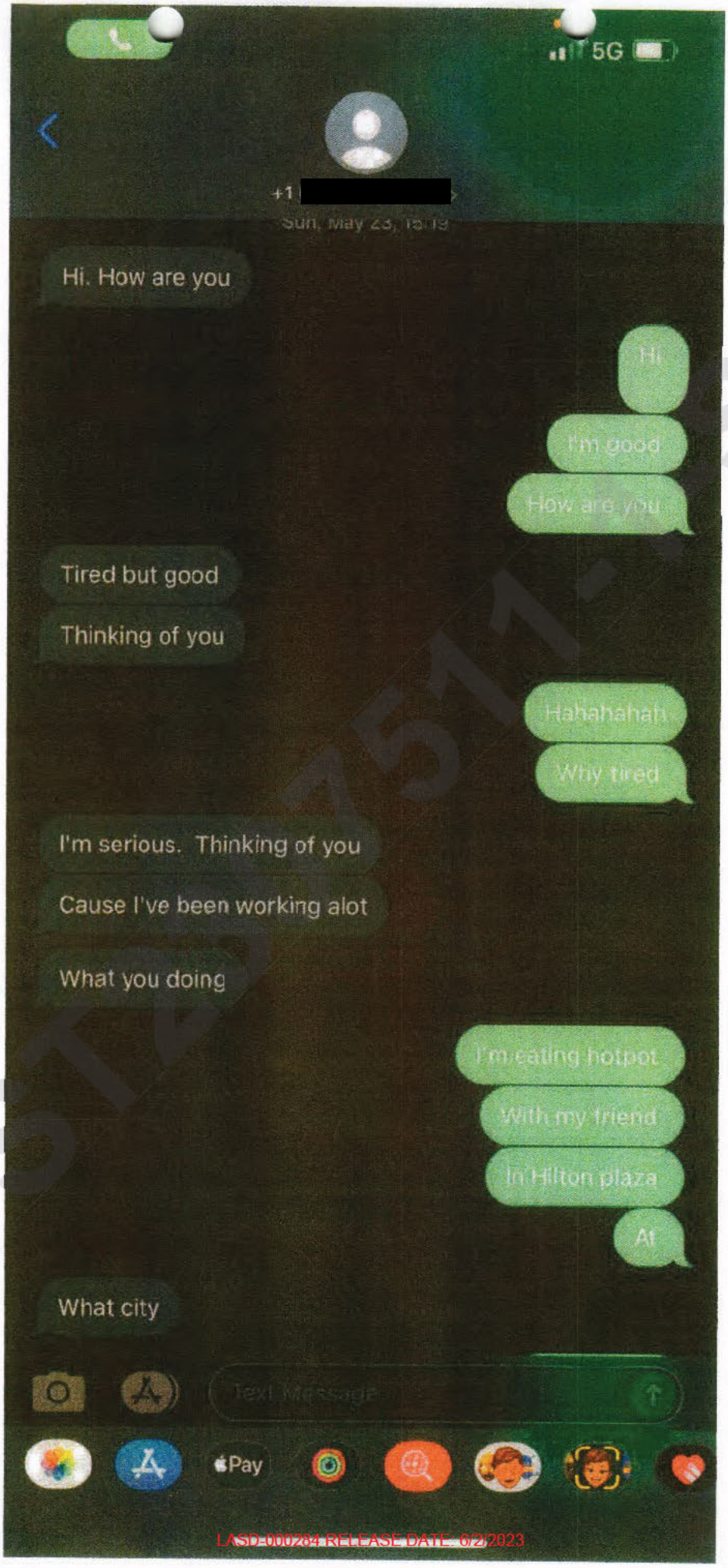
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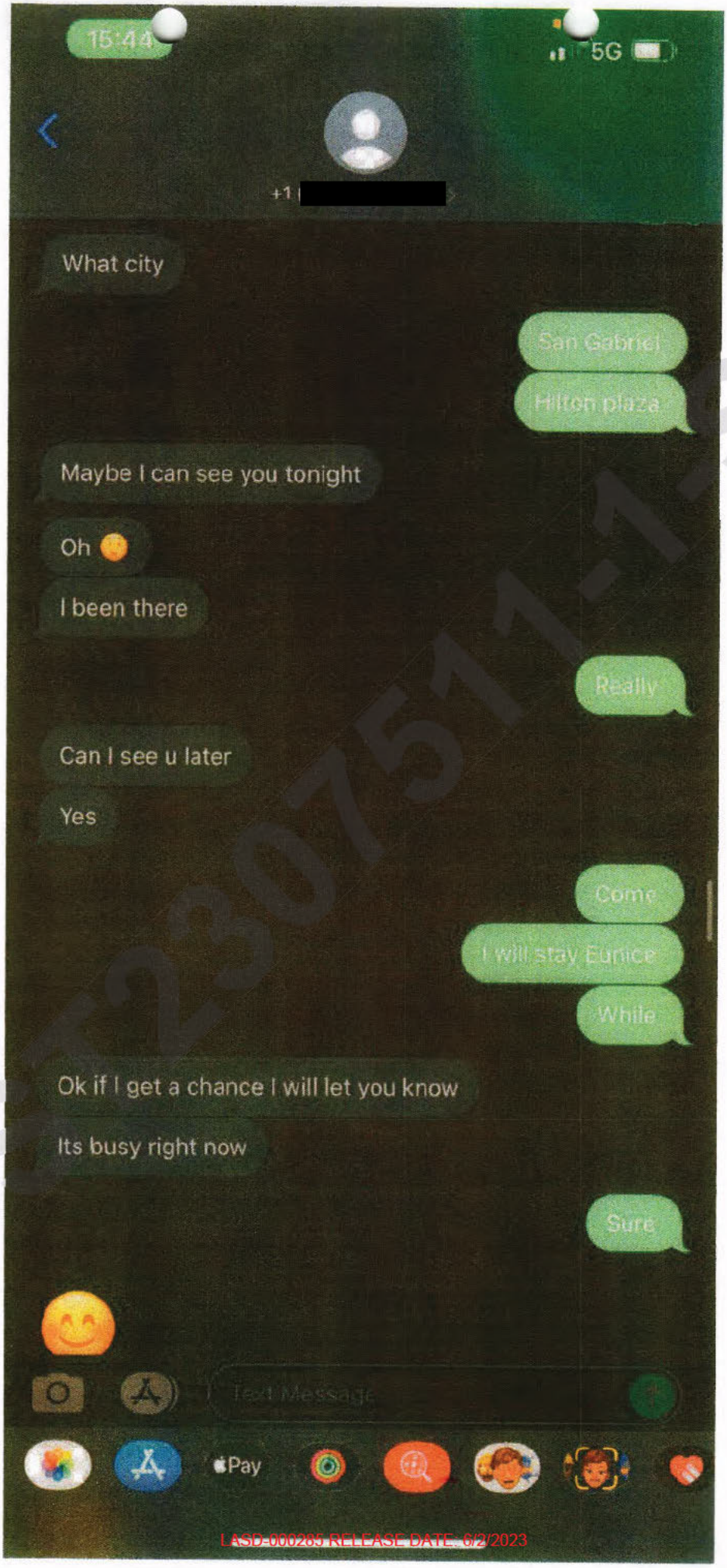
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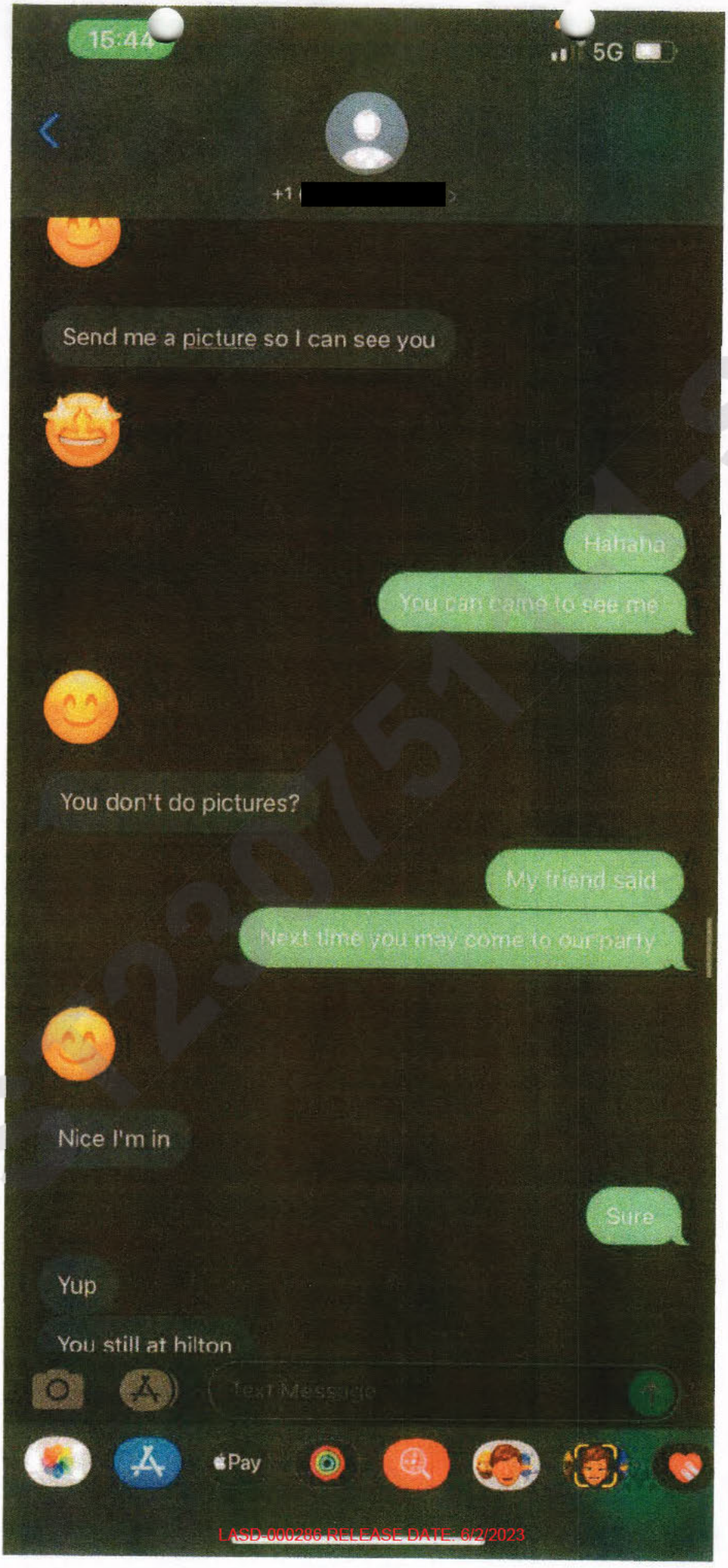
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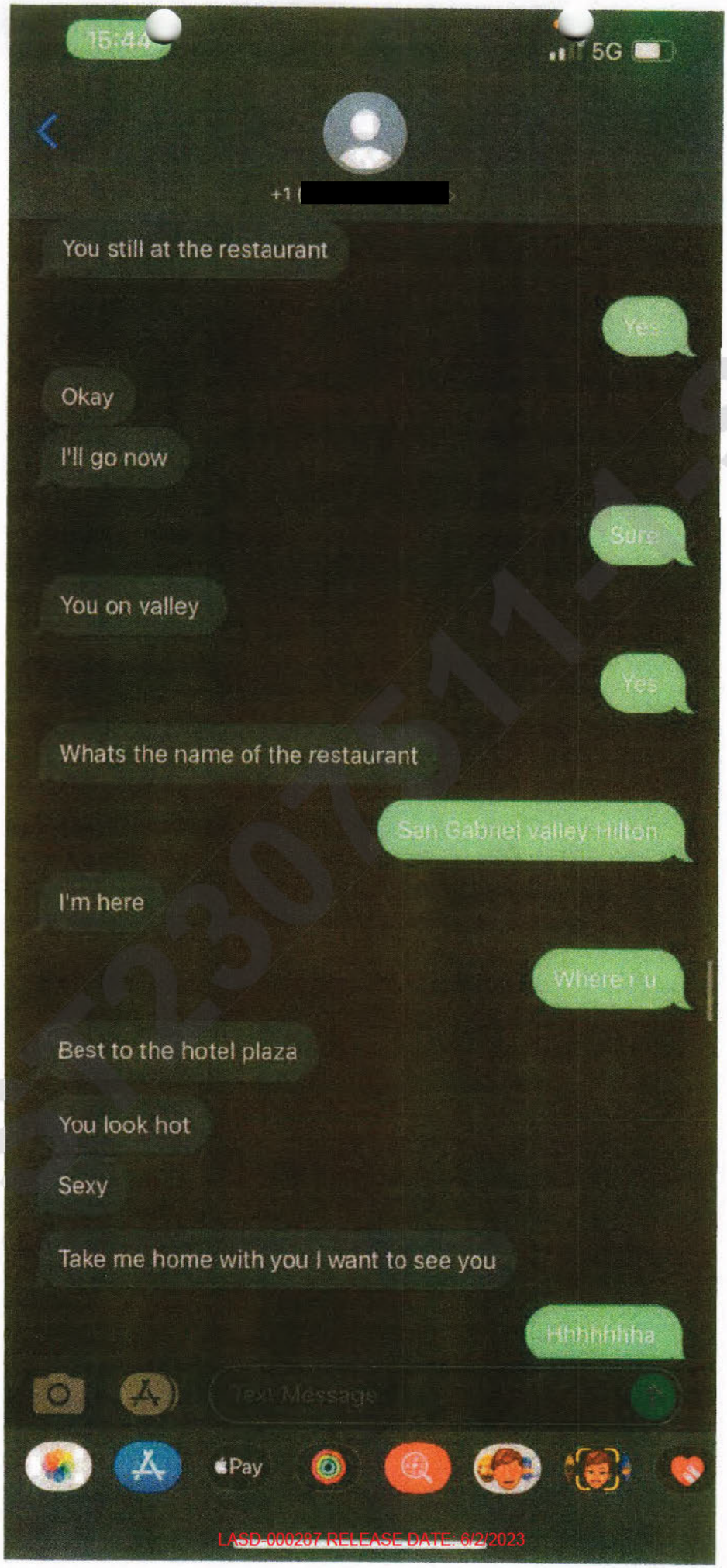
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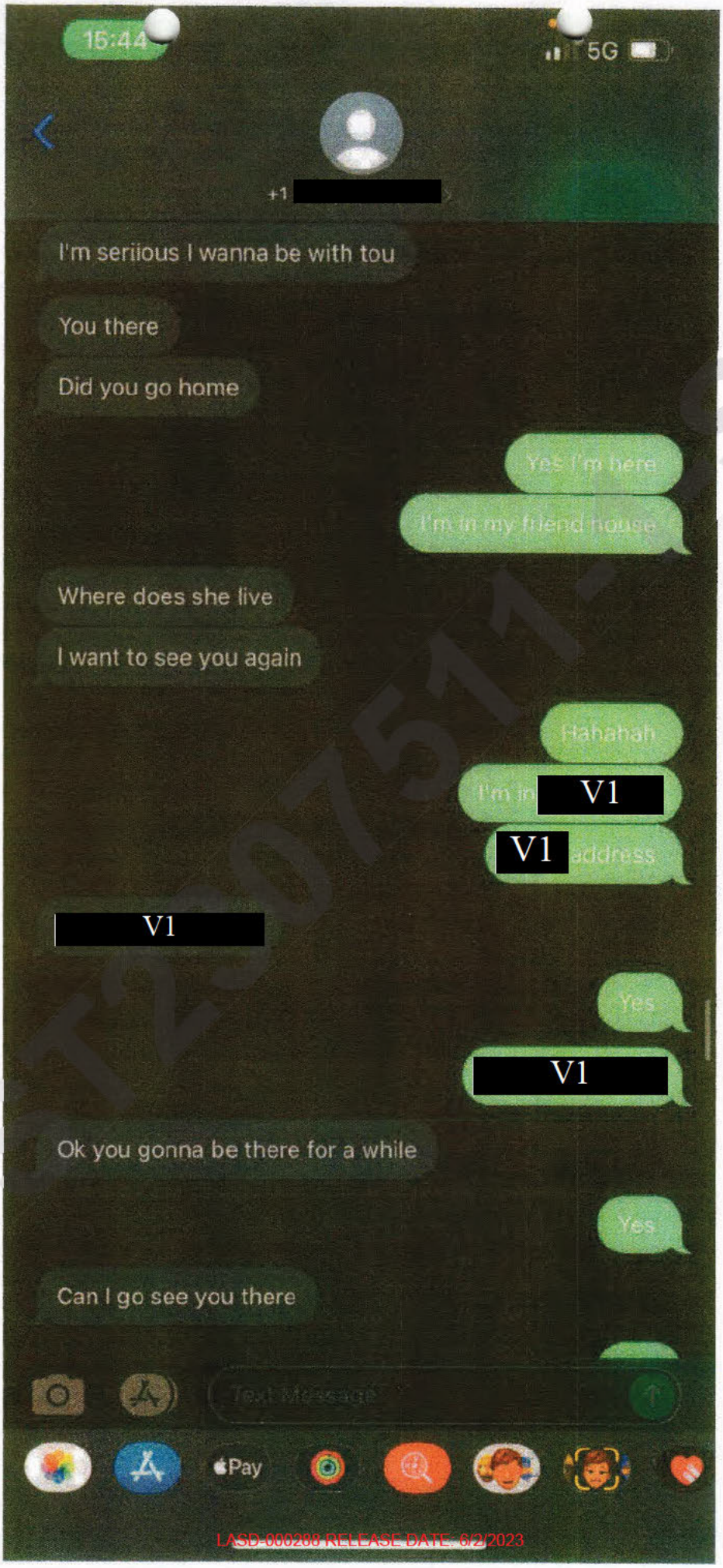
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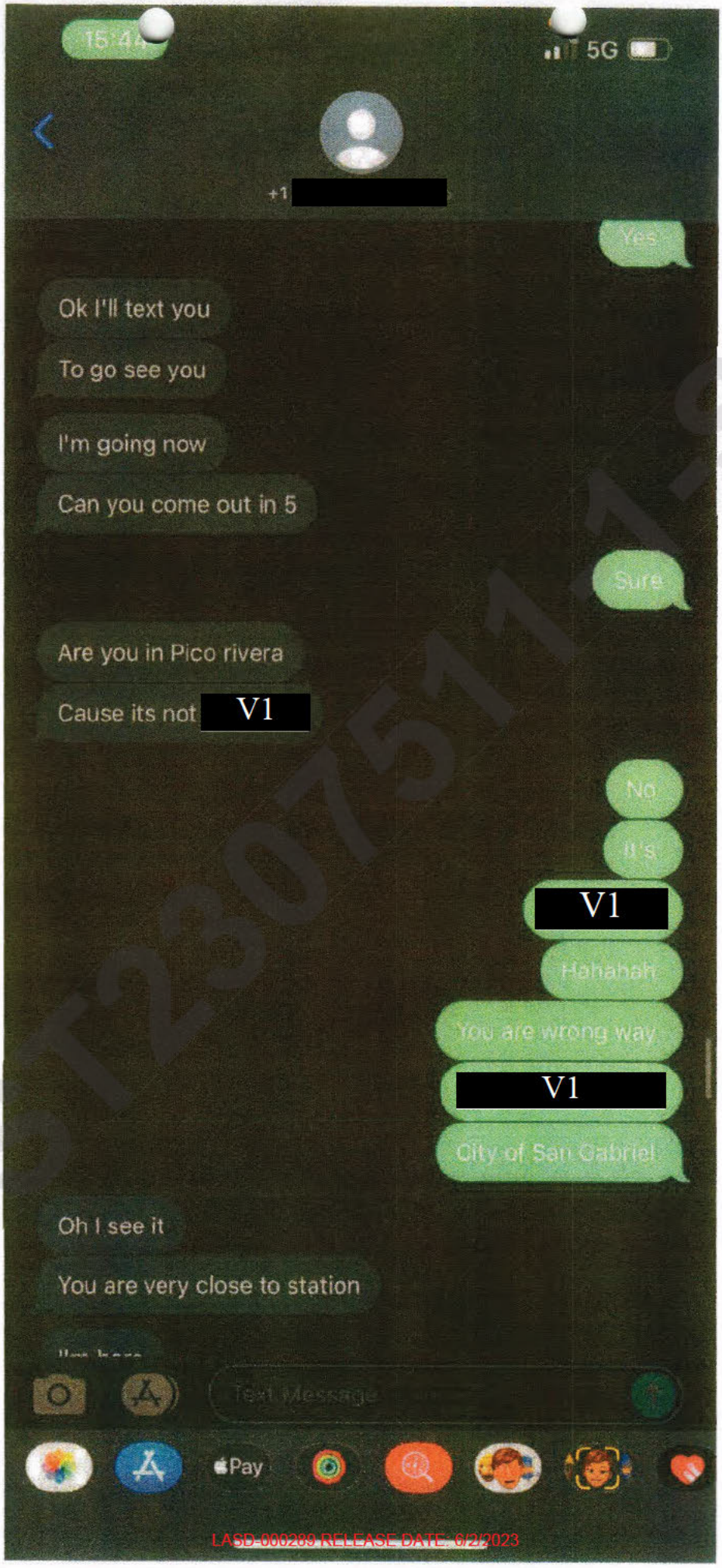
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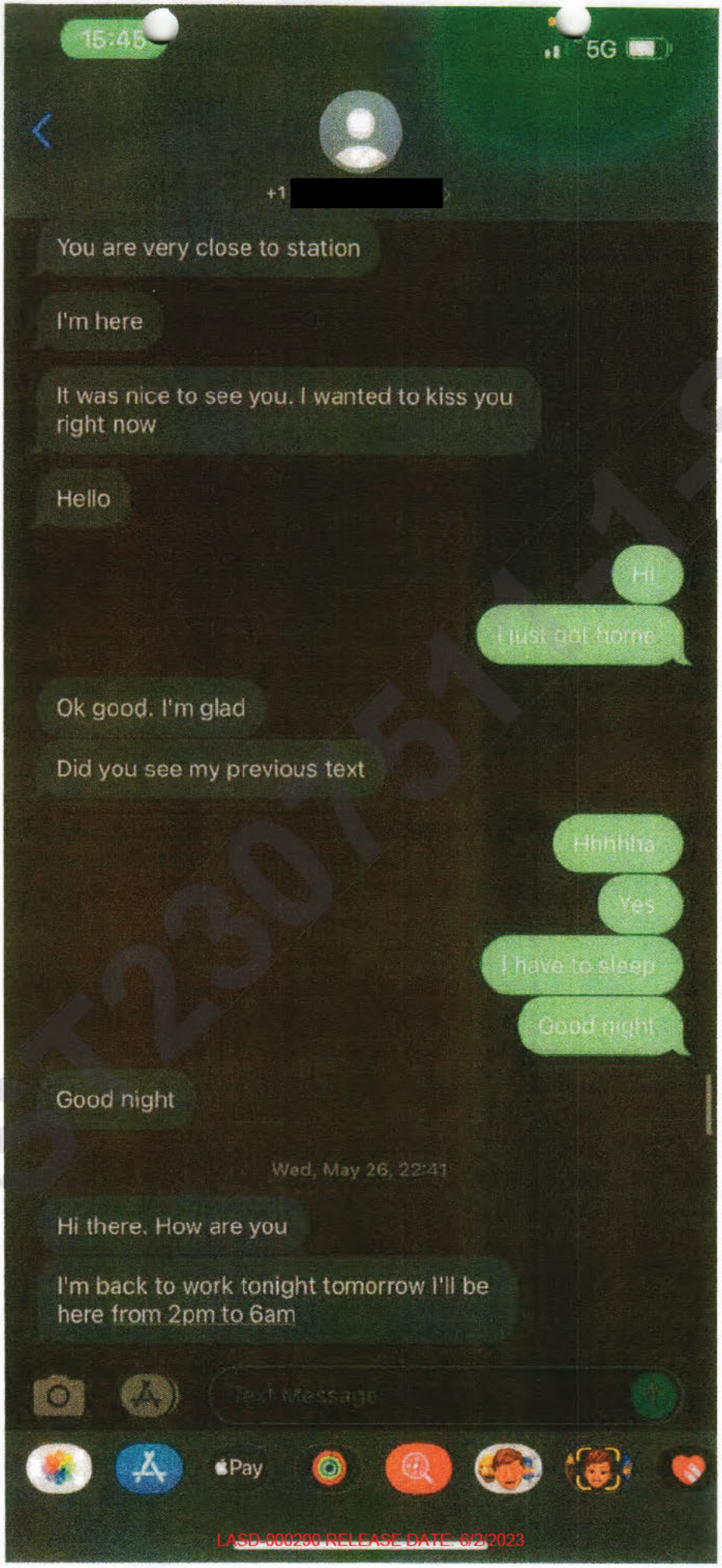
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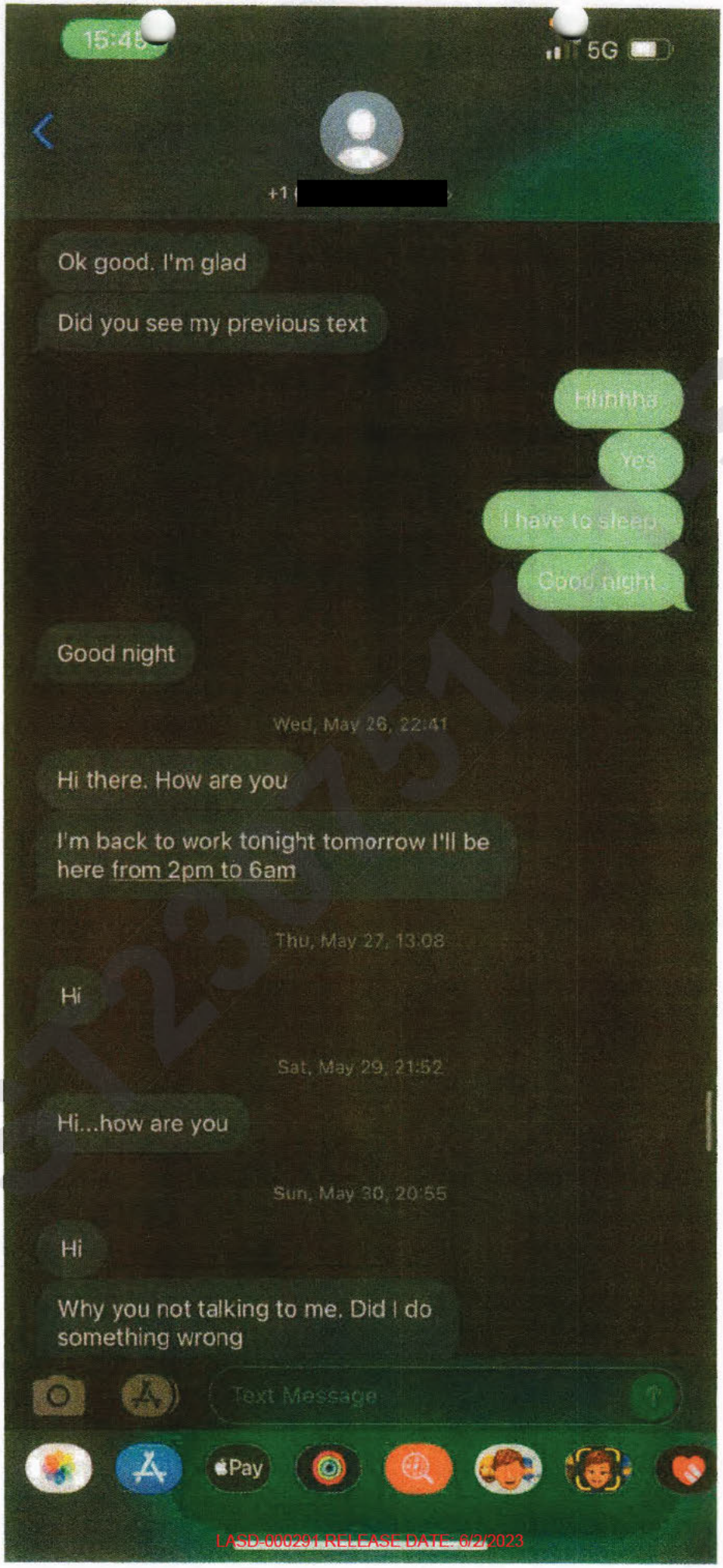


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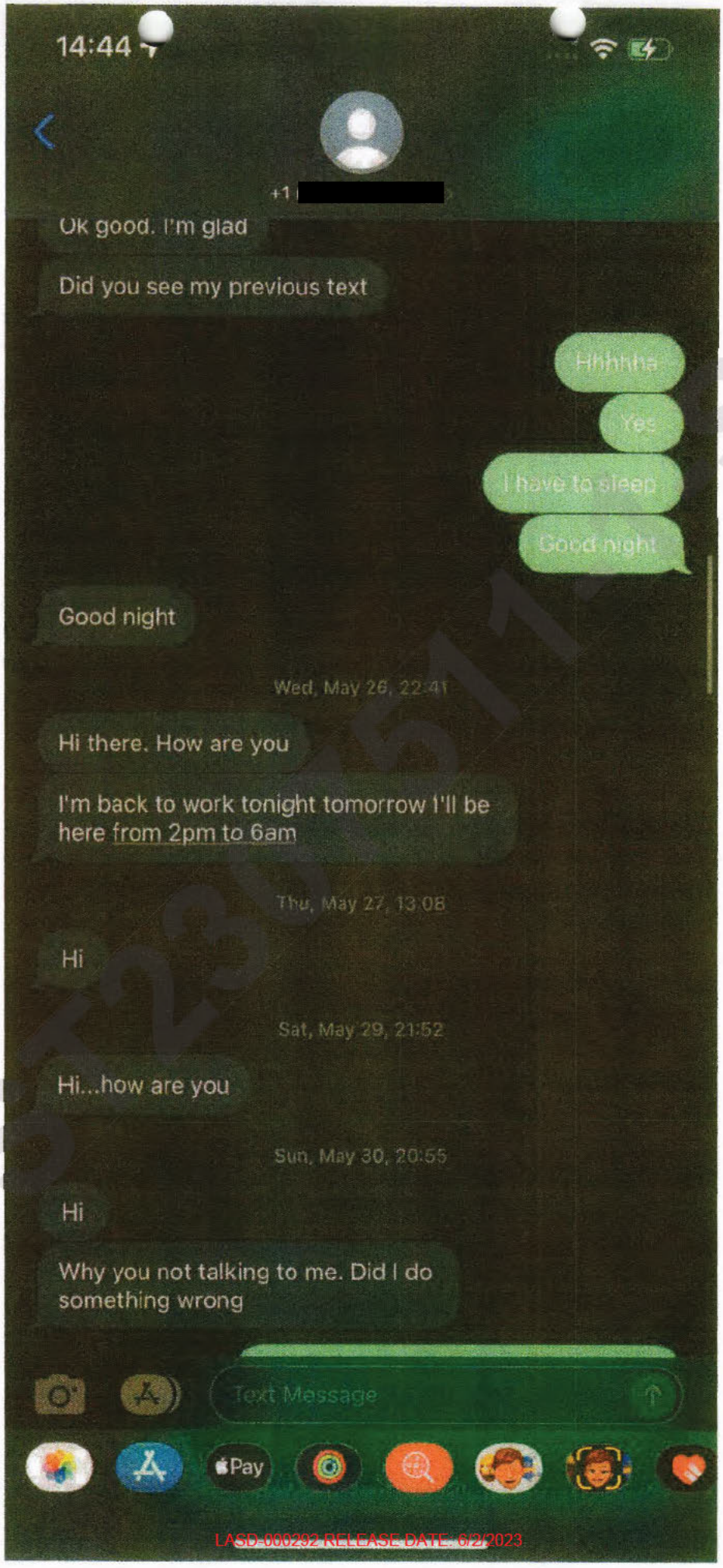
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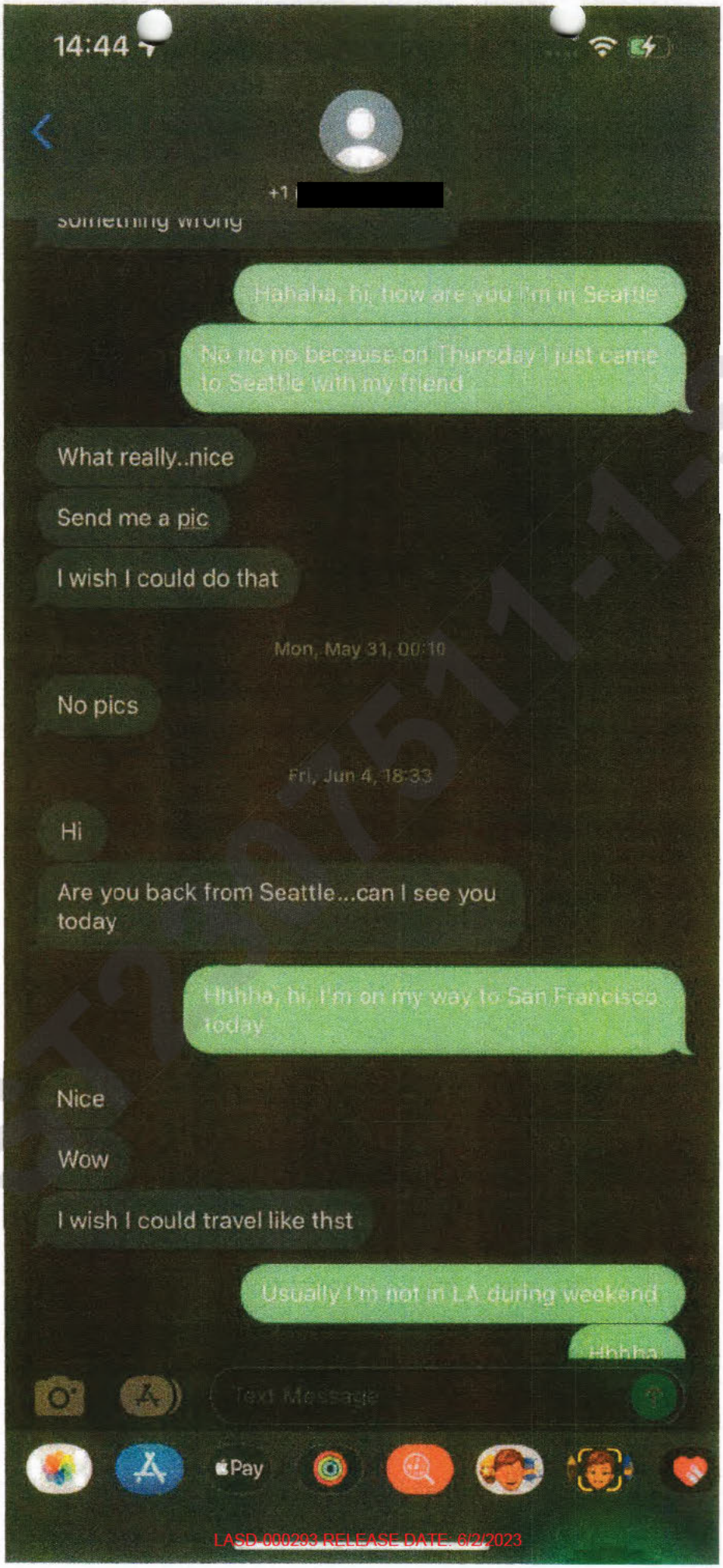
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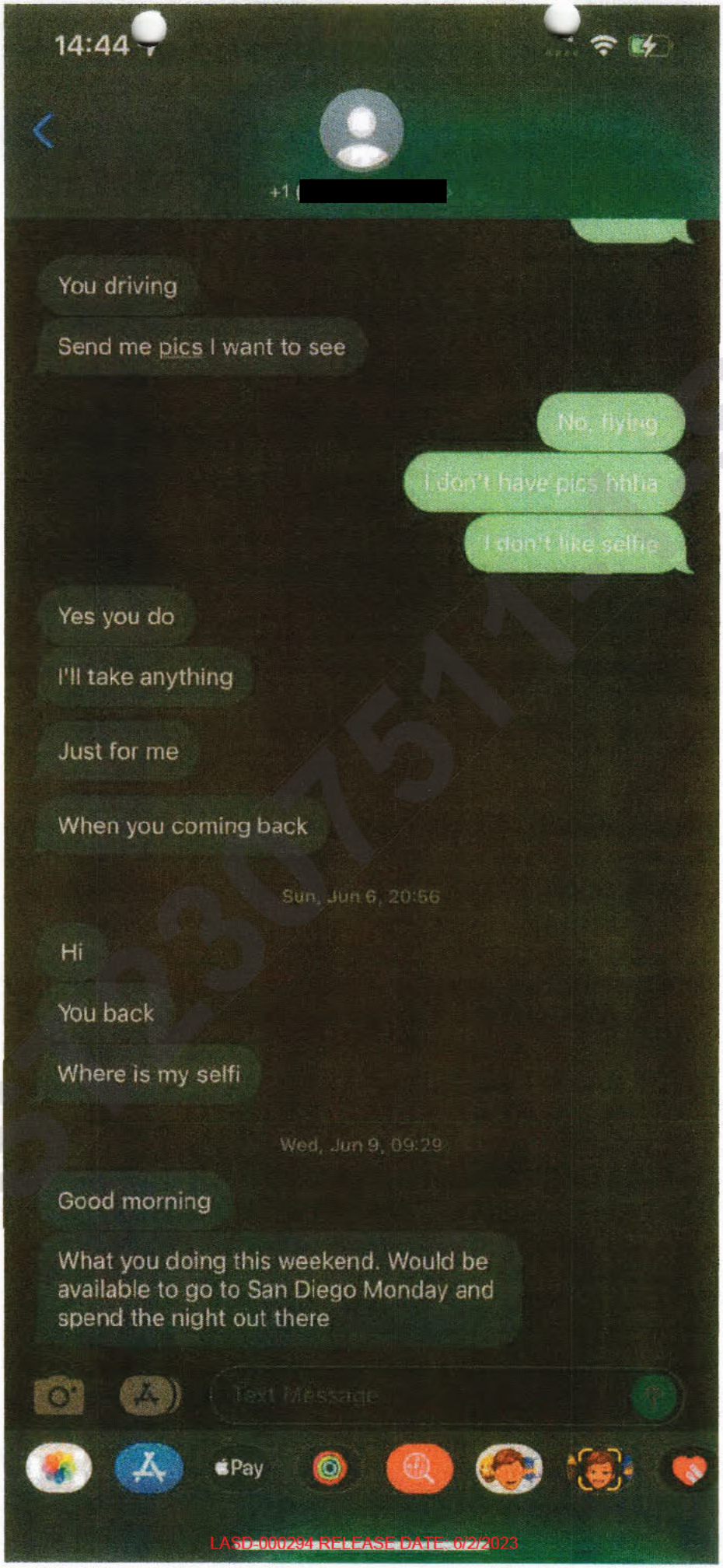
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LASD-000293 RELEASE DATE: 6/2/2023



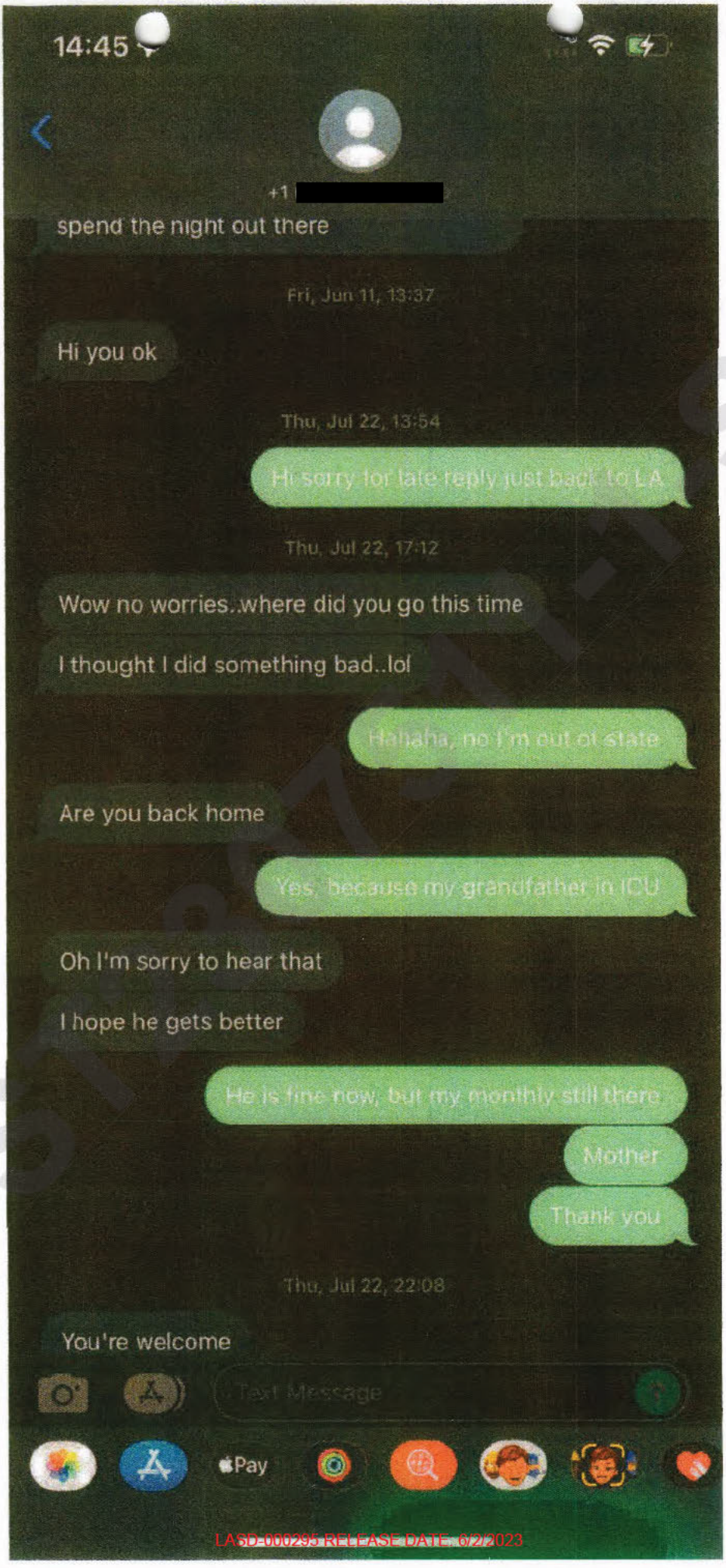
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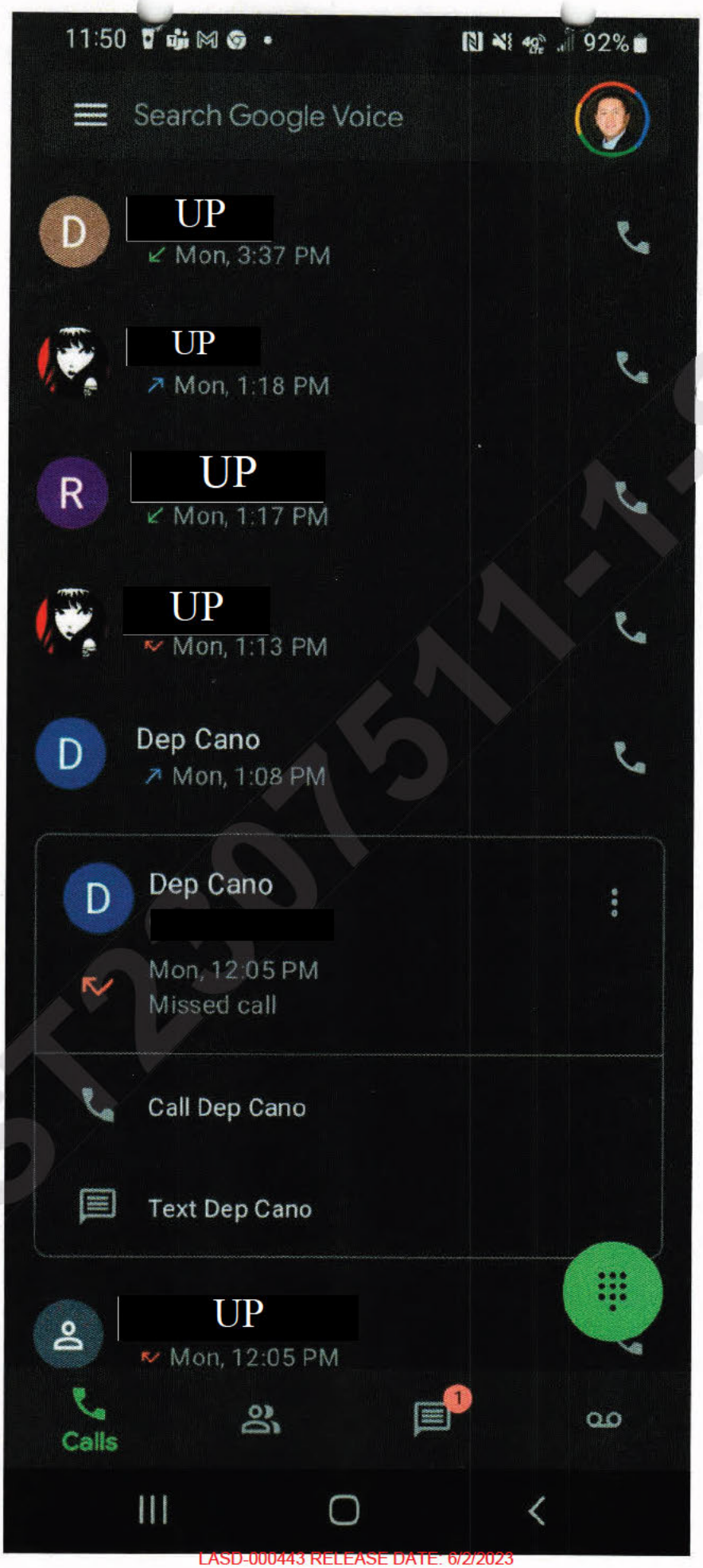
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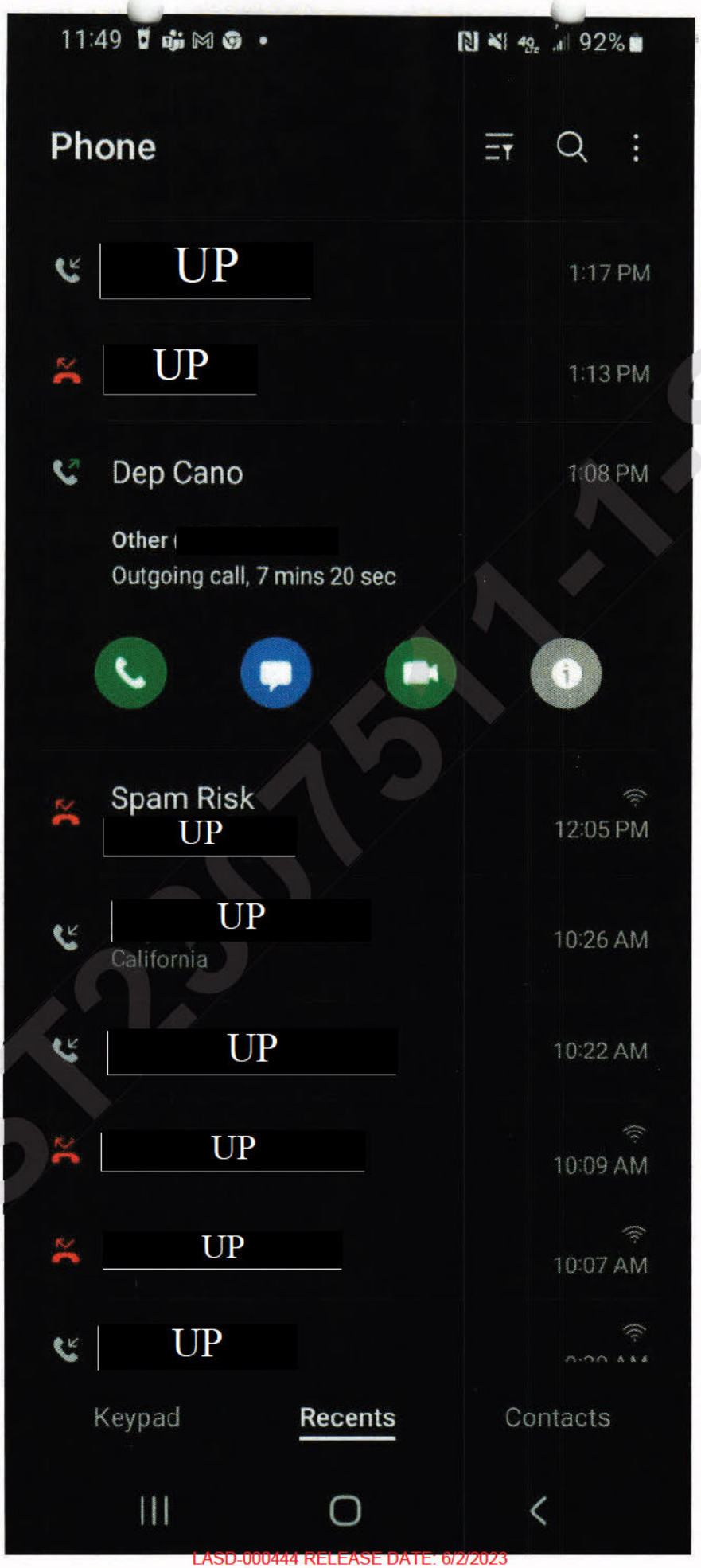
POST 287-1-1 SB2



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11/21/22

POST2307511-1-SB2

LASD-000443 RELEASE DATE: 6/2/2023



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POST2007511-1-SB2

LASD-000444 RELEASE DATE: 6/2/2023

Unit: 51 Shift: 3 Shift Date: 05/23/21

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R/O :TOYOTA LEASE TRUST LSR, [redacted] V1 LSE,
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SOLD:00/00/20 RCID:02/04/22 OCID:03/06/20 LOCD:8
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03/04/20 SMOG DUE 02/10/28

03/03/20 PREV LIC [redacted] V1

RELEASE OF LIABILITY (REG. 138)
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BUYER:LSC MOTOR GROUP, 13104 GLEN CT APT 55
CITY:CHINO HILLS CA SELLER:NOT THE SAME AS ON FILE

RELEASE OF LIABILITY (REG. 138)
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02/08/2020-ODOMETER: 20 MILES ACTUAL MILEAGE

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POST250751-1-SB2

10-13-22 ET

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NO VEHICLE HIT IN WPS
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POST230751 1-1-SB2

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POST230751 1-1-SB2

LASD-000401 RELEASE DATE: 6/2/2023

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PAGE 04
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POST230751 1-1-SB2

10-13-22

LASD-000402 RELEASE DATE: 6/2/2023

WITNESS EDWARD CHEN

Rodriguez: We're on the record. Today is August 26th, 2022, and the time is 2:34 PM. I am at Walnut Station in one of the interview rooms conducting a witness interview. I'm Sergeant Sara Rodriguez. I am with Los Angeles C unty Sheriff's Department Internal Affairs Bureau, which is comman ed by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez, and my last name is spelled R-O-D-R-I-G-U-E-Z. And being interviewed today is Reserve Deputy Edward Chen. Sir, for the record and voice recognition, can you please spell your last name and state your employee number?

Chen: That's Chen, C-H-E-N. My employee number is 535326.

Rodriguez: It should be noted that this interview will pertain to an incident that occurred during a working shift at Temple Station. This case is regarding an administrative investigation involving Temple Station personnel. The incident occurred on May 14, 2021. Prior to the interview, I gave you an Admonition for Witness, Sworn and Non-Sworn form. Did you have an opportunity to review the form?

Chen: Yes. I did.

Rodriguez: Did you understa id the f rm?

Chen: Yes.

Rodriguez: I see that you marked yes, both the boxes, and placed your initials besides each box, sign and dated the form. Is that correct?

Chen: Yes.

Rodriguez: Do you have any questions about the form or your requirement to, to make full and comple...full, complete, and truthful statements during this interview?

Chen: No questions.

Rodriguez: As a reminder, you're being ordered not to discuss the facts of this case or any of the issues discussed during your interview other than with your representative or attorney if you have one. Do you understand?

Chen: I understand.

POST 23075 11-352

LASD-000043 RELEASE DATE: 6/2/2023

Rodriguez: If you need a break for any reason, please let me know and I will accommodate you. The only thing that I ask you is that if I ask you a question, make sure you answer it before we go on, I mean, before you take your break, okay?

Chen: Okay.

Rodriguez: Is there any reason why this interview cannot take place?

Chen: No.

Rodriguez: So, let's start with a little bit of your background, your academy g.aduation, and then we'll...and then work your way from there, o. ay?

Chen: My academy graduation was in June of 200 for Level 3, app' ximately the same month in 2011 for Level 2. And ,y Level 1 acad' y graduation date was in August of...or Ju...yeah, Au ust of 20...2015.

Rodriguez: Oh, so...

Chen: So the reserve has three levels, Level 3, Level 2, Level 1. And...

Rodriguez: So when did you finish the level...Level 2?

Chen: In the...2011.

Rodriguez: And then the Level 1, you said you did it in 2015?

Chen: 2015, yes.

Rodriguez: Thank you, okay. Where were you assigned after, after you completed the reserves academy?

Chen: I was assigned at Temple Station.

Rodriguez: So afte you completed the Level 3 in 2008, you came straight here? Temple?

Chen: Ye...yes. No. In 2008, I was at Cerritos. In 2011, I was at Reserve Forces Bureau. And 2015, I was at...I subsequently went to Temple.

Rodriguez: And where are you at now?

Chen: I'm at Industry Station.

Rodriguez: So when did you leave Temple?

LASD-000044 RELEASE DATE: 6/2/2023

POST230751 1-SB2

Chen: That would've been in 2019.

Rodriguez: Were you working at Temple Station on May 13th, 2021?

Chen: Yes.

Rodriguez: Do you remember a, a... what position you were assigned to w rk?

Chen: I am a reserve deputy. So, I think it depends on when the call...if I could look at the face page. I think it's 52R.

Rodriguez: Oh, yeah. By the way, for the record, I've provided you with a copy of the authored report for that day. So, feel free to refer back to it, you ' now, and when...and whenever you need to, okay?

Chen: All right. I was, I was 53R.

Rodriguez: And did you have a partner at that time?

Chen: No.

Rodriguez: Tell me a little bit abou.. about your, your duties as, you know, that unit, 53R?

Chen: As a reserve deputy, I supplement deputies in the field as an extra patrol unit. Having completed my field training, I can log on and take...answer calls for se vice or assist deputies or ev...even initiate enforcement activities on my own if...well, when I'm on duty. On this day, I was requested by the Temple City traffic car regarding a Deputy Cano regarding a DUI traffic collision investigation. I've distinguished myself in the last year in just making myself available to the various training opportunities available to deputies in the field of DUI investigation. And it is not uncommon for full-time deputies that have very busy workloads to request a reserve deputy to help them with DUI investigation, especially one that concerns a traffic collision that, you know, it's, it's a lot of, lot of work for one deputy to handle.

Rodriguez: Just kind of...I'm just kind of gonna go back. Just, I have a question. But do...were you wor...were...had...are you issued bodyworn camera equipment?

Chen: I went to body-worn camera class in April of this year.

Rodriguez: So, at the time when this happened, you, you didn't have the camera...

LASD-000045 RELEASE DATE: 6/2/2023

POST-20751-1-SB2

Chen: No.

Rodriguez: ...correct...okay. Do you know...do you, do you know Deputy Cano from, from before, like, or, or you do...met him when you got to Temple, or how, how do you know him?

Chen: Yeah. I met him when I was...I...when I began my patrol training after my Level 1 academy graduation in 2007...2018. And that's when I .new him as a field deputy at...oh, as a deputy at, at Temple.

Rodriguez: So, when you got to Temple pretty much, okay. How did he contact you that night?

Chen: On my cellphone.

Rodriguez: So your personal cellphone?

Chen: My personal cellphone.

Rodriguez: And what did he tell you?

Chen: Something along the line that he had a DUI traffic collision at the corner of Rosemead and Garibaldi and if I would be willing to assist him with that.

Rodriguez: What were you doing at the time when he called you?

Chen: I was at hom .

Rodriguez: What...you weren't working?

Chen: No. It's...my...the deputies would call. I live a mile away from Temple Station. So, if they have some...that, that...I feel like that's my way to serve my fellow deputies in the, the department is if I'm close by and I can come in to be of assistance to help get deputies back out in the field, I'll do that to...I'll answer those calls, whether it be Mandarin translation or whether it's a DUI investigation. So I, I responded from home, and picked up a, a black-and-white radio car, and responded to the location.

Rodriguez: Is there another Chen...

Chen: There's quite a few times...

Rodriguez: ...at Temple?

Chen: Yeah.

POST230711-1-SB2

Rodriguez: No, at Temple specifically?

Chen: There's a full-time deputy, Michael Chen. He went over to SIB.

Rodriguez: That makes sense 'cause I...

Chen: I get his mail all the time, and he gets mine.

Rodriguez: And then just for the record, I, I was looking at the PM in...shift in-service for Temple Station for Thursday, May 13th, 2021. And then it showed a Chen working as five, five...

Chen: 53T1

Rodriguez: Yeah, 53T1. That's not you? That's Michael Chen? Is that what you're saying?

Chen: Yes, correct.

Rodriguez: All right, okay. When did you say you got train...you were trained on...in bodyworn camera? This year, right? What yea...month?

Chen: April of 2022, this year.

Rodriguez: So, it's he just, he just calls you, you know, on your personal cellphone. You're at home, and then you just respond?

Chen: Yes.

Rodriguez: Did you, did you respond in a, a patrol vehicle or...

Chen: No. I live a mile away from Temple Station. So I drove to Temple in my private vehicle. I start a patrol vehicle and then responded to the location.

Rodriguez: Oh, but...so you did respond to the location in a, in a patrol vehicle?

Chen: Yes.

Rodriguez: Okay, so all right. All right. And then so you, you get there, and you said you went to the corner of Garibaldi and...what?

Chen: Rosemead Boulevard.

Rodriguez: Rosemead Boulevard, okay. What happens?

POST230511-1-SB2

Chen: So, the vehicle was yielded to the...on Garibal...on the south side of Garibaldi Avenue just east of Rosemead Boulevard. When I arrived, I contacted Deputy Cano, who gave me a brief synopsis of what had occurred or what his...based on his investigation, the suspect had rearended a driver on...at the corner of...at the northbound Rosemead Boulevard at Garibaldi Avenue. The vehicles yielded and pulled to the eastbound Garibaldi Avenue south side of the...the south curb line of Garibaldi Avenue. Deputy Cano said the suspect was very despondent and was...I believe she got out and then went into another truck. And I also spoke with another deputy who was on scene and, and observed the suspect's bizarre behavior. Well, obviously, she was under the influence of alcohol.

Rodriguez: Oh, what do you mean you...when you say...can you describe what the bizarre behavior was?

Chen: That she was disoriented. She was not wearing any shoes. She was walking in the...well, he was...she was walking on a public roadway without any shoes, and she was attempting to get into another...a vehicle.

Rodriguez: Did that vehicle belong to her?

Chen: No. It was...

Rodriguez: It was just like a random (talking over)...

Chen: I believe it was a silver truck that I saw that was parked on...along the east curb line...east of Rosemead Boulevard on the south curb line of Garibaldi. So, she was detained by Deputy Cano as well as...I believe Deputy Patron was there during the incident. And so both of 'em had relayed their observations...or shared with me their observations so...before I had contacted the suspect.

Rodriguez: And then what happened?

Chen: I contact the suspect in the backseat of the...Deputy Cano's radio car. She attempted to get out of the car several times. She spoke...I think she was...she was not entirely answering the questions. I had to focus her many times, which is very common for a DUI investigation, as I asked her the questions that are sa...on the face page, Page 1 of my DUI report, and... well, in hindsight, looking back now, I realized she was on DUI probation. I, I would've not been able to...I would not need to have performed all the SFSTs that I attempted to perform, but I did outline in my report that I did conduct the first rep... the modified Romberg as well as the horizontal gaze and nystagmus test from the backseat of Deputy Cano's patrol vehicle. I was confident in making the findings that she was

LASD-000048 RELEASE DATE: 6/2/2023

POST 2507511-582

under the influence. So, she was read the, the DUI or the drug...the chemical test admonition...or Page 2 of the DS-367 form. And she chose breath. So she was willing to submit to a breath test.

Rodriguez: You mentioned that she tried to get out of the vehicle. How does she d that? How does she try to do that?

Chen: She was just tr...stepping out and ju...just in a motion tried to g out of the backseat of the vehicle. And...

Rodriguez: Oh, so the door was opened?

Chen: The...yeah. The door was opened in order for me to ask her the questions that is on the...for the SFST forms.

Rodriguez: Did you guys notify a supervisor at that time that, you know, she was trying to...acting a little bit, you know, bizarre, as you put it?

Chen: No. If I were to contact a supervisor every time I conduct a DUI investigation, then the, the...all the field supervisors would be, would be contacted...

Rodriguez: And then what happened?

Chen: And then when I was comfortable in making arrest in this matter, I...with the assistance of the deputies on scene, I transferred her from the backseat of Deputy Cano's patrol vehicle to the backseat of my patrol vehicle.

Rodriguez: Di...did...was, was she patted down for weapons before you made that transfer?

Chen: She was not wearing a whole lot of clothes, so vis... visually, I could see that there was really no, no way that she would be concealing a firearm on her persons.

Rodriguez: Do, do you know if, do you know if...only if you know...if anybody patted her down on...

Chen: I don't know. I, I didn't. Yeah.

Rodriguez: So you put her in the backseat of your patrol vehicle, and then what happens?

Chen: And I transported her to Industry Station of a DataMaster or a breath test.

POST23075T1-SB2

Rodriguez: And so you transported her from Rosemead and Garibaldi, right...

Chen: Yes.

Rodriguez: ...to Industry Station?

Chen: Uh-huh (AFFIRMATIVE).

Rodriguez: Did you advise SCC that you were making the transport of the female (talking over)?

Chen: Yes. I did.

Rodriguez: What did you broadcast?

Chen: Starting mileage, transporting one female to Industry Station regarding a breath test. I don't recall exactly...my exact words. But I...you know, it would be the starting mileage and the purpose of my transport.

Rodriguez: And where you were taking her?

Chen: Yes.

Rodriguez: How long was the trip from Industry Station to...I'm sorry...from Garibaldi and Rosemead to Industry Station?

Chen: Normally, 20 to 30 minutes. But depending on traffic conditions.

Rodriguez: Did anything occur during the transport?

Chen: I noted in my report...because it was a pretty significant event, where I've...when a female sus...suspect who was detained making the statements that she did with regards to...well, first...she first asked me in Chinese whether...if I wanted to play, which I was taking that to be in a sexually suggestive manner. So, without addressing it, I asked her...because she's a... she does not appear to be Chinese in... her appearance. So, I asked her where did she learn how to speak Chinese, and then she switched her accent from a Chinese mainland accent to a Taiwan accent, possibly judging from my accent and my tone that I was from Taiwan. And then she said in a perfect Taiwanese accent that she learned it from Tai...she learned how to speak Chinese from...in Taiwan, where she studied abroad. So I realized the, the suspect had...and she began to moan in, in a sexually suggestive manner, just, just str...straight-on moaning. And of, of course, I just remember I... driving to Industry Station in the most safest but quickest way possible so as to not have any allegations that I had...you know, with an attractive female suspect that's

POST230751 1-1-SB2

sitting in backseat moaning and groaning and, and asking me about if I wanted to, if I wanted to play with her.

Rodriguez: Did you consider maybe stopping the car and calling a supervisor at that time?

Chen: No.

Rodriguez: So, you just wanted...like you said, I mean, just the safest, quickest way possible to Industry Station and just kind of get her out of your car?

Chen: Uh-huh (AFFIRMATIVE).

Rodriguez: So what happens when you arrive at, at Industry Station?

Chen: She said she needed to use the restroom. So...and so I...after entering the jail gate, I directed her to the restroom rea.in t e proc s of uncuffing her, I remember she leaned fo...forward and with her butt facing towards me, backing up to...towards me, which I...

Rodriguez: So you were standing behind her?

Chen: I was standing behind her to try to uncuff her from...with...so sensing my struggle, I remembered there was a female detective who was inside the jail at the time. She came and assisted and talked to me subsequently about transporti .g females and e pecially one was...that was in that condition, about possible alter atives. But I had...in terms of what I, what I saw that night, I felt like...that I was operating within...that, that at no point was I ever going to do anything that's outside of what I would do with any other DUI suspect.

Rodriguez: Who...do you remember the name of the detective?

Chen: Raquel Sandoval.

Rodriguez: Raquel Sandoval, got it, okay. Did anyone assist you in trying to control her?

Chen: She did.

Rodriguez: How did she assist you?

Chen: She took her to the restroom, st...and she made the observation that she was not wearing any underwear and provided her a large-size jail pants. And after reading my report before this interview, I remembered during the DataMaster...doing the breath test, the suspect had repeatedly tried to

LASD-000051 RELEASE DATE: 6/2/2023

POST2505111-SB2

take off her pants and was just not entirely cooperative. But you know, with some guidance, she eventually submitted to two breath tests.

Rodriguez: And you didn't notice that she wasn't wearing any underwear when you initially started to transport her?

Chen: No.

Rodriguez: Did anybody say anything to you that, you know, she's not earing any underwear?

Chen: I don't remember.

Rodriguez: Besides, you know, the detective, Raquel?

Chen: I don't remember.

Rodriguez: I, I kind of used the term controlling...like, you tri d to ontrol her. But let, let me just back up for a second and ask you if...did you guys use force on her, or did you use force on her?

Chen: No.

Rodriguez: And no struggle? Nothing (talking over)?

Chen: Not even resistive, no. Nothing.

Rodriguez: So basically, what she was just doing is...and I don't wanna put words in your mouth, so just tell me yes or no. So, what she's doing that kind of prompted you to try to control is, is the fact that she was backing her buttocks in... onto v ur crotch, essentially, right?

Chen: Yes.

Rodriguez: Did you say anything to her at that point...while she's doing this to you?

Chen: I don't remember. I hope this jail has surveillance camera or audio that...I, I don't remember.

Rodriguez: What did Detective Raquel Sandoval tell you about transporting and the be...her behavior? What did she tell you?

Chen: Just ask another deputy or ask a female deputy to be present if I were to be in that position again.

POST 20751-1-SB2

Rodriguez: Did you tell anybody that sh...other than...I know you know...you, you put it or you noted it in your report, but did you tell anybody else about that incident...or the one that occurred in the car? And I'm looking for if mainly you...you know, you told, like, a supervisor, maybe.

Chen: I don't remember.

Rodriguez: Was anybody else around when that was happening that you can recall?

Chen: Well, there were the people that...at both stations, Temple and Industry, when we were inside the jails. There were the deputies that were on scene when I initially contacted her. But in terms of the car ride, it was just myself (talking over).

Rodriguez: Did something happen when you initially contacted her as wel or...was she inappropriate to you when you initially made contact with her?

Chen: Not with me. No, not at all.

Rodriguez: So, at Industry Station, were there other deputies around that might've seen, de...or any personnel that might've seen that happen?

Chen: Possibly. It was a pretty busy, full jail. But I don't...other than Detective Raq...Sandoval, I don't re...I don't remember exactly who was there.

Rodriguez: So, then she gives you the ru...anything else happen during the time...other...you know, you mentioned that she wanted to take her pants off a couple of times...a few times.

Chen: No. On the ride back...

Rodriguez: Did she say anything when that was happening? When she was trying to take her pants off?

Chen: No. I don't remember what she said. I'm sure she was making...someone who was drunk, who was talking about...I, I don't remember exactly what she's...what her complaints were or what...

Rodriguez: I'm sorry. And you were saying on the way back...

Chen: On the way back, she repeatedly asked if there's anything she could do to be out of this...to get out of this DUI because she had prior DUIs and that if I could drive her back to her house and give...release her to a family member. I do not know there was a note in the report because that's very common in a lot of DUI suspects to be asking for clemency or asking for something. I... but in the context of the sexual suggestions or the

POST230751-1-SB2

advances in the, in the beginning, I believe...well, it's, it's clear to me what she was, what she was after with regards to her behavior and, and her interaction with me that night. But I remember transporting ba...her back to Temple. And she was booked in jail.

Rodriguez: And so you said it was clear to you. Why? She was trying to get...what is it that you interpret that as?

Chen: That she was trying to, to not catch another DUI case, not, not be in, in another...not be apprehended for her DUI that night, driving under the influence and causing a traffic collision.

Rodriguez: And how was she gonna prevent that?

Chen: By appealing to me as the arresting deputy.

Rodriguez: Oh, okay.

Chen: Yeah.

Rodriguez: All right. So you transported her back to Temple, you said, right now, right?

Chen: Yes.

Rodriguez: Did you put out the information?

Chen: I did, yes.

Rodriguez: Did you put it on over the radio?

Chen: Yes.

Rodriguez: And what did...what information did you put out?

Chen: Beginning mileage, ending mileage, and I, I trust based on her behavior that night, it was probably the fastest I've ever driven between two stations.

Rodriguez: And how long did it take you to get there?

Chen: Probably 15 minutes to less than 20 minutes.

Rodriguez: When you get to Industry Station, what happens? I'm sorry, Temple, right? Yup, you transported her back to Temple. What happens then?

POST230711-1-SB2

Chen: I walked her in, and, and she was...I believe she was placed in a holding tank or a holding cell or drunk tank. And I don't recall if I completed the...her booking paperwork or if I had done a CHP 202F form, which is a field release and signed out and offered her...'cause I believe I did offer som...her the opportunity to have somebody pick her up from the stati n. So...yeah.

Rodriguez: Since you transported her, her, did you guys...do you know if she was injured as a result of the traffic collision? Did you guys ask her if she was injured?

Chen: I trust that that was done before my DUI investigatio began when the initial responding deputy would assess injuries and contact Fire and arrange for a transport. But that was not done in, in this ca... well, I, I don't know if this was done prior to my arrival.

Rodriguez: So, neither of the dep... none of the deputies that were there told you that they had asked her whether she wa njured or not?

Chen: I don't recall.

Rodriguez: And did you ask her if she was injured?

Chen: I believe that wa...that's a standard question on my face page of the DUI report. And I believe she answered no because that would...if she answered, then we'd have stopped the investigation. And I would've sought medical treatment for her.

Rodriguez: So, she's placed in the drunk tank or somewhere, right, in some ce...some type of cell? What, what do you do after that?

Chen: I believe I remember having contacted someone on...that she listed as emergency contact and completing the paperwork for that person to come to the station and, and, and pick her up.

Rodriguez: It...so i' was a side out, basically?

Chen: So it was a side...

Rodriguez: Your wrote it as a side out?

Chen: Yeah.

Rodriguez: Was this before you had knowledge that it was her third DUI? 'Cause you mentioned something earlier that this would've been...

POST2075111SB2

Chen: Yeah. Yeah, because I, I would not be able to confirm as a field deputy how many convictions. That would have be...that would have to be done by a secretary or someone with a... access.

Rodriguez: So, when you got to Temple, you didn't, you didn't check with the secretaries?

Chen: No. It's my...based on my training as a...in DUI, we let the district attorney's office upcharge. We do not hold on a third or eve ourth DUI, on a felony, unless there's injuries or others involved. So, it's, it's not outside of the standards for me to cite out somebody, e en on a second or third DUI because traffic office usually prefers that we allow the district attorney's office to upcharge rather than us making that determination.

Rodriguez: All right, thank you for the clarification. When you initially got to the location on...off of Garibaldi and Rosemead, did you kn...witness any interaction between Deputy Cano and Suspect...the suspect, the female suspect?

Chen: No. She was already in the backseat.

Rodriguez: But was he there with, with her, or was he elsewhere when you got there?

Chen: I don't remember. At least, she...he was probably standing outside cause...so that way, I... I'd...I got a contact, you know?

Rodriguez: Do you recall if he had his camera on the whole time? His bodyworn camera equipment?

Chen: I don't remember. And I hadn't been trained at that time, so I... I now know what I'm looking at when it comes to bodyworn cameras.

Rodriguez: All right. Do you remember if there was anything else odd about that...you know, anything else odd or bizarre about that interaction with her that you...

Chen: From the incident...

Rodriguez: ...I...maybe I missed?

Chen: From the incident, no. I thought it was very...I, I, I did my job that night, went home. I thought, you know, she was a very attractive young lady. And, and that's what...and based on my transport and what, what her statements were that night, that, that made it memorable. And I felt it necessary to memorialize that in the report. But other than that, it's a pretty cut and dry DUI traffic collision.

POST230751 1 EB2

Rodriguez: Do you know why she was transported to the hospital later that night?

Chen: By deputy personnel?

Rodriguez: Uh-huh (AFFIRMATIVE).

Chen: Prior to being released?

Rodriguez: If you know. If you don't know, then I don't want you to make any assumptions. I'm just wondering if you know why.

Chen: No. It is standard in DUI investigation, if a traffic collision is involved, if she were to be hard booked, the jailer would request that the suspect be medically cleared, okay to book, at the hospital. But in this case, I remember...well, refreshing my recollection before this interview today, seeing that there was a CHP 202F done, which means that it was a field release for the purpose of, of whether the suspect was in custody that night or whether she was sided out, by completing that form, based on what I remember now, that would be a field side out, which would...and the, the jailers has its own list of procedures, which they follow. But oftentimes, in the case of DUI investigation to what...especially obvious cases where there's no injuries, that we side out rather than going through the okay to book, that hard book process.

Rodriguez: So, I'm just gonna show you some photographs of that day, okay? And there's two of you, and then there's about three of her. And I just want you to tell me if, you know, it's the person, okay? All right. So for the record, the first photograph...it is timestamped May 13th, 2021, at 21:01 and 39 seconds. Is this you?

Chen: Yes.

Rodriguez: Can you kind of just describe what you're seeing in the photo?

Chen: That was...

Rodriguez: I guess that would be asking you to describe yourself.

Chen: Yeah.

Rodriguez: (UNINTELLIGIBLE)

Chen: Well, overweight, male, Asian deputy in the front...no. I'm just...I was holding onto my belt. I'm looking in the direction of possibly...I believe I'm

LASD-000057 RELEASE DATE: 6/2/2023

POST2075MT-SB2

standing in front of my patrol vehicle and then behind another patrol vehicle.

Rodriguez: Go ahead and in this little corner, the lower left-hand corner, you're gonn initial and date it, 8/22...8/26. And in the next photo I'm gonna show you is for the record timestamped May 13, 2021, at 21:19 with 25 seconds. Is that you on there?

Chen: Yes.

Rodriguez: Go ahead and initial and date it, okay. And then the next one is...do you recognize that female there? It's kind of blurry. But for the record, it's timestamped...the photograph is timestamped 5/13/2021 at 20:58 with 15 seconds. And it's a photograph, or a still frame, of a female sitting in the backseat of the patrol car, female, light-colored hair, Asian. S' e's...and it appears that she's handcuffed.

Chen: Yes.

Rodriguez: Do you recognize her? Is that her?

Chen: The picture's blurry, but based on the position of that silver truck I mentioned earlier in the report and my patrol vehicle, I believe that I, I recall the incident.

Rodriguez: And the next picture I'm gonna show you, it's a little bit clearer, but it...again, and just for the record, it's dated 5/13/2021 at 21:15 with 41 seconds. And, and it looks like that's you on the left-hand side of the photograph, and you're writing on something. And then there's a female Asian sitting still in the backseat of the patrol car. Is she handcuffed here? Do you know?

Chen: It appears that she was not. And... yes, I would...before initiating a pre-FSFT investigative question, it's my standard practice to unhandcuff the suspect for...as part of a DUI investigation.

Rodriguez: Go ahead and initial and date. Do you know if it...at any point in time, she was hobbled?

Chen: No.

Rodriguez: They put a Hobble on her or anything...okay.

Chen: No.

POST 20751-RSB2

Rodriguez: So, then the last photo that I'm gonna show you, it's...again, for the record, it's timestamped 5/13/2021, and the, the time is 21:22 and zero...with zero seconds. Do you recognize her?

Chen: I, I assume the...that to be the suspect, but I don't...

Rodriguez: You're not 100 percent sure?

Chen: No.

Rodriguez: Go ahead and initial and date it, okay. That's it. Is there anything you would like to add that I haven't already asked you?

Chen: No.

Rodriguez: Do you have any questions for me?

Chen: No.

Rodriguez: All right. With that being said, I don't have any more questions for you.

Chen: All right.

Rodriguez: So this is gonna conclude your interview, okay? And then we're gonna go off the record at 3:11 PM.

POST230711-1-SB2

LASD-000059 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

1a. WITNESS EDWARD CHEN (FOLLOW-UP INTERVIEW)

LASD-000080 RELEASE DATE: 6/2/2023

WITNESS EDWARD CHEN (FOLLOW-UP INTERVIEW)

Rodriguez: We're on the record. Today is November 17th, 2022, and the time is 10:59 AM. I'm at Temple Sheriff Station in the captain's conference room conducting a follow-up witness interview. I'm Sergeant Sarah Rodriguez with Los Angeles County Sheriff's Department Internal Affairs Bureau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sarah Rodriguez. Last name is spelled R-O-D-R-I-G-U-E-Z. Being interviewed toda is Reserve Deputy Edward Chen. Sir, for the record and voice recognition, can you please spell your last name and state your employee number?

Chen: Yes. My last name is Chen, C-H-E-N. Employee number 535-336.

Rodriguez: And it should be noted that this interview will be pertaining to an incident that occurred during a working shift at Temple Station and sometime following after that. With us, a well, in the room is Sherry Lawrence. Ms. Lawrence, can you please spell your first and last name for the record?

Lawrence: Yes. It's S-H-E-R-R-Y L-A-W-R-E-N-C-E.

Rodriguez: And Ms. Lawrence is here representing Deputy Chen. This case is regarding an administrative investigation involving Temple Station personnel. The incident occurred on May 14th, 2021, and the remainder months of 2021. Earlier I showed you a form that you originally dated and signed it and initialed, the admonition for witness sworn in on sworn form, which again, like I said, you signed and dated on August 26th, 2022. And just for the recor , everything stated in that form still applies to this interview. Do you have any questions about the form?

Chen: No, not at this time.

Rodriguez: Do you have any follow up questions as to your requirement to make full, complete and truthful statements during this interview?

Chen: No.

Lawrence: Can I get the IAB number?

Rodriguez: Yes, of course.

LASD-000061 RELEASE DATE: 6/2/2023

POST2075-1-1SB2

Lawrence: I should've written that-

Rodriguez: The IAB number for the record is going to be IV2550292.

Lawrence: Thank you.

Rodriguez: So, prior to this follow up interview, I provided you with the transcripts from your previous IAB interview, which took place on August 26th, 2022. Did you have an opportunity to review those transcripts?

Chen: Yes, I have.

Rodriguez: So, my reminder, once again, you're being ordered not to discuss the facts of this case or any other issues discussed during this interview other than with your representative or attorney. Do yo u understand?

Chen: I do.

Rodriguez: If you need a break for any reason, just let me know. I will accommodate you, but the only thing that I sk is that if I pose a question, you answer the question and then we'll take a break.

Chen: Okay.

Rodriguez: Is there any re son why this interview cannot take place today?

Chen: No.

Rodriguez: So, you arrested Ms. V1 we established on August 26th, and then per the transcripts, that you arrested Ms. V1 on May 13th, 2021, correct?

Chen: Yes.

Rodriguez: After you arrested her, did you have any type of contact with Deputy Cano?

Lawrence: Regarding?

Rodriguez: For now, any type of contact with Deputy Cano?

Chen: I have. He works here at the station. In passing, we see each other, we converse.

Rodriguez: So, between May 13th, when's the last time you talked to him?

LASD-000062 RELEASE DATE: 6/2/2023

POST23075V1-LSD2

Chen: It would be before, it'll be a few days ago on a phone call when I believe that he had informed me that the case was over, that he was coming back, so I picked up the phone. But that was not the case.

Rodriguez: Did you guys discuss anything pertaining to the case?

Chen: It was to refresh what we had discussed about Ms. V1 and a possible direction of what he's being questioned about. I thought my part of the interview is over.

Rodriguez: And you said this happened a few days ago?

Chen: Yes.

Rodriguez: So, would it be safe to say that within the last week?

Chen: Within the last week, yes.

Rodriguez: So, from the previous interview, you do remember me telling you that you were not allowed to talk to anybody about it, right?

Chen: Yes.

Rodriguez: What specifically did you guys discuss?

Chen: I was asked whether he had approached me in asking that I not attend the court hearings for Ms. V1 And we had a discussion. I ended the conversation fairly quickly. I recall an instance when Deputy Cano brought up that this will be Ms. V1 second or third DUI, and that was the end of that conversation. That was the extent of the conversation that I had with him.

Rodriguez: This was this last week, right?

Chen: No, this was several-

Rodriguez: Prior to?

Chen: Prior to. Post arrest-

Rodriguez: But after she was arrested? Okay.

Chen: After she was arrested.

LASD-000063 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: So, that was going to be my next question is, when you had that conversation about Ms. V1 post arrest, what was it that, he tells you this, what's going to happen. What did you respond to that?

Chen: I indicated that I would've...

Lawrence: Could we clarify what he said first? Because I'm a little confused what Deputy Chen was responding to. So, what did he say to you, as you recall it?

Chen: He brought up the fact that he's spoke to Ms. V1 and learned that this would be her second or third DUI. I interpreted that to mean, from a deputy to another, that if I were to not attend the court hearings, but he never specifically requested that of me. I ended the conversation by stating that I attend all my court hearings and subpoenas and I don't believe it ever got to a point where he crossed the line or made that request, or I responded in any way that would indicate that I understood what he was asking.

Rodriguez: So, you never asked for clarification what he was asking? That conversation that-

Chen: No, because I did not like what that implied. He never asked.

Rodriguez: Uh huh.

Chen: I want to be clear. But when you bring up a suspect's record and indicated that you've spoken to h r, my interpretation of that encounter would be that, if there's anything I could do as the arresting officer to impact or influence that case, which I don't believe I had the opportunity to do, because as a reserve deputy, I attend all my subpoenas. I attend all on-call or in court hearings by the court as when I'm subpoenaed to. I even attend most traffic citations that I issue. I even attend most traffic court subpoenas.

Rodriguez: So, if I'm understanding you correctly, I don't want to put words in your mouth, you interpreted that conversation that you had with Deputy Cano and he came up to you, right?

Chen: Yes. We were in the secretary's office when that conversation occurred.

Rodriguez: Here at Temple?

Chen: Here at Temple.

LASD-000064 RELEASE DATE: 6/2/2023

POST 30751 1 of SB2

Rodriguez: Do you remember more or less when that happened?

Chen: I don't remember at all when that conversation, I remember there was a conversation where he brought up that this would be Ms. V1 second or third DUI, and I ended the conversation and in a way that I believe Deputy Cano understood that I was not going to allow him to request anything improper of me or that I would even consider not attending court if subpoenaed.

Rodriguez: Did Cano tell you at that point, Deputy Cano , tell you that he was talking to Ms. V1

Chen: I believe, based on his statements about this being her second or third DUI and that she's getting an attorney, that they are in conversation. I believe I made a offhand remark ending the conversation with saying, "30 days" as not knowing specifically the department's policy, but the amount of time one needs to wait before there to be any contact with members of the public.

Rodriguez: Did you have any contact with Ms. V1 after her arrest?

Chen: No.

Rodriguez: So, he never explicitly told you, "I'm talking to her."

Chen: Based on those statements that this is her second or third DUI and that she's getting an attorney. I assume that that is that they were talking.

Rodriguez: And he never, you said it earlier, I just want to confirm, he never directly or supposedly told you, "Hey dude, don't show up for court." He just...

Chen: I believe that was-

Rodriguez: ... alluded to it.

Chen: I believe that was the inference, but I did not address it nor did I, I believe I ended that conversation as diplomatically and as pleasantly as possible by making an inference to the department's policy about talking to someone outside in, I said, "30 days" and then I walked out.

Rodriguez: I just want to, and the best that you can recall, so she was arrested on May 13, right? Of 2021.

Chen: Uh huh.

LASD-000065 RELEASE DATE: 6/2/2023

POST230751 1-SB2

Rodriguez: Would you say that conversation took place shortly thereafter? Or maybe a few months went by? Was it right before the year ended type of thing? Because it's already May or almost May, in the middle of the year, right?

Chen: I'm pretty certain it was after several weeks, even after a month or two. But I don't know exactly when that conversation took place.

Rodriguez: But it wasn't the following year, in 2022?

Chen: No, because if after 2022, I most likely would've remembered.

Rodriguez: Okay.

Lawrence: Can we take a break? I'd like to clarify something with Deputy Chen that I'm not clear about.

Rodriguez: Yeah, sure.

Lawrence: We'll just take a minute.

Rodriguez: Not a problem. Okay. We're going to take a short break and we're going to go off the record momentarily at 11:12 AM.

************Audio Recording Paused************

Rodriguez: Okay. We're back on the record at 11:19 AM. Same three people still in the room. So, I'll refer, go ahead and look at your transcripts, page 13, bottom. At one point, I ask you about the process and then you tell me that it was going to be a site out. So, then I ask you, "Was this before you found out that this was her third DUI?" You see that part?

Chen: Yes.

Rodriguez: And then you said, "Yeah, because I would not have been able to confirm as a field deputy how many convictions." Right? Okay. So, this interview took place on August 26th, 2022, okay? The first one that I had with you. On this date, you knew that when you arrested her, that would've been her third conviction. Was it because of what Cano told you or because of what, how did you learn about that third conviction?

Chen: So, it could be of the night of the incident that Deputy Cano , as the original deputy that was assigned to this call, had looked up her convictions at the secretariat to know that this was her third DUI, or as I previously stated, during that one conversation that he and I had after the

LASD-000066 RELEASE DATE: 6/2/2023

POST 2307511-1-SB2

incident, also at the secretariat, that he had disclosed that this would be her third DUI, or second or third if I recall, but third DUI. So, Deputy Cano could have learned that night on the date of the incident or sometime in between.

Rodriguez: I was asking about you though.

Chen: That I learned it's a third DUI? I don't know this was her third DUI. I never pulled up her cheers. You informed me during the interview that this was her third DUI.

Rodriguez: Okay.

Chen: And also on the transcript I stated that for a DUI, we usually allow the district attorney's office to upcharge, that I would just arrest on a misdemeanor. It's a fairly standard practi e.

Rodriguez: Right. Okay. So, at the end of the last interview, we asked this blanket question, and then I give you an opportunity and the questions along the lines say, "Is there anything else that you want to tell me that I didn't already ask you?" And I believe your answer was no, right? If you look at the transcript.

Chen: Uh huh.

Rodriguez: If you want to go back and look at it.

So, would it have been safe to say that by August 26th, 2022, you knew that Deputy Cano had approached you, alluded that you shouldn't go to court?

Chen: I don't know if it was my place to, I wasn't asked a question about, so, I'm trying to-

Rodriguez: But, no. Yeah, but that's not, you're getting ahead of me and that's fine. I understand that you're trying to justify it, and that's going to be my next question. But would it have been safe to say that you had that information when I conducted this interview initially?

Chen: Yes.

Rodriguez: In your interpretation of what Cano asked you, or alluding that you shouldn't show up to court, do you know, you're a deputy sheriff, so you're aware of what this, if you would've said that to me, what that would've

LASD-000067 RELEASE DATE: 6/2/2023

POST 2307511-SB2

done, or even if you would've, I mean you know that there's a part of it that can end up being criminal, right?

Chen: I know what's right and wrong and what my statements were. We never crossed the line to the point where I believe he did something. He requested something improper of me or inappropriate of me.

Rodriguez: So, I'm glad that you brought that up. You know the difference between right and wrong. So, that's actually really good. But with tha. being said, then you knew that him alluding to that was wrong, right? Because you mentioned you made the comment about 30 days and that other stuff, right? Okay. So, with that being said, now I'll ask you, is there a reason why you didn't tell me when I asked you if there was anything else?

Chen: If I may have a moment and just review this transcript.

Rodriguez: Yeah. Go ahead.

Chen: Everything that was discussed in our last intervi w was regarding the night of the incident. And in my mind, that's where my involvement with Ms. V1 ended. Any other subsequent interaction with Deputy Cano or with any deputy at the station, I did not feel it was part of your inquiry or specifically what you were requesting of me to provide, which is my involvement in thi. case, which er ded that night on May 13th, 2021.

Rodriguez: So, is that why you didn't, I don't, is that your explanation as to why you didn't tell me that he alluded to that? I mean, he basically asked you or alluded to the fact that you shouldn't show up to court, which if you wouldn't have, I mean, and we can go into what ifs, whatever, but at the end of the day, if you wouldn't have, then that brings you back in the loop. And even him approaching you and saying, "Hey, this is her third DUI" and alludes to the fact that you shouldn't show up or whatever, however you interpret it, it brings you back in the loop.

Lawrence: I mean, his interpretation is different from what was said, right? And so he wasn't asked to not go to court. So, I mean, I can understand how a person's interpretation of that is different or could be different from what was actually stated. I mean, I see what you're saying, but I also understand that there was no request that he not go to court, so-

Rodriguez: No and that, right, but it was still alluded. And so, here's the thing, earlier you said that you knew the difference between right and wrong, right? You told me that, right? There's something that you as a deputy sheriff, if you know that something's wrong and you know the difference between right

LASD-000068 RELEASE DATE: 6/2/2023

POST 2075-1-1-SB2

and wrong and you know that it's wrong, I'm just trying to understand why wouldn't you have told me that you had that information? Because you knew it was wrong.

Chen: But the reason for this interview, and if this is the follow-up interview to what we had discussed was nothing from the date of the incident or my involvement in this case, it ended that night. So, this is something that came afterwards, and I'll just go back to there are things that re explicitly said, and there's ones implicit understanding or interpretation to what was said. I volunteered and I told you what I interpreted that to mean and how that made me feel. But at no point am I going to, it's r ally not my, I mean, without even the last conversation I had with Deputy Cano, I would not have brought up or thought about anything unt ward or inappropriate about that encounter because the line was never crossed. I never did anything with it, nor would I have thought about doing anything with it.

Rodriguez: What about the last conversation you had with him within the last week and it was pertaining to this investigatio ev you were given a specific order not to discuss it with anybody?

Chen: Okay.

Rodriguez: Did you tell Cano that you were ordered not to? Did you guys discuss that? I should ask you that way.

Chen: I did not.

Rodriguez: You didn't? Okay.

Chen: No.

Rodriguez: Alright. Sherry, do you have anything? Do you want to take some time with him?

Lawrence: Yeah.

Rodriguez: Right now? Okay.

Lawrence: Yeah. Just to be on-

Rodriguez: Alright. Okay. We're going to go off the record momentarily at 11:30 AM.

************Audio Recording Paused************

LASD-000069 RELEASE DATE: 6/2/2023

POST230751-1-1382

Rodriguez: Okay. We're back on the record at 11:51 from a short break, and same three people still in the room. Okay. So, you mentioned earlier that Cano , Deputy Chen, contacted you this week, right? Would you say it was after Monday or-

Lawrence: What day was it?

Rodriguez: ... Or do you have that? You have record of that?

Chen: Yes.

Rodriguez: Oh, okay.

Chen: And I'll email it out.

Rodriguez: So, what day did he call you? Sorry.

Chen: It was Monday.

Rodriguez: Monday? Okay. What time?

Chen: I missed his call at 12:05 PM.

Rodriguez: 12. And then you had a conversation with him at that point?

Chen: Yes.

Rodriguez: You called him back?

Chen: I called him back.

Rodriguez: Or did he call you again?

Chen: No, I missed his call and I called him back.

Rodriguez: And you have record of both of those, right? You had the missed call, and then approximately how long did the conversation take place?

Chen: It was a seven-minute phone call according to my phone.

Rodriguez: Can you send me records of that like-

Chen: I did.

POST230511-1-SB2

LASD-000070 RELEASE DATE: 6/2/2023

Rodriguez: ... even how long the conversation was?

Chen: I did.

Rodriguez: Okay.

Chen: I sent all that to you.

Rodriguez: Thank you. Okay. Alright. Is there anything else that you would like to add that I haven't already covered or asked you?

Chen: Now I feel like that's a trick question. I'll, again-

Rodriguez: Well, this is the part where most attorneys take the witnesses or whatever, and "Hey, is there anything else that you might want to bring up?" But you guys already had a conversation.

Lawrence: Yeah.

Chen: At the advice of Ms. Lawrenc , I want to apologize. I understand that if something I felt inappropriate at the time, with regards to the duty to report, I don't know Deputy Cano that w ll, I'm a reserve deputy. I work here once, twice a week. I work at Industry Station once, twice a week, and that was mos of 2021. My int raction with individual deputies is limited. We work even on a different shift. I mostly work early mornings, and if I subjectively misinterp eted what he meant during that one conversation, but perhaps, now my perception of that conversation is painted by that phone c ll that he made recently with regards to whether he made that request of me. At the time, I didn't feel like it was my duty to really bring up a deputy's misconduct based on my own interpretation of what that was. nd if I'm wrong in this case, going forward, I will be very diligent and very sensitive to any innuendos or perceived requests of that nature. I did not feel that that line was crossed then. I did not feel that that line was crossed to the point where I would've brought it up with you at the last conversation. And I think given my last conversation, which I'm informing you now of the conversation, I learned the lesson with regards to what that conversation possibly meant, and to trust myself when it comes to that kind of subjective interpretation of what might have been there and what I should have done to stop it.

Rodriguez: In hindsight, now thinking back, I mean, you said you had a missed call from him, would you have called him? I mean, knowing what you know now?

POST 2021-11-1-SB2

LASD-000071 RELEASE DATE: 6/2/2023

Chen: I thought the investigation was over.

Rodriguez: Okay.

Chen: My thought, I was happy to hear from him thinking that the investigation was over, but he-

Rodriguez: Did he tell you that it was over? You might have said something, but I can't remember. Did he tell you it was over?

Chen: Based on the conversation that we had, believing tha ،t was not over, I ended the conversation.

Rodriguez: Alright. Well, I appreciate you being forthcoming, and I'm sure that the problem will as well. If you guys don't have anything else, I don't have any other questions for you. Okay?

Lawrence: Okay.

Rodriguez: Alright. With this being said, I don't have any more questions for Deputy Chen and we're going to conclude the interview and go off the record at 11:57 AM.

POST230751-1-SB2

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

2. WITNESS RAQUEL SANDOVAL

LASD-000073 RELEASE DATE: 6/2/2023

WITNESS RAQUEL SANDOVAL

Rodriguez: We're on the record. Today is August 30th, 2020...2022, and the time is 3:02 PM. We're at Internal Affairs Bureau, Interview Room B conducting a witness interview. I'm Sergeant Sara Rodriguez. With me is Sergeant Larry Villareal. We're from Los Angeles County Sheriff's Depar ent Internal Affairs Bureau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, I'm Sergeant, I'm Sergeant Rodriguez again, and last name is spelled R-O-D-R-I-G-U-E-Z. Sergeant Villareal, for the record and voice recognition, can you please spell your last name?

Villareal: V-I-L-L-A-R-E-A-L.

Rodriguez: Also with us in the room and representing Sergeant Raquel Sandoval is Sherry Lawrence. Ma'am, can you pl ase spell your...the...your first and last name?

Lawrence: Yes. It's S-H-E-R-R-Y, L-A-W-R-E-N-C-E.

Rodriguez: And then once again being interviewed t day is Sergeant Raquel Sandoval. Ma'am, fo ne record and oice recognition, can you please spell your name and state your employee number?

Sandoval: Raquel Sandoval, S-A-N-D-O- -A-L, 459114.

Rodriguez: It should be noted that th s interview will be pertaining to an incident that occurred during your time at Industry Station while in your capacity as a detective. This case is re...is regarding an administrative investigation under IV file number 2550292 involving Temple Station personnel. The incident took place starting May 13th, 2021. Prior to the interview, I gave you an Admonition for Witness, Sworn and Non-Sworn form. Did you have an opportunity to review the form?

Sandoval: Yes.

Rodriguez: Did you understand the form?

Sandoval: Yes.

Rodriguez: I see that you marked yes boxes and placed...and actually, can I have you place your initials right next to the yes boxes? Do you have any questions at...so I see that you signed and dated the form. Is that correct?

LASD-000074 RELEASE DATE: 6/2/2023

Sandoval: Yes.

Rodriguez: Do you have any questions about the form or your requirement to make full, complete, and truthful statements during this interview?

Sandoval: I'm sorry. One more time on the question?

Rodriguez: Do you have any questions about the form or your requirement to make full, complete, and truthful statements during this interview?

Sandoval: No.

Rodriguez: As a reminder, you're being ordered not to discuss the facts of this case or any of the issues discussed during your interview other than with your representative or attorney. Do you understand?

Sandoval: Yes.

Rodriguez: If you need a break for any reason, you let me know, and I'll do my best...you know, we'll accommodate you, obviously. But the only thing that I ask, and this is just a personal, personal thing, is that if I ask you a question, you answer it, and then we'll take a break, okay? Is there any reason why this interview cannot take place today?

Sandoval: No.

Rodriguez: So, I'm just gonna get a quick background of your time with the department and then just starting with your graduation date and tell me your history with the department.

Sandoval: I graduated in April of 1999 and was assigned to the Inmate Reception Center. I went out to patrol in December of '02 to Carson Station, stayed there until March of '08. I was then assigned to Industry Station until my promotion February of 2022. And I'm currently assigned to Altadena Station as a sergeant.

Rodriguez: When did you get to...sorry...Industry?

Sandoval: March of 2008.

Rodriguez: And then you promoted from there?

Sandoval: Yes.

Rodriguez: What positions did you...or what, what positions did you hold while you were at Industry Station?

LASD-000075 RELEASE DATE: 6/2/2023

POST2307511-TSB2

Sandoval: I was a field deputy for about a year, and then I promoted to detective and...sometime in 2009.

Rodriguez: And then you were a detective from 2009 to 2022 when you promoted?

Sandoval: Yes.

Rodriguez: What month did you leave Industry Station? Do you recall?

Sandoval: It would've been February of this year.

Rodriguez: And that's because you promoted, right?

Sandoval: Yes.

Rodriguez: And did you arrive at Altadena on that same month?

Sandoval: Yes.

Rodriguez: Where...what's your...do you have a specific position or a specific assignment right now?

Sandoval: I'm a field sergeant.

Rodriguez: So, do you recall...and I know it's been a while. But I have an in-service, and I'll show you if you don't recall, if you were working on May 13, 2021, at Industry Station?

Sandoval: I don't recall.

Rodriguez: So, for the record, I'm gonna show you two in-services. The first one is gonna be the AM shift in-service for Industry Station titled Thursday, May 13, 2021. Do you see yourself on there?

Sandoval: Yes.

Rodriguez: And then the second...the document that I'm gonna show you is the P...PM shift in-service for Industry Station dated Thursday, May 13, 2021. Do you see yourself on there?

Sandoval: Yes.

Rodriguez: What position are you working for...on dayshift?

POS 230511-1-SB2

Sandoval: On dayshift, I was CARPed as the dispatcher. And on PMs, I was working overtime as a watch deputy.

Rodriguez: You...can you kind of tell me what the layout is from...let's say from inside the...I guess the dispatch area?

Sandoval: I mean, it's an enclosed room. We have the LETs that answer the phones in there. There's a glass partition that separates the watch deputy and the dispatcher from them.

Rodriguez: If you look out, do...are there windows, or is it just an encl...completely enclosed room?

Sandoval: There's windows where you can look out to the lobby of the station. And then if you look the other direction, I guess like nor[illegible] the station, there's a doorway that leads to the door that leads out to the lobby and to the ca... like, area where there's a cashier. And then a little, like, hallway that leads...one way is to the locker room, the other way is to the watch sergeant's office.

Rodriguez: From there, do you have a view anywhere of the jail or anything?

Sandoval: No. The view would be from video surveillance cameras that are in the station. There's a large monitor in dis[illegible]tch with a view of a bunch of cameras throughout the station.

Rodriguez: On that day, do you remembe[illegible] having...or having an interaction with a reserve deputy that was dropping off a, a female prisoner?

Sandoval: Yes.

Rodriguez: Can you tell me what you recall of that incident?

Sandoval: Just that I saw that they were bringing a female in. I couldn't remember if we had a male...or a female jailer or not that day. But I usually tend to help them out by going in and doing a female search for them when they bring a, a female prisoner. Something drew my attention, don't recall what, probably to go do a search 'cause I do remember going into the jail. When I walked in, the reserve was in the doorway of the restroom, so I went in to check on him and inmate that be brought in. I noticed that she was in the restroom, so I told him pretty much, hey, you gotta leave. I'll make sure she's okay. So, he left and was doing whatever...I don't remember what. So when she came out of the restroom, I searched her. And that's pretty much all that I remember. I know at some point...she was wearing, she was wearing a skirt. When she was in the restroom, I noticed that it was very inappropriate that she had her legs, like, wide opened, and it didn't

LASD-000077 RELEASE DATE: 6/2/2023

POST230751-SB2

look like she was wearing any underwear. And so I told her, hey, you gotta close your legs. You can't, you can't do that. She seemed like she was very intoxicated. At one point, I do recall giving her clothes just because I noticed that when he was trying to do the breathalyzer, she kept like opening her legs just very inappropriately. And I think I told her again, like, hey, you need to close your legs. And she wasn't doing what I told her, which is when I asked the trustees, hey, bring me some pants to put on her 'cause I figured, obviously, she's intoxicated, she's not listening. So, the best I could do was get her some pants so that at the very least, if she did that, nobody would see her, pretty much. So...

Rodriguez: Do you remember what she looked like?

Sandoval: Just that she was an Asian, petite lady. That's all.

Rodriguez: And you said she wasn't wearing any underwear?

Sandoval: I don't believe she was.

Rodriguez: Do you remember at any point in time seeing her kind of like...I mean, I know you mentioned that she kept opening her legs...but kind of bent over and then backing up into Deputy Chen's crotch at any point in time?

Sandoval: I don't recall seeing that.

Rodriguez: Did you have a conversation with him about him transporting...anything pertaining about him transporting a female and her acting this way?

Sandoval: Yeah. I told him that in the future, probably best for him to call for a female deputy or someone else to come out with him to transport. I told him he needed to be careful with any allegations that would be made seeing how she was acting. So I told him, you know, next time, to make sure that either he called for another deputy or that he had a female present with him.

Rodriguez: What did he tell you?

Sandoval: He said okay. He understood.

Rodriguez: Do you know if he notified anybody, like a supervisor of her actions or...

Sandoval: No. I don't know.

Rodriguez: Did you by chance make any of your supervisors aware of how she was acting or anything?

POST 8075 1-1-SB2

Sandoval: No, because I gave her the pants. So I figured that would resolve the issue.

Rodriguez: Do you have any questions? Can you describe the, the deputy? Deputy Chen?

Sandoval: I think he's...

Rodriguez: Have you ever worked with him before, by the way?

Sandoval: I think I know who he is. He's an Asian guy, kind of chubby. And have I worked with him? Like, I've seen him around the stat on during the time that he was a reserve there but never worked a radio car with him if that's the question.

Rodriguez: Did she say...did you hear if she said anything to him or even you or anyone else that was walking by or any...

Sandoval: She was saying something to him n Chinese. I couldn't understand what she was saying.

Rodriguez: Did he tell you what he wa ...what she was saying or anything?

Sandoval: I didn't ask.

Rodriguez: Anything else that you might think of that she, she...you know, like, her behavior or her d meanor she was acting?

Sandoval: Just that she was intoxicated. And like I said, as far as her...you know, when she was wearing her skirt or whatnot, just very inappropriate.

Rodriguez: Did you have bodyworn camera? Had you been issued bodyworn camera equipment at that time?

Sandoval: I don't recall.

Rodriguez: Did you help them search her?

Sandoval: I searched her when she was in the jail, yes.

Rodriguez: Is that when you realized that she wasn't wearing underwear?

Sandoval: Uh-huh (AFFIRMATIVE).

Rodriguez: Did she say anything to you when you were searching her?

LASD-000079 RELEASE DATE: 6/2/2023

POST230751-1SB2

Sandoval: Not that I recall.

Rodriguez: Did she act inappropriate in any way or (talking over)?

Sandoval: She was just, she was just intoxicated.

Rodriguez: And you guys didn't use force on her?

Sandoval: No.

Rodriguez: Was anyone else in or around the area when this took place?

Sandoval: I don't remember.

Rodriguez: Other than Deputy Chen, was anybody else present when you were searching her inside the jail?

Sandoval: I don't recall.

Rodriguez: I'm gonna take a quick break because I realized that the...I have the photos, and I wanna show you some photos.

Sandoval: Uh-huh (AFFIRMATIVE).

Rodriguez: So, we'll take a short break, a very brief break at the...

Sandoval: Is there a, is there a restroom? Sorry.

Rodriguez: Yeah, at three.

Villareal: Yeah, just to the right.

Rodriguez: ...at 3:15, we'll go off the record.

Sandoval: Okay.

**********Audio Recording Paused**********

Rodriguez: We're back on the record, same four people still in the room. And we're back on the record at 3:21. I seem to forgot to have you initial the in-services that I showed you earlier. So just go ahead and initial, I'm sorry, on the left-hand side. And then date it. And today is 8/30/22...and all four pages. I'm gonna sho...next, I'm gonna show you some photos, and they're gonna be...and then you're gonna tell me if you recognize them or if you don't, okay? So, the first photo I'm gonna show you is labeled May

POST230751-1-SB2

13, 2021, timestamped 21:01 and 39 seconds. Do you recognize this person there?

Sandoval: Yeah. That's the deputy.

Rodriguez: This is Deputy Chen?

Sandoval: Uh-huh (AFFIRMATIVE).

Rodriguez: Go ahead and initial, same spot, left, and then date it. And then the next photo I'm gonna show you is just a different view, but it's again dated May 13, 2021, timestamped 21:19, 52 seconds. Is that still Deputy Chen?

Sandoval: Yes.

Rodriguez: So, the next photo, I know it's kind of blurry, but once again, it's dated of May 13, 2021, timestamped 20:58 with 15 seconds. Do ˙ ou recognize that female?

Sandoval: Yeah. That's the female that I did the search on.

Rodriguez: Go ahead and initial, initial and date, please. And then the next photo is just a different view of the camera, of the camera captured at all screen grabs from bodyworn camera footage, and it's dated May 13, 2021, 21...timestamped 21:15 with 41 seconds. Is that the same female still?

Sandoval: Yes.

Rodriguez: The next photo, it's, it's depicting the same female that you already identified, but it's kind of a full-body photo...screen grab. And again, it's dated May 13, 2021, timestamped 21:22 with six seconds. Is that the female?

Sandoval: Yes.

Rodriguez: Is that hat you recall she was wearing? The skirt?

Sandoval: Yeah.

Rodriguez: Can you describe what she's wearing?

Sandoval: A white skirt and a, a top.

Rodriguez: How, how, how...what length would you say the skirt is at?

Sandoval: Above her knees.

POST 2075 11-1-SB2

Rodriguez: Go ahead and initial and date, please. And then final, you know, just in case there was any doubt, is there...is that the female that you helped Deputy Chen search?

Sandoval: Yes.

Rodriguez: Go ahead and initial and date, please. Sherry, you have anything?

Lawrence: No.

Rodriguez: Well, is there anything else that you would like to add that I haven't already kind of touched upon or that you might recall?

Sandoval: No.

Rodriguez: So, at this point, I don't have any more questions for you. Just go ahead and conclude the interview.

Sandoval: Okay.

Rodriguez: We're gonna go off the record at 3:25 PM.

POST230711-1-SB2

LASD-000082 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

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3. WITNESS SAMUEL MOON

LASD-000083 RELEASE DATE: 6/2/2023

WITNESS SAMUEL MOON

Rodriguez: Okay. We're on the record. Today is September 6th, 2022. And the time is 0433 hours. I am at Crescenta Valley Sheriff's Station conducti .g a witness interview. I am Sergeant Sara Rodriguez. I'm from the Los Angeles County Sheriff's Department Internal Affairs Bureau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez. My last name is spelled R-o-d-r-i-g-u-e-z. Being interviewed today is Deputy Samuel moon. Sir, for the record and voice recognition can you please spell your name and state your employee number?

Moon: Uh-huh. First name Samuel, S-a-m-u-e-l. Last name is M on, M-o-o-n. Employee number is 637380.

Rodriguez: It should be noted that this interview will pertain to an incident that occurred on May 14, 2021. Thi case is regarding an administrative investigation involving Temple Sheriff's Station personnel I.A.B. case No.IV 2550292. The incident occurred on May 14, 2021. Prior to the -- prior to the interview I gave you an Adm nition for Witnesses Sworn and Non-Sworn form. Did you have an opportunity to review the form?

Moon: Yes. I did.

Rodriguez: Did you understand the form?

Moon: Yes.

Rodriguez: I see that you marked "yes" in boxes and placed your initials besides each box, signed and dated the form. Is that correct?

Moon: Yes.

Rodriguez: Do you have any questions about the form or your requirement to make full, complete and truthful statements during this interview?

Moon: No questions.

Rodriguez: As a reminder, you are being ordered not to discuss the facts of this case or the issues discussed during -- during your interview other than with your representative or attorney if you have one. Do you understand?

Moon: I understand.

LASD-000084 RELEASE DATE: 6/2/2023

Rodriguez: If you need a break for any reason please let me know and I will accommodate you. The only thing that I ask of you is that if I ask you a question please answer it and then we'll go ahead and take a break.

Moon: Uh-huh.

Rodriguez: Is there any reason why this interview cannot take place today?

Moon: No reason.

Rodriguez: Okay. So starting with your grad -- academy graduation date tell me about your time on the department.

Moon: I graduated in September of 2017. Then we went to I.R.C. until 2019. Late -- late 2019. Then I went on to Temple Station. Trained at Temple Station and stayed there for -- till I want to say February or March of this year. Which is 2022. And then I transferred to Crescenta Valley Station.

Rodriguez: Okay. And you said you got to Temple in 2019; right?

Moon: That's correct.

Rodriguez: Okay. That's where you trained?

Moon: Yes, ma'am.

Rodriguez: And then what capacity were you working there?

Moon: Patrol. Working the line. Answering calls for service and stuff like that.

Rodriguez: And you're currently assigned to Crescenta Valley; right?

Moon: Correct.

Rodriguez: What position do you work right now here?

Moon: As a deputy sheriff.

Rodriguez: Are you in the field?

Moon: Yes.

Rodriguez: Okay. Were you working at Temple Station on May 14, 2021?

Moon: I --

POST230751A1-SB2

Rodriguez: Did you --

Moon: If I'm on the in-service I --

Rodriguez: Okay.

Moon: -- so -- yes.

Rodriguez: So, for the record, I'm going to show you a photocopy of the e.m. -- e.m. shift in-service for Temple Station dated Friday, May 14, 2021. Go ahead and look at it. If you see your name on it just tell me what you were working.

Moon: Yes. It looks like I was working 51 --

Rodriguez: Okay.

Moon: -- that shift.

Rodriguez: What were your hours that shift?

Moon: 22 to 06.

Rodriguez: Did you have a partner that day?

Moon: Yes.

Rodriguez: Okay. And who was your partner?

Moon: Deputy Cano.

Rodriguez: Okay. Can you describe Deputy Cano?

Moon: Like just like how he looks?

Rodriguez: Uh-huh.

Moon: A male Hispanic. Last I saw him he had a shaved head. My -- like 5'7". 5'8". Do I need more descriptions or -- (laughing)

Rodriguez: (laughing) Whatever you can recall of him.

Moon: Description wise that's -- yeah.

POST230711-1-SB2

Rodriguez: Okay. Before we go any further do me a favor and initial at the bottom left hand corner of the -- you can initial and date both pages. Okay?

Moon: Yes, ma'am. Right here?

Rodriguez: Uh-huh.

Moon: All right.

Rodriguez: There's two pages.

Moon: Oh.

Rodriguez: Had your body worn camera equipment been i ued?

Moon: By that day?

Rodriguez: Yeah.

Moon: I can't recall. Pos -- possibly. I'm not a hundred percent sure.

Rodriguez: Okay. Give me one second. We're going to go off the record momentarily. At 4:39 in the morning.

********Audio Recording Paused********

Rodriguez: All right. We're back on the record at 4:40 a.m. So you were saying that you didn't -- you don't remember whether it had been issued; right? Your body worn camera equipment?

Moon: Correct. I don't remember exactly when it was --

Rodriguez: Okay.

Moon: -- issued.

Rodriguez: When -- when you were issued were you at Temple or here?

Moon: I was at Temple.

Rodriguez: You were still at Temple?

Moon: Uh-huh.

Rodriguez: Okay. And you were trained on it? Right?

POST23075111-1-SB2

Moon: Yes. I did go to the training for it.

Rodriguez: Okay.

Moon: Well, when I initially got to Temple and did my training there I didn't -- they -- it wasn't issued then. It was after I got off training. When I got it.

Rodriguez: Were you still on training when you rode with Deputy Cano? If you can recall.

Moon: This was March of 20 --

Rodriguez: This --

Moon: I was off training.

Rodriguez: -- was May.

Moon: I was off training.

Rodriguez: You were off training?

Moon: Yeah.

Rodriguez: Right here? Okay. Can you tell me what you can remember from working that evening wit . him?

Moon: No. Honestly, nothing specific.

Rodriguez: Okay.

Moon: I mean, just based off the in-service I -- I guess I was drafted, but outside of that I don't remember anything else.

Rodriguez: Okay. I'm going to show you your unit history report for that day, which would have been May 14, 2021, e.m. shift and it's for unit 51. Can you look it over quickly --

Moon: Uh-huh.

Rodriguez: -- and maybe help you refresh --

Moon: Sure.

Rodriguez: -- your memory.

POST230511-1-SB2

Moon: I vaguely remember the 211 report. I remember it being in the Pasadena county area I believe. I don't -- I'm not -- I can't really remember the other stuff. But the 211 I remember taking a report for that.

Rodriguez: Okay. Who was driving that night? Do you remember?

Moon: I can't remember if I was driving or not, ma'am.

Rodriguez: Uh-huh. Were you with Deputy Cano the entire shift?

Moon: Yes. Yes. I was.

Rodriguez: Okay. During that shift did you guys transport a female to the hosp tal for an okay to book?

Moon: I guess we had the -- V1 V1 there. It's the one right -- this is the one you're referring to?

Rodriguez: Did -- do you remember?

Moon: I don't -- I don't recall, but, I mean, if it's in the log I guess we did it.

Rodriguez: Okay.

Moon: Yeah.

Rodriguez: Before I go any further can you do the same and initial --

Moon: Sure.

Rodriguez: -- at the bottom left please? And date. Was Deputy Cano with you?

Moon: During the --

Rodriguez: When you guys --

Moon: -- transport --

Rodriguez: -- did the transport?

Moon: I believe so. I remember staying with him throughout the entire shift so.

Rodriguez: Okay. And then for the record I'm going to show you an incident report for I guess it would be tag 44 dated May 14, 2021. Okay?

Moon: Uh-huh.

POST230751-1-SB2

Rodriguez: You can look at it for your reference. Okay. Do you remember which hospital you took him to? Or you took her to?

Moon: Just based off the clearance I could see that it was San Gabriel Hospital.

Rodriguez: Okay. And do you remember who drove?

Moon: I do not.

Rodriguez: Okay. Did you broadcast that you were transporting a female?

Moon: I believe so. I can't recall this specific tag, but I -- I usually don't. I mean --

Rodriguez: Uh-huh.

Moon: -- such --

Rodriguez: What information did you put out?

Moon: When -- typically in female tr nsports I say th t I'm transporting a female from 00 I guess this would be from the station to San Gabriel Hospital with the starting mileage.

Rodriguez: Okay. Did you turn on your body worn camera equipment during your transportation?

Moon: I'm not -- I don't remember if I had the body worn camera.

Rodriguez: During your shift did you guys drive out of the area at any point in time?

Moon: We drove from the station to the hospital. But --

Rodriguez: Is that out of the area?

Moon: It's kind of -- it's not in the RD. Like Temple -- it's already slightly west of it.

Rodriguez: Uh-huh.

Moon: I guess it would typically be in San Gabriel. So slightly out of the RD. It's right next to us.

Rodriguez: Okay. Not too far away; right?

Moon: Correct.

POST230711-1-SB2

Rodriguez: Do you more or less know the address when --

Moon: I can't recall the exact address. I think it's off of like Las Tunas and like I think it's like Santa Anita or --

Rodriguez: How long would it take you to get from the station?

Moon: To there?

Rodriguez: Uh-huh.

Moon: Probably five minutes, ma'am. Around.

Rodriguez: Okay. Do you recall the female? Do you recall what she looked like or anything like that?

Moon: No.

Rodriguez: Okay. Do you recall that night did you guys driv to any place where Deputy Cano might have met with any female?

Moon: I don't recall that. No.

Rodriguez: During your shift did you guys drive to any place where Deputy Cano exited the patrol vehicle and was gone for an extended period of time?

Moon: I don't recall that either.

Rodriguez: If I reviewed the GPS data from patrol vehicle is there any reason why it would find that you guys drove outside of the area or were stopped anywhere for an xtended amount of time? Amount of time?

Moon: I don't believe so. I don't recall doing that.

Rodriguez: Okay. During the shift did you guys meet with any female anywhere?

Moon: You're talking beside -- like outside of the transportation?

Rodriguez: Yes.

Moon: I don't recall doing that.

Rodriguez: Okay. Is there anything odd that -- that you might remember about --

(radio noise)

LASD-000091 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Moon: Sorry.

Rodriguez: -- that -- that night?

Moon: Nothing that stands out currently.

Rodriguez: If you -- go ahead and initial the bottom and date it please. Okay. So I'm going to show you a photograph. And for the record it's a DMV photo. Or I'm sorry. A booking photo of a female. Does she look familiar to you?

Moon: No. I don't remember -- I mean, I'm assuming this is the female that we transported, but I don't remember how she looks like so --

Rodriguez: Okay. But she doesn't -- I mean, I don't want you to assume or anything. She doesn't look familiar to you?

Moon: No. Not specifically. No.

Rodriguez: Okay. All right. Just go ahead and initial at the bottom there. Okay. The only other thing that is there anything else that you could think of that I maybe haven't touched upon?

Moon: No. Nothing that I can think of. No.

Rodriguez: Okay. Okay. One more thing. I have to show you -- I'm sorry. Listen to your audio. To we're going to pause really quick. I'll bring it up --

Moon: Uh-huh.

Rodriguez: -- and then we'll come back on the record. Okay? And we're going to go off the record momentarily again at 4:53 a.m.

We're back on the record at 5:05 a.m. So I'm going to play you an audio again and then you just tell me if the -- you recognize the voice.

Moon: Uh-huh.

Rodriguez: And if, in fact, that's you. Okay?

Recording: On Friday, May 14th, 2021 at 4:15 a.m. with G.M.T. offset of negative 420 minutes. Agent I.D. is extension is 1097.

Male Voice: Temple 51. Transporting a white female from Temple Station to San Gabriel medical center. Starting mileage is 76890. 51.

POST230751-1-SB2

Dispatcher: 51. Your mileage starts at 0415 hours.

Rodriguez: That was you; right?

Moon: Yes, ma'am.

Rodriguez: Okay. How long were you guys at the hospital for? Do you recall?

Moon: I do not recall.

Rodriguez: Okay. Were you with -- with her and Cano the entire time?

Moon: I believe so. Yes.

Rodriguez: Uh-huh.

Moon: We were together.

Rodriguez: And another recording.

Recording: (INAUDIBLE) 1 on Friday, May 14, 2021 at 421 a.m. with G.M.T. offset of negative 420 minutes. Ag nt I.D. is -- extension is 1097.

Male Voice: Temple 51 Eddie. Mileage with a female transport going to be 76892. Temple 51.

Dispatcher: Temple 51. Your end of mileage ends at 0421 hours.

Rodriguez: All right. That's all I have for you.

Moon: Uh-huh.

Rodriguez: Do you have any questions for me?

Moon: No. No, ma'am.

Rodriguez: Okay. And you guys transported her back; right? Both of you guys? Back to the station?

Moon: I -- yeah. I believe so. Yes, ma'am.

Rodriguez: Okay. All right. So if you don't have any questions for me I don't have anything else. We'll go off the record at 5:08 a.m.

POST230711-1-SB2

POST230711-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

4. WITNESS RAUL OSUNA

LASD-000094 RELEASE DATE: 6/2/2023

WITNESS RAUL OSUNA

Rodriguez: We're on record. Today is September 8th, 2022. And the time is 2:27 PM. We're at Temple Sheriff's Station inside the captain's office, conducting a witness interview. I'm Sergeant Sara Rodriguez and with me is Sergeant Ed Luna, we are from the Los Angeles County Sheriff's Department's Internal Affairs Bureau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez. My last name is spelled R-O-D-R-I-G-U-E-Z. Sergeant Luna, for the record and voice recognition, can you please spell your last name?

Luna: Luna, L-U-N-A.

Rodriguez: Being interviewed today is Custody Assistant Raul Osuna. Sir, for the record and voice recognition, can you please spell your last name and state your employee number?

Osuna: Osuna, O-S-U-N-A. 535934.

Rodriguez: This is regarding an administrative investigation involving Temple Station personnel under IAB case number IV2550292. This incident occurred between May 14th, 2021, and May 26th, 2021. Prior to going on the record, I provided you with an admonition for witnesses sworn and non-sworn form. Did you have an opportunity to review the form?

Osuna: Yes.

Rodriguez: Do you understand the form?

Osuna: Yes.

Rodriguez: I see that you marked 'yes' on both boxes and initialed besides each box, signed and dated the form. Is that correct?

Osuna: Yes.

Rodriguez: Do you have any questions about the form or your requirement to make full, complete and truthful statements?

Osuna: No.

LASD-000095 RELEASE DATE: 6/2/2023

POST2307511-1-SB2

Rodriguez: During this interview?

Osuna: No.

Rodriguez: As a reminder, you're being ordered not to discuss the facts of this case or any of the issues discussed during this interview, other than with your representative or attorney if you have one. Do you understand?

Osuna: Yes.

Rodriguez: If you need a break for any reason, please let me know and I will do my best to accommodate you. The only thing that I ask is that if I throw a question at you or I ask you a question, you answer it and then we'll go ahead and you know, take a break. Okay?

Osuna: Okay.

Rodriguez: Is there any reason why this interview cannot take place today?

Osuna: No.

Rodriguez: Alright. So, we'll just start off with basic information about you. From the time that you graduated the academy, the CA academy, and then tell me about your time on the Department, up until now.

Osuna: So, once I got out of the academy, I, my first unit of assignment was Mira Loma Detention Facility.

Rodriguez: When did you, what year did you complete the academy?

Osuna: 2008.

Rodriguez: Uh huh, and you went to Mira Loma you said?

Osuna: Yes.

Rodriguez: Okay.

Osuna: And then once Mira Loma closed down, I went to North Facility.

Rodriguez: When did you leave Mira Loma?

Osuna: In, once it closed down. I think it was 2010, 2011.

LASD-000096 RELEASE DATE: 6/2/2023

POST250511-1-SB2

Rodriguez: Okay.

Osuna: And then went to North Facility. I was there for about a year and a half. And then I was then went to Santa Clarita Station.

Rodriguez: When did you get to Santa Clarita, do you remember?

Osuna: Roughly let me see. I'm not sure.

Rodriguez: Okay.

Osuna: And then, and then from Santa Clarita Station, I came here to Temple Station, and I've been here for six years. So, -

Rodriguez: 2016?

Osuna: Yeah.

Rodriguez: Yeah, okay. Do you remember more or less how long you were at Santa Clarita?

Osuna: Five years.

Rodriguez: Five years, okay. What's your current position right now?

Osuna: Custody assistant, jailer.

Rodriguez: So, you worked the jail?

Osuna: Yes.

Rodriguez: Strictly the jail, okay.

Osuna: Yes.

Rodriguez: So, were you working on Friday, May 14th, 2021?

Osuna: Yes.

Rodriguez: You were, okay. Alright, do you remember, you were working the jail?

Osuna: Yes.

Rodriguez: I'm assuming. Okay. You have any questions?

LASD-000097 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Luna: No, not so far, no.

Rodriguez: What shift were you assigned to?

Osuna: Early morning shift.

Rodriguez: And what are the hours for that shift?

Osuna: It's 23:00 to 06:00 hours. So, 11:00, 10PM to 6AM.

Rodriguez: Did you have a partner for that day?

Osuna: Not sure. I don't remember.

Rodriguez: And then for the record, I'm just going to show you a duplicate in-service, EM in-service shift. EM shift in-service for Temple Station. And it's dated Friday, May 14th, 2021. Go ahead and look, find yourself and then tell me if you had a partner.

Osuna: I did not have a partner.

Rodriguez: Do me a favor and you're going to initial since I, every, from this point forward, anything I show you, you're going to, I'm going to ask you to initial it, okay?

Osuna: Yes.

Rodriguez: And you're going to initial on the bottom lefthand corner. And you're going to put the date as well. Both, both –

Osuna: On both forms?

Rodriguez: Yeah. And today's the 8th. 9/8/22. Have you ever been issued a body-worn camera equipment?

Osuna: No.

Rodriguez: No, okay.

Osuna: We did wear it at Santa Clarita Station, but it was the station's.

Rodriguez: And here, have you been trained?

Osuna: No.

LASD-000098 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

Rodriguez: On it? No. Okay. Were you trained in, at Santa Clarita with it or no?

Osuna: It was, it was purchased by the, by Lieutenant there. So, they showed us how to use it.

Rodriguez: But not officially? Okay.

Osuna: Not officially.

Rodriguez: Alright. So, during the night of May 14th, 2021, do you recall sending out a female for an okay to book?

Osuna: No.

Rodriguez: You don't? Okay. So, I'm going to show you some paperwork okay? And it's basically it's a booking packet. You're going to go you know, kind of go through it. I'll show you some of the, just the booking. So, for the record, I'm going to show you a, a document titled Los Angeles County, booking and property record. Do you recognize the female?

Osuna: No.

Rodriguez: In there? Okay. Any of the details seem familiar to you?

Osuna: No.

Rodriguez: No. Okay. Oh, sorry. Go ahead and initial. On this one as well. It's the back o the booking slip. I'm going to show you another document which would be I guess the original, the, and for the record, this document is titled Los Angeles County Jail booking and property record for booking number 6179203. Does that kind of look familiar?

Osuna: It does look familiar.

Rodriguez: Okay.

Osuna: The actual form, not the actual booking.

Rodriguez: Oh okay. But the booking doesn't, nothing, the name? Nothing stands out to you?

Osuna: No.

POST23075M-1-SB2

Rodriguez: Go ahead and initial. Do you remember if by chance you, so you said you don't remember sending anybody to go get an okay to book?

Osuna: The thing is, we send so many people to okay to books. So many DUI's, so many uncoops (uncooperative), that it's, they all seem to, seem all the same, so.

Rodriguez: So, I'm going to show you another photo, okay? And then you tell me if it sort of looks familiar to you. These photos are in color, okay? So. And for the record, I'm showing you a booking photo, colored b oking photo of a female, Asian with brown hair, wearing a black tank top. Correct?

Osuna: Yes.

Rodriguez: Does she look familiar?

Osuna: No.

Rodriguez: Go ahead and initial.

Osuna: Can I ask a question?

Rodriguez: Sure.

Osuna: What, what would she go to okay to book for?

Rodriguez: I don't know. That's what I'm trying to find out.

Osuna: Oh.

Rodriguez: Does she look familiar? And then for the record, I'm showing you a screenshot of the Axon body worn camera footage, and it's dated May 13th, 2021. And time stamped 21:22:06 hours.

Osuna: No, she doesn't look familiar.

Rodriguez: Nothing? Okay. Let's see. Do you remember that night having contact with Deputy Cano or Deputy Moon?

Osuna: No.

Rodriguez: No, okay. Were you inside the jail the whole time, the entire shift?

Osuna: Yes.

LASD-000100 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: You have any questions?

Luna: No.

Rodriguez: So, nothing, is there anything that stands out about that night to you?

Osuna: No, because we get so many bookings. Like we're getting like eignt, nine, ten bookings a day during early morning shift. So, it's all a blur. Usually when, after a year.

Rodriguez: So, in looking at the, okay. Let me ask you this. In looking at the booking property and record, the electronic version of it.

Osuna: Uh huh.

Rodriguez: What's the charge that's on there?

Osuna: DUI above .08.

Rodriguez: What would be some of the reasons why a person or why you would have, or a, and I'm saying you, because you were working that night. That you would have a prisoner transported to go get an okay to book, being the charge or?

Osuna: Say if she was involved in a traffic collision, she was uncoop in the field and say she banged her head in a patrol vehicle, she had any medical conditions, took any medications, open wounds.

Rodriguez: Let's see. But normally that, what's the, can you read off, the charge on there?

Osuna: 23152 (b) vehicle code.

Rodriguez: And for that, would that be normally a cite out or would it be a hard booking?

Osuna: It's a hard booking with a cite out.

Rodriguez: Let's see. Hold on one second.

Osuna: But sometimes they do cite out in the field. Depending if you know, they have medical conditions and they get a, like some, a family member or somebody to take care of them while, for that night.

LASD-000101 RELEASE DATE: 6/2/2023

POST 2507511-1-SB2

Rodriguez: So, the next set of I guess documents that I'm going to show you are pretty much, you said she was brought in for driving under the influence, right?

Osuna: That's correct.

Rodriguez: So, would she have been like I guess under the influence?

Osuna: Yes.

Rodriguez: What's the procedure once she's, when someone comes in under the influence?

Osuna: It all depends on how intoxicated they are. If they're you know, they can't stand up, upright or they can't you know, stand up by themselves or sit down by themselves, that they're going to injure themselves falling off the bench inside the booking cell; we'll ta.e them to the intoxication cell and we'll hold them in there for, until they're a little bit b tter. Sometimes what, we'll offer them food. If they w nt to eat, they will give them food so they can sober up a little bit. And then once they sober up enough, we'll pull them out to Live Scan them and begin the rocess.

Rodriguez: Okay.

Luna: No, no questions at this point.

Rodriguez: Alright. So, earlier you mentioned if they were kind of uncoop in the field or just right now you had mentioned if they were too intoxicated, they can't stand up. Where would, you said you would normally put them where?

Osuna: The intoxication cell.

Rodriguez: How often are the checks done inside the intoxication cell?

Osuna: Every thirty minutes.

Rodriguez: And how do you keep records of them?

Osuna: With the intoxication observation sheet.

Rodriguez: So, for the record, I'm showing you the intoxication observation sheet for, it looks like it started on the date May 13th, 2021, for booking number 6179203. And then the file number 921-05266-025-243. Can you go ahead and it looks like it's a two pager.

LASD-000102 RELEASE DATE: 6/2/2023

POST2075-11-SB2

Osuna: Yes.

Rodriguez: Right? Okay. Can you go ahead and read through it, just kind of briefly to yourself, you don't have to read it out loud.

Osuna: The comments? Okay.

Rodriguez: You don't have to read it out loud. Just kind of browse through it to yourself. I'll give you a little bit so you can look at it.

Osuna: Okay.

Rodriguez: I'm going to make note to maybe about halfway down the page, and just right below where it says additional comments/observations. Who's the jailer that started the sheet?

Osuna: I was.

Rodriguez: What time did you start it?

Osuna: 22:50.

Rodriguez: Anything in the comments stand out to you or kind of refresh your memory about her?

Osuna: It looks like she was very uncoop. Once we put her in the intoxication cell, she was banging on the cell door, she was screaming. She just basically being loud in the cell.

Rodriguez: Anything else that you can recall?

Osuna: No.

Rodriguez: No? Nothing? Okay. Go ahead and initial those two pages. And finally, (inaudible). Okay. So, actually no, one more. This is going to be the preliminary, for the record, it's Los Angeles County Sheriff's Department preliminary field medical screening form. Can you tell me, and again, it's dated May 13th, 2021, for booking number 6179203. Can you tell me what this form is for?

Osuna: This form right here is for, it's a Covid form. Just to go over the questionnaire to see if they have any symptoms of Covid.

Rodriguez: And who filled, who fills this out?

LASD-000103 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Osuna: The deputy does.

Rodriguez: Who filled this out, can you read at the bottom?

Osuna: It's Deputy E. Chen.

Rodriguez: And then this form, for the record, it's titled arresting deputy officer observation. It's actually the same form. It continues right, there's three pages?

Osuna: Yeah.

Rodriguez: For the same booking number.

Osuna: No, this is the medical form.

Rodriguez: Oh, I'm sorry. Oh yeah, you're right. Okay. So, then for the record, this is titled Los Angeles County Unified Arresting Medical Screening Form, arresting agency Temple. Booking number 6179203, and it's dated May 13th, 2021. Can you look at the form? Is there anything that again, just kind of look at it. Anything that stands out with the form?

Osuna: The only thing that was checked 'yes' was under the influence of alcohol or drugs.

Rodriguez: And you said right now that the only thing that was checked off 'yes', would be that. Why did you point out to that, what brought you to that?

Osuna: Because it's the only one that is checked 'yes'.

Rodriguez: But what does that mean?

Osuna: That, at that point, once we identified that she was under the influence of alcohol or drugs, we do begin an intoxication sheet.

Rodriguez: Alright. Go ahead and initial. And the other one as well please.

Luna: The intoxication sheet, can I see it real quick? The one that he had made comments on it. Is there anything in here, in these comments that you would notify a supervisor saying that this person needs to be transported to the hospital for an okay to book?

POST2307511-1-SB2

LASD-000104 RELEASE DATE: 6/2/2023

Osuna: Yes and no. Say if she's banging on the door and she, and you could actually see swelling from her hands or redness on her hands, or anything that she really injured herself, then we would take her.

Luna: Is there anything here in the log saying that you would have notified a supervisor or a deputy about transporting her from Temple Station to the hospital for an okay to book?

Osuna: On this form?

Luna: Yes.

Osuna: No.

Luna: Is there anywhere where you would log saying that this person was at the Station and had to be transported to an, for an okay to book to a hospital?

Osuna: Just in the count log.

Luna: In the count log?

Osuna: Uh huh.

Luna: What's the normal procedure for you to decide when you, when this person should go to a hospital for an okay to book and then brought back?

Osuna: Like usually when they come in, the deputy will bring them in and while they're in the booking cell, I usually ask, "Hey, do you have any medical issues? Do you need medical attention for any reason?" or I'll do it while I'm Live Scanning them. To build a report and see if they need any medical attention.

Luna: Is there a' y reason why someone would come into a station to be booked for under the influence of drugs or alcohol and take a period of over two, three, four hours, five hours, six hours and then decide that this person needs to be transported to the hospital for an okay to book?

Osuna: Yeah. Sometimes they don't tell us their medical issues in the beginning. They'll say that they don't have any medical issues, and then once they sober up or they need their medication, at that point they'll let us know, "Hey, I take medication for this."

POST230751 1-SB2

LASD-000105 RELEASE DATE: 6/2/2023

Luna: So, like in this case, when you said that in the intoxication observation sheet, it said the person was being uncooperative, would you put down the reason why she was being uncooperative or no, on this sheet?

Osuna: No.

Luna: No? Okay.

Rodriguez: So, earlier you said something about the count log, that something would have been noted on there if she would have said something that would have determined her needing to go to –

Osuna: No. Well, the way I understood what he said is like is there any way we log that she was transported. To like, to the hospital. So, yeah. So, I'll, I usually put that she was sent to the hospital at this time, and then returned at this time.

Rodriguez: And where are those, where are those logs kept?

Osuna: The admin jailer has those.

Rodriguez: Okay.

Osuna: So, by –

Luna: And who is the admin jailer?

Osuna: It's Jessica Cook.

Rodriguez: Okay.

Luna: What time did she go to the hospital?

Rodriguez: So, tha''s what's going to be my, so. She comes in at, I'm just going to ask you. She comes in at about 22:00 hours, yeah. She gets to Temple about 22, 23, approximately 22, 23:00 hours. Okay? And then she's sent to get an okay to book at, and this, the, this happens on May 13th, 2021, at 22:23 hours. Right? She comes in. And then at about 04:15 hours on you know, May 14th, 2021, she's sent to go get an okay to book.

Osuna: Uh huh.

Rodriguez: So, my question is, what would have been a reason for that? We're talking about you know, ten, eleven, twelve right? One, two, three, four,

LASD-000106 RELEASE DATE: 6/2/2023

POST230751-LSB2

five. For six hours. What would have been a reason for that lag time that she wasn't sent? Because you start, according to, you started the intox log, right?

Osuna: Uh huh. Yes.

Rodriguez: Yeah. So, you started it right pretty much right when she comes in.

Osuna: Yes.

Rodriguez: 22:50. So, what would have been that lag time or how come so much time elapsed that from the time when she gets here you know, and you do the intox sheet for the cell, to the point where she's at four o'clock in the morning the next day she's sent to go get an okay to book?

Osuna: It could be that she, at the beginning she was super uncoop, that she wasn't letting us know that she had medical needs and so, she was in the intox cell until she sobered up. And then once we Live Scanned her and she was a little bit more sober, and once we put her in a regular cell, she let us know that she needed medical attention and we still needed a unit to take her to get an okay to book. So, it could have taken the unit a little time to get to us, to get her some medical attention.

Rodriguez: And what would have been your procedure, let's say if you determined okay, she needs medical attention at this point. What would have been, how would you handle that, tell me from the beginning to the end.

Osuna: So, once they tell me that they need medical attention and the arresting deputy is not currently there at the station, I'll talk to the watch deputy so they can get me a transport to the hospital.

Rodriguez: Okay.

Luna: To the watch deputy?

Osuna: Yes.

Luna: And afterwards, what would happen? You just wait and set everything up or what would you do?

Osuna: Yes. So, if he has a unit, he'll let me know oh like you know, 53 Adam will be the one taking him. And then so, we just wait until they're done with whatever call they're on or anything that they cleared up, and then they'll show up to the jail to take them to an okay to book.

LASD-000107 RELEASE DATE: 6/2/2023

POST 2075 1 SB2

Luna: Okay.

Osuna: And usually with the females, they'll, and it's only males on, they usually try to get a two-man car.

Rodriguez: Once she was brought in and she was booked, do you remember Live Scanning her?

Osuna: I don't remember her at all.

Rodriguez: If she would have been extremely intoxicated, would you have Live Scanned her right away?

Osuna: No.

Rodriguez: How long does it take for the fingerprints to come back?

Osuna: It could be anywhere from, like if they've been arrested, it usually comes back pretty quick. But it could be you know, two, three, four hours if they didn't, if they've never been arrested.

Luna: What is the average for a person that's never been arrested?

Osuna: About two hours.

Luna: Two hours, okay.

Rodriguez: Alright. You have anything else?

Luna: No.

Rodriguez: Is there anything else that you would like to add that I didn't already cover or ask you about?

Osuna: No.

Rodriguez: No? Okay. Alright, well with that being said, I don't have any more questions. Okay? And then we're going, do you have any questions?

Luna: No, I have no more questions.

Rodriguez: At this point we're going to conclude the interview with Custody Assistant Osuna at 2:53 PM.

LASD-000108 RELEASE DATE: 6/2/2023

POST23075 1-1-SB2

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

5. WITNESS SCOTT INTHAVONG

LASD-000109 RELEASE DATE: 6/2/2023

WITNESS SCOTT INTHAVONG

Kucharski: Hold on. It's, here we go.

Rodriguez: We're on the record. And today is September 6th, 2022. And the time is 12:44 PM. I'm at Internal Affairs Bureau office in interview room B, conducting a witness interview. I'm Sergeant Sara Rodriguez from the Los Angeles County Sheriff's Department, Internal Affairs Bureau. Which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez. Last name is spelled R-O-D-R-I-G-U-E-Z. Being interviewed today is Deputy Scott Inthavong, correct?

Inthavong: Yes.

Rodriguez: Sir, for the record and voice recognition, please spell your name and state your employee number.

Inthavong: Scott, S-C-O-T-T, Inthavong, I-N-T-H-A-V-O-N-G. 541581.

Rodriguez: It should be noted that this interview will be pertaining to an incident that occurred on May 16th, 2021. This case is regarding an administrative investigation involving Temple Station personnel under IAB case number IV2550292. Which incident took place between May 14th, 2021, and May 26th, 2021. With us in the room as well and representing Deputy Inthavong is Chris Kucharski?

Kucharski: Yes.

Rodriguez: And sir, for the record and voice recognition, can you please spell your first and last name?

Kucharski: First name Chris, C-H-R-I-S, last name Kucharski, K-U-C-H-A-R-S-K-I.

Rodriguez: Prior to your interview, I provided you with an admonition for witness sworn and non-sworn form. Did you have an opportunity to review the form?

Inthavong: Yes.

Rodriguez: Did you understand the form?

LASD-000110 RELEASE DATE: 6/2/2023

POST2007511-RSB2

Inthavong: Yes.

Rodriguez: I see that you marked 'yes' and placed your initials besides each box, signed and dated the form. Is that correct?

Inthavong: Yes.

Rodriguez: Do you have any questions about the form or your requirement to make full, complete and truthful statements during this interview?

Inthavong: No.

Rodriguez: As a reminder, you're being ordered not to discuss the facts of this case or any of the issues discussed during the interview, other than with your representative or attorney. Do you understand?

Inthavong: Yes.

Rodriguez: If you need a break for any reason, please let me know and I will accommodate you. The only thing that I ask, and this is a personal thing, is that if I ask you a question, make sure you answer it before we take a break. Okay?

Inthavong: Okay.

Rodriguez: Is there any reason why this interview cannot take place?

Inthavong: No.

Rodriguez: So, I'm going to go ahead and start with just kind of give me a little bit of background about yourself and then we'll start from your academy graduation date, up until you know, where you're at, all your assignments.

Inthavong: Okay.

Rodriguez: To the best that you can you know, recall, okay?

Inthavong: Dates? Okay.

Rodriguez: Or you can just give me years.

Inthavong: Okay.

Rodriguez: Uh huh.

LASD-000111 RELEASE DATE: 6/2/2023

POST230751-LSB2

Inthavong: That's perfect.

Rodriguez: Okay.

Inthavong: You want me to start?

Rodriguez: Uh huh.

Inthavong: Started off, I did approximately six, I did the academy, four months. Then six and a half years at Courts at CCB. Went straight to Temple. Approximately six and a half years, almost seven at Temple. I was a patrol deputy and a TO for a year and a half. And then now before I went to Custody training, I transferred to San Dimas for two months. Which was in March through May, and then I'm currently at Custody Training at BC.

Rodriguez: When did you get to Temple? Do yo . remembe r what year?

Inthavong: I'm, I'm pretty sure in 2015.

Rodriguez: And then you went to San Dimas, what year?

Inthavong: This year actually.

Rodriguez: Okay.

Inthavong: For two months.

Rodriguez: 2022? Okay.

Inthavong: Before I got picked up for Custody training.

Rodriguez: And then you've been at RTU since?

Inthavong: Yes. Since May.

Rodriguez: You're custody right? Training?

Inthavong: Custody training, yes.

Rodriguez: Alright. When you were at Temple Station, under what capacity were you working?

Inthavong: Patrol.

LASD-000112 RELEASE DATE: 6/2/2023

POST230751-HSB2

Rodriguez: And you were assigned to patrol?

Inthavong: Yes.

Rodriguez: At that time? Okay. So, what's your current position right now?

Inthavong: I do jail ops. I'm an instructor for jail ops, hot fire, divert. Basically when, and we have another position which does the CA academy, but I'm not part of that. I just do jail ops.

Rodriguez: And just for the record, jail ops means jail operations training, right?

Inthavong: Yeah.

Rodriguez: So, you're an instructor?

Inthavong: Yes.

Rodriguez: Pretty much? Okay. Were you working at Temple Station on May 16th, 2021?

Inthavong: Yes.

Rodriguez: Do you remember what you were working?

Inthavong: PM shift. Sorry. Unit 54 PM shift.

Rodriguez: And then for the record, you're looking at a DWS that you brought yourself, right? Your attorney brought it?

Inthavong: Yes, yes, I brought it.

Rodriguez: And DW, this is deputy daily worksheet, and it's, it's dated May 14th, right? Yeah, May 16th, 2021?

Inthavong: Where is the date?

Rodriguez: Yeah, it's right there.

Inthavong: Yeah.

Rodriguez: From 14 to 22:00.

Inthavong: Yes.

LASD-000113 RELEASE DATE: 6/2/2023

POST-230711-1-SB2

Rodriguez: Did you have a partner that day?

Inthavong: Yes.

Rodriguez: What were your hours that day?

Inthavong: Honestly, I don't know if we were on the 12's. Because on DWS, we have to put it by the hours. But I'm not sure if we were on 12/12's on that day.

Rodriguez: And what do you mean by 12/12s?

Inthavong: Basically A shift, B shift, from 6AM to 6PM, or 6PM to 6AM. Because of Emergency Operations, due to the fires.

Rodriguez: So, would you have been on that A or B shift?

Inthavong: We would have been B shift. So –

Rodriguez: And what time is that shift?

Inthavong: Would have been 6PM to 6AM.

Rodriguez: Okay.

Inthavong: But, I don't think we were, because if, if the call got dispatched that 2. something, we would have been there at 2.

Rodriguez: What time did, according to that, what time did you clear the call?

Inthavong: What time did we clear the call?

Rodriguez: Uh huh.

Inthavong: It doesn't say what time we cleared it. Just says that we went 97 at 2:30, 2:29.

Rodriguez: So, for the record, I'm going to show you a unit history report, and it's dated May 16th, 2021, for unit 54. And the shift is going to be 3, which equivalates to PM shift. Can you tell me what time did you clear the call?

Inthavong: 12:23 AM. So, just past midnight.

Rodriguez: So, you would have cleared it on May 17th, 2021, right?

LASD-000114 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Inthavong: Yes.

Rodriguez: At midnight. Okay, alright. Go ahead on the left-hand side, bottom left hand side. Go ahead and initial and date. That, just anything that you know, I show you from this point forward, that you know, you got to initial it, okay?

Inthavong: Sounds good.

Rodriguez: Who was your partner that day?

Inthavong: Deputy Cano.

Rodriguez: Can you, to the best of your ability, can you describe Deputy Cano for me?

Inthavong: He's a male, Hispanic deputy. He was a patrol deputy before I got there. I don't know how long before he was there, before I was there. He was an FTO. I don't know if he was still an FTO at this time.

Rodriguez: Uh huh.

Inthavong: Yeah. But he's been there a lot longer than I was. I don't know how much longer he was, because I was there for six and a half years, and I'm not exactly sure how long he was in patrol for, before that.

Rodriguez: Do you remember, so you mentioned something earlier and you were saying that you were possibly, there was some type of emergency with; what was the emergency that you recall that day?

Inthavong: Fires.

Rodriguez: Do you remember which fire was that?

Inthavong: It says the Lost Hills fire. So, I'm assuming it was the Calabasas fire.

Rodriguez: Do you remember more or less where you guys responded, what area?

Inthavong: Honestly, if it says Lost Hills, then probably we were either providing security or at a fixed like check point that we just diverting traffic and what not.

Rodriguez: Had your body-worn camera equipment been issued to you by May 16th, 2021?

LASD-000115 RELEASE DATE: 6/2/2023

POST2075T-1-SB2

Inthavong: No. No.

Rodriguez: Do you remember when you were issued the camera? The body-worn camera?

Inthavong: No. I, honestly I don't remember when we got it.

Rodriguez: So, you do remember working with Deputy Cano, right?

Inthavong: Specifically not, not on this day. I don't, like I told you b fore, I don't remember working with him at all, because he was a TO and I was a TO. So, it was very rare that we were in the same car together.

Rodriguez: Okay.

Inthavong: So,

Rodriguez: So, at that time, by May 16th, 2021, you were already an FTO?

Inthavong: Yes. I was a TO, but we didn't have any trainees at that time. So, that's what I'm assuming that we were, why we were together that day.

Rodriguez: Do you remember, w o was driving that night?

Inthavong: I don't remember.

Rodriguez: Were you with Deputy Car o the entire shift?

Inthavong: If we went to the fires together, yeah. We would probably be together the whole time.

Rodriguez: Aside from d iving to Lost Hills or Malibu, Lost Hills area, do you, did you guys drive out of the area, maybe on your way there or on your way back? Well, let me ask you, on your way there did you guys drive out of the area?

Inthavong: Unless they told us what to do, I don't remember anything what we would not be doing. We would just be going to the, if we went to the Station, we would just meet up at the Station code 3. And then we would get our assignments from there. Or at the CP (inaudible).

Rodriguez: But you don't remember –

Inthavong: I don't remember, no.

LASD-000116 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Rodriguez: How about –

Kucharski: I just want to clarify. Are you asking if they took any detours from the time they were dispatched to go to Lost Hills, were they –

Rodriguez: So, yeah. Before, before you got to Lost Hills, did you guys take any detours?

Inthavong: No, no, we –

Rodriguez: How about coming back from Lost Hills to Temple?

Inthavong: No, because by then we were all tired.

Rodriguez: If you remember, I don't want you to speculate.

Inthavong: No, we would not, no.

Rodriguez: Alright. Do you recall if during the shift you guys, Deputy Cano met with a female?

Inthavong: No, not that I remember, no.

Rodriguez: During your shift, did you guys drive anywhere where Deputy Cano exited the patrol vehicle and got, was gone for an extended period of time?

Inthavong: I don't remember, no.

Rodriguez: Do you remember if there was anything odd about that shift, other than the fact that you know, you responded to Lost Hills?

Inthavong: Honestly, I don't really remember being with him in the car. So, we went to a lot of fires out here. So, I don't know kind of like it's a mixture between this one and then the up North fires, Lancaster, Palmdale. So, I don't even really remember being with him.

Rodriguez: Do you remember anything specifically about this day?

Inthavong: No.

Rodriguez: That kind of just stands out.

Inthavong: It's been a while, so, no, I don't unfortunately.

LASD-000117 RELEASE DATE: 6/2/2023

POST230511-1-SB2

Rodriguez: I'm going to show you a photo, okay. And I just want you to tell me if you recognize this female.

Inthavong: No.

Rodriguez: No, okay.

Inthavong: I don't know her.

Rodriguez: So, just for the record, yeah, go ahead and initial and date it. I'm showing you a photograph of the female (inaudible) shoulder length hair, wearing a black top. Alright. Do you have anything else for me that –

Inthavong: No.

Rodriguez: - you might, yeah.

Inthavong: Unfortunately, no.

Rodriguez: No. Okay.

Inthavong: Sorry.

Rodriguez: Anything that I haven't already covered or asked you, anything?

Inthavong: No.

Rodriguez: Sir, do you have anything?

Kucharski: I have nothing.

Rodriguez: I have no more questions for you, and this will conclude the interview with Deputy Inthavong at 12:47, 12:57 PM.

POST230511-1-SB2

LASD-000118 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

6. WITNESS ELIZABETH TARIN

LASD-000119 RELEASE DATE: 6/2/2023

WITNESS ELIZABETH TARIN

Rodriguez: Okay. We're on the record. Today is September 6th, 2022. And the time is 0541 a.m. I'm at Temple Sheriff's Station conducting a witness interview. I'm Sergeant Sara Rodriguez. I'm from the Los Angeles County Sheriff's Department Internal Affairs Bureau, which is comm nded by Captain Ron Kopperud. For the record and voice recogni on, once again, I'm Sergeant Sara Rodriguez and my last name is spell d R-o-d-r-i-g-u-e-z. Being interviewed today is Deputy Elizabeth Tarin. Ma'am, for the record and voice recognition, can you please spell your name and state your employee number?

Tarin: My name is Elizabeth Tarin. E-l-i-z-a-b-e-t-h. Tarin, T-a-r-i-n. Employee number is 623003.

Rodriguez: It should be noted that this interview will pertain to an incident that occurred on May 23rd, 2021. This case is regarding an administrative investigation involving Temple Sheriff's Station under I.A.B. case No. IV2550292. The incident occurred on May 14, 2021. Prior to the interview I gave you an Admoniti n for Sworn and Non-Sworn form. Did you have an opportunity to review the form?

Tarin: Yes. I did.

Rodriguez: Did you understand the form?

Tarin: Yes.

Rodriguez: I see that you ma ked "yes" in boxes and placed your initials besides each box, signed and dated the form. Is that correct?

Tarin: That's correct.

Rodriguez: Just as a reminder, you are being ordered not to discuss the facts of this case or -- or anything discussed during your interview either with your representative or attorney if you have one. Do you understand?

Tarin: I understand.

Rodriguez: If you need a break for any reason please let me know and I will accommodate you. The only thing I ask is that you answer the question that I posed forth on the table before we take a break. Do you understand?

LASD-000120 RELEASE DATE: 6/2/2023

Tarin: I understand.

Rodriguez: Is there any reason why this interview cannot take today --

Tarin: No.

Rodriguez: -- place today. Starting with your academy graduation tell me about your time on the department.

Tarin: I graduated the academy April 1st, 2016. I was assigned to Twin Towers Correctional Facility for approximately two years. Then I went to North Valley Court for approximately a year -- two years. And then I started patrol at Temple Station January of 2019. Where I am currently assigned.

Rodriguez: And what's your current assignment here?

Tarin: I'm a training officer (T.O.). On early morning shift.

Rodriguez: How long have you been T.O. for?

Tarin: Approximately three months.

Rodriguez: Were you working at Temple Sheriff's Station on May 23rd, 2021?

Tarin: Yes.

Rodriguez: Okay. Do you remember what you were working?

Tarin: I do not.

Rodriguez: Okay. So I'm going to -- for the record I'm going to show you a photocopy of the p.m. in-service for Temple dated Sunday, May 23rd, 2021. Can you please look at it and tell me the unit you were working?

Tarin: Oh, I do see it. I was working 51.

Rodriguez: Okay. Did you have a partner that day?

Tarin: Yes.

Rodriguez: Okay. Who was your partner?

Tarin: Deputy Cano.

Rodriguez: Okay. And what hours were you working that day?

POST230751-TSB2

Tarin: I'm sorry. I couldn't hear you.

Rodriguez: What hours were you working that day?

Tarin: It looks like 14 to 22 (1400 hours to 2200 hours).

Rodriguez: Had you been issued your body worn camera at the time?

Tarin: May 2021? Yes.

Rodriguez: Okay. And you've been trained on it already?

Tarin: Yes.

Rodriguez: Were you wearing it that day?

Tarin: Yes.

Rodriguez: Can you -- to the best of your recollection at this point -- before we go any further can you do me a favo and initial the b ttom left-hand corner of those and then date it as well?

Tarin: Today's 09 --

Rodriguez: 06. Okay. To the best of your recollection and tell me about that day. That May 23rd, 2021?

Tarin: I don't re.nember it at all

Rodriguez: Okay. So I'm going to show you the unit history report for -- it's dated May 23rd, 2021. And you're unit 51 p.m. shift. Can you look at it briefly and then maybe it ill help you refresh your memory.

Tarin: Yeah. I reviewed this --

Rodriguez: Uh-huh.

Tarin: -- unit history report. But I still don't really remember this day. (laughing)

Rodriguez: (laughing)

Tarin: We were working a lot of overtime. Okay. Okay.

Rodriguez: And then the same thing. Can you initial the bottom left-hand corner and date it? Do you remember who was driving that night? Or that shift?

POST230751-1-1-SB2

Tarin: I don't remember.

Rodriguez: You don't remember. Okay. Was Deputy Cano with you the entire shift?

Tarin: Going for calls for service. Obviously not the entire time.

Rodriguez: Okay. What do you mean by that?

Tarin: I mean we get out and we have to use the restroom. We do our paperwork. We're separate during those times. But we do go to the calls for service together.

Rodriguez: Okay. During that shift did you guys drive out of the area?

Tarin: I don't remember.

Rodriguez: Okay. Did you guys drive to an addr ss in San Gabri l? Mainly in or around the area of the Hilton Plaza? Off of Valley Boulevard?

Tarin: Valley Boulevard. I don't remember. I really don't. We -- it -- we could have. I don't know.

Rodriguez: Okay. Did you guys drive anywhere where Deputy Cano met up with a female?

Tarin: I (laughing) -- I really don't rer ember this date. I'm sorry.

Rodriguez: Okay.

Tarin: We were working a lot of overtime. At this time.

Rodriguez: What do you remember about the day?

Tarin: I kind of remember that Big 5 call.

Rodriguez: Uh-huh.

Tarin: That it happened at 7-Eleven and at Big 5 and I remember taking a report for one of the businesses, but that's really the biggest thing that happened on that shift that I remember.

Rodriguez: Okay. But you don't remember if you guys went to 7-Eleven to get coffee? You don't remember anything else about that day?

Tarin: I really don't. I remember being at 7-Eleven for that call.

LASD-000123 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: Uh-huh.

Tarin: And then Big 5 is across the street. And the same people committed thefts in both areas.

Rodriguez: Okay. During that shift did you guys drive anywhere -- any place where Deputy Cano exited the patrol vehicle and was gone for an extended period of time?

Tarin: I don't remember.

Rodriguez: Okay. If I were to review any GPS data from the patrol vehicle would there be any reason why I find out -- I find that you guys drove out of the area or that you guys stopped somewhere for an extended pe iod of time?

Tarin: I wouldn't be surprised. Or I -- I -- I don't know. It -- I don't remember. It -- I wouldn't be surprised, and I wouldn't be surprised if we didn't.

Rodriguez: Okay. During your shift did you guys meet up -- meet with any female anywhere?

Tarin: Not that I remember. Unless they were an informant.

Rodriguez: Do you remember anything odd about the shift? Anything that happened? Anything odd about it?

Tarin: No. I just handled -- handled the calls. Deputy Cano is a more senior deputy, so I was handling business.

Rodriguez: Okay. And was he helping you with the car -- with the calls or was he just sitting around the car?

Tarin: He was assisting me as I needed.

Rodriguez: Okay.

Tarin: But I handled -- I was handling the calls.

Rodriguez: Okay. Is there anything that you would like to add that I haven't already covered or asked you?

Tarin: No.

Rodriguez: Okay. I'm going to show you a photograph. Does this female look familiar to you?

POST230751-LSB2

Tarin: No. Not that I remember.

Rodriguez: No?

Tarin: No.

Rodriguez: Okay. Go ahead and initial the bottom and date it. All right. If you don't have -- do you have any questions for me?

Tarin: I don't. No.

Rodriguez: Okay. If you don't have anything else for me then I don't have any more questions for you and we're going to go off the record at 0552 hours.

POST230711-1-SB2

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

6a. WITNESS ELIZABETH TARIN (FOLLOW-UP INTERVIEW)

LASD-000126 RELEASE DATE: 6/2/2023

WITNESS TARIN (FOLLOW-UP INTERVIEW)

Rodriguez: We're on the record. Today is October 13th, 2022. And the time is 09:00 hours. We're at Temple Sheriff's Station inside the captain's conference room, conducting a follow-up interview, witness interview. I'm Sergeant Sara Rodriguez. With me is Sergeant Paul Valle. We're from the Los Angeles County Sheriff's Department, Internal Affairs Bur eau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez, last name is spelled R-O-D-R-I-G-U-E-Z. Sergeant Valle, can you please spell your last name?

Valle: It's V as in Victor A-L-L-E.

Rodriguez: Being interviewed today is Deputy Elizabeth Tarin. Ma'am, for the record and voice recognition, can you please spell just y ur last name and then state your employee number?

Tarin: Last name Tarin, T-A-R-I-N. Employee number 623003.

Rodriguez: And it should be noted that this is an interview, a follow-up interview pertaining to an incident that occ rred on May 23rd, 2021. This case is regarding an administrative investigation involving Temple Sheriff's Station personnel under IAB case number IV2550292. Which took place during May of 2021. So, I showed you, prior to going on the record I showed you an administrative investigation sorry, admonition for witnesses sworn and non-sworn form, which you signed and dated September 6th, 2022. For the record, everything stated in this form still applies to this follow-up interview. D you have any questions about the form?

Tarin: I do not.

Rodriguez: Do you have any questions about the form or your requirement to make full, complete and truthful statements during this interview?

Tarin: Correct.

Rodriguez: You don't?

Tarin: I do.

POST 07511-1SB2

LASD-000127 RELEASE DATE: 6/2/2023

Rodriguez: So, and then also prior to the interview, I provided you with your transcripts from a previous IAB interview which took place on September 6th, 2022. Did you have an opportunity to review the transcripts?

Tarin: I did.

Rodriguez: And then just as a reminder, once again, you are being ordered not to discuss the facts of this case or any of the issues discussed during this interview other than your representative or attorney if you have one. Do you understand?

Tarin: I understand.

Rodriguez: Same thing, if you need a break, it won't be a long interview hopefully. But if you do, then you know, just let me know and then I'll accommodate you. But the only thing that I ask is that if you, if I ask you a question, just answer it before we go on break.

Tarin: Sounds good.

Rodriguez: Alright. So, during your interview on September 6th, 2022, you indicated the following, that you did not recall much of the PM shift, that you worked with Deputy Cano on May 23rd, 2021. However, you did say that you, and I'm looking at in your transcripts, I'm going from page 2 to 4 basically.

Tarin: Uh huh.

Rodriguez: You did say that you, you recalled responding to a fight call for service at Big 5, correct?

Tarin: Correct.

Rodriguez: And then you also said that you didn't remember if you drove out of the area, and that would have been on page 4.

Tarin: Correct.

Rodriguez: Or to an address in San Gabriel, or a location, you were around the Hilton Valley Boulevard. Then you said I quote, "I don't remember. I really don't. It could have been, I don't know." Is on page 4, line 9.

Tarin: Correct.

LASD-000128 RELEASE DATE: 6/2/2023

POST230511-SB2

Rodriguez: So, at about 21, let me see. Yeah, so, May 23rd, at about 21:15 hours, Deputy Cano drove to an address 49, what is it, 4951 North Rosemead. So, from what I understand it's just kind of south of here. So, I'm showing you for the record, it's just an arial satellite map taken off of Google, okay? Just kind of look at it and I know it's kind of hard, but you know, just trying to refresh your recollection.

Tarin: Okay.

Rodriguez: Were you with him when he drove to that location?

Tarin: I don't remember.

Rodriguez: You don't remember?

Tarin: No.

Rodriguez: Okay.

Tarin: We take this road of travel a lot. It's one of the main streets.

Rodriguez: Can you initial at the b ttom? Do you have your pen with you? Same way, yeah, just initial it and then date it or today is, would be 10/13/22. Okay, so, you don't recall if you guys actually went here?

Tarin: I do not recall, no.

Rodriguez: Do yo ecall any time. o, the stuff that I'm going to give you right, that I'm going to show you right now, I actually the GPS tracking data was pulled from the vehicle that you guys were using.

Tarin: Okay.

Rodriguez: Which you were logged onto, correct?

Tarin: Yes.

Rodriguez: So, what I'm showing you right now is basically the movements that were happening from the point when he arrived you know, a little bit before he arrived at the 4951 address, to kind of all the way around till the end of his shift. Okay?

Tarin: Okay.

POST230511-1-SB2

LASD-000129 RELEASE DATE: 6/2/2023

Rodriguez: So, then at about 21:12 hours, a stop was made at the Starbucks off of Rosemead Boulevard, which is kind of across the street from you, right?

Tarin: (Inaudible).

Rodriguez: So, and this was between 21, pretty much a minute on May 23rd, 2021, between 21:12 hours and 21:13 hours. Just kind of look at it. If it you know, and again for the record, it's just an arial satellite, arial Google image of the area of Starbucks.

Tarin: We, this is the Starbucks we usually go to. So, I wouldn't be surprised if we got a cup of coffee here.

Rodriguez: Did he drop you off there or can you recall if he dropped you off or?

Tarin: I don't remember, no.

Rodriguez: Alright, go ahead and initial.

Tarin: 13, right?

Rodriguez: Yes. Okay. So, you already said that you weren't with Deputy Cano when, or you said you don't remember, right? If you were with him? When he went to the 4951 address, okay. So, the next thing I'm going to show you is, and I think I showed you this last time I was with you. But it's going to be the unit history report, okay? And basically, I'm going to need you to focus at around 21:26 hours.

Tarin: 26. Okay.

Rodriguez: You see how there was a WANT9 ran for the name is going to be [redacted] V1 and for the record I'll spell that. First name is [redacted] as in [redacted], one second. [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted]. And then the middle name is going to be [redacted], and last name is spelled [redacted] V1 Okay? You see that? 21:26?

Tarin: I see it, yes.

Rodriguez: So, again, for the record, I showed you the unit history for May 23rd, 2021, and then you guys were working 51, right?

Tarin: Correct.

LASD-000130 RELEASE DATE: 6/2/2023

POST2307511-1-SB2

Rodriguez: On PM shift?

Tarin: Correct.

Rodriguez: So, at 21:26, did you run her?

Tarin: I don't know if I ran her or Deputy Cano ran her, but she was obviously ran.

Rodriguez: You are aware that that's your log on, right?

Tarin: Yeah, both of us are logged on.

Rodriguez: Right, no, but you were logged on as the mai person onto the MDC?

Tarin: I guess so, if that's, it's probably correct. Because I'm –

Rodriguez: So, when you're looking at the unit history at the tor , it'll show you your numbers, right, right next to it?

Tarin: Correct.

Rodriguez: So, typically, and I'm sure you know this.

Tarin: Yeah.

Rodriguez: When it's something like that happens, what are your numbers?

Tarin: 623003.

Rodriguez: Are those the numbers that are right next to in parentheses?

Tarin: Yes. Correct.

Rodriguez: So, that indicates that you ran her?

Tarin: Correct.

Rodriguez: You don't remember being in the car?

Tarin: For running her? I don't remember. I wouldn't run anybody unless it pertained to if I took, if we actually did a traffic stop, or a report for like the victim or an informant. So, I don't know if that person is a victim or an

POST230751111-SB2

LASD-000131 RELEASE DATE: 6/2/2023

informant for that, that call at Big 5. But I don't think we did any traffic stops this day. So, I don't know if she was the victim or informant for that call.

Rodriguez: But you don't remember running that name?

Tarin: No, I don't remember, I don't remember, no.

Rodriguez: You have anything sir?

Valle: No.

Rodriguez: Did, do you remember if he mentioned anything to you about running somebody or you recall him running somebody?

Tarin: No.

Rodriguez: What time does your shift end typically?

Tarin: 22:00.

Rodriguez: Okay.

Tarin: Well, I think I was working overtime this shift. So, I'm on a totally different shift. But I'm pretty sure this was an overtime shift (inaudible).

Rodriguez: Do you remember what tir e he dropped you off at the station?

Tarin: Probably 22:00.

Rodriguez: So, again, just from the, can you initial that at the bottom please?

Tarin: Yes.

Rodriguez: Actually I'm going to show you this again. From the same unit history details at about 16:09. So, if you focus on the first page. See there's an inquiry on a plate there. Can you read off the plate for me?

Tarin: 1609 is 8 Paul Frank X-ray, 504 (8PFX504).

Rodriguez: So, I'm going to show you a photocopy of it's a CLETS return for a vehicle registration, okay. So, there's four pages, but you know, the rest of the

POST230511-1-SB2

LASD-000132 RELEASE DATE: 6/2/2023

pages are pretty much SVS had zero messages that might come back, okay? Do you remember running that plate?

Tarin: I ran a lot of plates. So, -

Rodriguez: Well, the name is kind of, so, if you focus on the you know, the registration. It's a leased vehicle, but if you focus on the registration and the information of the person that's you know, under the lease, if you notice it's the same name that was ran later on.

Tarin: Yeah.

Rodriguez: Right?

Tarin: Correct, correct, yeah.

Rodriguez: So, again, you don't remember running anything like that with that name or anything?

Tarin: No.

Rodriguez: Okay.

Tarin: No.

Rodriguez: Alright, go ahead and initial all four pages at the bottom, 10/13/22. So, at about, and just from the tracking, the GPS tracking data, at about 21:36 on May 23th, 2021, it shows that you guys were stopped at the station pretty much from that point up until a little bit past you know, the MDC kind of shuts off.

Tarin: Okay.

Rodriguez: So, this, again, this is just a Google arial map of satellite arial image of the area. That's the station, right? And you don't recall what time –

Tarin: This is not the station.

Rodriguez: It's not the station?

Tarin: Valley and Abbott. It's the Hilton.

POST 207511-1-SB2

LASD-000133 RELEASE DATE: 6/2/2023

Rodriguez: Oh, that's right, I'm sorry. So, and that one, so that one's actually a, remember how you said in the last interview you said that, and I'll correct myself for the record. In your previous interview you had said that you don't recall going over to the Hilton or you might have or something? Remember how we talked about that –

Tarin: Yeah.

Rodriguez: - last time?

Tarin: I do.

Rodriguez: So, that actually shows that you guys were ther .

Tarin: Okay.

Rodriguez: You don't recall anything?

Tarin: After our first interview, I was like a little bit like what's going on. So, I drove that way and it, I reme bered stopping here and I remember the whole situation.

Rodriguez: Let's talk about that.

Tarin: So, we ran the car, he said he was going to go have pho there. And he asked me if I want d o eat and I was, I was writing the Big 5 report. And again, I'm a newer deputy. So, I'm not going to, I didn't feel comfortable going to eat with him. I just wanted to get the report done and then go home. So, he, he told me that he was going to go eat pho, to which he left. And I stayed in the car and wrote the report.

Rodriguez: Do you know where he went?

Tarin: We parked the car on the north side of the street, and then he left. I don't know where he went. He went north though. So, on this street Valley, he walked north. He never crossed the street, so.

Rodriguez: What businesses are there?

Tarin: Well, I don't know. This is out of our RD, but looking at this Google map, that's the only way I could, I assume that there's going to be a pho restaurant around there.

LASD-000134 RELEASE DATE: 6/2/2023

POST2507511-1-SB2

Rodriguez: If you recall.

Tarin: No. He just said that he was going to go eat.

Rodriguez: Did he tell you if he was going to meet with anybody?

Tarin: Not that I remember. But I don't know. I don't know, it's all speculation. I don't know that we would go eat alone.

Rodriguez: Okay.

Tarin: He didn't like say hey, I'm eating alone. But he didn't say he was going to go eat with somebody. You know.

Rodriguez: Were there any other deputies in the area?

Tarin: No.

Rodriguez: How long was he in there for, if you can remember?

Tarin: I don't want to say. More than an hour, I finished the report.

Rodriguez: Did he come out alone?

Tarin: I don't remember.

Rodriguez: Alright, go ahead and initial and date that. And then so, from the GPS tracking, it pretty much indicates that you guys I mean, I'm assuming you guys made it back about 21:36, but you say you don't remember what time he dropped you off?

Tarin: I don't remember, no.

Rodriguez: Alright. Do you have anything else that you want to add, that you know, I haven't already asked you about?

Tarin: No, I don't.

Rodriguez: No, okay. Alright. With that, this concludes the, oh, sir?

Valle: No, I don't have anything.

POST 20751-1-SB2

LASD-000135 RELEASE DATE: 6/2/2023

Rodriguez: This concludes the follow-up interview with Deputy Tarin, and we're going to go off the record at 9:16 AM.

POST230711-1-SB2

LASD-000136 RELEASE DATE: 6/2/2023

POST230711-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

7. WITNESS CHRISTOPHER WOODHOUSE

LASD-000137 RELEASE DATE: 6/2/2023

WITNESS CHRISTOPHER WOODHOUSE

Rodriguez: We're on the record. Today is August 9th, 2022, and the time is 9:33 AM. I'm at Internal Affairs Bureau, Interview Room B conducting a witness interview. I'm Sergeant Sara Rodriguez, and with me is Sergeant Walter Arcos. We're from Los Angeles County Sheriff's Department Internal Affairs Bureau which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez. Last name is spelled R-O-D-R-I-G-U-E-Z. Sergeant Arcos, for the record and voice recognition, can you please spell your last name?

Arcos: Sergeant Arcos, A-R-C-O-S.

Rodriguez: And al...also in the room is gonna be Sergeant Larry Villareal. Sergeant Villareal will only be observing, and he will not be participating in the interview. Sergeant Villareal, for the record and voice recognition, can you please spell your last name?

Villareal: V-I-L-L-A-R-E-A-L.

Rodriguez: Being interviewed today is Detective Christopher Woodhouse. Sir, for the record and voice recognition, can you please spell your name and state your last name and state your employee number?

Woodhouse: Woodhouse, W-O-O-D-H-O-U-S-E, 285575.

Rodriguez: It should be noted that this interview will be pertaining to an incident that occurred during your time at Temple Station while in, while in your capacity as a detective. This is...case is regarding an intervi...regarding an administrative investigation involving Temple Station personnel. The incident occurred on May 14, 2021. Prior to the interview, I gave you an Admonition Witness, Sworn and Non-Sworn form. Did you have an opportunity to review the form?

Woodhouse: Yes. And I think your date's off. I think it was May 24th.

Rodriguez: No.

Woodhouse: No, okay.

Rodriguez: We're good, yeah. Did you understand the form?

Woodhouse: Yes, ma'am.

LASD-000138 RELEASE DATE: 6/2/2023

Rodriguez: I see that you marked yes boxes and placed your initials beside each box that you signed and, and also you signed and dated the form?

Woodhouse: Yes, ma'am.

Rodriguez: Do you have any questions about the form or your requirement to make full, completely, and truthful statements during this interview?

Woodhouse: No.

Rodriguez: So as a reminder, I'm just ordering you not to discuss the facts of this case or any of the issues discussed during this interview other than with your representative or attorney if you have one. Do you understand?

Woodhouse: Yes.

Rodriguez: If you need a break for any reason, please let us know and we will accommodate you. If a question has been asked of you, I'm gonna need you to answer the question prior to taking a break. Do you understand?

Woodhouse: Yes.

Rodriguez: Is there any reason why this interview cannot take place today?

Woodhouse: No.

Rodriguez: So starting with your academy graduation date, tell me about your time on the department.

Woodhouse: So I worked at South Facility, went back to the academy, finished as a modified, was a signed to Men's Central Jail...

Rodriguez: What year was that?

Woodhouse: Oh, I, I...and then from Men's Central Jail, went to NCCF, out to patrol at East LA, to Temple, went on loan to DB, went to COPS Bureau, went...

Rodriguez: You went on loan to DB at Temple?

Woodhouse: Temple. I went to COPS Bureau, went back to Temple as a detective and then got picked up at Majors Metro.

Rodriguez: And do you, do you recall the year when you started...when you said you went back to Temple as a detective, do you recall the year?

LASD-000139 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Woodhouse: I would say 2012.

Rodriguez: And you were there until you got picked up, Metro...

Woodhouse: This year.

Rodriguez: ...so when was that...oh, this year?

Woodhouse: Yeah.

Rodriguez: And you said you were assigned as a detective, right?

Woodhouse: During the date and time in question?

Rodriguez: Uh-huh (AFFIRMATIVE).

Woodhouse: Yes, ma'am.

Rodriguez: Well, from 2012 to 2000 and...

Woodhouse: Yes.

Rodriguez: And then you arrived at Major Crimes Metro this year as well?

Woodhouse: Yes.

Rodriguez: Were you...and I know this is a long time and over a year ago. But were you working at Temple Station on May 24th, 2021?

Woodhouse: I don't remember. But when I saw the in-service, yes.

Rodriguez: Do you remember what position you were working?

Woodhouse: CARPing as Unit 51.

Rodriguez: What shift was that?

Woodhouse: Early mornings.

Rodriguez: What are the hours? Do you recall?

Woodhouse: Yeah. At that time, it was 23 or 07.

Rodriguez: And just for the record, I'm gonna show you an in-service, EM service for...at Temple Station dated Monday, May 24, 2020. Can you tell me what the Rs are under...

POST230751-1-SB2

LASD-000140 RELEASE DATE: 6/2/2023

Woodhouse: Oh, excuse me. 14...or correction, 22 to 06.

Rodriguez: Did you have a partner that day?

Woodhouse: I did.

Rodriguez: Do you remember who your partner was?

Woodhouse: Per the in-service, it's Cano. I don't remember off the top of my head.

Rodriguez: Can you describe Deputy Cano?

Woodhouse: About...

Rodriguez: To the best of your abilities.

Woodhouse: About five-seven, shaved head, no ιo be disparaging but his shoulders kind of ride high, like that. That's all I remember.

Rodriguez: And do you remember an age, approximate age?

Woodhouse: Maybe late 30s.

Rodriguez: At the time, had you been issued bodyworn camera equipment?

Woodhouse: No.

Rodriguez: So you do remember working with him that evening, right?

Woodhouse: Only because of the in-service. I don't remember that date.

Rodriguez: Do you remember anything about that day?

Woodhous‹: No. When I reviewed the...any of the details, nothing stands out to me.

Rodriguez: But do, do you remember who was driving that night?

Woodhous‹: Most likely him.

Rodriguez: Were you with him the entire shift?

W odhouse: Probably not.

Rodriguez: At what point would you say you guys...if you can recall?

POST230751-1-SB2

Woodhouse: So I think he and I worked together for three separate occasions on three separate days. And since I was a detective, if I had a case that I was working on, he would just say, hey, go work on your case. I'll call you if we get a call. And he was gonna sit in the back parking lot. So that's all I remember on the three occasions. I can't say if it was all three, or one, or two. But I did go up to work on a case, and he stayed in the car in the parking lot.

Rodriguez: Did you see him physically...like, he stayed there or you just...

Woodhouse: No. Once I left the vehicle, when I go up, all the views of the parking lot are obstructed. So as far as I know when I got out of the car, he parked in a space that was, you know, near the back door. And then I would go up and go to my desk.

Rodriguez: And then you remained like that for the rest of the shift or...

Woodhouse: No.

Rodriguez: ...eventually come back?

Woodhouse: Yeah. I would come back...or if we got a c ll, he said we got a call, and I would come down to the car. And we v uld roll.

Rodriguez: Do you remember you guys during the shift at any point in time driving anywhere?

Woodhouse: It's a daze. I have no idea.

Rodriguez: Do you remember driving to a specific address in the City of San Gabriel?

Woodhous : I don't remember anything about that day. Like, like I say, when I reviewed ', none of the calls or nothing stands out to me to refresh my recollection.

Rodriguez: Do you remember meeting a female at any point in time with Deputy Cano?

Woodho e: No.

Rodriguez: Did Deputy Cano ever mention to you that he was gonna go meet a female?

Woodhouse: No.

LASD-000142 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: Does anything stand out about that shift other...I mean, I know you said you were kind of already reviewed it. But you...nothing really...

Woodhouse: No.

Rodriguez: You don't remember anything or...

Woodhouse: I only remember one conversation and...whether it was that day or not. But I just remember us talking about...we were on Huntington Drive. And that's the only thing I could ever remember CARPing with him was that conversation on Huntington Drive.

Rodriguez: And what was the conversation?

Woodhouse: Oh, just about being young. I grew up in that area, and we were just talking about the street on Huntington.

Rodriguez: Oh, okay. So I'm gonna show you t wo photographs, okay, and then tell me if you recognize the female in the photographs, okay?

Woodhouse: Uh-huh (AFFIRMATIVE).

Rodriguez: And just for the record, I'm showing you a screen grab of a bodyworn camera for May 13, 2021. Excuse me. If you're looking at the photograph, there's a female off to the left-hand side of the photograph. Do you recognize that female?

Woodhouse: No.

Rodriguez: Go ahead and initial the bottom, initial and date at the bottom. And today's gonna be August 9th. And then second photograph that I'm gonna show you is a photograph from Cal Photo of a female Asian. Do you recognize her?

Woodhouse: No. Same...

Rodriguez: Can you do the same, initial and date? Is there anything else that you think I might've missed or...I mean, anything that you think my...might come to mind that might be useful to my investigation?

Woodhouse: No. I, I don't, I don't know this individual other than CARPing. You know, I don't know him on a personal level. So that's why I can't even give you a real physical description. I work days. He worked earlies. I, I don't even think I was in the field when he showed up. So very limited knowledge on the person.

POST 30 1511-1-SB2

LASD-000143 RELEASE DATE: 6/2/2023

Rodriguez: All right. I don't have anything else. Sir, do you have anything?

Arcos: No.

Rodriguez: All right. At this point, this is gonna conclude the interview with Detective Woodhouse. And we're going off the record at 9:43 AM.

POST230711-1-SB2

LASD-000144 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

8. WITNESS VICTOR RODRIGUEZ

LASD-000145 RELEASE DATE: 6/2/2023

WITNESS VICTOR RODRIGUEZ

S. Rodriguez: We are on the record. Today is October 13th, 2022. And the time is 10:01 AM. We're in the first floor inside the District Attorney's office of the Los Angeles County District Attorney's office, Alhambra branch office, conducting a witness interview. I'm Sergeant Sara Rodriguez, and with me is Sergeant Paul Valle. We are from Los Angeles County Sheriff's Department, Internal Affairs Bureau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez. My last name is spelled R-O-D-R-I-G-U-E-Z. Sergeant Valle, can you please spell your last name?

Valle: Yes, it's going to be V as in Victor A-L-L-E.

S. Rodriguez: And being interviewed today is Head Deputy District Attorney Victor Rodriguez. Did I get your title right sir?

V. Rodriguez: Yes, that's head deputy, that's correct.

S. Rodriguez: And sir, for the record and voice recognition, can you please spell your first, last name, and then I don't know if you guys are assigned employee numbers or a bar number?

V. Rodriguez: First name Victor, V-I-C-T-O-R. Excuse me. Last name Rodriguez, R-O-D-R-I-G-U-E-Z. My employee number is 294788.

S. Rodriguez: It should be noted that this is an interview, this interview will pertain to an incident that took place during I guess started in May 2021, and continued on until late last year or 2021. This case is regarding an investigation involving Temple Station personnel under IAB case number IV2550292. Which occurred during the month of May 2021. Prior to, okay, so, we record all of our interviews per policy. I just want to make sure that you know, you're aware of it and you do give me permission to record this?

V. Rodriguez: Yeah, you have my permission.

S. Rodriguez: So, can you just start a little bit giving me like a brief overview of your educational background and then your professional work?

LASD-000146 RELEASE DATE: 6/2/2023

POST230751-LASD

V. Rodriguez: Yes. I've been a deputy district attorney since December of 1991. So, going on 31 years. I went to the UCLA School of Law before that. I clarked a couple of places. I've had various assignments. I was a trial DA for about the first ten years of my career, then I became a supervisor. I've supervised in many different capacities from deputy in charge of an area office, assistant head deputy. Eventually head deputy. Sex crimes, the Sex Crimes Division, Norwalk Branch office. Then I became a Bureau director under Jackie Lacy, and then I became a head deputy again under George Gascon.

S. Rodriguez: And then how long have you been assigned to this branch, the Alhambra branch?

V. Rodriguez: I got assigned here on September 7th, of 2021.

S. Rodriguez: And what type of cases are filed or, and prosecuted, and or are prosecuted here?

V. Rodriguez: We do both felonies and misdemeanors of all types. I do have, we have three, it's a small office. We have three misdemeanor courts and we have three felony courts. We file the cases here and we prosecute them all the way to their conclusion. Both the felonies and misdemeanors. I do have an assistant head deputy at that, at the time that this incident occurred it was Iliana Alvarez. So, generally my assistant head deputy will fully responsible for managing the misdemeanors. They will come to me only when there was a problem that needed my attention, needed head deputy attention. Otherwise, she kind of dealt with all the offers and issues that related to the misdemeanors.

S. Rodriguez: So, you came in, you said you came in on September 7th, 2021, but this particular incident kind of came into play and, on September 2nd, or this case, right?

V. Rodriguez: Yes. This, so this case was ongoing already when it came to my attention. It looks like we, the incident happened on May 13th, of 2021. And it looks like the case was filed on July 21st, of 2021. The defendant was charged with one misdemeanor count of 23152(A), one 23152(B), and a hit and run. All misdemeanors. It was further alleged that she had sustained a prior conviction for DUI in 2018. Looking at the file notes, it appears that the defendant was arraigned in Department 5 here at the Alhambra Courthouse on September 2nd, of 2021. And then in February of this year, of 2022, my Assistant Head Deputy Iliana

LASD-000147 RELEASE DATE: 6/2/2023

POST2021-1-SB2

Alvarez became aware by information she received from the defense lawyer on this case, that there was some potential Brady material pertaining to Deputy Cano.

S. Rodriguez: And you're talking about a defendant by the name of [redacted] and then for the record, the spelling of that is going to be [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted] as in [redacted] and [redacted] as in [redacted], middle [redacted] and last name [redacted] And this is under court case number [redacted] as in [redacted] as in [redacted] ([redacted]), correct?

V. Rodriguez: That is correct.

S. Rodriguez: Okay.

V. Rodriguez: And around that time, the, my assistant deputy sheriff shared with me an email that she had received from the defense lawyer, and his name is Levon, L-E-V-O-N, Kyurkchyan, K-Y-U-R-K-C-H-Y-A-N. And she forwarded to me an email that she had received with him and some text screen shots. And the email the defense lawyer described contacts that the Officer Cano or Deputy Cano had with the defendant after the defense rests, where he appeared to be expressing romantic or sexual interest in her. And potential contacts with her. So, he described that and then he gave us various pages of copies of screenshots that he said were text communications between Deputy Cano and the defendant, that occurred after her arrest.

S. Rodriguez: Do you know when the communication started by chance?

V. Rodriguez: I'm not sure, because I just have the, I believe the, the, the text messages themselves, they indicate as May 14th, and they, the conversations about her getting released and what time she got released. So, it appears to be looking back at the arrest date again, the morning after or hours after she had been arrested. And the text communication started out with the number that's reportedly Deputy Cano asking what time did you get released and so forth. So, it appears that it was right after her release that these communications started.

S. Rodriguez: And then what did you do after your, your assistant head deputy DA notified you?

V. Rodriguez: At that time I reviewed the email communication from the defense lawyer, its contents. I looked over the text messages and then we also

LASD-000148 RELEASE DATE: 6/2/2023

POST230PKT-1-SB2

looked over the case to determine Deputy Cano's involvement in it and whether this case had to be dismissed immediately, because of potential Brady issues. And we determined that the case did not have to be dismissed. And there was another deputy who did most of the work, another deputy who was needed for the case who did not appear to be involved at all with any of these communications that Deputy Cano had engaged in. So, -

S. Rodriguez: Do you know the name of that deputy by chance?

V. Rodriguez: The other deputy I believe was Chen. Let me doub.e check. I belie e it was Edward Chen, but let me double check. Looking through the file just to refresh my memory here. I'm pretty sure it was Chen. I'm looking through the reports right now to confirm that. But who was the main deputy and he's the one that was essential to prove up this case. However, we were mindful that the defense was certainly wanted to get into that and was likely to be able to get it to these improper contacts between Deputy Cano and the defendant, and t' at that was likely to impact the case. In particular in the email communication from the defense lawyer, there wa one comment in there that really caused us a lot of concern. And that he is, Deputy Cano allegedly tells the defendant that he was going to try his best to get Chen not to show up to court, and that he asked that a- he was trying to ask her to go out. So, to me that had the potential of being a crime. Not just a bad judgement and violation of policy. But an actual crime, because it could be a potential obstruction of justice. And that caused us great concern. And also, at that time I also notified the deputy's captain, Mark Reyes over at Temple Station. Who informed me that he was referring the matter to Internal Affairs. And that was kind of the end of my involvement. Other than I wrote a memo up my chain of command, forwarding the email from the defense lawyer, the screenshots and my memo w' s that this could be a potential case that needed to be included in our ORWITS system, and my Bureau director, who received my memo, concurred and eventually it went up the chain of command. And the matter was turned into our ORWITS system. So, -

S. Rodriguez: Can you explain a little bit of what the ORWITS system is?

V. Rodriguez: Yes. The ORWITS system is managed by our Discovery Compliance Unit. And along with the Brady database. So, there's two separate databases. They're related, but separate. Brady and ORWITS. Brady are cases where we already know that the material at issue is actually Brady material. ORWITS is material where it could be potentially

LASD-000149 RELEASE DATE: 6/2/2023

POSTPONED-SB2

Brady. But we don't know yet. So, in that case the, under ORWITS, the, every time the deputy's name comes up as a potential witness, our deputy DA's, filing deputies, trial DA's, they're alerted and then they're required to look into the database and pull up materials related to Deputy Cano. And that is, in fact happened here. Deputy Cano is now in our ORWITS database. So, every time his name comes up as a potential witness, the lawyers on the case, our lawyers on the case will receive copies of the memos that went up. The email that the defense lawyer sent us and copies of the screenshots. And then they decide whether, with input from their supervisors, as to whether this should be turned over to the defense. And typically we do turn this over. So, I'm sure this is, if he's come up on any cases since then, some of this material is probably in the hands of the defense lawyers now. Who can then maybe ask for pictures, motions or go out and talk to the suspect themselves, see if they want to bring her in. To my knowledge, that hasn't happened yet, but you know, could potentially happen where the suspect here ends up testifying in somebody else's case.

S. Rodriguez: Oh okay. Would you say that Deputy Cano's involvement with the defendant, V1 had it affected or influenced the case in any way?

V. Rodriguez: Yes. So, we considered dismissing the case. We knew that a proceeding was going to be difficult. Even after we determined that Deputy Cano was not, we could do the case without him, because Deputy Chen was not involved with this, could carry the whole case. But we knew that the defense lawyer was going to try very hard to get in all the evidence against Deputy Cano anyhow. And would probably succeed. It's up to the judge ultimately, and this is going to really you know, hurt our cases. The defense lawyer did approach us about wanting to take a wet reckless, which is still a priorable offense. So, we agreed to it and moved on, so at least the defendant gets a priorable offense and they get some punishment for that. So, actually it ended up being an okay offer, not you know, now what we had intended. And we felt fortunate that they were willing to do it. I think the defense lawyer probably assessed the case the same way, that in this case Chen was not that significant. And I can't remember what, I'm sorry, Cano was not that significant and I don't recall, I would need to review the reports to determine Cano's involvement, but Chen could do the whole case. But in the other cases, this is going to be very problematic, where Cano is a sexual witness. Especially if you have a female defendant.

S. Rodriguez: So, what you're saying is basically that when, once he's entered in that ORWITS system as a witness, kind of, sort of right, because you

LASD-000150 RELEASE DATE: 6/2/2023

mentioned something while we were off the record that it would be more (inaudible) evidence right? That that would essentially if he comes up as a witness in a case –

V. Rodriguez: Yeah.

S. Rodriguez: - and this had a female, and it would flag the defense attorney or the DA, and say hey, you need to look at this. And so, I guess what I'm saying is, going forward now, any case that he's involved in can potentially be problematic?

V. Rodriguez: A smart defense lawyer would try to get this evidence in in any case.

S. Rodriguez: Okay.

V. Rodriguez: And if I'm the defense lawyer, I want to get him up there and ask him if he tried to get this, this, the defendant in our case to go out with him, or promised to get, really help the case get dismissed by having his partner officer not show up to court. Which is the implication there right? Believe me, I tried my best to get Chen not to show up to court. So, the implication is that he's going to get the case dismissed if she goes out with him. And I don't know if that's true, but you know, the defense lawyer now is free to try to delve into it, right? And he's going to be asked those questions. And I don't know if he's going to want to take the 5th on that or not. This has the potential to be a big problem actually, right? And smart defense lawyers would go hey, judge, we got this information from the DA himself. And I want to ask Deputy Cano about that.

S. Rodriguez: Okay.

V. Rodriguez: It'll be up to Deputy Cano I guess at that point once we answer those questions or not. But that you know, that could happen. He's still at Temple, he should come up here. To my knowledge, it hasn't yet.

S. Rodriguez: Okay.

V. Rodriguez: But it could happen. That's my concern anyhow. So, any time we have Cano on a case, or he's the necessary witness, we really got to keep an eye on the case, we've got to turn over these materials and then see what the defense does with it.

S. Rodriguez: What were the original charges that were filed that, or I guess the prosecuting attorney was looking at for her?

LASD-000151 RELEASE DATE: 6/2/2023

POST230(h)-1-SB2

V. Rodriguez: So, we filed the, we did file the misdemeanor driving under the influence and then driving with .08 or higher. With the allegations that she had a prior conviction. The, and I'm looking over the file notes. It looks like our, excuse me, our initial offer was that she pleaded a DUI. And we would have normally asked for three years' probation on this, on that. And a MADD program, and a couple of drug related programs. 96 hours of County Jail. Interlock device, restitution $500.00 fine, plus TA. And that she admit to prior. And then we plead it to a wet reckless, which is priorable. It turned to one year summary probation. I think it was credit time served. She still had to pay the $500.00 fine. Do an SB30 program (inaudible). So, it was actually, it was just lower probation and no jail time is what we gave up.

Valle: So, it was similar, but just not the, like you said, it was –

V. Rodriguez: Shorter probationary period and also we backed off the jail time.

Valle: Yeah. Either way it influenced the decision?

V. Rodriguez: It did, yeah. Because this is, it was a high BA, 2-3 I believe, with a second time DUI with very high BA. And a hit and run was also, so, charged.

Valle: Did this affect her, let's say she gets a conviction or an arrest down the road, will this wet reckless affect priorable?

V. Rodriguez: It's priorable, so.

Valle: Oh okay. So, it is.

V. Rodriguez: It will count the same as a DUI. So, we were, so the dispo was actually okay.

Valle: Okay.

V. Rodriguez: Not as much as we wanted, but it was okay. And like I said, the defense lawyer was fully aware of all the materials we had, because he provided them to us. And it was his decision to accept the offer. So, we went along with it.

Valle: Okay.

S. Rodriguez: So, I was looking over the court minute order. And at the hearing date which happened on the September 14th, 2022, there's a portion and I

LASD-000152 RELEASE DATE: 6/2/2023

POST230751-1-SB2

just, for clarification, I would like to know what this means. But it basically says that the, the counts 1, 2, 3, which would have been the two 23 152 A and B, and then also the hit and run; were dismissed and in the interest of justice per plea agreement. Does that basically mean that the plea agreement was that the wet reckless, right?

Valle: Yes.

S. Rodriguez: But the interest of justice part, how does –

V. Rodriguez: Just basically that's the DA is just explaining why we did it. So, she just used that language, we're doing it in the interest of justice. It's kind of a very vague you know, broad language that covers a lot. So, based on the totality, like everything we have discussed is basically the best interest of justice. And we, it was really in our best interest to take this offer, to settle this case because we knew we had the potential issues with Deputy Cano. Had we tried this case, it would have been very problematic. A lot would have epended on what judge we were in front of, and how much of Deputy Cano the judge got into. And you know, we've had cases where we don't put the officers in the wrong doing, but they still get into it right? The defense lawyers still find a way to convince the judges that we still get into it here, even though we're in court saying well he has nothing to do with this. He's not a witness. He didn't gather any of the evidence for admitting here, and but judges still do that. I mean we just had that happen in a case yesterday where an officer was not even subpoenaed made some remarks that were considered racial. Wh' h I don't think they were, but the judge let them in. And we lost the case. You know. So, we never know what you know, what a judge is going to do. And something like this, when it comes to potentially Brady, judges get really concerned and then more likely to let it in. So, this would have been, and unfortunately, Chen would have testified and he would have probably been asked about like what do you know about this a lot. Did he ever talk to you, did he ever say anything to you? They would have really gotten into this with Chen. So, even though he may not know anything. And then, you know, defense lawyers would try to show that yes, he's part of it. It would have smeared Chen.

Valle: Oh okay, really?

V. Rodriguez: Unfortunately, it's just –

LASD-000153 RELEASE DATE: 6/2/2023

POST-SB1421-SB2

S. Rodriguez: So, it would have not just affected you know, a case obviously and then Cano and now he's in ORWITS, but it would have also affected –

V. Rodriguez: I think it would have affected, because Chen was involved, even though he was not involved in this, that he may have been totally unaware of Cano's communications. But if all of a sudden he said I was aware, oh boy. Yeah, he told me he texted her after we arrested her. So, you never know.

Valle: Yeah, exactly. Sir, real quick, I know you gave my partner this package as a discovery, compliance system, print it out and all your memorandums. When, in this document does it show when Deputy Cano was placed in ORWITS? I know there's a date on page 2 or something?

V. Rodriguez: Yeah, let me see.

Valle: Or do you have any notes that shows when he actually was –

V. Rodriguez: Yeah, no, you know, because we, they don't tell me. I just really (inaudible) it's just in there.

Valle: Okay.

V. Rodriguez: It would have been, so the, he, this is the final approval by the chief of staff and he approved it in 4/15. So, this went over to them. So, it would have been shortly thereafter.

Valle: Okay.

V. Rodriguez: Just as long, probably as long as it took to the secretaries.

Valle: Okay.

V. Rodriguez: You know, that –

Valle: So, soon after?

V. Rodriguez: Soon after. It would have been soon after. Created on, so here. I believe it was created on 4/18/2022. So, this whole entry.

Valle: Somewhere around there.

LASD-000154 RELEASE DATE: 6/2/2023

POST230751-1-SB2

V. Rodriguez: And this said it was last updated. So, I don't know if it was up and running. They try to get him up right away.

Valle: Okay.

V. Rodriguez: So, it could have been up on 4/18 already. But definitely by 6/22, and if somebody else updated, maybe added additional information or changed something.

Valle: Great, thank you.

S. Rodriguez: So, earlier you mentioned that there could poten ially be an obstruction of justice charge. Obviously it's criminal. You guys decided not to go after Deputy Cano for that?

V. Rodriguez: No, I did not conduct any investigation. Once Captain Reyes said it was going to be an Internal Affairs investigation, we just left it up to the Department. To my knowledge no one in my office is investigating this. If they were, it would have been up to JCID.

S. Rodriguez: Okay.

V. Rodriguez: Because it's on-duty conduct.

Valle: Uh huh.

V. Rodriguez: But I don't know if they do. I think they generally leave it up to you guys and then you guys present if there's something. Look, I'm not saying there was, I'm not even saying that any of this is true, but it just has that potential. And if he's implying that I'll dismiss the case if you go out with me, it could potentially be interpreted as that. But so, I'm not saying that there was, I'm just saying that there opens the possibility that there could have been. But you know, in for us here, the defense on any case, is that's enough for them to really get into it without any finding of it. They're going to say there was and they're going to try to convince the judge that there was to try to impeach Deputy Cano. So, unfortunately, because he really hurt his career with this. As far as his, his credibility as a witness, I believe it's going to be significantly impacted by this.

Valle: And this could last his entire career, or ones' entire career?

V. Rodriguez: Yeah, he never, once in ORWITS, you're in ORWITS. To my knowledge, there's no mechanism to come out of it. I guess if you can

LASD-000155 RELEASE DATE: 6/2/2023

POST 2075 1-1-SB2

prove that this is all false, but I mean the text messages speak for themselves. A lot of that is just him wanting to talk to her and go out. Like I said, the most concerning part was described by the defense lawyer in my view. And that's why I thought you know, I never, we never asked her. We did not interview her. She was represented. So, I don't know what she would have to say about that. But he's claiming he got that from his client.

Valle: Okay.

V. Rodriguez: And you know, an allegation like that on its own, may not be that credible, but when you have all these text messages, it starts to make the defendant, this V1 a little more credible as to what could have happened.

Valle: Okay.

S. Rodriguez: To your knowledge, did, does she have any prior that you know about, and I don't know, you guys are up doing anything like this.

V. Rodriguez: I'm not aware. It's just whatever, I think all we know about her whatever is on his rap sheet, which is probably that other DUI.

S. Rodriguez: Okay.

V. Rodriguez: Yeah. It's unfortunate.

S. Rodriguez: Yeah, it is.

V. Rodriguez: You know.

Valle: I have nothing.

S. Rodriguez: Is there anything else that you would like to add that I did not already touch upon or you know?

V. Rodriguez: No, like I said, ultimately I don't know for sure. It's just a potential and that's why we kicked it up. And I think that's why Internal Affairs investigation I think was really warranted. So you guys can, I don't know if you're going to talk to her or not, but find out what's going on.

S. Rodriguez: Alright.

V. Rodriguez: So, that would determine how his career is impacted too.

LASD-000156 RELEASE DATE: 6/2/2023

POST230751-1-SB2

S. Rodriguez: Alright sir. I don't have anymore questions. How about you? Thank you very much. And then we're going to go off the record at 10:29 AM.

POST230751 1-1-SB2

LASD-000157 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

LASD-000158 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

9. SUBJECT SIFREDO CANO

LASD-000159 RELEASE DATE: 6/2/2023

Rodriguez: Okay. We're on the record. Today is September 27th, 2022. And the time is 1215 p.m. I'm in the Internal Affairs Bureau office in -- inside interview room B located in the city of Commerce conducting a subject interview. I'm Sergeant Sara Rodriguez. With me is Sergeant Ed Luna. We're from the Los Angeles County Sheriff's Department Internal Affairs Bureau, which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez and my last name is spelled R-o-d-r-i-g-u-e-z. Sergeant Luna, for the record and voice recognition, can you please spell your last nail?

Luna: Luna. L-u-n-a.

Rodriguez: Being interviewed today is Deputy Sifredo Cano. Sir, for the record and voice recognition, can you please spell your first an last name and state your employee number?

Cano: Sifredo Cano. S-i-f-r-e-d-o. Cano, C-a-n-o. Employee No. 509080.

Rodriguez: With us in the room as well and representing Deputy Cano is Amy Johnson. Ma'am, for the record and voice recognition, can you please spell your first and last name?

Johnson: Amy Johnson with Rains Lu ia Stern. A-m-y J-o-h-n-s-o-n.

Rodriguez: This case is regarding an administrative investigation involving Deputy Cano under I.A.B. case No. IV2550292. This incident took place during the year of 2021 Prior to the interview I gave you an Administrative Rights Sworn nd Non-sworn Subject form. Did you have an opportunity to review the form?

Cano: Yes.

Rodriguez: Did you understand the form?

Cano: Yes.

Rodriguez: I see that you marked the "yes" boxes and placed your initials besides each box, signed, and dated the form. Is that correct?

Cano: Yes.

LASD-000160 RELEASE DATE: 6/2/2023

Rodriguez: Do you have any questions about the form or the requirement to -- or your requirement to make full, complete and truthful statements during this interview?

Cano: No. No.

Rodriguez: No? Okay. As a reminder you are being ordered not discuss the facts of this case or any of the issues discussed during this interview other than with your representative or attorney if you have one. Do you understand?

Cano: Yes.

Rodriguez: If you need a break for any reason please let us k ow and we will o our best obviously we'll accommodate you. The only thing that I wo ld ask and this just kind of a personal thing is that if I ask you a question you answer the question and then, you know, we'll -- we'll take a break. Okay? Is there any reason why this interview cannot take place today?

Cano: No.

Rodriguez: Okay. So let's start with your academy graduation and then so you graduated the academy a d then you're go i g to tell me on your time on the department. Okay? Up until you are currently assigned. Where you're currently assigned.

Cano: Okay.

Johnson: Go ahead.

Cano: So I graduated November 19, 2007 I believe. On graduation I was assigned to P.D.C. South up in Wayside. I was there for about six years. Until 20 -- 2013. End of 2013 I believe. Or '14. And then I went to patrol to Temple Station. I believe I got there in March of '13 or '14. I've been there since. Promoted to F.T.O. in 2021 or 20. And I'm still assigned to Temple. I'm on loan to S.C.C. Radio Communications and the Training Unit.

Rodriguez: And when did you get there?

Cano: I believe March 1st.

Rodriguez: Of this year?

Cano: Of this year. Yes.

LASD-000161 RELEASE DATE: 6/2/2023

Rodriguez: Okay. And just while you were at Temple the only two positions or capacity that you were under was field deputy and then an F.T.O.; right?

Cano: Yeah. Yes, ma'am.

Rodriguez: Okay. And your current position with S.C.C. you're still under deputy?

Cano: Yes.

Rodriguez: Okay. Okay. Were you working Temple Station on May 13th, 2021?

Cano: I believe so.

Rodriguez: Okay. Do you remember what position you were assigned?

Cano: I do not.

Rodriguez: No. It should be -- actually I've got to take a quick break because I forgot the in-service. So we're going to go off the record at 12:20.

**********Audio Recording Paused**********

Rodriguez: Okay. We're back on the record at 12:33 p.m. So I left off and I asked you if you were working May 13th, 2021 and you said you did; right?

Cano: Yes.

Rodriguez: Do you recall what you were working?

Cano: I was working a traffic car in Temple City.

Rodriguez: Okay. Do you remember what uniformed patrol unit that was?

Cano: 52 Tom 1 (52T1).

Rodriguez: Okay. Did you have a partner that day?

Cano: No. I did not.

Rodriguez: Do you recall what your hours were?

Cano: I believe it was 1400 to 2200.

Rodriguez: Okay.

Cano: P.m. shift.

LASD-000162 RELEASE DATE: 6/2/2023

POST2307511-1-SB2

Rodriguez: Did you have by that time by May 13th, 2021 had you been issued your body worn camera?

Cano: Yes.

Rodriguez: Okay. Had you been trained? Completely trained on it?

Cano: Yes.

Rodriguez: Okay. Do you recall more or less when you were trained on that?

Cano: May -- so I believe we were on a -- we were still on a thir -- on a ninety day trial period on the cameras. So it had to be some time in -- a couple of months before maybe. Or so.

Rodriguez: Okay. Were you wearing your body worn camera that day?

Cano: Yes.

Rodriguez: Okay. Does anything stand out about that specific day? May 13th, 2021? Does anything stand out to you? That you can recall specifically about that day?

Cano: Just that we had a traffic collision a' d it turned out to be a DUI.

Rodriguez: Okay. What do you recall about that?

Cano: I got the call. Came out as a traffic collision priority.

Rodriguez: Uh-huh.

Cano: My assisting u' its had got there before I did and when I showed up they were detaining the driver who had crashed on -- off -- off of Rosemead and Giraldi --

Rodriguez: Uh-huh.

Cano: -- and I believed they said that she was trying to -- she walked away. Walk -- walked out of her car and she was trying to get in a truck that was parked on the -- on the side of the street. And that's when they detained her.

Rodriguez: Okay. Did you make contact with a driver?

POST230751-TSB2

LASD-000163 RELEASE DATE: 6/2/2023

Cano: After I talked to my partners she was in the back seat of my assisting unit and --

Rodriguez: And who was your assisting unit?

Cano: I believe it was 52 Frank.

Rodriguez: If I show you the in-service for that day would that help you kind of remember --

Cano: Yes.

Rodriguez: -- real quick? Okay. Okay. So for the record I'm showing you a p.m. in -- a p.m. shift in-service for Temple and it's dated Thursday, May 13, 2021. Okay.

Cano: Yes.

Rodriguez: Go ahead and take a look at it and see if you can recall who your assisting units -- or you said unit? Right? I'm sorry. Or units or unit. Whatever --

Cano: Yeah.

Rodriguez: -- you recall.

Cano: Yeah. Yeah. It was 52 Frank was the one that had detained her and she was in -- in his back seat.

Rodriguez: Okay.

Johnson: What's his name?

Rodriguez: And who was 52 Frank?

Cano: Deputy Patron.

Rodriguez: Patron?

Cano: Patron. Yes.

Rodriguez: Okay. Do you me a favor on the -- it would be the left -- bottom left hand corner go ahead and initial and date it. Do you have a pen?

Cano: Today's 09 --

Rodriguez: 27 --

POST230751-1-SB2

Luna: Yeah.

Rodriguez: 09-27.

Luna: 09-27.

Rodriguez: Okay. Do you recall the female that you were detaining? Do you recall anything about her?

Cano: Yes. I re -- I recall seeing the name on the traffic report.

Rodriguez: Okay. Can you describe her to me?

Cano: A female Asian in her 30s. She was extremely intoxicated.

Rodriguez: Okay.

Cano: Black or brown hair.

Rodriguez: You say she was extremely intoxicated. Wha‘ was she doing?

Cano: She couldn't even walk. She couldn't even stand. At that time I didn't -- I didn't -- I hadn't talke . to her yet --

Rodriguez: Uh-huh.

Cano: -- but when my partner detained her he said that she was stumbling. She could barely walk. And she actually tried to get in a car that was parked just east of her car, which she had TCd or crashed and she -- I guess the truck was unlocked o she was able to get in the driver's side trying to -- trying to start the truck. And that's when he detained her.

Rodriguez: Okay. Did you talk to her at all?

Cano: I did a little bit. I believe when I transferred to the unit that actually took the DUI.

Rodriguez: Okay. Not based on your report, but do you remember her name?

Cano: I do not.

Rodriguez: You don't remember her name?

Cano: I do not.

POST-20751-1-SB2

Rodriguez: Okay. I'm going to show you some photographs. Okay? And then you're going to tell me if you -- and you kind of described her, but you can tell me if she looks familiar to you. Okay? So the first photo is just basically it's her booking photo. Okay?

Cano: Uh-huh.

Rodriguez: And for the record I'm just showing you a booking photo of a female Asian with dark brown hair wearing a black tank top. Brown eyes. Light complexion. Does she look familiar?

Cano: Yes.

Rodriguez: Is that her?

Cano: That's the driver. Yes.

Rodriguez: Okay. So for this one for anything that I show you you're just going to go ahead and initial the bottom left. Oкay? Okay. An then the next photo that I'm going to show you is going to be a screen grab or a screenshot of your body worn camera footage. It's dated May 13th, 2021. The timestamp 21:15:41. Does she look familiar?

Cano: Yeah. I believe so.

Rodriguez: Okay. Is that the same female from that you -- was arrested that night?

Cano: Yes.

Rodriguez: Okay. Go ahead and initial for me. Okay. And the next photo that I'm going to show you it's again it's a screenshot from your body worn camera footage and it's dated May 5 -- May 13th, 2021. Timestamp 21:22:06. Is that the same female?

Cano: Yes. I believe so.

Rodriguez: Okay. Do you remember her name now? Does it kind of come back to you or no?

Cano: No. I -- I don't.

Rodriguez: You don't remember her name?

Cano: No.

POST 13075 1-1-SB2

Rodriguez: Okay. Would you do me a favor, could you look at -- and for the record I provided you with a copy of a traffic collision report that you authored. Also is a CHP triple -- triple nickle. And with -- dated May 13, 2021. And the file number is 921-02566-0521-242. Okay? Go ahead and look at it and what -- do you remember her name now? Locate her name and which party was it that -- and then tell me the name.

Cano: Oh, it has to be Party 1 because she was at fault and whoever is at fault is always Party 1 so it has to be yeah. This one right here.

Rodriguez: Okay. What's the name?

Cano: [redacted] V1

Rodriguez: Uh-huh.

Cano: [redacted] V1

Rodriguez: Okay. Go ahead and initial the bottom. And then for this one you're going to initial each page. I know it's stapled, but eventually it won't so, but initial and date it. Okay? And then --

Luna: Do you want him to date it?

Rodriguez: Yes.

Luna: Yeah. Date it.

Rodriguez: You forgot to date it. Ok y.

Johnson: It's the 27th.

Cano: I didn't date the pictures.

Rodriguez: You didn't?

Luna: No.

Cano: You said just initials.

Luna: Just initials. Yeah.

Rodriguez: Oh, okay. We'll get that. Okay. I'm giving you back the photographs. Okay? We'll go ahead and I'm sorry just date those.

Luna: It was the next page.

POST230711-1-SB2

Rodriguez: Okay. And I'm going to give you back the second page from the in-service. The same thing. Initial and date. So anything I show you from this point forward any -- any -- anything we're going to date and initial. Okay?

Cano: Okay.

Rodriguez: Okay. So we said that her name was V1 Nana V1 right?

Cano: Yes.

Rodriguez: Is that the same female?

Cano: Yes.

Rodriguez: Okay. Who arrested the female?

Cano: Deputy Chen.

Rodriguez: Okay. How did Deputy Chen end up at your call?

Cano: He's our -- he's a reserve deputy and he likes DUIs.

Rodriguez: Uh-huh.

Cano: He was trying to get to a certain number for a pin. So he had told us that if ever we get a DUI that, you know, just to let him know and he'll -- he'll take it. Do the handle on the DUI. And we just write the traffic report.

Rodriguez: How did he know?

Cano: I -- I talked to him on the cell phone.

Rodriguez: Okay. Was -- was he the one that pretty much he arrested her and then took her from that --

Cano: Yeah. He --

Rodriguez: -- point forward?

Cano: Yes.

Rodriguez: Okay.

Cano: He did.

LASD-000168 RELEASE DATE: 6/2/2023

POST250751-1-1-SB2

Rodriguez: Did you see her --

Cano: Interviews and everything.

Rodriguez: I'm sorry. What was that?

Cano: He did interviews and transported her and all that.

Rodriguez: Okay.

Cano: And booked her.

Rodriguez: Did you see her after that night?

Cano: After -- no.

Rodriguez: After --

Cano: I did not.

Rodriguez: I mean, after the 13th you didn't see her at all?

Cano: No. That night, no.

Rodriguez: Okay. So did you see her any day after that?

Cano: Yes.

Rodriguez: Okay. When was the next time -- the -- the next time you saw her after the 13th?

Cano: It had to be several weeks after. I -- I was working overtime. The same city. She lives borderline Temple City and Arcadia. And I was working the same city that night I believe. And she flagged me down. I was on a stop. She flagged me down. I told her that I would talk to her after I finished with the traffic stop. I came over once I was done and she asked me if -- if I remembered her. She told me if I remembered her. I said, "No." I -- "I don't." She said you and -- "you and your partner stopped me for a crash and a DUI." I said, "Well, where was it at?" And she said she told me it was in -- on Rosemead and Giraldi a couple of weeks back. I don't remember how long exactly. I said, "Oh, yeah." "I remember." I said, "I remember." "Deputy Chen is the one that arrested you for the DUI." And I said I -- "I wrote the -- the traffic report." She said, "Yes."

POST230711-1-SB2

And that's when she told me if -- if I could help one of her friends. I guess one of her best friends is a famous DJ that plays and flies all over the country doing DJ stuff. And she told me that they were doing an underground party in El Monte during COVID and that her stuff were taken away. Their equipment. DJ equipment. And that he was trying to find out what was happening with the case. If -- she said if I can maybe hel her get some information about the case. She didn't have any information on it. She said she will get me the case number. I told her that I didn't really know anybody in El Monte. I said, "We don't really see them on this side." I said, "But I can find out." See if there's any information on the case. And that's -- that was the last -- last time I saw her.

Rodriguez: That the last time --

Cano: Yeah.

Rodriguez: -- you saw her or talked to her?

Cano: No. When she told me the -- that she was going to get me the -- the case numbers -- I don't remember if ıe ever texted r e back that she was -- that she had the case number. Several weeks later -- I don't remember how -- how the timeframe, but I did call El Monte P.D. and just to find out if they had anything on that case and they told me that -- that it was still open. That they didn't -- they didn't -- they didn't know what court date or anything like that. That they were behind. And that they just had to wait. And then I let her know. I believe I -- I don't remember if I called her or texted her and I -- hey -- hey, I -- "I have some information regarding your friend's ca e." And I was working Rosemead that day. And she told me, "Oh, I'm -- I'm in Rosemead can you come meet my friend?" "He's over here." I was on -- I believe I was on Valley and either San Gabriel or Valley and Walnut Grove. Somewhere around there. And they were there. So it was my RD. I drove through there and I -- I spoke to her friend and I just told him I said, "Hey, they said that the case is still open." "That you have to wait." And, "They don't know when it's going to go to court." And that was that.

Rodriguez: Okay.

Cano: And that was the last time that I saw her.

Rodriguez: That --

Cano: Or saw them.

Rodriguez: When you met -- when you met with them at --

LASD-000170 RELEASE DATE: 6/2/2023

POST2021-1-SB2

Cano: At Valley --

Rodriguez: Off of --

Cano: -- and the city of Rosemead. That's our -- one of our RDs.

Rodriguez: Okay.

Luna: So -- so back up a little bit now.

Cano: Uh-huh (affirmative).

Luna: On the day of the deuce -- the accident?

Cano: Uh-huh.

Luna: Did you interact with the female after s was arrested?

Cano: No.

Luna: Did you transport her anywhere?

Cano: No.

Luna: Did you transport her to the hospital?

Cano: No, sir.

Luna: Okay.

Rodriguez: Okay. So I'm going to show you a -- for the record, two pages.

Cano: Uh-huh.

Rodriguez: E.m. shift in-service for Temple --

Cano: Uh-huh.

Rodriguez: -- Station dated Friday, May 14, 2021. Can you look on here and tell me if you're working. Now this would have been early morning shift so it could have been the night of that same night when she was arrested, but on early morning shift. Correct?

Cano: Yes.

Rodriguez: Okay.

POST230711-1-SB2

Cano: 14. Yes.

Rodriguez: Okay.

Cano: Yes.

Rodriguez: Do you see yourself on there?

Cano: Yes.

Rodriguez: Okay. Tell me what unit you were working?

Cano: 51.

Rodriguez: Okay. And did you have a partner?

Cano: Yes. I did.

Rodriguez: Okay. And who was your partner?

Cano: Deputy Moon. He got draf.ed that night.

Rodriguez: Okay. The bottom left hand corner just initial and date please. Both pages. (coughing Excuse me. Okay. Okay. So the next item I'm going to show you or the next document that I'm going to show you the Unit History Report for Temple Stat on. Unit 51. Would be shift one. Which would be the early morning shift. And it would be for early morning shift of May 14, 2021. You have two pages. Okay?

Cano: Uh-huh.

Rodriguez: You're familiar with what this is; right?

Cano: Yes.

Rodriguez: Your Unit History Report?

Cano: Uh-huh.

Rodriguez: Okay. So basically this gives you, you know, all of the calls that you receive during that day. Okay?

Cano: Yes.

Rodriguez: Maybe at around -- okay. So when you start looking on the second page

POST2507511-1-SB2

-- okay?

Cano: Uh-huh.

Rodriguez: Around 0403 in the morning. 0403 hours on the 14th. May 14th. You were assigned a call. The tac number is 44. Okay? And if you keep going down it says that you completed it or you initiated -- you and your partner -- a hospital. Right? You -- you did a hospital run somewhere? It indicates at 0 -- 0043 902H, which the code for?

Cano: For a hospital run.

Rodriguez: Okay. And you went to San Gabriel Hospital; right?

Cano: Uh-huh.

Rodriguez: That's what this says on there? Okay.

Cano: Yes.

Rodriguez: If you keep going down in the clearance, which occurred at approximately 0532 hours. If you keep going down. Can you read what it says on there? That line. How it was cleared.

Cano: It says cleared 758. We assisted somebody.

Rodriguez: Okay. What does the 758 stand for?

Cano: I don't recall. From memory.

Rodriguez: Okay.

Johnson: Okay.

Cano: TST O -- [redacted] Female Asian. Booking number. Okay to book to San Gabriel Hospital.

Rodriguez: And what does "TST" mean?

Cano: Trans -- transported.

Rodriguez: Okay. Do you recall that now?

Cano: I -- I mean, it's in there, but I don't recall. We were busy that night. We had a robbery right at the beginning of the shift. I don't recall -- I don't recall that call to be honest.

LASD-000173 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Rodriguez: You don't recall transporting her?

Cano: No. I don't.

Rodriguez: Okay.

Cano: I don't.

Rodriguez: All right. Same thing.

Cano: It's on our --

Rodriguez: Just initial bottom left hand corner and date it as well. So the next document that I'm going to show you it's an emergent -- emergency department discharge instructions and referral order.

Cano: Uh-huh.

Rodriguez: And it's from San Gabriel Valley Medical Center. Okay? It's dated May 14, 2021, and it's for a Patient V1 V1 Okay?

Cano: Uh-huh.

Rodriguez: Medical record 75 530. Okay?

Cano: Yes.

Rodriguez: So there's two pages there. Okay? The last page that's included with the medical record or the release --

Cano: Uh-huh.

Rodriguez: -- is a medical evaluation request by peace officer. Okay?

Cano: Uh-huh.

Rodriguez: And, again, it's given to V1 V1 dated May 14, 2021. At 0431 hours. Okay?

Cano: Yes.

Rodriguez: Now on this -- on this -- on this page it says who she was released to; right?

Cano: Yes.

LASD-000174 RELEASE DATE: 6/2/2023

Rodriguez: Okay. On your signature it says peace officer. Is that your signature?

Cano: Yes. It is.

Rodriguez: Okay. Under badge -- under -- right next to badge number what are the numbers that read on there?

Cano: 509080.

Rodriguez: Is that your -- your --

Cano: Yes. It is.

Rodriguez: -- employee number?

Cano: Yes.

Rodriguez: Okay. Go ahead and initial all thr e pages and date them please. Any questions?

Luna: Nothing now.

Rodriguez: Okay. Okay. Do you still not recall anything about the transport?

Cano: I -- I don't recall the actual transport. But, I mean, it's -- it's my signature so I know we were there. I mean, I can't deny that because it's -- she was released to me and my partner.

Rodriguez: Okay.

Cano: I just don't recall the actual call. Getting the actual call. At all.

Rodriguez: Okay. So you don't remember if either you or your partner put out a broadcast that you guys were transporting a female? You don't remember anything?

Cano: No. I don't remember. I know we --

Rodriguez: Okay.

Cano: -- we had to put it out because it's, you know, every time you transport a female you have to put it out so. But I don't recall who -- who did it.

Rodriguez: What about activating your body worn camera?

POST230511-1-SB2

Cano: I mean, we had to have activated the camera because --

Rodriguez: Do you remember activating it? I don't want you to make an assumption though.

Cano: I do not remember.

Rodriguez: Okay. Do you remember having a conversation with Miss V1 that night during that transport?

Cano: I don't remember.

Rodriguez: Okay. So after the transport on -- that occurred on May 14 --

Cano: Uh-huh.

Rodriguez: -- did you contact Miss V1 at all? Did you make contact with her after that?

Cano: After --

Johnson: Through any medium or --

Rodriguez: Any -- any medium.

Cano: After the flag down? Yes.

Rodriguez: So the flag down I'm assuming occurred after --

Cano: It was several weeks after that she flagged me down --

Rodriguez: Okay.

Cano: -- in Temple City. And then when I told her that I had the information and then that's when we met -- met her and her friend in Rosemead.

Rodriguez: Okay.

Cano: And that was the --

Rodriguez: How many weeks would you say that was after? Approximately?

Cano: I -- I do not remember. It was -- it was a few weeks I would say.

Rodriguez: Okay. So the next set of documents that I'm going to show you is a total of 28 pages.

LASD-000176 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Cano: Uh-huh.

Rodriguez: Yes. And they are screenshots from text message --

Cano: Okay.

Rodriguez: -- text messages. Okay?

Cano: Uh-huh.

Rodriguez: And, for the record, again, they are screenshots of text messages. The phone number that the messages are being sent t[illegible]are -- is 626-2[illegible]8-6949. And they begin on Friday, May 14, at ap[illegible]roximately 2306 hours. Okay? Go ahead and just kind of from -- from the [illegible]p --

Cano: Uh-huh.

Rodriguez: -- read it all the way down. Okay? And you're going through the line.

Johnson: Do you want to read it out loud or just read to himself?

Rodriguez: Yeah. Go ahead and read it out loud.

Johnson: All 28 pages?

Rodriguez: No, no, no. Just right here. First page.

Johnson: Okay.

Cano: "Hi. What time did you get released? Why so late. At 9:00" -- oh, that's the text right there. Right? "Hi. 9:00 a.m. Why so late? What you doing right now? I just woke up. Sorry. Who is this? The deputy that took the -- to the hos[illegible]ital. To get you checked out. Do you remember me?" We -- "I was holding you by the arms." "Do you remember my name?" She said, "Ha ha, yes. That's good. Yes. It's me."

Rodriguez: Okay.

Johnson: Are they all different or are they all --

Rodriguez: It's just for -- for that day.

Cano: Oh, this one.

POST230751-RSB2

Johnson: Can we have a chance to review the messages and go through them since they're just being presented to all -- to us right now?

Rodriguez: I mean, we're going to go over them as we go. That's why I'm having you review them right now. Keep reading.

Cano: "That's good. Yes. It's me. Thank you for your help. Hope you don't mind me texting you. No. I don't mind."

Rodriguez: Well, hold on really quick. I think you kind of skipped so ething here. After in the first page that I had you read --

Cano: Uh-huh.

Rodriguez: -- you -- after do you remember what does it say there? She replies?

Cano: Yes.

Rodriguez: Okay. And then?

Cano: I remember. Cano.

Rodriguez: What is the next line?

Cano: That I was holding her arm.

Rodriguez: What does it mean?

Cano: I was holding her by the arm.

Rodriguez: Okay. All right. Go ahead. Continue reading this.

Johnson: Can we take a break?

Rodriguez: Sure. Of course. We're going off the record for a short break at -- and we'll be going off the record at -- sorry. 1:04.

************Audio Recording Paused************

Rodriguez: Okay. We're back on the record from a temporary break. It's 1:19 p.m. Okay. So we ended up on the second page. Okay? And just start from the top again I -- I completely forgot where you left off.

Cano: "That's good. Yes. It's me. Thank you for your help. I hope you don't mind me texting you. No. I don't mind. You left a set of ear -- ear -- ear pods in the patrol car. When can we give -- can I give them to you. I think

POST230711-1-SB2

they're yours. I'm glad you don't. Yes. Yes, please." I can't really see what's -- "and also was wondering where is my shoes? I'm looking into my car, but I still can't find my shoes." I believe she was barefoot that day already. She didn't have any shoes in the car.

Rodriguez: Okay.

Cano: So it's slippers. "Slipper. How about tomorrow? When that -- when we got to you you were in another car that was parked and you didn't have shoes." So that's the truck that she got in. "Oh, my God. That's crazy. I'm not sure where you left them."

Johnson: Do you want him to --

Rodriguez: Yeah. Just keeping it. Well, so basically we're just going to review for the conversation on that day. On the 14th.

Johnson: Okay.

Rodriguez: And we'll just kind of take it day by day.

Johnson: Now do you want him to sign every page?

Rodriguez: Oh, yes. Definitely.

Johnson: That's what I'm asking.

Rodriguez: If you want to -- if you want to sign it as you go or you can wait until the end. It's up to you. I'm sorry. Initial and date them. Okay?

Cano: Okay. I'll do it after this one. "Yes. You're lucky you didn't get hurt. Okay. Wait. Oh, WTF. Is that -- okay. Okay. Will" --

Rodriguez: Well -- uh-huh.

Cano: "Ha ha, I think. Yes. I'm sure. I'm so lucky no one got hurt. And do you live alone? What's -- with my parents. Are you ever alone with -- at home?" What does it say? "They will -- they will --

Rodriguez: They --

Cano: "They're always here. They will hear" --

Rodriguez: "They will hear always."

POST230711-1-SB2

Cano: "Oh, because of COVID. I'm here tomorrow. I'm here Sunday after 2:00 p.m. Sure. No problem. I can visit you at the restaurant that you have in -- in Valley and New. I've been thinking of you. Sure. But now I'm not going" -- not going recently? Is that what it says? Not going --

Johnson: Uh-huh.

Cano: "Wow. That -- thank you, sir. What are you going to do now? Going back to bed." And I can't see what she wrote.

Rodriguez: It's on the next page. It continues on the next page rig t here.

Cano: Oh. "Yes. Going -- going to bed again and I'm getting sleepy. I've been sleeping the whole -- whole day. Okay. Have a good night. Good talking to you. Hope to see you soon. You, too, sir. Thank you for your help yesterday. You're welcome. Any time." And then she said, "Sunday, right? Yes. Or sooner. Yes. I wish sooner. Do you have the Instagram? Yes. Can I have it? What's yours?" She said, "I'll send you a request. Qianna [redacted]

Rodriguez: Okay.

Cano: "[redacted] Feidaen -- [redacted]

Rodriguez: And you can stop right there. Go ahead and initial these pages. Okay. And before I forget on this morning or the early -- during the early morning shift when you transported her --

Cano: Uh-huh.

Rodriguez: -- there's GPS they had uploaded from your -- your vehicle.

Cano: Uh-huh.

Rodriguez: Correct? The first photo or photograph that I'm showing you is the GPS coordinates and it goes from you went to the hospital and then you ended up back at Temple Station. So there's two pages that I'm showing you. Okay?

Cano: Okay.

Rodriguez: The first page that I'm showing you has the GPS coordinates at the hospital. Okay?

Cano: Uh-huh.

POST23075174-SB2

Rodriguez: So you're going to see this little -- this kind of little teardrop upside down.

Cano: Uh-huh.

Rodriguez: That's -- can you read what it says on this area right here? What's --

Cano: No. I can't see that. I can't see it. I don't have my glasses. I can't see it.

Luna: Are you talking about where the --

Rodriguez: Yeah. The upside down teardrop. Just the area. What is that? What's the name of the area right there?

Johnson: Let me try to look.

Cano: I can't see it.

Johnson: It says San Gabriel Valley Medical Center.

Rodriguez: All right. I know you said you don't remember, but, you know. It -- it's so that you know that, you know, the transport did occur.

Cano: Yeah. I know -- I know where it is. Yeah.

Rodriguez: Okay. And then the other pages, you know, you transport her to -- so between the transport it started at about 4:15 in the morning and then you guys made it back to Temple Station at about 4:52. Okay?

Cano: Okay.

Rodriguez: And this, again, it's just the GPS coordinates you'll see it right below. Those are it. Okay? And they're just based off your -- the GPS pulled from your vehicle. Okay?

Cano: Okay.

Rodriguez: Upside down teardrop can you -- It might be more legible there.

Cano: I can see Sheriff on the bottom.

Johnson: L.A. County Sheriff.

Rodriguez: You met -- you -- like I said, at 4:52 you're back at the station with her. Okay?

Cano: Okay.

POST230751-1-SB2

Rodriguez: All right. Just go ahead and initial. Initial and date please. So earlier you mentioned that you couldn't remember if you had texted her or if she texted you or called you. Remember you said it was a flag down?

Cano: Yes.

Rodriguez: Okay. When did you get her phone number initially?

Cano: I believe that night of the -- the traffic collision. For the report.

Rodriguez: You got for -- her phone number for the report?

Cano: I believe I got it from the handling unit. Because we -- I couldn't -- we couldn't understand at the beginning what -- to talk to her. So I -- I believe I got if from my partner.

Rodriguez: Uh-huh.

Cano: To -- for my report.

Rodriguez: Okay. I'm going to refer back. So we'll refer back to your traffic collision report, which I showed you previously. Right?

Cano: Yes.

Rodriguez: And, again, it's the CHP triple nickel (CHP-555) with file No. 921-05266-0521-242. Okay?

Cano: Yes.

Rodriguez: So you said initially that she was Party 1?

Cano: Yes.

Rodriguez: Okay. And under maybe what is it? One, two, three, four, five. If you look under Party 1 fifth or fifth line down there's two phone numbers. One of them says home phone and business phone. Which number did you text her?

Cano: I don't remember which -- which one it is. I don't remember the actual number. It -- it could be the one --

Rodriguez: Okay.

Cano: -- either one or --

POST230711-1-SB2

Rodriguez: Okay. But you got it -- it's either one of those?

Cano: Yeah. Because I --

Rodriguez: You got it from this form?

Cano: -- later -- no. I had it on -- I got it from my -- from my partner. I wrote it down on my notebook for the report.

Rodriguez: And then you transferred it on to this?

Cano: And then -- yes.

Rodriguez: Okay.

Cano: Both numbers. Yes.

Rodriguez: Yeah?

Luna: No, no, no.

Rodriguez: Okay. There's -- and going back to the same shots of the text messages --

Cano: Uh-huh.

Rodriguez: -- there's a phone number. 626-248-6949. Which is where the text messages are coming from. Do you recognize that number?

Cano: Yes.

Rodriguez: Okay. What number -- what is that?

Cano: It was a number that I had. It's like a C.I. burner phone that -- that I had to call informants or call for service when I go. Because I don't like using my -- my -- I don't use my personal cell phone.

Rodriguez: Okay. So that is -- that number at --

Cano: Yeah.

Rodriguez: -- one point was assigned to you --

Cano: Oh, yes.

POST230711-1-SB2

LASD-000183 RELEASE DATE: 6/2/2023

Rodriguez: -- or you had --

Cano: Yes.

Rodriguez: -- some type of device a number was assigned to?

Cano: With that number. Yes.

Rodriguez: Okay.

Cano: Which I don't have it anymore. Because we got a -- a county phone. So we -- I don't use it anymore.

Rodriguez: Did you have a county phone at the time?

Cano: I believe we had just gotten them.

Rodriguez: Okay.

Cano: With the cameras I believe.

Rodriguez: Did you ever use a county phone to --

Cano: No.

Rodriguez: -- communicate with her?

Cano: No.

Rodriguez: Okay. How did -- how did her -- just up until this point -- how did her AirPods get in the car?

Cano: I don't know how they got in the car. I know that -- I remember that Deputy Chen had transported her to, I believe, Industry to do a sobriety test. The machine that they have over there that we don't have.

Rodriguez: Uh-huh.

Cano: And then he brought her back to the station for booking. And then later on in the morning that's when the call that says that we had that 902H call. We got the call. So I'm not sure if she had them with her when we got her back from the jail for the hospital.

Rodriguez: Uh-huh.

Cano: And she dropped them there. Or if she dropped --

LASD-000184 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Rodriguez: "There" meaning where?

Cano: In the car. Inside the car.

Rodriguez: Okay.

Cano: Or if -- or if she dropped them off when she was at the -- at the site of the -- the crash.

Rodriguez: Okay.

Cano: But I don't -- she didn't have them on -- like she w .sn't, you know, using them at all. Because before we picked her up she gets searche before she goes in the car so --

Rodriguez: Okay. So who searched her before you guys -- you guys put her in the car? That night? When you guys did the transport?

Cano: It had to be the jailer. It had to be the jailer. Be use it's -- it was a female or another female deputy. I believe -- I don't remember if it was a jailer. A female jailer that was in that night. But usually it's either the jailer female or we call for a female for a search.

Rodriguez: Okay.

Cano: But I don't re all who -- who searched her.

Rodriguez: Sorry. You said that this -- this -- you don't have this number anymore; right?

Cano: No. I don't.

Rodriguez: Okay.

Cano: I use my county phone for -- to call people now.

Rodriguez: Okay. All right. Go ahead and just keep reading page 5 and move on.

Cano: "I guess her name. [redacted] on the top. I forgot when -- what my -- what is user name. Tony. I don't remember mine. I just sent you a request. I guess. Got it. You have pictures. You have any pictures? Only two. There's only two. Mine doesn't have any. I wanted to see a picture of you. I don't put any pictures. Ha ha ha. I have a story. A story has pictures. It's a video one. Two I believe. Send me one."

LASD-000185 RELEASE DATE: 6/2/2023

Rodriguez: Okay. We'll stop really quick. Go ahead and initial and date that one please. You asked her about her Instagram account?

Cano: Uh-huh.

Rodriguez: On page 5. Did you end up adding her to your account? Did you send her a friend request? Like you said on it?

Cano: I believe so.

Rodriguez: You believe so or you did?

Cano: Yes. I did.

Rodriguez: Okay. Do you remember what her handle was?

Cano: Her handle?

Rodriguez: Yeah. You know, her name?

Cano: No. I don't remember.

Rodriguez: You don't remember?

Cano: No.

Rodriguez: Okay. You do have an Instagram account; right?

Cano: I had one. Old. That I haven't used it anymore.

Rodriguez: Okay. Are you still friends with her --

Cano: It goes with that -- with that number.

Rodriguez: Okay. Are you still friends with her on Instagram?

Cano: No. No. I don't use that number anymore. It's been a long time.

Rodriguez: Okay. Okay. Go ahead.

Cano: Yeah. And I haven't talked to her in a long time.

Rodriguez: When was the last time you talked to her?

Cano: It's been a long time. I don't -- I wouldn't remember. But it was -- it was -- I don't know. A few weeks after that. When I gave her the information

POST230751 1-1-SB2

about her friend and that was it. A few texts maybe after that, but that was it.

Rodriguez: Okay.

Cano: "Way on the top. I just saw it. It's nice. I love it. I love -- love it. Thank you. Hope you rest. I'm here until 6:00 a.m. If you wake up before that. That's late. Yes. Ten hours. Oh, my God. That's too long. Ten hours. I can't believe how long. Yeah. Very tiring. I know you just -- I know you just for San Gabriel. Or anywhere. We cover a lot. Rosemead. Temple City. Pasadena. And more. Wow."

Rodriguez: Okay. So you were asking her for photographs. Why were you asking her for photographs?

Cano: What photographs?

Rodriguez: You asked her for photographs. On page 5 that I have here.

Cano: Oh, if she had photographs on Instagram.

Rodriguez: Okay. What was the reason you were asking her for photographs?

Cano: Just to see the -- just to see pictures. The -- her pictures. But she said she didn't have an, there.

Rodriguez: Do you remember seeing any photographs on her Instagram?

Cano: Just the video. A video that she posted that she was in, I believe, driving somewhe with her DJ friend. But it was -- it was just a video. Driving. Somewher

Rodriguez: And I'm sorry. Why did you say you wanted to see photographs of her?

Cano: Just to see -- see pictures of her.

Rodriguez: Okay. Did you know her from before?

Cano: No. I didn't know her.

Rodriguez: Before the --

Cano: No.

Rodriguez: She was arrested?

POST230751-1-SB2

Cano: No. I did not.

Rodriguez: Okay. So she was arrested on May 13th; right?

Cano: Yes.

Rodriguez: And then this communication that you had with her occurred May 14th --

Cano: Yes.

Rodriguez: -- 2021? The day after maybe even the same day whe , that transport c c -- occurred; right?

Cano: Yes.

Rodriguez: Okay. Go ahead. Keep reading.

Cano: "That's a lot. Yes. 80,000 square miles. It's a big area. That's why you're tired. Yes. But the benefits are good." And she says special you -- "especially you're a Sheriff. Yeah. They're goo Yes. That's good. I wish I could be a police. Ha ha. I don't see why not. You can. No. I don't have time for school. I don't have time for school. But you're a dentist. You make more -- you make go d for yourself."

Rodriguez: How did you know she was a dentist?

Cano: I believe the -- one of the business phone was her -- the business phone was to a dentist office.

Rodriguez: So did you call the business --

Cano: The business --

Rodriguez: -- line or --

Cano: No. I did not.

Rodriguez: How did you know it was a dentist?

Cano: The traffic -- the -- they had a traffic report. They tell you where they -- what business -- what their business phone number is. When they give you the business --

Rodriguez: Right. But --

Cano: The business at --

LASD-000188 RELEASE DATE: 6/2/2023

POST2307-1-1-SB2

Rodriguez: So listen to the question. And I'm asking you how did you know that it was a dentist's office?

Cano: She must have told me that it was a dentist that day.

Rodriguez: But did she tell you or did she didn't tell you?

Cano: I don't remember if she -- if she actually told me that. Yeah.

Rodriguez: So you were just assuming when you asked her that she was a dentist?

Cano: I -- I -- I don't know.

Johnson: Do -- do you think that another deputy told you?

Cano: I -- it could have been. My -- my -- when I got the number from -- from my partner. The one that did the actual arrest. Because they get the address to the business and everything. It could have been that he told me that -- that it was a dentist line.

Rodriguez: Okay. So I'm going to show you a copy of the Los Angeles County DUI report. Los Angeles County Sheriff's Department DUI complaint form. And it's dated May 13, 2021. Under f" No. 921-05266-0521-242. Okay?

Cano: Uh-huh.

Rodriguez: So and I'm just going to show the front page. So you're just going to initial the front. Okay?

Cano: Okay.

Rodriguez: Under -- there's the first section, which has all the details. You know, where the -- where the location. Where the actual DUI occurred. And along with the traffic collision and then there's a next section that basically that -- it -- it tells how they -- how you guys got the call. Right? It has the informant name. And the next section that's where her name is under suspect. Right? Do you see that?

Cano: Yes.

Rodriguez: So it's three sections down from the top. And her name -- is that her name?

Cano: Yes.

POST230751-1-SB2

Rodriguez: Okay. If you look a few sections down it's asking for a business address.

Cano: Uh-huh.

Rodriguez: And what does that read on there?

Cano: It says, "UNK." Unknown, I guess.

Rodriguez: Okay. What -- what does "UNK" stand for?

Cano: Unknown.

Rodriguez: Okay. So you do know what "UNK" stands for; right?

Cano: Yes.

Rodriguez: Okay. And then it says business phone? Area code --

Cano: Uh-huh.

Rodriguez: -- and what -- what does it say on there?

Cano: Not provided.

Rodriguez: Okay. Who wrote the report at the bottom?

Cano: I believe -- let me see. I believe I -- I don't see -- I don't see the name. Deputy name. Sergeant approval.

Rodriguez: It should be on left hand side.

Cano: Oh, up here. Yeah. I see it. Deputy Chen.

Rodriguez: Okay. Was that your partner that -- that's when you said that you must have gotten it from your partner from the report is that the partner that you're talking about?

Cano: The -- I could -- yeah. It could have been him or it could have been 2 -- 2 -- no. 2 Frank wouldn't have got any of that. If -- if it was -- if was from my partner. Yeah. It had to be from -- from him.

Johnson: Do you remember though where you got the --

Cano: No. I don't remember.

Rodriguez: Okay.

POST230751 1-1-SB2

Cano: No. I don't remember where I got it from.

Rodriguez: You don't remember where you got the --

Cano: No.

Rodriguez: -- phone number from now?

Cano: No.

Rodriguez: Okay.

Cano: Not the phone number. The -- you saying the -- the name; right?

Rodriguez: Well, I mean --

Cano: You're saying the --

Rodriguez: -- both things. Because initially I asked you where, you know, the -- how did you know that it was a dentist office; right?

Cano: Yeah. That's what we were talking about.

Rodriguez: And then you said -- yeah.

Cano: Yeah.

Rodriguez: You said that it was from, you know.

Cano: That if --

Rodriguez: That information --

Cano: Yeah. It could have been from one of the -- one of the partners.

Rodriguez: Okay. So now you're saying it could have been? And you don't remember now?

Cano: I don't -- I don't remember. No.

Rodriguez: Okay. Just go ahead and initial and date. So like I said I'm only going to show you the first page. Okay?

Cano: Okay.

POST230751-1-SB2

LASD-000191 RELEASE DATE: 6/2/2023

Rodriguez: So I'm going to detach the first page. Okay. All right. Keep reading.

Cano: "Like it's academy only. Seven months." She -- that's where she said. Oh, she's like I'm working for a dental office. I'm -- "I'm a P. -- P.R. Probably next year. Ha ha. Citizenship and high school. That's all you need. I'm -- I'm do have both. Ha ha. But before I need to -- need taking care of my DUI. That's a lot, too. Yeah. You need to stop drinking. First thing to do. I'm not drinking anymore. I quit drinking. Hope you do. It's better. At least don't drink and drive. Yes. It's too dangerous. You can do one, but not the other. Yes. It is. You can do one, but not the other. Yes. It is. So scared. No. You're not. Why are you scared? Because all things happen. I'm just like oh, my God. But it could have been very bad for you. I know. You drinking a lot. I don't have much, but I have t stop drinking. And be a good person. That's good. You will be -- yo will be now. Glad no one got hurt. That's a good thing. Listen to me. It was a good sign. Ha ha. Yes. You remember where you were at. I don't. Drinking or where you were coming fro . Home. You had no shoes and no clothes -- no under clothes. How when the -- yeah. Yes. Because I want to buy a taco. How you -- where you going? To your home? Oh, you went to eat? Did you find it? No. Just wanted to buy a taco during that time. Because you had no clue what you were doing."

Luna: Deputy Cano, in that section where you talk about you made reference to you had no shoes and no under -- under clothes what did you mean by that?

Cano: At the time of the arrest she d n't have any shoes and when -- when I got to the -- to the scene she w s doing all kinds of flips inside the car. At one point she was like -- her legs were on -- up top of the window and you could see that she didn't have no under clothes. And she -- and she had told my partner that she didn't remember what happened. So yeah.

Rodriguez: So by under clothes you meant like underwear?

Cano: Like underwear. Yeah.

Rodriguez: I don't want to put words in your mouth, but that's what you're --

Cano: Underwear. Yes.

Rodriguez: -- telling? Okay.

Luna: Okay.

Cano: She was doing flips inside the car and then I believe she was wearing like a -- a dress or something. And it was all the way down.

LASD-000192 RELEASE DATE: 6/2/2023

Luna: Okay.

Cano: "You went to get your phone. The tow truck. Yes. I want to call my father. Did you see the car? Yes. I sent to body shop already. Good. You need a -- you need a car. I don't want to drive recently. Ha ha. Probably you got to stay home awhile. Probably got to -- got to stay awhile." I think that's what she's saying. "How are you offices are you. At the station I can go pick up my AirPods. Hi. We just got getting route. Got deployed to the fires."

Luna: Okay.

Rodriguez: Okay. Do -- did you communicate with her? So on May 16th do you -- do you remember her -- sending her -- and thos , are not -- I'm going to get into it right now. Sending her photos?

Cano: Photos from where we were at?

Rodriguez: Yeah. I'm asking. Any -- any p otos. Do you remember?

Cano: I don't remember.

Rodriguez: Okay. So you mentioned that you -- you -- I see that question. Send her photos from where you were at. Did you send her photos of where -- where you were at?

Cano: I don't rem mber if I did.

Rodriguez: Okay. All right. Go ahead. Start reading. So that communication ended the 14th --

Cano: Uh-huh.

Rodriguez: -- but, I mean, I'm sorry. The 14th and then it goes on to the 16th, which is what you're continuing right now. Okay?

Cano: Okay.

Rodriguez: On May 16th.

Cano: "How are you doing? Okay. That's okay. I'm great. Can you meet you when you were at -- can't meet where you are at tonight. I'm here until 6:00. If that's okay? Are you home? No. I'm not. I'm with a friend. Are you here around San Gabriel now? Oh, I see. No. I just left. I just ke --

POST230751-1-SB2

left. Okay. Okay. Text me when you coming back then. Sounds good. Will do. Nothing cool yet. Nothing cool yet. My view of Malibu Hills."

Rodriguez: Okay. And then describe what that's -- that image that you're seeing there.

Cano: A picture of the hills.

Rodriguez: Okay.

Cano: "Malibu Hills. Oh, my God. Why so dark? Because of the fire. Yes. Yes."

Rodriguez: Did you work on June 16th -- I'm sorry. May 16?

Cano: Yes.

Rodriguez: That you remember?

Cano: Yes.

Rodriguez: Do you remember what unit you were working?

Cano: I don't remember what unit. No.

Rodriguez: Okay. So the n xt thing that I'm oing to show you is a p.m. shift in-service for Temple and it's dated Sunday, May 16, 2021. Go ahead and find yourself on there and tell me what unit you were working.

Cano: 54.

Rodriguez: Okay. Did you have a partner that day?

Cano: Yes.

Rodriguez: Okay. Who was your partner?

Cano: Deputy (INAUDIBLE).

Rodriguez: Okay. Go ahead and sign or I'm sorry. Initial and date both pages please. Did that kind of help you refresh your memory that you sent her any photos?

Cano: Yes.

Rodriguez: Okay. Did you send her that photo?

LASD-000194 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Cano: Yes.

Rodriguez: And you were deployed to the fires; right?

Cano: Yes.

Rodriguez: Okay. The next thing I'm going to show you is going to be a u it history report and it's for unit 54, shift 3, which would be p.m. shift. And it's dated 05-19 or May 6 -- I'm sorry. May 16, 2021. Okay?

Cano: Yes.

Rodriguez: When you read it you said you were deployed to the fires, but si ce you're reading it you are confirming that you were deployed to th fires when, you know, when you're looking at it. Right? That is you? That -- that was you guys; right?

Cano: Yes.

Rodriguez: Okay. Go ahead and just initial and date. Okay. Okay. Go ahead.

Cano: "Yes. The fires. By any Chence -- hi officer, by any Chence do you know where's my credit card and -- and some gift cards. I couldn't find my blue company card and Target gift card. No. We didn't touch anything and everything was on the floor. We didn't take anything out of the car. We only checked for insurance. Thank you, sir. Probably just lost it. Everything -- yes. Everything was thrown everywhere after the crash. You home now? I hope to get some -- some -- I hope to see you later -- later on. I'm with a friend because she kind of worry about me. Probably just staying home. Her house. Sorry to hear that. What city? And why is she worried?"

Rodriguez: I'm going to go back to -- so during -- part of that conversation that you had with her on May 14, 2021 on page 3 you asked her if she lived alone. And asked her, "Do you live alone?" And then she responded, "With my parents." "Are you ever alone there or are they always home?" Okay?

Cano: Uh-huh.

Rodriguez: And then the next line she tells you that they're basically always home because they have COVID. Right?

Cano: Uh-huh.

Rodriguez: Okay. Why did you want to know if -- if she was ever alone?

LASD-000195 RELEASE DATE: 6/2/2023

POST2007511-SB2

Cano: Um -- just to know if she was ever -- if she's home alone I guess. I mean -- I think -- I think -- just to know if she's home alone.

Rodriguez: How does that information --

Cano: I guess -- I --

Rodriguez: -- relevant to you though? Like how? Why would you ask her that? How is that information relevant to you?

Cano: It's not. Maybe just to -- maybe to see her. I don't know.

Rodriguez: I mean, I don't know.

Cano: If I could see her.

Rodriguez: I'm asking you.

Cano: Yeah. Just to know if she's alone. If -- we -- if we're going to see her or see each other or something. And -- maybe that's why.

Luna: And while she was alone did you ever visit her while you were on duty?

Cano: No, sir.

Luna: And did you ever visit her at her home while she was -- while off duty?

Cano: No, sir.

Luna: Okay.

Rodriguez: And how about when her parents were around did you ever visit her on duty?

Cano: No, ma'am.

Rodriguez: How about off duty?

Cano: No, ma'am.

Rodriguez: If you continue a few -- and by the way, for the record, the black is you; right?

Cano: Uh-huh.

POST230751-1-SB2

LASD-000196 RELEASE DATE: 6/2/2023

Rodriguez: And then the green is going to be her?

Cano: Yes.

Rodriguez: The blue bubbles are her; right?

Cano: Yes.

Rodriguez: So if we keep reading down one of the black bubbles it says right after you say, "I can visit you at your restaurant that you said you h .ve on New and Valley."

Cano: Uh-huh.

Rodriguez: When -- when did you -- how did you know that she had a restaurant on New and Valley?

Cano: She had told me that she had one.

Rodriguez: When did she tell you that?

Cano: I don't remember when she told me. She just had told me that she had a -- the -- because I told her I work Ro semead sometimes, too, and then she told me oh, I have a restaurant on that -- on that address. On that -- those streets. Some shopping center the' .

Rodriguez: Okay. And then the next bubble you say in black, "I've been thinking of you." What did you mean by that?

Cano: That I was thinking about her.

Rodriguez: Okay. In what context?

Cano: I -- I don't -- I don't know. Just thinking about her. I don't know. I mean, because we were talking now.

Rodriguez: I mean, it's not a difficult question. In what context were you thinking about her? You're a deputy; right? You're a deputy sheriff?

Cano: Uh-huh.

Rodriguez: And you're telling her that you were thinking about -- you were thinking about her. In what context?

Cano: Just -- I mean just -- just thinking about somebody. I mean, like I don't -- I don't understand what context would I be thinking about somebody? Just

LASD-000197 RELEASE DATE: 6/2/2023

POST2305511-1-SB2

thinking about her. Like oh, you know. I'm thinking about her today. Or I'm thinking about texting her. But --

Rodriguez: On. So since -- since you said you were thinking, you know, about texting her --

Cano: Uh-huh.

Rodriguez: -- for what purpose?

Cano: Just to say hi. See how she was doing.

Rodriguez: Okay. You said you didn't know her before then; right?

Cano: No. I did not.

Rodriguez: Okay. So just in the time from where she was arrested 'll, you know, what is this? This day -- or the day after you're concerned for her well-being?

Cano: I was that night when I texted her. Because she was extremely intoxicated. Yeah. I was con erned.

Rodriguez: Okay.

Luna: Is this what you normally do when u arrest someone? Do you normally follow up with them on their phone and either call them or text them? Asking them how they're doin or -- or texting them and saying, "I'm thinking about you"?

Cano: No, sir. I -- I don't.

Luna: Okay.

Rodriguez: Did you ever discuss her case with her? Her DUI case with her?

Cano: She -- no. I don't remember if we discussed the actual case-case. But she mentioned somewhere on the bottom of the text that she had to -- she had to take care of her DUI. But that was about it. I believe that was around the time that I -- I just didn't talk to her no more. When she said she had -- she said she had to take care of her DUI so I was assuming -- I assumed that she had court coming up or something and then I -- I never talked to her again.

Rodriguez: This thing about her having court is that like a phone call? Did you ever call her or talk to --

POST23075111-1-SB2

Cano: Yeah. We talked --

Rodriguez: -- over the phone?

Cano: -- over the phone a couple of times.

Rodriguez: A couple of times? Just --

Cano: Yeah. Like twice.

Rodriguez: Okay. How long were those conversations?

Cano: Not too long. A few minutes. Most of the -- I rem nber the one time that she answered she said she was in Seattle somewhere. So we didn't -- that was less than two minutes.

Rodriguez: Uh-huh.

Cano: And that was it.

Rodriguez: And what did you guys talk about?

Cano: Just what she was doing and where she was at. That was -- that was about it. She told me that she traveled a lot with -- with the DJ friend.

Rodriguez: Okay. But so going back to the case I asked you if you had at any point discussed anything pertaining to the case. Right?

Cano: Uh-huh.

Rodriguez: So if we go back to the conversation that you had with her on May 14th?

Cano: Uh-huh.

Rodriguez: Okay? You kind of start talking about maybe one, two, three, four -- the fifth bubble. Black. Or dark bubble down.

Cano: Uh-huh.

Rodriguez: Right?

Cano: Uh-huh.

Rodriguez: What do -- what do you say there?

Cano: Do you remember where -- where you were at?

POST230511-1-SB2

Rodriguez: Okay. And then she replies?

Cano: I don't.

Rodriguez: And then you -- you ask in the dark bubble?

Cano: Where -- I guess it continues where you were drinking or you were coming from.

Rodriguez: Okay. And what did she say?

Cano: Home.

Rodriguez: What's that little picture on there?

Cano: I believe it's a house.

Rodriguez: Okay. And then what do you say?

Cano: You had no shoes and no under clothe.

Rodriguez: Okay. When you originally contacted her did you ask her this information?

Cano: No. I didn't -- I don't -- I don't recall asking her any of that.

Rodriguez: Okay.

Cano: No.

Rodriguez: So on that day you didn't ask her this information?

Cano: I don't remember. I don't remember asking her at the scene. I don't remember.

Rodriguez: Okay. So as it pertains to --

Cano: To the --

Rodriguez: -- what she was doing leading up to her --

Cano: To the DUI --

Rodriguez: -- getting in the car and --

Cano: To the crash.

POST230751 1-1-SB2

Rodriguez: -- crashing?

Cano: Yeah. I don't --

Rodriguez: This is the only time that you can recall right now that you asked her?

Cano: That I can recall. Yes.

Rodriguez: What she was doing?

Cano: Yes.

Rodriguez: Okay. Do you have any questions?

Luna: No. No.

Rodriguez: Amy?

Johnson: No.

Rodriguez: Is there a particular reason why you discussed it like that? With all that information?

Cano: No. I don't -- I don t think so. No particular reason. No.

Rodriguez: Okay. All right. So okay. The next set of text messages that I'm going to -- the screenshots of the te t messages I'm going to show you. They're just going to start from Monday -- well, it continues on from your conversation on Satu ay -- 16 -- May 16. And then it goes all the way through Saturday, May 30th. Okay? And we're going to do the same. We're going to re iew them, but as you're reading them we'll review them. Okay?

Cano: Okay.

Rodriguez: Start from the top and like I said that's just a continuation from your conversation with her on May 16th.

Cano: Okay. "Hello. Are you there? Hi. Didn't -- I didn't hear from you all the way back on Thursday at 10:00 p.m. I'm here today. Do you want to -- do you want to meet -- to meet today. If not tomorrow, too. Hi, officer. Can't meet you tomorrow. I can't meet you tomorrow. Okay. Sounds good. I'm in Temple City. Let me know. Sure. I can meet Temple City High School. Yes. Okay. See you in thirty. Okay. If -- see if you can. Give me thirty. See you then. That's the same one. Hi. I'm here." She said, "I'm here.

POST 20751 1-1-SB2

LASD-000201 RELEASE DATE: 6/2/2023

In the parking lot. Where are you at? It was nice to see you. You look sexy. Ha ha. Okay. Thank you. Thank you. No. I'm serious. You look very sexy. I want to have -- I want to have a drink with you. That be okay? You didn't reply anymore. Shy. Yesterday I was too tired. I just woke up."

Rodriguez: Okay. Just go ahead and you can stop reading right there and I'm going to show you some stuff. Were you working -- do you recall if you were working on Friday, May 21st?

Cano: Yes. I believe so.

Rodriguez: Okay. Do you remember what unit you were working?

Cano: I believe I was a traffic car. 52 Tom on overtime.

Rodriguez: Okay. So I'm going to show you a record. An in-service for -- a p.m. in-service for Temple Station dated Friday, May 21 -- 21st, 2021.

Cano: Yes.

Rodriguez: And there's two pages. And, again, you're going to initial and date both of them at the bottom. Can you locate yourself and tell me what unit you were working?

Cano: Yes. Temple City 52.

Rodriguez: Okay.

Cano: 52.

Rodriguez: Uh-huh. Did you meet her that day?

Cano: Yes.

Rodriguez: Okay. Where did you meet her?

Cano: In the parking lot at Temple City High School.

Rodriguez: Okay. How long did you guys meet for?

Cano: Maybe five minutes.

Rodriguez: Okay.

Luna: Did she get out of the car?

POST230751 1-1-SB2

Cano: No. I was in my car (INAUDIBLE).

Luna: In the text reference here I'll say one, two, three, four, five, six, seven down. On the seventh bubble, which is -- would be the fourth bubble f r you it reads, "It was so nice to see you. You look so sexy." What did you mean by that?

Cano: That she looked beautiful. She looked nice. She was -- she was dressed -- well dressed.

Luna: How did you see her?

Cano: She -- see her from -- from the car. You can see the -- the suit that she was wearing.

Luna: Okay.

Rodriguez: What was she wearing? Do you --

Luna: Do you recall?

Rodriguez: You said a suit, but --

Cano: It's -- it's like -- yeah. Lik j cket type of -- like a -- not a -- not a suit jacket, but like a flannel top. It lo ked -- it looks dressy.

Rodriguez: Uh-huh.

Luna: Got it.

Rodriguez: That's all she was wearing?

Cano: That's all I can see from the car. From my -- from my car. Her car is on this side and I'm all right here.

Luna: And you went there again to Temple City High School for what?

Cano: I was working that city. I'm driving around.

Luna: And you were there to do? Just to meet? That's it?

Cano: Yeah. Just -- just I was in the area and she was coming down. I believe she lives somewhere up north from there.

Luna: Okay.

POST230711-1-SB2

Cano: So she was coming down Temple City.

Luna: Okay. The next line, which is I'd say line No. 9, which is -- would be your fifth conversation here on this page. It says, "I'm serious. You are very, very, sexy. I want to have a drink with you. Bad." Did you ever have a drink with her?

Cano: No, sir.

Luna: And you said how long were you there with her?

Cano: Maybe five minutes. If that. Not too long.

Luna: Okay.

Rodriguez: Okay. So the next set of photographs and this going to be kind of -- they're, you know -- they're -- and the date that was the GPS date that was pulled from the car that you were in that day.

Cano: Uh-huh.

Rodriguez: And -- so at about 1634 hours your vehicle pinned going en route to Temple City High. Okay?

Cano: Uh-huh.

Rodriguez: And eventually you arrived and you stop at Temple City High.

Cano: Uh-huh.

Rodriguez: So that's the little upside teardrop.

Cano: Yes.

Rodriguez: And, again, those are the coordinates that were pulled off your -- your GPS.

Cano: Okay.

Rodriguez: Okay. And then you remain there for approximately -- and from 1634 till about 1635. And then you, you know, you leave the area of Temple City High. Good?

Cano: Uh-huh.

POST230751-1-SB2

LASD-000204 RELEASE DATE: 6/2/2023

Rodriguez: I'm just showing you what your vehicle -- your GPS data shows.

Cano: Uh-huh.

Rodriguez: And you said that that day you just -- you met her just because?

Cano: I believe she was going to give me the information for the -- for the -- her friend. For her case. So -- so that I can get try to get information on the -- on the El Monte case.

Rodriguez: So did -- did you had already returned her AirPods?

Cano: Um, I don't recall what happened. If -- I think it was that day. I don't recall.

Rodriguez: Okay. Did you ever meet with her after -- after the 21st? Again?

Cano: After the 21st -- that was the Temple City one? The 21st is the Temple City one? Yeah.

Rodriguez: Oh, yeah. I'm sorry.

Cano: Yes. When I told her that I had the infor ation for her case.

Rodriguez: Uh-huh.

Cano: I -- I -- I told her that I was working Rosemead and it was -- she told me she was there and I -- she said her friend is there so that's when I -- I met them and told her what they had told me at El Monte.

Rodriguez: Okay. Okay. All right go ahead and keep reading.

Cano: "Hi. How are you? Hi. I'm good. How are you? Tired, but I'm good. Thinking of you. Ha ha. Why tired? I'm serious. Thinking of you because -- because I've been working a lot. Whacha doing. I'm eating. Hot -- Hot Pot with my friend. Hil -- in Hilton Plaza. What -- what city? San Gabriel. Hilton Plaza. Maybe we can see you tonight. Oh, I've been -- I've been there. Really? Can I see you later? Yes. Come -- come. I will stay." I don't know what that means. What that says, but -- I'll start again. "You --

Rodriguez: Yeah. I couldn't make out that was either.

Johnson: (INAUDIBLE)?

Cano: Awhile. I guess she tried to say awhile.

LASD-000205 RELEASE DATE: 6/2/2023

POST230511-1-SB2

Rodriguez: (coughing) Excuse me.

Cano: "I will stay awhile." Because then she wrote, "Awhile." "Okay. I'll get a chance I will let you know. It's busy right now. Sure."

Rodriguez: Okay. I'll stop you right there. Okay. So did you meet with her on the 23rd?

Cano: Yes.

Rodriguez: Where did you meet?

Cano: It's right on the border of San Gabriel and Rosemead. The city there I work. I was working that night. That day.

Rodriguez: Okay.

Cano: I believe it's Valley and either Del Mar. Or near one of those -- one of those streets.

Rodriguez: This time when you said right now that you m[illegible]t at the Del Mar and Valley --

Cano: Uh-huh.

Rodriguez: -- was that in addition to the time when you met her? Because you said you -- you met her from --

Cano: I think that's the time. That's the time that I'm talking about.

Rodriguez: So it's the same time?

Cano: It's the same time. Yes.

Rodriguez: Oh, okay. All right.

Cano: That was the only --

Rodriguez: So that was when you gave her --

Cano: -- two --

Rodriguez: -- the information?

Cano: Yes. That was the only two times that I saw her.

POST230751-1-SB2

Rodriguez: Okay. Okay. So, for the record, I'm showing you again just a Google aerial map. Okay?

Cano: Uh-huh.

Rodriguez: Of -- with your GP -- the GPS coordinates that were pulled from GPS data from the vehicle that you were driving that day.

Cano: Uh-huh.

Rodriguez: And, again, just kind of using the GPS coordinates you are the upside down teardrop and then if you can read what, you know, what's around there. Does that look kind of the area familiar to you?

Cano: Valley. Yeah. Valley looks familiar.

Johnson: Valley and Abbot --

Cano: What is this street?

Johnson: -- it looks like? This other one is --

Cano: And little side streets.

Johnson: Manley Drive is th other one. And --

Cano: I -- I recognize Valley, but I dc 't recognize the other little streets.

Johnson: There's a Hilton. Los Angeles.

Rodriguez: So that sounds about right? Is that where you went?

Cano: Yes. I was on Valley. Yes.

Rodriguez: Okay. Go ahead and -- and you said that day that was the one time that you met her? Just at the Hilton?

Cano: Yes.

Rodriguez: Okay.

Cano: I didn't meet her at the Hilton.

Rodriguez: Oh, no. I'm sorry. The -- well, because she said that she was at the Hilton Plaza. The -- The Hot Pot?

POST230511-1-SB2

Cano: Oh, the Plaza?

Rodriguez: Yeah. Yeah.

Cano: Yeah.

Rodriguez: That's what she said. How long did you meet her for?

Cano: It wasn't too long. Like I told what -- had told her that if I had time I would go over because it was -- it was super busy.

Rodriguez: Uh-huh.

Cano: Maybe -- maybe five -- six minutes. If that.

Rodriguez: Okay.

Cano: And I just met her and her friend and I pretty much just told them what they had told me in El Monte and that was it.

Rodriguez: Okay. All right. Go ahead. Keep reading.

Cano: "Send me pictures I can see. Ha ha ha. You can -- you came to see me. You can -- came to see me. You don' do pictures. My friend said next time you make might come to our r rty. Nice. I'm in. Sure. Yeah. You still at Hilton? You still at the restaurant? Yes. Okay. I'll go there. Sure. You're on Valley? Yes. What's the name of the restaurant? San Gabriel Valley Hilton. I'm here. Where are you? Outside. The hotel plaza." I guess it was. "You look hot. Sexy. Take -- take me home with you. I want to see you. Ha ha ha."

Luna: So, once again, just go ahead and get that page back over there real quick. And I'm going to direct to those -- those last comments that you made. "Outside. To the hotel plaza. You look hot. Sexy. Take me home with you. I want to see you." What did you mean by that?

Cano: That she looked nice. She, you know. She was well dressed.

Luna: Were you in -- were you in your car or out of your car?

Cano: I ex -- I believe I exited the car. I was on the sidewalk. Because they came out from the Plaza and met me on the -- on the like the sidewalk is here and we were like by the steps to the Plaza.

Luna: Okay.

POST2507511-1-SB2

Cano: But I was out of the car.

Luna: And how did you greet each other?

Cano: Just hi. I shook her hand.

Luna: Shook --

Cano: Her friend. Presented me with her friend and I shook his hand.

Luna: Okay. Do you remember by any Chence what you said? "She looked hot." "She looked sexy." Do you remember what she was wearing?

Cano: I believe she was wearing a dress. A long dress. Like blue. Black. Black dress.

Luna: Okay. Is this what you normally did wit . -- and this is we're talking like maybe a week now into after the arrest of someone that was arrested for DUI. Is this what you normally do with anyone that after you arrest?

Cano: No, sir. It's not and I should have never done it.

Luna: Okay. Okay.

Rodriguez: And then you tell her like, you know, one of those bubbles that you read --

Cano: Uh-huh.

Rodriguez: -- "take me home with you" or "I want to see you." Why did you want to go home with her?

Cano: Just to see her. ´ust us, I guess. Just me and her.

Rodriguez: Okay. Go ahead.

Cano: It says, "I'm going to be with you. Are you there? Did you go home? Yes. I'm here. In my friend's house. Where does she live? I want to see you again. Ha ha. I'm in Rosemean. 4900 block of Rosemead. Yes. 4951 Rosemead. Okay. Are you going to be there for a while? Yes. Can I go see you? Okay. I'll text you."

Luna: Okay. Let me stop you right there real quick. On that previous page, Cano.

Cano: Yes, sir.

POST230751-1-SB2

Luna: You had said, "I'm serious." "I want to be with you." What did you mean by that first bubble? "I'm serious." "I want to be with you."

Cano: Just to be with her. Just us.

Luna: Did you want to engage in some sort of romantic relationship with her?

Cano: I believe so, sir. Yes.

Luna: Okay.

Rodriguez: So you believe so or --

Cano: Yes.

Rodriguez: -- yes? Okay. Is that why you keep telling her that she's sexy and that you want --

Cano: Yes.

Rodriguez: -- that you want her to take you home with her?

Cano: Yes.

Rodriguez: But you were on duty; right?

Cano: At the time. es.

Rodriguez: You're working at the time; right?

Cano: Yes. But not on duty. Not that I want to go on duty.

Rodriguez: I was just asking if when you're saying this you're on duty?

Cano: Yes. When I --

Rodriguez: That's all I was asking.

Cano: -- texting. Yes.

Rodriguez: Okay. Uh-huh.

Luna: Yeah.

Rodriguez: Okay. Go ahead.

POST230751-1-SB2

Cano: Okay. "I'll -- I'll text you. Going to see you now. Can you come in like five? Sure. You in Pico Rivera because it's not Rosemead. No. It's Rosemead. You -- you -- you were the wrong way. You are the wrong way. 459 Rosemead is the city of San Gabriel. Oh, I see. You're -- you're closer to the station. You're then closer to the station. I'm here. I would like to see you. I wanted to kiss you right now. Hello. Just go home. Okay. I'm glad. Did you see Peter's text? Ha ha. Yes. I have to sleep. Good night. Good night. Hi, there. How are you? I'm back tomorrow. I'll be 2:00 p.m. to 6:00 a.m."

Luna: Okay. So on that page, Cano.

Cano: Yes, sir.

Luna: The third bubble. You said, "It was nice to see you." "I wanted to kiss you right now." Did you meet with her afterwards after work or during work? On that occasion?

Cano: No, sir. It was -- it was in -- I didn't meet with her after work. We met -- we met right after -- right then and there. Because it's our county -- Pasadena.

Luna: Okay.

Cano: -- area. And I met her downstairs outside on the -- on the street.

Rodriguez: This is on the 23rd; right?

Cano: Uh --

Rodriguez: Still on the 23rd?

Cano: I believe so.

Rodriguez: Okay.

Luna: You said, "Downstairs." Is that her residence?

Cano: No. She said it was a friend's residence. I believe she said it was a friend's.

Luna: Okay.

Cano: She doesn't -- she -- she doesn't live there. She lives up somewhere in north -- north of Temple City. In Arcadia somewhere.

POST230751-1-SB2

Luna: Okay. So when you met over there -- you went over to meet her; correct?

Cano: Yes.

Luna: Okay. And did you get out of the car?

Cano: To the sidewalk. Yes.

Luna: Okay. Now was she --

Cano: It's a --

Luna: Was she standing outside of the location there on Rosemead?

Cano: Yes.

Luna: Okay. How did you greet her?

Cano: With just a hi. And shook her hand.

Luna: Shook her hand?

Cano: Yeah.

Luna: Okay.

Rodriguez: So I'm going to show you a -- and then these are just your GPS coordinates for that day. Shoot. I'm sorry. May 23rd. Okay?

Cano: Uh-huh.

Rodriguez: The upside down it's just an aerial map taken off of Google --

Cano: Yeah.

Rodriguez: -- plugged in your -- your GPS coordinates --

Cano: U' -huh.

Rodriguez: -- for that day that were taken from your GPS of the vehicle that you were driving that day. And -- and the upside down teardrop if you look at it where -- where is that at? Outside of where? Or it looks like it's on the street.

Cano: Yeah. It's -- it's a little side street off of Rosemead. Just west of Rosemead Boulevard.

POST230711-1-SB2

Rodriguez: Okay.

Cano: It's a -- a -- they're like condo complexes there.

Rodriguez: Can you read the name of the apartment?

Cano: I don't think there's a name on it. It's just a street.

Johnson: Oh. Can you read that or no? It's too tiny. I -- I think it says Rose Villa Apartments.

Rodriguez: Uh-huh.

Cano: Rose Villa apartments?

Rodriguez: Uh-huh. How long were you there for?

Cano: Not too long.

Rodriguez: Just --

Cano: Maybe five -- less five -- five -- less than five minutes maybe.

Luna: Okay.

Rodriguez: So you met with her the 23rd twice? Not just once? Right?

Cano: Uh --

Rodriguez: Like you had previously said?

Cano: I -- yeah. If it was the same day with the other one. I believe so. Yes. It was twice.

Rodriguez: Okay. Do you have anything?

Luna: Go ahead.

Rodriguez: Maybe just go from --

Luna: Yeah.

Rodriguez: Let me go back to -- I'm going to show you the in-service for that afternoon. Sunday, May 23rd, 2021. It's the p.m. in-service for the p.m.

POST230751-1-SB2

shift in-service. Going ahead and find yourself and then tell me what unit you were working.

Cano: 51. Which is the same area.

Rodriguez: Okay. And do you have a partner?

Cano: Yes.

Rodriguez: Who was your partner?

Cano: Tarin. Tarin.

Rodriguez: Okay. Can you initial that please?

Luna: And just for the record it's Deputy Tarin. A deputy; correct?

Cano: Yes. Deputy.

Luna: Okay.

Rodriguez: Was she with you both times when you went to go --

Cano: No. This -- she was ıe on p.m.s. P.m. shift.

Rodriguez: Uh-huh.

Cano: The first time. And then the second time I was -- I believe I was by myself. I don't re.nember. I don't recall. But that was a -- an early morning. E.m. so I was covering. 51 would be where she was at that night.

Rodriguez: What time does your shift end on there?

Cano: I believe 2200.

Rodriguez: Okay. Well, I'll come back to it. But so the first time you -- you go to the ho -- ho -- the Hilton Plaza --

Cano: Uh-huh.

Rodriguez: -- Deputy Tarin is with you?

Cano: Yes.

Rodriguez: Okay.

POST230751-1-SB2

LASD-000214 RELEASE DATE: 6/2/2023

Cano: A second shift I believe -- I believe I was by myself. But I could -- I could be wrong. I don't re -- I don't recall. But it would have been for early morning shift.

Luna: Early morning shift.

Cano: Yes.

Luna: Okay. Okay. Go ahead.

Rodriguez: Oh, go ahead.

Cano: Uh --

Rodriguez: Oh, you know what? Before we go on. I'm sorry.

Cano: Okay.

Rodriguez: On the 23rd that -- that day when you go in to -- you meet her outside of the apartment complex --

Cano: Yes.

Rodriguez: -- did she ever get back in her car with you?

Cano: No.

Rodriguez: Okay. Did you ever run her -- her name on your M.D.C.?

Cano: No. Not -- not -- well, if I ran her maybe for the report, but not for nothing after that.

Rodriguez: What do you mean "for the report"?

Cano: Like at night -- the night of the traffic collision maybe. But not for -- not after -- after that.

Rodriguez: So I'm asking specifically for the 23rd.

Cano: For this date?

Rodriguez: Yes.

Cano: No.

Rodriguez: You --

POST230751-1-SB2

LASD-000215 RELEASE DATE: 6/2/2023

Cano: I don't recall.

Rodriguez: You don't recall --

Cano: No. I --

Rodriguez: -- or you didn't run her?

Cano: I don't recall running her. Or running her name. No.

Rodriguez: Okay. So she never got in the car. Her and her friend. And then you -- you --

Cano: No.

Rodriguez: -- while she was inside the car you ran her name? Right?

Cano: No. I don't recall running her name at all. Or being in the car.

Rodriguez: Okay.

Cano: I came out and we talked on the sidewalk and then I left.

Rodriguez: Okay. So if I pull the JDIC from that day and all the data that came out of that M.D.C. that was in that car I'm not going to find that you ran her name?

Cano: I don't know. Because I don't recall running her name. If -- if it comes out then yeah. Maybe I did, but I don't recall.

Rodriguez: Okay. Go -- go ahead.

Cano: Okay. "Good night. So this is (INAUDIBLE). Good night. Good night. Hi there. I'm back (INAUDIBLE). I'll be here from 2:00 to 6:00 a.m." Oh, I read this one already. "Hi. How are you? Hi. Talking to -- did -- when -- how -- why are you not talking to me? Did I do something wrong?"

Luna: Okay.

Rodriguez: So this next page that I'm going to give you just kind of look at it and it's -- it's the same thing --

Cano: Uh-huh.

POST230511-1-SB2

Rodriguez: -- but this is the way that it's kind of -- it's a duplicate. But that's the way it was given to us so I'm not going to, you know, mess with it. But just so you're looking at it and right here in front of you you see that yeah, it is one -- one of the pages is numbered 24 and then the 25th, but 24 and 25th both pages are the same. Okay?

Cano: Okay.

Rodriguez: But, like I said, this is -- that's the way it came so I didn't mess with it. Okay?

Cano: Okay.

Rodriguez: All right. So just go ahead and initial.

Cano: Can we just put double. A double copy of --

Johnson: Yeah.

Rodriguez: Yeah. Basically --

Cano: -- 24?

Johnson: That's all it is. Yes.

Rodriguez: -- that's what it is. I mean --

Cano: Oh, okay.

Johnson: And eah. It appears --

Rodriguez: Yeah.

Johnson: -- to be.

Cano: It's the same as --

Rodriguez: But I wanted you, you know, to see the --

Cano: Yeah. That's why I was like I read that and --

Rodriguez: Well, that -- this one. The 24 is kind of like a continuation of it. Just the way, you know.

Cano: Oh, okay.

POST230711-1-SB2

Rodriguez: But -- but these two are identical.

Cano: Okay.

Rodriguez: Okay? Fine. So 24 and 25th are identical.

Cano: Okay.

Rodriguez: Okay and so then continuing on to Page 26 and it's a continuation of the conversation that you were having with her on Sunday, May 30th. Okay?

Cano: Yes. "I guess I said something wrong. Ha ha ha ha How are you? I'm -- I'm in Seattle. No, no, no. Because on Thursday I just came to Seattle with my friend." That's the DJ friend that she travels I guess what she said.

Rodriguez: So let me stop you there. Earlier you had said that you spoke with her at one point. Right? You made -- you had a phone call and she said she was in Seattle?

Cano: Uh-huh.

Rodriguez: Because would this might have been when you communicated with her via telephone?

Cano: I believe so. Yes.

Rodriguez: Okay.

Cano: I say, "Oh, very nice. Send me pictures. I wish I could do that. No pics. Hi. Are you back from Seattle? I can't see you today. Hi. I'm -- I'm on my way to San Francisco today. Nice. Wow. I wish I could travel like that. Usually I'm not in L.A. during the weekends. Ha ha ha. Are you driving? Send me pictures. I want to see you. I want to see. No. Flying. I don't have pictures. Ha ha ha. I don't like selfies. Yes, you do. I'll take anything. Just for me. When are you coming back? Are you back? Where's my selfie? And good morning. What are you doing this weekend? Would you be available to go to San Diego Monday through Monday and spend the night out there. Up -- in the night out there."

Luna: All right. Okay. So real quick. Let me see the previous page that you just signed real quick. I just want to make a -- let me see it. Yeah. So okay. So last -- the last bubble that's on this page.

Cano: Yes, sir.

POST230751-1-SB2

Luna: It says, "What are you doing this weekend?" "Would you be available to go to San Diego Monday and spend the night out there?" Once again, I need to ask about that text. What were your -- what did you mean by that text and what were your intentions with that text?

Cano: Just yeah. That -- I asked her if she was available to -- to spend the night with me. And just spend the night together.

Luna: Okay.

Cano: But we did not. We did not meet.

Rodriguez: Oh, you guys didn't meet?

Cano: No. We didn't meet --

Rodriguez: In San Diego?

Cano: No. We -- we never -- never met. In that -- in those terms. Just to be me -- me and her spend the night.

Luna: Okay.

Cano: "Hi. Are you okay? Hi. Sorry for the late reply. I just got back to L.A. No worries. Where did you go this time? I thought I did something bad. LOL. Ha ha ha. No. I'm out of town. Out of state. Out of state. You back home? Yes. Because my grandfather is in ICU. Oh, oh, I'm sorry to hear that. I hope he gets better. Is he fine now? But my mom is still there?" My mother I guess she said. (INAUDIBLE). "My mother is still there. Thank you." And "you're welcome."

Luna: Okay.

Rodriguez: Okay. So you have a conversation with her and if you want to go back to the pages, but -- okay. It's the actual -- June 9th you have a conversation with her and you ask her if she would be available to spend the night out there on June 9th. And then she doesn't reply. The dark bubble indicates that you -- you sent her a message Friday, June 11th. So the two days later you eventually asked her to go to San Diego with you. So she didn't reply. And then again there's no communication with her until July 22nd.

Cano: Yes.

Rodriguez: And it looks like she was the one who replies.

Cano: Yes.

LASD-000219 RELEASE DATE: 6/2/2023

POST250511-1-SB2

Rodriguez: And then you kind of have a conversation continues. Were you in contact with her between June 11th and July 22nd?

Cano: No. I was not.

Rodriguez: So you guys didn't talk during --

Cano: No.

Rodriguez: -- that -- I mean, I guess over a month? You guys --

Cano: Yes.

Rodriguez: -- didn't speak to each other or have contact --

Cano: No.

Rodriguez: -- with each other? Okay.

Cano: I was just -- most of the time I would just do it with this phone because that's the only phone I use at work and it's - it's a phone that stays at work. But with my stuff. Because it's -- it's on my war bag so. I wouldn't like use it anywhere else. But work. So I -- I don't -- I didn't talk to her.

Rodriguez: So the phone that you have, I mean, you said it was a burner phone. Is that like a separate phone that you have and you just keep it at work?

Cano: Yes.

Rodriguez: Aside from your personal phone?

Cano: Yes. Like it's -- it's -- it's like a -- we call it a C.I. phone. We use it for if I want to call an informant or call somebody that I need to talk to. Either to get information then we use that -- I use that phone.

Rodriguez: And why wouldn't you use your other personal -- like your personal phone?

Cano: Because I've -- I've done it before and I even -- even when I use blocked numbers they would call me back and they said, "Oh, you helped me out one time with this." "Can you help me out?" And then that's why I got the phone.

Rodriguez: How long have you had this phone for?

POST230711-1-SB2

Cano: I had it for -- I don't know. I would say -- I don't recall how long I had it for. But I haven't had it since this last -- last text that I had with her. Like I said, we got the county phone and then I just use that. Like it was like a couple of weeks after that I never used it again. And I -- once you don't pay it's -- it's gone so.

Rodriguez: Oh, okay. So what I'll do next is -- well, why did you stop communicating with her? On July 22nd? (INAUDIBLE).

Cano: That was the last time I talked to her? Is that what you --

Rodriguez: Why did you stop communicating with her?

Cano: Honestly, I -- I -- I -- she had mentioned that sh was still going to court and I -- I just didn't want to get in -- in -- in -- involved anymore and I just stopped talking. And that's -- that was the last time I -- I texted her or -- or had any communication with her.

Rodriguez: But you said that she had mention d that she was going to court. Like but you had already talked to her; right? About her case? In previous text messages?

Cano: Yeah. She -- yeah.

Rodriguez: Uh-huh.

Cano: I had -- I had. But she had me tioned that she had court coming up.

Rodriguez: Uh-huh.

Cano: During like around that time in June. And that's when like I stopped talking to her. Because she had a court coming up some time. I don't remember the -- I don't recall the time, but --

Rodriguez: Okay. So what is the relevance of her having a court date coming up? What -- why would you stop talking to her then? Or --

Cano: Because --

Rodriguez: -- at that point?

Cano: Because I figured she would still have her proceeding so I -- I, you know, I realized I shouldn't even be talking to her. So I -- I -- I just stopped.

Rodriguez: But nearly --

LASD-000221 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Cano: But she -- she --

Rodriguez: -- two months later you realized that you shouldn't even be talking to her?

Cano: Yeah. Because she mentioned the court date. I thought she was -- to me she was done with it. Because, you know, it was just a DUI. But when she mentioned that she had a court coming up then I was like oh, okay. Well, then I shouldn't even be talking to her, you know. So I -- I stopped.

Luna: Did you have any phone conversations with her after July 22nd? At all?

Cano: I -- no, sir.

Luna: Okay. You -- and just for the record so you had many texts with her from the moment it started, which was right after she got released from jail, which was on May 14th. Where it seems like, for the record, it seems that you started to begin a conversation with her May 14th at 2306 hours texting. Up until the last text, which was Thursday, July 26th at 2208 hours. At what point did you realize maybe I shouldn't be having a conversation with her?

Cano: I -- I believe it was when she mentioned that she had court coming up. So I -- I realized okay. Maybe -- maybe her case is still open. So then I -- that's when I stopped.

Luna: Okay. Did you ever and just for the record did you ever have any type of conversation with anyone else after they get -- get arrested or -- or after a traffic stop? Anything like that?

Cano: No, sir.

Luna: Okay. You've been at Temple Station patrol for how long?

Cano: It's going to be nine -- ten years in November, sir.

Luna: Ten years. Okay.

Rodriguez: And you -- you said you were an F.T.O.; right?

Cano: Yes, ma'am.

Rodriguez: Okay. So at the time that this incident had occurred you want to say you said that in 2001 you were promoted to F.T.O.?

Cano: 2021.

LASD-000222 RELEASE DATE: 6/2/2023

Rodriguez: 2021.

Cano: Yeah. We didn't have trainees at the time so we kind of had one, but I was promoted in '21.

Rodriguez: '21. Okay.

Cano: I believe so. Yeah.

Rodriguez: Are you familiar with the policy -- the department policy a t pertains to prohibited associations?

Cano: Yes, ma'am.

Rodriguez: Okay. In your own words, please explain it to me.

Cano: It pretty much states that, you know, you're not to have any conversations with somebody that's either in jail or in any roceedin s within thirty days I believe.

Rodriguez: Okay. And then, once again, you -- she was arrested on May 13th --

Cano: Yes.

Rodriguez: -- 2021 -- 2021?

Cano: Yes, ma'am.

Rodriguez: And you contacted her via one of your burner phones -- that's what you called it -- on May 14th, 2021?

Cano: Yes, ma'am.

Rodriguez: Okay. So literally just like a day after she had been arrested. Or the morning after; right? She had been --

Cano: After she got released. Yes.

Rodriguez: Okay. All right. So I'm going to show you your -- just your body worn -- worn -- body worn camera footage.

Cano: Yes, ma'am.

Rodriguez: It's completely up to you guys if you guys want to watch -- to watch the whole thing. It's about twenty something minutes. Yeah. About twenty something minutes. So I can, you know, leave it or you guys can watch it.

POST230751-1-SB2

It's up to you guys. But regardless I'll -- I'm going to read you the advisement. And then we'll do that. When we come back I'll give you guys a break. You guys can talk. You can talk to your attorney. We'll step out at this time. And then as a matter of fact when we're playing the -- the video we'll just kind of step out and you guys can have a conversation. Whatever. And whenever you're ready just come out and get me. We'll use that time to take a break. Whatever. We'll come back on the record. And then I just have a few more questions and then we should be done.

Cano: Yes, ma'am.

Rodriguez: Okay. All right. You are about to view a video recording. It is important to understand that while this recording depicts visual information from the scene the human eye and brain could perceive some things in stressful situations differently than the camera records them. So this photographic record may not reflect how the involved personnel actually perceived the event. The recording may depict things that personnel did not see or hear. Personnel may have seen or heard things that were not recorded by the camera. Depending on the speed of the camera some action elements may not have been recorded or may have happened faster than personnel could perceive and absorb them. The camera has captured a two dimensional image, which may be different from the person's three dimensional observations. Lighting and angles may also have contributed to different perceptions. This recording is being shown to you in order to facilitate recollection of the incident. Video images are only one piece of the evidence to be considered in reconstructing and evaluating the totality of the circumstances. Some elements may require further exploration and explanation before the investigation is concluded. Any differences between the video and what you recall should be described by you during this interview. Do you understand?

Cano: Yes.

Rodriguez: Okay. We're going to go off the record and view the -- Deputy Cano's body worn camera footage. We're going off the record at 2:49 p.m.

Okay. We're back on the record at 1528 hours. The same four people still in the room coming back from watching a body -- a body worn camera and a short break. So I believe Sergeant Luna kind of already asked you this earlier. But is it common practice for you to follow up on, you know, any arrestee after they're arrested?

Cano: No, ma'am.

Rodriguez: Because typically --

LASD-000224 RELEASE DATE: 6/2/2023

POST 2020 SB2

Cano: It's not.

Rodriguez: -- you, you know, you -- you mentioned that, you know --

Cano: It is not.

Rodriguez: Okay. Okay. So in the body worn camera footage there's a portion and I kind of cued it to it and I have to ask it because while I was r viewing I, you know, I have to ask specifically, but it looks like the hobble was placed around her ankles at one point. Okay? This is coming from your body worn camera footage. And we're looking at I believe 10:53:50 h dir e stamp on the video. So just pay attention where e comes o t ar you'll see that there's a hobble around her ankles. Okay?

Cano: Uh-huh.

Rodriguez: So the questions that I'm going to ask you are going t follow that. Do you see it? Do you see the bottom?

Cano: I believe that's the seatbelt. That's the seatbelt.

Rodriguez: This right here?

Cano: Yeah. See. I take it off right there.

Rodriguez: Oh, okay. So the seatbelt comes across --

Cano: It goes -- yeah.

Rodriguez: -- like that?

Cano: On the new SUVs it -- it comes across and when you put it it goes this way. Over there.

Rodriguez: Okay. I stand corrected.

Cano: Was I --

Rodriguez: I did not know. Okay.

Cano: Yeah. The new SUVs they're already up here --

Rodriguez: Uh-huh.

Cano: -- so it's easy for you to grab it instead of reaching over.

LASD-000225 RELEASE DATE: 6/2/2023

Rodriguez: Okay.

Cano: So it's right her and then you just bring it across and -- and hook it to the --

Rodriguez: Okay.

Cano: -- to the --

Rodriguez: Thank you for clarifying. Yeah.

Johnson: That's good.

Rodriguez: I didn't know that. The last time I was in a patrol car I was still -- still driving --

Cano: (laughing)

Rodriguez: -- Crown Vics. So it's been awhile.

Cano: And I like the Crown Vics myself so --

Rodriguez: All right. So did you ever have physical contact with Miss V1 on duty?

Cano: Physical meaning?

Rodriguez: Contact. Any -- any --

Cano: Just verbal commun --

Rodriguez: -- type. Not verbal. Physical contact with her. Any type of physical contact. Beyond the hand shaking?

Cano: When I escorted --

Rodriguez: On duty?

Cano: -- her from my patrol car to my partner's patrol car. From I believe her right arm.

Rodriguez: Uh-huh.

Cano: I was holding her. Escorting her to his patrol vehicle.

Rodriguez: Okay. Aside from the times where you escorted her that day when she was arrested and then when you shook hands with her in those two to

POST230751 1-1-SB2

LASD-000226 RELEASE DATE: 6/2/2023

three times that you met with her did you have any other type of physical contact --

Cano: No, ma'am.

Rodriguez: -- on duty?

Cano: No, ma'am.

Rodriguez: How about off duty?

Cano: No, ma'am.

Rodriguez: Okay. Did you ever engage in any sexual act of any nature? And just going to be straight forward. Intercourse?

Cano: No, ma'am.

Rodriguez: Oral sex?

Cano: No, ma'am.

Rodriguez: This that I'm describing right now we'll ju t say on duty?

Cano: No, ma'am.

Rodriguez: Okay. The same thing. Did you ever have any sexual contact with her of any nature to include -- off duty -- intercourse?

Cano: No, ma'am.

Rodriguez: Excuse me. (coughing) Oral sex?

Cano: No, ma'am.

Rodriguez: Okay. You mentioned a couple of times in the text messages that you wanted to kiss her. Did you ever actually kiss her?

Cano: No, ma'am.

Rodriguez: On duty?

Cano: No, ma'am.

Rodriguez: Off duty?

POST230751-1-SB2

Cano: No, ma'am.

Rodriguez: Okay. Anything?

Luna: No. I'll come back to that. Just give me one second. I'm still generating this.

Rodriguez: Okay. In the meantime this is the part where I give you or we'll give you a -- an opportunity to kind of just as far as the facts anything that I, you know, factual. Okay? Anything else that you would like to add that I haven't already covered?

Cano: Okay. Just -- just a few things from watching the video that I was asking her questions about where she was coming from and if she had rinks. For the case.

Rodriguez: Okay.

Cano: I did run her on the M.D.C. that day of the accident

Rodriguez: Okay.

Cano: I did ask for her phone number, but she kept going all over the place. She -- he had is the one that mentioned th dental office. That she was coming from. That's where the message came from. And then -- and then yeah. I got the number from her for -- for the -- and wrote it in my notebook.

Rodriguez: For what? For --

Cano: This. For the --

Rodriguez: So she gave you --

Cano: For the report. Yeah. She gave me numbers there --

Rodriguez: Uh-huh.

Cano: -- but she kept giving different numbers, but I did ask her there at the scene.

Rodriguez: Okay. So then you -- the number that you were texting her we -- some of the text messages we can't see it -- what I showed you -- but that's where you grabbed the number from --

Cano: Yes.

POST230511-1SB2

LASD-000228 RELEASE DATE: 6/2/2023

Rodriguez: -- that you were texting her?

Cano: Yes.

Rodriguez: Okay.

Johnson: And then looking back if you had to do things over again what would you do?

Rodriguez: Well, before we go there --

Johnson: Okay.

Rodriguez: -- did you have anything?

Luna: No. Actually, no. I'm good. I covered -- you covered it.

Rodriguez: You're good?

Luna: Yes.

Rodriguez: We covered it?

Luna: Yes.

Rodriguez: Okay. There was one more thing that I needed to ask you and I completely forgot right now. Okay. Go ahead. Go ahead. I'm sorry.

Cano: Yes. Just, you know. I -- I now realize I did make a mistake as something that I should have never done. I realized it and it was late to realize that I should have never texted her. I have never been in trouble when a -- with the department at all. And -- and I know that it won't happen again. Especially if I'm given an opportunity to go back to patrol because that's what I want to do until something else comes up. And, you know, I realize that I made a mistake and I can see how it would look, you know, for -- this is a DUI so I can see how the department is looking at it. Okay. You made a mistake here. What happens if we have a serious case. Like a murder or, you know. Some -- some big felony and you make that mistake again then it could jeopardize the case so. You know, I -- I made a mistake and I know it won't happen again.

Rodriguez: Okay. Let me just double-check. Okay? We -- so earlier and you can kind of see it in the video --

Cano: Uh-huh.

LASD-000229 RELEASE DATE: 6/2/2023

POSS230751 1-1-SB2

Rodriguez: -- I mean, she's acting like really belligerent obviously and at one point she's very aggressive. She's yelling.

Cano: And screaming.

Rodriguez: And then I know at one point during your interview earlier you mentioned that she was kind of like putting her feet up and that's when you realized that she wasn't wearing any underwear.

Cano: Uh-huh.

Rodriguez: Did you ever like think to maybe call a supervisor at that point?

Cano: No. I -- I did not. Because I knew my partner was coming and he was going to handle everything else from there so I -- I -- it didn't -- didn't cross my mind to do it at the time. Because I wasn't going to transport so.

Rodriguez: Did you guys ever call a female out to the -- out to the field to have her searched or anything? Because I notice -- unless I'm missing a part like where a female came and searched her or anything. I noticed you guys just transferred her from -- or do you not get --

Cano: I don't remember if he did --

Rodriguez: Uh-huh.

Cano: -- have her searched there. I -- I don't recall, to be honest with you. If -- if he actually -- I did not. I did not.

Rodriguez: Okay. So that's what I'm asking.

Cano: Yeah.

Rodriguez: Try not to answer for anyone else other than yourself.

Cano: Okay. Yeah. I did not.

Rodriguez: But you don't -- you didn't search --

Cano: No.

Rodriguez: -- her or anything?

Cano: No.

POST230751-1-SD2

Rodriguez: Not anything from the beginning?

Cano: No.

Rodriguez: Okay. Did you witness any of your other partners searching her --

Cano: No.

Rodriguez: -- or at least making an attempt to call somebody or anything?

Cano: No, ma'am.

Rodriguez: Okay.

Cano: I did not.

Rodriguez: As far as, you know, you making contact with her in hindsight now knowing everything that you know would you have done anything different?

Cano: Yes. I would have -- I would have called my s pervisor and especially when she asked for help because that's when all of the communications kept going in regards to her friend's ca: e. I should have -- I should have ran it by a sergeant or -- or have her call the station. Or call El Monte P.D. herself and try to find out. That way I, you know, I don't get -- I wouldn't be in this situation if I would have done that.

Rodriguez: But you did, I mean, by you own admission you kind of said that you tried to engage in a romantic relationship with her; right?

Cano: Yes.

Rodriguez: Okay. And so this is, I mean, from the start of not even thirty days after she got out; right?

Cano: Yes.

Rodriguez: Or I'm sorry. Not even a day after?

Cano: Yes.

Rodriguez: So -- okay. Anything?

Luna: No. No. That's it. Just want to clarify that you just admitted that you were engaging in a -- in a way -- in an inappropriate way per our policy, which is a prohibited association; correct?

LASD-000231 RELEASE DATE: 6/2/2023

POST2021-11-1-SB2

Cano: Yes, sir.

Luna: Okay.

Rodriguez: All right. I don't have anything -- I don't have anything else. If you want to add anything I'll just leave it open for you at this point. But I don't have any more questions.

Cano: I mean, all I can say like I was -- I was earlier just talking to -- to Amy and, you know, it's -- it's -- a lot -- a lot of times we get -- we get in touch with people that we arrest and the next time I know that I -- my best way is to either run it by a sergeant and see if -- if it's okay for me to do it or if he wants to do somebody else or give her some other type of information that she can handle it by herself. And not get involved knowing that, you know, I'll be getting in trouble for policy.

Rodriguez: But you are familiar when I asked you the question if you would do anything different as far as, you k ɔw, when you iɾi ially made contact with her --

Cano: Uh-huh.

Rodriguez: -- knowing everything that you know n w, you know, even in the -- because you still have body worn camera, but you were an F.T.O. You know what the policy dictates. All that so --

Cano: Uh-huh.

Rodriguez: -- in hindsight from the initial time that you made contact with her would you have done anything different?

Cano: Yes.

Rodriguez: What would that be?

Cano: Call the supervisor on scene. And go from there.

Rodriguez: Anything else?

Cano: Search her. Make sure she doesn't have anything, you know, like stuff that she left in there. Make sure we do a good search. And -- and have a supervisor present.

Rodriguez: But what does policy say about you searching?

LASD-000232 RELEASE DATE: 6/2/2023

POST230751-LSB2

Cano: Searching. It's either, you know, you can do it with the back of your hand across. In between. Across like that. Or the best thing that we always do is call a female to do the search.

Rodriguez: Okay. All right, sir. Well, so I don't have any more questions for you. This is going to conclude your interview. And we're going to go off the record at 1532 hours.

JL
Cron & Associates Transcription 714-573-7172

POST230751 1-1-SB2

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

9a. SUBJECT SIFREDO CANO (FOLLOW-UP INTERVIEW)

LASD-000234 RELEASE DATE: 6/2/2023

Rodriguez: We're on the record. Today is November 14, 2022, and the time is 1015 a.m. We're at Internal Affairs Bureau in Interview Room "A," located in the city of Commerce conducting a follow up subject interview. I'm Sergeant Sara Rodriguez, and with me is Sergeant Ed Luna. We're from the Los Angeles County Sheriff's Department, Internal Affairs Bur au, which is commanded by Captain Ron Kopperud. For the record and voice-recognition, once again, I'm Sergeant Sara Rodriguez. Last name is spelled R-o-d-r-i-g-u-e-z. And Sergeant Luna, for the record and voice-recognition, can you please spell your last name.

Luna: It's Sergeant Luna, L-u-n-a.

Rodriguez: And being interviewed today for his follow-up is Deputy Sifredo Cano. And, sir, for the record and voice-recognition, please spell your first and last name and then state your employee number.

Cano: Sifredo Cano, S-i-f-r-e-d-o C-a-n-o. Employee No. is 508090.

Rodriguez: And it's 508090, you said?

Cano: 50 -- 509080.

Rodriguez: Okay. And with us in the room as well and representing Deputy Cano is gonna be Attorney Amy Johnson. Ma'am, for the record and voice-recognition, can you please spell your first and last name.

Johnson: Amy Johnson with Rains, Lucia, Stern. A-m-y J-o-h-n-s-o-n.

Rodriguez: And this case is regarding an administrative investigation involving Temple Station personnel under IAB Case No. IV2550292, which -- which the incident took place during the year of 2021. So during your previous interview which occurred on September 27, 2022, you filled out an administrative rights form -- "sworn and non-form subjects form." So I'm just letting you know that everything in that form that's dated still applies to this follow-up interview. Do you have any question s about the form?

Cano: No.

Rodriguez: And do you have any questions about the form or your requirement to still make a full, complete, and truthful statement during this interview?

LASD-000235 RELEASE DATE: 6/2/2023

POST2075T-1552

Cano: Yes.

Rodriguez: You don't -- you have questions?

Cano: No, no. No questions.

Rodriguez: All right. So prior to this interview, I -- I E-mailed you your transcripts, correct?

Cano: Yes.

Rodriguez: Did you have time to review those?

Cano: Yes.

Rodriguez: So as a reminder and once again, you're being ordered not to discuss the facts of this case or any of the issues discussed during this interview other than with your representative or attorney. Do you understand?

Cano: Yes.

Rodriguez: So if you need a break for any reason, please let me know and I will accommodate you. The only thing I ask is that if I ask you a question, please answer it and then we'll take a break. Is there any reason why this follow-up interview can't take place today?

Cano: No.

Rodriguez: So in -- back in your interview from the 27th, you said that you had contacted Miss V1 because you were concerned and also because you had her Airpods, correct?

Cano: Yes.

Rodriguez: Do you remember that?

Cano: Yes.

Rodriguez: All right. And you said -- you know, you also said that you didn't know how they ended up in your patrol car.

Cano: That's correct.

Rodriguez: Right? Okay. So do you normally check the patrol car every time before -- every time before you use it?

LASD-000236 RELEASE DATE: 6/2/2023

POST 2307S11-1-SB2

Cano: Yes.

Rodriguez: And tell me how did you find the Airpods?

Cano: I believe it was when -- towards the end of the shift when we were gassing up -- gassing up the car, we always check the car and I saw them in the back seat on the floor -- floor -- floorboard of the -- of the back seat.

Rodriguez: And how did you know they were her hers?

Cano: Cause she was the only one in the car that night.

Rodriguez: So you always check your car before?

Cano: Before and after, yes.

Rodriguez: Because that's what I was asking. You always check it before you take it?

Cano: Yes.

Rodriguez: And they weren't there --

Cano: They were not.

Rodriguez: -- is that what you're saying?

Cano: Yes.

Rodriguez: Okay.

Cano: Yes.

Rodriguez: So then you found them -- tell me again. When?

Cano: It was after toward -- at the end of the shift when we gas up the car. We always check the car again to make sure there's nothing in there and that's when I found them.

Rodriguez: And the rear passenger or the driver's side?

Cano: The rear passenger's side.

Rodriguez: So why didn't you just put the Airpods into Evidence?

Cano: It was after six o'clock. We had one other in-custody. I just -- I forgot to even booked it. I put it in my war bag and it just -- it just -- I forgot about it.

LASD-000237 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Rodriguez: So are you familiar with the -- what department MPP says or the policy -- Manual of Policy and Procedures indicates regarding found property and proper booking to include found inmate property?

Cano: Yes.

Rodriguez: What does it say?

Cano: That all property --

Rodriguez: Or just, I'm sorry. Explain your understanding of the policy in your own words if you can put it in your own words.

Cano: That, I mean, if it's -- if it's found property, then you shall [illegible] a Found Property Report and book it as evidence.

Rodriguez: Okay.

Cano: If -- if it belongs to an inmate, then either add it to their property and -- and, you know, rewrite it on the booking slip and just book it with their property.

Rodriguez: And you didn't do that, right?

Cano: No, I did not.

Rodriguez: And why is it tha. you didn't do that?

Cano: Like I said, we were busy that night. I -- we had had several other reports and I believe we had one in custody and I -- I just forgot about it. I put it in my war bag and I put my war bag away before coming up to the station and after that, I just -- I just forgot about it.

Rodriguez: You have any questions?

Luna: No.

Rodriguez: So, again, in your previous interview you talked about you meeting Miss V1 on May 23rd, 2021, in the area of -- in the -- near the area of Del Mar Boulevard and Valley Boulevard. Tell me again what you met her there for.

Cano: Del Mar and Valley, you said?

Rodriguez: Uh-huh.

LASD-000238 RELEASE DATE: 6/2/2023

POST 2075-1-1-SB2

Cano: I believe that was the time when I had told the -- I had information in regards to her friend being the DJ and her equipment being taken away from her. I had called El Monte PD to just get information on the case and she told me that her friend was there that time. And I went to talk to him about it.

Rodriguez: Did you go there for any other reason?

Cano: No.

Rodriguez: So on that day, who were you -- who was your partner that day?

Cano: I believe that was Deputy "Karen" that night, that afternoon.

Rodriguez: What's her name again?

Cano: Karen. I can't remember -- I can't even think here.

Luna: Is it Tarin?

Cano: Tarin, there you go. Tarin. Deputy Tarin, yes.

Luna: Tarin.

Rodriguez: So did -- on Page 46 of your transcripts -- and I'm just gonna show you Page 46. So if you are -- from the fourth line from the bottom up, okay? Can you read your statement again under "Cano." What does it say?

Cano: The whole statement?

Rodriguez: Yeah, go ahead and read it out loud. "Hi. How are you?" "Hi. I'm good. How are you?" "Tired, but I'm good. Thinking of you." "Why tired?" "I'm serious thinking of you because I have been working a lot. What you doing?" I'm eating Hot Pot with my friend." (INAUDIBLE). Heel? "My friend Heel with the Hilton Plaza." "What city?" "San Gabriel. Hilton Plaza." "Maybe we can see you tonight." "Oh, I been -- I been there." "Really?" "Can I see you later?" "Yes, come. I will stay -- I will stay." I don't know what that means. Was that -- what that says. I don't know what that means or what they says, but I'll start again." You.

Rodriguez: That's it?

Cano: Uh-huh.

Rodriguez: So -- so you said right now that you just met her cause you had information, you know, that you gathered from El Monte PD, right?

LASD-000239 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Cano: Yes.

Rodriguez: Did you send her another text to tell her that or, I mean, cause --

Cano: No, I --

Rodriguez: -- you just read that you were thinking about for, like, -- why did you go over there and see her?

Cano: No, I didn't send her a text.

Rodriguez: Besides the one you just read? The ones that you just read.

Cano: Yeah, just -- yeah, just that one.

Rodriguez: So on that day that you met with Miss V1 at the Hilton or near the Hilton Plaza, did you tell Deputy Tarin that you wanted to have Phó for dinner, a Vietnamese food? The soup? Do y ɹ recall if you told her that?

Cano: No, I do not.

Rodriguez: On that date, did you have dinner with Miss V1

Cano: No, I did not.

Rodriguez: And how long did you say you were there for?

Cano: Maybe five minutes, I think, if that.

Rodriguez: Okay.

Cano: Five, six minutes.

Rodriguez: Did you ever have with this -- dinner with Miss V1 on duty?

Cano: No, I did not.

Rodriguez: Did you ever have dinner with Miss V1 off duty?

Cano: No, I did not.

Rodriguez: Was Deputy Tarin -- so you meet her there at -- near the Hilton Plaza that day --

Cano: Yes.

LASD-000240 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: -- right? And then -- and then your interview we established last time that you also met her a second time outside of her friend's apartment. You recall that?

Cano: Yes.

Rodriguez: Was Deputy Tarin with you when you drove to the apartment complex?

Cano: No, she was not.

Rodriguez: So, again, during your interview on September 27, you said that -- at first you indicated that you did not use Miss V1 information to run her through on the MDC. Do you recall that?

Cano: I'm sorry. That?

Rodriguez: You didn't -- you didn't run her name or, you know, input her name in the MDC to run her. Do you recall saying that you didn't? You didn't do that at first?

Cano: I -- I ran her at the scene of the -- of the traffic collision.

Rodriguez: Right. But we're still talking about May 23rd? Remember I -- I told you at the beginning that --

Cano: Yeah, I don't recall the -- running her that night.

Rodriguez: You don't recall --

Cano: No.

Rodriguez: -- running her? Okay.

Cano: No.

Rodriguez: And you said that Tarin wasn't with you, right?

Cano: No. I believe she was not.

Rodriguez: Who was the --

Johnson: At what -- at what point, though?

Rodriguez: The second --

Johnson: There's --

LASD-000241 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: -- time they met. So that would have been towards the end of the night. I think in -- it might have been about 2100 hours or so. Yeah. So that was after. Okay. Okay. So what I'm gonna show you is a unit history report for Temple Unit 51, Shift 3, which is a p.m. shift and it's dated May 23rd, 2021. There's two pages, okay?

Cano: Uh-huh.

Rodriguez: And there's two things that we're gonna look at. The first one if you look around 1609 under "Inquiry." Can you read what -- what -- what's on there?

Johnson: 1609, you said?

Rodriguez: Yeah, 1609.

Cano: A license plate.

Rodriguez: What's the license plate?

Cano: Vehicle license plate. 8, Paul, Frank, X-ray, 50 -- 504.

Rodriguez: Did you ever run that plate?

Cano: I don't recall running the plate, no.

Rodriguez: So kind of goes along with it, but keep that still with you. This is a DMV printout and, basically, it's the inmate information -- or information. Can you read the plate? And it's dated May -- I'm sorry -- it was ran -- so the license plate, can you -- you see under "License plate"?

Cano: Yeah.

Rodriguez: What's the license plate there?

Cano: It's 8 -- I can't see that.

Johnson: It's right there.

Cano: It's 8, Paul, Frank, X-ray, 504.

Rodriguez: Is it the same license plate as the one over there? The unit history?

Cano: Yes, it is.

POST250751-1-SB2

LASD-000242 RELEASE DATE: 6/2/2023

Rodriguez: Can you read the registered owner under "Registered owner"? Who is the registered owner?

Cano: Toyota Lease LLC (INAUDIBLE) something and V1 V1

Rodriguez: Do you recall running the plate now?

Cano: I don't recall running the plate. No.

Rodriguez: Go ahead and initial your unit -- well, start with this. Initial for all these pages. You're only looking at the first one but that's the entire vehicle information, the DMV printout. So I'm giving -- I'm letting you see everything that goes with it, okay?

Cano: Uh-huh.

Rodriguez: But you're gonna initial -- date and initial all the pages I just showed you.

Cano: You said this is the same date?

Rodriguez: No, it's not the same date.

Cano: Same date as this is not the same date as this?

Rodriguez: No, it's not.

Cano: Okay. So it wasn't ran that date that you're asking.

Rodriguez: Oh, no, it was ran that day. It's on there. It's just that I can't go back and grab this, the full -- the full record of that. So I ran it to see that -- show you that the actual full registration and that those -- the plate matches to that and who it is registered to, which happens to be Miss V1

Cano: Okay.

Luna: Make sure you date it too.

Cano: All of them, you said?

Rodriguez: Uh-huh.

Johnson: It's the 14, though.

Cano: 11-14.

Johnson: Did you want him to -- what's this paperwork? You want to --

LASD-000243 RELEASE DATE: 6/2/2023

POST 20751-1-SB2

Rodriguez: Oh, it's just a blank form, like, the whole --

Johnson: It's just like in-services and stuff? Do you want?

Rodriguez: Oh, no, not that one.

Johnson: So just these --

Rodriguez: Just that.

Johnson: -- not so you already dated that one but --

Rodriguez: (INAUDIBLE). Okay. So on the second page of that, of this one, okay? If you look under 2126 (INAUDIBLE).

Cano: Uh-huh.

Rodriguez: Okay? (INAUDIBLE)

Johnson: Looking at the same one.

Rodriguez: Okay. Can you tell me what was ran in -- for the record, you're looking at the unit history for Unit 51.

Cano: Inquiry WANT9 Cal.ornia V1 V1 birthday and some other numbers.

Rodriguez: What's the birthday?

Cano: Well, I don't know if it's the birthday but it's 05-01-92.

Rodriguez: Did you run Miss V1 that night?

Cano: I don't remember.

Rodriguez: You don't remember running it?

Cano: No, I don't. Is that an employee number there?

Rodriguez: Uh-huh.

Cano: Or is it 62003?

Rodriguez: Yeah.

Cano: That's not my employee number, right?

LASD-000244 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Rodriguez: How long you been -- how long you been on patrol?

Cano: Eight years.

Rodriguez: You've never seen the unit history report?

Cano: Yes, I have.

Rodriguez: What are the numbers indicate at the front of that?

Cano: At the front of -- what was it this time?

Rodriguez: All of those inquiries that are done. The inquiries that are done, the call clearances. What do the numbers indicate in front of them?

Cano: I don't recall the -- what they represent.

Rodriguez: So you were just guessing when you said that that wasn't you that ran her?

Cano: No. I'm just saying if -- I asked if that's an employee number because I don't recall what it is or if it's an employee number.

Rodriguez: So, typically, when you log on and you've been an FTO for a while then you know -- you've been out of patrol, right?

Cano: Uh-huh.

Rodriguez: So when you're trainee logs onto -- your trainee or your partner logs onto that MDC, that particular MDC, everything that -- that's done on that MDC is gonna show their number, but that doesn't necessarily mean that they ran somebody. Cause they could have had a partner --

Cano: Yeah, somebody else --

Rodriguez: -- you know, like you --

Cano: -- somebody else, yeah.

Rodriguez: -- enter. So that's what those numbers are.

Cano: Okay. So that's -- yeah, that's my partner's.

Rodriguez: So my follow up question is around -- you said that she wasn't there when -- you said that Deputy Tarin wasn't there when you -- when you went to

LASD-000245 RELEASE DATE: 6/2/2023

POST-2075311-1-SB2

go meet Miss V1 -- or, I'm sorry, Miss V1 the second time, right? Around, you know, 2100 hours or so.

Cano: Uh-huh. Yes.

Rodriguez: Did you give Miss Tarin her information? Miss V1 information to run?

Cano: No, I did not.

Rodriguez: So if -- if Tarin wasn't with you -- Deputy Tarin wasn't with you, then who ran Miss V1

Cano: Oh, it had to be me because it's my -- my unit, but I don't recall running her. But it's -- I mean, it's got to be me.

Rodriguez: Okay.

Cano: It doesn't mean I recall running her.

Rodriguez: What is -- do you -- do you know what the WANT 9 stands for?

Cano: Any wants or warrants.

Rodriguez: What else is included with that?

Cano: Their history. I mean, it's --

Rodriguez: What history?

Cano: -- people's -- people's -- if they're wanted or if they are missing or it runs it, like, I believe it's, like, six different sites.

Rodriguez: Was Miss V1 ever inside the patrol vehicle with you?

Cano: No, ma'am.

Johnson: And we're talking about that same --

Rodriguez: The same night, yeah --

Johnson: -- (INAUDIBLE).

Rodriguez: -- there's still some (INAUDIBLE). Uh-huh. Okay. So this portion of any question that I ask you kind of going forward, it's gonna be pertaining -- so during our investigation, Miss V1 made an allegation that you, basically, told her that if she went out on a date with you then you could potentially

LASD-000246 RELEASE DATE: 6/2/2023

POST230751-1-SB2

make her case go away, meaning the arrest from May 13th. And in there, you also indicated that -- that you would talk to Deputy Chen and tell him not to show up to court, okay? So during the discovery period of her case, this information was brought forward to the DA's office, okay?

Cano: Uh-huh.

Rodriguez: As you know that's criminal in nature, okay? So with that being said, I spoke with the DA's office and at the moment they're -- they haven't -- they decided not to file charges but instead, they entered you into ORWITS that's, basically, what it stands for it's an Officer and Recurrent Witness Information Tracking System. So, basically, it's almost like the Brady list but it's for witnesses, okay?

Cano: Uh-huh.

Rodriguez: Basically, anybody can run. I can go in there, you know? Anybody who is a peace officer, law enforcement, can go in there if there's any -- ever any potential allegation that you could have possibly -- or me or whomever could have intruded into any type of investigation.

Cano: Okay.

Rodriguez: So with that being said, I was told that they're not gonna pursue charges. However, nothing was written. There is no disposition for that particular case, meaning t ,at, you know, we don't have anything written that says, hey, we're not gonna come after you later on down the line or anything like that, okay? So I'm sure Miss Johnson already explained to you what -- but I'm about to give you a Lybarger Admonishment and she already explained to you what that means, right?

Cano: Yes.

Rodriguez: Okay. So I'll just read it on the record, okay? And then I'll have you initial and, you know, I'll have you check off the form and then you are initial right next to it, sign it at the bottom and then everybody's gonna sign it. So I'm doing this out of an abundance of caution because I don't, you know, want you to end up, you know, being damaged by it if ever there was something else happening aside from what I was told, okay? All right. "So due to the nature of this administrative investigation, Government Code 3303(h) -- subsection (h), -- Public Safety Officer's Procedural Bill of Rights, Bill of Rights act, requires me to advise you of your Constitutional Rights. Therefore, it is important that you understand that criminally you have the right to remain silent. Anything you say can be used against you in court. You have the right to an attorney before and during questioning." Do you understand each of these rights as I have explained them to you?

LASD-000247 RELEASE DATE: 6/2/2023

POST2507T-1-SB2

Cano: Yes.

Rodriguez: "With these rights in mind, would you like to speak to me now?"

Cano: No.

Rodriguez: "While you have the right to remain silent with regards to this incident -- with regards to any criminal investigation, you do not have the right to refuse to answer my questions administratively. This is a Los Angeles County Sheriff's Department administrative investigation. I am, therefore, now ordering you to answer all my questions fully and honestly. If you refuse to answer my questions, your silence can be deemed insubordination and may result in administrative discipline up to and including termination. Any statement you make during this compulsion of threat of such discipline is for administrative purposes only and cannot be used against you criminally." Do you understand --

Cano: Yes.

Rodriguez: -- your rights? Okay. So now what you're gonna do is you're gonna check off "Yes" "Yes." Make sure you initial, okay? Or, I'm sorry. "Yes" and then "No," right? And then at the bottom, you're gonna -- you do. And then Amy will explain the rest.

Johnson: Can I borrow your pen?

Rodriguez: Yeah, or course.

Cano: So check and initial?

Johnson: Yeah. Initial. You want an initial?

Rodriguez: Yeah.

Johnson: Yeah. And then -- and then -- and then sign. You want him to sign it, right?

Rodriguez: Yes, please.

Johnson: Sign and date. And, yeah, just for -- just for the record, you know, under Gates Johnson it is the Sheriff's Department's practice not to proceed forward with an administrative investigation until we have confirmation from the District Attorney's office that there will not be any type of filing and you have conveyed to me that you were verbally told there was no filing, but we've not been provided any written documentation of that. But it is our understanding that you are ordering him to answer questions and

LASD-000248 RELEASE DATE: 6/2/2023

POST2307511-1532

we will proceed forward under threat of being insubordinate if you do not answer questions. And he will answer questions in order not to be insubordinate.

Rodriguez: Noted. Okay. So after you -- Miss V1 was arrested and you went to go see her that day on the 23rd, one of the days -- one of those locations, did you ever suggest to Miss V1 that if she went out on a date with you that you could make the case go away?

Cano: No, I did not.

Rodriguez: Did you ever tell Miss V1 "Believe me, I'll try my best to get Chen" -- Deputy -- Deputy Chen -- "not to show up to court"?

Cano: No, I did not.

Rodriguez: After Miss V1 was -- was arrested and during the time you were communicating with her, did you ever speak to Deputy Chen regarding Miss V1 case?

Cano: No, I did not.

Rodriguez: Did you ever, at any point -- at any point or in any way suggest to Deputy Chen that he should not show up to court for Miss V1 case?

Cano: No, I did not.

Rodriguez: Did you ever have any type of conversation with Deputy Chen after Miss V1 arrest?

Johnson: About the case or just about anything?

Rodriguez: Just any type of conversation or any contact with him after?

Cano: Just during the incident.

Rodriguez: Okay.

Cano: During --

Rodriguez: After the arrest, did you have any contact --

Cano: No.

Rodriguez: -- with him?

LASD-000249 RELEASE DATE: 6/2/2023

POST230751F-1-SB2

Cano: No.

Rodriguez: Okay.

Cano: No.

Rodriguez: Is there anything else that you would like to add that I haven't already covered or asked you? Did you guys want to take some time?

Johnson: Yeah, maybe we'll take a break.

Rodriguez: Okay. All right. We're gonna go off the record mom ,ntarily for a short break at 10:44 a.m. I'm going off the record.

**********Audio Recording Paused**********

Rodriguez: And we're back on the record at 10:51 a.m. from a short break. Deputy Cano, is there anything that you would like to add that I haven't already covered or asked you?

Cano: Yes, just going back to the Airpods. I -- I know I made a mistake. I -- I should have, you know, followed procedure and done what I -- what we were supposed to do and either write a report, a found property report, or run it by either the jailer or the sergeant. And, you know, would have prevented all this to -- to come out. If -- if I would to do it again, that's what I would do just run it by the sergeant or write a report for the found property.

Rodriguez: Okay. Anything?

Luna: No.

Rodriguez: With this being said, I don't have anymore questions for you.

Johnson: No.

Rodriguez: Okay. So now we're gonna go off the record and this concludes the interview with Subject Cano at 10:52 a.m.

POST230511-1-SB2

LASD-000250 RELEASE DATE: 6/2/2023

POST230751 1-1-SB2

REFER TO INTERVIEW AUDIOS AND TRANSCRIPTS CD

9b. SUBJECT SIFREDO CANO (2ND FOLLOW-UP INTERVIEW)

LASD-000251 RELEASE DATE: 6/2/2023

SUBJECT SIFREDO CANO (2ND FOLLOW-UP INTERVIEW)

Rodriguez: We're on the record. Today is November 21st, 2022, and the time is 1:21 PM. We're at Internal Affairs Bureau, interview room A, located in the City of Commerce, conducting a second follow-up interview, with a subject interview. I'm Sergeant Sara Rodriguez and with me Sergeant Ed Luna. We're from Los Angeles County Sheriff's Department Internal Affairs Bureau which is commanded by Captain Ron Kopperud. For the record and voice recognition, once again, I'm Sergeant Sara Rodriguez. Last name is spelled R-O-D-R-I-G-U-E-Z. Sergeant Luna, can you please spell your last name?

Luna: Sergeant Luna, L-U-N-A.

Rodriguez: Being interviewed today is Deputy Sifredo Cano. Sir, for the record and voice recognition, can you please spell your first and last name and state your employee number?

Cano: Sifredo Cano, S-I-F-R-E-D-O, C-A-N-O. 509080.

Rodriguez: With us in the room as well and representing Deputy Cano is Amy Johnson. Ma'am, for the record and voice recognition, can you please spell your first and last name?

Johnson: Amy Johnson with Rains Lucia Stern, A-M-Y. J-O-H-N-S-O-N.

Rodriguez: This case is regarding an administrative investigation involving Temple Station personnel under case number IV2550292. The incidents took place during the year of 2021. So, back in, I believe, it was September 27th, when you originally interviewed, I provided you with the administrative rights, sworn and non-sworn subject form. Do you recall that?

Cano: Yes.

Rodriguez: And you signed it, you initialed it, and then you dated it? Do you recall that?

Cano: Yes.

LASD-000252 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: Just for the record, everything in that form still applies to this second follow-up interview. Do you have any questions about the form?

Cano: No, I don't.

Rodriguez: Do you have any questions about the form or your requirement to make full, complete and truthful statements during this interview?

Cano: No.

Rodriguez: Prior to the interview I provided you with the transcripts from your previous follow-up interview, which took place on September... No, I'm sorry, November 14th, 2022. Did you have an opportu ty to review the form?

Cano: No, I did not.

Rodriguez: I'm sorry, the transcripts?

Cano: Just now.

Rodriguez: Did you have an opportuni y to review the transcripts?

Cano: Yes.

Rodriguez: As a reminder, and once again, you're being ordered not to discuss the facts of this case or any of the issues discussed during this interview other than with your representative attorney, if you have one. Do you understand?

Cano: Yes.

Rodriguez: If you need a break for any reason, please let me know and we will accommodate you. The only thing I ask is that you answer a question if I ask you before we go on break. Okay?

Johnson: There is one clarification we'd like to make to the transcript, and I don't know if you want us to do it now or...

Rodriguez: Let me just ask this last one and then you can make it. Is there any reason why this second follow up interview cannot take place today?

Cano: No.

Rodriguez: Go ahead, ma'am.

POST250711-1-SB2

LASD-000253 RELEASE DATE: 6/2/2023

Johnson: There's just one thing that we would like to clarify, on page 15 and going into page 16 of the transcript. I believe there was one section towards the end where you were asking about conversations that Deputy Cano had with Deputy Chen after Ms. V1 arrest and there was a little bit of talking over each other, and I think Deputy Cano just wants to clarify contact that he had with Deputy Chen.

Cano: Yes. My understanding was that if I had any discussions about the case with Deputy Chen, which we did not, but I do talk to him because I consider him a friend. So, I have talked to him, just support, he went through kind of the same type of investigation a few years back and that's the clarification that I want to make.

Rodriguez: Because you did answer that.

Cano: Yes.

Rodriguez: You wanted to add to that or, because you did say you, I mean...

Cano: Yeah, I said-

Rodriguez: That's fine. Anything else?

Johnson: No. That's it.

Rodriguez: In your November 14th, 2022, follow up interview, I asked you if you had contact with Deputy Chen after Ms. V1 arrest, and then also in between the time you initiated contact or contacting Ms. V1 and you responded, "No, I did not." And then you can refer back to page 15, which I believe you just kind of pointed out.

Cano: Yes.

Rodriguez: So, I will ask you again. After Ms. V1 arrest, did you have any contact with Deputy Chen?

Cano: Yes.

Rodriguez: When did you have that contact with him? Let's start with that.

Cano: The recent one was last week or about a week ago.

LASD-000254 RELEASE DATE: 6/2/2023

POST-20751-1-SB2

Rodriguez: But we're talking about between the time that she was arrested, which would've been May 13th, 2021, and then during the time that you were talking to her. Did you have any contact-

Cano: I said no.

Rodriguez: No. Are you still talking to her?

Cano: No, no, no, no. I'm talking about Deputy Chen.

Rodriguez: No, no, no. Listen to the question. Did you have contact with Deputy Chen after the time Ms. V1 was arrested, which would've been in May 13th, 2021? Correct?

Cano: Uh huh.

Rodriguez: And the time you guys were communicating, which would've been May 14th, through July 22nd, of 2021. Did you have any contact with him?

Cano: No.

Johnson: Wait, I'm, I think that's a con pound que- ion.

Cano: I'm confused.

Rodriguez: Yeah. So, okay, you said you had contact with them, right, after Ms. V1 was arrested?

Johnson: With both of them?

Rodriguez: No. With Ms. Chen, with Chen, deputy Chen.

Cano: Yes.

Rodriguez: You did?

Cano: Yes.

Rodriguez: When did this happen? At one point, so, I guess what I'm trying to say is you guys were talking, you and Ms. V1 were talking from May 14th, through July 22nd, which we established that in your first interview, correct?

Cano: Yes. Yes.

LASD-000255 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Rodriguez: In that time that you guys were talking and then after her arrest, did you have any contact with Deputy Chen?

Cano: Yes.

Rodriguez: When was that? I don't need an exact date, but a ballpark. I mean, maybe a month?

Cano: The most, well, it had to be, I will say right after this came out, after the whole case came out that we knew that I was coming, that I was being ROD, and that we were going to be interviewed. I believe that was the first time we talked about it, which-

Rodriguez: So, it was after July 22nd, 2021?

Cano: Yes.

Rodriguez: Did you have any contact with Deputy Chen between May 14th, 2021, and July 22nd, 2021?

Johnson: If you remember.

Cano: I believe I did, but I'm not 100% sure. Alright?

Rodriguez: What makes you think that you did?

Cano: Because we did talk in regards to not searching the female during that call.

Rodriguez: And what-

Cano: Me not searching her and then him not searching her to transport. We talked about this. I'm not sure if it was in between those dates or after we found out about the case, so what the case was about, if I'm making sense.

Rodriguez: Do you recall where this conversation took place?

Cano: It was over the cell phone, I believe.

Rodriguez: So, you never had a conversation to him face-to-face, anywhere at Temple Station? The secretariat's office?

LASD-000256 RELEASE DATE: 6/2/2023

POST230751-1-SB2

Cano: Just, he asked me about the traffic report, I believe, if it was already done, if I had turned it in or if it was approved.

Rodriguez: So, this was a separate time, another location?

Cano: Yeah. At the station? Yeah, because I was still working. Yeah. So, I wouldn't see him.

Rodriguez: What did you tell him?

Cano: I had told him the first time that I had turned it in to traffic and that I was just waiting for them to either approve it or kick it back for corrections.

Rodriguez: During the time that you had that interaction with him regarding the traffic collision report for Ms. V1 case, did you discuss anything pertaining to Ms. V1 case?

Cano: No.

Rodriguez: Did you tell him that this was Ms. V1 third DUI and perhaps alluded to the fact that he shouldn't show up to court?

Cano: No.

Rodriguez: Did you at any point suggest in any way, okay, that Deputy Chen shouldn't show up to court for Ms. V1 case?

Cano: No.

Rodriguez: Did you make any type insinuation that he shouldn't show up to court?

Cano: No.

Rodriguez: For Ms. V1 case?

Cano: No.

Rodriguez: Earlier you kind of mentioned that you had a conversation with Deputy Chen on, you said, last week?

Cano: Yeah, I believe it was last week, yeah.

Rodriguez: Do remember more or less what day?

LASD-000257 RELEASE DATE: 6/2/2023

POST230731-1-SB2

Cano: I do not. It was either Tuesday or Wednesday last week.

Rodriguez: How did you communicate with him?

Cano: Cell phone.

Rodriguez: Why'd you call him?

Cano: Just support. Like I said, he had mentioned that he went through the same process and just needed to talk to somebody and he ex lained pretty much how everything goes and just told me that it wa sit and wait. Once you're ROD, there's nothing you can do, just wait it ut. He said, he just told me that his took almost two and a half years or something like that. But that was it.

Rodriguez: Did you discuss anything pertaining to the case, specifics?

Cano: No.

Rodriguez: How long was this conversation?

Cano: We talked maybe, it was 10 minutes, maybe? He was babysitting, so he's...

Rodriguez: For the record, I'm going to show you screenshots of the call log for Deputy Chen's cell phone record, cell phone call log, I guess. If you look maybe about halfway down, the under D, there's a bubble inside, there's a D, right?

Cano: Yes.

Rodriguez: Letter D. What reads right next to it?

Cano: Deputy Cano. My-

Rodriguez: Please read the phone number.

Cano: (323) 286-5008.

Rodriguez: What is the day of the conversation?

Cano: Monday. Monday, 12:05 PM.

Rodriguez: It's a missed call, right?

LASD-000258 RELEASE DATE: 6/2/2023

POST2507511-1-SB2

Cano: Yes.

Rodriguez: So, you called him first?

Cano: Yes, I called him first. I think it went to voicemail and then he called me back.

Rodriguez: Did you leave a voicemail?

Cano: I don't recall if I left a message, to be honest.

Rodriguez: And then for the record, on Monday, the date would be November 14th, 2022?

Cano: Yes.

Rodriguez: Was that the day that you had your fi st follow up interview?

Cano: Yes.

Rodriguez: Okay.

Cano: Yes.

Rodriguez: Do me a favor, just at the bottom, initial and date It. Then I'm going to show you a second page, which would just be a continuation of-

Cano: What's oday? 21st?

Rodriguez: 21st.

Luna: 21st.

Rodriguez: It's just continuation of the call log and then it shows maybe about the third, fourth, third line down Deputy Cano, and then again, what's the phone number that reads on there?

Cano: (323) 286-5008.

Rodriguez: It was an ongoing call, seven minutes and 20 seconds.

Cano: Yes.

Rodriguez: Am I right?

POST230711-1-SB2

LASD-000259 RELEASE DATE: 6/2/2023

Cano: Yes.

Rodriguez: The other thing that I'm going to show you is going to be a record of your scheduling management system, your personal and identifying information. There's two pages that just kind of continues, but on the second page, under contact numbers or phone numbers, what is the first phone number that's under a cell phone?

Cano: (323) 286-5008.

Rodriguez: Is that your true and correct, accurate phone number?

Cano: Yes it is.

Rodriguez: So, that's your current cell phone number?

Cano: Yes, it is.

Rodriguez: Go ahead and initial both. Initial and date both -. Okay, during that conversation you had over the phone, that you had with Deputy Chen, did you ever tell him or insinuate, did you ever tell him that we had questioned you during your interview that day about you approaching him and asking him or insinuating in any way that he shouldn't show up to court?

Cano: No.

Rodriguez: You never provided that information or discuss any of that information with him?

Cano: No.

Rodriguez: Did you talk about your investigation at all? Any particular details?

Cano: No details about the investigation, no.

Rodriguez: On the same form, the administrative rights sworn and non-form subject form, if you look towards the end of the form, it would be the second paragraph from the bottom up in bold letters, please read the sentence that's in there.

Cano: "You are not being ordered to discuss." Is that the one?

Rodriguez: Uh huh. Can you read it out loud, please?

LASD-000260 RELEASE DATE: 6/2/2023

POST230761-1-SB2

Cano: You are being ordered not to discuss the facts of this case or any of the issues discussed during your interview with anyone other than your designated representative or attorney in this matter.

Rodriguez: You did read the form at the beginning when it was first given to you, right?

Cano: Yes.

Rodriguez: You were afforded the opportunity, your attorney was here?

Cano: Yes.

Rodriguez: You did read, okay. Furthermore, on the first interview that yo did, which happened on September 27th, on the record, once again, I ordered you not to discuss any details about the case of the interview, correct?

Cano: Yes.

Rodriguez: Is there any reason why Deputy Chen would say that you called him and you talked to him specifically about anythir pertaining to your case?

Cano: That I know, I do not know. I mean, th only thing we mentioned was that I was still under in stigation. That was it.

Rodriguez: You told him that you were still in their investigation?

Cano: Yeah. Well-

Rodriguez: He never asked you if the investigation was done, or completed?

Cano: I don't know if he asked me. I said that I was ROD, and my case wasn't done.

Rodriguez: So, you just called him to discuss, tell me again what you discussed.

Cano: Just because he has experience on what he went through a few years back and just needed to talk to him and just see anything I can do or just encouragement, I guess, since he knew how the process goes. That was about it.

Rodriguez: You were aware that he was a witness in your case, right?

Cano: Yes.

LASD-000261 RELEASE DATE: 6/2/2023

POST230751 11-SB2

Rodriguez: Is there a reason why you still opted to contact him, despite knowing that he was a witness in your case?

Cano: Because I consider him a friend.

Rodriguez: Well, that's the only reason?

Cano: Yeah.

Rodriguez: And you didn't see anything wrong with that?

Cano: If we don't talk about the case, no. I didn't see anything wrong about it.

Johnson: Do you have any questions?

Cano: No.

Johnson: No?

Rodriguez: Just going back to what you read, it says you're ordered not to discuss the facts of this case for issues discussed during your interview. Just to be clear, did you discuss any facts of the ca e with him?

Cano: No facts of the case.

Rodriguez: Did you talk about any issues discussed during your interview?

Cano: No.

Rodriguez: Did anyone ever tell you that you cannot have any contact with any witnesses at all for this case?

Cano: No.

Rodriguez: Is there anything else that you would like to add that I haven't already covered or asked you or did you guys want to take some time?

Cano: No, I pretty much explained what I wanted to explain and that's pretty much it.

Rodriguez: Alright. I don't have any more questions for you and then this will conclude the interview with Deputy Cano at 1:41 PM.

LASD-000262 RELEASE DATE: 6/2/2023

POST230711-1-SB2

Commission on Peace Officer Standards and Training
860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1603
(916) 227-3909 • www.post.ca.gov

EXECUTIVE REVIEW & PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION RECOMMENDATION

DATE: July 24, 2024

CASE #: POST2307511

PEACE OFFICER: Sifredo A. Cano

POST ID#: C03-G01

AGENCY: Los Angeles County Sheriff's Department

POST CONSULTANT / BC: William Imboden /Mike Radford

ALLEGATION(S):

Dishonesty, Abuse of Power, Sexual Assault. Respondent was accused of using his position to pursue a sexual relationship with an arrestee. Respondent accessed confidential records, tried to influence another Deputy, tried to establish a quid pro quo sexual relationship with the arrestee, and was dishonest and misleading during the ensuing IA.

The Peace Officer Standards Accountability Division, Certification Executive Review Panel has reviewed the above referenced case involving alleged serious misconduct and has determined the following:

☒ There are reasonable grounds for revocation of a peace officer's certification.

POST determined clear and convincing evidence exists to show Respondent abused the power of his position as a peace officer to attempt to enter into a romantic relationship with an arrestee, inappropriately accessed confidential information for personal gain, and committed sexual assault in violation of POST regulation 1205(a)(4) in that he attempted the initiation of a sexual act with a member of the public while on duty and through an offer of leniency or other official favor.

☐ There are reasonable grounds for suspension of a peace officer's certification. The recommended term(s) for suspension are:

☐ There is insufficient evidence to support a recommendation of revocation or suspension of certification.

William Darden	William Darden	7/31/24
Chief Legal Counsel	Signature	Date
Annemarie Del Mugnaio	Annemarie Del Mugnaio	07/30/2024
Assistant Executive Director	Signature	Date
Manuel Alvarez, Jr.	Manuel Alvarez Jr.	07/30/2024
Executive Director	Signature	Date

cc: Bureau Chief Mike Radford

cc: Jason Morlock

cc: Chandler Knapp

cc:

AGENDA ITEM REPORT

Title: POST2313715 - JAIME BERMUDEZ (POST ID: C36-U28)
LAST EMPLOYING AGENCY: DALY CITY POLICE DEPARTMENT

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Central Bureau	
RESEARCHED BY Kevin Sherburne	**REVIEWED BY** Brian South	
REPORT DATE 08/07/2024	**APPROVED BY** Annemarie Del Mugnio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE: The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND: Respondent served as a Daly City Police Department officer from 2012 until July 2023, when the department terminated his employment. In August 2022, Walnut Creek police officers arrested Respondent for driving under the influence ("DUI"). In December 2023, Respondent was convicted of DUI with a sentencing enhancement for having a previous DUI conviction within ten years. The sentencing enhancement stemmed from Respondent's previous conviction for DUI in 2015.

ANALYSIS: The Division found that clear and convincing evidence substantiated that Respondent's actions that led to his convictions in 2015 and 2023 for DUI were "sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public." The Division further found that Respondent's actions violated California Penal Code Section 13510.8(b)(6) and POST Regulation 1205(a)(6). Finally, the Division found that reasonable grounds exist for revocation of Respondent's peace officer certifications pursuant to California Penal Code Section 13510.85(a)(1), as set forth in more detail in the Executive Review and Peace Officer Standards Accountability Division Recommendation attached to the Investigative Summary and Findings.

RECOMMENDATION: The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):

BR1_POST2313715_Bermudez_Jaime_ISF.pdf
BR2_POST2313715_Bermudez_Jaime_Reviewed_A_Executive_Review_Division_Recommer
BR3_POST2313715_Bermudez_Jaime_REDACTED_B_JaimeBermudez_ProfileReport.pdf
BR4_POST2313715_Bermudez_Jaime_REDACTED_C_Affidavit_re_Probable_Cause_and_B
BR5_POST2313715_Bermudez_Jaime_REDACTED_D_Campbell_20150619013_1_rev004.p
BR6_POST2313715_Bermudez_Jaime_REDACTED_E_Minute_Order_Santa_Clara_County_
BR7_POST2313715_Bermudez_Jaime_REVIEWED_F_Daly_City_Police_Policy.pdf
BR8_POST2313715_Bermudez_Jaime_REDACTED_G_Walunt_Creek_22-25731_1_rev004.pdf
BR9_POST2313715_Bermudez_Jaime_REDACTED_H_WCPD_lab_drug_lab_results_1_rev0
BR10_POST2313715_Bermudez_Jaime_REDACTED_I_MisdComplaint_Santa_Clara_County
BR11_POST2313715_Bermudez_Jaime_REDACTED_J_Bermudez_Interview_Transcription.p
BR12_POST2313715_Bermudez_Jaime_REVIEWED_K_Findings_and_Recommendations_1_
BR13_POST2313715_Bermudez_Jaime_REDACTED_L_WCPD_22-25731_lab_results_1_rev004.pdf
BR14_POST2313715_Bermudez_Jaime_REDACTED_M_Notice_of_intent_to_terminate_1.pd
BR15_POST2313715_Bermudez_Jaime_REVIEWED_N_Misdemeanor_Advisement_of_Right



INVESTIGATIVE SUMMARY AND FINDINGS

Jaime Bermudez

POST ID C36-U28

Daly City Police Department

POST2313715

WRITTEN BY: Kevin P. Sherburne

August 7, 2024

Contents

I. Executive Summary 3
II. Background 4
A. Employment 4
B. 2015 DUI Incident and Internal Affairs Investigation 4
C. 2022 DUI Incident and Internal Affairs Investigation 5
III. Methodology/Investigative Process 6
A. Methodology and Standard of Proof 6
B. Other Allegations of Serious Misconduct 7
IV. Findings of Fact and Analysis 7
A. Did Respondent's conduct that led to his convictions in 2015 and 2023 for DUI constitute "[a]cts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public?" If so, did Respondent's actions constitute a violation of California Penal Code Section 13510.8(b)(6)? 7
V. Supporting Evidence and Documentation 9
VI. Conclusion 11

I. Executive Summary

On August 27, 2022, Walnut Creek Police Officers arrested then-Daly City Police Officer Jaime Bermudez (POST ID C36-U28) (hereafter "Respondent') for violation of the California Vehicle Code Section 23152(a) (driving under the influence ("DUI")). At the time of his arrest, Respondent was driving a government-owned vehicle and was on-call for his duties assigned to the San Mateo County Narcotics Task Force ("SMCNTF"). Respondent was convicted in 2015 for DUI, which made him eligible for enhanced sentencing if convicted in the 2022 incident. On December 5, 2023, Respondent was convicted of violating California Penal Code Section 23152(b) (DUI) and California Vehicle Code Section 23540 (second DUI within 10 years).

On June 30, 2023, Daly City Police Department submitted a report to the California Commission on Peace Officer Standards and Training ("POST") that Respondent may have committed serious misconduct. On July 29, 2023, I was charged to conduct an investigation of serious misconduct. I conducted an investigation and reviewed evidence of the following allegations. I make the following findings in this Investigative Summary and Findings:

A. *Issue:* Did Respondent's conduct that led to his convictions in 2015 and in 2023 for DUI constitute "[a]cts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public?" If so, did Respondent's actions constitute a violation of California Penal Code Section 13510.8(b)(6)?

1. ***Finding***: The clear and convincing evidence substantiated that Respondent's actions were "sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public." Respondent violated California Penal Code Section 13510.8(b)(6) when he drove vehicles in 2015 and 2022 in violation of California criminal law as a result of being under the influence of alcohol and drugs and was convicted twice for DUI, including a conviction with a sentencing enhancement for a second DUI conviction within ten years.

Based upon the evidence presented in the Daly City Police Department Internal Affairs investigation report and my investigation, I find that reasonable grounds exist for revocation of Respondent's peace officer certifications pursuant to California Penal Code Section 13510.85(a)(1), as set forth in more detail in the attached Executive Review and Peace Officer Standards Accountability Division Recommendation.[1]

[1] Attachment A (Executive Review and Peace Officer Standards Accountability Division Recommendation).

II. Background

A. Employment

According to his Electronic Data Interchange ("EDI") profile, Daly City Police Department hired Respondent on December 26, 2012, as a peace officer. Respondent worked for Daly City Police Department until July 11, 2023, when the department terminated him as a result of the second DUI.[2]

POST issued Respondent three peace officer certificates:

Certificate Type	Certificate Number	Issuance Date
Basic	178096	7/9/2014
Intermediate	126361	1/22/2015
Advanced	118972	12/27/2018

B. 2015 DUI Incident and Internal Affairs Investigation

On June 19, 2015, Campbell Police Officers arrested Respondent for violation of the California Vehicle Code 23152(a) (DUI).[3] On July 24, 2015, the Santa Clara County District Attorney's Office filed a Misdemeanor Complaint against Respondent, charging two counts of violation of: (1) California Vehicle Code Section 23152(a); and (2) California Vehicle Code Section 23152(b). According to the Campbell Police Department report, Respondent's vehicle collided with a fire hydrant, resulting in major damage to the driver's side of the vehicle. Respondent was driving with a passenger at the time of the accident, and the accident resulted in the deployment of both the driver's and passenger's side air bags.[4] The complaint stated that Respondent's blood alcohol content ("BAC") measured 0.19% by volume. On September 3, 2015, Respondent pled nolo contendere to violation of California Vehicle Code Section 23152(b). The court sentenced him to volunteer work, counseling, and fines.[5]

Daly City Police Department initiated an internal affairs investigation relating to Respondent's DUI and conviction. Because, according to Daly City Police Department Policy Manual Section 1025.7.3 (Internal Affairs File (Management, Control, and Audit)) (in effect in 2016), the department purged the internal affairs investigative file after five and one-half years, it is unclear whether the investigation sustained findings,

[2] Attachment B (EDI Profile of Respondent).
[3] Attachment C (Affidavit re Probable Cause and Bail Setting).
[4] Attachment D (Campbell Police Department Narrative Report 20150619013 at 3-4 (6/19/2015)).
[5] Attachment E (Minute Order, *People v. Bermudez*, C1517080, Santa Clara County Superior Court (9/3/2015)).

what the allegations were, and, if sustained, what discipline, if any, the department imposed.[6]

C. 2022 DUI Incident and Internal Affairs Investigation

On August 27, 2022, Walnut Creek Police Officers arrested Respondent for violation of the California Vehicle Code Section 23152(a) (DUI).[7] Respondent was driving with a civilian passenger in the car.[8] Respondent's BAC measured 0.269% by volume. In addition to alcohol, Respondent's blood tested positive for Tetrahydrocannabinol ("THC") at the rate of 5.9 ng/ml.[9] On December 6, 2023, Respondent was convicted of DUI with a sentencing enhancement for having a previous DUI conviction within ten years. The sentencing enhancement in the Walnut Creek DUI stemmed from Respondent's conviction for DUI in Santa Clara County in 2015.[10]

On August 29, 2022, Daly City Police Department initiated an internal affairs investigation of Respondent's arrest by Walnut Creek Police Department for DUI. Sergeant Brandon Scholes conducted the internal affairs investigation. On December 12, 2022, Sergeant Scholes requested that a Disciplinary Review Panel ("DRP") be convened to make findings and recommendations based upon the evidence he collected in the investigation pursuant to Daly City Police Department policy.

During his internal affairs interview, Respondent stated that he had put himself through a 30-day in-patient rehabilitation program, was undergoing outpatient treatment, was attending Alcoholics Anonymous meetings, and was (at the time of the interview) 80 days sober.[11]

On March 8, 2023, the DRP issued a Memorandum with its Findings and Recommendations.[12] The DRP examined six policy violation allegations and sustained four of those allegations. I have summarized the portions of the Memorandum's findings and analysis that are relevant to the issue in this Investigative Summary and Findings below.

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[6] Attachment F (Daly City Police Department Policy Section 1025.7.3). The five and one-half years also tracked California Government Code Section 34090.
[7] Attachment G (Walnut Creek Police Department General Offense Report 2022-25731 at 6 (8/27/2022)).
[8] Attachment G (Walnut Creek Police Department General Offense Report 2022-25731 at 10 (8/27/2022)).
[9] Attachment H (Report of Laboratory Examination, Toxicology Analysis (10/14/2022).
[10] Attachment I (Misdemeanor Complaint, *People v. Bermudez*, C1517080, Santa Clara County Superior Court (7/24/2015); Attachment E (Minute Order, *People v. Bermudez*, C1517080, Santa Clara County Superior Court (9/3/2015).
[11] Attachment J (IA Interview of Respondent at 21-22 (11/15/2022).
[12] Attachment K (Memorandum from Lieutenant Harold Rolfes to Acting Chief of Police Cameron Christensen (3/8/2023)).

The DRP found that a preponderance of the evidence substantiated that Respondent conducted himself in a manner that reflected unfavorably upon the department; that Respondent operated a motor vehicle while intoxicated; and that Respondent was dishonest when questioned by Walnut Creek police officers who asked him how much he had to drink. The DRP noted the following factors in reaching these conclusions:

- Respondent performed the field sobriety tests poorly
- After initially agreeing to provide a breath test, Respondent retracted his consent and requested a warrant, which Walnut Creek police officers obtained
- Respondent had a blood alcohol content of 0.269%
- Respondent had 5.9 ng/ml of cannabinoids in his system at the time of his arrest
- The 2022 incident in Walnut Creek was Respondent's second DUI arrest
- Respondent was not truthful when he answered officers' questions how much he had to drink because he sought to avoid arrest

The DRP also concluded that the preponderance of the evidence did not establish that Respondent failed to respond to a lawful order when he refused a breath test or was not considered to be on-duty while on-call while intoxicated. The DRP noted the following factors in reaching these conclusions:

- Respondent had the same rights as other people to refuse a breath test
- Respondent would not have been paid unless there was an actual call-out or operation
- Respondent did not place himself in an on-duty capacity nor was he responding to any work-related business
- Respondent's on-call status was not scheduled to commence until about eight hours after his DUI arrest

III. Methodology/Investigative Process

A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation in accordance with the regulations and policies of POST. During my investigation, I reviewed the Internal Affairs investigation. I also conducted an independent investigation, which included reviewing court records and the 2022 internal affairs investigative file.

Based on my review of the entire record of the administrative investigation, including the statements of the witnesses, evidence collected during the administrative investigation, the written investigative report, and my own independent investigation, the administrative investigation findings were supported by reasonable grounds.

I analyzed the information in this case under the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt." Based on the statements of the witnesses, as well as the documentary evidence available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.

B. Other Allegations of Serious Misconduct

As of the date of this Investigative Summary and Findings, POST is not aware of any other allegations of serious misconduct against Respondent.

IV. Findings of Fact and Analysis

A. Did Respondent's conduct that led to his convictions in 2015 and 2023 for DUI constitute "[a]cts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public?" If so, did Respondent's actions constitute a violation of California Penal Code Section 13510.8(b)(6)?

The clear and convincing evidence substantiated that Respondent engaged in conduct in 2015 and 2022 that led to his arrests and convictions for DUI, which included a sentencing enhancement for having a second DUI conviction within ten years. The clear and convincing evidence also substantiated that, at the time of Respondent's second DUI, in addition to being impaired by alcohol, a toxicology report showed that he had a THC blood level of 5.9 ng/ml.[13]

Impaired driving – whether under the influence of alcohol or THC – is illegal because of the inherent dangers to the drivers themselves and to others. According to the National Highway Traffic Safety Administration ("NHTSA"), nearly 30% of all traffic-related deaths in the United States resulted from alcohol-impaired drivers in 2020.[14] Of those who died in crashes involving alcohol-impaired drivers, the NHTSA reported that 62% were the drivers themselves and 38% were passengers of the alcohol-impaired

[13] Although the State of California does not have *per* se blood levels to establish impaired driving while under the influence of THC, by comparison, the State of Washington has set a *per se* level of 5 ng/mL of THC to establish impaired driving. Revised Code of Washington 46.61.502(1)(b).

[14] National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts 2020 Data: Alcohol-Impaired Driving (Report No DOT HS 813 294). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis; April 2022.

driver, driver or passenger of another vehicle, or nonoccupants.[15] Stated another way, the NHTSA reported that 32 people in the United States are killed every day in crashes involving an alcohol-impaired driver, which amounts to one death every 45 minutes.[16]

Although there is less data involving drivers impaired by both alcohol and drugs, one study at seven trauma centers found that 22% of drivers tested positive for alcohol and 25% tested positive for marijuana.[17] The State of Colorado reported that drivers impaired by THC at a rate of greater than 5 ng/ml resulted in 101 fatalities in 2022.[18]

Under Penal Code Section 13510.8(b)(6) and POST Regulation 1205(a)(6), acts that violate the law constitute serious misconduct when they are "sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public." Impaired driving and repeated acts of impaired driving are acts that violate the law that are both sufficiently egregious and also sufficiently repeated as to be inconsistent with Respondent's obligation to uphold the law or respect the rights of members of the public. As an officer charged to enforce DUI laws, Respondent's actions in driving impaired on two occasions establish that he committed serious misconduct.

The clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(6) when:

- he drove a vehicle on June 19, 2015, while under the influence of alcohol at a rate approximately double the legal limit, causing significant property damage

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[15] National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts 2020 Data: Alcohol-Impaired Driving (Report No DOT HS 813 294). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis; April 2022.

[16] National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts 2020 Data: Alcohol-Impaired Driving (Report No DOT HS 813 294). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis; April 2022.

[17] Thomas FD, Darrah J, Graham L, Berning A, Blomberg R, Finstad K, Griggs C, Crandall M, Schulman C, Kozar R, Lai J, Mohr N, Chenoweth J, Cunningham K, Babu K, Dorfman J, Van Heukelom J, Ehsani J, Fell J, Whitehill J, Brown T, Moore C. Alcohol and Drug Prevalence Among Seriously or Fatally Injured Road Users (Report No. DOT HS 813 399). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Office of Behavioral Safety Research. December 2022.

[18] https://www.codot.gov/safety/impaired-driving/druggeddriving/data. The year-over-year statistics show a marked increase in fatalities in crashes involved THC-impaired drivers: 42 (2018); 56 (2019); 52 (2020); 92 (2021).

- he was convicted on September 3, 2015, of violating California Penal Code Section 23152(b)
- he drove a vehicle on August 27, 2022, while under the influence of alcohol at a rate approximately three times in excess of the legal limit[19]
- he transported a civilian passenger in his vehicle while he drove intoxicated, jeopardizing the passenger's safety
- he ingested cannabis as a peace officer
- he ingested cannabis while serving as a member of a Task Force dedicated to illegal drug interdiction[20]
- the vehicle he was driving while under the influence of alcohol was a government-owned vehicle[21]
- he knew that driving a government-owned vehicle while under the influence of alcohol was against department policy
- he knew in August 2022 that he had already been convicted of DUI in 2015 and should have known better than to drink alcohol and drive a vehicle
- he was convicted on December 5, 2023, of violating California Penal Code Section 23152(b) (DUI) and California Vehicle Code Section 23540 (second DUI within 10 years)

his December 2023 conviction included a sentencing enhancement because the offense was Respondent's second DUI in ten years, which resulted in a sentence of 20 days in jail.[22]

V. Supporting Evidence and Documentation

Evidence	Attachment
Executive Review and Peace Officer Standards Accountability Division Recommendation	A

[19] Attachment L (Report of Laboratory Examination, Alcohol Analysis (9/9/2022)).
[20] Attachment M (Memorandum from City Manager Thomas J. Piccolotti to Respondent at 6 "Notice of Intent to Terminate" (6/2/2023)).
[21] Attachment M, (Memorandum from City Manager Thomas J. Piccolotti to Respondent at 4 "Notice of Intent to Terminate" (6/2/2023)). In addition to his signed acknowledgement that he knew driving a government-owned vehicle while under the influence of alcohol was wrong, Respondent's experience stemming from his 2015 DUI conviction provides additional evidence of his knowledge of the dangers of driving under the influence. In 2015, with just eleven months of service as a peace officer, Respondent drove a vehicle on June 19, 2015, while under the influence of alcohol at a rate of approximately twice the legal limit. Attachment J (IA Interview of Respondent at 20-21 (11/15/2022); Attachment I (Misdemeanor Complaint, C1517080, *People v. Bermudez,* Superior Court of Santa Clara County (7/24/2015). As summarized above, he collided with a fire hydrant, causing significant damage to his vehicle and the hydrant because of his drunk driving.
[22] Attachment N (Misdemeanor Advisement of Rights, Waiver and Plea Form and Misdemeanor Order of Probation, *People v. Bermudez*, Contra Costa County Superior Court, Case 01-23-01334 (12/5/2023).

Evidence	**Attachment**
EDI Profile of Jaime Francisco Bermudez	B
Affidavit re Probable Cause and Bail Setting	C
Campbell Police Department Police Report 20150619013 (6/19/2015)	D
Minute Order, *People v. Bermudez*, Santa Clara County Superior Court , Case C1517080 (9/3/2015)	E
Daly City Police Department Policy Section 1025.7.3	F
Walnut Creek Police Department General Offense Report 2022-25731 (8/27/2022)	G
Report of Laboratory Examination, Toxicology Analysis (10/14/2022)	H
Misdemeanor Complaint, *People v. Bermudez,* Santa Clara County Superior Court, Case C1517080 (7/24/2015)	I
IA Interview of Respondent at 20-21 (11/15/2022)	J
Memorandum from Lieutenant Harold Rolfes to Acting Chief of Police Cameron Christensen (3/8/2023)	K
Report of Laboratory Examination, Alcohol Analysis (9/9/2022)	L
Memorandum from City Manager Thomas J. Piccolotti to Respondent, “Notice of Intent to Terminate” (6/2/2023)	M
Misdemeanor Advisement of Rights, Waiver and Plea Form and Misdemeanor Order of Probation, *People v. Bermudez*, Contra Costa County Superior Court, Case 01-23-01334 (12/5/2023)	N

VI. Conclusion

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation of Respondent's peace officer certificates pursuant to Penal Code Section 13510.8 in accordance with the Executive Review and Peace Officer Standards Accountability Division Recommendation.[23]

[23] Attachment A (Executive Review and Peace Officer Standards Accountability Division Recommendation).

Commission on Peace Officer Standards and Training
860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1603
(916) 227-3909 • *www.post.ca.gov*

EXECUTIVE REVIEW & PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION RECOMMENDATION

DATE: July 29, 2024

CASE #: POST2313715

PEACE OFFICER: Jaime Bermudez

POST ID#: C36-U28

AGENCY: Daly City Police Department

POST CONSULTANT / BC: Kevin P. Sherburne

ALLEGATION(S):

Acts that violate the law that are sufficiently egregious and repeated in violation of Penal Code Section 13510.8(b)(6); 2015 DUI California Vehicle Code Section 23152(b); 2023 DUI California Vehicle Code Section 23152(b) w/ sentencing enhancements for having a previous DUI conviction within 10 years.

The Peace Officer Standards Accountability Division, Certification Executive Review Panel has reviewed the above referenced case involving alleged serious misconduct and has determined the following:

☒ There are reasonable grounds for revocation of a peace officer's certification.

Responded test positive for Tetrahydrocannabinol (THC) and had a BAC of 0.269% at the time of the arrest for the second DUI in 2022. Respondent was also traveling with a civilian passenger in his vehicle while he drove intoxicated, jeopardizing the passenger's safety.

☐ There are reasonable grounds for suspension of a peace officer's certification. The recommended term(s) for suspension are:

☐ There is insufficient evidence to support a recommendation of revocation or suspension of certification.

William Darden	William Darden	08/01/2024
Chief Legal Counsel	Signature	Date
Annemarie Del Mugnaio	Annemarie Del Mugnaio	8/01/2024
Assistant Executive Director	Signature	Date
Manuel Alvarez, Jr.	Manuel Alvarez, Jr.	08/02/2024
Executive Director	Signature	Date

cc: Bureau Chief Brian South

cc: Jason Morlock

cc: Chandler Knapp

cc:

POST PROFILE NAME:

BERMUDEZ, JAIME

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: N/A

DATE: 08/01/2023

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
C36-U28		[redacted]		

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
178096	B	07/09/2014	BS	0.00	43.00	Educational Institution [redacted]
126361	I	01/22/2015	BS	0.00	0.00	
118972	A	12/27/2018	BS	0.00	0.00	

Total Number of Certificates: 3

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
12/26/2012	07/11/2023	8	PO	12/26/2012	41060	DALY CITY PD	F	P	

***Reason for Separation: 8 = Involuntary Separation**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
05/17/2011	A	2540-00100-10-003	760		N	60020	SOBAYRTC		BASIC COURSE-INTENSIVE
11/09/2011	A	2540-00100-10-006	870		Y	60020	SOBAYRTC		BASIC COURSE-INTENSIVE
11/26/2012	K	2540-23090-12-010	4		Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
12/17/2012	K	2540-29503-12-027	4		Y	41170	SOBAYRTC	*	ARSTCTL(PSP)
06/20/2013	K	2540-22289-12-028	9		Y	41060	SOBAYRTC		TACTICAL RESP.SCHOOL/COMM.VIOL
12/09/2013	K	2540-23090-13-007	4		Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
12/09/2013	K	2540-29503-13-023	4		Y	41060	SOBAYRTC	*	ARSTCTL(PSP)
02/10/2014	K	1280-29000-13-161	2	X	Y	41060	DCPD	*	TACTICAL COMMUNICATIONS
02/10/2014	K	2540-21779-13-002	2	X	Y	41060	SOBAYRTC		CPR REFRESHER
02/10/2014	K	2540-21769-13-005	2	X	Y	41060	SOBAYRTC		FIRST AID REFRESHER
02/10/2014	K	2540-21890-13-002	2	X	Y	41060	SOBAYRTC		AIDS/COMMUNICABLE DISEASE UPD.
02/21/2014	K	5590-22220-13-002	24		Y	41060	CONTRASO		DRUG INFLUENCE - 11550 H&S
02/26/2014	K	2540-20290-13-001	24	X	Y	41060	SOBAYRTC		DUI DETECTION-FIELD SOBRIETY
05/12/2014	K	2540-29502-13-020	8		Y	41060	SOBAYRTC	*	DRIVING(PSP)
07/30/2014	K	1280-29000-14-233	2	X	Y	41060	DCPD		HUMAN TRAFFICKING UPDATE
10/24/2014	K	2540-28000-14-003	24	X	Y	41060	SOBAYRTC		TRAINING CONFERENCE
12/04/2014	K	2540-29501-14-020	6		Y	41060	SOBAYRTC	*	FIREARM(PSP)
02/19/2015	K	1280-29000-14-195	2	X	Y	41060	DCPD		HATE CRIMES
02/19/2015	K	2930-23277-14-008	2	X	Y	41060	APD		RACIAL PROFILING - ISSUES AND IMPACT
03/10/2015	K	9070-33433-14-004	8		Y	41060	GTA		SEXUAL ASLT. INV-1ST RESPONDER
04/01/2015	K	2540-31445-14-002	24		Y	41060	SOBAYRTC		INTERVIEW & INTERROGATION
05/05/2015	K	1126-24202-14-003	8		Y	41060	3RD DEGREE		CRITICAL INCIDENT RESPONSE BASIC
05/21/2015	K	2540-29503-14-044	4		Y	41060	SOBAYRTC	*	ARSTCTL(PSP)
07/16/2015	K	2540-21779-15-001	2	X	Y	41060	SOBAYRTC		CPR REFRESHER
07/16/2015	K	2540-21769-15-001	2	X	Y	41060	SOBAYRTC		FIRST AID REFRESHER
07/16/2015	K	2540-29501-15-001	4		Y	41060	SOBAYRTC	*	FIREARM(PSP)
09/10/2015	K	2540-22289-15-008	9		Y	41060	SOBAYRTC		TACTICAL RESP.SCHOOL/COMM.VIOL
10/22/2015	K	2540-23090-15-003	6		Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
11/20/2015	K	2270-20801-15-002	40	R	Y	41060	SCSO		CRISIS INTERVENTION
12/02/2015	K	2540-22405-15-001	21	R	Y	41060	SOBAYRTC		OFFICER SAFETY/FIELD TACTICS UPDATE
12/18/2015	K	2540-32075-15-009	16		Y	41060	SOBAYRTC		FIREARMS/TACTICAL RIFLE
04/11/2016	K	2540-32343-15-001	4	X	Y	41060	SOBAYRTC		DOMESTIC VIOLENCE UPDATE

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
04/11/2016	K	2540-29501-15-024	4		Y	41060	SOBAYRTC	*	FIREARM(PSP)
07/25/2016	K	2540-29502-16-017	8		Y	41060	SOBAYRTC	*	DRIVING(PSP)
09/26/2016	K	2540-29503-16-015	4		Y	41060	SOBAYRTC	*	ARSTCTL(PSP)
11/08/2016	K	2540-24261-16-005	16	R	Y	41060	SOBAYRTC		SEARCH WARRANT-PATROL
11/21/2016	K	2540-23090-16-016	4		Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
05/03/2017	K	9180-25585-16-307	2	X	Y	41060	POST	*	TACTICAL COMMUNICATION (WEB)
05/08/2017	K	2540-29503-16-093	4		Y	41060	SOBAYRTC	*	ARSTCTL(PSP)
09/25/2017	K	2540-21798-17-011	8	X	Y	41060	SOBAYRTC		FIRST AID/CPR UPDATE
11/20/2017	K	2540-29501-17-039	4		Y	41060	SOBAYRTC	*	FIREARM(PSP)
01/29/2018	K	2540-23090-17-005	4	X	Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
05/07/2018	K	2540-29503-17-092	4		Y	41060	SOBAYRTC	*	ARSTCTL(PSP)
07/09/2018	K	2540-29502-18-001	6		Y	41060	SOBAYRTC	*	DRIVING(PSP)
07/10/2018	K	8790-20447-18-001	8	X	Y	41060	CNOA		CELLUAR PHONE FORENSICS/INVESTIGATION
08/27/2018	K	2540-12425-18-004	8		Y	41060	SOBAYRTC		PRINCIPLED POLICING
09/28/2018	K	1173-21635-18-001	80	R	Y	41060	PIDT TC	*	DEFENSIVE TACTICS INSTRUCTOR
01/18/2019	K	9180-25583-18-202	2	X	Y	41060	POST		DOMESTIC VIOLENCE RESPONSE (WEB)
02/01/2019	K	4200-31725-18-003	38	R	Y	41060	NAPA C		FIELD TRAINING OFFICER
03/01/2019	K	1173-21615-18-003	40	R	Y	41060	PIDT TC	*	BATON INSTRUCTORS COURSE
03/04/2019	K	2540-23090-18-014	4	X	Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
03/04/2019	K	2540-29501-18-057	4		Y	41060	SOBAYRTC	*	FIREARM(PSP)
05/02/2019	K	3170-41610-18-001	72	X	Y	41060	COLMA PD		PATROL OPS - FIELD LEADERSHIP
07/09/2019	K	2930-31470-19-001	16	X	Y	41060	APD		CHILD VICTIMS-INTERVIEWING
08/02/2019	K	2060-23000-19-001	80	R	Y	41060	ORANGE SD		SPECIAL WEAPONS & TACTICS
11/15/2019	K	1185-21625-19-002	40	X	Y	41060	CATO		CHEMICAL AGENT INSTRUCTOR
01/13/2020	K	2540-23090-19-007	4		Y	41060	SOBAYRTC		ELECTRONIC WEAPONS
01/13/2020	K	2540-29501-19-018	4		Y	41060	SOBAYRTC	*	FIREARM(PSP)
01/13/2020	K	2540-33888-19-004	2	X	Y	41060	SOBAYRTC		AB 392 USE OF FORCE UPDATE
01/15/2020	K	9180-25585-19-199	2	X	Y	41060	POST	*	TACTICAL COMMUNICATION (WEB)
10/01/2020	K	9260-22020-20-006	8		Y	41060	DOJ		ELECTRONIC SURVEILLANCE
10/23/2020	K	8790-32660-20-001	40	R	Y	41060	CNOA		NARCOTICS INVESTIGATION
11/06/2020	K	1126-31445-20-002	24	R	Y	41060	3RD DEGREE		INTERVIEW & INTERROGATION
02/04/2021	K	2540-21797-20-022	8		Y	41060	SOBAYRTC		FIRST AID/CPR/AED REFRESHER
07/08/2021	K	2540-29502-21-001	8		Y	41060	SOBAYRTC	*	DRIVING(PSP)
08/06/2021	K	5590-21705-21-001	40	X	Y	41060	CONTRASO		ACADEMY INSTRUCTOR CERTIFICATION COURSE (AICC)
11/23/2021	K	8790-28000-21-001	24	X	Y	41060	CNOA		TRAINING CONFERENCE
03/06/2022	K	9180-25597-21-249	1	X	Y	41060	POST		LEGAL UPDATE: POSITIONAL ASPHYXIA-SELF PACED
08/01/2022	K	9180-25599-22-032	4	X	Y	41060	POST	*	PSP: STRATEGIC COMMUNICATIONS-SELF PACED
09/10/2022	K	1280-29000-22-187	2	X	Y	41060	DCPD		ANTI-REPRODUCTIVE RIGHTS CRIMES

***Meets Perishable Skills**

FOOTNOTES

Date	Additional Information/Actions Taken	Presenter
06/20/2022	PSP Instructor Exemption ARREST AND CONTROL	SOUTH BAY REGIONAL TRAINING CONSORTIUM (2540)
06/20/2022	PSP Instructor Exemption USE OF FORCE	SOUTH BAY REGIONAL TRAINING CONSORTIUM (2540)

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES

This section will only appear if applicable.

FOOTNOTES

This section reserved for additional information.

8710066630 RR Donnelley ©2007. All rights reserved. —0557

DOB: 01 DOB

AFFIDAVIT RE PROBABLE CAUSE AND BAIL SETTING

THE AFFIANT, A PEACE OFFICER FOR THE STATE OF CALIFORNIA (AGENCY) CAMPBELL

STATES THAT: ON (DATE) 6/19/15, (NAME) JAIME BELMUDEZ (CEN#) _____

(ARREST TIME) 0436 (BOOKING TIME) _____, WAS BOOKED AT THE SANTA CLARA COUNTY JAIL ON THE FOLLOWING CHARGES: CASE# 2015-2530

REF. NO.	ON-VIEW FELONY CHARGE(S)	ON-VIEW MISD. CHARGE(S)	SCHEDULED BAIL
(1)		23152(B)VC	
( )			
( )			
( )			
( )			
( )			

(DO NOT ADD IN BAIL FOR OFFENSES THAT ARE THE SAME COURSE OF ACTION)

( ) BAIL SET BY COURT BAIL SCHEDULE _____ TOTAL: $_____

( ) BAIL SET BY MAGISTRATE _____ TOTAL: $_____ Judge _____

AUTHORIZED SIGNATURE: _____

DIRECTIONS FOR COMPLETION

What facts led you to believe that the defendant committed the above felony/misdemeanor offense(s)? **State reasons for initial contact/car stop. Describe actions of the defendant, addressing the elements of the offense(s), including symptoms of intoxication FSTs; injuries and how inflicted.** If you relied on third party information, describe incident and state who can establish the facts:

REASONS FOR STOP/SEARCH/ARREST

ON 6/19/15, I RESPONDED TO A VEHICLE COLLISION. I ARRIVED A FEW MINS LATER AND THE REGISTERED OWNER OF THE VEHICLE WAS CONTACTED HALF A BLOCK AWAY. (S) SAID HE WAS THE DRIVER AT THE TIME OF THE COLLISION. (S) EXHIBITED SIGNS & SYMPTOMS OF ALCOHOL INTOXICATION. WATERY EYES, ODOR OF AN ALCOHOLIC BEVERAGE ON HIS BREATH AND HORIZONTAL GAZE NYSTAGMUS OBSERVED. (S) REFUSED TO PERFORM TESTS. BASED ON (S)'S SIGNS & SYMPTOMS OF ALCOHOL INTOXICATION, BEING INVOLVED IN A COLLISION, I DETERMINED (S) TO BE DUI. (S) WAS ARRESTED FOR 23300.5 VC. (S) WAS TRANSPORTED TO AND BOOKED INTO THE SANTA CLARA COUNTY MAIN JAIL.

EACH APPLICABLE SECTION BELOW MUST BE COMPLETED:

1) Was the suspect armed? (Yes/No) Describe weapon: _____
2) Did the suspect resist arrest? (Yes/No) Combative to officer(s)? (Yes/No) Describe _____ Fled only (Yes/No)
3) Assault victim info: Age ____ Ht ____ Wt ____ Sex ____ Relationship to suspect _____
4) Injuries sustained by victim: None _____ Minor _____ Moderate _____ Major _____
5) Type of theft: Person _____ Residence _____ Commercial _____ Other (describe) _____
6) Property taken and approximate value: _____
7) Property recovered: None _____ Partial _____ Full Recovery _____
8) Controlled substances involved: (Type) _____ Presumptive test results _____
(Required Information) $ Value _____ Quantity _____
9) Threats to victim(s) or witness(es): including information leading you to believe that the defendant may injure the victim(s)/witness(es) (threats, prior violence, etc.) or may flee prior to a court appearance: _____

I declare under penalty of perjury, that the foregoing is true and correct.

[redacted] [redacted]

CAMPBELL POLICE
CONTROLLED DOCUMENT
DATE: 03/06/2023
RELEASED TO: DALYCITY PD
RELEASED BY: Y44
CONFIDENTIAL PURSUANT TO 7923.600(a)

Narrative Report

Campbell Police Department
70 N. First St.
Campbell, Ca. 95008 (408) 866-2121 Fax. 379-7561

Report #20150619013
Case #2015-2530

34090.6 GC- Vehicle#1350 **VieVu# LE2-902224** **Date:06/19/15** **Time:0353**

☐ *Supplemental Report*

ATTACHMENTS:
Booking sheet
Evidence sheet
DS367
Vehicle code complaint
(S)'s breath test results
(S)'s CDL
CAD
Sergeant Stephenson's Supplemental Report
Officer Leitz' Supplemental Report
Officer Lau's Traffic Collision Report

SYNOPSIS:
On 06/19/15, (S) was the driver of a vehicle and collided into a fire hydrant. (S) was contacted and exhibited signs and symptoms of alcohol intoxication. Based on (S)'s signs and symptom of alcohol intoxication and because he was involved in a collision, (S) was determined to be DUI. (S) was arrested per 40300.5 VC. (S) provided a breath sample which showed a BAC of .20 and .19. (S) was transported and booked into the Santa Clara County Main Jail.

INVESTIGATION:
On 06/19/15, at approximately 0353 hours, I was on duty in full uniform in unmarked patrol vehicle #1357. CPD officers were dispatched to a white pickup truck that went off of the roadway. CPD dispatch updated that a male and female were heard near the vehicle. Sergeant Stephenson arrived in the area and contacted a male and a female near the intersection of Walnut Ave. and Chapman Ave. (See Sergeant Stephenson's Supplemental Report for details).

The male was later identified by his CDL as (S) Bermudez, and the female was identified as R1 Officer Leitz later contacted R1 and took her statement. R1 stated she and (S) Bermudez had been drinking earlier in the night, and (S) Bermudez was driving at the time of the collision. (See Officer Leitz' Supplemental Report for details)

I responded to Hacienda Ave. at Walnut Ave. where there was a white Chevy Silverado (CA Lic. [redacted] facing south / east on the south curb of Hacienda Ave. just east of Walnut Ave. The vehicle had major driver's

Reporting Officer: B. Rice	
CJIC # R7259	Date: 6/21/15

Dispositions

☒→ Arrest. ☐→ To DA for Complaint.
☐→ Information Report Only / No Crime. ☐→ Victim Declined Prosecution.
☐→ Active - Follow-up to SED. ☐→ Cleared/Closed.
☐→ Active - Follow-up to Officer ____. ☐→ To Original Report.
☐→ Inactive. ☐→ Cleared/Closed by Exception [____].
☐→ Offender is a Juvenile. ☐→ Death of Offender.

Reviewed By: _____ Date:____ Processed By: _____ Date: _____

CRIS Entry By: _____ Date: _____ Copies To: ☐ SED ☐ DA ☐ Court ☐ Other
☐ DPW ☐ Finance ☐ JPD ☐ S/O or PD_____

CAMPBEL OLICE
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Narrative Report

Campbell Police Department
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Report #20150619013
Case #2015-2530

side damage, there was a fire hydrant that had been knocked over near the rear of the vehicle and both front and passenger's side airbags had deployed. No one was inside the vehicle, and the vehicle key was in the ignition. (S) Bermudez was the registered owner of the vehicle.

In the area of the collision Hacienda Ave. is under heavy construction. The roadway is closed down to non-residents between S. Winchester Blvd. and San Tomas Aquino Rd. There are numerous cones and road closure signs. The roadway asphalt has been removed and dirt remains. The north / and south curbs are still intact, and there are cones dividing east and west bound traffic. Officer Tolentino took photographs of the roadway in the area of the collision, later in the day, during daylight hours. The photographs were later uploaded to Veripic. Officer Lau took photographs of the Chevy and of the scene (See Officer Lau's Traffic Collision Report for details).

I responded to where (S) Bermudez and R1 had been contacted. I activated my VieVu recorder. I had (S) Bermudez stand up and walk over to me. (S) Bermudez said he had been driving with R1 in his vehicle. (S) Bermudez said he was taking R1 home and crashed approximately 5 minutes prior, due to the roadway construction. (S) Bermudez said he was not injured and there were no other occupants in the vehicle. (S) Bermudez had an odor of an alcoholic beverage on his breath. (S) Bermudez estimated the time was around 0200 or 0300 hours at approximately 0405 hours. (S) Bermudez said he had been drinking around 2200 hours, on 06/18/15. (S) Bermudez said he was not injured. I checked (S) Bermudez for horizontal gaze nystagmus, and horizontal gaze was present with an onset prior to 45 degrees. (S) Bermudez did not want to perform FSTs or submit to a PAS test.

Based on (S) Bermudez' signs and symptoms of alcohol intoxication, statements, and because he was involved in a collision, I determined (S) Bermudez to be DUI. (S) Bermudez was placed under arrest per 40300.5 VC. I placed (S) Bermudez in the back of patrol vehicle #1350 and activated the in-car recording; which was later uploaded to veripic. (S) Bermudez chose to provide a breath sample.

I transported (S) Bermudez to AIB. While at AIB I read (S) Bermudez the chemical admonishment on the DS367 and he again decided to provide a breath sample. (S) Bermudez provided two breath samples which showed a BAC of .20 (0524 hours) and .19 (0528 hours).

While at AIB, Officer Lau contacted me and said that there was blood on the driver's side airbag. I noticed (S) Bermudez had minor cuts to the tops of both hands, with what appeared to be a small amount of fresh dried blood.

Reporting Officer: B. Rice
CJIC # R7259 Date: 6/21/15

Dispositions

- ☒→ Arrest.
- ☐→ To DA for Complaint.
- ☐→ Information Report Only / No Crime.
- ☐→ Victim Declined Prosecution.
- ☐→ Active - Follow-up to SED.
- ☐→ Cleared/Closed.
- ☐→ Active - Follow-up to Officer ____.
- ☐→ To Original Report.
- ☐→ Inactive.
- ☐→ Cleared/Closed by Exception [____].
- ☐→ Offender is a Juvenile.
- ☐→ Death of Offender.

Reviewed By: _____ Date: _____ Processed By: _____ Date: _____

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Report #20150619013
Case #2015-2530

I transported and booked (S) Bermudez into the Santa Clara County Main Jail.

P.L.E.O:
Sergeant Stephenson: Supplemental report / no recordings
Officer Lau: Traffic collision report / VieVu
Officer Leitz: Supplemental report / VieVu

EVIDENCE:
Uploaded to VeriPic:
- VieVu from Agent Rice's camera showing scene and (S) contact
- Incar recording from Agent Rice 1350 showing (S) transport
- Ofc. Tolentino daytime photos of scene

CASE DISPOSITION:
Closed by arrest.

Reporting Officer:	B. Rice
CJIC # R7259	Date: 6/21/15

Dispositions

☒→ Arrest.	☐→ To DA for Complaint.
☐→ Information Report Only / No Crime.	☐→ Victim Declined Prosecution.
☐→ Active - Follow-up to SED.	☐→ Cleared/Closed.
☐→ Active - Follow-up to Officer ____.	☐→ To Original Report.
☐→ Inactive.	☐→ Cleared/Closed by Exception [____].
☐→ Offender is a Juvenile	☐→ Death of Offender.

Reviewed By: _____ Date:_____ Processed By: _____ Date: _____

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Narrative Report

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Report ID# 20150619013

Case # 2015-2530

☐ Supplemental Report

Supplemental Report

Details:

On 06/19/2015 at approx. 0353 hours, I was in full uniform driving a fully marked police vehicle. CPD dispatch received a call from neighbors on Hacienda at Walnut that a white pick-up truck had crashed into the barricades on Hacienda and a male and female were walking away on Walnut (Hacienda was closed to all traffic, except local residents, due to construction). I responded to the area, by driving W/B on Chapman at Walnut, where I saw a male and female walking W/B Chapman from Walnut They did not appear to be in hurry and they were not running. I contacted the parties and determined that they were involved in the collision. The female stated that they were walking to her friend's house to get assistance with the truck. I learned from the male, later identified as (S) Jamie Bermudez, that he was the driver and owner of the white truck. (S) believed that he only drove into a ditch and did not collide into anything else.

Agent Rice #80 arrived and conducted a DUI investigation

Officer Lau arrived and completed a vehicle collision report.

Case Disposition:
To original report.

Reporting Officer	
Sergeant Stephenson #36	
CJIC # S7573	Date 6/21/15

Dispositions

☐→ Arrest	☐→ Cleared/Closed
☐→ Unfounded	☐→ To Original Report
☐→ Active - Follow-up to SED	☐→ Cleared/Closed by Exception:
☐→ Active - Follow-up to Officer	A Death of Offender
☐→ Inactive	B Prosecution Declined
☐→ To DA for Complaint	C Do Not Use
☐→ Info Report Only/No Crime	D Victim Refused to Cooperate
	E Juvenile/No Custody (Not Referred JPD)

Reviewed By: _____ Date: _____ Processed By: _____ Date: _____
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☐ DPW ☐ Finance ☐ JPD ☐ S/O or PD _____

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Narrative Report

Campbell Police Department
70 N. First St.
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Report # 20150619013
Case # 2015-2530
Page # 1

34090.6 GC- Vehicle# 1350 | **VieVu# 013833** | **Date: 06/19/15** | **Time: 0353**

☒ *Supplemental Report*

Investigation:

On 06/19/15 at 0353 hours I was on duty in full uniform driving a marked patrol vehicle (1350). I was dispatched to assist Agt. Rice with the report of a vehicle collision that occurred on Hacienda Ave.

Due to the roadway construction on W. Hacienda Ave, I was not able to drive directly to the scene. I contacted R1 on the corner of Walnut Drive and Chapman Drive. I activated my department provided Vievu which was later uploaded to Veripic. R1 provided the following brief statement in summary.

Statement of (W) Berry:

R1 said she is a bartender at "Cardiff" bar, located at 260 E. Campbell Ave. and had plans to hang out with (S) Bermudez when she got off of work. R1 stated her shift ended at 1:00am so she sent (S) Bermudez a text to come pick her up at the "Cardiff". Once (S) Bermudez arrived they walked over to "Khartoum's", located at 300 Orchard City Drive.

R1 said while at "Khartoum's" they both had consumed alcoholic beverages but she was unsure of how many (S) Bermudez had actually consumed because she was only with him for a short amount of time. R1 R1 said when the business closed, (S) Bermudez offered to give her a ride home. R1 suggested they should take "*Uber*" but (S) Bermudez told her he was okay to drive.

R1 told me that she had just recently moved to Campbell and was unsure of how to get to her new address. (S) Bermudez typed her address into his cellular phone "GPS" application and began to drive to her residence, located at R1 Address R1 stated she was the only passenger in the vehicle at the time of the collision and stated (S) Bermudez was the driver.

R1 told me that due to her level of intoxication, she fell asleep in the vehicle on the way back to her house. R1 told me that she woke up when she felt the car come to a sudden stop. R1 stated she was unsure of what the vehicle had collided into and said she was unable to recall any further details about the collision. R1 and (S) Bermudez exited the vehicle and began to walk southbound on Walnut Drive when CPD Officers arrived on scene.

Reporting Officer: M. Leitz, 90	
CJIC # L0494	Date: 06/19/15

Dispositions

☐→ Arrest.	☐→ To DA for Complaint.
☐→ Information Report Only / No Crime.	☐→ Victim Declined Prosecution.
☐→ Active - Follow-up to SED.	☐→ Cleared/Closed.
☐→ Active - Follow-up to Officer ____.	☒→ To Original Report.
☐→ Inactive.	☐→ Cleared/Closed by Exception [____].
☐→ Offender is a Juvenile.	☐→ Death of Offender.

Reviewed By: _____ Date: ____ Processed By: _____ Date: _____

CRIS Entry By: _____ Date: ____ Copies To: ☐ SED ☐ DA ☐ Court ☐ Other____
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Narrative Report

Campbell Police Department
70 N. First St.
Campbell, Ca. 95008 (408) 866-2121 Fax. 379-7561

Report # 20150619013
Case # 2015-2530
Page # 8

I asked R1 f (S) Bermudez had said anything to her when they exited the vehicle which she stated he did not.

R1 dvised she did not sustain any injuries from the collision and declined any medical attention.

Evidence:

Veripic:
Officer Leitz – Vievu recording of statement with (W)

Disposition:
To Original Report

Reporting Officer: M. Leitz, 90
CJIC # L0494 Date: 06/19/15

Dispositions

- ☐→ Arrest.
- ☐→ Information Report Only / No Crime.
- ☐→ Active - Follow-up to SED.
- ☐→ Active - Follow-up to Officer ____.
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- ☐→ Offender is a Juvenile.
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- ☒→ To Original Report.
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- ☐→ Death of Offender.

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VEHICLE CODE COMPLAINT

COURT 43470 POLICE AGENCY CAMPBELL UNIT FSD PHONE 408-866-2121

CASE 2015-2530 COMPLAINANT Sullivan BADGE 55312

ARRESTING OFFICER(S)/BADGE B. Rice #80 R7259

DEFENDANT: BERMUDEZ (LAST) JAIME (FIRST) FRANCISCO (MIDDLE) DOB [redacted] O1 DOB

CEN: 15025220 PFN: EPM881 ARRAIGNMENT DATE/TIME: 8-18-15

CUSTODY STATUS: IN ☐ SCIT ☒ BAIL ☐ O.R. ☐ O.R.P. ☐ S.O.R.P. ☐ WARRANT ☐ RETAKE ☐

OTHER ☐ Explain:

ADDRESS: [redacted] O1 Address (STREET) (CITY) (STATE)

BREATH RESULTS: .20 / .19 BLOOD RESULTS: ____ URINE RESULTS: ____ DRUG(S) DETECTED: ____

LAB #: ____ REFUSED TEST(S): ____ NOT GIVEN (REASON): ____

VEHICLE CODE SECTION(S): **DATE OF OFFENSE:** 6/19/15

☒ 23152(a) Alcohol	☐ 23152(a) Drug	☐ 23152(a) Alcohol/Drug	☒ 23152(b)	☐ 23153(a) w/Injury	☐ 23153(b)

SPECIAL ALLEGATIONS/ENHANCEMENT(S):

☐ 13202.5 Under 21 Yrs.	☐ 23577(a) Refusal	☐ 23572 Minor in Car	☒ 23578 .15/Above	☐ 23582 20 MPH+ Reckless	☐ ____ Other

VC 23152(A/B) PRIORS:

SECTION: ____ COURT: ____ DOCKET: ____ DATE: ____

SECTION: ____ COURT: ____ DOCKET: ____ DATE: ____

ATTENTION OFFICER:

ADDITIONAL VEHICLE CODE SECTION(S):

This is your copy of felony complaint authorization form.

☐ 12500(a)	☐ 14601(a)	☐ 14601.1(a)	☐ 14601.2(a)	☐ 14601.5(a)	☐ 20002(a)

DO NOT LEAVE IT WITH COURT

OTHER PRIORS:

SECTION: ____ COURT: ____ DOCKET: ____ DATE: ____
SECTION: ____ COURT: ____ DOCKET: ____ DATE: ____
SECTION: ____ COURT: ____ DOCKET: ____ DATE: ____

ADDITIONAL CHARGE(S): ____

NOTES: ____

CASE REJECTED/REASON: ____

ATTORNEY'S INITIALS RF 1506 TMPO 0-249 OFFENSE TYPE ____ D.A. TEAM LETTER MISD DATE 7/2/15

REFERRAL # 29291 INTERPRETER REQUIRED ☐ LANGUAGE ____

628 REV 2/07

ISD 714603

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DUI/Arrest Investigation Report

Campbell Police Department

Report ID # 20150619013

Case # 2015-2530

TYPE OF REPORT: ☐ OFFICER ☒ ARREST

CASE DISPOSITION: ☒ ARREST ☐ TO DA FOR COMPLAINT ☐ INFO REPORT ONLY / NO CRIME

Event Information

OFFICER	BADGE #	CJIC #	ASSISTING PERSONNEL		
RICE	80	R7259	LAU	LEITZ	STEPHENSON

NCIC CODE AND CRIME SECTION (List most serious crime first)

1	23152(a) VC	DUI	I M F	4	I M F
2	23152(b) VC	DUI OVER .08	I M F	5	I M F
3			I M F	6	I M F

LOCATION OF OCCURRENCE	BUSINESS NAME (If Applicable)		
HALIFNOA / WALNUT			
DATE OF STOP: 6/19/15	TIME OF STOP: 0357	DATE OF ARREST: 6/19/15	TIME OF ARREST: 0436

Suspect

IF ARREST: ☒ SEE BOOKING SHEET ☐ SEE JUVENILE CONTACT REPORT — SUSPECT #: 1

NAME (LAST, FIRST, MIDDLE): BERMUDEZ, JAIME FRANCISCO

AKA(S):

[redacted] O1 Phys Description, DOB, PII

SCARS, MARKS, TATTOOS:

HOME ADDR [redacted] O1 Address

HOM [redacted] O1 Ph Number

EMPLOYER NAME: DALY CITY

EMPLOYER ADDRESS: 333 90TH ST. DALY CITY

ADDITIONAL DESCRIPTION: PFN EDM881
CEN 15025220

Suspect Vehicle

CHECK IF: ☒ REGISTERED OWNER SAME AS DRIVER

REGISTERED OWNER'S NAME	REGISTERED OWNER'S ADDRESS				
YEAR: 14	MAKE: CHEVY	MODEL: SILV.	BODY TYPE: P/U	COLOR: WHT	LICENSE NUMBER: 9624MI	STATE: CA

ADDITIONAL VEHICLE DESCRIPTION:

Involved Parties

REPORTING PARTY	WITNESS #	PASSENGER #	DOB	SEX	RACE
☐	1	1			

R1 DOB & Phys Description

R1 Name, Address, Phone # [redacted]

BUSINESS OR NAME (LAST, FIRST, MIDDLE):

HOME ADDRESS:

WORK ADDRESS:

HOME PHONE: WORK PHONE:

OTHER DESCRIPTION:

REPORTING PARTY	WITNESS #	PASSENGER #	DOB	SEX	RACE
☐					

BUSINESS OR NAME (LAST, FIRST, MIDDLE):

HOME ADDRESS:

WORK ADDRESS:

HOME PHONE: WORK PHONE:

OTHER DESCRIPTION:

CASE CLOSED

REVIEWED BY: [signature] DATE: 6/21/15

CRIS ENTRY BY: 428 DATE: 6/27/15

PROCESSED BY: S24 DATE: 6.25.15

COPIES TO: ☐ ISD ☒ DA ☒ COURT ☐ OTHER ☐ DPW ☐ FINANCE ☐ JPD ☐ S/O or PD

DUI / Arrest-Investigation Report

CAMPBELL POLICE
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DATE: 03/06/2023
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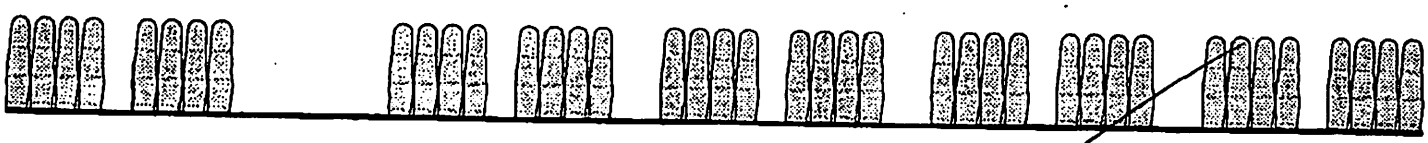
Report ID # 215061913
Case # 2015-2530
Page # 1

Field Sobriety Tests (Record results only for those tests administered)

ODOR OF ALCOHOLIC BEVERAGE? ☒ YES ☐ NO		TIME STARTED DRINKING 10PM	TIME STOPPED DRINKING —	HOW MUCH HAVE YOU HAD TO DRINK? N/A			
WHERE ARE YOU NOW? —	WHAT TIME IS IT 2053	ACTUAL TIME 0410	ATTITUDE COOP	SPEECH —	EYES WATERY	PUPILS —	NYSTAGMUS AGN
LOCATION WHERE TESTS CONDUCTED N/A			DESCRIBE UNUSUAL SURFACE, WEATHER, OR LIGHTING CONDITIONS N/A				

Finger Dexterity Test: (Touch your fingertips to thumb and count as directed. Do a total of _____ sets.)

Asked Performed



Balance On One Foot: (Subject balances on one foot for _____ seconds.)

Line Walk: (Subject takes _____ steps forward, turns around and takes _____ steps back, walking heel to toe.)

Alphabet Test: (☐ See attached card.)

Standing Modified Test: (Subject stands heel to toe and looks left/right and then forward.)

Rhomberg Test: (Subject estimates 30 seconds while standing with feet together, hands at sides, head tilted back, and eyes closed.)

Actual Time: _____

Chemical Tests

☐ BLOOD	☒ BREATH	RESULTS: .20 % .19 % ____ %	☐ URINE	☐ REFUSAL	TIME ADMINISTERED 0524, 0528
☐ DRUG RESULTS REQUESTED	DRUG(S) SUSPECTED				

HALL OF JUSTICE
190 W. HEDDING ST
SAN JOSE, CA 95110

CASE NO. C1517080
CEN 15025220
DATE 09/03/2015 9:01 AM DEPT 51 PO.19%
CDY BK:Y
EDM881 M

PEOPLE VS. JAIME FRANCISCO BERMUDEZ
L.K.A. [redacted] 01 Address

01 CDL and DOB

CLERK S. FARNHAM
HEARING PLEA
JUDGE HON. GREGORY H. SALDIVAR DV: AGENCY CA-04302-83312-SULLIVAN
REPORTER RECORDER CHILD: STATUS O-SCIT- TW
DEF. ATTY. AHMADTEH, SOUHOD(S) D.A. PAK APO
CHARGES M(001)VC23152(A) M(002)VC23152(B) VIOLATION DATE 06/19/2015

NEXT APPEARANCE 10-27-15 AR 9:01 D51

☐ Defendant Present ☑ Not Present ☑ Atty Present ____ AD / PD / IDO / Special App
☐ Arr'd ☐ Adv ☐ Arr Wav ☐ Amend Comp/Info ☐ Arr ☐ Plea ☐ IDC ☐ PTC ☐ Prob / Sent ☐ Interpreter ____ ☐ Sworn
☐ PC977 ☐ Filed ☐ On File ☐ Reptr. Adv / Wav ☐ Bail/ OR/ SORP ☐ Rect Dr Rpt ☐ FAR/ ERC ☐ Bail Apply ☐ Balance Exonerated
☐ NG ☐ Entered by CRT ☐ NGBRI / Adv ☐ PSet ☐ Prelim ☐ Readiness ☐ S / B MTC ☐ Bail Exonerated ☐ Forfeited Bond #____
☐ Denies Priors/ Allegations/ Enhancements/Refusal ☐ Further ☐ Jury ☐ CT ☐ Peo / Def Wav Jury ☐ Reassumption Filed ☐ Forfeiture Set Aside ☐ Bail Rein
☐ TW ☐ TNW ☐ TW / WD ☑ TW Sentence ☑ Ref'd RC SAP 120 HRS OR ☐ $____ Costs Within 30 Days to Court
☐ Ref / Appt PD / ADO / IDO ☐ Con Decl ☐ Adm A / F ☐ APO / DADS/ Prop 36 ☐ P36 Re-Assm't ☐ SORP / OR ☐ Revoked ☐ Reinstated ☐ May Post & Forfeit
☐ ____Relieved____Appt'd ☐ Crim Proc Susp ☐ Rein ☐ Status Hrg ☐ BW Ordered $____ ☐ Stayed ☐ To Issue
☐ Hrg on Motion ____ ☐ Doubt Decl Pursuant PC 1368 ☐ No Cite Release/SCIT ☐ No Request ☐ Cash Only
☐ Granted ☐ Denied ☐ Submitted ☐ Off Cal ☐ Subm on Report ☐ Found ____ ☐ BW Set Aside ☐ Recalled ☐ Filed ☐ Remain Out ☐ NWF
☑ Stip to Comm ☐ Drs. Appointed ____ ☐ Max Term ____ ☐ Committed ____ ☐ Proof of ____
☐ Prelim Wav ☐ Certified to General Jurisdiction ☐ MDA / COM Amended to ____
☐ Amended to ☐ (M) VC12500(a) / VC23103(a) ☐ Pur VC23103.5 ☐ DA Stmt Filed ____ ☐ PROP. 47

PLEA Conditions: ☐ None ☐ No State Prison ☐ PC17 after 1 Yr Prob ☐ Includes VOP ____
☐ Jail / Prison Term of ____ ☐ Add to Cal ☐ Vacate pending date
☑ Dismissal / Striking CT 1 MDA VOP ☐ Subm time of Sent ☐ Harvey Stip ____
☑ Adv Max Pen / Parole / Prob / Immig / Appeal ☐ Reg HS11590/PC290/PC457.1/PC186.30 ☐ FSF ☑ Fines/Fees ☐ PC29800/29805/30305/666/VC14607.8
☑ Wav Right to ☐ Counsel ☑ Court / Jury Trial ☑ Subpoena / Confront / Examine Witnesses ☑ Self-incrimination ☑ Written Waiver filed ☑ Plea / Absentia filed
☐ COP ☐ **GUILTY** ☑ **NOLO CONTENDERE** to charges & admits enhancements / allegations / priors ☐ **PC17** ☐ Arbuckle ☑ Factual Basis found ☑ Findings stated
☐ Prop 36 Granted / Unamenable / Refused / Term ☐ DEJ Eligibility Filed ☐ DEJ Granted / Rein / Term Fee $____ ☐ Guilty Plea Rendered
☐ Waives Referral ☐ APO Full Rpt ☐ CR110 issued **Fines/Fees Pay to:** ☑ DOR ☐ Traffic ☐ Court ☐ Today ☐ Audit #____
☐ Sent Suspended ____ ☐ **PROBATION DENIED**

PROBATION ☐ Execution ☑ Imposition of sentence suspended for probation period
☑ COURT ☐ FORMAL PROBATION GRANTED for 3 Days / Mos / Yrs
☐ Report to APO within____ Days ☐ Terminated ☐ Upon Release
☑ Perform 120 Hrs Volunteer Work as directed PO (SAP) ☑ in lieu of fine/Jail
☑ Not drive w/o valid DL & Ins ☑ Adv VC23600 ☐ HTO ☐ Re-refer
☐ MOP ☑ FOP ☐ 12 hrs ☑ 3 mos ☐ 9 mos Enroll within 30 days
☐ DL Susp/ Restr'd/ Rvk'd for ____ ☐ IID Not/Ordered/ Rmv'd Term ____ Yrs
☐ No contact with victim or family / co-defts unless appr by APO ☐ PC1202.05
☐ DVPO issued / mod /term'd Exp ____ ☐ Victim Present
☐ No Contact ☐ Peaceful Contact ☐ DSA thru APO / DOR / CRT ☐ Filed
☐ Not own/possess deadly weapons ☐ Destroy/return weapon ____
☐ Stay away from ____
☐ Submit Search/Testing ☐ Educ/Voc Trng/Empl ☐ No alcohol / drugs or where sold
☐ Substance Abuse, Psych, Theft, Anger Mgmt, DV, Parenting cnsl / prgm
☐ PC296 (DNA) ☐ PC1202.1 HIV Test / Education
VOP: ☐ Wav ☐ Arr'd ____ ☐ Admits/Denies Viol ☐ Court Finds VOP / No VOP
Prob Rein / Mod / Term'd / Revoked / Remains Revoked / Ext to ____
☐ Original Terms & Conditions Except as Amended herein
☐ Co-terminous with ____ ☐ No Further Penalties / Reviews
Other: ____

COUNT 2 $ 1240 + PA $ ____ ☐ Purs HS11350d
COUNT 2 $ 400 + PA $ 1240 ☐ PC290.3
AIDS / CPP $____ + PA $____ SORP ____
DPF $ 20 + PA $____ EMAT $ 4
LAB $____ + PA $____
~~DRE~~ /RF $ 1165 Add'l RF $ 150 Susp'd PC1202.44/45
AEF $ 50 Original Fine $ ____
~~SECA/COPA~~ $ 40 **CTS PC2900.5** $ ____
ICMF $ 30 **TOTAL DUE** $ ____
ICIN $____ Payments Granted / Modified
AR W $ ~~35~~ $____/Mo beginning ____
SHELTER $____ FINE STAYED 12-07-15
DV $____ Committed @ $____/day ☐ May Pay Out
ATTY $____ Consec/Conc to ____
ASF$25/CPF$10 $____ Fine / Fees ☐ Deemed Satisfied ☐ Commuted
P/INVEST $____ ☐ P/SUP $____/Mo ☐ Waived
CJAF $129.75/$259.50 $____ ☐ Addt'l Fees Waived
☐ SECA, ICMF, ICIN, CJAF, PINVEST, PSUP FEES NOT COND. OF PROB
☑ Restit ☑ Gen $____ to ____
☐ As determined by APO/Court ☐ Referred to VWAC ☐ Collect Civilly

JAIL/PRISON ☐ See Attachm't Pg ☐ CDCR/Parole collect restit from Def's earnings ☐ Blended Sentence

Count	F/M	Violation	Prison Term / Yrs	Enhancement / Priors	Yrs / Styd / Strkn	County Jail HRS / DAYS / MOS
2	M				SAP 120 HRS OR	16

Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Enhancement	Yrs/S	Total

CTS = ____ ACT + 0 ☐ 4019 ☐ ½ ☐ ⅓ ☐ PC2933.1 ____ Total Total term 16 days ☐ CDCR / PC 1170h
☐ Straight time ☐ In Camp ☑ WWP ☑ PC1209 Fees ☐ Waived ☐ Court Rec____ All / Except ☐ EMP/PSP/ERP/DRP/Co Parole/NP ____
☐ Sent Deemed Srv'd ☐ Rpt to Parole/Prob w/in ____ ☐ Adv/ORD ____ Yrs/Mos Parole/MS/PRCS/Appeal ☐ Consec ☐ Conc to ____
☐ Bal CJ Susp ☐ All but ____Hrs/Days/Mos ☐ On Cond Complete Residential Treatment Prgm ☐ Serve Consec MO/TU/WE/TH/FR/SA/SU ____
☑ Re-process ____ AM/PM ☑ **Stay / Surrender / Transport to** ____ @ ____ AM/PM or Sooner

☐ REMANDED-BAIL $____ ☐ REMAIN AS SET ☐ NO BAIL ☐ COMMITTED ☐ RELEASED ☐ OR ☐ SORP ☐ JAC PHONE ASSM'T ☐ P36
☐ AS COND OF SORP ☐ BAIL INCREASED / REDUCED ☐ TO PRGM AS REC BY JAC DOC TO ARRANGE TRANSPORT UPON AVAIL BED

DISTRIBUTION: ORIGINAL - FILE, GREEN - DOC, BLUE - CJIC / DOR PURPLE - PROBATION, BROWN - DEFENDANT

3. Once the permanent performance evaluation form has been made final, the underlying foundational material(s) and/or duplicate copies may be purged after one year.

(b) All rules of confidentiality and disclosure shall apply equally to the division file.

1025.7.3 INTERNAL AFFAIRS FILE (MANAGEMENT, CONTROL, AND AUDIT)
Internal affairs files shall be maintained under the exclusive control of the Management Control and Audit in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the supervisor of the Management Control and Audit. These files shall contain:

(a) The complete investigation of all formal complaints of employee misconduct, regardless of disposition

1. Each investigation file shall be sequentially numbered within a calendar year (e.g., yy-001, yy-002).

2. Each investigation file arising out of a formal citizen's complaint or a complaint involving a discriminatory harassment or hostile work environment shall be maintained no less than five and a half (5.5) years (Penal Code § 832.5(b)). Investigation files arising out of other internally generated complaints shall be maintained no less than five and a half (5.5) years (Government Code § 34090).

(b) Investigations that result in other than a sustained finding shall be maintained for the minimum statutory period but may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5 (c)). Personnel inquiry forms, shall be maintained for no less than one year.

(c) Disciplinary action:

1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained in the individual employee's Management, Control and Audit (MCA) file at least five and a half (5.5) years (Government Code § 34090).

2. Investigations of complaints which result in a finding of not-sustained, unfounded or exonerated shall be placed in the employee's MCA file and will be separately maintained for five and a half (5.5) years.

(d) Adverse comments such as supervisor log entries and Personnel Inquiry Forms will be retained in the MCA file after the employee has had the opportunity to read and initial the comment and for a period of one year Government Code § 3305).

1. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into a file, the employee shall be given the opportunity to respond in writing to such adverse comment within 30 days (Government Code § 3306).

Adoption Date: 2016/08/30
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WALNUT CREEK PD

GENERAL OFFENSE HARDCOPY

LAW ENFORCEMENT USE ONLY

GO# 2022-25731 CLOSED MISD AT DA FOR REVIEW **90D-25 DRIVING UNDER THE INFLUENCE**

WALNUT CREEK POLICE DEPARTMENT - RELEASE TRACKING DISCLAIMER This document is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this material is not the intended recipient, or the employee or agent responsible for delivering this material to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this material in error, please notify us immediately by telephone at (925) 943-5890 and return the material to the Walnut Creek Police Department, 1666 N Main St., Walnut Creek, CA. 94596

General Offense Information

Operational status: **CLOSED MISD AT DA FOR REVIEW**
Reported on: **Aug-27-2022 (Sat.) 340**
Occurred on: **Aug-27-2022 (Sat.) 340**
Approved on: **Aug-27-2022 (Sat.)** by: **P518 - BROOKSHIRE, DUSTIN**
Report submitted by: **P533 - YOUNG,ERIC**
Org unit: **PATROL TEAM 4**
Accompanied by: **P533 - YOUNG,ERIC**
Address: **1644 N BROADWAY**
Municipality: **WALNUT CREEK**
District: **13** Beat: **1** Grid: **289**
Felony/Misdemeanor: **MISDEMEANOR**
ARRC Indicator: **N**
Gang Activity: **N**
Identity Theft: **N**
Family violence: **No**

Offenses (Completed/Attempted)

Offense: **# 1 90D-25 DRIVING UNDER THE INFLUENCE - COMPLETED**
Location: **HIGHWAY/ROAD/ALLEY/STREET/SIDEWALK**
Offender suspected of using: **NOT APPLICABLE (Mutually exclusive)**
Bias: **NONE (no bias/ mutually exclusive)**

Related Event(s)

AB 2022-25731
CP 2022-25731

Related Person(s)

1. ARRESTEE # 1 - BERMUNDEZ, JAIME FRANCISCO

(Case Specific Information)

Sex: O1
Race: O1
Date of birth: O1
Address: O1
Municipality: O1

Phone Numbers

Home: O1

Particulars

Place of birth: O1
Ethnicity: O1
Height:
Eye color:
Hair color:

Master Name Index Reference

Name: **BERMUNDEZ, JAIME FRANCISCO**
Sex: O1
Race: O1
Date of birth: O1
Ethnicity
Address: O1
Municipality: O1

Phone numbers

Home: O1

Charge Summary

Charge # 1

Offense date: **Aug-27-2022 (Sat.) 110**
Offense : **DUI ALCOHOL**
Charge statute: **VC 23152(A)**
Charge severity: **2 MISDEMEANOR**
Domestic Violence: **No**
Court date: **Nov-07-2022 (Mon.)**
Court: **WALNUT CREEK SUPERIOR COURT**

Linkage factors

Resident status : [redacted] O1
Age range : [redacted] O1
Armed with : **UNARMED**
Offense: **90D- 25 DRIVING UNDER THE INFLUENCE - COMPLETED**
Arrest date: **Aug-27-2022 (Sat.)**
Arrest type: **ON VIEW ARREST**

Related Vehicle(s)

1. INVOLVED # 1 - [redacted] **CA VIN#** [redacted] Vehicle license information

(Case Specific Information)

License number: [redacted] Vehicle license information
State of issue: **California**
VIN #: [redacted] Vehicle license information
Vehicle type: **AUTOMOBILE**
Make and model: **Chevrolet**
Year: **2017**

Master Vehicle Index Reference

License number: [redacted] Vehicle license
State of issue: **California**

Owner Information

Owner type: **PERSON**
Owner role: **INVOLVED**

Narrative Text

Type INVESTIGATION
Author P533 - YOUNG,ERIC
Related Date Aug-27-2022 3:51

CASE STATUS:

Pending misdemeanor DA review.

PHYSICAL CONDITION:

BERMUDEZ displayed the following objective signs of intoxication:

-Red watery eyes.

-Unsteady gait.

-Slack facial expressions.

-Strong odor of alcoholic beverages coming from his breath and person.

-HGN and lack of smooth pursuit.

EVIDENCE:

#138113 -1: DUI blood kit.

-BWC video.

INVESTIGATION:

On 8/27/22 at approx 0110 hours, I was in full police uniform riding in the passenger seat of a marked WCPD patrol car with Officer Peters (also in full police uniform). At that time we heard via radio Corporal Mauro conduct a traffic enforcement stop and immediately ask for another unit. Upon arrival, I saw Corporal Mauro talking with the driver, identified by CDL as Jaime BERMUDEZ. While Corporal Mauro spoke with BERMUDEZ, I saw the back passenger door open and I began speaking with the female seated in the back right passenger seat. The female told me she was BERMUDEZ's girl friend and said they were going to [R6] house and they had just left the parking lot of Modern China, where they had been drinking. I asked her why she was sitting in the back and she said "He wanted to drive home and I said no." BERMUDEZ's girl friend then turned to BERMUDEZ and said "I told you not to drive."

Corporal Mauro told me he was driving when the vehicle (black Chevy truck) had cut him off. While following the truck, Corporal Mauro saw the truck swerve across several lanes and so he conducted a traffic stop. Corporal Mauro saw signs of intoxication while talking to BERMUDEZ and requested I conduct a DUI investigation. See Corporal Mauro's report for further details.

I contacted BERMUDEZ and asked him if he had any weapons. BERMUDEZ said he had firearms secured in the rear of the truck. Based on his driving and his objective signs of intoxication, I asked him to step out of the vehicle where I conducted a weapons pat down and did not find any weapons. I asked BERMUDEZ to step away from the truck to an area where I was going to conduct SFSTs. While walking to the area, BERMUDEZ appeared to stagger. I asked him if he was going to be ok and he said yes.

I asked BERMUDEZ the following pre-FST questions:

-Anything mechanically wrong with your car? No. It's a county car.

-Are you sick or injured? No.

-Are you diabetic or epileptic? No.

-Do you take insulin? No.

-Do you have any physical impairments? No.

-When did you last sleep? Thursday 3am to 7am. (while answering, BERMUDEZ lost his balance and I put my hand out to catch him).

-When did you last eat? I don't know. 8am, oatmeal.

-Where did you start driving? This is where my car is parked. (I asked BERMUDEZ multiple times where he began driving but BERMUDEZ said he was parked right here and he was headed home. BERMUDEZ confirmed he understood my question).

-Where were you going? Home i[redacted]O1 Address

-What and how much did you drink tonight? I haven't had anything to drink.

-Zero alcoholic drinks? Sure.

-Do you feel the effects of the alcohol? No.

-Did you bump or hit your head in the last 24 hours? No.

-Do you take any medicine or drugs? No.

-Have you had any recent surgeries performed? No.

While talking to BERMUDEZ, I smelled the strong odor of alcoholic beverages coming from his breath and person. I also saw BERMUDEZ had red watery eyes and a slack facial expression.

I then conducted the following SFSTs. All tests were conducted on a dry level surface with adequate light from the street lights and patrol cars. I explained and demonstrated each test in fill and asked for understanding from BERMUDEZ prior to him performing each test. I told BERMUDEZ not to begin any test until I told him to do so. BERMUDEZ told me he understood. Corporal Mauro was on scene to assist.

LACK OF SMOOTH PURSUIT: present in both eyes.

DISTINCT AND SUSTAINED NYSTAGMUS: present in both eyes.

ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES: present in both eyes.

VGN: present in left eye.

LOC: not present.

WALK AND TURN: While standing in the starting position, BERMUDEZ lost his balance twice. When he began, BERMUDEZ stepped off line 3 times (first nine) and 2 times (second nine). When he did this, he stopped walking each time to catch his balance. BERMUDEZ did not count out loud for the entire test. BERMUDEZ took a total of 10 steps (second nine).

ONE LEG STAND: While standing on his left leg, BERMUDEZ did not count out loud for the entire test. BERMUDEZ swayed approx 3 times and flared his arms for balance approx 2 times. BERMUDEZ lost his balance and put his left foot down at 13 seconds and 28 seconds.

ROMBERG BALANCE TEST: BERMUDEZ began but after approx 4 seconds, BERMUDEZ opened his eyes and said "Are you going to tell me when to stop?" I re-explained the test. During the second test, BERMUDEZ had a back and forth upper body sway. BERMUDEZ estimated 30 seconds in a 25 second time period.

PAS: BERMUDEZ declined to provide a voluntary sample.

Based on the above, I placed BERMUDEZ under arrest for DUI. I handcuffed him (double locked and checked for tightness) and placed him in the back seat of my patrol car. BERMUDEZ's vehicle was legally parked at the scene and later picked up by Officer Mendiara (#21). I transported BERMUDEZ to WCPD where I read him the DL 367 chemical admonishment which in summary states he is required by state law to submit to a chemical test. He can refuse but there are penalties if he does so. In addition, if he refused or failed to complete a test, I would contact a judge in an effort to obtain a search warrant for a blood draw. BERMUDEZ said "Breath test".

At the end of the 15 minute period for observation, I began to set up the Intox DMT. At that point, BERMUDEZ said something similar to "fuck it, go get a warrant." I asked him if he was going to do the breath test and BERMUDEZ shook his head no. Due to BERMUDEZ's refusal at approx 0256 hours, Honorable J. Hiramoto signed a search warrant authorizing a blood draw.

At approx 0304 hours, blood technician J. Young drew 4 vials of blood from BERMUDEZ's right arm. I booked the vials into Evidence. I completed an Admin Per Se form and attached BERMUDEZ's CDL. BERMUDEZ signed a Promise to Appear and was released to his friend, R6

A criminal history check on BERMUDEZ shows a prior conviction for DUI on 9/3/15.

This case is pending misdemeanor DA review.

Follow Up Report # 1

Assignment Information

Assigned to: **P533 - YOUNG,ERIC** Rank:
Capacity: **SUPPLEMENT** Org unit: **PATROL TEAM 4**
Assigned on: **Aug-27-2022 (Sat.) 639** by: **P533 - YOUNG,ERIC**
Report due on: **Aug-29-2022 (Mon.)**

Submission Information

Approved on: **Aug-29-2022 (Mon.)** by: **P518 - BROOKSHIRE, DUSTIN**
Follow Up Conclusion
Follow Up concluded: **Yes**

Narrative Text

Type INVESTIGATION
Author P533 - YOUNG,ERIC
Related Date Aug-27-2022 6:15

BERMUDEZ's girlfriend was later identified as [redacted] R7

Follow Up Report # 2

Assignment Information

Assigned to: **P431 - MAURO, GABE** Rank:
Capacity: **SUPPLEMENT** Org unit: **PATROL TEAM 4**
Assigned on: **Aug-27-2022 (Sat.) 640** by: **P431 - MAURO, GABE**
Report due on: **Aug-29-2022 (Mon.)**

Submission Information

Submitted on: **Aug-27-2022 (Sat.) 446**
Approved on: **Aug-27-2022 (Sat.)** by: **P518 - BROOKSHIRE, DUSTIN**

Follow Up Conclusion

Follow Up concluded: **Yes**

Narrative Text

Type INVESTIGATION
Author P431 - MAURO, GABE
Related Date Aug-27-2022 3:54

CASE STATUS:

Pending to Ofc's. Young and Peters.

EVIDENCE:

BWC and traffic camera footage uploaded to Evidence.com.

INVESTIGATION:

On 08/27/22 at about 0108 hours I was driving SB in the #2 lane of N. Broadway approaching the Civic Dr. intersection. The traffic light for the intersection was red. As I approached the intersection I saw a black Chevy truck Lic# [redacted] stopped half way in the left turn lane and the #1 SB lane of N. Broadway. SB N. Broadway at this intersection has two SB lanes and a dedicated left turn lane. When the traffic light turned green, the Chevy proceeded SB through the intersection, and drove into the #2 lane where I was driving and without signaling, causing me to slow down to avoid a collision.

When the Chevy was about 100 yards south of the Civic Dr. intersection, it swerved into the #1 lane, then back into the #2 lane, almost hitting the west curb of N. Broadway. Based on the observed erratic driving, I suspected the driver may be under the influence of alcohol. As we approached the Lincoln Ave. intersection I activated my overhead lights and initiated a traffic enforcement stop. The Chevy made a left turn from the #2 SB N. Broadway Ln. onto EB Lincoln Ave. and pulled into the Walnut Creek Library parking lot (1644 N. Broadway) where it stopped. SB N. Broadway at the Lincoln Ave. intersection has two SB lanes and a dedicated left turn lane.

I contacted the driver, who was later identified with a CDL as Jaime BERMUDEZ. I asked BERMUDEZ where he was coming from and he said he was coming from around the corner. I directed BERMUDEZ to turn off the vehicle and asked him for his driver's license. I observed that BERMUDEZ' speech was slow and slurred and his body movements were lethargic and consistent with someone who is intoxicated. BERMUDEZ proceeded to look through the center console of the truck for his license until his girlfriend, who was sitting in the rear passenger side seat of the truck, handed him his wallet. BERMUDEZ fumbled through his wallet, pulling out his CDL and a work ID. Prior to handing me his ID's, BERMUDEZ dropped them twice on the floor of the truck and he had to reach down to search for them. As BERMUDEZ handed me his ID's I again asked him where he was coming from and he only responded, "uh from the uh, uh" and didn't finish the sentence. Along with his CDL, BERMUDEZ handed me his Daly City Police Department ID. I asked BERMUDEZ if he was a police officer and he said he was. I asked him if he had a firearm in the truck and he indicated he had one locked up in the back of the truck. It was ultimately determined his firearms were secured in a locker in the bed of his truck, but BERMUDEZ struggled with explaining where exactly the guns were due to his inability to form coherent sentences.

Officers Young and Peters responded to the scene and took over the remainder of the DUI investigation.

This concludes my involvement in this case.

Clearance Information

Agency: **WALNUT CREEK**
Cleared status: **CHARGED/ARRESTED - NOT APPLICABLE**
Cleared on: **Aug-27-2022 (Sat.)**
Complainant/Victim notified: **No**

Related Arrest Report: AB# 2022-25731

Arrestee: **BERMUNDEZ, JAIME FRANCISCO**
Date of birth: [redacted]
Related CD#: **64419**

Arrest Information

Status: **BOOKED WCPD - OR = 2**
Type of arrest: **ON VIEW ARREST**
Reason for arrest: **MISDEMEANOR COMMITTED IN MY PRESENCE**
Arrest date: **Aug-27-2022 (Sat.) 132**
Rush file required: **No**
Booked into cell: **No**
Arrest agency: **WALNUT CREEK POLICE DEPARTMENT**
Arresting officers: **P533 - YOUNG,ERIC, - WALNUT CREEK POLICE DEPARTMENT**
Summary of facts: **ARREST FOR DUI**

Arrest location
Address: **1644 N BROADWAY**
Municipality: **WALNUT CREEK**
District: **13** Beat: **1** Grid: **289**

SODA zone: **No** Drug free zone: **No**

Additional Arrest Information

Case Screened: **No**
Notify victim on release: **No**
Juvenile: **No**
Armed with: **UNARMED**
Diversion recommended: **No**
Interpreter needed: **No**
Rights given: **No**
Mental exam required: **No**
Statement taken: **No**
Fingerprinted: **No** Photo taken: **No**
CD updated: **No**
Family notified: **No**
Lawyer called: **No**
Meal given: **No** Coffee given: **No**
Detained: **No**

*** END OF HARDCOPY ***

22-3556-2

Forensic Services Division
Contra Costa County Office of the Sheriff
1960 Muir Rd. Martinez, Ca. 94553
Telephone: (925) 313-2800 Fax: (925) 313-2840

REPORT OF LABORATORY EXAMINATION

Laboratory #	22-3556-2	**Agency:**	Walnut Creek Police Department
Issue Date:	October 14, 2022	**Agency Case #**	22-25731
Service:	Toxicology Analysis	**Requested by:**	Young, Eric
Request Date:	August 31, 2022	**Case Type:**	Alcohol and Drugs
Subject(s):	Bermudez, Jaime		

Description of Evidence

The lab received:
Submission #1: Blood Alcohol/Drug envelope containing 4 vial(s).

Test Subject: Bermudez, Jaime
Type of sample: Blood

Analysis results:

Analysis Date(s): September 7, 2022 to October 10, 2022

Submission #1: Blood Alcohol/Drug envelope

Screening Results and Conclusions:

	Result:	Analytical Test Used:
Amphetamine/MDA	not detected	Immunoassay
Methamphetamine/MDMA	not detected	Immunoassay
Cocaine/Cocaine Metabolite	not detected	Immunoassay
Cannabinoids	positive	Immunoassay
Buprenorphine	not detected	Immunoassay
Fentanyl	not detected	Immunoassay
Methadone	not detected	Immunoassay
Opiates (Morphine)	not detected	Immunoassay
Opioids	not detected	Immunoassay
Oxycodone 1	not detected	Immunoassay
Oxycodone 2	not detected	Immunoassay
Tramadol	not detected	Immunoassay
Dextromethorphan	not detected	Immunoassay
Phencyclidine	not detected	Immunoassay
Barbiturates	not detected	Immunoassay
Benzodiazepines 1	not detected	Immunoassay
Benzodiazepines 2	not detected	Immunoassay
Meprobamate	not detected	Immunoassay
Tricyclic Antidepressants	not detected	Immunoassay
Zolpidem	not detected	Immunoassay

Confirmation Results and Conclusions:

	Result:	Uncertainty:	Analytical Test Used:
Carboxy-tetrahydrocannabinol	**5.9** ng/ml	±1.1 ng/ml	LC/MS

The following analytes were **not detected** (cutoff) using LC/MS:
Tetrahydrocannabinol (1.00 ng/ml), Hydroxy-tetrahydrocannabinol (1.00 ng/ml)

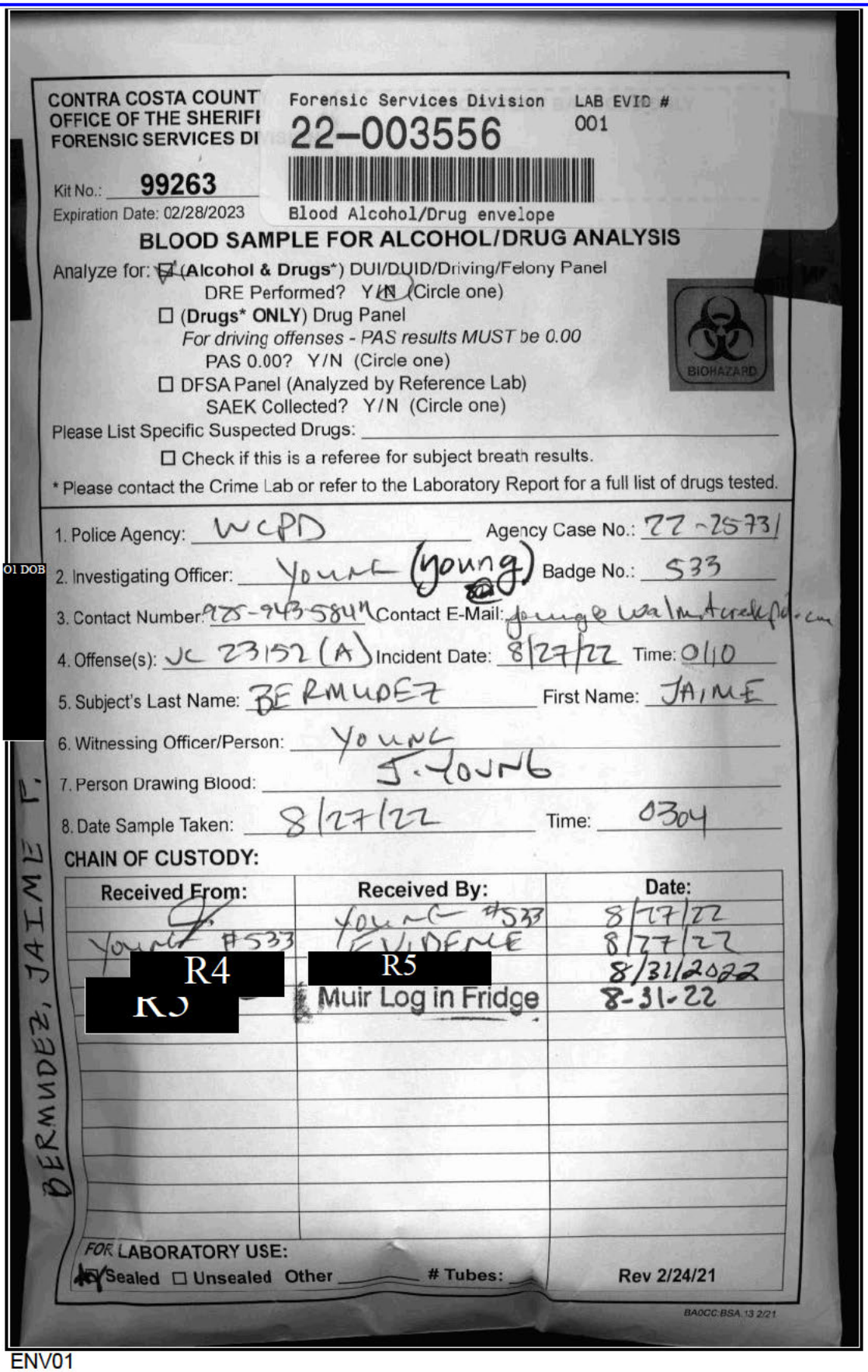
MDA is Methylenedioxyamphetamine
MDMA is Methylenedioxymethamphetamine

Reported By:

R8
R8 Criminalist
Date Completed: October 12, 2022

Approved By:

R2
R2 Criminalist
Approved Date: October 14, 2022



CONTRA COSTA COUNTY
OFFICE OF THE SHERIFF
FORENSIC SERVICES DI

Forensic Services Division LAB EVID #
22-003556 001

Kit No.: 99263
Expiration Date: 02/28/2023

Blood Alcohol/Drug envelope

BLOOD SAMPLE FOR ALCOHOL/DRUG ANALYSIS

Analyze for: ☑ (**Alcohol & Drugs***) DUI/DUID/Driving/Felony Panel
DRE Performed? Y/N (Circle one)
☐ (**Drugs* ONLY**) Drug Panel
For driving offenses - PAS results MUST be 0.00
PAS 0.00? Y/N (Circle one)
☐ DFSA Panel (Analyzed by Reference Lab)
SAEK Collected? Y/N (Circle one)

Please List Specific Suspected Drugs: _____

☐ Check if this is a referee for subject breath results.

* Please contact the Crime Lab or refer to the Laboratory Report for a full list of drugs tested.

BIOHAZARD

1. Police Agency: WCPD Agency Case No.: 22-2573
2. Investigating Officer: Young (Young) Badge No.: 533
3. Contact Number: 925-943-5844 Contact E-Mail: young@walnutcreekpd.com
4. Offense(s): VC 23152 (A) Incident Date: 8/27/22 Time: 0110
5. Subject's Last Name: BERMUDEZ First Name: JAIME
6. Witnessing Officer/Person: Young
7. Person Drawing Blood: J. Young
8. Date Sample Taken: 8/27/22 Time: 0304

CHAIN OF CUSTODY:

Received From:	Received By:	Date:
Young #533	Young #533	8/27/22
R4	R5	8/27/22
R3	Muir Log in Fridge	8/31/2022
		8-31-22

FOR LABORATORY USE:
☑ Sealed ☐ Unsealed Other _____ # Tubes: _____

Rev 2/24/21

BAOCC.BSA.13 2/21

BERMUDEZ, JAIME F.

01 DOB

ENV01

Report Annex

Client Address:
Walnut Creek Police Department
1666 North Main Street
Walnut Creek, CA
94596

Compliance Statements:

- Initial package(s) were submitted tape sealed unless otherwise indicated.
- Uncertainty information will only be given for quantitative results. The statistical level of confidence is approximately 95% (k=2, unless otherwise noted).
- Homogeneity is assumed among multiple vials within an envelope or kits as long as the vials were collected sequentially, from a single event, and into multiple similar containers, and having similar volumes. The reported results pertain to the entire item, not just the tested amount or the vial analyzed.
- All results relate only to the items that were tested and apply to the evidence as received by the Forensic Services Division, except when otherwise indicated. This report reflects the test results, conclusions, and interpretations of the analyst as indicated by their signature.
- µg/ml is an abbreviation for micrograms per milliliter. ng/ml is an abbreviation for nanograms per milliliter.
- GC/MS-SIM is an abbreviation for Gas Chromatography/Mass Spectrometry using Selective Ion Monitoring.
  GC/MS-Full is an abbreviation for Gas Chromatography/Mass Spectrometry using full scan.
  LC/MS is an abbreviation for Liquid Chromatography/Tandem Mass Spectrometry.
- Immunoassay screening technique is considered a presumptive test because immunoassays are not always specific to a single analyte.
- When the report indicates that further work or additional analysis may be performed, it is the responsibility of the customer to request the work if needed.
- The reported result reflects the concentration at the time of analysis and does not account for changes that may occur before or after analysis. Not all drugs are stable and concentrations may change over time, potentially resulting in values below the reporting limit. Any additional analysis or re-analysis should be requested as soon as possible.
- Samples to be re-analyzed should be stored in a manner that prevents breakdown and preserves the evidence as long as possible--refrigeration is highly suggested.
- Analytes at a concentration less than this Laboratory's established reporting limit are reported as "not detected".
- The tests performed are generally accepted by consensus of the relevant scientific community.
- Evidence associated with California Vehicle Codes (CVC) may be sub-itemized, tested for toxicology, and forwarded to alcohol for analysis. The evidence will be kept for one year in the laboratory, and then returned to the agency. All other evidence will be returned to the agency, unless otherwise noted on the report.
- Information provided by the requesting agency or derived from the analysis of evidence may be shared for criminal justice or accreditation activities.

Receipt of Evidence

Submission #1: Blood Alcohol/Drug envelope

This evidence submission was received from R4 by R5 on **August 31, 2022**.

[End of Report]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
HALL OF JUSTICE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JAIME FRANCISCO BERMUDEZ [redacted] O1 DOB
[redacted] O1 Address

Defendant(s).

C1571080

MISDEMEANOR COMPLAINT

DA NO: 150714603
CEN: 15025220

JFB SCIT 08/18/2015

BREATH 0.19

The undersigned is informed and believes that:

JUL 2015

COUNT 1

On or about June 19, 2015, in the County of Santa Clara, State of California, the crime of DRIVING UNDER THE INFLUENCE OF ALCOHOL, in violation of VEHICLE CODE SECTION 23152(a), a Misdemeanor, was committed by JAIME FRANCISCO BERMUDEZ who did drive a vehicle while under the influence of alcohol.

Pursuant to Vehicle Code section 23593:

"You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder."

(CJIC-VEH, JRS-NW) It is further alleged that in the commission of the offense charged above, the defendant'sdefendant's blood alcohol level was 0.15 percent and more by weight, within the meaning of Vehicle Code section 23578.

COUNT 2

On or about June 19, 2015, in the County of Santa Clara, State of California, the crime of DRIVING WITH A BLOOD ALCOHOL LEVEL OF 0.08 OR MORE, in violation of VEHICLE CODE SECTION 23152(b), a Misdemeanor, was committed by JAIME FRANCISCO BERMUDEZ who did drive a vehicle while having 0.08 percent and more, by weight, of alcohol in his or her blood.

Pursuant to Vehicle Code section 23593:
"You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder."

(CJIC-VEH, JRS-NW) It is further alleged that in the commission of the offense charged above, the defendant'sdefendant's blood alcohol level was 0.15 percent and more by weight, within the meaning of Vehicle Code section 23578.

DISCOVERY REQUEST

Pursuant to Penal Code sections 1054 through 1054.7, the People request that, within 15 days, the defendant and/or his/her attorney disclose: (A) The names and addresses of persons, other than the defendant, he/she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial; (B) Any real evidence which the defendant intends to offer in evidence at the trial. This request is a continuing request, to cover not only all such material currently in existence, but all material which comes into existence to the conclusion of this case.

Further, attached and incorporated by reference are official reports and documents of a law enforcement agency which the complainant believes establish probable cause for the pretrial restraint of defendant JAIME FRANCISCO BERMUDEZ, for the above-listed crimes.

Complainant therefore requests that the defendant(s) be dealt with according to law.

I certify under penalty of perjury that the above is true and correct.

Executed on July 24, 2015, in SANTA CLARA County, California.

Sullivan S3312
(Rice R7259)
CPD (408) 866-2121 20152530 CPD
DUFFY/ D249/ MISDEMEANOR/ MH

INTERVIEW OF: OFFICER JAIME BERMUDEZ

INTERVIEW BY: SERGEANT BRANDON SCHOLES

LIEUTENANT MATTHEW FOX

ATTORNEY ANDREW GANZ

CASE NO.: IA 22-08

SGT. SCHOLES: All right. This is Sergeant Brandon Scholes of the Daly City Professional Standards Unit. I am here accompanied by Lieutenant Matthew Fox.

The purpose of our interview today is to interview Officer Jaime Bermudez regarding Daly City IA No. 22-08. Accompanying Officer Bermudez is his attorney, Andrew Ganz.

Officer Bermudez, before we begin, I'm going to read you an admonishment.

"You are hereby advised that an administrative investigation is in process within this department, in which it has become necessary to obtain a statement from you.

"If you cooperate fully at this time, your statements and any evidence arising therefrom may be used in any and all proceedings arising out of this investigation.

"As a citizen and an employee of this department, you are hereby authorized that if, prior to or during the taking of your statement, this department determines that you may be charged with a criminal offense, the proceeding will be stopped, and you will be advised of your constitutional rights and given an opportunity to obtain legal counsel.

"If you decide not to give a statement at this time, you are now ordered as an employee of this department to answer all questions asked by investigators and to give a full, detailed, and complete statement regarding your knowledge of or involvement in the matter now under investigation. Although you have the -- have a right to silence in a criminal investigation, this is not a criminal investigation but an administrative hearing, and you are now being ordered to answer all questions under the compulsion of threat of disciplinary action.

"False statements, of course, will result in severe disciplinary action. Members are always required to be truthful. See DCPD Manual of Rules, 4.96-Truthfulness."

ATTY. GANZ: Yeah. Thank you.

So I just -- that's fairly clear, but I want to make it extremely clear given the nature of these allegations that if he were asked to give a voluntary statement, Officer Bermudez would respectfully decline. But, of course, he'll comply with your order to answer questions and thereby making a statement not usable in a criminal case.

SGT. SCHOLES: Okay.

ATTY. GANZ: Thank you.

SGT. SCHOLES: Understood.

Officer Bermudez, if you could sign that, date, and time stamp it.

And then, Mr. Ganz, if you could sign as well as a witness.

ATTY. GANZ: Okay.

SGT. SCHOLES: Thank you.

Thank you.

Like I said earlier, just kind of going to ask some foundational questions and then we'll get into, kind of, the day of.

So Officer Bermudez, on Friday, August 26, 2022, were you employed as a police officer with the City of Daly City?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Are you currently employed as a police officer with the City of Daly City?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: On Friday, August 26, 2022, as part of your employment, were you assigned to the San Mateo County Narcotics Task Force?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: As part of your -- referred to as NTF, Narcotics Task Force from here on out. As part of NTF, are you assigned a county take-home vehicle?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And what vehicle were you assigned?

OFC. BERMUDEZ: It was a black Chevy Silverado.

SGT. SCHOLES: Okay.

When you joined NTF, were you made aware of any policies or procedures regarding the use of the take-home car?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And how were you made aware of those policies?

OFC. BERMUDEZ: I was told, and there's a manual that you got to read.

SGT. SCHOLES: Okay.

And so you read this manual?

OFC. BERMUDEZ: I don't remember if I did.

SGT. SCHOLES: Do you -- I'm sorry. Go ahead.

OFC. BERMUDEZ: I think I did.

SGT. SCHOLES: Okay.

And when you said you were told, who were you told -- told by?

OFC. BERMUDEZ: FTOs. The people who were training me.

SGT. SCHOLES: And who were they? Do you remember them by name?

OFC. BERMUDEZ: It was Steve Woelkers and -- Steve Woelkers.

SGT. SCHOLES: Steve Woelkers. Okay.

ATTY. GANZ: I'm going to just ask because there's recorders over there, you're kind of soft spoken --

OFC. BERMUDEZ: Oh, yes.

ATTY GANZ: -- if you could just raise the volume a little

bit.

SGT. SCHOLES: So did you acknowledge any of these policies by signing anything or...

OFC. BERMUDEZ: I believe I did.

SGT. SCHOLES: Okay.

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And that was when you first joined NTF?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

Based on your, I guess, knowledge of these policies and procedures, are you allowed to drive the vehicle -- your take-home vehicle -- when you're not conducting NTF business?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Okay.

Is there any unwritten rule that says drive it whenever, or is it hardline rule of drive it to and from work and when we're doing NTF and then park it?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: That's the rule?

OFC. BERMUDEZ: That's the rule.

SGT. SCHOLES: Okay.

Are you allowed to have civilian passengers in the vehicle while not in the performance of your duties?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Okay.

Is there any unwritten rule that says it's fine?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Are you allowed to consume alcohol and drive the vehicle?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Is there any unwritten rule that says it's fine, have a few drinks and --

OFC. BERMUDEZ: No.

SGT. SCHOLES: -- go driving? Okay.

When you joined NTF, did you ever have a conversation with Sergeant Kennan about his expectations?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And what did that conversation entail?

OFC. BERMUDEZ: To -- just, I guess, to, you know, do your job and follow the rules. And if there's something that I need to reach out to him and talk to him about, contact him if there's something I'm not sure about.

ATTY. GANZ: Can I just -- so you said the word "I guess" in your answer. So he's asking about a specific conversation or conversations that you may have had. If, in any of this interview, you don't remember something, or you remember parts of it, or you're paraphrasing, if you could just clarify, like, if you have an actual memory of it. If your -- you know, anything like that, just try to make clear.

So there was this conversation with a Sergeant

Kennan. Do you remember it specifically?

OFC. BERMUDEZ: Not specifically, no.

ATTY. GANZ: What, if anything, do you remember about it?

OFC. BERMUDEZ: Just -- kind of just going over how things work at NTF, and, you know, what you're expected to do and what not to do.

SGT. SCHOLES: In speaking of what not to do, did you -- do you specifically remember him talking about drinking and driving?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And did he specifically talk to you about drinking and driving in a County vehicle?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And from what you do remember, what did that conversation -- what was that conversation about or...

OFC. BERMUDEZ: Shall not do it.

SGT. SCHOLES: Okay.

Did he provide any anecdotal stories or anything related to drinking and driving in County vehicles?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Okay.

As part of your NTF duties, are you sometimes on call?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Can you describe what "on call" means in

the rules and responsibilities of the on-call NTF agent?

OFC. BERMUDEZ: That you are responsible for -- if there's a request for an on-call NTF agent, you got to be ready to answer the call, and if you need to go somewhere, you need to be able to do that.

SGT. SCHOLES: Okay.

So it requires you to physically be able to respond out to a location?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

Are you allowed to be intoxicated when you're on call?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Is there any unwritten rule that says, hey, if your intoxicated on call just call somebody else and they'll pick it up for you?

OFC. BERMUDEZ: I -- yes, I think so. Yes.

SGT. SCHOLES: Okay.

And I guess, without me putting words in your mouth, can you elaborate on what that would look like?

OFC. BERMUDEZ: So if -- say, for example, if I was too intoxicated to respond to an on-call request, I could call -- I can try and call someone else to see if they could step in and handle the on-call request.

SGT. SCHOLES: Okay.

And has that been done before either by you or somebody else?

OFC. BERMUDEZ: Not -- not by me, and from someone else, not that I know of.

SGT. SCHOLES: Okay.

Do you receive any compensation for being on call?

OFC. BERMUDEZ: No.

SGT. SCHOLES: What was your schedule when assigned to NTF?

OFC. BERMUDEZ: Monday through Thursday, 9:00 a.m. to 7:00 p.m.

SGT. SCHOLES: 9:00 a.m., 7:00 p.m. Okay.

Were you on call on Friday, August 26, 2022?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And when did your on-call end?

OFC. BERMUDEZ: I think I still had a couple days left on on-call. I don't remember exactly what -- what day it ended.

SGT. SCHOLES: Okay.

So during my investigation, I found out -- or at least I heard that someone was supposed to pick up your on-call the following day, for Saturday. Do you remember that?

OFC. BERMUDEZ: Yes. Now I remember that, yes.

SGT. SCHOLES: Okay.

And who was supposed to pick up your on-call, do you remember?

OFC. BERMUDEZ: Justin Villareal.

SGT. SCHOLES: Okay.

And what time was he supposed to pick up your on-call?

OFC. BERMUDEZ: I guess in the morning, 9:00, or just the morning time. There wasn't like a specific starting -- 9:00 or 8:00. I think we just had an understanding that, like, on that Saturday, he was going to cover any on-call requests.

SGT. SCHOLES: Okay.

So starting that morning, 9:00, 8:00-ish?

OFC. BERMUDEZ: Yeah.

SGT. SCHOLES: Okay.

OFC. BERMUDEZ: Around there.

SGT. SCHOLES: And so just for clarification, so you were on call Friday night into Saturday morning till Justin was supposed to pick up your on-call at around 8:00 or 9:00?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

On Friday, August 26, 2022, did you attend department training?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And what were the hours of that training?

OFC. BERMUDEZ: I don't remember specifically, but we started in the morning. I think it was, like, 7:00 a.m. till around 5:00.

SGT. SCHOLES: Okay.

Did you drive your take-home car to the training, this Chevy pickup?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

After training concluded, where did you go?

OFC. BERMUDEZ: I went to the Stadium Pub.

SGT. SCHOLES: Did you go directly to Stadium Pub?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

And how did you get there?

OFC. BERMUDEZ: In the County vehicle.

SGT. SCHOLES: And again, I'm not trying to make you re-answer a question you already answered, but you didn't stop anywhere from the department after training to the Stadium Pub?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Okay.

And did you have any alcoholic drinks there?

OFC. BERMUDEZ: Stadium Pub, I believe I had one.

SGT. SCHOLES: One what?

OFC. BERMUDEZ: A beer.

SGT. SCHOLES: Okay.

Do you remember what kind of beer?

OFC. BERMUDEZ: No, I don't.

SGT. SCHOLES: Did you eat anything?

OFC. BERMUDEZ: No.

SGT. SCHOLES: From what time to what time were you there?

OFC. BERMUDEZ: I estimate it was about an hour.

SGT. SCHOLES: So when did you get there and when did you leave?

OFC. BERMUDEZ: I got there around 5:30.

SGT. SCHOLES: And then if it's an hour, you estimate you left around...

OFC. BERMUDEZ: Around 6:30.

SGT. SCHOLES: Okay.

Did you feel the effects of the alcohol when you left --

OFC. BERMUDEZ: No.

SGT. SCHOLES: -- Stadium Pub?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Where did you go next?

OFC. BERMUDEZ: I went to Modern China.

SGT. SCHOLES: Okay.

And how did you get there?

OFC. BERMUDEZ: Walked.

SGT. SCHOLES: Okay.

Did you have any alcoholic drinks there?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: What and how many?

OFC. BERMUDEZ: From what I can remember, I think I had

about two drinks, and I think they were shots.

SGT. SCHOLES: Of what?

OFC. BERMUDEZ: Tequila.

SGT. SCHOLES: Did you eat anything?

OFC. BERMUDEZ: No.

SGT. SCHOLES: From what time to what time were you there?

OFC. BERMUDEZ: I'd say about an hour and a half, maybe two hours.

SGT. SCHOLES: Okay.

So what time did you get there and what time did you leave?

OFC. BERMUDEZ: I guess I -- if I had to guess, it'd be around 6:30, probably left around 8:00.

SGT. SCHOLES: Did you feel the effects of the alcohol when you left Modern China?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Where did you go next?

OFC. BERMUDEZ: After that, I went to 1515.

SGT. SCHOLES: Okay.

And how did you get there?

OFC. BERMUDEZ: I walked.

SGT. SCHOLES: Did you have any alcoholic drinks there?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: What and how many?

OFC. BERMUDEZ: If I had to guess, it was around -- over

ten.

SGT. SCHOLES: Okay.

OFC. BERMUDEZ: Ten drinks.

SGT. SCHOLES: And do you remember what you drank?

OFC. BERMUDEZ: A combination of beer and liquor. Tequila and beer.

SGT. SCHOLES: About from what time to what time were you there?

OFC. BERMUDEZ: I think I left there around 12:00, 12:30.

SGT. SCHOLES: And just going off your previous timeline, did you get there around 8:00 p.m. from Modern China?

OFC. BERMUDEZ: I -- I believe so.

SGT. SCHOLES: Okay.

Did you feel the effects of the alcohol when you left?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

Where did you go next?

OFC. BERMUDEZ: I walked back towards the car -- my car.

SGT. SCHOLES: Okay.

And where was that parked at?

OFC. BERMUDEZ: It was parked at the Walnut Creek Library.

SGT. SCHOLES: And was anyone with you at this time?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

Where were you headed?

OFC. BERMUDEZ: I believe I was headed home.

SGT. SCHOLES: And home in [redacted]

OFC. BERMUDEZ: [redacted]

SGT. SCHOLES: Okay.

How far is that from the Walnut Creek Library to where you were -- your destination was?

OFC. BERMUDEZ: It's about a 10- to 15-minute drive.

SGT. SCHOLES: Okay.

How many alcoholic drinks do you believe you had from the time you started drinking until the time you got into your County vehicle?

OFC. BERMUDEZ: I'd say around 15.

SGT. SCHOLES: Did you reasonably believe -- reasonably believe you were too intoxicated to drive?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: When you were pulled over by Walnut Creek PD, did you identify yourself as a Daly City police officer?

OFC. BERMUDEZ: I believe I did, yes.

SGT. SCHOLES: How did you do that?

OFC. BERMUDEZ: I believe when I -- asked for my ID, I gave him my police ID and my driver's license.

SGT. SCHOLES: And why did you do that?

OFC. BERMUDEZ: Just to show them because I was -- I was driving a County vehicle, I had guns in the car, and kind of

just hoping that they would help me out.

SGT. SCHOLES: And by help you out, you mean let you go, get you a ride home?

OFC. BERMUDEZ: One of the two, yeah.

SGT. SCHOLES: Okay.

Did you cooperate with Walnut Creek police officers on scene and submit to a series of field sobriety tests?

OFC. BERMUDEZ: I did some sobriety tests, yes, but I believe I refused the PAS.

SGT. SCHOLES: Okay.

During your pre-field sobriety -- pre-field sobriety test questions, were you asked how much you had to drink that night?

OFC. BERMUDEZ: I believe so, yes.

SGT. SCHOLES: And what was your response?

OFC. BERMUDEZ: I don't remember exactly what my response was. I may have said, like, a couple. Maybe, like, two or three. You know, I was -- I was scared at the time.

SGT. SCHOLES: I know you haven't reviewed the police report or looked at body camera footage, but do you remember saying, quote, "I haven't had anything to drink"?

OFC. BERMUDEZ: I don't remember saying that. But it wouldn't surprise me if I did.

SGT. SCHOLES: Do you remember the officer confirming with you that you -- that you said that? That, like, you -- he

wanted to make sure that you said you had nothing to drink. Do you remember that?

OFC. BERMUDEZ: I don't remember that.

SGT. SCHOLES: Again, I know you haven't reviewed it, but does it -- does your memory come back to you that you said, "Zero"?

OFC. BERMUDEZ: No, it doesn't.

SGT. SCHOLES: So in telling the officer that you had -- had nothing to drink, and then him confirming, and you, again, saying "Zero," was your response to the officer truthful?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Why did you respond that way?

OFC. BERMUDEZ: There was a lot going through my head. I was -- like I said, I was scared. I was just -- didn't -- not making the right -- my judgment wasn't -- wasn't all there. I was intoxicated, and there was just a lot going through my head, and honestly, I don't know why I said that. Like, maybe -- I -- I -- I don't know. I guess I was scared and, you know.

SGT. SCHOLES: Okay.

Following your arrest, were you provided the chemical admonishment advising you were required by law to submit to a chemical test to determine your blood alcohol content?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Did you initially agree to submit to a

breath test?

OFC. BERMUDEZ: I don't think I did. I'm not -- I don't remember if I did.

SGT. SCHOLES: Okay.

So I guess, did you end up providing a breath test -- a chemical -- like, after the arrest?

OFC. BERMUDEZ: No. I did a blood.

SGT. SCHOLES: Okay.

Do you remember what you said when you denied a breath test?

OFC. BERMUDEZ: I believe I said something to the effect of, "Just go ahead and just get a search warrant."

SGT. SCHOLES: Okay.

If I -- going from the body camera footage -- or sorry, going from the police report, quote, "Fuck it. Go get a warrant." Does that refresh your recollection?

OFC. BERMUDEZ: That sounds about right, yes.

SGT. SCHOLES: Okay.

Was this a tactic to delay the chemical sample to lower your blood alcohol content?

OFC. BERMUDEZ: No. I think I was just frustrated at that point.

SGT. SCHOLES: Okay.

OFC. BERMUDEZ: And I, basically, knew that I was -- I was -- I was done, so that's why I said that. Yeah.

SGT. SCHOLES: Okay.

Did you take any recreational drugs, marijuana, or narcotics prior to your arrest?

OFC. BERMUDEZ: No.

SGT. SCHOLES: What about in the ten days leading up to your arrest?

OFC. BERMUDEZ: No.

SGT. SCHOLES: Can you explain the presence of cannabinoids or THC in your system from that blood draw?

OFC. BERMUDEZ: So I took sleeping pills, but those are -- those aren't weed or marijuana. Those are the CBD type.

SGT. SCHOLES: Okay.

OFC. BERMUDEZ: So yeah. Those are my girlfriend's. So yeah, I -- I -- I remember taking one of those.

SGT. SCHOLES: And when did you take this?

OFC. BERMUDEZ: Maybe, like, a week or two -- two weeks before.

SGT. SCHOLES: Okay.

Did you look at the bottle that you were taking them from? Did you confirm that they were CBD and not THC?

OFC. BERMUDEZ: No. I just -- my girlfriend, she usually takes them to help her go to sleep for -- to help her sleep, and she offered me one, so I took one.

SGT. SCHOLES: Okay.

And you said about a week or two prior?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: And you took one -- is it pill, gummy?

OFC. BERMUDEZ: Yes. It was a pill.

SGT. SCHOLES: Okay.

And, again, you believed this to be CBD?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

And you didn't believe it to contain THC?

OFC. BERMUDEZ: Yes.

SGT. SCHOLES: Okay.

At this point, is there anything you feel is relevant you want to add?

OFC. BERMUDEZ: Just that -- I just want to apologize to the department and to all the people that believed in me and had my back when, you know -- I -- you know, my mistakes that I've made in the past. I just feel that I've -- I've let them -- I've let a lot of people down, I've let myself down, and I -- I regret all the things that have happened. You know, I -- I can't take them back. I can only move forward from this. And I'm appreciative for the opportunity that I've had with Daly City.

But I just, you know, I made, you know, as dealing with, you know -- I guess I've come to realize that I had a problem with -- a drinking problem with alcohol, and, you know, I -- I never addressed it after the first instance. But

I've -- I've come to terms with it that -- I admitted to myself that I have a problem, and, you know, I've -- I've worked on it. I've taken the steps to address this problem. I'm still working on it. It's going to be a -- an ongoing process for me.

You know, I put myself through a in-patient rehab facility. I was there for 30 days, learned a lot about myself during those 30 days. After that, I went through an outpatient program as well for a couple weeks, and I'm -- I'm still going to AA -- AA meetings, which it's helped me out a lot.

You know, this -- I feel like I've hit rock bottom from this situation, and I just -- I know I need to address it, and I have, and, you know, I haven't picked up a drink since that day. I've been 80 days sober today. I feel a lot better about myself, and, you know, I -- I -- my plan is to continue to remain sober. I'm cutting alcohol completely out of my life because it's -- you know, I'm not the person -- I'm not me when I drink, you know. I -- I turn into someone else. I -- I make bad decisions.

And, you know, I'm hopefully going to get to -- I'm hoping I could take this experience and possibly mentor others or help others that are -- you know, might be going through what I'm going through.

But, you know, I -- I've got a plan where, you know, I've got a support system to help me, keep me on track. I've

got a sponsor that I've been working with. You know, this -- I know I'm not the person that could just have one drink or two drinks and be okay.

You know, I have a problem. Like, I -- if I drink, I -- I drink to -- to excess. I -- I binge drink, and I know that about myself now, and that's why I've committed to not drinking alcohol anymore. It's -- it's ruining my life. And, you know, I'm -- I'm happy where I'm at now, you know. I just feel more clear-minded, and I just feel healthier and better.

And, you know, I appreciate everyone, no matter how this turns out, you know. I -- I just feel, moving forward, I'm -- I'm going to be a better person. That's all I have.

SGT. SCHOLES: Thank you.

Mr. Ganz, I -- if you have anything now, shoot, otherwise, we can take a break, kind of regroup, and then we might have some more questions to just kind of -- between the two of us.

ATTY. GANZ: Yeah. I'll -- I'll ask some questions, now and then we can --

SGT. SCHOLES: Okay.

ATTY. GANZ: -- do that.

So I just -- you know, there -- I -- I stopped early on in the interview and asked you about whether you specifically remembered the conversation with the sergeant. And so when I ask you questions, I just want you to be clear

about whether or not you actually remember it, or if you're sort of, like, giving your best guess about something.

So I guess, in general, as you're talking about the events of that evening into the early morning, how would you explain your memory? Like, do you remember every detail? Do you remember some details? Do you remember hardly any? Like, just explain kind of your quality of your memory.

OFC. BERMUDEZ: I -- I don't remember every detail. I'm trying to answer the questions best as I can remember.

ATTY. GANZ: Okay.

OFC. BERMUDEZ: Some things I just -- I -- I don't remember. I -- I couldn't tell you exactly what I said or -- or did.

ATTY. GANZ: Okay.

OFC. BERMUDEZ: I'm just trying to do the best from what I can remember.

ATTY. GANZ: Okay.

So I just have a few questions in somewhat chronological order. So you indicated that you didn't feel like the alcohol was affecting you until you went to that third location, 1515, where you had a lot to drink; correct?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: And so now sort of looking back, especially after 30 days of treatment, can you tell us how you think your mind was operating in terms of your decision to go ahead and

get into a car and drive? Like, what was your thought process then, if you can explain it?

OFC. BERMUDEZ: My thought process was, you know, that I was okay to drive, at first, but then -- you know, having a couple drinks. But once I got to a point where there was no thought process, I just -- I made -- I just decided that I was going to drive home. And then somehow, I ended up driving back towards the Walnut Creek Library. So I -- I don't know if my thought process changed of whether I was going to drive back and park my car and stay with a friend. I -- I don't -- I don't know. I...

ATTY. GANZ: Okay.

So I mean, once you are feeling the effects of alcohol, would you say that changes your judgment in terms of what you would do if you were sober?

OFC. BERMUDEZ: Yes. 100 percent. Yeah.

ATTY. GANZ: Okay.

And you mentioned you'd made this change in direction to head back to the library and possibly, although you're not sure, it could have been to go to a friend's house. Is there a specific friend that lives in that area that you might have been going to?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: Who -- how far away do they live from that location?

OFC. BERMUDEZ: A block or two.

ATTY. GANZ: Okay.

And -- and would you agree that whether you were driving a block or two or 10 miles or 100 miles, it was not okay to be driving in the condition that you were in?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: Okay.

You know, there was a question asked earlier about an unwritten rule about being on call, and if for some reason you had been drinking, like, having someone fill in for you. So obviously you're not supposed to drink when you're on call; correct?

OFC. BERMUDEZ: Correct.

ATTY. GANZ: But, you know, if, for some reason, hypothetically, you were in a situation where you had been drinking, or someone else had been drinking, would you say, like, given that situation, it would be better to have someone else fill in as opposed to the person that's intoxicated?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: Okay.

And then just -- you mentioned already the treatment that you've gone through, and there is obviously a previous incident. Do you feel like you recognized the problem that you had back then when you had that first incident?

OFC. BERMUDEZ: No. I -- I didn't think I had a drinking

problem back then. I thought that, you know, I just made a bad decision, and -- but I never thought that I needed to take a step back and just realize what I was doing to myself with the amount of drinking that I was doing.

ATTY. GANZ: And do you feel that that's changed this time?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: How so?

OFC. BERMUDEZ: Well, I never thought of myself as an alcoholic and as someone who can't -- who has a drinking problem and now I do, which is why I don't drink. I -- I don't -- not even one beer. I just -- there's no point for me to drink one beer because I -- I can't. I can't do it. I have to stay away from it, and it wasn't like that before, but now it is.

ATTY. GANZ: Okay.

And then my last question is just that 30 days that you spent in residential treatment, can just explain how that experience was for you?

OFC. BERMUDEZ: It was -- it was a good experience for me. I -- it helped me realize the problems that I was having. It -- once I was able to see what I was doing and admit to myself that I had a drinking problem, I feel like things got a lot more clearer in my mind of what I needed to do. And how alcohol -- having alcohol in my life is going to stop me or

prevent me from being, you know, the person that I want to be. It was -- it was -- it was just ruining my life, my relationships, you know, my work, my health. It was all going downhill.

And I just -- it -- it -- going through that and seeing that there's other people going through the same thing that I'm going through, it kind of -- it helped me realize that I -- I needed to get help. And, you know, it's okay to admit that you have this problem.

ATTY. GANZ: Thank you.

Those are all my questions

LT. FOX: Take a quick, like, ten-minute break then come back?

ATTY. GANZ: Yes.

(Break taken.)

SGT. SCHOLES: All right. This is Sergeant Scholes. We are back on the record. Lieutenant Fox had some questions. Lieutenant Fox.

LT. FOX: Just -- all right.

Just a couple clarifying questions that might kind of be out of order just to make sure that we cover all of the bases for us.

So we talk a lot about, you know, the unwritten rule; right? The culture of an organization; right? Some things aren't said, but it's inferred; right? So I just want to

clarify that, based upon your previous testimony, you remember acknowledging the policies in relationship to a take-home vehicle.

OFC. BERMUDEZ: Yes.

LT. FOX: Right?

And that acknowledgement, was it made verbally to the supervisor and a written acknowledgement where you signed a form, or to the best of your recollection?

OFC. BERMUDEZ: To the best of my recollection, it's -- I think it's form that you sign.

LT. FOX: Okay.

And do you remember having that conversation with Sergeant -- is it Kernan?

SGT. SCHOLES: Kennan.

LT. FOX: Kennan and Lieutenant Leishman?

OFC. BERMUDEZ: No. I don't remember.

LT. FOX: Okay.

But it was your understanding when you were assigned that vehicle that there was a lot of responsibility with that vehicle?

OFC. BERMUDEZ: Yes.

LT. FOX: And is it your testimony today --

ATTY. GANZ: Not testimony.

LT. FOX: Oh.

Is it your statement today that, when assigned that

vehicle, it's for work-related purposes primarily outside of minutia, stopping to get milk at the store?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Give me a second, I'm going through this. And what was the rule of the -- the County vehicle policy about having civilians inside your vehicle, to the best of your recollection?

OFC. BERMUDEZ: To the best of my recollection, I believe you're not supposed to. You're not.

LT. FOX: Okay.

Outside supervision approval?

OFC. BERMUDEZ: Unless you have -- yeah. Unless it's, like, an informant that you're working with.

LT. FOX: So you basically get approval to take a civilian inside your vehicle?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Do you remember having a conversation with Lieutenant Leishman when assigned the vehicle and when permissible to use the vehicle?

OFC. BERMUDEZ: No.

LT. FOX: Okay.

So you don't remember that conversation at all?

OFC. BERMUDEZ: No.

LT. FOX: Okay.

Were you driving the San Mateo County county vehicle at the time -- were you assigned to a call for service at any portion during that night?

OFC. BERMUDEZ: No.

LT. FOX: And when you're on call, do you -- is it your responsibility to check in with County Communications and let them know that you are the on-call person?

OFC. BERMUDEZ: Yeah. When -- at the beginning, when you start your on-call, yes.

LT. FOX: So you did check in with County and say, "I am on call"?

OFC. BERMUDEZ: I believe I did, yes.

LT. FOX: Okay.

Having said that, you then made a conscious decision to consume alcohol while assigned on-call?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Did you at any point think to yourself, "I should probably call somebody because I want to consume alcohol tonight and defer that responsibility"?

OFC. BERMUDEZ: I didn't think about calling someone, but I guess what -- I was thinking if the call came in that I would call and ask someone to see if they could step in for me.

LT. FOX: So after the fact, you would call if you felt

you couldn't respond?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Did you consider yourself technically on duty while you were in the on-call position?

OFC. BERMUDEZ: Yes.

LT. FOX: And prior to coming to Walnut Creek, where was your training at?

OFC. BERMUDEZ: Daly City.

LT. FOX: Daly City? Was it SWAT training?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Was there a lock box affixed inside of your vehicle to store firearms?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Did you have firearms inside the vehicle at the time you were stopped?

OFC. BERMUDEZ: Yes.

LT. FOX: Is it common practice to have the firearms in your vehicle when you're on call?

OFC. BERMUDEZ: Yes.

LT. FOX: What is your understanding about leaving firearms in the vehicle when not on call or working?

OFC. BERMUDEZ: That they're locked in the lock box or in

a gun safe.

LT. FOX: So it's -- it's okay to leave guns in the lock box in the vehicle on your days off?

OFC. BERMUDEZ: Well, no. On my days off, I bring them inside the house.

LT. FOX: Okay.

But so they were in the vehicle because you were technically on call?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Would you categorize your contact with the Walnut Creek Police Department to be cooperative?

OFC. BERMUDEZ: I wasn't completely cooperative. I mean, I wasn't honest about how much I drank. I did some of the field sobriety tests, and then I think, from what I remember, at some point, I was just basically, like, "What's the point now?"

LT. FOX: Did you purposely -- let me rephrase that. It's your statement today you don't remember too much about what you said unless there was clarifying questions by Sergeant Scholes. Did you purposely lie about how much you had to drink to Walnut Creek Police Department?

OFC. BERMUDEZ: Yes.

LT. FOX: And was that to see if he'd cut you a break?

OFC. BERMUDEZ: Yes.

LT. FOX: Did Walnut Creek Police Department book you into the county jail?

OFC. BERMUDEZ: No.

LT. FOX: The -- in talking about the cannabinoids in your system and the amount that was in your system, do you know -- and you're Narcotics Task Force, so you probably know more about it than I do -- do you know if that's prescribed to your girlfriend?

OFC. BERMUDEZ: No. I -- I don't think it's prescribed.

LT. FOX: Do you know for a fact it's not prescribed?

OFC. BERMUDEZ: I don't know for a fact, but I think she just buys it from the store. She doesn't have a -- what do you call it? A cannabis card.

LT. FOX: Medicinal card?

OFC. BERMUDEZ: Yeah. She...

LT. FOX: So something you think that she could just buy over the counter.

OFC. BERMUDEZ: Yes.

LT. FOX: Would it surprise you that there are traces of THC in CBD?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

Was it an oil, a gummy, or a pill that you took?

OFC. BERMUDEZ: It was a pill.

LT. FOX: It was a pill?

OFC. BERMUDEZ: Yes.

LT. FOX: So the amount of cannabinoids that was in your system was a significant amount. So is it -- do you remember how many times you took it? Because you said one to two weeks prior, and it wouldn't show up in your system according to if it wasn't sooner -- you know, it wasn't before that date. Is it possible that -- and if you didn't know, then we'd like to know why it was in your system; right? That level of THC.

OFC. BERMUDEZ: I took -- I took a couple pills before I went to bed this one night. I -- I don't remember how long before it was prior to the DUI.

LT. FOX: Is it possible it was in three days or five days, not the big expand of two weeks?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

OFC. BERMUDEZ: It's possible. I don't remember exactly what day, but it wasn't too long.

LT. FOX: Do you smoke marijuana?

OFC. BERMUDEZ: No.

LT. FOX: Have you ever smoked marijuana as a police officer?

OFC. BERMUDEZ: No.

LT. FOX: Okay.

Are you prescribed any type of medication by your doctor that deals with sleep apnea or anything like that that

may contain cannabinoids?

OFC. BERMUDEZ: No.

LT. FOX: Okay.

So it's your statement today is that your girlfriend's got these gummies, you had a hard time sleeping --

ATTY. GANZ: Not -- sorry. Not gummies.

LT. FOX: What's that?

ATTY. GANZ: They were pills.

LT. FOX: A pill. Sorry.

She has these pills. You took the pill to help you get some sleep?

OFC. BERMUDEZ: Yes.

LT. FOX: And it's your statement today that if you knew that THC could -- pos traces of that could be in these pills, would you've taken that?

OFC. BERMUDEZ: No.

LT. FOX: Okay.

And it's your understanding that there's no prescription needed to get this --

OFC. BERMUDEZ: Yes.

LT. FOX: -- pill?

And it's your position that your girlfriend doesn't have a medicinal marijuana card and goes to a dispensary to get this?

OFC. BERMUDEZ: Yes.

LT. FOX: Okay.

I think that concludes my questions.

ATTY. GANZ: Sure.

LT. FOX: So if you have any...

ATTY. GANZ: Just on a couple points.

So I'm thinking in terms of, like, you know, everything that happened during this event and before and everything after. So during this event and before, you expressed how you had a problem with alcohol. So it's an ongoing issue that you deal with; correct?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: So without getting into super detail about how much you were drinking in let's just say the couple weeks leading up to this incident, were you drinking too much just on your off time?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: Okay.

Do you think that affects your ability to remember exactly, let's say, how long before this incident you had some pills?

OFC. BERMUDEZ: Yeah. The drinking has affected my memory, yes.

ATTY. GANZ: Okay.

And then again, with your knowledge in your police work, at this point in time in Northern California, can

somebody get, you know, high amounts of -- large amounts of marijuana, basically, without a medical prescription? Like, you can walk into a dispensary -- correct? -- and get recreational marijuana?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: So you know, in terms of taking something that you're not sure exactly what it is, there's always a possibility that this could be something that contains THC; correct?

OFC. BERMUDEZ: Yes.

ATTY. GANZ: Okay.

But it wouldn't necessarily require a prescription; right?

OFC. BERMUDEZ: Correct.

ATTY. GANZ: Okay. That's all.

LT. FOX: And real quick. Did you ever reach out to, like, a peer or supervisor about maybe some struggles you were having this, or it didn't really come to a head until that night?

OFC. BERMUDEZ: No. I never reached out to anyone about it.

LT. FOX: And --

OFC. BERMUDEZ: The problem, yeah.

LT. FOX: -- and if you could, is there anything -- again, because this is unfortunate; right? Is there anything that we

can do, as an organization, better to kind of help prevent this from happening to people that we really care for?

OFC. BERMUDEZ: That's kind of hard to say, you know. It's -- you know, it's hard to, you know -- hard to recognize someone that's going through it that maybe has a drinking problem. But I don't know how you would approach that, you know. But maybe, like, some peer support or something. I don't -- I don't know. I don't know. But...

LT. FOX: But you're friends with other Daly City officers; right?

OFC. BERMUDEZ: Yes.

LT. FOX: Anything, Brandon?

SGT. SCHOLES: No.

ATTY. GANZ: I don't have anything else.

LT. FOX: All right. We'll conclude the interview.

(Conclusion of Recorded Material)

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DALY CITY POLICE DEPARTMENT

TO: Chief of Police DATE: 28-Feb-23

SUBJECT: Findings and Recommendations 22-08 (Officer Bermudez)

INSTRUCTIONS	Department members submitting any written requests for consideration or action by the Office of the Chief of Police will attach this form and route the material through the chain of command. Immediate supervisors, intermediate supervisors and bureau commanders are required to individually make recommendations for appropriate action on each transmittal and cite reasons. Regardless of the recommendation at any level, transmittal to the Office of the Chief of Police will be completed.
□ Information Only □ Approved □ Disapproved	COMMENTS: OFFICER DATE:
□ Information Only □ Approved □ Disapproved	COMMENTS: FISCAL DATE:
□ Information Only □ Approved □ Disapproved	COMMENTS: TRAINING SERGEANT DATE:
□ Information Only □ Approved □ Disapproved	COMMENTS: SERGEANT DATE:
☒ Information Only □ Approved □ Disapproved	COMMENTS: DRP request LIEUTENANT R. Ilfes #101 DATE: 2/28/2023
☒ Information Only □ Approved □ Disapproved	COMMENTS: Agree with Lt. Relfes findings and recommendation. Sgt Schultes to schedule DRP. CAPTAIN Barton #98 DATE: 3-6-23
□ Information Only □ Approved □ Disapproved	COMMENTS: CHIEF OF POLICE DATE:

(Please use reverse side for additional comments.)

DALY CITY POLICE DEPARTMENT MEMORANDUM

TO	Cameron Christensen Acting Chief of Police	March 8,2023
FROM	Lieutenant Harold Rolfes #101	
SUBJECT	Findings & Recommendations **22-08 (Officer Bermudez)**	

BACKGROUND

On 02/20/2023 I was requested to review, evaluate and analyze this investigation with the purpose of providing Findings & Recommendations.

The scope of this investigation is:

Issue #1: Did Officer Bermudez conduct himself in a manner that tends to reflect unfavorably upon this department or its members (Lexipol Policy 340.5.10 Conduct)?

Issue #2: Did Officer Bermudez violate the law, and therefore Department policy, by operating a motor vehicle while intoxicated (Lexipol Policy 340.04 General Standards and Manual of Rules 3.65 Obedience to Laws and Regulations)?

Issue #3: Was Officer Bermudez dishonest during pre-FST questioning, therefore violating Lexipol Policy 340.5.10 Conduct and Manual of Rules 4.96 Truthfulness?

Issue #4: Did Officer Bermudez fail to respond to a lawful order of "other proper authorities," in violation of Manual of Rules 3.30 General Responsibilities, when he refused to submit to a chemical test?

Issue #5: Was Officer Bermudez considered to be on-duty while on-call and therefore in violation of Lexipol Policy 340.5.12 Intoxicants and Manual of Rules 4.64 Consumption of Intoxicants?

Issue #6: Did Officer Bermudez fail to comply with a lawful directive while assigned to the San Mateo County Narcotics Task Force when he violated SMCNTF Policy 4.6 Personal Conduct-Grounds for Disciplinary Action (A,B,M and P) – Misuse of SMCNTF property or funds (Lexipol Policy 340.3 Directives and Orders)?

INVESTIGATION

- Conducted a thorough review of the complaint and associated documents.
- Conducted a thorough review of Sergeant Scholes investigation.

APPLICABLE AUTHORITIES

Lexipol Policy

340.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification

340.4 General Standards

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

340.5.10 Conduct

h. Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department

m. Any other on or off duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

340.5.12 Intoxicants

a. *Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.*

b. *Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.*

c. *Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.*





Daly City Manual Rules

3.30 General Responsibilities

Sworn members shall at all times respond to lawful orders of superior officers, other proper authorities, as well as to calls for police assistance from citizens. Proper police action shall be taken whenever it is required.

3.65 Obedience to Laws and Regulations

All members shall observe and obey all Federal, State, and municipal laws and ordinances, all rules and regulations of the Department, and all General Orders or Special Orders of the Department.

4.64 Consumption of Intoxicants

Members shall not consume any alcoholic beverage or intoxicating substance while off duty to the extent that evidence of such consumption is apparent when reporting for duty, or to the extent that ability to perform duty is impaired. Members shall not consume any alcoholic beverage or intoxicating substance, including prescribed drugs that can impaired their ability to perform their duties while on duty unless necessary in the performance of a police task and only with the specific permission of a superior officer. ***Member shall not at any time be under the influence of alcohol or intoxicating substances while on duty.*** *Members shall not consume illegal drugs at any time.*

4.96 Truthfulness

Members are required to be truthful at all times whether under oath or not.

ANALYSIS

This investigation stems from an incident Officer Jaime Bermudez was involved in off-duty where he was arrested for driving under the influence (DUI) by the Walnut Creek Police Department on Saturday, August 27, 2022. From the investigation it revealed at the time of the arrest Officer Bermudez, who was assigned to the San Mateo County Narcotics Task Force (SMCNTF), was driving his assigned SMCNTF vehicle, was on-call, and had his girlfriend in the vehicle. The DUI investigation conducted by Walnut Creek PD revealed Officer Bermudez lied about his alcohol consumption during preliminary field sobriety tests and after his refusal of providing a chemical test, a search warrant was written for a blood draw. The result of the blood draw on Officer Bermudez revealed a blood alcohol content of 0.269% and 5.9 ng/ml (nanograms per milliliter) of cannabinoids in his system.

Issue #1: Did Officer Bermudez conduct himself in a manner that tends to reflect unfavorably upon this department or its members (Lexipol Policy 340.5.10 Conduct)?

Officer Bermudez was pulled over on 08-27-2022 by the Walnut Creek Police Department while off-duty and driving his SMCNTF issued vehicle. The reason he was pulled over was for swerving and cutting off a Walnut Creek Police Officer. When the officer contacted Officer Bermudez, Officer Bermudez handed him his driver's license and Daly City Police Department ID card. Officer Bermudez verbally identified himself as a police officer and that he had firearms inside the vehicle. The officer noticed Officer Bermudez had slurred speech, the odor of an alcoholic beverage and watery red eyes. Based on this the officer began conducting a DUI investigation on Officer Bermudez.

Officer Bermudez was given field sobriety tests and from watching the body worn camera interview done, I noticed Officer Bermudez's demeanor change from cooperative to defensive. Officer Bermudez can be seen on the body worn camera rolling his eyes, questioning the reason for the traffic stop in a negative tone and at one point declaring it was "bullshit" what was happening. Ultimately Officer Bermudez performed the field sobriety tests but did very poorly and he was placed under arrest. Officer Bermudez refused the Preliminary Alcohol Screening device during the field sobriety tests and initially agreed to provide a breath test required by law per DL 367 when read the chemical test admonishment after his arrest. However, shortly after agreeing to provide this breath test, Officer Bermudez changed his mind and told the officer, "fuck it, go get a warrant." A warrant was then authored to draw Officer Bermudez's blood and a toxicology report of his blood showed he had 0.269% blood alcohol and 5.9 ng/ml of cannabinoids in his system at the time of his arrest.

Officer Bermudez was assigned to the SMCNTF and he was given a SMCNTF vehicle to drive as part of this position. Officer Bermudez was driving this vehicle at the time of arrest and had his assigned firearms locked in the vehicle. Due to his level of intoxication and arrest, a Daly City officer was called to the scene in order to take control of the NTF vehicle and the weapons inside. Further, Officer Bermudez was the on-call NTF agent for the entire county that night, and although he scheduled with another agent to takeover this duty, the start time for that was to be on Saturday, 08-27-2022, at 0900 hours, which was after his arrest. This would indicate Officer Bermudez was on-call and intoxicated at the time he was arrested.

During Officer Bermudez's administrative interview, Sergeant Scholes asked him why he provided the Walnut Creek Police Officer with his work ID card. Officer Bermudez said it was because he was driving a county vehicle, had guns in the car and was hoping the officer would help him out by either getting him a ride home or letting him go.

Issue #2: Did Officer Bermudez violate the law, and therefore Department policy, by operating a motor vehicle while intoxicated (Lexipol Policy 340.04 General Standards and Manual of Rules 3.65 Obedience to Laws and Regulations)?

Officer Bermudez was driving his assigned SMCNTF vehicle during the early morning hours on Saturday, 08-27-2022. He was pulled over by the Walnut Creek Police Department for swerving in the lanes of traffic and cutting off the Walnut Creek Police Officer who pulled him over. Officer Bermudez had the odor of an alcoholic beverage, slurred speech and watery red eyes. He was given field sobriety tests and the officer giving those tests noticed Officer Bermudez had an unsteady gait, horizontal gaze nystagmus and lack of smooth pursuit in his eyes. Officer Bermudez performed poorly on the other field sobriety tests given, which included the walk and turn and the one leg stand, where he lost his balance several times. He was placed under arrest for driving under the influence and provided the chemical test admonition per DL 367. He refused to provide a chemical test and a warrant was authored to collect his blood. A toxicology report provided by the Contra Costa County Forensic Laboratory showed Officer Bermudez had a blood alcohol content of 0.269% and 5.9 ng/ml of cannabinoids in his system at the time of his arrest.

This most recent DUI arrest of Officer Bermudez is his second arrest for driving under the influence of alcohol. On September 3rd,2015 the Campbell Police Department arrested Officer Bermudez for driving under the influence of alcohol.

Currently the Contra Costa County District Attorney's Office has the case for Officer Bermudez's DUI arrest. As of now the case is being reviewed and filing charges are pending.

Issue #3: Was Officer Bermudez dishonest during pre-FST questioning, therefore violating Lexipol Policy 340.5.10 Conduct and Manual of Rules 4.96 Truthfulness?

During the field sobriety tests of Officer Bermudez on Saturday, 08-27-2022, the Walnut Creek Police Officer asked him a series of questions. One of the questions was, "what and how much did you drink tonight." Officer Bermudez answered he did not have anything to drink. The officer asked Officer Bermudez this question again, and Officer Bermudez responded that he had, "zero," to drink. I watched the body worn camera footage of the field sobriety tests given to Officer Bermudez and confirmed this was the response he gave to the officer on both occasions. It also appears in the body worn camera footage that Officer Bermudez clearly understood all the questions and instructions provided to him by the officer. Given the circumstances that a DUI investigation was being conducted and Officer Bermudez was well aware of this and that it could lead to an arrest, it appears Officer Bermudez was not truthful with the officer about how many drinks he had in order to avoid getting arrested.

During Officer Bermudez' administrative interview he was asked about being questioned by the Walnut Creek Police Officer on how much he had to drink. Officer Bermudez

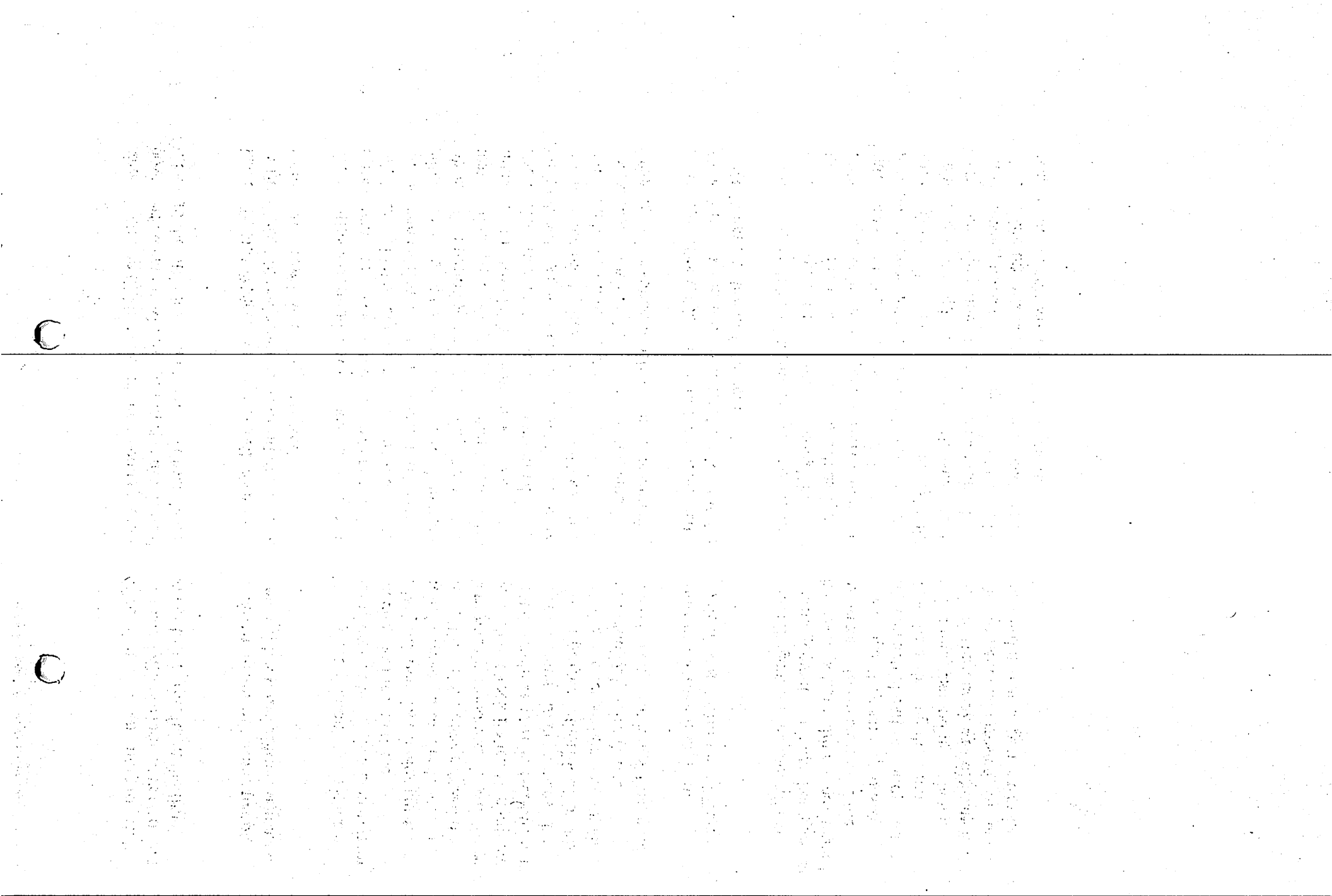
said initially he did not remember responding to the officer that he had nothing to drink, however; he said it would not surprise him if he did say that. Officer Bermudez also said if he told the officer he had "zero" to drink then he was not being truthful at the time.

Issue #4: Did Officer Bermudez fail to respond to a lawful order of "other proper authorities," in violation of Manual of Rules 3.30 General Responsibilities, when he refused to submit to a chemical test?

When Officer Bermudez was placed under arrest for DUI by the Walnut Creek Police Department, he was read the DL 367 chemical test admonishment which is a Department of Motor Vehicles requirement that he must submit to a chemical test in these circumstances and a refusal is subject to penalties. Initially, Officer Bermudez agreed to submit to a breath test when he was read this admonition, however; after the 15-minute observation period prior to providing the breath sample, Officer Bermudez refused the test. Ultimately a warrant was obtained and Officer Bermudez's blood was drawn. Since this order to provide the chemical test was given by the Walnut Creek Police Department and Officer Bermudez was facing criminal charges of DUI, I believe Officer Bermudez is entitled to the same rights of refusal for any citizen under the same circumstances. I do not find that the Walnut Creek Police Department are "other proper authorities," in this situation based on the Manual of Rules 3.30. I believe "other proper authorities" under the Manual of Rules 3.30 would be for superior officers at the Daly City Police Department or superior officers at his assigned San Mateo County Narcotics Task Force.

Issue #5: Was Officer Bermudez considered to be on-duty while on-call and therefore in violation of Lexipol Policy 340.5.12 Intoxicants and Manual of Rules 4.64 Consumption of Intoxicants?

At the time of Officer Bermudez's arrest, he was the on-call agent for the San Mateo County Narcotics Task Force. Although he had made arrangements with another agent at the Task Force to take over this on-call assignment, that responsibility did not begin until 0900 hours, which was approximately 8 hours after his arrest. However, during the interviews with his supervisors, Lt. Leishman and Sgt. Kennan, they said the on-call assignment does not include any extra pay unless there is an actual call-out or operation. Lt. Leishman also said Officer Bermudez should not have been driving the county vehicle, even though he was on-call, as he was not conducting, responding or being called-out to any operation. Based on this I believe Officer Bermudez was off duty at the time he was pulled over by the Walnut Creek Police Department and arrested, and at no time during this incident did he ever place himself in an on-duty capacity nor was he responding to any work related business.



While conducting the findings and recommendations for this case, I saw there was another issue which needed to be addressed. This issue is stated below and pertains to Officer Bermudez's role at the San Mateo County Narcotics Task Force and the policies that pertain to him.

Issue #6: Did Officer Bermudez fail to comply with a lawful directive while assigned to the San Mateo County Narcotics Task Force when he violated SMCNTF Policy 4.6 Personal Conduct-Grounds for Disciplinary Action (A,B,M and P) – Misuse of SMCNTF property or funds (Lexipol Policy 340.3 Directives and Orders)?

At the time of Officer Bermudez's arrest, he was assigned to the SMCNTF, driving his work provided vehicle and was the on-call agent for the county. Officer Bermudez is directly supervised by Sergeant Kennan and Lieutenant Leishman and when he was assigned to this unit he was briefed by his supervisors as to the policies and expectations of the SMCNTF. When Lieutenant Leishman was interviewed, he said his understanding was Officer Bermudez was on-call Friday, 08-26-2022, and had made arrangement for another task force agent to pick up the on-call duty Saturday, 08-27-2022, at 0900 hours. He said at the time Officer Bermudez was pulled over he did not have permission to be driving the SMCNTF vehicle as there was no call-out or operation being conducted. He also said Officer Bermudez should not have had any civilian in the car at the time he was stopped. During Sergeant Kennan's interview he said he was Officer Bermudez's direct supervisor when he joined the task force. He said the SMCNTF has policies related to being on-call, vehicle use for county assigned vehicles and alcohol use. Sergeant Kennan said when Officer Bermudez was hired with the task force, he had a one-on-one conversation with him about his expectations and specifically remembers talking to him about not drinking and driving. Sergeant Kennan also said there is an unofficial policy that agents could use county vehicles for personal use and have civilians in the car if there was a potential need to respond to any type of call-out.

Officer Bermudez's position at the SMCNTF was terminated by Lieutenant Leishman for his recent arrest and multiple violations of SMCNTF policy and procedures. Cited in Lieutenant Leishman's letter of termination was:

SMCNTF Policy 4.6 Personal Conduct-Grounds for Disciplinary Action

A.) Violation of any SMCNTF policy, procedure, rule, order, directive or requirement.

B.) Violation of any general order, policy, or procedure of the member's employing agency that is not inconsistent with the orders, policies, and procedures of the SMCNTF.

M.) Misuse of SMCNTF property or funds.

P.) Any other failure of good behavior, either during or outside of duty hours, which is of such a nature that causes discredit to the SMCNTF or the agency in which the member is employed.

FINDINGS

Issue #1: Did Officer Bermudez conduct himself in a manner that tends to reflect unfavorably upon this department or its members (Lexipol Policy 340.5.10 Conduct)?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

Issue #2: Did Officer Bermudez violate the law, and therefore Department policy, by operating a motor vehicle while (Lexipol Policy 340.04 General Standards and Manual of Rules 3.65 Obedience to Laws and Regulations)?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

Issue #3: Was Officer Bermudez dishonest during pre-FST questioning, therefore violating Lexipol Policy 340.5.10 Conduct and Manual of Rules 4.96 Truthfulness?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

Issue #4: Did Officer Bermudez fail to respond to a lawful order of "other proper authorities," in violation of Manual of Rules 3.30 General Responsibilities, when he refused to submit to a chemical test?

NOT SUSTAINED - The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint. The finding of Not Sustained will not relieve Department supervisors or commanders from the responsibility for counseling or training subordinate personnel.

Issue #5: Was Officer Bermudez considered to be on-duty while on-call and therefore in violation of Lexipol Policy 340.5.12 Intoxicants and Manual of Rules 4.64 Consumption of Intoxicants?

NOT SUSTAINED - The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint. The finding of Not Sustained will not relieve Department supervisors or commanders from the responsibility for counseling or training subordinate personnel.

Issue #6: Did Officer Bermudez fail to comply with a lawful directive while assigned to the San Mateo County Narcotics Task Force when he violated SMCNTF Policy



4.6 Personal Conduct-Grounds for Disciplinary Action (A,B,M and P) – Misuse of SMCNTF property or funds (Lexipol Policy 340.3 Directives and Orders)?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

RECOMMENDATIONS

Disciplinary Review Panel.

ATTACHMENTS

Refer to Sergeant Scholes original investigation and documentation provided in this investigation.

Campbell Police Department report #2015-2530

H. Rolfes #101

Harold Rolfes
Police Lieutenant #101
Investigations Division

22-3556-1

Forensic Services Division
Contra Costa County Office of the Sheriff
1960 Muir Rd. Martinez, Ca. 94553
Telephone: (925) 313-2800 Fax: (925) 313-2840

REPORT OF LABORATORY EXAMINATION

Laboratory #	22-3556-1	**Agency:**	Walnut Creek Police Department
Issue Date:	September 9, 2022	**Agency Case #**	22-25731
Service:	Alcohol Analysis	**Requested by:**	Young, Eric
Request Date:	August 31, 2022	**Case Type:**	Alcohol and Drugs
Subject(s):	Bermudez, Jaime		

Offenses: 23152(a)

Date of incident: 8/27/2022

Description of Evidence

The lab received:

Submission #1: Blood Alcohol/Drug envelope containing four vial(s)

Test Subject: Bermudez, Jaime

Type of sample: Blood

Examination Results and Conclusions:

Analysis Date(s): September 1, 2022 to September 2, 2022

Submission #1: Blood Alcohol/Drug envelope

Reported Result: 0.269 % W/V Blood Alcohol Concentration

Uncertainty of Measurement: 0.269 ± 0.018 % W/V (Range: 0.251 to 0.287 % W/V)

I certify, under penalty of perjury, under the laws of the State of California, that the above blood/urine analysis was performed during the regular course of my duties, and is a true and correct copy thereof. I further certify that I am qualified to perform these analyses, and that the equipment used in arriving at the results was in proper working order at the time I performed this analysis. The recording of the analysis results was done at the time of the analysis.

Reported By:

R8
R8 Criminalist

Date Completed: September 07, 2022

Approved By:

R3
R3 Criminalist

Approved Date: September 09, 2022

Executed in Martinez, Contra Costa County, California

CONTRA COSTA COUNT
OFFICE OF THE SHERIFI
FORENSIC SERVICES DI

Forensic Services Division LAB EVID #
22-003556 001

Kit No.: 99263
Expiration Date: 02/28/2023

Blood Alcohol/Drug envelope

BLOOD SAMPLE FOR ALCOHOL/DRUG ANALYSIS

Analyze for: ☑ (**Alcohol & Drugs***) DUI/DUID/Driving/Felony Panel
DRE Performed? Y/N (Circle one)
☐ (**Drugs* ONLY**) Drug Panel
For driving offenses - PAS results MUST be 0.00
PAS 0.00? Y/N (Circle one)
☐ DFSA Panel (Analyzed by Reference Lab)
SAEK Collected? Y/N (Circle one)

BIOHAZARD

Please List Specific Suspected Drugs: _____

☐ Check if this is a referee for subject breath results.

* Please contact the Crime Lab or refer to the Laboratory Report for a full list of drugs tested.

1. Police Agency: WCPD Agency Case No.: 22-2573|
2. Investigating Officer: Young (young) Badge No.: 533
3. Contact Number: 925-943-5844 Contact E-Mail: jyoung@walnutcreekpd.com
4. Offense(s): VC 23152 (A) Incident Date: 8/27/22 Time: 0110
5. Subject's Last Name: BERMUDEZ First Name: JAIME
6. Witnessing Officer/Person: Young
7. Person Drawing Blood: J. Young
8. Date Sample Taken: 8/27/22 Time: 0304

01 DOB

BERMUDEZ, JAIME F.

CHAIN OF CUSTODY:

Received From:	Received By:	Date:
Young #533	Young #533	8/27/22
R4 R5	R5 EVIDENCE	8/27/22
	Muir Log in Fridge	8/31/2022
		8-31-22

FOR LABORATORY USE:
☑ Sealed ☐ Unsealed Other _____ # Tubes: _____

Rev 2/24/21

BAOCC:BSA 13 2/21

Report Annex

Client Address:

Walnut Creek Police Department
1666 North Main Street
Walnut Creek, CA
94596

Compliance Statements:

- Initial package(s) were submitted tape sealed unless otherwise indicated.
- Uncertainty of measurement is reported on the average of the four unconverted measurements. The statistical level of confidence is approximately 99.73% (k=3).
- Per AB2425, the reported result is truncated to three digits.
- Per Title 17, urine results are reported as a blood alcohol equivalent using a conversion factor (divisor) of 1.3. The uncertainty of measurement is reported on the average of the unconverted analytical results.
- Vitreous results are reported as a blood alcohol equivalent using a conversion factor (divisor) of 1.27. The uncertainty of measurement is reported on the average of the unconverted analytical results.
- The unconverted result determines the reportability of urine and vitreous samples.
- For Cavity Fluid, Other, & Coroner-Other sample types, results are reported as an alcohol concentration and are not converted to a blood alcohol concentration.
- Homogeneity is assumed among multiple vials within an envelope or kit as long as the vials were collected sequentially, from a single event, and into multiple similar containers, and having similar volumes. The reported results pertain to the entire item, not just the tested amount or the vial analyzed.
- All results relate only to the items that were tested and apply to the evidence as received by the Forensic Services Division, except when otherwise indicated. Identification of the analysts authorizing the report will be indicated by the signatures on the report. Unless otherwise indicated, the results are reported by the analyst who performed the testing.
- Any addition to, deviation(s) or exclusion(s) from the test method will be included in the Examination Results.
- % W/V is an abbreviation for grams of ethanol per 100 milliliters of liquid.
- The linear reportable range of the method is 0.020 % W/V to 0.500 % W/V.
- The reported result reflects the concentration at the time of analysis and does not account for changes that may occur before or after analysis.
- When Toxicology Analysis is requested, evidence may be sub-itemized, tested for alcohol, and forwarded to the toxicology unit for analysis
- Evidence associated with California Vehicle Codes (CVC) will be kept for one year in the laboratory, and then returned to the agency. All other evidence will be returned to the agency, unless otherwise noted on the report.
- Information provided by the requesting agency or derived from the analysis of evidence may be shared for criminal justice or accreditation activities.

Analytical Tests Used:

Heated Headspace Dual Column Gas Chromatography with Flame Ionization Detector

Receipt of Evidence:

Received from R4 by R5 on **August 31, 2022**

1 Blood Alcohol/Drug envelope

[End of Report]

OFFICE OF THE CITY MANAGER
CITY OF DALY CITY
333 – 90TH STREET
DALY CITY, CA 94015-1895
(650) 991-8125

PERSONAL AND CONFIDENTIAL

TO: Officer Jamie Bermudez

FROM: Thomas J. Piccolotti, City Manager

DATE: June 2, 2023

SUBJECT: Notice of Intent to Terminate

The purpose of this letter is to provide you with notice pursuant to the Daly City Police Department Policy Manual and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, of my proposal to terminate you from your position as a Police Officer for Daly City ("City"). If my proposal remains unchanged following completion of any pre-disciplinary review in this matter, then your termination will be effective following completion of the pre-disciplinary process and written notice of your termination.

I. CHARGES UPON WHICH THE PROPOSED TERMINATION IS BASED

This Notice of Intent to Terminate is based on my preliminary determination that you have violated the following rules, policies, and/or provisions:

The Daly City Police Department Police Manual

Section 340.04—General Standards

Members shall conduct themselves whether on- or off-duty, in accordance with United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

Section 340.3—Directives and Orders

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

Section 340.5.10—Conduct

(h) Criminal, dishonest, disgraceful conduct, whether on-or off-duty, that adversely affects the member's relationship with this department.

(m) Any other on or off duty conduct which any members knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

The Daly City Police Department Manual of Rules

Section 3.65—Obedience to Laws and Regulations

All members shall observe and obey all Federal, State, and municipal laws and ordinances, all rules and regulations of the Department, and all General Orders or Special Orders of the Department.

Section 4.64--Consumption of Intoxicants

Members shall not consume any alcoholic beverage or intoxicating substance while off duty to the extent that evidence of such consumption is apparent when reporting or duty, or to the extent that ability to perform duty is impaired. Members shall not consume any alcoholic beverage or intoxicating substance, including prescribed drugs that can impair their ability to perform their duties while on duty unless necessary in the performance of a police task and only with the permission of a superior officer. Members shall not at any time be under the influence of alcohol or intoxicating substances while on duty. Members shall not consume illegal drugs at any time.

Section 4.96—Truthfulness

Members are required to be truthful at all times whether under oath or not.

San Mateo County Narcotics Task Force (SMCNTF) Policy

Section 4.4—Rules of Conduct—Basis for Disciplinary Action

a) Violation of any SMCNTF policy, procedure, rule order, directive or requirement

b) Violation of any general order, policy, or procedure of the member's employing agency that is not inconsistent with the orders, policies, and procedures of the SMCNTF

m) Misuse of SMCNTF property or funds

p) Any other failure of good behavior, either during or outside of duty hours, which is of such a nature that causes discredit to the SMCNTF or the agency in which the member is employed.

The Daly City Rules and Regulations of the Classified Service, Rule XVIII, Standards of Employment, Section 10, Causes for Discipline or Discharge

(b) Discourteous treatment of the public, supervisors, other employees
(c) Failure to follow directions, policies and procedures
(e) Inappropriate use of drugs and alcohol
(n) Untruthfulness

(p) Violation of City and/or Department rules, regulations, policies and procedures
(q) Violation of City, State and/or Federal Law(s)

Please note that this Notice of Intent to Terminate is based upon your violation of any one of the above rules and need not be based upon a finding or conclusion that you committed multiple violations. Your violation of any one of the above rules would, in and of itself, support my recommendation that you be terminated.

II. SUMMARY OF FACTS IN SUPPORT OF PROPOSED TERMINATION

A. YOUR AUGUST 27, 2022 DUI ARREST

On August 27, 2022, at approximately 0100, you were driving your SMCNTF-assigned vehicle in Walnut Creek. While driving the vehicle, Walnut Creek Police observed you stopped at a red light at the intersection of North Broadway and Civic Drive. You were stopped half in the left turn lane and half in the southbound lane. When the light turned green, you went through the intersection and swerved across multiple lanes without signaling, causing the Walnut Creek Police to brake in order to avoid colliding with you. As you continued toward the Lincoln Avenue intersection, Walnut Creek Police Corporal Mauro pulled you over. After you were pulled over, you exhibited slurred speech and your body movements were lethargic, consistent with someone who is intoxicated. After Corporal Mauro asked for your identification, you searched for your wallet in the center console of the truck until your girlfriend, [redacted] W1 who was sitting in the backseat of the truck, handed you your wallet. You then pulled out your driver's license and work ID and dropped them twice on the floor of the truck before handing them to Corporal Mauro. When you were asked where you were coming from, you initially said something to the effect of "right around the corner." When asked again, you stumbled on your words and could not form a coherent sentence. At some point, Corporal Mauro observed blood and scratches on the back of your neck. However, it appeared you were unaware of the blood and scratches on the back of your neck. You then reported that you had a firearm locked in the back of the truck, but you had trouble explaining where exactly the firearms were located due to your inability to form coherent sentences. After this, Officers Young and Peters took over the remainder of the DUI investigation.

Officers Young and Peters first arrived on the scene and spoke with [redacted] W1 When asked why she was sitting in the back seat [redacted] W1 said that you wanted to drive home but she told you not to. She said you both were drinking at "Modern" (Modern China Café). You then interrupted [redacted] W1 [redacted] W1 and tried to tell Officer Young where you were coming from, but could not remember the name of the location.

After observing your objective signs of intoxication, the Walnut Creek Police officers conduct a DUI investigation and requested that you step out of the vehicle. When you stepped out of the vehicle, you staggered, prompting Corporal Mauro to ask if you were "going to be ok." You responded in the affirmative.

The officers talking to you smelled a strong odor of alcohol coming from your breath and person and informed you they were going to conduct a Field Sobriety Test ("FST"). You responded "go ahead" and then said "this is bullshit." Officer Young then asked you several pre-FST questions. During the questions you staggered and lost your balance multiple times. Additionally, Officer Young had to ask you to display professional courtesy towards him. He told you that he could tell you were very intoxicated, and as a police officer, you should know you should not be driving. When asked what alcoholic beverages you had, you responded, "I haven't had anything to drink." This answer caused Officer Young to further ask, "Zero alcoholic

drinks?" You replied, "Zero." When asked again whether you were coming from Modern China Café, you responded, "no, I was parked right here." You also stated you did not take any medicine or drugs.

You then performed multiple standard FSTs including the "HGN test," the "Walk and turn" test, "One leg stand" test, and the "Romberg balance" test. When asked if you would provide a voluntary breath sample, you said "Nah." Based on your performance on the FSTs and interactions with the police, you were placed under arrest for driving under the influence of alcohol.

After being transported to Walnut Creek Police Department, you originally consented to a breath test with a Preliminary Alcohol Screening ("PAS") device, but then changed your mind and said "fuck it, go get a warrant." A judge then signed a search warrant authorizing a blood draw at around 0256 hours. At approximately 0304 hours, your blood was drawn and the blood vials were booked into the Department's Evidence room. The Contra Costa County Forensic Laboratory showed that your blood test from that night resulted in a blood alcohol content of 0.269%, over three times the legal limit of .08%.

B. PRE-ARREST CONDUCT ON AUGUST 26 AND 27, 2022

You met your girlfriend at Stadium Pub on the evening of August 26, 2022. You and your girlfriend then went to a nearby bar called Modern China Café and then to another nearby bar called 1515 Restaurant and Lounge. After leaving 1515 Restaurant and Lounge, you operated the SMCNTF vehicle until you were stopped by the Walnut Creek Police Department at approximately 0100 on August 27, 2022.

In your administrative interview, you admitted to drinking and being intoxicated before driving. You said you estimated that you had a beer at Stadium Pub, two (2) shots of tequila at Modern China Café, and over ten (10) drinks of tequila and beer at 1515 Restaurant and Lounge. You stated you felt the feelings of alcohol after you left 1515, and admitted you reasonably believed you were too intoxicated to drive.

C. YOUR USE OF THE SMCNTF VEHICLE ON THE NIGHT OF AUGUST 27, 2022

You were on-call for the SMCNTF on August 26, 2022, and August 27, 2022. However, you arranged for someone else to assume your on-call duties as of 0900 on August 27, 2022. Therefore, you were on-call when arrested at 0100 on August 27, 2022.

You were previously instructed by your direct supervisor at the SMCNTF, to not drink and drive while using the SMCNTF vehicle. During your administrative interview, you stated during your training when you first joined SMCNTF, you were instructed on SMCNTF policies regarding your take-home vehicle. You acknowledged you were not allowed to consume alcohol and drive the vehicle, and that you had a one-on-one conversation with your direct supervisor about not drinking and driving while using the SMCNTF vehicle.

D. YOUR DRUG TOXICOLOGY REPORT

The blood test performed by the Contra Costa County Forensic Laboratory also showed you had 5.9 ng/mL of cannabinoids at the time of your arrest. A criminalist at the Contra Costa County Sheriff's Office stated that this means you consumed tetrahydrocannabinol, also known as THC, at some point prior to the drug test.

During your administrative interview, in response to questions about the presence of cannabinoids in your blood, you stated that you took a couple of CBD pills that [redacted] W1 [redacted] gave you but could not remember when you took them. In her interview, [redacted] W1 [redacted] stated that she takes sleeping pills called

Unisom, which are over the counter, and said that she occasionally takes THC gummies from a friend to help her sleep, but that you have never taken them with her.

E. YOUR 2015 DUI CONVICTION

This incident is your second arrest for DUI. On June 19, 2015, the Campbell Police Department arrested you for driving under the influence. You were subsequently convicted on September 3, 2015, for driving under the influence.

III. ANALYSIS

In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, the California Supreme Court held that in considering the propriety of public employee disciplinary action:

> "...the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in harm to the public service.... Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence."

With this in mind, I am proposing the termination of your employment as a police officer for the reasons below.

The evidence demonstrates that you failed to uphold your duties as a Police Officer of the Daly City Police Department (DCPD) by driving under the influence of alcohol, ingesting cannabinoids, misusing San Mateo County Narcotics Task Force (SMCNTF) property, and lying to fellow police officers about your alcohol use. You demonstrated a clear lack of judgment and inappropriate behavior when you became intoxicated and decided to operate a motor vehicle. Your judgment is further called into question because you were on call with the SMCNTF while intoxicated and the vehicle you were driving was an SMCNTF vehicle. Even with access to Uber, Lyft, or some other taxi, you decided to operate a law enforcement vehicle while extremely intoxicated. Drinking while driving your SMCNTF vehicle was a violation of workplace expectations as well as a directive from a supervisor. Moreover, driving any vehicle under the influence is a crime. Furthermore, in doing so, you created potential harm to yourself, your passenger, and members of the community, while implicating the SMCNTF and the DCPD. Your conduct constitutes both a violation of DCPD and SMCNTF policy and is criminal, disgraceful conduct that has adversely affected the relationship between you and this Department. Your conduct warrants termination.

Additionally, when questioned about how much alcohol you consumed, you stated on two different occasions that you did not consume any alcohol. However, your blood alcohol content reveals that statement was untrue. In your administrative interview, you acknowledged you drank multiple drinks of alcohol and felt the effects of alcohol before driving. Your blood test results showed your blood alcohol level was over three times the legal limit even after being taken in to the Walnut Creek Police Department station. You also admitted you lied to police officers at the scene after being pulled over. You were discourteous and acted improperly toward the other officers. As a member of the DCPD and of the SMCNTF, you are expected to embody a pillar of honesty and truthfulness. Lack of truthfulness is not tolerated in the DCPD—in lying about your alcohol consumption, you have violated policy and abused the trust placed in you by the Department and termination is warranted.

The above conduct also harms the reputation of DCPD with the arresting agency, the Walnut Creek Police Department, as well as the District Attorney's Office of Contra Costa County. Your intoxication, decision to drive

while intoxicated, your criminal activity, your rudeness, and lack of truthfulness reflect poorly not just on yourself, but also on the DCPD. Police Officers are expected to display the highest standard of integrity. Your actions fall well below that standard and in doing so, you harmed the reputation of the Department and your fellow officers.

I note you were convicted of a DUI in 2015 and know the consequences of driving while under the influence. However, you intentionally decided to again engage in this unlawful and dangerous activity, rendering termination even more warranted.

Further, during your administrative interview, you stated that you ingested [redacted] W1 CBD sleeping pills in order to explain the presence of cannabinoids in your blood. However, her testimony contradicted your own. Regardless of when or where it happened, your ingestion of cannabinoids violates the policy against the use of illegal drugs, as cannabinoids, and in particular THC, are illegal under federal law. Your use of any illegal drugs is particularly inappropriate as a member of the SMCNTF and the DCPD.

As a Police Officer of the DCPD, you are expected to maintain the highest level of integrity, responsibility, and competency, carrying out your duties with excellence and diligence. Your misconduct was not only an abuse of the trust placed in you by the Department—but has very serious implications for the DCPD and Daly City in the public eye.

Finally, I note your actions not only violated significant DCPD and SMCNTF rules and policies, but your conduct also violated Citywide policies prohibiting the following: discourteous treatment; failure to follow rules, regulations, directions, policies, and procedures; the inappropriate use of alcohol; untruthfulness; violation of City, City, State and/or Federal Law(s).

For all these reasons, proposing your termination is in the best interests of the Department.

This proposed termination is based on the findings set forth in this notice. However, additional proceedings are pending against you, including a decision from the California Department of Motor Vehicle regarding the termination or revocation of your driver's license due to your conduct in this matter, as well as the criminal charges filed against you by the Contra Costa District Attorney's Office. The City reserves the right to take further disciplinary action against you pending the outcomes of these matters.

IV. WARNING AGAINST RETALIATION

Please be advised that it is illegal and a violation of City policy to retaliate against any person who has participated in providing information regarding this investigation or issuing this disciplinary notice. Any retaliatory conduct constitutes a separate an independent basis for discipline up to and including termination.

V. PRE-DISCIPLINARY RESPONSE TO CHARGES

You have the right to respond to your proposed termination within seven (7) days from the date you received this Notice, either by requesting a *Skelly* conference or by providing a written response, or both. Your contact for requesting the *Skelly* conference and/or providing a written response is Natalie Sakkal, Director of Human Resources. Her email address is nsakkal@dalycity.org. Failure to request a *Skelly* conference or provide a written response within seven (7) days from the date you received this Notice constitutes a waiver of your right to respond prior to final discipline being imposed.

If you request a *Skelly* conference, you have the right to have a representative of your choice at the *Skelly* conference.

VI. DOCUMENTS RELIED UPON IN MAKING RECOMMENDATION

The following documents were considered and relied upon in recommending that you be terminated. They are attached. I have reviewed your personnel file and given it consideration in deciding on the recommended discipline. You are entitled to review your personnel file. Although your personnel file is not attached, if you wish to review your personnel file, please contact Natalie Sakkal to schedule an appointment.

1. Administrative Investigation 22-08
2. Findings & Recommendations 22-08
3. Disciplinary Review Panel Memorandum of March 22, 2023
4. Relevant Excerpts from the DCPD Manual of Rules
5. DCPD Policy Manual, Section 340
6. Relevant Excerpts of the SMCNTF Policy Manual
7. Rule XVIII of the Daly City Rules and Regulations of the Classified Service

CC: Cameron Christensen, Acting Chief of Police
Natalie Sakkal, Director of Human Resources
Rose Zimmerman, City Attorney

Acknowledgment of Receipt:

Received: _____ _____
Jaime Bermudez Date

FILED
2023

Superior Court of California, County of Contra Costa

☑ MARTINEZ ☐ PITTSBURG ☐ RICHMOND By

People v. Jaime Francisco Bermudez Case No. 2023042700111

MISDEMEANOR ADVISEMENT OF RIGHTS, WAIVER AND PLEA FORM

Fill out this form if you wish to plead guilty or no contest to the charges against you. Initial the box for each applicable item only if you understand it. If you have any questions about your case, the possible sentence, or the information on this form, ask your lawyer or the judge.

RIGHT TO A LAWYER

Initial Applicable Boxes

1. I understand that I have the right to be represented by a lawyer throughout the proceedings. I understand that the court will appoint a free lawyer for me if I cannot afford to hire a lawyer, but at the end of the case I may be asked to pay all or part of the cost of that lawyer, if I can afford to. I understand that there are dangers and disadvantages to giving up my right to a lawyer and that it is almost always unwise to represent myself. ..... 1. ☑

NATURE OF THE CHARGES

2. I understand that I am charged with the following offense(s): CVC 23152(a) + (b) (Type of offense(s) and section number(s)) 2. J.B.

3. *If applicable* – I understand that I am also charged with having the following prior conviction(s): CVC 23152(b) 6/19/15 violation Sent. Date 9/3/15 #151704D Santa Clarita. (Case number(s) and date(s)) 3. J.B.

4. *If applicable* – I understand that I am also charged with violating the probation imposed on me in case number(s) _____ on date(s) _____ 4. ☑

5. I understand the charge(s) against me, and the possible pleas and defenses. ..... 5. J.B.

CONSTITUTIONAL RIGHTS

6. **RIGHT TO A TRIAL BY A JUDGE OR BY A JURY** – I understand that I have the right to a speedy, public trial by a judge or by a jury. ..... 6. J.B.

7. **RIGHT TO CONFRONT WITNESSES** – I understand that I have the right to confront and cross-examine all witnesses testifying against me. ..... 7. J.B.

8. **RIGHT AGAINST SELF-INCRIMINATION** – I understand that I have the right to remain silent and not incriminate myself, and the right to testify on my own behalf. I understand that by pleading guilty or no contest, I am incriminating myself. ..... 8. J.B.

9. **RIGHT TO PRODUCE EVIDENCE** – I understand that I have the right to present evidence and to have the court issue subpoenas to bring into court all witnesses and evidence favorable to me, at no cost to me. ..... 9. J.B.

CHARGES OF PRIOR CONVICTION(S) AND PROBATION VIOLATION(S)

10. *If applicable* – I understand that I have the right to a lawyer, the right to a trial by judge or jury, the right to confront witnesses, the right against self-incrimination, and the right to produce evidence for all the charges against me, including any charged prior conviction(s). However, for a charge of violating probation, I do not have the right to a jury trial although I do have the right to a hearing before a judge. ..... 10. J.B.

WAIVER OF RIGHTS

11. Understanding all this, for *all* the charges against me, including any prior conviction(s) or probation violation(s):

11a. I give up my right to a lawyer, and I choose to represent myself. (Does not apply if you have a lawyer.) ..... 11a. /

11b. I give up my right to a trial by a judge or by a jury. ..... 11b. J.B.

11c. I give up my right to confront and cross-examine witnesses. ..... 11c. J.B.

11d. I give up my right to remain silent and not incriminate myself. ..... 11d. J.B.

11e. I give up my right to produce evidence or witnesses on my own behalf. ..... 11e. J.B.

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

12. **Penalty:** I understand that the *possible consequences* for the offense(s) charged are:

12a. as described in Exhibit A attached hereto. I also understand that the Department of Motor Vehicles may take additional administrative actions affecting my license. .... 12a. J.B.

12b. as follows: _____ 12b. J.B.

13. Federal Law provides for mandatory deportation for certain crimes. I understand that if I am not a citizen of the United States, I have the right to contact an immigration attorney, a diplomat or consular representative of my country. I also understand that a conviction of a crime may, and for certain crimes will, result in my deportation, denial of my re-entry to the United States and denial of my application for citizenship. 13. J.B. J.B.

14. *If applicable* – I understand that any plea entered in this case may be an admission of a violation of probation or parole which has been previously imposed on me in any other case. ..... 14.

15. *If applicable* – I understand that any plea of no contest will result in conviction and punishment, the same as a plea of guilty but cannot be used against me in a civil lawsuit. 15. J.B.

16. I understand that the Department of Motor Vehicles will suspend my license for an additional six months if my offense involved a controlled substance (drug). ..... 16. /

PLEAS

17. All promises made to me concerning this plea have been stated on the record or are as follows: 20 SWAP (cts 5 did residential + outpatient program); 18 month Dui program; stacked 2nd Dui terms 17. J.B.

Other than as indicated, no further promises have been made to me. No one has threatened me, or anyone closely related to or associated with me, to make me plead guilty or no contest. .....

18. Having read and understood this form, I hereby freely and voluntarily plead [ ] guilty or [✓] no contest to CVC 23152(b) 18. J.B.
(list charges)

19. I understand that I have the right to wait from six hours to five days prior to being sentenced. I give up this right and agree to be sentenced at this time. ..... 19. J.B.

20. *If applicable* – I freely and voluntarily admit the prior conviction(s) listed on this form. I understand that this admission may increase the penalties which are imposed on me. ..... 20. J.B.

21. *If applicable* – I understand that I have the right to enter my plea before, and be sentenced by a judge. I give up this right and agree to enter my plea before, and be sentenced by _____, duly appointed Temporary Judge. 21. J.B.

22. I understand that I have the right to appeal this sentence, conviction and any rulings made by the Court in this case. I give up my right to appeal in exchange for accepting this negotiated disposition. 22. J.B.

23. I am not under the influence of any alcohol or drug at the time of signing this document. 23. J.B.

11/29/23
Date

Defendant's Signature

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form and any addendum with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offense(s), and the possible defenses. I concur in this plea and in the defendant's decision to waive constitutional rights.

DATE	SIGNATURE OF DEFENDANT'S ATTORNEY
11/29/23	➔

INTERPRETER'S STATEMENT (If Applicable)

I, having been sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language indicated below. The defendant stated that he/she understood the contents of the form, and then he/she initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify): _____

DATE	TYPE OR PRINT NAME	COURT INTERPRETER'S SIGNATURE
		➔

WAIVERS AND PLEA IN ABSENTIA (If Applicable)

1. I specifically waive my right to personally enter my plea, I waive my right to be personally present when sentence is imposed, I waive my right to delay sentencing not less than six hours nor more than five days after entry of the plea, and I waive my right to personally address the court in mitigation of my sentence which might be imposed.

2. ☑ (Check box if represented by Attorney)

I hereby authorize and direct my attorney named Jason Runckel to enter said plea of No Contest to the court for me in my absence. My attorney is further authorized and directed to waive time for sentencing, and to receive the sentence, including probation, in my absence.

Date: 11/29/23
(Notary, if appropriate)

Signature of Defendant

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and any addendum, and having questioned the defendant concerning the defendant's constitutional rights, finds that the defendant has expressly, knowingly, understandingly and intelligently waived his or her constitutional rights. The Court finds that the defendant's plea is freely and voluntarily made with an understanding of the nature and consequences thereof, and that there is a factual basis for the plea. The Court accepts the defendant's plea and orders this form filed and incorporated in the docket by reference as though fully set forth therein.

DATE:

➔ Julie Conger 12/5/23

☒ Judge of the Superior Court

☐ Temporary Judge of the Superior Court

AGENDA ITEM REPORT

Title: POST2300017 - PAUL MATEJCEK (POST ID: C65-U31)
LAST EMPLOYING AGENCY: BRENTWOOD POLICE DEPARTMENT

REPORT PROFILE

MEETING DATE 10/17/2024	**BUREAU SUBMITTING THE REPORT** Professional Conduct Central Bureau	
RESEARCHED BY Kevin Sherburne	**REVIEWED BY** Brian South	
REPORT DATE	**APPROVED BY**	**DATE APPROVED** 10/17/2024
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

On April 23, 2022, Respondent, then a Brentwood Police Officer, responded to a service call of a person screaming near garden sheds at a home improvement store. There, Respondent and other officers found an individual hiding in one of the sheds. Respondent detained the individual, placed her in handcuffs behind her back, and seated her in front of the shed where they found her. About eight minutes later, she suddenly attempted to stand up. Body worn camera (“BWC”) footage showed Respondent took three steps toward her and kicked her with his right foot, knocking her backward into the shed door, where she fell to the ground. Brentwood Police Department conducted an administrative investigation on the issue whether Respondent's use of force was excessive or unreasonable and found that Respondent's use of force was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance." Brentwood Police Department terminated Respondent.

Video Evidence Links:

- BR13 POST2300017 Matejcek Paul REDACTED002 K 4 BPD 2201912 FRANSON DAVID 624D

- BR14 POST2300017 Matejcek Paul REDACTION L 2 BPD 2201912 MATEJCEK PAUL 595P 2

ANALYSIS: The clear and convincing evidence substantiated that Respondent kicked Victim 1 on April 23, 2022, while she was handcuffed. The clear and convincing evidence substantiated that Respondent's use of force was excessive and unreasonable, either or both. The evidence showed that just prior to and at the time that Respondent kicked Victim 1, she did not pose a threat to Respondent, the other officers, or anyone else, was not resisting, and was not attempting to escape. Reasonable grounds exist for the Respondent's peace officer certification to be subject to disciplinary action, which is either revocation or suspension by the Commission pursuant to California Penal Code Section 13510.85(a)(1).

RECOMMENDATION: The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigation presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):

BR1_POST2300017_Matejcek_Paul_POST2300017_Matejcek_ISF_Sherburne_FINAL.pdf
BR2_POST2300017_Matejcek_Paul_REDACTED_1_Executive_Review_Division_Recommen
BR3_POST2300017_Matejcek_Paul_REDACTED.pdf
BR4_POST2300017_Matejcek_Paul_REDACTED_B_EDI_Profile.pdf
BR5_POST2300017_Matejcek_Paul_REDACTED_C_1_City_of_Brentwood-Matecjek_Termination-Hearing_Officer_Recommendation_002.pdf
BR6_POST2300017_Matejcek_Paul_REDACTED_D_PM_HO_Appeal_.pdf
BR7_POST2300017_Matejcek_Paul_REDACTED_E_3_Notice_of_Intent_to_Terminate_with_
BR8_POST2300017_Matejcek_Paul_REDACTED_F_4_Notice_of_Termination_Skelly_Opinio
BR9_POST2300017_Matejcek_Paul_REVIEWED_G_2_2022_09_02_JDF_to_Ogden_Appeal_
BR10_POST2300017_Matejcek_Paul_REDACTED_H_Respondent_Interview_Transcript_002ksherburne9132_Redacted.pdf
BR11_POST2300017_Matejcek_Paul_REDACTED_I_26_2022-05-26_Josh_Flynn_interview_trancript.pdf
BR12_POST2300017_Matejcek_Paul_REDACTED_J_25_2022-05-30_David_Franson_interview_transcript_Redacted.pdf
BR15_POST2300017_Matejcek_Paul_REDACTED_M_33_Matejcek_Accomodations.pdf

BR16_POST2300017_Matejcek_Paul_REDACTED_N_IA_Findings_20-03_002.pdf
BR17_POST2300017_Matejcek_Paul_REDACTED_O_1_IA_20-03_Summary_002-ksherburne9132.pdf

INVESTIGATIVE SUMMARY AND FINDINGS

Paul Matejcek

POST ID C65-U31

Brentwood Police Department

POST2300017

WRITTEN BY: Kevin P. Sherburne

August 23, 2024

Contents

I. Executive Summary 3
II. Methodology/Investigative Process 4
A. Methodology and Standard of Proof 4
B. Employment History and Peace Officer Certifications 4
C. Other Allegations of Serious Misconduct 5
D. Summary of Investigations Relating to the Allegations in This Case 5
1. IA Case 22-07 and Appeal 5
III. Findings of Fact and Analysis 8
A. Background 8
B. Physical Abuse Analysis 15
1. The Use of Force Was Unreasonable and Excessive 15
2. Prior Conduct and Likelihood of Recurrence Warrant Regulatory Action 22
C. Reasonable Grounds Exist for Regulatory Action 24
IV. Supporting Evidence and Documentation 25
V. Conclusion 26

I. Executive Summary

On April 23, 2022, Brentwood Police Officer Paul Matejcek ("Respondent") and two other officers responded to a service call of a person screaming near garden sheds at a Home Depot. There, the officers found Victim 1 hiding in one of the sheds. Respondent detained Victim 1, placed her in handcuffs behind her back, and seated her in front of the shed where they found her. About eight minutes later, Victim 1 suddenly attempted to stand up. Body worn camera ("BWC") footage showed Respondent took three steps toward her and kicked her with his right foot, knocking her backward into the shed door, where she fell to the ground.

Brentwood Police Department opened an investigation into whether Respondent's use of force violated department policy. On June 29, 2022, the investigation found that a preponderance of the evidence substantiated that Respondent violated department policy because Respondent's level of force was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance."[1] On August 31, 2022, Chief Thomas Hansen notified Respondent of his termination based upon Respondent's use of excessive force.

On January 3, 2023, Brentwood Police Department reported an allegation of serious misconduct to POST that Respondent may have engaged in physical abuse, including but not limited to, excessive or unreasonable use of force. On February 6, 2023, I was assigned to conduct an investigation of serious misconduct. In my investigation, I examined the following issue:

1. ***Did Respondent kick Victim 1 to the ground while she was handcuffed behind her back and trying to stand from a seated position? If so, did his actions constitute physical abuse as defined by California Penal Code Section 13510.8(b)(3) and POST Commission Regulation 1205(a)(3) and, if so, are there reasonable grounds to recommend revocation or suspension of his peace officer certificates?***

    a. ***Finding*: *The clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(3) and POST Regulation 1205(a)(3) when he kicked Victim 1 while she was handcuffed behind her back and trying to stand from a seated position because it was unreasonable.***

Based upon the evidence presented in the Brentwood Police Department Internal Affairs investigation report and my investigation, reasonable grounds exist for the Respondent's peace officer certification to be subject to disciplinary action, which is either revocation or suspension by the Commission pursuant to California Penal Code Section 13510.85(a)(1).

[1] Attachment A (Brentwood Police Department IA Report 22-07 at 1).

II. Methodology/Investigative Process

A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation in accordance with the regulations and policies of POST. During my investigation, I reviewed the Internal Affairs investigation, which included interviews of five witnesses, including Respondent. I also conducted an independent investigation, which included review of the Internal Affairs investigative report, review of the BWC footage, Notice of Intent to Terminate, Notice of Termination, Hearing Officer's Recommendation, Brentwood City Manager's Decision Rejecting Hearing Officer's Determination, Letter of Commendation, and a previous Internal Affairs investigation report.

Based on my review of the entire record of the administrative investigation, including the statements of the witnesses, evidence collected during the administrative investigation, the written investigative report, and my own independent investigation, I find that the administrative investigation findings were supported by reasonable grounds.

I analyzed the information in this case under the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt." Based on the statements of the witnesses, as well as the documentary evidence available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.[2]

B. Employment History and Peace Officer Certifications

POST issued the following professional certifications to Respondent:

Certificate Type	***Certificate Number***	***Date Issued***
Basic	194086	3/8/2019
Intermediate	145737	12/18/2020

[2] A recent California State Personnel Board precedential opinion provides guidance about credibility: "A witness's credibility may be determined based on "any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony." (Evid. Code, § 780.) Relevant factors include the witness's demeanor while testifying, ability to perceive or recall, bias or other motive, and attitude toward the pending action, as well as consistency of the witness's testimony with previous statements, and the existence or nonexistence of any fact the witness testified to. (Evid. Code, § 780, subds. (a), (c), (d), (f)-(j).) When a witness testifies falsely as to some matters, some or all of his other testimony may be disregarded, whether contradicted or not. (Halagan v. Ohanesian (1967) 257 Cal.App.2d 14, 21.)"

Respondent began work as a police officer with Brentwood Police Department on August 1, 2017. He remained with Brentwood Police Department until his termination on August 31, 2022.[3]

Respondent appealed his termination. On December 12, 2023, after an administrative hearing, the hearing officer issued an advisory recommendation to the City Manager. The hearing officer found by a preponderance of the evidence that the Respondent engaged in acts that violated department policy by using excessive force. The hearing officer, however, found that the department abused its discretion when imposing the discipline of termination.[4] The hearing officer recommended a one week suspension instead.[5] Nevertheless, on January 23, 2024, the Brentwood City Manager rejected the hearing officer's recommendation for a one week suspension and upheld the department's termination of Respondent's employment.[6]

C. Other Allegations of Serious Misconduct

POST is not aware of any other allegations of serious misconduct against Respondent.

As discussed below, POST is aware of a previous Internal Affairs investigation involving a use of force complaint and a Letter of Commendation.

D. Summary of Investigations Relating to the Allegations in This Case

1. IA Case 22-07 and Appeal

Brentwood Police Department opened an Internal Affairs investigation of Respondent's use of force against Victim 1. The department retained Todd Simonson, Law Office of Todd Simonson, to conduct the investigation and relied upon his analysis of the use of force as a basis for its decision. Simonson issued a report of his findings dated June 29, 2022. In the investigation, Simonson found that a preponderance of the evidence substantiated that Respondent violated Brentwood Police Department Use of Force Policy Manual Section 300.3.2 when he kicked Victim 1 with "substantial force to her left torso area with his right foot, while [Victim 1] was handcuffed and effectively surrounded by three officers. . . ."[7] Simonson found that Respondent's use of force was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance."[8]

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[3] Attachment B (EDI Profile of Respondent).
[4] Attachment C (Hearing Officer's Recommendation at 17-18 (12/12/2023)).
[5] Attachment C (Hearing Officer's Recommendation at 19 (12/12/2023)).
[6] Attachment D (Letter from Tim Ogden, Brentwood City Manager, to James E. "Jeb" Brown and Julia D. Fox, City Manager's Decision Rejecting Hearing Officer's Recommendation (1/23/2024)).
[7] Attachment A (Brentwood IA Report 22-07 at 1).
[8] Attachment A (Brentwood IA Report 22-07 at 1).

Simonson examined the Use of Force policy and factors listed in the policy to determine the reasonableness of the force.

Simonson found that Respondent was aware that Victim 1 had a history of methamphetamine and alcohol abuse, erratic behavior, and violence during encounters with police officers, including spitting on them. Respondent had six documented encounters with Victim 1, including one during which Victim 1 ran away from Respondent.[9]

Simonson further found that Victim 1 was acting erratically on April 23, 2022, and was either under the influence of alcohol, drugs, or both. Victim 1 exhibited what Simonson characterized as a "'rollercoaster' of emotions – shifting between calm and yelling at the officers, then became agitated and upset to the point that her voice was louder and more audible . . . ."[10] Victim 1 also regularly and frequently used vulgar language.[11]

In sustaining the allegation that Respondent's use of force was unreasonable, Simonson relied on many factors, including the following:

- Victim 1 was effectively restrained with handcuffs securing her arms behind her back;
- Victim 1 was impaired by drugs and/or alcohol;
- Victim 1 did not present an immediate threat to the officers or anyone else at the time of the use of force; and
- Victim 1 did not "present any reasonably foreseeable potential of injury to the three officers or any other person, did not present a reasonably foreseeable risk of escape, and there was no apparent need for 'immediate control' of [Victim 1] or 'a prompt resolution of the situation.'[12]

Simonson rejected Respondent's statements that he used force to avoid being spit on because Respondent's own actions in maintaining proximity to Victim 1 after the incident and failing to attempt to obtain a spit hood prior to the incident contradicted his statements.[13] Further, neither of the other officers bore the same concerns about Victim 1.[14] Finally, Simonson found that Respondent's statement that his police academy training justified his use of force to be "substantially rebutted by the evidence."[15]

---

[9] Victim 1 ran away from Respondent approximately three months prior to the use of force at issue in this investigation. Attachment A (Brentwood IA Report 22-07 at 30, footnote 17).
[10] Attachment A (Brentwood IA Report 22-07 at 31).
[11] *E.g.*, Attachment A (Brentwood IA Report 22-07 at 9).
[12] Attachment A (Brentwood IA Report 22-07 at 32).
[13] Attachment A (Brentwood IA Report 22-07 at 32-33).
[14] Attachment A (Brentwood IA Report 22-07 at 33).
[15] Attachment A (Brentwood IA Report 22-07 at 34).

In the Notice of Intent to Terminate, dated August 15, 2022, from Chief Thomas Hansen to Respondent, Chief Hansen stated that Respondent's use of force warranted termination because it was "an egregious use of excessive force."[16] Chief Hansen further stated the Contra Costa County District Attorney was evaluating criminal charges but the filing of criminal charges would not impact the imposition of discipline as the District Attorney uses a different standard of proof.[17] On September 15, 2022, the District Attorney declined to file charges because of insufficient evidence. Following a *Skelly* hearing, Chief Hansen served Respondent with a Notice of Termination, dated August 31, 2022.[18] As stated in the Notice of Termination, Chief Hansen considered – and rejected – Respondent's and Respondent's counsel's arguments that the use of force was justified because of the threat of Victim 1 spitting or fighting. Chief Hansen stated, "Nothing can justify the violent force that you used under the circumstances. You were not faced with imminent danger and the need to make a split-second decision. You employed what can be fairly described as **bully tactics**."[19]

On September 2, 2022, Matejcek appealed the termination pursuant to Brentwood Police Department Policy Manual, Policy 1028.[20] On December 12, 2023, Paul D. Roose, the hearing officer, issued a Hearing Officer Recommendation Pursuant to Department Policy Manual ("Hearing Officer's Recommendation").[21] At the hearing, the hearing officer heard testimony, including testimony from a subject matter expert offered by Matejcek, and a Brentwood Police Department sergeant who led the department's defensive tactics program and provided training to department officers. The hearing officer found that the preponderance of the evidence substantiated that Respondent "engaged in an unauthorized use of force in violation of department policy" and the "decision to kick/push the handcuffed civilian was not reasonable."[22] The hearing officer reasoned that:

- Respondent and his fellow officers were not in "imminent danger;"
- If Victim 1 spat at the officers, they could have stepped aside;

[16] Attachment E (Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022) at 6).
[17] Attachment E (Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022) at 5).
[18] Attachment F (Memorandum from Police Chief Thomas Hansen to Officer Paul Metejcek, Notice of Termination (8/31/2022)).
[19] Attachment E (Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022) at 6) (emphasis supplied)).
[20] Attachment G (Letter from Julia D. Fox, Rains Lucia Stern St. Phalle & Silver, to Tim Ogden, Brentwood City Manager, Appeal of Notice of Termination (9/2/2022)).
[21] Under Brentwood Police Department Policy No. 1028, the recommendation of the hearing officer is advisory to the City Manager, unless the City Manager is the individual who initially imposed the discipline being appealed, in which case the recommendation is advisory to the City Council. The recommendation is not binding in any way on the City Manager (or City Council), who may either accept, modify, or reject the recommended decision.
[22] Attachment C (Hearing Officer Recommendation (12/12/2023) at 16).

- Respondent's reasoning was "after the fact justification" and any danger to potential civilians in the area was "speculative;"
- Kicking a handcuffed person was not a trained tactic;
- Respondent's reasoning that Victim 1 would spit at him is undermined by his own actions;
- Respondent's actions were not a "'split-second' decision."[23]

Although the hearing officer found that Respondent's use of force was not reasonable, the hearing officer also found that the department abused its discretion when it chose to terminate Respondent. The hearing officer therefore recommended a one week suspension on the grounds that suspension was a "progressive discipline" and a suspension would serve as a "clear signal to [Respondent] that his was a serious infraction."[24] The hearing officer reasoned:

> Retraining is not the appropriate remedy in this situation. No evidence emerged that [Respondent] was inadequately trained. He knew what to do. His lapse was in decision-making, apparently allowing his emotions to overcome his better judgment.[25]

Following receipt of the Hearing Officer's Recommendation, on January 23, 2024, Tim Ogden, Brentwood City Manager, rejected the hearing officer's recommendation and upheld the department's decision to terminate Respondent. In rendering this decision, Mr. Ogden stated that he relied on Chief Hansen's testimony during the hearing, including Chief Hansen's statements that:

- "'police officers are held at a high standard;'"
- "'[u]se of force like this breaks down trust in the community;'"
- Respondent did not acknowledge wrongdoing;
- He lacked faith that Respondent would use appropriate level of force in other situations in the future.[26]

III. Findings of Fact and Analysis

A. Background

On April 23, 2022, Brentwood Police Department received a call at approximately 5:30 a.m., that a person was screaming near the garden sheds at a local Home Depot. Officers Josh Flynn, Dave Franson, and Respondent responded to the call. There, the officers found Victim 1, a homeless person, inside one of the sheds.

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[23] Attachment C (Hearing Officer Recommendation (12/12/2023) at 16).
[24] Attachment C Hearing Officer Recommendation (12/12/2023) at 19).
[25] Attachment C (Hearing Officer Recommendation (12/12/2023) at 19).
[26] Attachment D (Letter from Tim Ogden, Brentwood City Manager, to James E. "Jeb" Brown and Julia D. Fox, City Manager's Decision Rejecting Hearing Officer's Recommendation (1/23/2024) at 2).

Respondent placed Victim 1 in handcuffs and placed her in a seated position in front of the open door to the shed. While seated, Victim 1 engaged in discussions with Respondent. Victim 1 alternated between being verbally abusive, yelling at the officers at several points using foul language, and routine conversation. Victim 1 appeared to the officers to be drunk and, based upon her erratic behavior and statements about being shot with a laser, the officers later stated that they believed that she had possibly used illegal drugs.[27]

BWC captured most of what transpired next. Officer Flynn turned off his BWC after no one other than Victim 1 was found in the sheds because, he said, he did not think anyone else was in the sheds and Victim 1 seemed to have calmed down.[28] Respondent activated his BWC; however, he turned it off after approximately two minutes into the incident. Respondent stated during his Internal Affairs interview that the situation was "static" because Victim 1 was in handcuffs, she was seated on the ground, and the officers had triangulated her.[29] Officer Franson activated his BWC; however, he turned off the audio approximately one minute prior to Respondent's use of force at issue in this investigation. Officer Franson stated he did not remember why he turned off the audio but assumed it was because the officers were going to discuss their plan for how to deal with Victim 1.[30]

Approximately seven and one-half minutes after being seated, Victim 1 started to stand up. As she was standing, the officers stated during their internal affairs interviews that they told Victim 1 to stay seated and not to stand up.[31] At the time that Victim 1 was seated, Respondent and Flynn stood approximately four or five feet from Victim 1, according to Respondent. Respondent and Flynn faced Victim 1, while Franson stood to her side. Respondent had initially positioned Victim 1 on the ground with her legs crossed. She remained handcuffed at the time she started to stand up.

Respondent stated that Victim 1 started increasing the volume of her voice and her abusive language. Respondent stated that he intended simply to knock her off balance, and that he did not intend to harm her. Respondent stated, "I was just trying to get her off balance into the door so that she would go back down and that way I can get behind her, pick her up."[32] Respondent stated that Victim 1 had previously spat in

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[27] *E.g.*, Attachment H (Respondent IA Interview Transcript at 41).
[28] Attachment A (Brentwood Police Department IA Report 22-07 at 5, 7); Attachment I (Flynn IA Interview Transcript at 5-6).
[29] Attachment A (Brentwood Police Department IA Report 22-07 at 18); Attachment H (Respondent IA Interview Transcript at 35).
[30] Attachment A (Brentwood Police Department IA Report 22-07 at 5, 11); Attachment J (Franson IA Interview Transcript at 16-17).
[31] Attachment J (Franson IA Interview Transcript at 18); Attachment H (Respondent IA Interview Transcript at 49).
[32] Attachment H (Respondent IA Interview Transcript at 53).

officers' faces and had been able to slide her wrists under her feet while handcuffed to get her handcuffed hands in front of her.[33]

Officer Franson's BWC footage showed that Respondent took three quick steps toward Victim 1 at 5:40:44 AM and kicked Victim 1 with his right foot in her left midsection or upper thigh.[34] Victim 1 fell back toward the open door of the shed, hitting the open door and falling to the ground. Neither Flynn nor Franson made any physical movements when Victim 1 began to get to her feet to indicate that Victim 1 was a flight risk or otherwise posed a threat of physical harm to any of the three officers. Victim 1 was not injured in the encounter.

After the incident, Flynn and Franson said that they discussed Respondent's use of force against Victim 1 while walking behind Respondent and Victim 1 to the patrol vehicle. Both stated they expressed surprise to each other that Respondent used force because they said there was no threat or safety issue requiring the use of force or that level of force.[35] Once at the patrol vehicle, Flynn stated that the three officers discussed summoning an ambulance for Victim 1 due to the use of force. She was quiet after the kick and stated at some point that she had been assaulted.[36] An ambulance arrived and, according to Franson, left after a brief examination of Victim 1 because the EMTs determined she did not require medical treatment.[37]

Respondent arrested Victim 1 for violation of California Penal Code Section 647(f)(public intoxication). While a Community Services Officer was preparing to transport Victim 1 to the county jail, Respondent stated that she told him she had AIDS or HIV and spat at him. Accordingly, Victim 1 was also charged with violation of California Penal Code Section 243(b)(battery on a peace officer).[38]

The table below sets forth a summary timeline of key events discussed in this Investigative Summary and Findings that are relevant to serious misconduct allegations of Physical Abuse.

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[33] Attachment A (Brentwood Police Department IA Report 22-07 at 21-22); Attachment H (Respondent IA Interview Transcript at 51).
[34] Attachment K (Franson BWC at 5:40:44 AM).
[35] Attachment A (Brentwood Police Department IA Report 22-07 at 8 (Flynn); Attachment A (Brentwood Police Department IA Report 22-07 at 11 (Franson)); Attachment J (Franson IA Interview Transcript at 20 ("Absolutely, I'm still surprised."); Attachment I (Flynn IA Interview Transcript at 22 ("I was very surprised. I think the video reflects that also.").
[36] Attachment A (Brentwood Police Department IA Report 22-07 at 8); Attachment J (Franson IA Interview Transcript at 27).
[37] Attachment A (Brentwood Police Department IA Report 22-07 at 12); Attachment J (Franson IA Interview Transcript at 27).
[38] Attachment H (Respondent IA Interview Transcript at 67).

Time of Day	Summary	Source
5:32:05 AM	Respondent: "Police department. Step outside." Respondent knocks on garden shed.	Respondent BWC[39]
5:32:25 AM - 5:33:29 AM	Victim 1 exits shed. Respondent: "Come out." Officer: "Hey, let me see your hands." Respondent: "Sit down, sit down, sit down. [Victim 1], sit down." Respondent holds Victim 1. Victim 1: "What are you doing, man?" Respondent: "Sit down, sit down, sit down." Victim 1: "Ow, what are you doing?" Respondent: "Put your hands behind your back." Victim 1: "Why?" Respondent: "Because I said so." Respondent places her left arm behind her back. Franson to an officer: "Watch your back, is there anybody else in there?" Victim 1: "I just got shot in my nose." Respondent places handcuffs on Victim 1 behind her back. (5:33:13 AM). He does not conduct a pat down search. Respondent: "Can I get some light over here, please?"	Franson BWC;[40] Respondent BWC

[39] Attachment L (Respondent BWC).
[40] Attachment K (Franson BWC).

Time of Day	Summary	Source
	Another officer walks over with flashlight. Respondent leans over Victim 1, who is holding items in her right hand. Respondent: "Drop your stuff, drop your stuff." Victim 1: "Somebody just fucking shot me in my nose." . . . "Thank God you guys heard me scream." Respondent: "Why didn't you step outside when we told you to?" Victim 1: "Because I didn't know who it was." Respondent: "We said police department." Victim 1: "Someone shot me in my nose. Someone shot me in my nose. Fucking shot me in my nose. Look. On the corner of it." Respondent: "Shot you in your nose? With what?" Respondent: "Shot you in your nose?" Victim 1: "Yeah." Respondent: "With what?" Victim 1: "I have no clue, looked like a laser." Respondent: "Who was it?" Victim 1: "It was that, that guy with the uh. The fucking, the one with the fucking the hawk nose, or whatever." Respondent: "The hawk nose?” Victim 1: "Yeah." Respondent: "I don't know what you're talking about."	

Time of Day	Summary	Source
	Victim 1: "He fucking, he called me up or whatever and he's like, he's like, hey, he's like, he's like, yeah, it's fine. He's like stop by Tough Shed or whatever." Respondent: "What'd he look like?" Victim 1: "Fucking, like a, like a big ass fucking nose." Respondent: "Yeah, but like, was he black, white, Hispanic?" Victim 1: "He was Mexican." Respondent: "He was Mexican?" Victim 1: "Yeah."	
5:32:23 AM – 5:32:34 AM	Respondent handcuffs Victim 1.	Respondent BWC
5:33:59 AM	Respondent turns off his BWC.	Respondent BWC
5:34:45 AM - 5:38:24 AM	Victim 1 explains how a man shot her in the nose, made it looked like she slipped and fell, and locked her in the garden shed.	Franson BWC
5:38:24 AM - 5:40:43 AM	Victim 1 is in a seated position and is handcuffed with her hands behind her back. Respondent and Flynn stand in front of Victim 1 approximately 4-6 feet away from her. Franson stands to her left approximately 4-6 feet away. Respondent: "[Victim 1], why is it so dirty over here? What is all this stuff?" Victim 1 starts screaming. Victim 1 states she did not want the officers to continue following her, tells the officers she can drink as much beer as she wants, and curses at the officers. Respondent: "Are you thinking of harming yourself?" Victim 1: "No." Respondent: "Are you thinking of harming anybody else?"	Franson BWC

Time of Day	Summary	Source
	Victim 1: "No." Respondent: "Oh, that was a softball question. And you did not hit that one." Victim 1: "Uh, I don't play softball." Officer: "I don't, either." Victim 1 continues to talk about drinking beer.	
5:39:43 AM	Officer makes inaudible statement. Franson turns BWC audio off.	Franson BWC
5:40:43 AM	Victim 1 starts to stand from cross-legged seated position.	Franson BWC
5:40:44 AM	Respondent takes 3 quick steps toward Victim 1. Flynn does not move.	Franson BWC
5:40:45 AM	Respondent kicks Victim 1 in torso. Flynn and Franson stand motionless while Respondent kicks Victim 1.	Franson BWC
5:40:46 AM	Victim 1 falls into back side of the open door to shed and to the ground. Respondent approaches Victim 1 after she falls and lifts her up.	Franson BWC
5:40:49 AM	Flynn starts walking toward Respondent and Victim 1.	Franson BWC
5:40:49 AM	Respondent grabs Victim 1 by upper arms from her back.	Franson BWC
5:40:53 AM - 5:41:07 AM	Respondent helps Victim 1 stand up. Respondent does not need another officer's assistance. Flynn approaches and stands on the side next to Respondent and Victim 1. Franson approaches and stands in front of Respondent and Victim 1. Respondent walks Victim 1 to patrol car. Flynn and Franson follow Respondent and Victim 1 from approximately 20 feet away.	Franson BWC
5:41:13 AM - 5:45:36 AM	Respondent places Victim 1 next to hood of patrol car and places Victim 1 in a position of advantage to conduct a pat down search of Victim 1. A second officer reaches down and takes an item from Victim 1's lower leg area. Respondent pulls items from Victim 1's pockets and places them on patrol car hood. Respondent double locks Victim 1's handcuffs. Respondent places Victim 1 into patrol car.	Franson BWC

The table below shows significant events and the time elapsed between them.

Event (Start)	Event (End)	Time of Day of Event	Amount of Time Elapsed (Minutes:Seconds)
Respondent makes initial contact with Victim 1 by announcing police presence.	Respondent handcuffs Victim 1.	5:32:05 AM - 5:33:13 AM	1:08
Respondent makes initial contact with Victim 1 by announcing police presence.	Respondent turns off BWC	5:32:05 AM – 5:33:59 AM	1:54
Victim 1 is handcuffed in a seated position.	Victim 1 starts to stand.	5:33:13 AM - 5:40:43 AM	7:30
Franson turns off BWC audio.	Respondent kicks Victim 1.	5:39:43 AM – 5:40:44 AM	1:01
Respondent kicks Victim 1.	Flynn makes motion to assist Respondent by walking toward Respondent.	5:40:44 AM - 5:40:49 AM	0:05

B. Physical Abuse Analysis

California Penal Code 13510.8(b)(3) and POST Regulation 1205(a)(3) each state that the definition of "serious misconduct" shall include:

> (3) Physical abuse, including, but not limited to, the excessive or unreasonable use of force.

The clear and convincing evidence substantiated that Respondent kicked Victim 1 on April 23, 2022, while she was handcuffed. The clear and convincing evidence further substantiated that Respondent's use of force was unreasonable and excessive in violation of California Penal Code Section 13510.8(b)(3) and POST Regulation 1205(a)(3).

1. The Use of Force Was Unreasonable and Excessive.

The clear and convincing evidence substantiated that Respondent's use of force was excessive and unreasonable, either or both. The evidence showed that just prior to and at the time that Respondent kicked Victim 1, she did not pose a threat to Respondent, the other officers, or anyone else, was not resisting, and was not attempting to escape. In reaching this conclusion, I reviewed Respondent's statements during his internal affairs interview to understand his perspective. I also reviewed the statements of Flynn and Franson to understand their perspective. As officers also at

the scene and faced with the same circumstances as Respondent, Flynn's and Franson's actions – or lack thereof – are as equally significant to understand the level of resistance and threat, Victim 1 posed under the totality of the circumstances the officers faced. Neither Flynn nor Franson stated the force used by Respondent was reasonable. In fact, immediately after Respondent kicked Victim 1, both Flynn and Franson stated that they were surprised by the level of force used given the lack of resistance.

While Respondent stated during his internal affairs interview that Victim 1 was resisting,[41] the clear and convincing evidence substantiated that Victim 1 did not objectively pose a threat and was not resisting. When Victim 1 attempted to rise from a seated position, Respondent was not faced with a split-second decision about how to respond to a threat. This is apparent from the initial contact the officers had with Victim 1, as Victim 1 consistently did not display indicators of resistance, threat, or escape.

For example, the handcuffing process was relatively straightforward. Respondent's BWC showed that, from the time she exited the shed to the time Respondent handcuffed her, Respondent had effective control over Victim 1 and that she did not resist the handcuffing process.[42] Officers ordered Victim 1 to sit down several times and when ordered to put her hands behind her back, although she questioned why,[43] she did not resist Respondent's physical efforts to enforce commands to sit down or place her hands behind her back.[44]

The fact that Respondent was the only officer who was physically in contact with Victim 1 also illustrated her lack of resistance at this early stage of the contact and the officers' belief that Victim 1 was not a safety threat. After Victim 1 sat down, Flynn immediately started to explore the area and left his cover position from which he stood ready to assist Respondent if he required assistance in controlling Victim 1.[45] Although Franson provided light to Respondent and continued to stand ready to assist Respondent while Flynn entered the shed, he did not have physical contact with Victim 1.

After she was seated, Respondent noticed that Victim 1 had items in her hand. Respondent ordered Victim 1 to drop what she was holding.[46] Respondent shook her hands and she immediately dropped the items in her hand without any attempt to

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[41] Attachment H (Respondent IA Interview Transcript at 67).
[42] Attachment L (Respondent BWC at 5:32:23 AM – 5:32:32 AM); Attachment K (Franson BWC at 5:32:23 AM – 5:32:32 AM).
[43] I cannot reasonably find that Victim 1's questions and that officers had to order her several times to sit down constituted even passive resistance. At best, Victim 1 appeared bewildered, although lucid.
[44] Attachment L (Respondent BWC at 5:32:23 AM - 5:32:34 AM); Attachment K (Franson BWC at 5:32:23 AM - 5:32:34 AM).
[45] Attachment L (Respondent BWC at 5:32:37 AM); Attachment K (Franson BWC at 5:32:37 AM).
[46] Attachment L (Respondent BWC at 5:32:48AM); Attachment K (Franson BWC at 5:32:48 AM).

squeeze her hand to continue holding the items.[47] Respondent used her name because he recognized who she was.[48] Flynn returned to the area where Victim 1 was being detained.

As mentioned above, the handcuffing process was relatively straightforward. The BWC showed that Respondent had control of her hands[49] and that Victim 1 did not resist at this time. When Respondent applied the handcuffs to Victim 1's wrists, he applied light pressure at first, then adjusted them to a tighter position.[50] During this process, the noise of the ratchet of the handcuffs illustrated that Respondent did not apply the handcuffs in an aggressive manner.[51] Also during this process, the audio of the BWC showed that Respondent and Victim 1 engaged in a conversation free from emotion or stress. Further, Respondent's BWC did not show that Respondent double-locked the handcuffs or conduct a pat search of Victim 1.[52] Respondent did not ask Victim 1 if she had any weapons and he did not state later at his internal affairs interview that he was concerned that she had weapons. All of these factors demonstrate that Victim 1 did not resist at this stage of the encounter and that Respondent and the other officers, did not believe at the time that she posed a threat to him or the other officers.

After being handcuffed, Victim 1 was seated for approximately eight minutes without any attempt to resist before she attempted to rise to a standing position. During this time period, Respondent, the other officers, and Victim 1 engaged in conversation. The conversation – and Respondent's knowledge of Victim 1's past history of drug and alcohol abuse – provided Respondent with enough basis to reasonably form an opinion that Victim 1 was experiencing a mental health episode. The officers themselves demonstrated a belief that Victim 1 was having mental health problems when one of them asked if Victim 1 had intentions to harm herself or others.

After Respondent started asking Victim 1 about her property and drinking alcohol, Victim 1's demeanor changed. She became aggressive and started yelling at the officers and cursing.[53] Respondent escalated the tone of the conversation, responding to her delay in answering his question whether she intended to harm others by stating, "Oh, that was a softball question. And you did not hit that one."[54] The evidence reasonably showed that what had previously been a light conversation turned at this point toward a near-mocking of Victim 1 and sarcastic exchanges between Victim 1 and Respondent.[55] Franson turned the audio on his BWC off nearly

[47] Attachment L (Respondent BWC at 5:32:48 AM).
[48] Attachment K (Franson BWC at 5:32:51 AM).
[49] Attachment L (Respondent BWC at 5:32:54 AM).
[50] Attachment L (Respondent BWC at 5:32:02 AM – 5:32:11 AM).
[51] Attachment L (Respondent BWC at 5:32:03 AM – 5:32:11 AM).
[52] Respondent confirmed that he did not pat-search Victim 1 during his internal affairs interview. Attachment H (Respondent IA Interview Transcript at 32).
[53] Attachment K (Franson BWC at 5:32:24 AM – 5:40:43 AM).
[54] Attachment K (Franson BWC at 5:39:01 AM).
[55] Attachment L (Respondent BWC at 5:39:17 AM).

immediately after these exchanges at 5:39:43 AM. Silent video footage showed what continued to be dialog between the officers and Victim 1 for the next minute or so. Victim 1 then attempted to stand from a cross-legged seated position while handcuffed behind her back. In response, the BWC showed that Respondent immediately rushed at Victim 1, taking his first step toward her from several yards away from her even before she had risen to a full standing position.

[56] The BWC also showed the force with which Respondent kicked Victim 1 nearly picked her up completely off the ground and backwards into the garden shed door, where she fell to the ground.[57]

The clear and convincing evidence substantiated that Respondent's actions directed at Victim 1's attempt to stand are unreasonable and excessive. Given the evidence, Victim 1 did not reasonably pose a threat to the officers or others and was not resisting or attempting to escape.[58] Respondent took three quick strides toward Victim 1 and kicked her with such force that he knocked her backward into the open door of the shed and to the ground. During this time, neither Flynn nor Franson even flinched when they saw her attempt to stand. I conclude that meant she did not appear to Flynn or Franson to be resisting, threatening anyone, or attempting to escape. Both Flynn and Franson stated they were surprised by Respondent's use of force under the circumstances.[59] As Flynn stated, "I didn't see [Victim 1] getting up as a major issue."[60] BWC showed that Flynn remained motionless until after Respondent picked up Victim 1. Neither Flynn nor Franson had time to intervene to prevent the use of force. After Respondent's kick to Victim 1, neither Flynn nor Franson reacted in a manner that showed exigency to the situation that Respondent said existed. Both walked calmly over to assist Respondent recover Victim 1 from the ground.

Respondent stated during his internal affairs interview that he believed a kick was an appropriate use of force for someone who was actively resisting,[61] that she was actively resisting when she attempted to stand,[62] that he knew who Victim 1 was, and that he knew how "physically combative she becomes, [t]hat she actively resists,"[63] that

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[56] Attachment K (Franson BWC at 5:40:44 AM).
[57] Attachment K (Franson BWC at 5:40:46 AM).
[58] There was no evidence that Victim 1 had attempted to slip her hands from behind her to in front of her, as Respondent stated she had previously done or attempted to do with him. In fact, Respondent stated that because Victim 1 was seated, she could not attempt to slip her hands to her front. Attachment H (Respondent IA Interview Transcript at 52).
[59] Attachment A (Brentwood Police Department IA Report 22-07 at 11 (6/29/2022)(quoting Franson: "I was shocked by what happened. I never saw it coming. I'm still baffled as to why it happened. I don't understand it."); Attachment I (Flynn IA Interview Transcript at 22 ("I was very surprised. I think the video reflects that also.").
[60] Attachment I (Flynn IA Interview Transcript at 22).
[61] Attachment H (Respondent IA Interview Transcript at 13).
[62] Attachment H (Respondent IA Interview Transcript at 67).
[63] Attachment H (Respondent IA Interview Transcript at 31).

she spit, kicked, and bit officers.[64] Respondent stated during his appeal hearing that he kicked Victim 1 because he knew she spit at officers in the past and he "used [his] foot to keep [himself] as far away from her as [he] could, instead of getting my hands close to her and pushing her back down to the ground."[65] I did not find Respondent's statements to be credible about the risk level Victim 1 posed. These statements are *post hoc* rationalizations to justify his actions and stand in contrast to Franson's and Flynn's statements about their perspectives at the time of the incident. Kicking Victim 1 brought Respondent closer to her and there was no indication in the previous eight to ten minutes of his contact with Victim 1 that she acted in any manner that would indicate she was going to spit at him.

Franson stated his perspective on the lack of risk Victim 1 posed:

> Well, first off she's handcuffed. She's a fairly small person, that's comparing her to me. Officer Matejcek's size is different than mine [footnote 2 omitted], it's different than Flynn's, he's smaller than both of us as far as height ... Yeah, so comparing size, the fact she's handcuffed, I believe that she had been pat searched at that point, so there's no concern. I mean, maybe biting, but she wasn't showing us that as an indicator that she might bite us, or spitting, there was none of that going on. It was clearly just way too far, as far as force goes, for that. Like you said, grabbing an arm, verbal commands to light touch, to maybe a control hold, would be appropriate under those circumstances, from what I recall at the time of that incident.[66]

Likewise, Flynn stated during his internal affairs interview that Victim 1 did not pose a threat of violence: "No, just the same, 'you guys are pigs. You guys are this, you guys are that.'"[67] Flynn also stated that Victim 1 was not a flight risk: "No. I thought the worst we'd have to do is maybe take a couple running steps to catch her if she tried to run since she was in handcuffs."[68]

Respondent could have engaged in less intrusive and reasonable alternatives to kicking Victim 1. As Flynn and Franson said during their IA interviews, these options included additional "verbal commands, maintaining distance to further observe [Victim 1] and her intentions, using a control hold or grabbing her arm, and either pulling

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[64] Attachment H (Respondent IA Interview Transcript at 69).
[65] Attachment C (Hearing Officer's Recommendation at 7 (12/12/2023)). *Compare* Attachment H (Respondent IA Interview Transcript at 70) ("Yeah. So that would mean I would have to bring my face closer to hers. Right? And I know that she spits, which she eventually did, and that's why I didn't want to use my hands and just simply grab her and take her to the car.").
[66] Attachment A (Brentwood Police Department IA Report 22-07 at 9-10 (6/29/2022)). Respondent's statement about Victim 1's size is similarly incredible. He stated her weight was "'closer to 170, 180.'" Attachment A (Brentwood Police Department IA Report 22-07 at 16 (6/29/2022)). In fact, Respondent had not pat-searched Victim 1. Attachment H (Respondent IA Interview Transcript at 32).
[67] Attachment I (Flynn IA Interview Transcript at 20).
[68] Attachment I (Flynn IA Interview Transcript at 21).

[Victim 1] back down into a seated position, or escorting her to one of the nearby patrol vehicles."[69]

In addition to being unreasonable, as described above, the clear and convincing evidence substantiated that Respondent's use of force was excessive. Respondent stated during his internal affairs interview his thoughts about the level of force he used:

> So what I saw here was she's got this solid backdrop behind her, as far as the wooden door. If I push her into the door, now she'll be thrown off balance. She could slide down the door, back onto her butt and not hit her head on anything.[70]

The internal affairs investigator explored the level of force in the following colloquy during Respondent's interview:

> Paul Matejcek:
>
> Yes. And I didn't use... I used only enough to push her off, but I wouldn't have used any more force if I had pushed her back down with my hands, if that makes sense.
>
> Todd Simonson:
>
> No, explain that to me.
>
> Paul Matejcek:
>
> I used the same amount, right? So regardless if I was pushing her with my foot or if I was pushing her with my hands, the same amount.
>
> Todd Simonson:
>
> You would've used the same amount of force to knock her off balance to get her on her butt in a position you could handle her without her spitting on you?
>
> Paul Matejcek:
>
> No, with my foot. So I would've used the same amount of force to push her with my foot as I would have with my hands to push her into that door so that way she would be off balance.

[69] Attachment A (Brentwood Police Department IA Report 22-07 at 35).
[70] Attachment H (Respondent IA Interview Transcript at 52).

Todd Simonson:

Okay. So, you think if you used your hands, you would've shoved her-

Paul Matejcek:

The same amount of force.

Todd Simonson:

Okay.

Paul Matejcek:

The same amount of pressure.

Todd Simonson:

So I guess I'm just kind of asking in a roundabout way because it happens, kind of the, I don't know my own strength kind of thing. Did you intend to use the amount of force behind that kick as you did?

Paul Matejcek:

Yes, because I believe that was the least intrusive force method as well as that was the smallest amount of force to get her to do what I wanted her to do.[71]

Respondent's statements about the level of force he used are not credible, especially in light of the BWC footage that showed the impact to Victim 1. The BWC showed Victim 1 slamming into the shed door and to the ground in a violent fashion. Fortunately, Victim 1 was not injured.

Respondent's level of force was not proportional to even the threat Respondent stated Victim 1 posed. She was not – as he feared – spitting, kicking, and biting. At most, Victim 1 was vocal in stating her views and attempting to stand. The officers also all stated their belief Victim 1 was under the influence of drugs and/or alcohol and given that her hands were cuffed behind her back, a kick was not "proportional to the seriousness of the offense or the reasonably perceived level of actual or threatened resistance," as Brentwood Police Department Use of Force policy states.

In sum, the clear and convincing evidence substantiated that Respondent's use of force was not reasonable and was excessive.

[71] Attachment H (Respondent IA Interview Transcript at 53-54).

2. Prior Conduct and Likelihood of Recurrence Warrant Regulatory Action

POST Regulation 1213 provides that the Commission shall consider a variety of factors in "considering whether to take action against a peace officer's certification, and in considering whether a revocation or suspension is appropriate." Because of the finding that clear and convincing evidence substantiated unreasonable force occurred, I obtained evidence in this case that relates to two factors set forth in POST Regulation 1213 for consideration by the Commission:

- "prior conduct, discipline and service record"[72]
- "the likelihood of recurrence"

In 2020, Respondent was the subject of an internal affairs investigation that involved similar circumstances to this case.[73] Specifically, as was the case here, the allegations against Respondent in that case included his use of unreasonable force against a restrained, spitting, and belligerent female subject who appeared to be experiencing a mental health crisis and refused to remain seated.[74] The investigator referred his factual gatherings to the police chief, who found that a preponderance of the evidence did not sustain that Respondent's conduct constituted a policy violation for unreasonable or unwarranted force on a person under arrest.[75]

Although the 2020 IA investigation resulted in a finding of not sustained, analysis of the POST Regulation 1213 factors above is warranted for consideration whether a revocation or suspension is warranted as evidence of prior misconduct by the Respondent that further shows the likelihood that this type of misconduct will reoccur in the future.

The 2020 IA stemmed from Respondent's actions during a service call involving a pregnant woman experiencing a mental health episode. On May 7, 2020, a bystander observing Respondent's actions related to a call for service involving a pregnant woman [referred to herein as Victim 2] who threatened to drive her vehicle off a bridge. The bystander alleged that Respondent lost "control of his emotions,

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[72] Respondent received a letter of recognition on September 9, 2019. Respondent and two other officers responded to a service call involving the detention of an individual on probation who was known to be associated with promoting side shows and a previous incident involving a gunshot wound. Respondent and the officers conducted a probation search and located stolen vehicles and evidence of an active chop shop. Attachment M (Memorandum from Sergeant Eric Huesman to Officer Michael Gibson and Respondent, Letter of Recognition for BPD Cases #1904282 & 1904283 (9/9/2019).).

[73] Chief Hansen was the police chief at the time of the 2020 IA investigation, as well as for the IA investigation in this serious misconduct case.

[74] Attachment N (Memorandum from Chief Thomas Hansen to Officer Paul Matejcek, Administrative Investigation IA # 20-03 (6/29/2020)).

[75] According to Brentwood Police Department Policy Manual Section 1019.6.4, the term "not sustained" means "When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member."

resulting in his inability to keep the situation from escalating."[76] The bystander alleged that Respondent "lost control" after Victim 2 became "belligerent, us[ed] profanity, [was] out of control, and was not listening to the officer" and spit on Respondent, Respondent "over-reacted when he threw his forearm into [Victim 2's] chest area in order to put her body position back to the stretcher."[77]

Respondent and another officer arrived at the scene and found Victim 2 seated in the rear hatch of her vehicle. Victim 2 admitted to feelings of wanting to kill herself and had signs and symptoms of being under the influence of an intoxicant.

Victim 2 was belligerent, uncooperative, and yelled at the officers.[78] Victim 2 met the criteria for a mental health evaluation hold. Victim 2 attempted to run away from the officers in what Respondent believed was an attempt to avoid the mental health hold. Respondent restrained Victim 2. Victim 2 resisted. Respondent grabbed her and applied a rear twist lock and escorted her to an ambulance gurney.[79]

Victim 2 then attempted to punch Respondent, at which time Respondent used his body to pull her to the ground and used his right leg to knock her off balance. She landed on the cement roadway. Respondent handcuffed Victim 2 and attempted to seat her on the gurney. Victim 2 continued to refuse to sit down.

Ultimately, after she was handcuffed, the officers and medics were able to force her to sit on an ambulance gurney. There, she spat at Respondent, who then used his right elbow to hold her head down, placed his arm on the left side of her face and turned her head away from him.[80] Respondent admitted stating something to the effect that "you don't fucking spit at the cops" to emphasize he was being serious when Victim 2 was not cooperating.[81] Like in the present case, Respondent did not activate his BWC during the incident.

Although the policy finding was different in IA 20-03, the underlying circumstances are similar to those in this case. Specifically, both incidents involved females who engaged in actions that Respondent perceived as defiant and both females were displaying signs of impaired judgment at the time of their arrest. In the 2020 arrest, the Victim 2 was suffering a mental health crisis that resulted in her being placed on a mental health hold. In this serious misconduct incident, Victim 1 was intoxicated and possibly suffering from a mental health episode at the time of her

[76] Attachment O (Brentwood Police Department IA Report 20-03 at 1).
[77] Attachment O (Brentwood Police Department IA Report 20-03 at 1-2).
[78] Attachment O (Brentwood Police Department IA Report 20-03 at 3).
[79] Attachment O (Brentwood Police Department IA Report 20-03 at 6).
[80] Attachment O (Brentwood Police Department IA Report 20-03 at 6).
[81] The 2020 IA also included an allegation that Respondent violated Brentwood Police Department Policy that prohibited use of "obscene, indecent, profane, or derogatory language while on duty or in uniform." The chief found that Respondent was "exonerated" of this allegation. Brentwood Police Department Policy defines "exonerated" to mean "When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper."

arrest, as demonstrated by her unbelievable claims about how she sustained the injuries to her face when officers initially contacted her and the screaming that prompted Home Depot employees to call the police. As the hearing officer in this serious misconduct case stated, Respondent's "lapse was in decision-making, apparently allowing his emotions to overcome his better judgment."[82] Likewise, I find that the 2020 fact pattern to be similar enough (even with a different outcome) to warrant comment here.[83] The complainant in that case reported that Respondent "lost control of his emotions," which resulted "in his inability to keep the situation from escalating."[84] In both the 2020 incident and in the instant investigation, the Respondent:

- Escalated situations involving individuals experiencing mental health and substance abuse episodes
- Resorted to use of force against restrained, belligerent individuals who attempted to defy Respondent.

Subsequent to the 2020 incident and prior to the 2022 incident, Respondent received additional training. Respondent undertook two training classes related to the use of force and one class related to arrest and control.[85]

C. Reasonable Grounds Exist for Regulatory Action

Reasonable grounds exist for revocation of Respondent's peace officer certificates, including:

- Respondent failed to accept responsibility for his actions, as demonstrated in his IA interview statements that described illogical reasons for his use of force that, for example, he "pushed" Victim 1 with his foot and that Victim 1 was resisting;[86]
- Respondent's actions amounted to "bully tactics" by resorting to use of force as intimidation instead of opting for lesser alternatives; and
- Respondent's previous behavior in escalating situations with a restrained subject that resulted in Respondent's use of force put him on notice that his use of force would result in scrutiny of his emotional responses, especially in situations involving restrained individuals.

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[82] Attachment C (Hearing Officer's Recommendation at 19).
[83] I also considered the 2020 incident in the context of the professional lifespan of Respondent's position as a peace officer certificate holder, including education, training, potential risk to public safety, and rehabilitation efforts.
[84] Attachment O (Brentwood Police Department IA Report 20-03 at 1).
[85] Attachment B (EDI Profile of Respondent).
[86] Attachment H (Respondent IA Interview Transcript at 63 (describing the kick as a "push" with his foot); 67 (her resistance was standing to her feet)).

IV. Supporting Evidence and Documentation

Evidence	Attachment
Brentwood Police Department IA Report 22-07 (6/29/2022)	A
EDI Profile of Respondent	B
Hearing Officer's Recommendation (12/12/2023)	C
Letter from Tim Ogden, Brentwood City Manager, to James E. "Jeb" Brown and Julia D. Fox, City Manager's Decision Rejecting Hearing Officer's Recommendation (1/23/2024)	D
Memorandum from Police Chief Thomas Hansen to Officer Paul Matejcek, Notice of Intent to Terminate (8/15/2022)	E
Memorandum from Police Chief Thomas Hansen to Officer Paul Metejcek, Notice of Termination (8/31/2022)	F
Letter from Julia D. Fox, Rains Lucia Stern St. Phalle & Siliver, to Tim Ogden, Brentwood City Manager, Appeal of Notice of Termination (9/2/2022)	G
Respondent IA Interview Transcript	H
Flynn IA Interview Transcript	I
Franson IA Interview Transcript	J
Franson BWC	K
Respondent BWC	L
Memorandum from Sergeant Eric Huesman to Officer Michael Gibson and Respondent, Letter of Recognition for BPD Cases #1904282 & 1904283 (9/9/2019)	M
Memorandum from Chief Thomas Hansen to Officer Paul Matejcek, Administrative Investigation IA #20-03 (6/29/2020)	N
Brentwood Police Department IA Report 20-03 (6/9/2020)	O

V. Conclusion

As stated above, reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation or suspension of Respondent's peace officer certificates pursuant to California Penal Code Section 13510.8.

Commission on Peace Officer Standards and Training
860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1603
(916) 227-3909 • www.post.ca.gov

EXECUTIVE REVIEW & PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION RECOMMENDATION

DATE: August 15, 2024

CASE #: POST2300017

PEACE OFFICER: Paul Matejcek

POST ID#: C65-U31

AGENCY: Brentwood Police Department

POST CONSULTANT / BC: Kevin Sherburne/Brian South

ALLEGATION(S):

Physical Abuse; including, but not limited to, the excessive or unreasonable use of force.

Respondent used excessive or unreasonable force when respondent kicked a "Victim" in the torso while handcuffed. The Victim did not pose a threat to the surrounding officers, themself, or other members of the public at the time of the use of force. The Victim did not appear to pose a flight risk.

The Peace Officer Standards Accountability Division, Certification Executive Review Panel has reviewed the above referenced case involving alleged serious misconduct and has determined the following:

☒ There are reasonable grounds for suspension or revocation of a peace officer's certification.

POST determined clear and convincing evidence exists to show Respondent used unreasonable force pursuant to 13510.8(b)(3) when he kicked a handcuffed Victim who did not pose an immediate threat to surrounding officers, themselves, or others members of the public.

☐ There is insufficient evidence to support a recommendation of revocation or suspension of certification.

William Darden	William Darden	08/22/2024
Chief Legal Counsel	Signature	Date
Annemarie Del Mugnaio	Annemarie Del Mugnaio	08/22/2024
Assistant Executive Director	Signature	Date
Manuel Alvarez, Jr.	Manuel Alvarez, Jr.	08/23/2024
Executive Director	Signature	Date

cc: Bureau Chief Brian South

cc: Jason Morlock

cc: Chandler Knapp

cc:

Todd Simonson
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LAW OFFICE OF TODD SIMONSON

CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED INVESTIGATIVE REPORT

IA 22-07

Employer: City of Brentwood

Subject: Police Officer Paul Matejcek

Investigator: Todd Simonson

Date: June 29, 2022

Table of Contents

		Page
I.	Introduction	1
II.	Summary of Findings	1
III.	Methodology of the Investigation	2
	A. Persons Interviewed	2
	B. Documents Reviewed	2
IV.	Witness Statement Summaries	3
	A. Josh Flynn	3
	1. Background	3
	2. Relationship with Officer Matejcek and Prior Defensive Tactics Training	3
	3. Arrest of [redacted]	4
	B. David Franson	7
	1. Background	7
	2. Recent Defensive Tactics Training	7
	3. Arrest of [redacted]	7
	C. Mitchell Alvarez	11
	1. Background	11
	2. Involvement with [redacted] Arrest	11
	D. Paul Matejcek	14
	1. Background	14
	2. Relationship with Officers Flynn and Franson; Prior Defensive Tactics Training; and History of Kicks as Approved Use of Force	14
	3. Prior Contacts with [redacted] and Knowledge of Other Officers' Contacts with [redacted]	15
	4. Arrest of [redacted] on April 23, 2022	17
	E. Richard Nance	24
	1. Background	24
	2. Officer Matejcek's Training	25
	3. Prior involvement with this matter	26
	4. Sergeant Nance's review of the Franson body-worn camera video with the Investigator and his opinion regarding Officer Matejcek's use of force	26
V.	Credibility Assessments	28
VI.	Standard Of Proof, Findings, and Analysis	29
	A. Standard of Proof and Keys to Findings	29
	B. Findings and Analysis	29

I. INTRODUCTION

The City of Brentwood ("City"), through its Police Department ("BPD"), retained Todd Simonson ("Investigator") to conduct an investigation into Police Officer Paul Matejcek's use of force against a local V1 -year-old transient named V1 on April 23, 2022.

In summary, at approximately 5:30 a.m., Officer Matejcek and two cover officers—Officers David Franson and Josh Flynn—responded to a call of a person screaming from the area of a line of several garden sheds for sale in the parking lot of the Home Depot on Lone Tree Way and found Ms. V1 hiding in one of the sheds. As shown on video from Officer Franson's body-worn camera, approximately eight minutes after detaining Ms. V1 in handcuffs, seating her on the ground in front of the same shed, and conversing with Ms. V1 about the circumstances that led to her discovery in the shed, Ms. V1 stood up while she remained handcuffed. At that point, Officer Matejcek took about three quick steps toward Ms. V1 and, with his right foot, kicked Ms. V1 on her left torso area, knocking her backwards into the open shed before she fell back to the ground. Officer Matejcek arrested Ms. V1 for Battery on a Peace Officer (Penal Code section 243(b)) and Public Intoxication (Penal Code section 647(f)) and wrote a report describing the incident and characterizing his use of force against V1 as reasonable under the circumstances.

BPD requested the Investigator to determine whether Officer Matejcek's use of force against Ms V1 on April 23, 2022, was reasonable or unreasonable under the circumstances.

This report contains factual findings based upon the information made available in the course of the investigation. While numerous hours were spent reviewing documents and video footage and interviewing witnesses, this report does not purport to include every detail as described by the individuals involved. Rather, it assesses the important facts as they pertain to the incidents investigated.

II. SUMMARY OF FINDINGS

There is sufficient evidence to find that Officer Matejcek used unreasonable force on April 23, 2022, by kicking Ms V1 with substantial force to her left torso area with his right foot, while Ms. V1 was handcuffed and effectively surrounded by three officers, because Ms. V1 stood up contrary to commands to remain seated. After consideration of the relevant "factors used to determine reasonableness of force" referenced in section BPD Policy Manual section 300.3.2, the Investigator finds that Officer Matejcek's level of force against Ms. V1 was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance" and, therefore, violated the BPD Use of Force policy.

Finding: Sustained.

III. METHODOLOGY OF THE INVESTIGATION

A. Persons Interviewed

The witnesses were each provided with a Notice of Interview compelling them to participate in the interview, requesting each witness to keep confidential all aspects of the interview during the course of the investigation, to answer the Investigator's questions truthfully, and to refrain from, and report, any suspected retaliation.

All witness interviews were digitally recorded and roughly transcribed. Copies of recorded interviews or transcriptions will only be provided to authorized personnel upon request.

Interview Subject	Position	Date Interviewed
Josh Flynn	Police Officer	May 26, 2022
David Franson	Police Officer	May 30, 2022
Mitchell Alvarez	Sergeant of Police	May 31, 2022
Paul Matejcek	Police Officer	June 10, 2022
Richard Nance	Sergeant and BPD Lead Defensive Tactics Instructor	June 13, 2022

B. Documents Reviewed

Ex.	Description
1	Officer Franson's body-worn camera video that captured Officer Matejcek's use of force against Ms. V1 (at 9:07)
2	Officer Franson's dash camera video that captured the sound of Ms. V1 reaction to being kicked by Officer Matejcek (at 8:50)
3	BPD Misdemeanor Report, Case Number 2201912, regarding the arrest of Ms. V1 on April 23, 2022
4	Audio recording of reporting party's call with dispatcher about person screaming near garden sheds at Brentwood Home Depot on April 23, 2022; audio recording of BPD radio traffic regarding the same call
5	CAD Incident Report regarding call at Brentwood Home Depot on April 23, 2022
6	Memorandum dated April 23, 2022, from Sergeant Alvarez to Chief Thomas Hansen regarding "Use of Force by Officer Matejcek #595, Case #2201912"
7	Six photographs of Ms. V1 and one photograph of beer cans recovered from Ms. V1 clothing following her arrest on April 23, 2022
8	Email on April 27, 2022, from Lieutenant Mark Louwerens to Sergeant Alvarez regarding corrections and clarifications to Officer Matejcek's report
9	Pages from Officer Matejcek's police academy workbooks: Learning Domains 20-2 (overcoming active resistance), 33-1 (the foot as a personal weapon), and 33-7 (the midsection of a suspect as a target for impact weapons)
10	Six BPD police reports documenting arrests of Ms. V1 by BPD officers for obstructing a police officer (Penal Code §148(a)(1)), between February 8, 2019 and January 31, 2022
11	Six CAD Incident Reports regarding calls involving Ms. V1 when Officer Matejcek was present at the scene, between October 13, 2018 and January 6, 2022

Ex.	Description
12	BPD Person Record for V1
13	BPD Misdemeanor Report, Case Number 1702597, regarding arrest during which Officer O2 O2 kicked the suspect in the "head area" on May 17, 2017
14	Officer Matejcek's training records
15	BPD Policy 300 – Use of Force
16	BPD Policy 306.5 – Application of Spit Hoods
17	Email from BPD Captain Herbert to Investigator regarding BPD officers' access to spit hoods

IV. WITNESS STATEMENT SUMMARIES

A. Josh Flynn

1. Background

Josh Flynn was hired by the City as a police officer in 2016 and has been assigned to Patrol, has served on the SWAT team, and has also served as a field training officer. In 2021, Officer Flynn left the Department for about nine months to work as a safety coordinator for a construction company and returned to the Department in March 2022. Prior to being hired by the City, Officer Flynn was a police officer with the City of Hutchinson in Kansas.

2. Relationship with Officer Matejcek and Prior Defensive Tactics Training

Officer Flynn stated that on April 23, 2022, he was working on a Patrol team comprised of himself, Officer Dave Franson, Officer Tanner Kephart, Officer Jordan Stroben, Officer Paul Matejcek, and Sergeant Alvarez. The Patrol team worked from 8:00 p.m. to 7:00 a.m. with four days on and four days off. Officer Flynn stated that the Patrol teams used to be on a four-month rotation schedule, and he had previously worked one or two four-month rotations with Officer Matejcek. Officer Flynn stated that he and Officer Matejcek had gotten along "decently well" and that they had never had any prior issues with one another.

Officer Flynn stated that the Patrol team he was with in April had attended a Defensive Tactics training some time shortly before the April 23, 2022 incident with V1. Asked to describe the Defensive Tactics training, Officer Flynn stated:

> I believe there was a 10-hour training day. We went over policy as it relates to use of force. And more specifically that day we were going over the new duty to intercede law that's just been passed or . . . yeah, I think just passed recently. And then, in the actual hands-on training, we were learning a lot of grappling type techniques for being able to use certain techniques to control people, or I guess control subject with having to be overly violent, I guess.

Officer Flynn stated that his entire Patrol team, including Officer Matejcek, had attended this training. Asked if there was any defensive tactics instruction or training about kicking, Officer Flynn stated, "There have been . . . we have not trained physically to kick people. I think where kicking has come into the conversation is utilizing tools if you're in hand-to-hand combat type of situation. And if you can utilize kicks in a hand-to-hand combat type of

situation, then kicks would be allowed." Officer Flynn stated that Sergeant Nance is in charge of the Department's in-service defensive tactics training.

3. Arrest of [redacted]

Officer Flynn recalled that the incident involving [redacted] came out as a dispatched call to the Home Depot on Lone Tree Way at 5:24 a.m. on April 23, 2022. Officer Flynn stated that he had not been on any significant calls earlier in his shift that would have affected his ability to observe what happened on this particular call. Officer Flynn stated that the Home Depot is on Officer Matejcek's beat, and Officer Flynn responded to cover in an undercover vehicle and arrived first on the scene. Officer Flynn stated that he parked on the north side of the Home Depot parking lot to the west of the storage sheds and waited for other units to arrive. Officer Flynn stated that Home Depot always leaves these sheds unlocked and it is a "constant issue." Officer Flynn stated that Officer Franson met with the Reporting Party and then walked over and said that the officers should focus their attention toward the center of the line of sheds. Officer Flynn stated that he recalled the door of one of the sheds being pulled shut in a hard manner, "and it was very obvious that somebody retreated back inside the shed and pulled the door shut."

Officer Flynn stated that when he approached the shed, he did not know the identity or gender of the person that was inside. The Investigator showed Officer Flynn a screenshot of Ms. [redacted] and Officer Flynn identified Ms. [redacted] by name. Officer Flynn noted that he had dealt with Ms. [redacted] in the past for things "much of the same, intoxicated in public, yelling, screaming, causing issues for paying customers of various businesses in Brentwood." Officer Flynn stated that he previously had about a half dozen contacts with Ms. [redacted] and knew her to be a methamphetamine user and a heavy alcohol user. Officer Flynn stated that he did not know if Ms. [redacted] was flagged with Dispatch as a dangerous person, "but I know that the majority of officers know that she has aggressive tendencies. And I know she has spit on officers in the past." Officer Flynn stated that he did not know if Ms. [redacted] had spit on Officer Matejcek in the past or if Officer Matejcek had contacts with Ms. [redacted] in which she acted violently toward him and Officer Flynn stated that he did not recall having any prolonged discussions about Ms [redacted] prior to the call on April 23, 2022.

The Investigator reviewed with Officer Flynn the body-worn camera footage of the incident from Officer Franson's body camera, starting at time stamp 53 seconds and ending at 1:03 minutes. In this snippet, Ms. [redacted] came out of the shed and Officer Matejcek pulled Ms. [redacted] by her left arm, forced her to the ground, and handcuffed her. Asked whether he had any issues with Officer Matejcek's use of force at this point, Officer Flynn stated, "No, he gave her multiple commands to sit down and stop and she wasn't listening. And so I felt it was appropriate to get her to the ground and detain her in handcuffs." Officer Flynn stated that he was surprised when Ms. [redacted] came out of the shed because she was standing so close to the door when the officers opened it:

> I think we were all surprised that she came out of the shed and we had given multiple command to . . . for whoever was inside before we knew it was her, we have multiple commands for whoever was inside the shed to come out and nobody emerged from the shed. And that's ultimately why we had to open the door and figure out what was going on. I think for me personally, I was

> overwhelmed by what it looked like inside the shed. It was very obvious that a struggle or erratic behavior had happened, just with broken bottles and trash everywhere. And then when we opened the door, who we found to be V1 V1 was standing I mean almost nose to the door. And at least for myself, I was very surprised. You always want to expect that there's somebody behind the door. And we knew there was somebody behind the door, but for her to be that close to the door was definitely a shock. And I think when—this is me only assuming—but if it was me in Officer Matejcek's position, and she started walking towards him after I just got surprised by somebody inside a door, I think your natural reaction is to detain the person and figure out why weren't you listening to me? Why didn't you open the door and why didn't you come out when I told you to?

Officer Flynn stated that there was broken glass at the scene and inside the shed was "a bunch of trash, newspaper, toilet paper. It smelled like alcohol and feces." Asked if Ms. V1 appeared to be under the influence of methamphetamines or alcohol, Officer Flynn stated, "at least alcohol," and said that he could detect the odor of an alcoholic beverage on her person. The Investigator reviewed with Officer Flynn additional footage from Officer Franson's body camera depicting Officer Flynn checking the other sheds. Officer Flynn stated that after he determined nobody else was in the sheds, he shut off his own body camera because, "I thought my involvement . . . I fully expected to clear the call. It seemed like at best we were going to arrest V1 for being intoxicated in public and she seemed to have calmed down. So since I was in a UC car, I intended to clear. I don't remember what made me stick around and not activate my camera, but think maybe we were talking through the details about, well, do we have any crime."

Officer Flynn stated that he did not recall Ms V1 stating that she had been attacked by a Hispanic male, but did recall that "she kept on screaming about being shot and having lasers pointed at her and being beat up." The Investigator reviewed with Officer Flynn the video around the 6:45 minute mark, and Officer Flynn stated that during this timeframe, "we were discussing what type of crime we had or whether based on what she was talking about and how she was acting if she fits the 5150 criteria." Officer Flynn stated that he is an EMT and former medical instructor, so officers relied on his opinion related to medical matters. Officer Flynn stated that Officer Matejcek suggested placing V1 on a 5150 W&I hold, but Officer Flynn stated that he told Officer Matejcek that she did not fit the criterion and they should arrest Ms. Flynn for Penal Code § 647(f). The Investigator noted that the audio on Officer Franson's video was deactivated at the minute 8:10 mark, and Officer Flynn explained that it is common practice to deactivate audio while discussing the elements of a crime and specific matters of a case to prevent those conversations from being scrutinized in court.

Officer Flynn stated that Ms. V1 oscillated between being calm and yelling at the officers and that she got highly agitated, possibly from overhearing the officers discuss arresting her. The Investigator reviewed with Officer Flynn that video footage at the 8:53 minute mark which shows Ms. V1 yelling at Officer Matejcek. Officer Flynn stated at this point Ms. V1 had moved her body weight in a manner suggesting she was going to stand up, and he, Officer Matejcek, and Officer Franson were ordering her to stay seated, with words to the effect, V1 just sit down, just stay seated. You don't need to get up right now." Asked if he had any

concern about his or the other officers' safety if Ms. V1 did manage to stand up, Officer Flynn stated, "No. I thought the worst we'd have to do is maybe take a couple of running steps to catch her if she tried to run since she was in handcuffs." Officer Flynn stated that he did not know whether Ms. V1 had a history of running from the police.

The Investigator reviewed with Officer Flynn the body camera footage starting at the 9:04 minute mark which shows Officer Matejcek taking a few steps forward and then kicking Ms. V1 in the left arm and chest area. Asked about how Ms. V1 landed on the ground (which is difficult to see in the video), Officer Flynn stated, "Based on what I remember, she landed on her butt and then kind of fell to her left side or her momentum carried her to the left side." Officer Flynn stated that he had "no clue" ahead of time that Officer Matejcek was going to kick Ms. V1 and had "no idea" why Officer Matejcek did so. Asked if he was surprised by the kick, Officer Flynn stated, "I was very surprised. I think the video reflects that also." Officer Flynn noted that at the 9:15 minute mark the video shows, "I almost slow motion look at Franson, like what just happened?" Officer Flynn stated that he had not moved toward Ms. V1 as she tried to stand because, "I didn't see V1 getting up as a major issue. I mean, we didn't want her to stand up, but I didn't feel like [it was an] immediate safety issue." Officer Flynn stated that he did not believe that Officer Matejcek's kick was reasonable force under the circumstances, and he would have chosen to sit her back down again or to escort her to a police vehicle.

Officer Flynn stated that after the kick, Officer Matejcek quickly escorted Ms. V1 to his vehicle. Officer Flynn stated that he and Officer Franson trailed behind and discussed with each other that they did not understand the level of force that was used. Officer Flynn stated that once they reached the police vehicle, Officer Franson told Officer Matejcek something to the effect, "Hey, we'll take it from here," because "we didn't know what was going on or if something happened that we didn't see or there was another reason for the use of force." Officer Flynn said that in response to Officer Franson's offer, Officer Matejcek turned and smiled and said something to the effect, "No, I'm good. We're good." Asked if Officer Matejcek had said anything about the kick, Officer Flynn stated, "He said she was standing up. He said that she had been aggressive with him in the past and he felt the need to get her back on the ground as fast as possible." Officer Flynn stated that this conversation happened at the police vehicle when he, Officer Matejcek, and Officer Franson were discussing summoning an ambulance due to the use of force. Asked if Ms. V1 said anything after the kick, Officer Flynn stated, "No. She was quiet. I remember when . . . because we called for paramedics to come check her out and clear her medically. I remember at a certain point there she said something about, 'You assaulted me,' or, 'The cops assaulted me,' or something like that."

Officer Flynn stated that Officer Matejcek never made any admissions, such as "I might have screwed up there," or anything of the like. Officer Flynn stated that he did not know why Officer Matejcek included a battery on a police officer charge (Penal Code § 243b) against Ms. V1. Officer Flynn stated that he did not write a supplemental report because he was not really involved in the matter beyond standing around and that Officer Franson had written a supplemental report because he had drawn his Taser when they were opening the door of the shed.

Officer Flynn stated that once back at the Police Department, he, Officer Matejcek, and Officer Franson met with Sergeant Alvarez and had a quick discussion in which Officer Matejcek gave an account of the force he had used. Sergeant Alvarez had said something to the effect, "Okay, I'll review the video and we'll talk about it." Officer Flynn stated no further conversation occurred because when he returned to work, Officer Matejcek was on administrative leave.

B. David Franson

1. Background

David Franson was hired by the City as a police officer in June of 2020 and has primarily worked Patrol on the graveyard shift. Prior to working for the City, Officer Franson worked for the San Mateo County Sheriff's Department, where he started as a correctional officer in 2007, and then became a Deputy Sheriff in 2011 primarily working in the Patrol Division.

2. Recent Defensive Tactics Training

Officer Franson stated that in March or April 2022, he and his team, including Officer Matejcek, attended a defensive tactics training. Asked to describe that training, Officer Franson stated:

> I mean, we did a lot of hands-on stuff for the defensive tactics portion. We did some of the force options simulator during that class. I know some of the classroom portion did cover, and I can't tell you the sections or the laws or whatever on it, but the kind of newer stuff, how we're mandated to report stuff to a supervisor.

Officer Franson said that the training lasted a full day and he recalled that Sergeant Aguiar had been the instructor.

3. Arrest of V1 [redacted]

Officer Franson stated that in April 2022, his Patrol team was comprised of himself, Officer Matejcek, Officer Flynn, Officer Kephart, Officer Stroben, and Sergeant Alvarez, and their shift hours were from 8:00 p.m. to 7:00 a.m. Officer Franson stated that he recalled responding to a call on April 23, 2022 at 5:24 a.m., and "It was a report of someone screaming from the parking lot, it was a report of transients who lived in the storage sheds that were on display there in the Home Depot parking lot." Officer Franson stated that the call was on Officer Matejcek's beat and Officer Franson was responding as a cover officer. Officer Franson stated that when he pulled into the lot, he was driving by the garden department when the reporting party waved him down and told Officer Franson that she had heard someone screaming from somewhere in the middle of the line of sheds that were out on display. The reporting party said that she had not seen anyone and could not describe them, and also stated she did not know if it was more than one person screaming and that whoever was yelling might have been experiencing some sort of mental health episode.

Officer Franson stated that after meeting with the reporting party, he drove over to meet with Officer Matejcek and Officer Flynn and together they approached the line of sheds. Officer Franson stated, "As we were getting closer to them, suddenly one of the doors on one of the sheds kind of slammed shut, it was ajar, but kind of slammed shut, and so kind of gave away

that, okay, there's somebody in there." Officer Franson stated that he pounded his fist on the side of the shed and announced something to the effect, "Police Department, come out with your hands up," but received no response. Officer Franson stated that Officer Matejcek went to the door of the shed and signaled that he was going to open it, and Officer Franson drew his Taser for officer safety reasons. Officer Franson stated that when Officer Matejcek opened the shed's door, V1 was standing there.

Officer Franson stated that he previously had contact with Ms. V1 on about five occasions or less, and probably had not been the primary officer on those contacts. Officer Franson stated that he had heard about other contacts with Ms. V1 from other officers and "knew that she was somebody who has been contacted numerous times by the Police Department." Asked if he knew Ms. V1 to be a methamphetamine user, Officer Franson stated, "I've never evaluated her for drug influence, but I did make that assumption, I think, I mean, I can't say for sure, but I believe I heard that she was a drug user and then I just believed she was." Officer Franson stated that he did not have any knowledge of Ms. V1 being a heavy drinker. Officer Franson recalled that on one occasion he responded to a call and saw Ms. V1 on a stretcher being treated by AMR after she had broken into a home that was under construction and was found hiding in a closet. Officer Franson stated that Ms. V1 was yelling while she was on the stretcher and, "It was not normal behavior by any means." Officer Franson stated that he believed that he heard of Ms. V1 acting violently in the past but could not recall a specific instance.

The Investigator reviewed with Officer Franson footage from his body camera of the April 23, 2022 incident starting at the 1:06 minute mark.[1] Officer Franson recognized Ms. V1 as she came out of the shed and was pulled to the ground and handcuffed by Officer Matejcek. Officer Franson stated he believed "at that point" the use of force was reasonable under the circumstances and that it was appropriate to detain Ms. V1 Officer Franson stated:

> I mean, based off the call for service to somebody yelling, screaming, we didn't know what was going on. So, I mean, as part of our investigation, like one of my concerns I expressed to you a couple of minutes ago, is we don't know if there's someone else involved, if there's somebody inside that's been, for example, stabbed or shot or somebody who overdosed, I don't know what's going on in there. And so, for our safety, I think that was absolutely not only reasonable, but necessary at that time to detain her.

Officer Franson stated that he recalled Ms. V1 saying something about a man attacking her and being shot in the nose. The Investigator reviewed with Officer Franson video of himself, Officer Flynn, and Officer Matejcek having a discussion. Officer Franson stated that he could not recall exactly what they were talking about, "but I think one of the things we may have

[1] Officer Franson stated that the only time he had previously reviewed this footage was when he wrote a supplemental report, and the only portion he had reviewed related to his meeting with the reporting party and drawing his Taser. Officer Franson stated that he had not reviewed Officer Matejcek's report and had not spoken in any substance with members of his team about this incident. Officer Franson stated the only cursory discussion he had was with Officer Flynn about "the fact that there was an interview coming up."

discussed was alcohol influence. I do remember smelling a strong odor of an alcoholic beverage coming from her person, her eyes were red and watery. I believe there was alcohol influence. I don't know at that point, I believe there was drug influence."

Officer Franson stated that he felt like Ms. V1 "was maintaining a certain level of calm, and then I feel like all of the sudden it kind of ramped up and I'm not sure why that happened." The Investigator played footage from 6:44 minute mark to the 7:58 minute mark in which Ms. V1 tells Officer Matejcek to stop following her and says, "I don't give a fuck if it's beer or not, drink as much beer as I fucking want." Officer Franson stated at that point he was just standing off to the side waiting for Officer Matejcek to figure out a disposition for the call, "and I would think in the forefront of his mind would be alcohol influence, drug influence, trespassing, something like that, maybe even vandalism."

Asked why he muted the audio on his camera (at the 8:10 minute mark) in the video footage, Officer Franson stated, "I'm assuming, I can't tell you for sure if there was something I was about to say, I think just game planning is why, and there being no need to record what we were going to discuss, but I don't know for sure what we said at that point." Officer Franson stated that in watching the video leading up to the kick, he could not recall exactly what was being discussed, but he recalled that Ms. V1 got upset and began moving her body and tucking her legs in preparation to stand up while Officer Matejcek and Officer Flynn ordered her to remain seated. Officer Franson estimated that at this point he, Officer Flynn, and Officer Matejcek were all standing about seven to eight feet away from Ms. V1. Officer Franson agreed that starting at the 8:58 minute mark, the video appeared to show Officer Matejcek take two or three quick steps toward Ms. V1 and then kick her in the left torso area with his right foot causing Ms. V1 to fall backwards.

Officer Franson stated that he did not know why Officer Matejcek kicked Ms. V1, and that he had "no idea" ahead of time that Officer Matejcek was going to do that. Asked if he was surprised by the kick, Officer Franson stated, "Absolutely. I'm still surprised." Asked why he and Officer Flynn were standing still when Officer Matejcek initiated the kick, Officer Franson stated that was because "I did not fear a threat near that level at that point at all." Officer Franson agreed that there were other options involving less force such as pulling Ms. V1 back into a seated position by her arms or escorting her to be detained in a vehicle. Officer Franson stated that he did not believe that Officer Matejcek's kick was a reasonable use of force under the circumstances. Asked to explain why it was not reasonable, Officer Franson stated:

> Well, first off she's handcuffed. She's a fairly small person, that's comparing her to me. Officer Matejcek's size is different than mine,[2] it's different than Flynn's, he's smaller than both of us as far as height . . . Yeah, so comparing size, the fact she's handcuffed, I believe that she had been pat searched at that point, so there's no concern. I mean, maybe biting, but she wasn't showing us that as an indicator that she might bite us, or spitting, there was none of that going on. It was clearly just way too far, as far as force goes, for that. Like you said, grabbing an arm, verbal commands to light touch, to maybe a control hold,

[2] Officer Franson previously stated his height is PII and his weight is PII

would be appropriate under those circumstances, from what I recall at the time of that incident.

Asked whether he was taught during defensive tactics training at the San Mateo Sheriff's Department or at Brentwood that there were situations in which a suspect could be kicked, Officer Franson stated:

> I mean, I don't remember specifically talking about kicking a suspect in that situation. However, the way that continuum of force goes, I mean, for example, lethal force doesn't have to be from a firearm, it doesn't have to be from a vehicle or blade, it can be anything, but that's if that situation requires that or reaches that level, and this, no.

Asked whether Ms. V1 actions rose to the level he had just described, Officer Franson stated, "No, unless I completely missed something, I don't think I did though." Officer Franson stated that he was not aware of any prior negative interactions between Officer Matejcek and Ms. V1 that would have prompted Officer Matejcek to kick her. Officer Franson stated that after the incident, he and Officer Flynn spoke with Officer Matejcek while Ms. V1 was in the back of the patrol car and told him that they did not agree with his use of force and that they would need to discuss it with the Sergeant. Officer Franson stated that Officer Matejcek became "defensive" and was "taking offense" to this criticism and said that "he felt her standing up was presenting some sort of threat to him." Officer Franson stated, "the way he spoke about it was almost like it was a justifiable use of force, and I did not agree with that. Never saw that and still don't."

Officer Franson said that he discussed the incident with Officer Flynn at the scene while Officer Matejcek was off somewhere else, perhaps at the front of the Home Depot building. Officer Franson stated, "I think we both briefly discussed it and we were shocked. We were just completely like, 'Where did that come from? What just happened?' So we were just trying to process it and we were like, 'Hey, did you see what I saw?' 'Yes.' 'Okay, so we're on the same page, why did that happen?' And we were both baffled by it." Officer Franson stated that he had never seen Officer Matejcek do anything like that before.

Officer Franson stated that after the incident he believed that Ms. V1 must have complained about the kick because "I think that's what prompted me to suggest that we call for medical attention, was just in case there was something related to that [kick]." Officer Franson recalled that AMR was only on the scene briefly and after examining Ms. V1 the EMTs determined that she did not require medical treatment.

Officer Franson stated that when he returned to the Department, Officer Matejcek and Officer Flynn were standing at the sallyport with Sergeant Alvarez. Officer Franson stated that they explained to Sergeant Alvarez "in essence, that this was the situation we came upon, what we were dispatched to, which I believe he was already aware of that we contacted V1 at the shed. She was cuffed, she got mouthy, she stood up, Officer Matejcek kicked her. I don't remember verbatim what was said, but I think it was conveyed to him [Sergeant Alvarez] that it was a use of force and it may not have been a justifiable use of force." Officer Franson stated

that he believed Ms V1 was transported from the Department to County jail by CSO Alan Sheffield.

Officer Franson stated that he was later directed to write a supplemental report to document the brandishing of the Taser because that is technically a use of force and also to document his initial contact with the reporting party. Officer Franson stated that he did not include Officer Matejcek's use of force in the supplemental report because he was not directed to do so, and also because he was not authoring the primary report.

Asked if he had anything to add to his interview, Officer Franson stated:

> Sure. That again, like I already said, I think, to you, that I was shocked by what happened. I never saw it coming. I'm still baffled as to why it happened, I don't understand it. But what I wanted to say is with that said . . . maybe part of the reason I'm surprised by that is because of Officer Matejcek and my history with him. This year is my first year really working with him, being on the same team. He's a good guy and he is a go-getter. I've looked up to him as being a competent police officer who really does care about the value of the job. So I think maybe that's why I'm surprised it happened from a guy like him. I respected him and I mean, his volume of arrests and proactivity and I've worked with him quite a bit this year and seen him work and I'm impressed with the way he's talked to people and all that stuff, and he has been professional. So I think all that stuff, considering that, and then seeing what happened, it was just shocking. I just never suspected that would happen. So anyway, that's all.

The Investigator advised Officer Franson that if he recalled anything else or wanted to add to his statement he was free to contact the Investigator to do so.

C. Mitchell Alvarez

1. Background

Mitchell Alvarez was hired by the City as a police officer in 2012 and was promoted to sergeant in December 2019. During his tenure with the City, Sergeant Alvarez has served as an FTO, traffic officer, driving instructor, and as a member of the SWAT team. Prior to being hired by the City, Sergeant Alvarez was a police officer with the City of Benicia for four years.

2. Involvement with V1 Arrest

Sergeant Alvarez stated in April 2022 he was the sergeant for the A Side graveyard team which was comprised of Officer Matejcek, Officer Flynn, Officer Kephart, and Officer Franson. Sergeant Alvarez stated that he had previously supervised Officer Matejcek for a month or two when Sergeant Alvarez was first promoted. Sergeant Alvarez stated that he remembered hearing a dispatched call for service on April 23, 2022 regarding a person screaming in the Home Depot parking lot. At the time of this call, Sergeant Alvarez was at the Police Department dealing with a notification of a potential COVID exposure to some of the swing shift officers. Sergeant Alvarez stated after responding to the call, Officer Matejcek advised

over the radio that he was returning to the Department with a person in-custody and requested that Sergeant Alvarez meet him by the sallyport.

Sergeant Alvarez stated that at about 6:30 a.m. he met with Officer Matejcek who told Sergeant Alvarez that he had a use of force incident but wanted to wait for the arrival of Officer Flynn and Officer Franson before he discussed it any further. Sergeant Alvarez stated that once Officers Flynn and Franson arrived at the sallyport, Officer Matejcek gave the following explanation of the incident:

> Officer Matejcek said they responded to a call of someone yelling in one of the sheds at the Home Depot. They arrived, Officer Franson briefly contacted the, I guess the reporting party, and they went over to the sheds where they located someone in one of the middle sheds.
>
> As she was exiting the shed, he told her to sit down numerous times, she wouldn't, she wouldn't comply, so he performed a leg sweep to take her down, and then he detained her in cuffs.
>
> I guess at some point she was seated on the ground, handcuffed, and she kept trying to stand up, told her "do not stand up" numerous times, told her not to stand up, eventually she stood up and he kicked her in the chest area . . . with the bottom of his foot. He did that because she was known to spit on officers, fight and flee from them.
>
> He said she had been complaining that she had been shot in the face. There was no evidence to indicate that. He called AMR to the scene who eventually evaluated her and determined she was fine, she was not shot. Then at the scene, that was pretty much it at the scene I believe.

Sergeant Alvarez stated that Officer Flynn and Officer Franson did not contribute to this conversation and that, "Officer Matejcek explained it all in front of them and he did explain that they watched video footage on one of their vehicles, and that basically Officers Franson and Flynn were worried about the use of force used, and that basically Officer Matejcek would tell me in front of them to make sure nothing was missed." Sergeant Alvarez said that when he finished his explanation of the incident, Officer Matejcek asked Officer Franson and Officer Flynn if they had anything to add and they said they did not.

Sergeant Alvarez told the officers that if there were concerns with the use of force, Sergeant Alvarez would review the video and they would "go from there." Sergeant Alvarez stated that Officer Matejcek informed him that he would be absent the following shift to attend a training, and Sergeant Alvarez told Officer Matejcek that since the incident involved a use of force, he would need to complete a report before leaving for the day.

After meeting with Officer Matejcek, Sergeant Alvarez went back inside the station, possibly to deal with the COVID exposure issue, and then went back to the lot to speak with Officer Matejcek and ask if Ms. V1 was complaining of pain and whether her chest area had been photographed. At this time, Officer Matejcek was in his patrol car and Ms. V1 was in the transport van with CSO Alan Sheffield who was preparing to transport her to the County jail.

Sergeant Alvarez stated that he only briefly saw Ms. V1 in the van and did not have any contact with her.

Sergeant Alvarez stated that after meeting again with Officer Matejcek, he went back inside the station to review the video from Officer Franson's body camera. Sergeant Alvarez stated that in reviewing the video, he had no concerns with the leg sweep and "I thought it was fine," but "then the kick, I had concerns with the kick." Asked about his concerns with the kick, Sergeant Alvarez stated, "Well, she was handcuffed for one, she hadn't really . . . She just stood up, she didn't lunge at them, didn't try to assault them, she basically was just standing up, and no one was really next to her when she stood up. Then Officer Matejcek goes and kicks her in the chest." Asked what he would have done differently, Sergeant Alvarez stated, "I would've, as well as I think most officers, would've just grabbed her."

Sergeant Alvarez stated that Ms. V1 behavior in the video was consistent with the behavior that he had witnessed in prior contacts with Ms. V1 Sergeant Alvarez stated that he knew Ms. V1 to be a methamphetamine user and heavy drinker who is "very belligerent when we deal with her." Asked whether he had prior experience with Ms. V1 spitting, fighting, or fleeing, Sergeant Alvarez stated, "Personally? No. I just know she's belligerent, I've never had her fight with me or seen her fight with anyone." Sergeant Alvarez stated that after watching the video footage, he called Lieutenant Louwerens at about 7:00 a.m. to notify Lieutenant Louwerens about the concerns with the kick. Sergeant Alvarez stated that he and Lieutenant Louwerens "were on the same page that the report needed to be completed before the shift was over or before he went off, and then he said he would come in and look at it. I think it was a Sunday morning so he was off. Yeah, so he would have to come in and look at it."

Sergeant Alvarez stated that when he came into work the following night, he found that Officer Matejcek had been placed on administrative leave and Sergeant Alvarez completed a memorandum documenting the incident. Asked about the substance of his memorandum, Sergeant Alvarez stated, "That basically I met the officers by the sallyport, Officer Matejcek explained to me what happened, about the use of force, and then about, let's see, the photos, trying to photograph her. She had no injuries. Then the report may be done since he was going off. Then lastly I wrote that I, upon watching the video, that I had concerns with the use of force."[3]

Sergeant Alvarez stated that he met with Officers Flynn and Franson and told them something to the effect, "Hey, I watched the video. You guys did nothing wrong." Sergeant Alvarez noted that the incident occurred so suddenly that Officers Flynn and Franson did not even have time to react, and he also told them, "It is what it is, he put us in this situation."

Sergeant Alvarez stated that Officer Matejcek turned in an initial report but that there were "a few questions that our administration wanted answered on the report." Sergeant Alvarez stated that he met with Lieutenant Louwerens who suggested that Sergeant Alvarez meet with Officer Matejcek at his house to correct the issues with the report on the computer in Sergeant Alvarez's vehicle. Sergeant Alvarez stated that he told Lieutenant Louwerens this was a bad

[3] Sergeant Alvarez later sent his memorandum to the Investigator. It is Exhibit 6 to this report.

idea, and eventually Lieutenant Louwerens agreed that Sergeant Aguiar, the PSU sergeant, should approve the report. Sergeant Alvarez recalled that Lieutenant Louwerens had sent an email that outlined the further information required for Officer Matejcek's report and reviewed that email during his interview with the Investigator. The email was sent on April 27, 2022, and the issues for clarification included: whether Officer Franson needed to write a supplemental report documenting his contact with the reporting party; spelling and grammar issues throughout the report; the report of screaming "comes out of nowhere"; verification of which leg Officer Matejcek used to conduct the leg sweep; confirmation that Ms. V1 facial injuries were not a result of the leg sweep since there was broken glass on the ground; confirmation that the broken glass was from alcohol bottles; confirmation that in addition to the unopened beers recovered from Ms. V1 there were also empty beer cans at the scene; and an explanation as to whether there was any type of psychiatric or drug influence evaluation that was done on Ms. V1 [4]

D. Paul Matejcek[5]

1. Background

Officer Matejcek was hired by the City as a police officer in August 2017 and has worked in Patrol on day shift, swing shift, and graveyards. The Patrol teams work a rotating four-day schedule with A side and B side shifts that cover each other's days off. In April 2022, Officer Matejcek was working the A side graveyard shift with Officer Dave Franson, Officer Josh Flynn, Officer Jordan Stroben, Officer Tanner Kephart, and Sergeant Mitchell Alvarez.

2. Relationship with Officers Flynn and Franson; Prior Defensive Tactics Training; and History of Kicks as Approved Use of Force

Officer Matejcek stated that he had a good relationship with both Officer Flynn and Officer Franson. Asked if he had any prior significant issues with either officer, Officer Matejcek stated, "No, I enjoyed working with Josh [Flynn] just because he had left and come back and he had been on the SWAT team. I had just got on the SWAT team so we connected that way. Officer Franson is a DRE [Drug Recognition Expert] and I'm big into investigating drugs and people under the influence of drugs."

Officer Matejcek stated that he had undergone defensive tactics training while he was in the Contra Costa County Police Academy and has also undergone Department-sponsored defensive tactics training courses about twice a year since being hired by the City. Officer Matejcek stated that the most recent Department-sponsored defensive tactics training course he attended was in April 2022, and that class was taught by Officer Doug Morrison who was assisted by Taylor Johnson and Jason Fish. Officer Matejcek could not recall whether Sergeant Nance attended the April training, but he knows Sergeant Nance to be a defensive tactics instructor as well.

Asked if he had received training with respect to kicking a suspect, Officer Matejcek stated that he had received such training in the Academy. Officer Matejcek stated that he had

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[4] Sergeant Alvarez later sent Lieutenant Louwerens' email to the Investigator. (Exhibit 8.)

[5] Officer Matejcek was represented at his interview by Julia Fox, Esq.

practiced kicking techniques while at the Academy, but that none of that training involved a hypothetical situation in which a handcuffed suspect was involved. Officer Matejcek stated that he had brought to the interview some relevant Learning Domains that he had received during the Academy, including the Use-of-Force, Arrest Control, and Custody Learning Domains. The Investigator reviewed with Officer Matejcek a chart entitled "Body Parts as Personal Weapons," from Learning Domain 33, Chapter 1, page 15 which lists the foot as a personal weapon and lists the various parts of the foot that may be used including the "instep," "heel," "ball of foot," "edge of foot," and "the toe." Also from Learning Domain 33, at Chapter 7, the investigator reviewed with Officer Matejcek a body schematic entitled, "Guidelines for Impact Weapons," that lists "possible target areas," including "chest," "midsection," "rib cage," "arms," and "legs." The Investigator also reviewed with Officer Matejcek a chart entitled "Resistance" from Learning Domain 20, Chapter 2 which lists the various types of resistance including "cooperative," "passive non-compliance," and "active resistance," with the various "possible force options" associated with each kind of resistance.[6]

Officer Matejcek stated that based on the Learning Domains he reviewed with the Investigator, Officer Matejcek believed that depending on the circumstances, a kick was an appropriate use of force for a subject that was actively resisting. Officer Matejcek stated that he had not reported a kick as a use of force prior to April 23, 2022. Asked if he was aware of any other officer who had reported a kick as a use of force, Officer Matejcek stated that he was aware that Officer O2 O2 had reported a kick as a use of force, but Officer Matejcek did not know the circumstances or the date of the occurrence. Officer Matejcek stated that he had spoken with retired Lieutenant Sal DiMercurio who told Officer Matejcek that Officer O2 had kicked a suspect in the head and that Officer O2 was subsequently exonerated for this use of force. Officer Matejcek stated that it was his understanding that this incident had occurred prior to Officer Matejcek's tenure with the City,[7] and he noted that Officer O2 is currently one of the Department's defensive tactics instructors.

3. Prior Contacts with Ms. V1 and Knowledge of Other Officers' Contacts with Ms. V1

Officer Matejcek estimated that he had about two contacts a month with Ms. V1 since 2019, but then revised the number to be about 24 total contacts with her from 2019 to the present. Officer Matejcek stated that some of the contacts involved Ms. V1 breaking the restraining order that her father has against her and that he also dealt with her in connection with burglary-related issues. Officer Matejcek elaborated:

> Okay. Burglarizing vehicles. She found a vacant apartment complex and she destroyed it as far as like breaking plumbing, defecating everywhere, and that kind of stuff. Shoplift, drug usage, big time drug user, alcohol, steals alcohol. Those are like the calls that I've gone to her for. Whenever I contact her, and there's been only one time where I've contacted her where I believe she was

[6] The Investigator photographed the three Learning Domain pages presented by Officer Matejcek during his interview. (Exhibit 9.)

[7] The Investigator later requested the police report documenting Officer O2 kick to a suspect's head. The police report, dated May 17, 2017, is Exhibit 13 to this report.

completely sober, but other than that, she's either high on meth or drunk or both.

Officer Matejcek stated that one of the reasons he knows Ms. V1 to be a methamphetamine user is because he has arrested her for possession of methamphetamine as well as for possession of paraphernalia. Officer Matejcek stated that he has known Ms. V1 to be violent, combative, and aggressive. Asked to describe Ms. V1 behavior, Officer Matejcek stated:

> So, in my last, not including the contact that we're talking about right now, but in my last two contacts prior, I arrested her for 647(f) and I believe it was 148 as well. While she was in the back of the car, she's tried kicking at me, she's tried spitting. The contact after that, I responded to a liquor store because she was reported to have been acting suspicious and possibly stealing from the liquor store. When I showed up on scene, she started yelling at me. Then I didn't have a cover unit with me and I couldn't confirm if anything was taken or if the liquor store wanted anything done. So, I saw her, told her to get out, and then she immediately started yelling and then she just ran off and I just let her run away because I wasn't going to chase after her by myself for no reason.

Officer Matejcek estimated that these two contacts occurred, respectively, in January of 2022 and the summer of 2021. Officer Matejcek stated that Ms. V1 name is flagged by Dispatch meaning that she poses an officer safety risk and calls involving her require a minimum of a two-officer response. Asked what he had heard about Ms. V1 from other officers, Officer Matejcek stated, "She absolutely fights. She has no problem kicking and running away and spitting at officers. Between the times of my last contact with her and the date of this incident, she had been reported to have been stealing from the same liquor store where I contacted her. That officer chased after her." Officer Matejcek stated that the incident he heard about at the liquor store occurred in March 2022 and involved Officer Michelle Hall who "ended up getting into a ground fight wit V1 until V1 was taken into custody." Officer Matejcek stated that he was aware of this incident prior to his contact with Ms V1 on April 23, 2022. Officer Matejcek stated that Ms. V1 had previously been on probation with Alameda County for a Penal Code section 148 violation, but was taken off probation in 2019 when the law was changed to limit misdemeanor probation to two years. Officer Matejcek stated that he recalled looking at Ms. V1 criminal history and seeing "she had been arrested a minimum of 16 times for 148, and I think there was a couple of felony PC 69s in there as well." Officer Matejcek stated that while Ms V1 was listed at 5'7" and 145 lbs. on the police report, Officer Matejcek believes that "she's definitely heavier than that now," and estimated her weight to be "closer to 170, 180."

When the Investigator noted that Ms. V1 did not appear to be as heavy as Officer Matejcek suggested, Officer Matejcek stated that Ms. V1 appearance changes. Asked to explain, Officer Matejcek stated:

> Shaves her head, hair grows back. She gets thin, she gets big. That kind of thing. Even when I first contacted V1 when we opened up the shed door and V1 was standing there, I immediately recognized her. And that's why . . . And

> I remembered everything that I've done with her, every contact that I've had with her, as far as being combative, resisting, all of the above, as well as other officers. And that's why I put her in handcuffs right on the spot . . . Okay. At that point, Officer Flynn, who was right with me, was like, "Who's this?" And I said, "[V1]." And he goes, "Really? I didn't recognize her because she changes."

During follow-up questioning by Ms. Fox, Officer Matejcek stated that he believed Ms. [V1] had been convicted of felony assault on her father, which was why her father had a restraining order against her.

4. Arrest of [V1] on April 23, 2022

Officer Matejcek stated that in April 2022, his Patrol team's regular hours were from 8:00 p.m. to 7:00 a.m., but that with his supervisor's permission, he started his shift on April 22, 2022 at about 10:00 or 11:00 p.m. because he had attended a graduation ceremony earlier in the day and needed to sleep prior to working graveyard. Officer Matejcek recalled a dispatched call later in the shift at about 5:24 a.m. on April 23, 2022, and stated, "it was described as a male screaming in the Home Depot parking lot and the reporting party believed it was a homeless male who was living in the display sheds in front of the Home Depot, in their parking lot."[8] Officer Matejcek stated that he had encountered homeless people in these sheds on four or five previous occasions. Officer Matejcek stated that when the call came out, he had just gotten gas and was enroute to the Department to book some property related to a warrant arrest[9] that he had made about an hour earlier, so two other units were dispatched on the call. Officer Matejcek stated that the call was on his beat, and because he had good beat integrity, he cancelled one of the units and responded as the primary officer with Officer Franson responding as his cover unit. Officer Matejcek stated that Officer Flynn was in an unmarked vehicle and showed up on the call as well.

Officer Matejcek stated that on the northwest corner of the Home Depot parking lot there is a line of sheds the fronts of which all face south. Officer Matejcek stated that once he arrived on scene, he parked in front of the sheds and got out of his car as Officer Franson drove up to him. Officer Franson had met with the reporting party near the front of the store prior to driving over to meet with Officer Matejcek near the sheds. Officer Matejcek stated that he had no prior contact with [IP8] the reporting party. Officer Matejcek said that as he was talking to Officer Franson and Officer Flynn, he heard a door to one of the sheds slam shut, and Officer Matejcek told Officers Flynn and Franson something to the effect, "I'm going to take a guess and say that whoever we're looking for is in that shed."

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[8] Officer Matejcek stated that he had not been to any significant calls earlier in the shift that would have impaired his ability to observe the events surrounding the arrest of Ms. [V1]

[9] In the latter part of the interview, the Investigator mentioned to Officer Matejcek that the Investigator had been provided with body camera footage of Officer Matejcek interacting with a homeless African American man. Officer Matejcek stated that video related to the warrant arrest that he had made about an hour prior to responding to the call that involved Ms. [V1]

The Investigator reviewed with Officer Matejcek video footage of the incident with Ms. V1 from Officer Franson's body camera starting with footage of the officers in front of the line of sheds. Officer Matejcek explained:

> So, what [Ms. V1] had done at this point, so we heard the door shut. We said, "Okay, we're probably going to take a guess and say, whoever we're looking for is in there." Then we hear, it sounded like someone had thrown themselves on the ground or against a wood wall. So, we're like, "Okay, somebody's definitely in there." So that's when we announced, "Police, come out." We started shining our lights in the window. We can't see anything because what she had done was lay down on the ground, like right up against the door so that way we can't see her."
>
> We had coordinated like, "All right, Franson you're going to stand in front of the door. You've got the Taser." Flynn's off to the side, I'm not sure if he had any force options out. And then I was going to throw the door open.

The Investigator reviewed the footage with Officer Matejcek through the 1:22 minute mark which depicts the initial contact with Ms. V1 and Officer Matejcek's detention of Ms. V1 in handcuffs. Officer Matejcek stated that he asked Ms. V1 several times to sit down but she did not comply, and explained why he felt it was necessary to pull her to the ground and handcuff her:

> Just because the call that we had responded to was someone screaming for whatever reason. And then I see her, and I remember how physically combative she becomes. That she actively resists, all of the above, or she doesn't like cops, that kind of thing. So, I see her. I know that if we're dealing with her, it's probably best that she goes in handcuffs.

Officer Matejcek stated that at the time he handcuffed Ms. V1 he did not pat search her, but did see a lighter in her hand. When the Investigator noted that Officer Matejcek had turned off his body camera around this point in time, Officer Matejcek stated, "After she was in handcuffs and she was sat down and myself, Flynn, and Franson had triangulated her, we were comfortable with the situation at the time. It was static. And I was having an administrative conversation on where to go with V1 from then." Officer Matejcek stated that he had no idea why Ms. V1 was saying that she had been shot in the nose by an unknown male and that he did not find any other subjects at the scene. Officer Matejcek stated that he noticed that Ms. V1 had some small cuts to her nose and that there was broken glass on the ground, and it was his assumption that Ms. V1 had thrown a bottle on the ground and some of the glass had ricocheted and cut her face causing her to scream.

The Investigator and Officer Matejcek reviewed the video which showed Officer Flynn searching other sheds while Ms. V1 talks to Officer Franson. Officer Matejcek stated that during this time period he was thinking through, "Okay, where are we going to go from here? Is there anything else we need to look for? She's saying she was shot in the face. Flynn's looking for somebody else, that kind of thing." Officer Matejcek stated as he watched and listened to Ms. V1 he could smell alcohol on her breath, heard slurred speech, and saw

that her eyes were watery, "so I'm more than certain she's under the influence of at least alcohol." Officer Matejcek explained:

> So, I know that she gets combative when she finds out she's going to jail. So, I'm like, okay. And this is the administrative conversation that I have with Flynn where I'm like, "What do you think? Where should we go from here? What do we have?" That kind of thing. We kind of cancel out that there was a fight, as far as her fighting somebody else and it was just her at the scene that morning. So, I'm thinking like, "Okay, let's call AMR. Let's just have her get on the gurney and we'll send her away for intoxication . . . To say that she's . . . Well, I mean, we already asked her if she would be willing to go on the gurney, because she's more than willing to go into gurney to go to the hospital and get checked out than to go to jail. And then we can say that she's so intoxicated that she needs to be medically evaluated.

Officer Matejcek stated that he also considered placing Ms. V1 on Welfare & Institutions section 5150 psychiatric hold, but that Ms. V1 denied that she felt inclined to hurt herself or others. Asked if there was any thought of just leaving Ms. V1 at the scene, Officer Matejcek stated, "Absolutely not." Asked to explain why, Officer Matejcek stated:

> Because if she's to the point where she's throwing bottles down and she's hurting herself and she's not caring about it, who is to say that once people start to arrive more for work or be in that general area, who's to say that she's not going to throw them at them or she's going to walk through traffic or something like that next to Lone Tree, which a busy fairway, busy thoroughfare. If anybody goes and contacts and says 'Leave,' it's more likely that they're going to get into a confrontation with her because of her actions.

The Investigator reviewed with Officer Matejcek footage from the 6:46 minute mark through the 7:16 minute mark in which Officer Matejcek asks Ms. V1 why the area was so dirty. Officer Matejcek stated that he asked that "just to see if she was the one causing all that garbage that was on the ground. It looked like somebody had just taken their trash can and just dumped it right out front." In the video footage, Ms. V1 also yells that the officers need to quit following her and complains about flashlights shining in her face. Officer Matejcek stated that Ms. V1 had yelled at him like that during his prior contacts with her. Officer Matejcek stated, "She goes through . . . And this is why I think she was under the influence of drugs as well, because she just does giant mood swings and that's one of them. She's low. She's calm at first or not calm, but calmer at first. And then on the blink of an eye, she's just erupting like that." Officer Matejcek stated that he did not know why Ms. V1 would say, "Quit following me," as he had never followed Ms. V1 and had only encountered her on dispatched calls.

The Investigator reviewed with Officer Matejcek the footage from minute mark 7:17 through the 8:10 minute mark in which Officer Matejcek comments on Ms. V1 beer consumption and she responds, "I don't give a fuck if it's beer or not. I drink as much beer as I fucking want." Officer Matejcek stated that at this point he could see beer cans protruding from Ms. V1 jacket pocket. Asked why Officer Franson muted his body camera at the 8:10 minute

mark, Officer Matejcek stated, "Yeah, we were going . . . Or she was just going in circles. There was nothing really else that we were going to get out of her as far as the statement, but he just decided I'm going to take . . . I guess, and say that he just decided to keep the video rolling just in case." Officer Matejcek stated that while the audio was deactivated, Ms. V1 kept making bizarre statements while he and Officer Flynn were having an administrative conversation as to whether to just have Ms. V1 medically evaluated or whether to transport her to MDF. Officer Matejcek stated that Ms. V1 "exploded," when Officer Franson or Officer Flynn inadvertently called her by the wrong name, possibly Unrelated name,,

Officer Matejcek stated that he had decided that after Ms. V1 's last outburst, he thought "we're obviously past the point of just AMR," and had decided that Ms. V1 would need to be transported to jail. Asked whether there was any thought as to how they would get Ms. V1 off the ground and get her into a vehicle, Officer Matejcek stated:

> Yeah. So, my de-escalation in my head was if we don't put her in the back of a car, if we just let her sit here and we get the ambulance to come and take her, this is going to resolve her from finding out that she's going to go to jail and she's going to explode. So, if just keep her here, say, "Hey, we've got the ambulance on the way," she'll stay calm. I believe she'll stay calm. And then she'll be on her merry way to the hospital, which is something she would much rather do instead of go to jail. If we put her in the back of the car, now we're opening the door for her to go after us.

The Investigator reviewed the now audio-less footage with Officer Matejcek starting at the 8:36 minute mark. Officer Matejcek stated that at this point Ms. Hurley "ramped up the volume on her voice," and was yelling something to the effect, "I see you in my dreams," and "Fuck this, fuck you." Officer Matejcek stated that based on his Academy training, he had Ms. V1 cross her legs when she initially sat down, and explained:

> When we have them sat down, when they're sitting on the curb, they cross their legs. Because it's, now if they uncross their legs, it's more likely that they're going to stand up or they're going to try and run away. So, we always have them cross their legs. So that's how she was when she was placed on the ground. She's crossed her legs. So, when she uncrossed her legs, I'm like, "Okay, now she's going to try and make a move." She has a history of running and fighting cops. This is it. This is where she's going to start to make that decision. And she rolled forward, or she uncrossed her legs and rolled forward.

Officer Matejcek stated that after uncrossing her legs, Ms. V1 began to tuck her legs underneath herself in an effort to stand up. Asked if Ms. V1 said anything about running, Officer Matejcek stated, "No. But because of my prior history with her and her being violent and her running away multiple times from me, from other officers, I knew that this was not . . . She wasn't just going to stand up and just hang out." Officer Matejcek stated that he gave Ms. V1 two commands to the effect, "V1 stay seated. V1 sit down." Asked if Ms. V1 seemed to hear him, Officer Matejcek stated:

> Yes. I don't think she cared, but I know she heard me because I hadn't changed my distance. I had said it louder than I would have when we were conversating, as far as like, "Hey, are you thinking of hurting yourself or are you thinking of hurting anyone else?" So, I know she could hear me, but as far as her acknowledging me, she did not make any acknowledgment.

Officer Matejcek estimated that at this point, he was about four or five feet away from Ms. V1 and that Officer Flynn and Officer Franson were a foot or two further away than Officer Matejcek was from Ms. V1 . The Investigator reviewed with Officer Matejcek the footage starting at the 9:07 minute mark which Officer Matejcek agreed depicts him take three quick steps toward Ms. V1 and kick her in the left torso area with his right foot. Officer Matejcek stated, "So, I know it sounds crazy, but when she undid her feet and rolled forward, I thought at that point she was going to jump out at me because that's a V1 thing." Asked to explain his thought process further, Officer Matejcek stated:

> As far as like being unpredictable and how she comes at you. So, in my head I was thinking, "Okay, she's hopped up on drugs and she's hopped up on alcohol. This would not surprise me if jumped forward towards me." And then if she was going to jump towards me, she was going to stand all the way up. And then she was going to come after us or she was going to run away or she's going to spit at us.

Asked if the fact that Ms. V1 was handcuffed entered into his calculus of his decision to kick Ms. V1 , Officer Matejcek stated:

> Yes. So, you can see that she was standing in front of the door and I knew that if I go hands on with her, my face is going to be right next to her. And she's more than likely going to spit in my face because now her hands are tied behind her, they're handcuffed behind her back and she's likely to spit in my face because she's done that before to other people.

Asked if Ms. V1 had spit on him during prior contacts, Officer Matejcek stated:

> Me personally? No. So where she's standing, I was like, if I grab her, one, I'm going to get spit in the face, but I'm also going to have to try and throw her to the ground to get her back onto her stomach, to be able to pick her back up or handle her however we need to, as far as putting her in a wrap or whatever it is to control her legs. So that way now she can't kick us or slip her cuffs, which she has done before as well.

Officer Matejcek stated that on prior occasions, Ms. V1 had slid her wrists underneath her feet to get her handcuffed hands in front of her. Officer Matejcek stated, "So what I saw here was that she's got this solid backdrop behind her, as far as the wooden door. If I push her into the door, now she'll be thrown off balance. She could slide down the door, back onto her butt and not hit her head on anything."

Asked if he intended to kick Ms. V1 with enough force to send her back into the door of the shed, Officer Matejcek stated:

> So, the amount of force I used would . . . And if you slow the video down, you can see where only the top of . . . like the ball of my foot actually contacts her where I'm extended. So, my thinking was only an amount of force in order to knock her off balance into this door. I wasn't trying to field goal punt her through the shed. I wasn't trying to like harm her or break any bones or anything like that. I wasn't trying to hurt her. I was just trying to get her off balance into the door so that she would go back down and that way I can get behind her, pick her up.

Asked if he had done what he intended to do with the kick, Officer Matejcek stated, "Yes. And I only used enough to push her off, but I wouldn't have used any more force if I had pushed her back down with my hands if that makes sense . . . I used the same amount, right? So regardless if I was pushing her with my foot or if I was pushing her with my hands, the same amount." Asked if perhaps the kick was a "kind of the, I don't know my own strength kind of thing," and whether he had actually intended to kick as forcefully as he did, Officer Matejcek stated, "Yes, because I believe that was the least intrusive force method as well as that was the smallest amount of force to get her to do what I wanted her to do." Officer Matejcek stated that due to concerns of spitting, "The kick was to allow as much distance between my face and hers as possible while still being able to push her into a seated position."

Asked why he did not simply ask Officer Franson or Officer Flynn to help him escort Ms. V1 to a vehicle, Officer Matejcek stated, "Because she was already standing up here. She was already on her way up at that point and I wanted to . . . I knew that it was going to either be a fight or she was going to run away, or she was going to spit on us like she had done in the past. So, I knew that if I act now, act quickly, then I'm going to resolve the situation and she wouldn't be able to do any of those." Asked why he did not let Ms. V1 run and then grab her, Officer Matejcek stated, "Because if she runs, then it's more likely that we're going to have to tackle her. And now her hands are behind her back. And if she falls, then how is she going to brace herself?" Asked if he had actually thought through all of these options before he kicked Ms. V1, Officer Matejcek stated, "Yes, as this is all going down." Asked if Ms. V1 might have said anything that prompted him to kick her, Officer Matejcek stated, "I don't recall her threatening me. I just remember her being aggressive in the tone she was using, the fuck yous and stuff like that."

The Investigator reviewed with Officer Matejcek footage from Officer Franson's vehicle camera at minute mark 8:30 to minute mark 9:02 in which it sounds like Ms. V1 is saying something to the effect of "quit calling me that" and shortly afterward the sound of Ms. V1 audible reaction to being kicked can be heard.[10] Officer Matejcek stated he believed that was when Officer Flynn or Officer Franson had mixed up Ms. V1 name and called her Unrelated name."

Officer Matejcek stated that after Ms. V1 was knocked to the ground, he escorted her back to his vehicle and recovered the three Budweiser beer cans from her pocket and placed her in the rear of his vehicle without incident. Officer Matejcek stated that after putting Ms. V1 in the vehicle, Officer Flynn and Officer Franson "were like, 'What the heck?' Like they were

[10] Exhibit 2, 8:53.

kind of caught of guard." Officer Matejcek stated that he explained to them, "Hey look, she fights, she kicks, she bites, she spits. She does everything to not go to jail and because she's standing up, I was confident that she was going to either try and run. She was going to spit. She was going to kick us. She's going to try to slip out of her cuffs, whatever it is, not to go to jail." Officer Matejcek stated the three of them watched the body camera footage at the scene, and Officer Flynn made a comment to the effect, "If she had taken a step forward it would have been more justified." Officer Matejcek stated that he responded something to the effect, "I didn't want it to get to that point. I didn't want to have to wait for her to try to attack us, actively attack us or actively run away. I wanted to stop it before all of that happened." Officer Matejcek said he had the feeling that both Officer Flynn and Officer Franson thought the kick was excessive but neither specifically told him that. Officer Matejcek stated that both Officer Franson and Officer Flynn expressed concern about being in breach of the new policy that required them to intercede. Officer Matejcek told them something to the effect, "It's not like I'm not going to say anything. I'm going to tell the sergeant what happened. That's why we're going back to the station."

Officer Matejcek stated that he called an ambulance to the scene "to have her checked out as far as being kicked and injuries to her face." Officer Matejcek stated that Ms. V1 did not complain of pain to her torso from being kicked and that AMR checked out Ms. V1 in the parking lot and medically cleared her. Officer Matejcek stated that while he was driving back to the station, he notified Sergeant Alvarez that there had been a use of force. Asked why he did not call Sergeant Alvarez to come to the scene, Officer Matejcek stated, "Between me, Franson, Flynn, I believe that we had enough experience that we were getting all the things that whatever Alvarez was going to need to take care of, we were doing it there. All we needed to do was notify him."

Officer Matejcek stated that he, Officer Flynn, and Officer Franson met with Sergeant Alvarez at the sallyport, and Officer Matejcek told Sergeant Alvarez something to the effect, "We get this call. She's sitting down, she's in handcuffs. I know her to be combative and run and all of the above. She goes to stand up. In order to prevent her from escaping or spitting at us or fighting with us, I push her to the end of the shed and she slides down." Officer Matejcek said that he characterized his actions to Sergeant Alvarez as a "push" with his foot.[11] Officer Matejcek said that Officer Flynn and Officer Franson agreed with his recitation of the incident to Sergeant Alvarez and did not say that they thought excessive force had been used. Officer

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[11] Asked if he understood why some might view the "push" as a kick, Officer Matejcek stated because "it's with a foot." Officer Matejcek agreed that he had described the use of force as a "kick," in his report but clarified:

> A discretionary kick. Yes. But my intent was to push her into the shed, push her off balance into the shed. If I wanted to kick someone . . . I could see how that would be a kick, but that was not . . . My intent was to not . . . I didn't want to injure her so that's why I'm pushing her to the ground. Not kicking her. Like I said before, not throwing her through the shed, I'm just pushing her off balance with enough force with my foot.

Matejcek said that Sergeant Alvarez asked if photos had been taken of Ms. V1 njuries. Officer Matejcek said Ms. V1 was not wearing a shirt underneath her jackets and there was no female officer on duty to inspect her, so he only was able to view and photograph from her mid-thorax and below. Sergeant Alvarez also told Officer Matejcek that since he would be gone the next shift for training and this was the end of his work week, Officer Matejcek needed to finish the report before he left that day and it would be reviewed by the day watch supervisor, Sergeant Tonkel.

Officer Matejcek stated that Sergeant Tonkel approved his initial report, but that once it was reviewed by the Lieutenants and a Captain, there were additional questions that they wanted to be resolved before the report was finalized. Officer Matejcek stated that there were questions as to what happened to the beer cans and some grammatical issues were raised. Officer Matejcek stated the reason that he included a Penal Code section 243(b) charge in the report was because while Ms. V1 was in the transportation van, she had told CSO Sheffield that V1 Medical Condition and then spit into his mouth. Officer Matejcek stated that he included the Penal Code section 148 charge because Ms. V1 had tried to stand up when he had told her not to do so.

Asked if he wanted to add anything, Officer Matejcek stated:

> And my intention is not to hurt her. I didn't want to use any force. If we could have avoided this altogether, then we wouldn't be sitting here. And if that option had come up, then we obviously wouldn't be here. But she forced my hand to do something. And in order to prevent us from having to go more hands on with her, now she's got three officers on top of her on the ground. Possibly could hit her head. Whatever it is. Or she tries to kick at us, tries to bite us, spit at us, whatever it is, that's why I acted the way I did. And that's based on my training and experience, with her being resistive and whatnot. So, I don't think the amount of force that I used, I believe it was the least intrusive and reasonable. And I can see how it looks bad on camera, but where I was standing and from my point of view, I knew that there was a danger if she was to get to her feet.

Asked if he harbored any animosity toward transients such as Ms. V1 Officer Matejcek stated, "Absolutely not. I regularly contact them. I specifically picked Beat One because I know there's a large homeless population that's growing and I want to help minimize it by helping them get to where they need to be." Officer Matejcek stated that he regularly worked with the Department's Homeless Liaison, Sergeant Peart, to help find resources and shelter for the homeless people on his beat.

E. Richard Nance

1. Background

Richard Nance was hired by the City as a Police Officer in January 1998. He has been a BPD defensive tactics instructor since 2001, and took over as leader of the defensive tactics training program at BPD when he was promoted to Sergeant in 2019.

In addition to BPD training, Sergeant Nance has conducted numerous trainings for outside agencies as well—including training he developed for the California Commission on Peace Officer Standards and Training ("POST")—in the areas of defensive tactics, arrest and control tactics, and firearms. Sergeant Nance was the defensive tactics columnist for Officer.com and for LawOfficer.com for several years, and is currently on the editorial advisory board for Officer Magazine. He has contributed articles regarding defensive and arrest and control tactics to Police magazine, CATOnews (California Association of Tactical Officers), and several firearm industry publications intended primarily for private citizens.[12]

Sergeant Nance stated that he reviewed Officer Matejcek's report about the incident, as well as Officer Franson's body-worn camera video, prior to his interview with the Investigator.

2. Officer Matejcek's Training

Sergeant Nance has worked around Officer Matejcek "off and on" since Officer Matejcek was hired in 2017. Sergeant Nance did not recall being present at any use-of-force by Officer Matejcek and has not rendered any opinions about any prior use-of-force by Officer Matejcek. Sergeant Nance stated that he did not have any prior negative history with Officer Matejcek.

Sergeant Nance agreed with the three pages of Learning Domain literature provided by Officer Matejcek from Officer Matejcek's police academy workbooks; that is, in cases where an unhandcuffed suspect was actively resisting, an officer's use of the foot as an impact weapon to a suspect's midsection could be reasonable depending on the circumstances. Sergeant Nance noted that a BPD defensive tactics course taught in April 2018 specifically addressed kicking as part of a segment that reviewed "striking and personal body weapons to include viable possible techniques, development of power, and use of striking to facilitate movement or disengage with a suspect." The most recent BPD use-of-force training in April 2022 was an introduction to "Gracie Survival Tactics"—involving takedowns, clenches, and "ground control" when wrestling with a suspect—policy review, and de-escalation techniques.

Sergeant Nance also stated ". . . we've never trained to strike a handcuffed suspect" in any of the BPD courses—including the use-of-force, arrest and control, and defensive tactics trainings that officers are regularly required to complete as renewal of "perishable skills." When asked if there were circumstances he was aware of where kicking or otherwise striking a handcuffed suspect would be reasonable, Sergeant Nance stated that he had not been personally involved in such a situation but believed that in a "very, very unusual circumstance"—like if a handcuffed suspect reached for a weapon such as a firearm, or was about to run into traffic—that striking the handcuffed suspect might be deemed as reasonable.

Sergeant Nance stated that BPD records show that Officer Matejcek is currently up to date with perishable skills training and that Officer Matejcek took other relevant training, outside

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[12] *See, e.g.*, LinkedIn (https://www.linkedin.com/in/richard-nance-a1759017/), Officer.com (https://www.officer.com/home/contact/10234412/richard-nance), Officer Magazine editorial advisory board (https://www.officer.com/command-hq/article/21263337/introducing-the-officer-media-group-editorial-advisory-board); Police magazine (https://www.policemag.com/339931/cuffing-with-useful-force).

of BPD perishable skills training, from outside providers such as POST and the CNOA (California Narcotics Officers' Association).[13]

3. Prior involvement with this matter

Sergeant Nance stated that following Officer Matejcek's use-of-force on April 23, 2022, Sergeant Tonkel—the day watch patrol sergeant who had initially been asked to review Officer Matejcek's report about the incident by Sergeant Alvarez—called Sergeant Nance, while Sergeant Nance was off duty, described the incident, asked for Sergeant Nance's opinion about the kick at issue, and asked if the April 2022 use-of-force training had included kicking. Sergeant Nance, in turn, spoke to Officer Sares—the lead defensive tactics instructor for the Gracie Survival Tactics portion of the training—who told Sergeant Nance there had not been any curriculum about kicking at the April 2022 training.

Sergeant Nance also was asked by Sergeant Eric Huesman and Officer Aaron Peachman—both of whom "are very heavily involved with the POA"— about Officer Matejcek's kick of Ms. V1 and about any BPD training about kicking.

Following the questions from Sergeant Huesman and Officer Peachman, Sergeant Nance reviewed the video of Officer Matejcek's kick of Ms. V1 captured on Officer Franson's body-worn camera and assumed he would see Officer Matejcek "using his foot to prevent [Ms. V1 from standing;" instead, "it was [Officer Matejcek] actually kicking her." After reviewing the video, Sergeant Nance told Sergeant Huesman and Officer Peachman that he did not think that Officer Matejcek's kick of Ms. V1 was reasonable.

4. Sergeant Nance's review of the Franson body-worn camera video with the Investigator and his opinion regarding Officer Matejcek's use of force

In addition to Sergeant Nance's prior review of Officer Matejcek's report and Officer Franson's body-worn camera video that captured Officer Matejcek's kick of Ms V1 and to provide additional context when reviewing the video with him, the Investigator provided Sergeant Nance with basic background information about the time of day, nature of the call, the location of the incident, and how the involved officers came upon Ms V1 inside the shed shown in the video. The Investigator then played portions of Officer Franson's body-worn camera video to provide Sergeant Nance with additional context about the incident so that he was as aware as possible about the circumstances that led to Officer Matejcek's use of force.

Sergeant Nance stated that he recognized Ms. V1 from "probably less than five" prior contacts he has had with her. Sergeant Nance noted that Ms. V1 was "oftentimes intoxicated and/or under the influence of a controlled substance" during his prior contacts with her. Sergeant Nance knew from his contacts with Ms V1 and/or information from other BPD officers, that Ms. V1 was a methamphetamine user who sometimes engaged in erratic behavior and ran from officers. Sergeant Nance also believed that Ms. V1 had attempted

[13] Exhibit 14.

to spit or kick at other officers and had prior arrests for obstructing officers (Penal Code section 148) and public intoxication (Penal Code section 647(f)).

Sergeant Nance watched the portion of the video during which Ms. V1 emerged from the shed and Officer Matejcek pulled Ms. V1 to the ground with her left arm into a seated position after Ms. V1 did not comply with Officer Matejcek's directions to "sit down."[14] Sergeant Nance stated that Officer Matejcek's actions were reasonable in that instance.

When asked by the Investigator about Officer Matejcek's and Officer Flynn's deactivation of their respective body-worn cameras during the incident to have "administrative conversations" about what to do with Ms. V1 , Sergeant Nance stated that it would have been preferable if they had muted, rather than deactivated, their respective cameras, but described that muting or deactivating cameras during such "administrative conversations" is "not uncommon" at BPD.

The Investigator played a portion of the video starting approximately two minutes before Officer Matejcek kicked Ms. V1 during which Ms. V1 yelled, with profanity throughout, at Officers Matejcek, Flynn, and Franson to "quit following" her, objected to them shining lights in her eyes, alleged that they killed people, and argued that she could drink "whatever the fuck I want" before Officer Franson muted the audio on his body worn camera.[15] The Investigator then provided Sergeant Nance with a general description of the recollections of Officers Matejcek, Flynn, and Franson about what occurred during the approximately one minute of muted audio prior to Officer Matejcek kicking Ms. V1 The Investigator described:

> According to all the officers, they're discussing what to do with V1 . They discuss 5150. They decide they don't have that. They land on 647(f) because she does seem intoxicated and meets the elements of public intoxication. They discuss having AMR [the ambulance] come to have some scratches on her face looked at, which I think they suspect she got from throwing a bottle against the wall of that shed and breaking it. She gets upset, starts kind of talking and yelling nonsense to them, like she was before Franson muted his body-worn camera. And then right before the kick, she starts trying to stand up.

The Investigator twice played for Sergeant Nance the portion of the video during which Officer Matejcek kicked Ms. V1 . The Investigator also provided Sergeant Nance with Officer Matejcek's perceptions of Ms. V1 actions immediately before he kicked Ms. V1 : uncrossing her legs, leaning forward, and tucking her legs beneath her. The Investigator told Sergeant Nance that Officer Matejcek estimated standing about four to five feet away from Ms. V1 before stepping forward and using his right foot to kick Ms. V1 in the left midsection, and estimated Flynn to be a foot or two behind him, and Franson five to six feet away from Ms. V1 at the time of his kick. The Investigator provided Sergeant Nance a

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[14] Exhibit 1, 0:50 – 1:45.

[15] Exhibit 1, 6:44 – 8:10.

summary of Officer Matejcek's stated rationale for kicking Ms. V1 in the manner that he did:

> [Matejcek] thought that V1 was either going to jump forward at him if she stood up, spit at them or run away, which might require them to tackle her causing more injury. So he said that he wanted to push her off balance with his foot back into the shed door and onto her butt, if possible, but did not want to go hands on because he did not want to be spit on.

The Investigator then asked if Sergeant Nance believed that Officer Matejcek's kick was reasonable force under the circumstances. Sergeant Nance responded:

> No . . . Because there was other officers present. There was no imminent threat. She's handcuffed. She's not at risk of escaping. She's not going to outrun those three officers handcuffed. She did not lunge at the officers, although the officer may well believe she might, it did not appear that she made any attempt to close distance. Based on those reasons, yeah, it seems like it was not a reasonable use of force.

The Investigator relayed to Sergeant Nance that Officers Franson and Flynn each believed there were less intrusive options available at the time to secure Ms. V1 including use of a control hold and sitting her back on the ground or bringing her to a nearby patrol vehicle, or maintaining their distance and seeing what Ms. V1 did. Sergeant Nance agreed that each of those less intrusive options was reasonable under the circumstances.

Sergeant Nance added: ". . . it does not appear to me as though the kick was delivered with the intent of causing injury or diminishing the suspect's capacity to fight back. I do believe he kicked her in order to push her back to the ground." Sergeant Nance believed Officer Matejcek's kick might have been more reasonable than it was if Ms. V1 had not been handcuffed, but "would still likely be unreasonable in my opinion."

V. CREDIBILITY ASSESSMENTS

In connection with determining the facts alleged, and consistent with EEOC guidelines, the Investigator assessed the credibility of each witness by evaluating the witness's demeanor, potential bias or motivation to be untruthful, ability to recall information, the specificity of the information provided, the consistency of statements with a witness's prior statements and/or the statements of other witnesses, the inherent plausibility of witness statements, and, in some cases, the past record of a witness.

The Investigator found each witness to be forthright, honest, and credible.

Officer Matejcek seemed to sincerely believe his use-of-force was reasonable under the circumstances. While the other witnesses unanimously disagreed with Officer Matejcek's opinion about the force he used, and the findings below conclude that his use-of-force was not reasonable, the Investigator does not impute an intention by Officer Matejcek to purposefully overstate his perception of the threat presented by Ms. V1, the nature of his relevant training, or any of the circumstances that led to his use-of-force.

VI. STANDARD OF PROOF, FINDINGS, AND ANALYSIS

A. Standard of Proof and Keys to Findings

In weighing the evidence, the general civil standard of proof was applied. An incident was found to have occurred if the preponderance of the evidence obtained during the investigation supported that conclusion. That is, it was more likely than not that the event happened. In reaching these determinations, it is critical that the information is both reliable and susceptible of proof. Credibility resolutions were made where appropriate.

The following is a key to the terminology used in reaching findings:

SUSTAINED	There is sufficient evidence to establish the act(s) occurred.
NOT SUSTAINED	There is insufficient evidence to sustain the complaint or fully exonerate the member.
UNFOUNDED	The alleged acts did not occur.
EXONERATED	The alleged acts occurred but the acts were justified, lawful, and/or proper.

B. Findings and Analysis

The allegation is **sustained**. There is sufficient credible evidence to find Officer Matejcek used unreasonable force when he kicked Ms. V1 on April 23, 2022, while Ms. V1 was handcuffed and effectively surrounded by Officer Matejcek, Officer Franson, and Officer Flynn.

In reaching this finding, the Investigator considered the BPD Use of Force policy, Section 300, as a whole, and applied the relevant "factors used to determine reasonableness of force" referenced in section 300.3.2[16] to the credible evidence gathered during the course of this investigation. The following factual findings are supported by more than a preponderance of credible evidence and address the cited relevant "factors used to determine reasonableness of force" in the BPD Use of Force policy:

Officer Matejcek, Officer Flynn, and Officer Franson had prior contacts with V1 before April 23, 2022. Between the three officers, they were aware, to varying degrees, that Ms. V1 used methamphetamine, drank alcohol to excess, could act erratically and aggressively, and that she sometimes fought with officers, spat at officers, and ran away from officers during Ms. V1 multitude of contacts with BPD personnel. Of all the witnesses, Officer Matejcek professed the most knowledge about Ms. V1 estimating that he had contacted her approximately 24 times since he started at BPD in August 2017. Officer Matejcek specifically raised his two most recent contacts with Ms. V1 —in the summer of

[16] The BPD Use of Force policy is Exhibit 15 to this report.

2021 and January 2022—and his knowledge of BPD Officer Michelle Hall "getting into a ground fight" with Ms. V1 during an arrest in approximately March 2022, as evidence of Ms V1 propensity to fight with officers, run away from officers, and/or spit at officers.[17] Based on a review of all the evidence, there is sufficient evidence to find that Officer Matejcek knew of Ms V1 use of methamphetamine and alcohol, that she could act erratically and aggressively, and that she sometimes fought with officers, spat at officers, and ran away from officers. However, there was no documentary evidence provided by the BPD that Ms. V1 ever fought with, or spat at, Officer Matejcek during Officer Matejcek's nearly five-year career with the BPD.[18]

It had been more than three months since Officer Matejcek had any documented contact with Ms V1 when Officers Matejcek, Franson, and Flynn responded to the April 23, 2022 call at the Home Depot on Lone Tree Way regarding a person screaming near the garden sheds in the parking lot. As Officer Franson's video depicts, Officer Matejcek quickly recognized Ms. V1 as she emerged from the shed while he was holding open the door, calling her V1 within a few seconds and ordering her to "sit down" as Ms V1 slowly shuffled to her right

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[17] According to Officer Hall's police report, Ms. V1 ran from Officer Hall twice on January 31, 2022, while Officer Hall was investigating a possible auto burglary involving Ms. V1. According to Officer Hall's report, Ms V1 struggled and kicked at Officer Hall before a citizen helped hold down Ms V1 so that Officer Hall could handcuff Ms. V1 and take her into custody. A search of BPD records showed that Officer Matejcek has not arrested Ms. V1 for obstructing an officer (Penal Code section 148(a)(1)) or for any incidents involving violence by Ms. V1. (Exhibit 10.)

BPD records also show that Officer Matejcek was present during six incidents—not 24 incidents as estimated by Officer Matejcek—involving Ms. V1 prior to April 23, 2022, three during which he had any contact with Ms. V1, and one, the latest in January 2022, during which Ms. V1 ran away from Officer Matejcek. A summary of the six incidents: October 13, 2018 (Ms. V1 father reported a concerning text message from Ms. V1. Ms. V1 was not present at the scene); November 16, 2018 (Ms. V1 was accused of vandalizing her father's vehicle and left the scene prior to Officer Matejcek's arrival); December 14, 2018 (Ms. V1 was thought to be responsible for a possible auto burglary and was not present at the scene); December 22, 2018 (Ms. V1 was reported to be lying near a traffic signal, and Officer Matejcek told dispatch V1 was sleeping moved along"); July 26, 2021 (Ms. V1 was detained and released by Officer Matejcek after a customer at Happy's Laundry reported that Ms. V1 was "yelling, screaming, touching ppl's clothes, and touching her privates"); and, as referenced by Officer Matejcek, January 6, 2022 (Ms. V1 ran away from Officer Matejcek when he attempted to contact her for causing a disturbance at the Brentwood Game Exchange.) (Exhibit 11.)

According to Ms. V1 "Person Record," she has been contacted on more than 100 different dates since August 2005 by BPD officers, more than 90 of those dates are since July 2018. (Exhibit 12.)

[18] Exhibit 15, Section 300.3.2(r).

and toward Officer Matejcek, seemingly dazed and not focusing on Officer Matejcek. Ms. V1 was initially slow to comply with Officer Matejcek's initial commands to "sit down" as she emerged from the shed and Officer Matejcek, without hesitation, grabbed Ms V1 by her left arm and conducted what he described as a "leg sweep" while pulling her down to her buttocks, then handcuffed her[19]—actions that all witnesses, including Sergeant Nance, deemed as reasonable under the circumstances.

Within one minute of her discovery in the shed, Ms. V1 was effectively restrained with handcuffs behind her back and seated on the pavement in front of the open shed door she had emerged from. For the next seven plus minutes, Ms. V1 remained in that position while she conversed with, and yelled at, the three larger officers triangulated around her—each about six to seven feet from Ms V1 .[20] Officer Matejcek chose not to pat search Ms. V1 for weapons, did not express any concern that Ms. V1 possessed any weapons at the scene or during his interview, and there were no visible weapons or "dangerous improvised devices" within Ms. V1 limited reach or close vicinity.[21]

The video shows, and the officers' statements confirmed, that Ms V1 exhibited symptoms of alcohol impairment that supported her arrest for public intoxication (Penal Code section 647(f))—a relatively minor misdemeanor—including the smell of an alcoholic beverage on her breath, slurred speech, watery eyes, the fact that she was hiding in a shed when they found her, and her sometimes erratic and non-sensical speech. Officers Matejcek and Franson suspected Ms. V1 might be under the influence of drugs based on her erratic behavior, but no drug recognition tests were performed by the officers and Ms V1 was not arrested for being under the influence of methamphetamine or any other drug.[22] Ms. V1 was able to respond to questions by the officers (albeit sometimes sarcastically) about the suspect who allegedly shot her in the nose and her mental state. Officer Flynn and Officer Matejcek each turned off their respective body-worn cameras early in the contact with Ms. V1 because, as described by Officer Matejcek, the situation was "static" at the time. According to Officers Flynn and Matejcek, Ms. V1 did not meet the criterion to place her on a temporary hold for psychiatric evaluation pursuant to Welfare & Institutions Code section 5150, and Ms. V1 expressly denied wanting to hurt herself or others when asked by Officer Matejcek.[23]

After Officer Franson muted the audio on his body-worn camera at the minute 8:10 mark of the video, Ms V1 , according to the similar descriptions by each of the three officers, continued to exhibit a "rollercoaster" of emotions—shifting between calm and yelling at the officers, then became agitated and upset to the point that her voice was louder and more audible

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[19] Exhibit 1, 0:47-1:00.

[20] Exhibit 15, Section 300.3.2(a), (b), (c), (i).

[21] Exhibit 15, Section 300.3.2(h).

[22] Exhibit 15, Section 300.3.2(e); Exhibit 1,1:00-9:06.

[23] Exhibit 15, Section 300.3.2 (e), (f), (g), (k); Exhibit 1 at 7:16-7:28.

on the camera in Officer Franson's car than it had been for most of the contact.[24] At the minute 9:08 mark on Officer Franson's body-worn camera video, Ms. V1 can be seen leaning forward in an attempt to stand up despite Officer Matejcek reporting that he told Ms. V1 to "stay seated" and "sit down" (which cannot be heard on Officer Franson's vehicle camera video, but was attested to by Officer Flynn). Officer Matejcek then took his first of three quick steps toward Ms. V1 from about six feet away as she began to stand up, then kicked Ms. V1 hard with his right foot to her left torso area. Officer Matejcek's kick connected with Ms. V1 left side just as Ms. V1 appeared to stand up completely, and with enough force to send Ms. V1 sprawling backwards into the open shed door before falling to the ground on her buttocks. As captured on Officer Franson's vehicle camera, Officer Matejcek's kick of Ms V1 sounded as if it caused Ms V1 to yell "aah" and created an audible "thud" as her body struck the open shed door behind her.[25]

At the time Officer Matejcek kicked Ms V1 she did not present any immediate threat to Officers Matejcek, Franson, or Flynn, or any other citizen.[26] While she had yelled at officers and started to stand up contrary to the commands by Officer Matejcek to "sit down," Ms. V1 made no movement toward Officer Matejcek or the other two officers indicating physical resistance, made no movement indicating an attempt to run away, and made no attempt to spit at the officers.[27] At the moment Officer Matejcek started his approach toward Ms. V1 then kicked her with considerable force, Ms. V1 did not present any reasonably foreseeable potential of injury to the three officers or any other person, did not present a reasonably foreseeable risk of escape, and there was no apparent need for "immediate control" of Ms. V1 or "a prompt resolution of the situation."[28] To the contrary, Ms. V1 was impaired by alcohol, handcuffed, effectively surrounded by three larger officers, and was in the middle of a large, otherwise empty, parking lot. Despite Officer Matejcek's stated concerns about the risk of Ms. V1 "running away or being able to slip her handcuffed arms from behind her" if she stood up, Ms. V1 did not attempt to do either before Officer Matejcek kicked her. Had Ms. V1 intended to fight or run from officers, she was at a profound disadvantage in every sense, and could have been subdued without much effort using less intrusive means, just as Officer Matejcek had demonstrated when he initially detained Ms. V1

Officer Matejcek's assertions that he used the kick to create distance from Ms V1 to avoid being spit on is unpersuasive and contradicted by his actions. Ms. V1 had neither spit nor attempted to spit on Officers Matejcek, Flynn, or Franson before Officer Matejcek kicked her. Moreover, Officer Matejcek made no effort during the several minutes before the kick, or

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[24] Exhibit 2, 8:30-8:55.

[25] Exhibit 1, 9:07-9:12; Exhibit 2, 8:50-8:54.

[26] Exhibit 15, Section 300.3.2(a).

[27] Exhibit 15, Section 300.3.2 (n).

[28] Exhibit 15, Section 300.3.2 (m), (o), (p).

thereafter, to obtain a spit hood and place it on Ms. V1 to prevent being spit on by her, even though all BPD patrol vehicles are equipped with spit hoods and BPD officers are authorized to use them in such circumstances.[29] Further, immediately following the kick, Officer Matejcek is shown on the Franson body-worn camera video searching Ms V1 for about four minutes at the hood of his car, often placing his face within one to two feet of Ms. V1 head without registering any concern that Ms V1 might spit at him.[30]

Officer Flynn and Officer Franson did not have the same concerns about Ms V1 standing up as Officer Matejcek did, which was evinced on Officer Franson's body-worn camera video when neither of them moved discernably at all when Ms. V1 started standing up. Officer Flynn and Officer Franson each unhesitatingly stated during their interviews that they were surprised by Officer Matejcek kicking Ms. V1 in the manner that he did, and each believed Officer Matejcek's kick of Ms. V1 to have been unreasonable under the circumstances. Officer Flynn and Officer Franson also offered a number of feasible, reasonable, and less intrusive alternatives to Officer Matejcek's kick that were available at the time, such as more verbal commands, maintaining distance to further observe Ms V1 and her intentions, using a control hold or grabbing her arm, and either pulling Ms. V1 back down into a seated position, or escorting her to one of the nearby patrol vehicles.[31]

Sergeant Nance—a defensive tactics instructor at BPD for over 20 years, the lead BPD defensive tactics instructor for the last three years, an accomplished outside agency instructor in defensive tactics, arrest and control, and uses of force, and a published author and editor for noted law enforcement publications about those subjects—substantially and independently agreed with the observations of Officers Flynn and Franson, including their belief that there were feasible, less intrusive options to control Ms. V1 at the time. Sergeant Nance, after viewing the video showing Officer Matejcek's kick of Ms. V1 several times, reading Officer Matejcek's report, and being provided Officer Matejcek's stated reasoning for his kick of Ms. V1 also opined that Officer Matejcek's kick was unreasonable under the circumstances, "Because there was other officers present. There was no imminent threat. She's handcuffed. She did not lunge at the officers, although the officer may well believe she might, it did not appear that she made any attempt to close distance." Sergeant Nance added that he did not believe Officer Matejcek intended to cause injury to Ms. V1 and that it appeared that Officer Matejcek intended to kick Ms. V1 in order to push her back to the ground.[32]

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[29] Exhibits 16, 17.

[30] Exhibit 1, 9:16-14:03 (end of video). Ms. V1, still without a spit hood, later spit on CSO Alan Sheffield at the Martinez Detention facility. (Exhibit 3 (CSO Sheffield's supplemental report).)

[31] Exhibit 15, Section 300.3.2(j).

[32] The Investigator concurs with Sergeant Nance on this point and does not find that Officer Matejcek was attempting to injure Ms. V1 Instead, consistent with Officer Matejcek's explanation that he was effectively trying to topple Ms. V1 and "wasn't trying to field goal

Finally, Officer Matejcek's contentions that his kick of Ms. V1 was justified by police academy training he received, and that BPD Officer O2 O2 had been exonerated for kicking a suspect in the head, were substantially rebutted by the evidence. For one, the three "Learning Domain" pages from Officer Matejcek's police academy workbooks that Officer Matejcek provided as support for the idea that kicking an actively resisting suspect in the midsection was proper, did not include any mention of kicking a handcuffed suspect and Officer Matejcek conceded that none of his police academy kick training involved hypothetical situations of kicking a handcuffed suspect.[33] Sergeant Nance stated that BPD training records show Officer Matejcek is currently up to date with all perishable skills training and emphatically added that the BPD "never trained to strike a handcuffed suspect" in any of the BPD courses—including the perishable skills trainings involving use of force, arrest and control, and defensive tactics. Sergeant Nance also opined that only in a "very, very unusual circumstance" might striking a handcuffed suspect be deemed as reasonable, such as a handcuffed suspect reaching for a weapon such as a firearm, or about to run into traffic.

Relatedly, a review of Officer O2 May 17, 2017, police report[34] shows that Officer O2 was involved in one of those "very unusual circumstances." According to the report, Officer O2 assisted with the apprehension of a suspect wanted for stalking in Emeryville who had engaged Emeryville PD and California Highway Patrol units in a vehicle pursuit to the suspect's home in Brentwood. Officer O2 was one of three officers who apprehended the suspect in the suspect's garage. The suspect struggled with the three officers and refused to comply with repeated commands to place his hands behind his back. Officer O2 wrote that he kicked the unhandcuffed suspect on the left side of the face and back of the head believing the suspect's actions presented an "imminent danger" to the officers if he continued to reach for a possible weapon in his waistband area.

Based on all of the foregoing evidence, and consideration of the relevant "factors used to determine reasonableness of force" referenced in section BPD Policy Manual section 300.3.2, there is sufficient evidence to find that Officer Matejcek used unreasonable force on April 23, 2022, by kicking Ms V1 with substantial force to her left torso area with his right foot while Ms. V1 was handcuffed and effectively surrounded by three officers, because Ms. V1 stood up contrary to commands to remain seated. Officer Matejcek's level of force against Ms. V1 was "not proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance" and, therefore, violated the BPD Use of Force policy.

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punt her through the shed," it appears that Officer Matejcek's leg was nearly fully extended at the point his foot made contact with Ms. V1 torso. Nevertheless, under the circumstances here, even a somewhat restrained kick was not reasonable.

[33] Exhibit 9.

[34] Exhibit 13 at p. 16.

Respectfully Submitted,

Todd Simonson

Todd Simonson, Investigator

LAW OFFICE OF TODD SIMONSON, PC

POST PROFILE NAME:

MATEJCEK, PAUL

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: N/A

DATE: 02/13/2023

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
C65-U31				

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
194086	B	03/08/2019		51.00	0.00	O1 Educational Institution
145737	I	12/18/2020	BS	0.00	0.00	

Total Number of Certificates: 2

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
08/01/2017	08/31/2022	2	PO	08/01/2017	07020	BRENTWOOD PD	F	P	

***Reason for Separation: 2 = Discharge**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
07/28/2017	A	5590-00100-16-002	1020		Y	07020	CONTRASO		BASIC COURSE-INTENSIVE
08/01/2017	K	3460-29501-17-001	8		Y	07020	BPD	*	FIREARM(PSP)
08/04/2017	K	3460-31803-17-001	20	X	Y	07020	BPD		FIREARMS/LONG RIFLE
08/10/2017	K	3460-29503-17-001	5		Y	07020	BPD	*	ARSTCTL(PSP)
09/22/2017	K	7140-31445-17-003	40	X	Y	07020	I&I INSTIT	*	INTERVIEW & INTERROGATION
01/11/2018	K	9180-25554-17-195	2	X	Y	07020	POST	*	COMMUNICATION: KEEPING YOUR EDGE (WEB)
03/01/2018	K	3460-29501-17-002	5		Y	07020	BPD	*	FIREARM(PSP)
06/14/2018	K	3460-30780-17-002	8	X	Y	07020	BPD		COURT & TEMPORARY HOLDING FACL
06/29/2018	K	9180-25587-17-364	2	X	Y	07020	POST		VEHICLE PURSUIT POLICY (WEB)
10/24/2018	K	9180-25579-18-116	3	X	Y	07020	POST		GANGS: PC 186.22 FOR PATROL (WEB)
11/25/2018	K	9180-25560-18-148	1	X	Y	07020	POST		OFFICER SAFETY: HOT OR NOT (WEB)
11/25/2018	K	9180-25577-18-148	2	X	Y	07020	POST		OFFICER SAFETY: MAKE THE RIGHT CHOICE (WEB)
01/17/2019	K	9180-25585-18-201	2	X	Y	07020	POST	*	TACTICAL COMMUNICATION (WEB)
02/07/2019	K	3460-29501-18-004	5		Y	07020	BPD	*	FIREARM(PSP)
02/20/2019	K	1270-30252-18-012	8	X	Y	07020	CHP		VEHICLE RACING/MOD.VEH.ENFORC
03/12/2019	K	9070-32345-18-010	8	X	Y	07020	GTA		DOMESTIC VIOLENCE/1ST RESPONDER
04/18/2019	K	5590-20798-18-006	8		Y	07020	CONTRASO		CRISIS INTERVENTION AND DE-ESCALATION TRAINING
05/20/2019	K	1345-24202-18-006	8	X	Y	07020	STG		CRITICAL INCIDENT RESPONSE BASIC
05/23/2019	K	3460-29502-18-005	8		Y	07020	BPD	*	DRIVING(PSP)
06/13/2019	K	3460-29501-18-003	10		Y	07020	BPD	*	FIREARM(PSP)
07/01/2019	K	3460-29501-19-002	10		Y	07020	BPD	*	FIREARM(PSP)
08/01/2019	K	3460-30780-19-001	8	X	Y	07020	BPD		COURT & TEMPORARY HOLDING FACL
08/01/2019	K	3460-29000-19-260	2	X	Y	07020	BPD		BIAS BASED POLICING: REMAINING FAIR & IMPARTIAL
08/12/2019	K	9180-25587-19-043	2	X	Y	07020	POST		VEHICLE PURSUIT POLICY (WEB)
09/13/2019	K	5590-20311-19-001	24		Y	07020	CONTRASO		DRUG ABUSE RECOGNITION-INTRO
09/19/2019	K	2750-24065-19-001	8		Y	07020	SUNNYVL PS		CANINE AGITATOR COURSE
11/29/2019	K	9180-55000-19-152	1	X	Y	07020	POST		AB:392 CALIFORNIA'S NEW USE OF FORCE STANDARDS (NO CPT CREDIT)
12/18/2019	K	1270-20272-19-036	16		Y	07020	CHP		ADVANCED ROADSIDE IMPAIRED DRIVER ENFORCEMENT
01/09/2020	K	8790-21185-19-003	8		Y	07020	CNOA		USE OF FORCE UPDATE

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
03/05/2020	K	3460-29501-19-004	10		Y	07020	BPD	*	FIREARM(PSP)
06/12/2020	K	9180-25586-19-348	8	X	Y	07020	POST		FIRST AID/CPR/AED (WEB)
07/01/2020	K	3460-29000-20-280	2	X	Y	07020	BPD		USE OF FORCE: TOTALITY OF THE CIRCUMSTANCES
08/06/2020	K	5590-29502-20-005	4	R	Y	07020	CONTRASO	*	DRIVING(PSP)
09/10/2020	K	5590-23300-20-001	24	R	Y	07020	CONTRASO		RADAR OPERATOR
09/11/2020	K	5590-23320-20-001	8	R	Y	07020	CONTRASO		RADAR-LASER OPERATOR (LIDAR)
09/17/2020	K	3460-29503-20-002	5	R	Y	07020	BPD	*	ARSTCTL(PSP)
11/04/2020	K	9590-31434-20-001	8	X	Y	07020	B.A.T.I.		INTERVIEWING FOR FIRST RESPONDERS
02/24/2021	K	1126-24202-20-004	8	R	Y	07020	3RD DEGREE		CRITICAL INCIDENT RESPONSE BASIC
04/12/2021	K	3460-29000-20-288	2	X	Y	07020	BPD		BIAS AND RACIAL PROFILING
04/12/2021	K	3460-29000-20-291	2	X	Y	07020	BPD		HUMAN TRAFFICKING
04/12/2021	K	9180-25585-20-286	2	X	Y	07020	POST	*	TACTICAL COMMUNICATION (WEB)
05/14/2021	K	3460-29502-20-003	6	R	Y	07020	BPD	*	DRIVING(PSP)
05/15/2021	K	9180-25588-20-319	4	X	Y	07020	POST		CALLERS IN CRISIS: SUICIDAL CALLERS (WEB)
08/02/2021	K	3460-29501-21-003	5		Y	07020	BPD	*	FIREARM(PSP)
08/06/2021	K	3460-29503-21-003	5		Y	07020	BPD	*	ARSTCTL(PSP)
10/22/2021	K	5590-21675-21-001	40	R	Y	07020	CONTRASO		DRIVER TRAINING INSTR
02/02/2022	K	9180-25595-21-217	4	X	Y	07020	POST		BEYOND BIAS:RACIAL & IDENTITY PROFILING UPDATE
02/02/2022	K	9180-25597-21-217	1	X	Y	07020	POST		LEGAL UPDATE: POSITIONAL ASPHYXIA-SELF PACED
04/15/2022	K	3460-29580-21-001	4	X	Y	07020	BPD	*	USE OF FORCE (PSP)

***Meets Perishable Skills**

FOOTNOTES

NO FOOTNOTE ON FILE.

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES
This section will only appear if applicable.

FOOTNOTES
This section reserved for additional information.

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December 12, 2023

HEARING OFFICER RECOMMENDATION
PURSUANT TO
DEPARTMENT POLICY MANUAL

In the Matter of a Disciplinary Appeal	)	
	)	
City of Brentwood, Employer	)	Officer Paul Matecjek Termination
and	)	
Paul Matecjek, Appellant	)	

APPEARANCES:

For the Employer: James E. "Jeb" Brown, Attorney
Liebert Cassidy Whitmore
6033 W. Century Blvd. 5th Floor
Los Angeles, CA 90045

For the Appellant: Julia D. Fox, Attorney
Rains Lucia Stern
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Pleasant Hill, CA 94523

PROCEDURAL BACKGROUND

The above-referenced matter results from an appeal filed by the Appellant, Officer Paul Matecjek. The appeal was made pursuant to the Brentwood Police Department Policy Manual, Policy 1028.

The undersigned was selected by the Employer and the Appellant as the hearing officer. The matter was heard in Brentwood, California on August 8 and 9, 2023.

The parties stipulated that the matter was properly before the hearing officer. Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. At the conclusion of the hearing, the parties chose to conclude their presentations by written briefs. Briefs were received by the hearing officer on November 13, 2023, and the matter was submitted.

In accordance with the applicable policy, the following is a recommendation to the City Manager.

ISSUE

The following is the issue in this matter: Did the Employer fail to provide the facts cited in support of the punitive action by a preponderance of the evidence? Did the Employer abuse its discretion in the imposition of the penalty? If so, what is the proper remedy?

RELEVANT POLICY PROVISIONS

Brentwood Police Department Policy Manual

Policy 1028 – Administrative Appeals

1028.1 PURPOSE AND SCOPE This administrative appeal process is established pursuant to Government Code Section 3304.5. This policy applies to all public safety officers (as that term is defined by Government Code Section 3301) who are subject to any punitive (disciplinary) action or denial of promotion on grounds other than merit. A punitive action is defined as any personnel action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment (Government Code Section 3303).

…….

(c) Advisory Findings:

1. The recommended findings of the hearing officer shall be rendered within thirty (30) calendar days of the hearing, or within a reasonable time thereafter, and shall be advisory only to the City Manager. In the event the punitive action being appealed was initially imposed by the City Manager, the hearing officer's finding shall be advisory to the City Council. The City Council shall make the final decision. The City Manager or City Council may accept, modify, or reject the recommended decision. Nothing in this policy shall be construed as to bind the City Manager or City Council, to any findings of the hearing officer.

(d) Burden of Proof/Persuasion:

1. The employer shall have the burden of providing the facts cited in support of the punitive action by a preponderance of the evidence. The employer shall also bear the burden of persuasion that the punitive action being appealed is not an abuse of discretion.

FACTS

The Appellant Was a Police Officer with Five Years Experience with the Employer: He attended the Contra Costa County Sheriff's police academy in January 2017 as a "non-affiliate student," paying his own way. One of the academy training officers was Officer Tonkle from the Brentwood PD. The Appellant testified as follows:

> He [Office Tonkle] saw how well I was doing at the academy, he knew that I wanted to come to Brentwood, because I had family that lived in the area, and I wanted to serve in the community that I kind of grew up in…

The Appellant was sworn in as a Brentwood police officer on August 2, 2017. At the time of the incident for which he was terminated, the Appellant was a patrol officer working the night shift. He had no prior discipline.

Officer David Franson was hired in 2020 and worked with the Appellant. He was called by the City as a witness and testified as follows:

> Honestly, going to [the Appellant's] team because we bid for shifts every year…I was looking forward to it. My little experience before being assigned to that team with him…I knew him to be a good guy. And…in my opinion, a good officer, a competent officer, somebody I could trust to get my back if things went really bad, if that makes sense.

Over His Years Working Patrol, the Appellant Had Several On-the-Job Encounters with the Civilian[1]: The Appellant's experience with the white female [redacted] went back several years. He testified as follows:

> I knew that she was a local transient that we, myself, I had multiple problems with, as far as when I arrested her, and the kind of human that I saw she was…She was a transient

[1] To protect her privacy, the civilian involved in the incident will be referred to in this Recommendation as "V1." She did not testify at the hearing.

> who was always under the influence of methamphetamine or alcohol or both….I knew her to be belligerent, violent. She never showered, so she was always kind of dirty…
>
> I knew that she was a shoplifter. I knew that she would run away from me any time that I tried to arrest her. And if I did arrest her and tell her that she was going to go to jail, she would normally fight with us. Whether it be kicking, pulling, biting, screaming, anything to resist going to jail.

Prior to April 2022, the Appellant had contact with [V1] twenty times and arrested her approximately six times. In 2021, he arrested her when she was observed going through people's clothes in a laundromat. He and his partner coaxed her out of the building. He testified as follows:

> I put her in handcuffs…and sat her down. While she's sitting down, she's doing the same kind of thing, screaming at me, obscenities, the "fuck yous," you know, "you got nothing on me," that kind of thing…I eventually escort her to the back of my patrol car and I try putting her in the back of the car. When she's in the back of the car, she's pulling away, she's kicking at me, and then she actually spat at me.

The Appellant stated that his first contact with [V1] was in 2019. He testified as follows:

> She had a restraining order which was issued by her father because she had been arrested for elder abuse against him…He called us saying that "Yeah, she's here." So we actually ended up chasing her until she went and hid in the back of a truck…She was…aggressive with us as well. Like, "What, I'm not [V1]
>
> Then putting her in handcuffs, she starts amping it up with a lot of verbal aggression and kind of pulling away…

[V1] had a "two-officer minimum" listed by her name in police records, the Appellant stated. This meant that officers were not advised to contact her by themselves. [V1] had informed the Appellant and other officers that she was Medical Information or had Medical Informat

Prior to being hired by BPD, Officer David Franson worked as a correctional officer and deputy sheriff for San Mateo County for thirteen years. He was called by the City as a witness at the hearing.

Officer Franson had also had encounters with [V1] during his time as a patrol officer. He had approximately five contacts with her prior to April 2022. He stated that she is a "known transient. Has been a problem in the past. Multiple law enforcement contacts." He said she had a reputation in the department as a "difficult person to deal with."

Officer Franson testified about one prior incident with [V1]

> It was not my call, I was just there to help out if needed…[V1] was found inside of a new home that was almost done being built…She somehow gained access to that residence

> and was hiding in a closet…Officers contacted her inside. I remember them describing her as acting like a zombie as she crawled out of the closet.
>
> When I showed up on scene, she was on a stretcher in front of the house, and she was acting pretty bizarre, as far as yelling, almost animal-like behavior.

On April 23, 2022, the Appellant and Two Fellow Officers Responded to a Call in the Parking Lot of a Home Depot: A call came in to 911 from an individual who was in the parking lot at the Home Depot in Brentwood. She reported that she had arrived to perform landscaping duties on the site and had heard the sound of screaming coming from one of the manufactured storage sheds in an outdoor display area adjacent to the parking lot.

The Appellant was on his way back to the police station to book some personal belongings from an arrest he made earlier that morning. He heard the call, knew he was the primary officer for that beat, and told dispatch that he would take it. He testified that Officer Josh Flynn also arrived on the scene in an unmarked vehicle.[2]

Officer Franson also heard the call on the radio and went to the scene. He recalled arriving on the scene and conducting a brief interview with the Home Depot gardener. He then met Officer Flynn and the Appellant near the sheds. Officer Franson had his body worn camera (BWC) activated at this time.[3]

The officers heard noises coming from one of the sheds. Officer Flynn and the Appellant approached the shed. The door of the shed was shut. Officer Flynn shone his flashlight through a small window in the shed while the Appellant opened the door. Officer Franson stood a few feet from the shed door with his taser pointed at the door.

V1 had apparently been standing inside the shed, near the door. When the door opened, she walked out. Officer Franson stated "let's see your hands," which were visible in front of her at about shoulder height. V1 began to walk away and the Appellant ordered her to sit down. "Sit down, sit down, sit down, [V1 sit down," can be heard on the audio of the BWC. She did not sit down and continued to walk.

The Appellant grabbed her from behind by the upper arms and stated he used a leg sweep technique to get her into a seated position on the ground in front of the shed.[4] The BWC video is oriented from V1's waist up, so it is not possible to see whether a leg sweep took place or whether he just pulled her

[2] Officer Flynn did not testify at the hearing.
[3] The Appellant turned off his BWC when he arrived on the scene. He was not charged with a rule infraction for doing so. That matter is therefore not further discussed in this recommendation.
[4] The Appellant was not charged with excessive force for this initial takedown of the suspect.

down. She is then seated with her legs crossed in front of her. Debris and broken glass can be seen scattered in front of the shed.

The Appellant can then be heard saying "put your hands behind your back." [redacted] then asks "why," and the Appellant responds, "because I said so." He then proceeds to place metal handcuffs on her wrists. She appears and sounds calm at this point, telling the Appellant that she was "shot in my nose."

The Appellant and the two officers talk with her for the next several minutes. One goes to look around the other sheds to see if anyone else is in the vicinity. A calm conversation continues for approximately six minutes as the officers question her about her claim of being shot. Then Officer Flynn can be heard asking her "[redacted] why is it so dirty here? What are you doing with all this stuff?" [redacted] suddenly yells "I'm sick and tired of you following me sir" as she bends forward from the waist. "Stop following me. I can do whatever the fuck I want to. Stop shining those lights in my eyes."

The Appellant Kicked / Pushed the Handcuffed Suspect with the Sole of His Boot: At the 8:09 mark on the BWC video, officer Franson can be seen reaching up and turning off the audio on his BWC. The audio goes silent. Officer Franson testified as follows on direct examination:

> Q: Officer Franson, you muted the audio right there; is that right?
>
> A: I did.
>
> Q: Why?
>
> A: At that time, I mean, it's something that we commonly do if we're trying to figure out what's going on. If we're going to start talking amongst ourselves and don't feel that…whatever we're going to be discussing needs to be recorded. That's…what I was doing there, if I recall correctly.

Officer Franson did not remember what was said after the audio was muted. He did not recall giving [redacted] any commands. He recalls [redacted] being "verbally aggressive" during this time frame. He testified as follows:

> I recall smelling the odor of an alcoholic beverage. Her behavior was bizarre. I know sometimes in my experience, drug influence indicators and mental health issues can kind of indicate the same things. But, in my mind, she could have definitely been under the influence of drugs, as she was aggressive. Didn't make sense to me why she went from being more calm, to all of a sudden being super aggressive verbally, and the things she was saying…not making sense.

The Appellant testified that he believed, when [redacted] began screaming profanities, that the situation had changed. He testified as follows:

> So I knew at that point…any idea of her going to the hospital is out the door right now, because I'm not going to send… a verbally aggressive, known to be combative person to the hospital. I'll just send her to jail at this point. And for her safety, because now she's intoxicated and…we were near Lone Tree Way, which is a large corridor…as well as to prevent her from contacting anybody else within the parking lot.

By the 8:20 mark on the video, [redacted] can be seen beginning to rock back and forth slightly. The BWC shows [redacted] from a side angle, from Officer Franson's standing position. It only shows [redacted] from the upper part of her torso up. [redacted] is facing the Appellant and Officer Flynn.

The BWC video shows [redacted] continuing to rock back and forth slightly, apparently talking. At 9:09, it shows her beginning to stand up by leaning forward and using her weight to propel her upward without the use of her hands. Immediately, before she reaches a full standing position, the video shows the Appellant quickly take several steps forward, raise his right foot to his waist height, and push [redacted] in the midsection. The video shows her back hitting the door of the shed, and her sliding down to a seated position.

The Appellant testified as follows:

> As soon as I saw her start to stand up, I told her "[redacted] sit down." She didn't listen, she continues to stand up. I said, "[redacted] stay seated." I ran over really quickly, and at that point I kicked her with a push from the bottom of my foot, the ball of my foot on the…left hip bone to push her back down to the ground. I saw she had a backdrop of a door that I could push her into, and she could slide back down to her butt.
>
> I thought that would be the safest, least intrusive way for us to gain compliance with her and an immediate action. I did not think it was safe for us to approach her if she was to stand all the way up.
>
> I wanted to maximize the distance between my face and her face. I knew that she likes to spit, which she had a habit of doing in the past. Not only to me, but to other officers, and I did not want to be infected with anything that she might potentially have.

That's why I used my foot to keep myself as far away from her as I could, instead of getting my hands close to her and pushing her back down to the ground.

On the BWC video, the Appellant quickly steps behind [redacted] grabs her arms from behind and lifts her to a standing position. In the meantime, Officer Flynn is seen walking slowly the few steps over to the scene of contact. The Appellant secures [redacted] and begins walking her toward the patrol vehicle nearby in the parking lot. [redacted] expressionless face, without apparent vocalizing, can be seen while the Appellant walks her to his patrol car.

Officer Franson testified that he perceived V1 when she began to stand up, as a "minimal threat." He stated that the Appellant's kick "surprised" him. "I just didn't see it coming. I didn't see a reason for that level of force under those circumstances."

The Appellant called for an ambulance to check on V1 wellbeing. On direct examination, he was asked why he called EMS:

> One, she had claimed that she was shot in the face, and she did have scratches on her face, but also because I had used force against her. And I wanted her to be cleared by medical personnel before being transported to jail.

Emergency medical personnel arrived, spoke to V1 and evaluated her. "They determined that she was medically cleared to go to jail," the Appellant testified. EMS did not transport V1 from the scene. She was put in the Appellant's patrol car.

The Appellant, Officer Flynn and Office Franson had a conversation on the scene prior to leaving. The Appellant recalled it as follows:

> They said, "Hey we think we need to talk with you about this. We think we need to inform the sergeant." And I was like, "Well, of course, we're going to inform the sergeant. This is a use of force incident. I know that I used force, and I know that per our policy we need to advise our sergeants that we used force. I have no problem telling the sergeant exactly how it happened."
>
> And I explained to them, "If you guys are so worried about this, join in that conversation when I tell the sergeant exactly what happened. And if I miss anything, if I'm…playing it down, or if I miss out certain bits of evidence, or bits of…information, please interject."

Officer Franson recalled that, while the Appellant was talking with the original reporting party at Home Depot after V1 was in the patrol car, he and Officer Flynn discussed the use of force. "The gist of it," he stated, "was that we believed it was excessive." He recalled them then discussing the use of force with the Appellant. The Appellant responded "fairly well," Officer Franson recalled. "I don't remember it being a big argument or anything like that."

The Appellant transported V1 to the police station. He testified as follows:

> So after I transported V1 to the Brentwood PD in the sally port, I contacted Sergeant Alvarez, and I waited on the scene with Alvarez until Flynn and Franson had both arrived, and then I told Sergeant Alvarez exactly what had happened in front of them. And neither of them had interjected, and they said that I told the story completely.

Officer Franson recalled the conversation at the station between the Appellant, Sergeant Alvarez, Officer Franson, and Officer Flynn. "He [the Appellant] detailed it [the use of force incident] properly, in my opinion."

When [V1] was being transported from the police station to the county jail, she spit in the mouth of the community service officer transporting her.

The Department Investigated Then Terminated the Appellant for Unauthorized Use of Force: Later that same day, Sergeant Alvarez wrote a memo to Chief Thomas Hansen concerning "Use of Force" by the Appellant.[5] He described the Appellant's account of the incident, corroborating the Appellant's recollection of the incident. He noted that the Appellant "asked Officers Flynn and Franson if they had anything to add and they did not."

He ended his memo with the following:

> I then watched Officer Franson's body worn camera footage from the incident. Upon viewing Officer Matejcek's kick of [V1] I had concerns that the use of force from the kick was unreasonable and/or unnecessary. I elected to call Lieutenant Louwerens and notify him of the incident and inform him of my concerns about the level of force that was used by Officer Matejcek.

Thomas Hansen was Chief of Police for the Brentwood Police Department (BPD) from 2018 – September 30, 2022. Prior to that, he worked his way up from police officer to police captain over a 28-year career with BPD. He was the police chief at the time of the incident.

He testified that, prior to the incident, he had no knowledge of [V1] He stated that he received a call from Captain Silva about the incident and instructed staff to place the Appellant on administrative leave.[6] He participated in a decision to hire Todd Simonson, an outside investigator, to investigate the incident.[7]

When the investigation was completed, Chief Hansen reviewed it and concluded that the charges were "extremely serious." He decided to terminate the Appellant. He testified as follows:

> [V1] was handcuffed when he kicked her, and this could have resulted in…serious injury, if not death…In my 35 years in law enforcement, I have never been trained to kick anyone that's in handcuffs. That's extremely dangerous. And the fact that Officer Matejcek believed that he did nothing wrong, that this was justified. After reading the report and all the documents, I truly lost faith in the future he was going to use appropriate force in

[5] Sergeant Alvarez did not testify at the hearing. The parties stipulated that, had he testified, he would have affirmed what he wrote in his memo.
[6] Captain Silva did not testify at the hearing.
[7] Mr. Simonson did not testify at the hearing, nor was his report in the record.

> other situations that my officers are involved in…I couldn't risk…the liability with the city at that point.

On August 31, 2022, the department issued a Notice of Termination to the Appellant. The Notice cited the Use of Force section of the department policies. Relevant excerpts are as follows:

> Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the even to accomplish a legitimate law enforcement purpose (Penal Code 835a).
>
> The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.
>
> …officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code 7286(b)).
>
> …the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

The Notice of Termination accused the Appellant of writing his police report in such a manner "that attempts to minimize the violent force with which you kicked [V1. The Notice states the following:

> An egregious use of excessive force like that which you used against [V1 tends to undermine public confidence in the professionalism and trustworthiness of the Brentwood Police Department, which in turn undermines our effectiveness…You employed what can be fairly described as bully tactics.
>
> While [V1 was not seriously injured, my sworn duty is to protect the public and this incident has broken my trust and confidence that you can or will safely perform the duties of a police officer. I do not believe that additional training would address or prevent similar instances in the future…Thus, I believe that termination is the only appropriate course of action.

Appellant Called a Use-of-Force Expert Who Testified that the Appellant Did Not Use Excessive Force on April 23, 2022: Sean McCann is a former police officer who is now a college professor and law enforcement training instructor. He stated that he has testified about 60 times in criminal cases about police use of force.

Counsel for the Appellant moved to have Professor McCann qualified as an expert in police use of force and reasonable force for the arbitration hearing. Without objection from opposing counsel, the motion was granted.

Professor McCann testified that he reviewed the police reports, the IA interviews of the involved officers, and the BWC video regarding the instant matter. He evaluated the incident, considering the Appellant's familiarity with V1. In particular, he noted V1 propensity to spit at law enforcement personnel. He also characterized V1 behavior prior to standing up as "pre-assaultive."

He termed the Appellant's actions as the use of "significant" force. The kick was "toward the higher end of that [reasonableness] range." But "the availability of less intrusive options doesn't make the option chosen unreasonable." He testified as follows:

> …it does knock her off her feet and backwards and into the door, and thus it's successful…it's what's sometimes referred to as standing stop kick…you're hitting with the sole of the foot. In order to hit with the sole of your foot, you have to raise your knee a lot higher than your intended target area, and then you push outward and stomp outward. It actually lessens the power of the kick, though.

Professor McCann concluded as follows:

> But in balancing it all, that fear of being spit upon, and the fact that the handcuffs don't prevent that, that weighed heavily in…my decision…to say that this kick probably falls within the range of reasonableness that the industry looks for.

He concluded that the other two officers at the scene may have drawn different conclusions about the use of force because they were not as familiar with V1 as the Appellant was. "Use of force is supposed to be reviewed from the perspective of the…officer who's using force," he testified.

Professor McCann further testified that if the Appellant's actions were "merely to prevent flight, then I'd probably be criticizing it…but the idea of being spat upon…is a serious assault."

When asked about the Department's allegation that the Appellant's actions exposed the City to liability, Professor McCann responded as follows:

> …there's multiple liabilities there, depending on whether or not you succeed in successful use of force, or fail to, decide not to, and then something else happens. I don't think for the line officer you can make your decisions based on liability.

The Department Called a Former Department Training Sergeant Who Testified that the Appellant Violated Department Use-of-Force Policy on April 23, 2022: Richard Nance retired from the BPD in May 2023. He held the rank of sergeant at his retirement. He worked for BPD for twenty-five years. He was in charge of the defensive tactics program for the department and worked as a defensive tactics instructor there since 2001. He is a prolific author of articles about firearms and defensive tactics in newsstand publications, with over one thousand published articles. Since his retirement, he has become the self-defense editor for "Handguns Magazine" and gun technology editor for "Guns and Ammo" magazine. He co-hosts television shows on the Outdoor and Sportsman Channels called "Handguns" and "The Best Defense."

While he was still working at BPD, he taught law enforcement training courses in Utah, North Dakota, and Georgia.

In 2019, when he was promoted to sergeant, he was put in charge of weaponless defense, arrest and control tactics, and defensive tactics training for BPD. In that capacity, he attended the department's force review boards. These meetings were held four times a year and analyzed incidents of use of force in the prior months.

On the day the incident took place in April 2022, Sergeant Nance received a call at home from on-duty sergeant Tonkle, asking his opinion about the incident.[8] He came down to the department to look at the BWC video. After reviewing it, he told Sergeant Tonkle that "it did not appear that the use of force was within policy, and he [Sergeant Tonkle] needed to contact a lieutenant."

Sergeant Nance then contacted Officer Peachman, the BPOA president at the time. He also contacted Sergeant Huseman, who Sergeant Nance described as "very involved in the BPOA."[9] He stated that he contacted Officer Peachman both to give him a "heads-up" as the POA President but also because Officer Peachman was a current defensive tactics instructor.

The following exchange took place with Sergeant Nance on direct examination about his review of the incident:

> Q: …if you were on scene in a similar situation as Officer Matejcek, and you had a suspect handcuffed and seated, and then they stand up. What would that present to you?

[8] Sergeant Tonkle did not testify at the hearing.
[9] Neither Officer Peachman nor Sergeant Huseman testified at the hearing.

> A: My concern would be that they may attempt to flee. That would be my first concern, or that they may attempt to…fight or who knows what. But it's certainly cause for concern if a seated suspect, who's handcuffed, stands.
>
> Q: Given the circumstances that you saw on the body-worn camera, would that kick [be] in compliance with policy."
>
> A: I didn't think it was within policy.
>
> Q: Why is that?
>
> A: There were two other officers present. She was handcuffed behind her back. When she stood, she didn't appear to make an overt movement toward any of the officers. And…it didn't seem that there was an immediacy or an urgency to close distance with her and use a kick, which I don't believe resulted in injury, but it might have.

Sergeant Nance testified that at BPD "we've taught various other kicking techniques, where you would kick the abdomen…we try to teach officers that every part of their body can be used as a weapon that you could utilize under the right circumstances." He stated that BPD does not train officers to kick a handcuffed suspect. He concluded his testimony by stating that the Appellant's actions on April 23, 2022, were a failure of "decision-making" not "technique."

EMPLOYER'S POSITION

The City argues that the Appellant engaged in "misconduct which placed Officer Matejcek the public and his partner officers at risk."

The Employer contends that the Appellant's conduct failed a three-pronged test of reasonable use of force, under existing case law. One, "the crime at issue, if any, was not severe." Two, the suspect "did not pose a threat to the safety of the public or responding officers." And three, the suspect was "not actively resisting arrest."

The Appellant's "unreasonable use of force violated Brentwood Police Department Policy," the City asserts. "The forceful kick delivered by Matejcek and captured on the BWC video is wildly disproportionate to the seriousness of the crime [V1 may have committed or her action of trying to stand," the City writes in its brief.

The kick used by the Appellant "was not trained and not authorized by the Brentwood Police Department," the Employer argues.

The City contends that the "City meets its burden if the evidence shows that Matejcek more likely than not engaged in this misconduct. The City's discipline should not be overturned unless the City has abused its discretion. Courts instruct civil service commissions, arbitrators, and hearing bodies to give deference to the employer's penalty decision considering such things as the employer's administration of its own standards and rules. (See Kolender v. San Diego Civil Service Commission (2007) 149 Cal.App.4th 464, 471.) The fact that reasonable minds may differ regarding the penalty imposed supports a finding that the employer has acted within its discretion. (Ackerman v. State Personnel Board (1983) 145 Cal.App.3d 395, 401.)"

The Appellant's "prior experience with [V1 and his knowledge of her reputation to resist arrest did not justify his conduct," the City writes in its brief. "Matejcek may argue that since [V1 spat on CSO Alan Sheffield after her arrest, his kick was appropriate, because he thought she would spit at the officers and he wanted to keep his face far away from any potential spittle. This argument fails because it is speculative and the exact type of 20/20 hindsight analysis the Supreme Court forbids: Matejcek cannot use actions [V1 engaged in after his use of force to justify his claim that his use of force was necessary."

"Retraining," the city contends, "would not be sufficient based on these facts. As chief Hansen testified, he lost trust that Matejcek would make an appropriate decision in the future regarding when and how to use force. This use of force was so egregious that no amount of retraining would rectify Matejcek's behavior, and termination is the only appropriate remedy."

"Chief Hansen," the Employer asserts, "believed that Matejcek showed no remorse for his actions, and he lost faith in Matejcek's ability to appropriately use force in the future. For all of these reasons, Chief Hansen determined that termination was the only appropriate level of discipline in this matter. Chief Hansen's termination of Matejcek was not an abuse of discretion and should be upheld."

The Employer concludes by writing "For all of the reasons identified above, all of the evidence and testimony clearly shows that Matejcek violated policy when he kicked [V1 in violation of law and policy. Matejcek knew that this technique was not trained or authorized by the Brentwood Police Department. Nevertheless, Matejcek kicked [V1 without justification. As a result, the Department did not abuse its discretion in deciding to terminate him, and Matejcek's termination should be upheld."

APPELLANT'S POSITION

The Appellant argues that "Matecjek did not violate the Department's Use of Force Policy." The hearing officer should find that the Appellant "due to his many previous personal encounters with [V1 had

legitimate concerns for his safety and that of his fellow officers when [V1 resisted his orders to stay seated and attempted to rise to her feet. He used the least amount of force possible to keep [V1 at a distance, and ensured that his force would not result in injury to [V1 indeed, [V1 was neither injured by the kick nor displayed any signs of agitation afterwards," the Appellant contends.

The Appellant credits the opinion of expert witness McCann, including his opinion that "whether a use of force was reasonable is not evaluated under the standard of whether the force was the least intrusive means available; in other words, the availability of less intrusive options does not make the force option chosen unreasonable."

"The Hearing Officer," Appellant's brief contends, "should therefore align himself with the conclusion reached by McCann that Matejcek, based on his personal experience, reasonably concluded [V1 was going to become assaultive and, accordingly, Matejcek's kick was reasonable and not excessive; indeed, it was the least intrusive means of force that could be used to ensure officer safety."

In regard to Department Policy, Appellant asserts that Matejcek's use of force was within policy. "The majority of these factors weigh in favor of Matejcek's use of force: [V1 had, in the past, indicated she was infected with Medical Info, making it very dangerous to the officers were she to spit at them; [V1 was intoxicated by alcohol, and most likely methamphetamine, as she usually was; Matejcek did not exhibit any hostile behavior toward [V1 while she was cooperating; [V1 had known mental health issues; [V1 became resistive and ignored Matejcek's commands; neither the handcuffs nor the presence of three officers could keep [V1 from spitting; and Matejcek had extensive experience with [V1 and was thus familiar with her behaviors."

Appellant argues that the penalty is inappropriate. "Even if, arguendo, the Hearing Officer concludes that Matejcek's use of force was unreasonable, he should find that termination is excessive and unwarranted," Appellant contends. "First, Matejcek used the least amount of force available to him, force that expert McCann categorized as not even rising to the level of 'intermediate' force. Second, officers are taught how to use kicks in the Academy, and POST materials provide that kicks to the mid-section are appropriate. Third, Matejcek utilized the force knowing that [V1 would not be injured as a result and, in fact, she was not. Fourth, the City presented no evidence that Matejcek had previously been disciplined for improper use of force or, indeed, any misconduct at all. The Hearing Officer should find that a first instance of use of unreasonable force that resulted in no injuries does not merit termination, the ultimate disciplinary measure."

"The Department presented no evidence," the Appellant's brief continues, "that Matejcek would not learn from this situation and therefore engage again in such conduct, or that he would not be amenable to further training for such situations. The Hearing Officer should thus find that a consideration of the Skelly factors leads to the conclusion that termination is unwarranted and excessive."

The brief concludes as follows: "For the foregoing reasons, it is respectfully requested that the Hearing Officer find that Matejcek's use of force against [V1] was reasonable, and thus not a violation of Department policy. In the alternative, if the Hearing Officer finds that the use of force was not within policy, he should conclude that termination in these circumstances is unwarranted."

DISCUSSION

The Appellant Violated Department Policy by Using Excessive Force on April 23, 2022: The preponderance of the evidence is that the Appellant engaged in an unauthorized use of force in violation of department policy. His decision to kick / push the handcuffed civilian was not reasonable, for several reasons:

1) The Appellant and Officers Franson and Flynn were standing several feet away from [V1] when she stood up. He and his fellow officers were in no imminent danger when she stood up.

2) Expert witness McCann, called by the Appellant, identified spitting as the only potential assaultive behavior available to [V1] at that moment. Review of the BWC video indicates that the Appellant could have merely stepped back or turned to the side if [V1] spat at him.

3) Expert witness McCann also stated that the flight risk alone would not have justified the Appellant's kick. The Appellant's after-the-fact justification for his kick, that [V1] posed a danger to other civilians in the area of Home Depot, does not ring true. The danger posed by [V1] at that moment was speculative. Had she fled, the officers on scene would have had other options at their disposal to address her flight.

4) Kicking a handcuffed suspect was not a tactic that had been included in the department's training.

5) The Appellant's expressed concern about the potential of [V1] spitting at him is undermined by his next actions captured on the video – he moved close to her and grabbed her arms from behind. This did not appear to be the actions of someone concerned about infectious spittle.

6) The Appellant's actions cannot be excused as a "split-second" decision made in a rapidly evolving set of circumstances. The Appellant was handcuffed and seated. The Appellant observed her begin to rock front to back as if she was trying to stand up. He had at least a minute to anticipate her attempting to stand up and decide how he

> would respond. He had time to confer with his fellow officers on scene about how to respond if she stood up.

The Appellant recalled that he gave verbal commands to [redacted] to "sit down" as she began to stand up. Unfortunately, Officer Franson turned off the BWC audio prior to the standing up / kicking incident. Those commands cannot be verified. Officer Franson did not recall if the Appellant did or did not give commands.

Even without the audio, the video appears to show that the Appellant gave no command as [redacted] began to rise to her feet. If he did give a command, he did not allow sufficient time to see if [redacted] would comply. Had he given a command, she might have ignored or defied it. Nonetheless, verbal commands would have been appropriate in this situation as a first resort prior to kicking [redacted] back to the ground.

The neutral observer concludes the following from watching the BWC video of the incident: that, for a second during an otherwise well-handled situation, the Appellant lost his cool. Without checking with his fellow officers, and without apparent forethought, he kicked / pushed [redacted] to the ground. This conduct was not reasonable. As former BPD training officer Nance stated, the Appellant erred in his "decision-making," not in his technique. Just cause exists for disciplining the Appellant for violating the department's use of force policy.

The Department Abused its Discretion by Selecting the Termination Penalty:[10] Discipline for the April 23, 2022 incident is warranted. The Employer met its burden that the Appellant used excessive force on that date.

The next question is the appropriate penalty. The BPD policy manual allows for written reprimands, demotions, and suspensions without pay (among other choices) as disciplinary options. The policy manual makes it clear that a hearing officer is restricted to exploring two questions: did the Employer prove the infraction by a preponderance of the evidence? And, if so, did it meet its burden of persuasion that "the punitive action being appealed is not an abuse of discretion."

[10] The Appellant brought forward a prior incident in the department in which an officer allegedly used excessive force on a suspect and received no discipline. The Appellant argued disparate treatment. The Hearing Office finds that insufficient evidence was in the record about the earlier incident to draw an apt comparison between it and the incident in the instant matter. The Appellant did not meet his burden of persuasion for disparate treatment. The Appellant also brought forward a prior incident involving a disagreement between him and Chief Hansen about the use of canines in the department. The Appellant alleges that animus by the police chief toward the Appellant resulting from this incident was a factor in the chief's decision to termination the Appellant. The undersigned hearing officer finds that the Appellant did not meet his burden of proof that this prior incident impacted the instant case.

Former Chief Hansen testified that he chose the termination penalty because he could no longer trust the Appellant. He thought the City would be exposed to liability if the Appellant were still on the street. He specifically rejected the idea of retraining as a viable option. Notably, he did not state why he believed that an intermediate form of discipline, such as a time-off suspension, would not correct the Appellant's behavior.

Part of the discretion that must be exercised by a deciding official in this type of case is the consideration of mitigation. No evidence emerged that Chief Hansen considered mitigating factors. Strong mitigation exists in the instant matter, as follows:

1) The Appellant had nearly five years of discipline-free service as a patrol officer for the department. A witness called by the Employer, Officer Franson, testified that he wanted to be assigned to the Appellant's team because "in my opinion [he was] a good officer, a competent officer, somebody I could trust to get my back if things went really bad." This praise is especially meaningful given that Officer Franson testified that he believed the Appellant used excessive force in April 2022. No one from the Department testified to the contrary.

2) In unrebutted testimony, the Appellant stated that the department recruited him because of his strong performance at the police academy.

3) Chief Hansen testified that he believed that V could have been badly hurt or even killed from the Appellant's kick. Yet the evidence is that she was unharmed and not in need of medical care after the deployed tactic. The Chief implied that the Appellant was just lucky that greater injury did not occur. The undersigned hearing officer believes that, indeed, the Appellant was fortunate that V was not injured. However, the Appellant also needs to be given some credit for striking V in such a way as to minimize the risk of injury.

4) The Appellant's actions can, in part, be justified by his extensive knowledge of the prior behavior and predilection of V1. This was not a first-time encounter between an officer and a civilian. She had a long track record of erratic and assaultive behavior. The Appellant over-reacted on April 23, 2022, but his actions must be viewed in the context of his prior interactions with the civilian.

5) The Appellant handled the post-incident interviews with candor and professionalism. From the viewpoint of the hearing officer, the Appellant was wrong in concluding that he did not use excessive force. But no evidence emerged that he in any way attempted to cover up the incident or enlist his fellow officers in a conspiracy to do so. The preponderance of the evidence is that the Appellant behaved like a trustworthy police officer during the post-incident assessment.

Excessive force actions by law enforcement personnel must be evaluated on a case-by-case basis. One size does not fit all when it comes to meting out discipline for these kinds of incidents. What best fits this incident is a lesser disciplinary action. Its characteristics – no injury to the civilian, suspect with a past history of resisting arrest, officer with a good track record and no priors, candid post-incident

debriefing – point away from termination. The preponderance of the evidence is that the Department abused its discretion when it terminated the Appellant.

The Appropriate Remedy is to Reinstate the Appellant by Converting the Termination to a One-Week Suspension: The Appellant's representative has asked that the penalty be reduced to retraining. Retraining is not the appropriate remedy in this situation. No evidence emerged that the Appellant was inadequately trained. He knew what to do. His lapse was in decision-making, apparently allowing his emotions to overcome his better judgment.

A better option than termination or retraining is a disciplinary suspension. Such an outcome would do two useful things. One, a suspension would serve as a step up the ladder of progressive discipline. Should the Appellant engage in another excessive force incident, a suspension in his file would provide a solid foundation for termination. Second, the loss of a week's pay would be a clear signal to the Appellant that his was a serious infraction. Hitting him in his bank account would focus him on the important task of being more measured in his future responses in performing his patrol officer duties.

The undersigned hearing officer recommends that the termination of the Appellant be reduced to a one-week suspension without pay. He should be made whole for the remainder of his time off since his termination on August 31, 2022. Any earnings he made in replacement employment since that date should be deducted from his back pay.

RECOMMENDATION

1. The Employer provided the facts cited in support of the punitive action by a preponderance of the evidence. Discipline of the Appellant, Officer Paul Matecjek, was for just cause.

2. The Employer abused its discretion when it chose the penalty of termination.

3. The discipline is to be modified to a one-week suspension without pay.

4. The Appellant is to be made whole for all lost pay and benefits minus the one-week disciplinary suspension. Interim earnings are to be deducted from back pay.



_____

Paul D. Roose, Hearing Officer

Date: December 12, 2023

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January 23, 2024

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Re: In the Matter of a Disciplinary Appeal by Appellant Paul Matecjek
City Manager's Decision Rejecting Hearing Officer's Recommendation

Dear Mr. Brown and Ms. Fox:

Paul Matecjek ("Appellant") appealed his termination from employment with the City of Brentwood ("City") Police Department pursuant to the Public Safety Officers Procedural Bill of Rights Act ("POBR") and the Police Department Policy Manual, Policy 1028. Consistent with Policy 1028, a hearing was conducted in Brentwood, California on August 8 and 9, 2023. On December 12, 2023, Hearing Officer Paul Roose issued his recommendation that the termination be set aside, and the discipline be reduced to a one-week suspension.

Policy 1028.2.3 provides that "the City Manager shall render a written decision after receiving the advisory findings of the hearing officer. The City Manager's decision shall be final and conclusive." My decision takes into account all of the evidence and arguments presented at the hearing, and is made after a careful review of the Hearing Officer's written decision.

I have decided to reject the advisory findings and uphold the City's decision to terminate Appellant.

My decision is final and appealable pursuant to Code of Civil Procedure section 1094.5, *et seq.* A writ petition challenging the decision must be filed within 90 days of the mailing of this notice.

I. Factual Findings

I accept the factual findings of the Hearing Officer without modification.

II. Discussion

The City has the burden of proof to demonstrate by a preponderance of evidence that Appellant violated City rules and policies and that because of those

violations, termination is the appropriate level of discipline. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175; *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039.) I find that the City has demonstrated sufficient evidence to support the termination.

A. The Evidence Demonstrates that Appellant Violated the Police Department's Use of Force Policy.

The evidence demonstrates that Appellant violated the Police Department's Use of Force Policy (Hearing Exhibit 15) by using force in excess of "that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose." (Policy 300.3.) In making this finding, I adopt all the findings and reasoning of the Hearing Officer enumerated and explained on pages 16-17 of his written recommendation.

B. Termination is an Appropriate Level of Discipline and Within the Police Chief's Discretion.

Former Chief of Police Thomas Hansen testified at the hearing that he believed Appellant's violations were "extremely serious" (Transcript at 83:18) and that "Ms. V1 was handcuffed when he kicked her, and this could have resulted in -- in serious injury, if not death." (Transcript at 83:25 - 84:2.) He further testified: "Ms. V1 was smaller than those three able-bodied police officers that were standing in front of her. She was handcuffed. In my 35 years in law enforcement, I have never been trained to kick anyone that's in handcuffs. That's extremely dangerous." (Transcript at 84:13-18.)

Chief Hansen testified that "police officers are held at a high standard" and that "[u]se of force like this breaks down trust in the community." (Transcript at 83:10-12.) He testified that Appellant showed no acknowledgment of wrongdoing (Transcript at 84:19-20) and that he had no faith that Appellant would use the appropriate level of force in other situations in the future. (Transcript at 84:21-23.)

The question before me is not whether I would have chosen the same level of discipline for Appellant, but whether the evidence shows that Chief Hansen properly exercised his discretion as the head of the Police Department. As a City Department Head, Chief Hanson was granted the discretion to set standards of conduct and appropriate levels of discipline. He was tasked with maintaining the trust of the community and ensuring that members of the Police Department acted lawfully, reasonably, and in accordance with Department policies. Chief Hansen's testimony at the hearing makes clear that his decision to terminate Appellant was made after careful consideration of multiple factors. It was not a decision taken

lightly or with disregard to the evidence before him, including a thorough investigation by a neutral, third-party investigator.

Police officers are, as Chief Hansen testified, held to a higher standard of conduct than civilians. Chief Hansen made the decision not to tolerate excessive use of force against a vulnerable, handcuffed individual, especially without a significant threat of escape from the location surrounded by three officers, or threat of bodily injury to them. It has long been established that "in police officer cases it is imperative that special emphasis be placed upon the paramilitary nature of police operations; the necessity of developing and maintaining discipline, morale, loyalty, confidentiality and efficiency of the force with view toward the proper protection of the public safety, which is the primary object and function of a police department." (*Unruh v. City Council* (1978) 78 Cal.App.3d 18, 24-25.) Cities have broad discretion in the discipline of their employees, and termination of employment based on a sustained allegation is not an abuse of discretion. (*Griego v. City of Barstow* (2023) 87 Cal.App.5th 133.) Termination was supported by the weight of the evidence, and the decision to terminate employment was well within the City's disciplinary authority.

IV. Conclusion.

After considering the evidence and testimony in this matter, I find that the City demonstrated sufficient evidence to support its decision that termination is the appropriate level of discipline. Accordingly, I reject the Hearing Officer's recommendation. The termination is upheld.

Sincerely,

Tim Ogden
City Manager

THE CITY OF
BRENTWOOD
HERITAGE • VISION • OPPORTUNITY

To: Police Officer Paul Matejcek

From: Chief Thomas Hansen

Date: August 15, 2022

Re: Notice of Intent to Terminate

This memorandum provides you notice of my preliminary decision that you be terminated from your position of a Police Officer with the City of Brentwood Police Department ("Department"). My recommendation is based upon the materials set forth in the attached Administrative Investigation (IA 22-07) and your violations of Department policy cited herein. All materials I considered in reaching my proposed decision are attached to this notice.

As set forth in greater detail below, no disciplinary action shall be imposed upon you until you have had the opportunity to participate in a pre-disciplinary meeting during which you shall be afforded the opportunity to state your positions and any other factors in mitigation. Following your participation in the pre-disciplinary meeting (or following your failure to request such a meeting), I will decide whether or not the proposed termination will be imposed.

I. POLICY VIOLATIONS

The recommended termination is based upon my preliminary findings that you have committed one or more of the following violations of Department policies and procedures, a violation of any of which would support a decision to terminate your employment:

339.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Brentwood Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

339.2 POLICY

The continued employment or appointment of every member of the Brentwood Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

339.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

339.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

339.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals…

(c) Violation of federal, state, local or administrative laws, rules or regulations.

339.5.7 EFFICIENCY

(b) Unsatisfactory work performance including but not limited to failure, incompetence inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.

339.5.9 CONDUCT

…(b) Unreasonable and unwarranted force to a person encountered or a person under arrest.

(c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct...

(f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City...

(h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department...

(m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

(a) The apparent immediacy and severity of the threat to officers or others (Penal Code§ 835a).

(b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).

(c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

(d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).

(e) The effects of suspected drugs or alcohol.

(f) The individual's apparent mental state or capacity (Penal Code § 835a).

(g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).

(h) Proximity of weapons or dangerous improvised devices.

(i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(j) The availability of other reasonable and feasible options and their possible

effectiveness (Penal Code § 835a).

(k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.

(l) Training and experience of the officer.

(m) Potential for injury to officers, suspects, bystanders, and others.

(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

(o) The risk and reasonably foreseeable consequences of escape.

(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(r) Prior contacts with the subject or awareness of any propensity for violence.

(s) Any other exigent circumstances.

B. FACTS IN SUPPORT OF THE CHARGES[1]

You violated the above referenced policies, rules, and/or codes during the incident documented below:

On April 23, 2022, at approximately 5:30 a.m., you and two other Department officers, Officers David Franson and Josh Flynn, responded to a call of a person screaming from a line of garden sheds for sale in the parking lot of the Home Depot on Lone Tree Way. You discovered a local unhoused person, V1 V1 hiding in one of the sheds. You handcuffed, detained, and sat V1 on the ground pending further investigation. Approximately eight minutes after she was detained, V1 stood up while she remained handcuffed. At that point, you took about three quick steps toward V1 and with your right foot, kicked V1 in her torso area, knocking her backwards into the open shed before she fell back to the ground. You arrested V1 for Battery on a Police Officer (Penal Code section 243 (b)) and Public Intoxication (Penal Code section 647(f)).

You then wrote your report in a manner that attempts to minimize the violent force with which you kicked V1 You stated in convoluted fashion that you "utilized my right leg to force her off balance and back onto the ground with as less intrusive force as possible"; "kicked my right foot forward planting the ball of my foot against V1 left side . . . and extended my leg"; and, "chose to use my foot to push V1 off balance."

C. ANALYSIS

In determining that penalty which is appropriate in this matter, I am guided by *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 218-219, in which the State Supreme Court said:

> the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated, is likely to result in harm to the public service .... Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

Applying this standard, I believe that your conduct warrants termination of your employment. (See, e.g., *Cranston v. City of Richmond* (1985) 40 Cal.3d 755.)'

As a preliminary matter, I note the justice system holds law enforcement professionals to the highest standards of conduct given the trust and power afforded to them. (See, e.g., *Titus v. Los Angeles County Civil Service Commission* (1982) 130 Cal.App.3d 357, 364; *Ackerman v.*

[1] I am aware that the District Attorney is evaluating your conduct to determine whether to file criminal charges. If the District Attorney does not file criminal charges, that will not affect my proposal since the District Attorney evaluates whether to file criminal charges using a different standard. If the D.A. does file charges, then dismisses them or you are acquitted, that similarly will not affect my proposal. However, if you are charged and convicted, that may be an independent basis for new disciplinary charges.

State Personnel Board (1983) 145 Cal.App.3d 395, 400) ["There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in other callings. Public officials such as judges, policemen, and school teachers fall into such a category"].)

Furthermore, the use of force is one of the most significant actions that a police officer can take. The use of force implicates the constitutional rights of the individuals upon whom it is used and excessive force creates the potential for significant liability exposure to the Department. An egregious use of excessive force like that which you used against V1 tends to undermine public confidence in the professionalism and trustworthiness of the Brentwood Police Department, which in turn undermines our effectiveness.

V1 an unhoused person who you believed to be alcohol and substance impaired, was unarmed, outnumbered, undersized, handcuffed, and surrounded by three armed and able-bodied police officers. Nothing can justify the violent force that you used under the circumstances. You were not faced with imminent danger and the need to make a split-second decision. You employed what can be fairly described as bully tactics. Your manner of describing your force underscores for me your understanding that what you did was improper.

While V1 was not seriously injured, my sworn duty is to protect the public and this incident has broken my trust and confidence that you can or will safely perform the duties of a police officer. I do not believe that additional training would address or prevent similar instances in the future. Similarly, I do not think the public and the Department should have to risk that you will use force so indiscriminately or irresponsibly in the future. Thus, I believe that termination is the only appropriate course of action.

II. JOINT AND SEVERAL BASIS FOR DISCIPLINE

Please further be aware that my recommendation that you be terminated need not be based upon a determination that each and every policy, rule, and/or code cited above was in fact violated, and/or that each and every fact cited above has been verified. Any one of the rule or regulation violations or any one of the factual bases described above, would in and of itself, be a proper basis for my recommendation that you receive such discipline.

III. PRE-DISCIPLINARY RIGHT TO RESPOND

Pursuant to Department Policy Section 1019.10.2 and *Skelly v. State Personnel Board*, you are entitled to an opportunity to respond, orally or in writing, to this proposed action prior to the effective date of discipline. I have calendared the pre-disciplinary meeting to occur on August 17, 2022 at 1:00 p.m. at the Brentwood Police Department, 9100 Brentwood Blvd., Brentwood, CA 94513. Please confirm your attendance at this meeting by contacting IP3 IP3 at IP3 Contact Information no later than August 16, 2022 at 5:00 p.m.

The pre-disciplinary review shall be an informal *Skelly* meeting at which time you will have the opportunity to rebut the charges against you and to state any mitigating circumstances. Although the meeting with me is informal, an individual of your choice may represent you (i.e.

an attorney or an employee organization representative.) In addition or as an alternative to the *Skelly* meeting, you may respond to this notice in writing. Any such written response must be received in my office no later than August 17, 2022 at 10:00 a.m. in order to be considered. The written response should be sent to me at thansen@brentwoodca.gov.

If you do not attend the *Skelly* meeting or submit a written response, then you will have waived your opportunity to respond and the disciplinary determination will be based upon my assessment of this Notice of Intent to Terminate and the attachments thereto.

IV. WARNING AGAINST RETALIATION

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in reporting or providing information regarding these allegations. You may not contact or in any way retaliate against any individual who has provided information to the Department regarding your conduct and performance.

V. ATTACHMENTS

I considered your personnel file in its entirety. Although your personnel file is not attached, you may contact [redacted] to arrange a reasonable time to examine your file. Attached for your review are the following materials forming the basis of this action:

Administrative Investigation Report IA 22-047 by Todd Simonson including the following attachments:

1. Officer Franson's body-worn camera video that captured Officer Matejcek's use of force against [redacted] (at 9:07)
2. Officer Franson's dash camera video that captured the sound of [redacted] reaction to being kicked by Officer Matejcek (at 8:50)
3. BPD Misdemeanor Report, Case Number 2201912, regarding the arrest of [redacted] on April 23, 2022
4. Audio recording of reporting party's call with dispatcher about person screaming near garden sheds at Brentwood Home Depot on April 23, 2022; audio recording of BPD radio traffic regarding the same call
5. CAD Incident Report regarding call at Brentwood Home Depot on April 23, 2022
6. Memorandum dated April 23, 2022, from Sergeant Alvarez to Chief Thomas Hansen regarding "Use of Force by Officer Matejcek #595, Case #2201912"
7. Six photographs of [redacted] and one photograph of beer cans recovered from Ms. [redacted] clothing following her arrest on April 23, 2022
8. Email on April 27, 2022, from Lieutenant Mark Louwerens to Sergeant Alvarez regarding corrections and clarifications to Officer Matejcek's report

9. Pages from Officer Matejcek's police academy workbooks: Learning Domains 20-2 (overcoming active resistance), 33-1 (the foot as a personal weapon), and 33-7 (the midsection of a suspect as a target for impact weapons)

10. Six BPD police reports documenting arrests of [redacted] by BPD officers for obstructing a police officer (Penal Code §148(a)(1)), between February 8, 2019 and January 31, 2022

11. Six CAD Incident Reports regarding calls involving [redacted] when Officer Matejcek was present at the scene, between October 13, 2018 and January 6, 2022

12. BPD Person Record for [redacted]

13. BPD Misdemeanor Report, Case Number 1702597, regarding arrest during which [redacted] kicked the suspect in the "head area" on May 17, 2017

14. Officer Matejcek's training records

15. BPD Policy 300 – Use of Force

16. BPD Policy 306.5 – Application of Spit Hoods

17. Email from BPD Captain Herbert to Investigator regarding BPD officers' access to spit hoods

18. All audio and transcripts of interviews in IA 22-07

19. Department Policies: 339 and 1019.10.2

ACKNOWLEDGEMENT OF RECEIPT:

OFFICER PAUL MATEJCEK — DATE 8/15/2022

WITNESSED BY:

DATE 8/15/22

To: Police Officer Paul Matejcek

From: Chief Thomas Hansen

Date: August 31, 2022

Re: Notice of Termination

This memorandum provides you notice of my decision that you be terminated from your position of a Police Officer with the City of Brentwood Police Department ("Department"). My decision is based upon the materials set forth in the attached Administrative Investigation (IA 22-07) and your violations of Department policy cited therein. Your termination will be effective immediately upon service of this notice.

I. POLICY VIOLATIONS

The termination is based upon my findings that you have committed one or more of the following violations of Department policies and procedures, a violation of any of which would support a decision to terminate your employment:

339.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Brentwood Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

339.2 POLICY

The continued employment or appointment of every member of the Brentwood Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

339.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

339.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

339.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals…

(c) Violation of federal, state, local or administrative laws, rules or regulations.

339.5.7 EFFICIENCY

(b) Unsatisfactory work performance including but not limited to failure, incompetence inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.

339.5.9 CONDUCT

… (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.

(c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct…

(f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City…

(h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department…

(m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

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300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

(a) The apparent immediacy and severity of the threat to officers or others (Penal Code§ 835a).

(b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).

(c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

(d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).

(e) The effects of suspected drugs or alcohol.

(f) The individual's apparent mental state or capacity (Penal Code § 835a).

(g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).

(h) Proximity of weapons or dangerous improvised devices.

(i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(j) The availability of other reasonable and feasible options and their possible

effectiveness (Penal Code § 835a).

(k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.

(l) Training and experience of the officer.

(m) Potential for injury to officers, suspects, bystanders, and others.

(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

(o) The risk and reasonably foreseeable consequences of escape.

(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(r) Prior contacts with the subject or awareness of any propensity for violence.

(s) Any other exigent circumstances.

B. FACTS IN SUPPORT OF THE DECISION[1]

You violated the above referenced policies, rules, and/or codes during the incident documented below:

[1] I am aware that the District Attorney is evaluating your conduct to determine whether to file criminal charges. If the District Attorney does not file criminal charges, that will not affect my decision since the District Attorney evaluates whether to file criminal charges using a different standard. If the D.A. does file charges, then dismisses them or you are acquitted, that similarly will not affect my decision However, if you are charged and convicted, that may be an independent basis for new disciplinary charges.

On April 23, 2022, at approximately 5:30 a.m., you and two other Department officers, Officers David Franson and Josh Flynn, responded to a call of a person screaming from a line of garden sheds for sale in the parking lot of the Home Depot on Lone Tree Way. You discovered a local unhoused person, V1 V1 hiding in one of the sheds. You handcuffed, detained, and sat V1 on the ground pending further investigation. Approximately eight minutes after she was detained, V1 stood up while she remained handcuffed. At that point, you took about three quick steps toward V1 and with your right foot, kicked V1 in her torso area, knocking her backwards into the open shed before she fell back to the ground. You arrested V1 for Battery on a Police Officer (Penal Code section 243 (b)) and Public Intoxication (Penal Code section 647(f)).

You then wrote your report in a manner that attempts to minimize the violent force with which you kicked V1 You stated in convoluted fashion that you "utilized my right leg to force her off balance and back onto the ground with as less intrusive force as possible"; "kicked my right foot forward planting the ball of my foot against V1 left side . . . and extended my leg"; and, "chose to use my foot to push V1 off balance."

C. ANALYSIS

In determining that penalty which is appropriate in this matter, I am guided by *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 218-219, in which the State Supreme Court said:

> the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated, is likely to result in harm to the public service .... Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

Applying this standard, I believe that your conduct warrants termination of your employment. (See, e.g., *Cranston v. City of Richmond* (1985) 40 Cal.3d 755.)'

As a preliminary matter, I note the justice system holds law enforcement professionals to the highest standards of conduct given the trust and power afforded to them. (See, e.g., *Titus v. Los Angeles County Civil Service Commission* (1982) 130 Cal.App.3d 357, 364; *Ackerman v. State Personnel Board* (1983) 145 Cal.App.3d 395, 400) ["There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in other callings. Public officials such as judges, policemen, and school teachers fall into such a category"].)

Furthermore, the use of force is one of the most significant actions that a police officer can take. The use of force implicates the constitutional rights of the individuals upon whom it is used and excessive force creates the potential for significant liability exposure to the Department. An egregious use of excessive force like that which you used against V1 tends to undermine public confidence in the professionalism and trustworthiness of the Brentwood Police Department, which in turn undermines our effectiveness.

V1 an unhoused person who you believed to be alcohol and substance impaired, was unarmed, outnumbered, undersized, handcuffed, and surrounded by three armed and able-

bodied police officers. Nothing can justify the violent force that you used under the circumstances. You were not faced with imminent danger and the need to make a split-second decision. You employed what can be fairly described as bully tactics. Your manner of describing your force underscores for me your understanding that what you did was improper.

I considered the points you and your attorney made at your August 30, 2022 *Skelly* hearing but do not find them persuasive nor sufficient to change my course of action. Your alleged concerns about an unhoused, handcuffed female attempting to spit or fight you do not, in my mind, reasonably justify the actions you took.

While [redacted] V1 was not seriously injured, my sworn duty is to protect the public and this incident has broken my trust and confidence that you can or will safely perform the duties of a police officer. I do not believe that additional training would address or prevent similar instances in the future. Similarly, I do not think the public and the Department should have to risk that you will use force so indiscriminately or irresponsibly in the future. Thus, I believe that termination is the only appropriate course of action.

II. JOINT AND SEVERAL BASIS FOR DISCIPLINE

Please further be aware that my decision that you be terminated need not be based upon a determination that each and every policy, rule, and/or code cited above was in fact violated, and/or that each and every fact cited above has been verified. Any one of the rule or regulation violations or any one of the factual bases described above, would in and of itself, be a proper basis for my decision that you receive such discipline.

III. RIGHT TO APPEAL

Pursuant to Department Policy Section 1028, you are entitled to administratively appeal this decision. If you intend to appeal this decision, you must provide City Manager Tim Ogden written notice of your appeal within five (5) calendar days of receipt of this Notice. If you do not advise Mr. Ogden in writing of your administrative appeal of this decision within five (5) calendar days of receipt of this Notice, you will waive your right to administratively appeal this decision.

IV. WARNING AGAINST RETALIATION

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in reporting or providing information regarding these allegations. You may not contact or in any way retaliate against any individual who has provided information to the Department regarding your conduct and performance.

V. ATTACHMENTS

All documents supporting my decision (Administrative Investigation Report IA 22-047 by Todd Simonson including all attachments) were previously served upon you with the Notice of Intent to Terminate and are incorporated herein by reference.

Please find attached the following additional, relevant document:

Department Policy 1028

ACKNOWLEDGEMENT OF RECEIPT:

OFFICER PAUL MATEJCEK

8/31/2022
DATE

WITNESSED BY:

8-31-22
DATE

RLS RAINS LUCIA STERN ST. PHALLE & SILVER, PC

Julia D. Fox
Attorney at Law
JFox@RLSLawyers.com

September 2, 2022

VIA ELECTRONIC MAIL [TOGDEN@BRENTWOODCA.GOV] & FIRST CLASS MAIL

Tim Ogden
City Manager
City of Brentwood
150 City Park Way
Brentwood, CA 94513

Re: Paul Matejcek – Appeal of Notice of Termination

Dear Mr. Ogden:

I represent recently-terminated Police Officer Paul Matejcek on his disciplinary case. He received the Notice of Termination on August 31, 2022. Pursuant to the Department Policy 1028 this letter is intended to formally request appeal of the termination. The request is timely made within five (5) days of service of the Notice.

Sincerely,

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

Julia D. Fox

JDF:msv

cc: Paul Matejcek

Todd Simonson:

All right. We are on, the time is 11:29 in the morning. The date is June the 10th of 2022. My name is Todd Simonson. I'm in a conference room at the Brentwood Police Department with two people. Paul, why don't we start with you? Can you spell your first and last name for me?

Paul Matejcek:

First name is Paul, P-A-U-L, last name is Matejcek, M-A-T-E-J-C-E-K.

Todd Simonson:

Great. And he's represented by?

Julia Fox:

Julia Fox.

Todd Simonson:

F-O-X is the last name?

Julia Fox:

Correct.

Todd Simonson:

All right. You both understand I'm recording this?

Julia Fox:

Yes.

Paul Matejcek:

Yes.

Todd Simonson:

Are either of you recording?

Julia Fox:

No.

Todd Simonson:

Okay. Paul, you got a notice, I believe it was from Chief Hanson about today's interview and the expectations.

Paul Matejcek:

Yes.

Todd Simonson:

And you understood that?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. I'm going to read this Miranda and Lybarger. Okay? All right. The date is June 10th, 2022. The time is 11:29 hours. Present in the conference room at the Brentwood Police Department are Officer Paul Matejcek and me, Attorney Todd Simonson. Also, Officer Matejcek is represented by his attorney, Julia Fox. This interview is being audio recorded by me for the Brentwood Police Department. The purpose of this investigation is to conduct an interview of Officer Paul Matejcek, who is an employee of the Brentwood Police Department in the capacity of a police officer. This is an administrative investigation on the charge that Officer Paul Matejcek allegedly violated Brentwood PD policy. This is an administrative investigation only on this charge. Do you understand that?

Paul Matejcek:

Yes.

Todd Simonson:

However, since that allegation indicated a crime may have been committed, I am advising you that one, you have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and to have a lawyer present before enduring any questioning. If you cannot afford to hire an attorney, one will be appointed free of charge to represent you before and during questioning, if you desire. Do you understand each of these rights I've explained to you?

Paul Matejcek:

Yes.

Todd Simonson:

Having the rights in mind, do you wish to talk to me now?

Paul Matejcek:

No.

Todd Simonson:

Although you have the right to remain silent and not incriminate yourself, your silence can be deemed insubordination and result in administrative discipline. Since any statement under compulsion of the threat of discipline cannot be used against you in a later criminal proceeding, I am ordering you to answer my questions. If you do not answer my questions, truthfully and fully, your charge of insubordination may be imposed, which could result in discipline up to and including termination. Do you understand this is only an administrative investigation?

Paul Matejcek:

Yes.

Todd Simonson:

Do you understand the charge?

Paul Matejcek:

Yes.

Todd Simonson:

Do you understand that I'm ordering you to answer my questions and that if you do not answer them truthfully and fully, it could result in disciplinary action up to and including termination?

Paul Matejcek:

Yes.

Todd Simonson:

There's initial space for you on the initial line. Having all these rights in mind, are you [inaudible 00:02:47] to give me a statement today?

Paul Matejcek:

For the Miranda rights or for the administrative?

Todd Simonson:

The administrative.

Paul Matejcek:

Yes.

Todd Simonson:

Okay. All right. Prior law enforcement experience before you came to the city?

Paul Matejcek:

No.

Todd Simonson:

Okay. What date did you join the city here?

Paul Matejcek:

I was sworn in as a police officer on, I think, believe it was August 2nd, 2017.

Todd Simonson:

And what assignments have you held here to date?

Paul Matejcek:

Patrol officer.

Todd Simonson:
Where on patrol?

Paul Matejcek:
Where?

Todd Simonson:
Yeah, I mean, what shifts?

Paul Matejcek:
Day shift, swing shift, graveyards.

Todd Simonson:
In April of '22, what team or patrol squad were you on?

Paul Matejcek:
I was on graveyard.

Todd Simonson:
Graveyard? Is there a name for it?

Paul Matejcek:
The A-side Graveyard. A-side.

Todd Simonson:
So there's an A-side and a B-side?

Paul Matejcek:
Yes, sir.

Todd Simonson:
What's B-side mean?

Paul Matejcek:
It's just the opposite side of the week. We have a four on four off schedule, so.

Todd Simonson:
What days off did you have? Did it rotate?

Paul Matejcek:
Yeah, rotating.

Todd Simonson:

What were your hours?

Paul Matejcek:
8:00 PM to 7:00 AM.

Todd Simonson:
And how long had you been on this patrol team for?

Paul Matejcek:
This specific team?

Todd Simonson:
Yeah.

Paul Matejcek:
We rotated to the A-side halfway through January, but I'd been on Graves for the last three years.

Todd Simonson:
With the same group?

Paul Matejcek:
Different group.

Todd Simonson:
Okay. Who was on this group that you started with in-

Paul Matejcek:
It was Sergeant Alvarez, Mitch Alvarez was our sergeant. Dave Franson, Officer Dave Franson.

Todd Simonson:
F-R-A-N-S-O-N?

Paul Matejcek:
Yes, sir.

Todd Simonson:
Yes.

Paul Matejcek:
Joshua Smith, or Flynn had just been assigned to us.

Todd Simonson:
F-L-Y-N-N.

Paul Matejcek:
Yes.

Todd Simonson:
I'm going to spell names just because the transcription sometimes has difficulty.

Paul Matejcek:
Jordan Stroben.

Todd Simonson:
Spell the last name for me.

Paul Matejcek:
S-T-R-O-B-E-N.

Todd Simonson:
Okay.

Paul Matejcek:
And Tanner Kephart, K-E-P-H-A-R-T.

Todd Simonson:
Thank you. With respect to officers Franson and Flynn who are also at this call we're going to talk about, how did you go along with each of them?

Paul Matejcek:
Good, good , yeah. Good with both of them.

Todd Simonson:
No, significant issues with them beforehand?

Paul Matejcek:
No, I enjoyed working with Josh just because he had left and come back and he had been on the SWAT team. I had just got on the SWAT team. So we connected that way. And then Officer Franson is a DRE and I'm big into investigating drugs and people under the influence of drugs.

Todd Simonson:
DRE, meaning Drug Recognition Expert?

Paul Matejcek:
Yes, sir.

Todd Simonson:

Okay. Have you talked to anybody on your team, the folks you just named, about this investigation or the allegations of the incident at all, since it's occurred?

Paul Matejcek:

Since it's occurred?

Todd Simonson:

Yeah.

Paul Matejcek:

I talked to Sergeant Alvarez the morning of to explain to him what had happened.

Todd Simonson:

I'm going to ask you about that a little bit later on.

Paul Matejcek:

Okay.

Todd Simonson:

Go ahead.

Paul Matejcek:

That was it, just from my team, I didn't talk to anybody else. I had talked with Franson and Flynn that morning after the incident, but before we went home for the day. Other than that, I haven't talked to anybody.

Todd Simonson:

Okay. Have you had a chance to review the report?

Paul Matejcek:

Yes.

Todd Simonson:

And what video, if any, have you reviewed in preparation for this?

Paul Matejcek:

Dave Franson's body camera video.

Todd Simonson:

Okay. That's it?

Paul Matejcek:

That's it.

Todd Simonson:
Anything in the report that you want to change?

Paul Matejcek:
I see here that it only says 243B and 647F, there should be a 148 charge on there as well. Other than that? No.

Todd Simonson:
Okay. Defensive tactics training, did you take some in the Academy?

Paul Matejcek:
Yes.

Todd Simonson:
What academy did you go to and when?

Paul Matejcek:
Contra Costa County Academy, I was there from January 2017 to July 2017.

Todd Simonson:
And you did whatever the prescribed defensive tactics block is?

Paul Matejcek:
Yes.

Todd Simonson:
What is that, do you know?

Paul Matejcek:
I don't know.

Todd Simonson:
Okay. What about since the Academy, have you had any like refresher courses?

Paul Matejcek:
Only department approved trainings.

Todd Simonson:
How many of those have you had?

Paul Matejcek:
We usually do two a year.

Todd Simonson:
When was the last one you did?

Paul Matejcek:
I believe early April.

Todd Simonson:
Who taught that, if you remember?

Paul Matejcek:
Officer Doug Morrison, M-O-R-R-I-S-O-N.

Todd Simonson:
Go ahead.

Paul Matejcek:
I'm just thinking.

Todd Simonson:
Okay. Was Sergeant Nance involved? N-A-N-C-E.

Paul Matejcek:
I think he was there. I don't remember him.

Todd Simonson:
Is he a defensive tactic instructor?

Paul Matejcek:
Yes. I believe he's a supervisor.

Todd Simonson:
Okay. Has he trained you and others before?

Paul Matejcek:
Yes. Just in our department trainings. Yes.

Todd Simonson:
Okay. It was somebody else at your academy?

Paul Matejcek:
Yes.

Todd Simonson:

Do you remember who that was?

Paul Matejcek:
No. Taylor Johnson was at the training as well. And then Jason Fish.

Todd Simonson:
Those are all like assistant instructors?

Paul Matejcek:
Yeah.

Todd Simonson:
Okay.

Paul Matejcek:
And then... Yeah.

Todd Simonson:
Okay.

Paul Matejcek:
That seems about right.

Todd Simonson:
In your academy and refresher training here, defensive tactics, have you learned anything about kicking a suspect? Is there any curriculum about kicking a suspect?

Paul Matejcek:
Yes. I specifically remember being taught in defensive tactics, how to kick a suspect, the motions to going through kicking a suspect and when to.

Todd Simonson:
Which defensive tactics do you remember that being taught in?

Paul Matejcek:
At the Academy.

Todd Simonson:
Academy.

Julia Fox:
And just so you know, Todd, he brought the relevant Learning Domains to that point.

Todd Simonson:

Oh? Yeah. Okay, great. Would you be willing to give me copies of that?

Paul Matejcek:

Absolutely.

Todd Simonson:

Okay. Great. Learning domains, LDs. I remember those. Okay. Do you have them marked?

Paul Matejcek:

Yeah, so I have my Use of Force Learning Domain, my Arresting Control, as well as my Custody. What would you like to see?

Todd Simonson:

Tell you what, let's not go through those now. Are there workbook numbers or Learning Domain numbers?

Paul Matejcek:

Yeah.

Julia Fox:

I think it might be helpful. We have sort of paired this down to what's relevant and that might be helpful to you to streamline it too.

Todd Simonson:

Okay.

Julia Fox:

There are two charts. Why don't you just reference those for Todd, the two charts?

Paul Matejcek:

So the first chart is the personal body weapons and it just goes over parts of the body that you can use and what they're used for, for a resisting suspect. And then at the bottom, you'll see there, it says feet and it goes over parts of the feet.

Todd Simonson:

I see. You mind if I take a picture of this?

Paul Matejcek:

Please.

Todd Simonson:

So just for the record, the chart that you're pointing to, it's entitled Body Parts As Personal Weapons. It's in Learning Domain 33, chapter one, page 15. I think that's how that works. Is that right?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. This is by no means a scientific way of doing it, but whatever.

Paul Matejcek:

Okay. And I just took a picture of that page.

Julia Fox:

And then we just draw a nexus between that and the circumstances that Officer Matejcek found himself in. So why don't you go to the next chart just while we're on this? I think it's page 26 or 27.

Paul Matejcek:

Of the same? Was it the same LD? Yeah. So this one just goes over like what type of force you would use in an actively resisting suspect or a passive.

Todd Simonson:

What are you pointing me to?

Paul Matejcek:

This one right here. Basically, it describes like what inactively resisting suspect, how they are and then what types of force to use or is suggested to use.

Todd Simonson:

I see.

Julia Fox:

So in other words, just an nexus between the two charts.

Todd Simonson:

Got it. So this is Learning Domain 20, chapter two, entitled Force Options. We're on chapter two, page six. I'm going to take a picture of that too. Thank you. One more. Okay. All right. Anything else you wanted to show me?

Julia Fox:

No, I think that's it for this.

Todd Simonson:

Okay. Right. Thank you. So those Learning Domain workbooks were from your academy?

Paul Matejcek:

Yes, sir.

Todd Simonson:

Okay. So can you kind of just encapsulate what you just showed me? Let me ask you this and you can correct me if I'm wrong. You believe that the use of a kick was an appropriate use of force for somebody who was actively resisting, depending on the circumstances?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. Had you ever had any kicks as reported uses of forces before April 23rd of this year?

Paul Matejcek:

No.

Todd Simonson:

Do you know anybody who had here?

Paul Matejcek:

At least one officer. I'm not sure of the date or the circumstances. I only know that the officer has been involved in one.

Todd Simonson:

Who's that?

Paul Matejcek:

His name is Officer O2

Todd Simonson:

Spell his last name.

Paul Matejcek:

O2 .

Todd Simonson:

Okay. Do you know when the kick use of force occurred?

Paul Matejcek:

Unfortunately, I don't.

Todd Simonson:

How do you know of it?

Paul Matejcek:

I talked to a retired lieutenant recently who told me that Officer O2 used a kick to kick someone in the head while employed here. And that he was, I believe it was, exonerated during that use of force.

Todd Simonson:

Who's the retired lieutenant?

Paul Matejcek:

The name is Sal DiMercurio.

Todd Simonson:

Sal, S-A-L?

Paul Matejcek:

Mm-hmm. Dimocorio, D-I-M... I'm not sure how to spell Dimocorio. I'm sorry.

Todd Simonson:

It's okay. I'll figure out. DiMercurio. I can find out the exact spelling if I need to. Okay. You have no idea when that occurred though?

Paul Matejcek:

I don't.

Todd Simonson:

Was it before your time here?

Paul Matejcek:

Yes.

Todd Simonson:

You know where Officer O2 is now?

Paul Matejcek:

He's still here.

Todd Simonson:

Oh, he is. Okay.

Paul Matejcek:

He's actually one of our defensive tactics instructors.

Todd Simonson:

Okay. Did you practice kicking in the Academy?

Paul Matejcek:

Yes.

Todd Simonson:

Any of those involving a training or a hypothetical situation where there was a handcuffed suspect involved?

Paul Matejcek:

No.

Todd Simonson:

Okay. So this occurred April 23rd. So if you worked Graves, you started April 22nd, right? The night of April 22nd.

Paul Matejcek:

Yes.

Todd Simonson:

So it was Sunday to Monday, April 22nd to April 23rd. Does that sound right?

Paul Matejcek:

I thought it was a Saturday to a Sunday morning.

Todd Simonson:

Make sure we have that right. I got it. I guess I was looking at the wrong year. It's a Friday to a Saturday morning.

Paul Matejcek:

Yep. That sounds more like it.

Todd Simonson:

Friday to Saturday. Okay. During that shift, you started at about 8:00?

Paul Matejcek:

So that day I actually came in late. I was attending a graduation ceremony earlier that day and I needed to sleep. So I had made arrangements with my sergeant that day to come in a little bit later. So I think I started at 10:00 or 11:00.

Todd Simonson:

Okay. Was this your Friday, so to speak? This shift that occurred?

Paul Matejcek:

So it would've been my Friday for just me, because I was supposed to go to a training on Monday in Anaheim. So they gave me Sunday off to have that day off to be able to adjust to a-

Todd Simonson:

A regular day?

Paul Matejcek:

A regular day. Yeah.

Todd Simonson:

I remember that. So that shift, were there any significant calls leading up to the call at Home Depot, which happened at about 5:20, 5:30 in the morning, that affected your ability to observe?

Paul Matejcek:

No.

Todd Simonson:

So the call that we're looking into came in at about 5:24 AM, was a person screaming in the parking lot. Does that sound right?

Paul Matejcek:

Yes. It was what was described as a male screaming in the Home Depot parking lot and the reporting party believed it was a homeless male who was living in the display sheds in front of Home Depot, in their parking lot.

Todd Simonson:

Okay. Had you found homeless people in those display sheds before?

Paul Matejcek:

Yes.

Todd Simonson:

How many times before this?

Paul Matejcek:

Four or five.

Todd Simonson:

Okay. The RPs name was [redacted] Had you met with her before?

Paul Matejcek:

No.

Todd Simonson:

Okay. Did you meet with the RP in this case?

Paul Matejcek:

Yes.

Todd Simonson:

You did that before you addressed the sheds?

Paul Matejcek:

No. No. So I responded to the sheds first and Officer Franson went and briefly spoke with IP8 and then afterwards, after the incident occurred, I had my contact with V1 that's when I went and recontacted IP8 to get a very more detailed statement.

Todd Simonson:

Oh, right. That's in your report. Yes?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. Just kind of describe the line of sheds at the Home Depot parking lot that we're talking about. How are they positioned?

Paul Matejcek:

So Home Depot itself faces west. There's a giant parking lot in front.

Todd Simonson:

On Lone Tree?

Paul Matejcek:

On Lone Tree. Yeah.

Todd Simonson:

Okay. Go ahead.

Paul Matejcek:

On what would be the north side, so the northwest corner of Home Depot, there's a line of sheds that's parallel to like the edge of the parking lot. Behind that is a Chevron gas station. And then behind that is Lone Tree or yeah, eastbound Lone Tree. The sheds all face south. They all open south, so that way you can park in front of them and go check out the sheds if you want to buy a shed.

Todd Simonson:

And Home Depot apparently keeps them unlocked?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. How did you ultimately come upon the person in the shed?

Paul Matejcek:

So, once I arrived on scene, I got out of my car and Franson had just driven over to me. And once Franson got there, I heard a door slam shut. And I don't remember if I was looking at Franson or if I was looking at Flynn and I said, "I'm going to take a guess and say that whoever we're looking for is in that shed."

Todd Simonson:

That's a clue.

Paul Matejcek:

FBI clue. So we went to the shed that we thought where this person was at was inside. We knocked on the shed.

Todd Simonson:

That's you and?

Paul Matejcek:

Me, Franson, Flynn.

Todd Simonson:

Was Flynn... Who was the assigned cover unit for you?

Paul Matejcek:

Franson.

Todd Simonson:

Is it your beat, Home Depot?

Paul Matejcek:

Yes.

Todd Simonson:

Beat one?

Paul Matejcek:

Beat one. Yes. When this call came out, I had just gotten gas and I was going to head back to the station because I had arrested a guy for a warrant, like an hour before that, so I was going to go back and book some stuff. This call came out and because I had good beat integrity, I'm like, "Nope, I'll head back that way." Flynn and Franson were supposed to go to it or Flynn and Stroben. And then I just had one of them cancel, I think it was Stroben. And then Flynn was in an unmarked car because we had had problems with a Walgreens downtown that was getting burglarized. So he just attached himself and he just showed up. So Franson was my designated cover unit, Flynn just happened to be there.

Todd Simonson:

All right. So Franson talks to the RP. RP talks to Franson. Franson comes and meets with you. Flynn shows up. You guys all kind of park in the same area?

Paul Matejcek:

Yeah.

Todd Simonson:

Okay.

Paul Matejcek:

Yeah, in front of those sheds.

Todd Simonson:

In front of the sheds.

Paul Matejcek:

Yeah.

Todd Simonson:

Where did the RRP go while you were contacting V1

Paul Matejcek:

So she's not directly employed by Home Depot, but the flowers, like the garden center, those flowers. She's employed to manage those.

Todd Simonson:

She's the-

Paul Matejcek:

Gardener.

Todd Simonson:

She tends the garden, but is a third party vendor [inaudible 00:21:15]?

Paul Matejcek:

Yes. Yeah.

Todd Simonson:

Got it.

Paul Matejcek:

So she and another gentleman, her coworker, they show up to tend the flowers early in the morning. And so they were still doing that while we were contacting V1

Todd Simonson:

Had they called before on homeless people in the sheds?

Paul Matejcek:

She said she had, but I hadn't been to any.

Todd Simonson:

Okay. So did you coordinate with Franson and Flynn about checking the sheds or the shed where the door had shut?

Paul Matejcek:

Yes.

Todd Simonson:

All right. At that point, you didn't know who was in the shed?

Paul Matejcek:

No.

Todd Simonson:

If anybody.

Paul Matejcek:

If anybody.

Todd Simonson:

Okay. Let me ask you this before we get into the video, you ultimately found V1 .

Paul Matejcek:

Yes.

Todd Simonson:

And you knew V1 V1 from prior contacts according to report?

Paul Matejcek:
Yes.

Todd Simonson:
How many prior contacts had you had with V1 ?

Paul Matejcek:
Since 2019, I approximate two a month, at least two a month.

Todd Simonson:
Have you checked any records about that or you're just guesstimating?

Paul Matejcek:
Guesstimating.

Todd Simonson:
Okay. So you've had a fair number of contacts with her?

Paul Matejcek:
Yes.

Todd Simonson:
All right. Two per month since 2019. So that would be 24, a year, 48, 2 years. So over 50 contacts?

Paul Matejcek:
I would actually, I'd probably say more like 24 contacts.

Todd Simonson:
Okay.

Paul Matejcek:
We'll say.

Todd Simonson:
Okay.

Paul Matejcek:
We deal with her quite often.

Todd Simonson:
Sounds like it. Can you kind of give me a general description of prior contacts you've had?

Paul Matejcek:

With that I've had, or that everybody's had?

Todd Simonson:

Well, that you've had and I'm going to ask you what you knew about her from everybody.

Paul Matejcek:

Yeah. So my prior contacts with her have always been for her doing something that she's not supposed to, whether she's in violation of a restraining order that her dad has against her. Or she's burglarizing.

Todd Simonson:

Is the dad local?

Paul Matejcek:

Yes.

Todd Simonson:

He's in Brentwood?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. Burglarizing vehicles. She found a vacant apartment complex and she destroyed it as far as like breaking plumbing, defecating everywhere, that kind of stuff. Shoplift, drug usage, big time drug user, alcohol, steals alcohol. Those are like the calls that I've gone to for her. Whenever I contact her, and there's only been one time where I've contacted her where I believe she was completely sober, but other than that, she's either high on meth or drunk and or both.

Todd Simonson:

How do you know she's high on meth?

Paul Matejcek:

I've arrested her for methamphetamine or for possession.

Todd Simonson:

She's actually possessed meth during some of your contacts?

Paul Matejcek:

Yeah. As well as paraphernalia, probation violations.

Todd Simonson:

Okay. During your prior contact with her, has she been combative, violent, aggressive?

Paul Matejcek:

Yes.

Todd Simonson:

Can you describe what you mean?

Paul Matejcek:

So in my last, not including the contact that we're talking about right now, but in my last two contacts prior, I arrested her for 647F and I believe it was 148 as well. While she was in the back of the car. She's tried kicking at me, she's tried spitting. The contact after that, I responded to a liquor store because she was reported to have been acting suspicious and possibly stealing from the liquor store. When I showed up on scene, she started yelling at me. Then I didn't have a cover unit with me and I couldn't confirm if anything was taken or if the liquor store wanted anything done. So I saw her, told her to get out, and then she immediately started yelling and then she just ran off and I just let her run away because I wasn't going to chase after her by myself for no reason.

Todd Simonson:

When did those two prior contacts take place, if you remember?

Paul Matejcek:

The second one was probably in January of this year and the first one was sometime last year, maybe summer of last year.

Todd Simonson:

Okay. Pretty easy to find if I ask somebody?

Paul Matejcek:

I'd say, yeah.

Todd Simonson:

You mentioned in your report that she, V1 has been flagged for officer safety in Brentwood PD records. What does that mean?

Paul Matejcek:

If we get a call on, we'll say V1 and she has a two officer minimum, that means I don't get to respond to that call by myself. I only go when I have a partner with me because that person is so dangerous that it's more than likely that they're going to try and hurt me or there's something about that person where we need to have at least two officers there at all times.

Todd Simonson:

So that's an alert to dispatch, like when her name pops up?

Paul Matejcek:

Yeah. Dispatch will see it. So if I'm responding there and I'm driving and that name pops up, they'll see on there, it says officer safety. And it'll say like combative towards law enforcement, known to have needles on them, whatever the issue is.

Todd Simonson:

How do you know her name's flagged for officer safety records?

Paul Matejcek:

Because I've dealt with her multiple times before.

Todd Simonson:

I mean, do the dispatchers put something out that indicates that, or?

Paul Matejcek:

Officer usually request it and then the supervisor will bring it up to the dispatchers and the dispatchers are usually the ones that put it in.

Todd Simonson:

But do you know for a fact that V1 has that flagged next to her name in dispatch?

Paul Matejcek:

At the time, I don't know if she had it. I know that since then, yes.

Todd Simonson:

Okay. Okay. Obviously, other officers in this agency have had contact with V1.

Paul Matejcek:

Mm-hmm.

Todd Simonson:

That's yes?

Paul Matejcek:

Yes.

Todd Simonson:

Have you heard anything from other officers about her behavior and demeanor during contacts you weren't part of?

Paul Matejcek:

Yes.

Todd Simonson:

Tell me what you mean.

Paul Matejcek:

She absolutely fights. She has no problem kicking and running away and spitting at officers. Between the times of my last contact with her and the date of this incident, she had been reported to have been stealing from the same liquor store where I contacted her. That officer chased after her.

Todd Simonson:

Who was that?

Paul Matejcek:

Officer Michelle Hall, H-A-L-L. That officer ended up getting into a ground fight with V1 until V1 was taken into custody.

Todd Simonson:

Did you know about that contact with Officer Hall before this call in April?

Paul Matejcek:

Yes.

Todd Simonson:

When did that contact with Officer Hall occur?

Paul Matejcek:

I believe it was March, so maybe a month before.

Todd Simonson:

Okay. Do you know what V1 was arrested for pursuant to that one?

Paul Matejcek:

I think it was 148, a 647F and I think 48 or 47. I'm not a hundred percent sure on that.

Todd Simonson:

Just out of curiosity, do you know if V1 actually been convicted of like a 148 or a 243B?

Paul Matejcek:

Yes.

Todd Simonson:

She has?

Paul Matejcek:

Yes. So she was supposed to be on probation for a 148, I think it was out of Alameda County, until, was it, 2019 when they changed the law from misdemeanor. You get two years for a misdemeanor or two years for felony, one year for a misdemeanor, probation. So once that kicked in, she was taken off probation because the start day of her probation was more than a year out or was more than a year ahead of what happened. So after that, she was taken off probation.

Todd Simonson:

Okay. So when you contacted her on April 23rd, she was not on probation?

Paul Matejcek:

No.

Todd Simonson:

Okay. In the report-

Paul Matejcek:

And I think when I ran her rap sheet, she had been arrested a minimum of 16 times for a 148. And I think there was a couple felony PC69s in there as well.

Todd Simonson:

What's 69? Remind me.

Paul Matejcek:

Like more than just resisting. It's like if somebody broke my arm. Trying to get out [inaudible 00:29:52].

Todd Simonson:

So it's like with injury?

Paul Matejcek:

Yeah. Yeah.

Todd Simonson:

Okay.

Julia Fox:

Is it threat to a police officer?

Paul Matejcek:

I thought that was like a criminal threat, like a punch.

Julia Fox:

Okay.

Paul Matejcek:

Whatever it was, it was in there. The more serious of the fighting penal codes.

Todd Simonson:

Okay. Got it. She's listed in the police report, your police report, as 5'7", 145. Is that about the height and weight that she was, if you could guesstimate?

Paul Matejcek:

She's definitely heavier than that now.

Todd Simonson:

She's heavier than 145?

Paul Matejcek:

Yeah.

Todd Simonson:

Huh.

Paul Matejcek:

Yeah. I'd probably say she's closer to 170, 180.

Todd Simonson:

The pictures don't show that.

Paul Matejcek:

Which pictures did you see?

Todd Simonson:

The ones that were taken at the scene.

Paul Matejcek:

Oh, okay. Yeah.

Todd Simonson:

It just doesn't look 170.

Paul Matejcek:

I thought you looked at her previous booking photos.

Todd Simonson:

No. So has she changed quite a bit lately?

Paul Matejcek:

Yes.

Todd Simonson:

How so?

Paul Matejcek:

Shaves her head, hair grows back. She gets thin, she gets big. That kind of thing. Even when I first contacted V1 when we opened up the shed door and V1 was standing there, I immediately recognized her. And that's why... And I remembered everything that I've done with her, every contact that I've had with her, as far as her being combative, resisting, all of the above, as well as other officers. And that's why I put her in handcuffs right on the spot.

Todd Simonson:

Yeah. I'm going to talk to you about that.

Paul Matejcek:

Okay. At that point, Officer Flynn, who was right there with me, was like, "Who's this?" And I said, "V1 V1 And he goes, "Really? I didn't recognize her because she changes."

Todd Simonson:

I see. Okay. All right. So I'm going to go to the video. It looks like your agency's body worn camera videos as with other agencies are, there's no sound the first 30 seconds.

Paul Matejcek:

Yes.

Todd Simonson:

That's a setting on the Axon body cameras.

Paul Matejcek:

Mm-hmm.

Todd Simonson:

And then you can hear things after 30 seconds. So I'll kind of narrate what we're looking at. So at the beginning, this is the line of sheds we're talking about.

Paul Matejcek:

Yes.

Todd Simonson:

Okay. I'm going to fast forward to-

Paul Matejcek:

Would it be easier if you came over here and then we could all watch it from one side?

Todd Simonson:

Yeah, I'll do that. Okay. Okay. We're all on the same side of the table. This is the line of sheds. This is Franson's video so he's kind of focused on one of the sheds. I'm going to move it up to when she comes out. So there's flashlights on the shed. This is 5:30 or so in the morning?

Paul Matejcek:

Yep. So what she had done at this point, so we heard the door shut. We said, "Okay, we're probably going to take a guess and say, whoever we're looking for is in there." Then we hear, it sounded like someone had thrown themselves on the ground or against a wood wall. So we're like, "Okay, somebody's definitely in there." So that's when we announced, "Police, come out." We started shining our lights in the window. We can't see anything because what she had done was lay down on the ground, like right up against the door so that way we can't see her.

Todd Simonson:

Okay. You narrow it down to this shed with like a red door with some white trim. This is Flynn over here shining a flashlight in the window?

Paul Matejcek:

Yeah. He should have been over there.

Todd Simonson:

Okay.

Paul Matejcek:

We had coordinated like, "All right, Franson you're going to stand in front of the door. You've got taser." Flynn's off to the side, I'm not sure if he had any [inaudible 00:33:37] options out. And then I was going to throw the door open.

Todd Simonson:

Okay. And that's what happened, right?

Paul Matejcek:

That's what happened.

Todd Simonson:

Okay. Playing at 43.

Speaker 1:

Hey, let me see your hands.

Todd Simonson:

V1 coming out.

Speaker 1:
Sit down. Sit down. Sit down. V1 sit down.

V1
What?

Speaker 1:
Sit down, sit down, sit down.

V1 :
No. What are you doing?

Speaker 1:
Put your hands behind your back.

V1 :
Why?

Speaker 1:
Because I said so.

Speaker 2:
Just watch your back, if anybody else-

V1 :
[inaudible 00:33:56] shot in my fucking nose, dude. I just got shot in my nose.

Speaker 1:
Can I get some light over here please?

Speaker 2:
Absolutely.

Speaker 1:
V1 drop your stuff.

V1 :
Oh, what?

Speaker 1:
Drop your stuff.

V1 :
Oh.

Speaker 2:
Are you hurt, V1

V1 :
Somebody just fucking shot me in my nose.

Speaker 1:
[inaudible 00:34:15] 29, V1 bare with us.

V1
Thank God.

Todd Simonson:
Let me just stop it real quick. I'm going to stop at 1:22. So I just want to... I'm going to stand up.

Paul Matejcek:
You're fine. Yeah. That's all right.

Todd Simonson:
So you pulled her to the ground, I think it was around 53 seconds, and handcuffed her. Why did you do that?

Paul Matejcek:
Just because the call that we had responded to was someone screaming for whatever reason. And then I see her and I remember how physically combative she becomes. That she actively resists, all of the above, or she doesn't like the cops, that kind of thing. So I see her. I know that if we're dealing with her, it's probably best that she goes in handcuffs.

Todd Simonson:
Right. I noticed that you said her name several times and told her to sit down.

Paul Matejcek:
Yeah.

Todd Simonson:
And she didn't appear to go with the program?

Paul Matejcek:
No.

Todd Simonson:
Okay. Is that reason you kind of pulled her down to the ground?

Paul Matejcek:
Yes.

Todd Simonson:
I'm not going to go through the whole search. Did you pat search her for weapons?

Paul Matejcek:
At that time, no.

Todd Simonson:
Okay. Did you know if she had any weapons on her after you had searched her?

Paul Matejcek:
No.

Todd Simonson:
There were some beer cans that were later removed from her jacket.

Paul Matejcek:
Yes.

Todd Simonson:
Did you feel those when you were securing her there?

Paul Matejcek:
At that point, I didn't. I didn't pat search her.

Todd Simonson:
You didn't pat her at all.

Paul Matejcek:
I just put her in handcuffs and put her down.

Todd Simonson:
I think she had some stuff in her hands, if I remember.

Paul Matejcek:
Yes she had, I believe it was a lighter.

Todd Simonson:

Let me just put play.

V1 :
Right.

Speaker 2:
Why didn't you step outside when we told you to?

V1 :
Because I didn't know who it was.

Speaker 1:
We said police department.

V1
Oh, somebody shot me in my nose. Fucking shot me in my nose. Look on the corner of it.

Speaker 1:
Shot you in your nose?

V1 :
Yeah.

Speaker 1:
With what?

V1
I have no clue. It looked like a razor.

Speaker 1:
Who was it?

V1 :
It was that guy, the fucking one with the hawk nose or whatever.

Speaker 1:
The hawk nose?

V1 :
Yeah.

Speaker 1:
I don't know what you're talking about.

V1 :
He fucking called me up or whatever and he is like, "Hey, Alex, wow." He's like, "Stop by." He's like tough shit or whatever.

Speaker 1:
What did he look like?

V1 :
Fucking like a big ass fucking nose on him.

Speaker 1:
Yeah. But like, was he Black, white, Hispanic? What happened?

V1
He's Mexican.

Speaker 1:
He's Mexican?

V1
Yeah.

Todd Simonson:
I'm going to stop it here. I thought we were going to... I saw the lighter and the whatever else she had in her hand at some point.

Paul Matejcek:
I think it's in my body camera footage where you see that.

Todd Simonson:
Oh, okay. So your body camera footage stops while you're conversing with her.

Paul Matejcek:
Yes.

Todd Simonson:
You turned it off maybe two or three minutes in?

Paul Matejcek:
Yes.

Todd Simonson:
But why'd you turn it off?

Paul Matejcek:

After she was in handcuffs and she was sat down and myself Flynn and Franson had triangulated her, we were comfortable with the situation at that time. It was static. And I was having an administrative conversation on where to go with V1 from then.

Todd Simonson:

Okay. I'm going to talk to you about that. So this back and forth that you're having with her during this where she's telling you about being shot in the nose by some male, did you have any idea what she was talking about at the time?

Paul Matejcek:

No.

Todd Simonson:

Okay. Did you ever find another male?

Paul Matejcek:

No.

Todd Simonson:

She had some injuries on her face at the time. Did you notice that when she was sitting outside the shed?

Paul Matejcek:

Yes.

Todd Simonson:

What kind of injuries?

Paul Matejcek:

There were like small cuts to her nose.

Todd Simonson:

Okay. Did she ever explain how she got those?

Paul Matejcek:

She just said that she was shot in the face. After she was put in the back of the car, I think even maybe before, Flynn had gone into the shed and seen how there were glass shards. And then there was also glass on the parking lot where she was sitting. So we think that she had thrown a glass bottle down, it hit her or like ricocheted, cut her in the face and that's why she was screaming. And then that's when the RP, the reporting party, IP8 heard her screaming. And that's how we got the call.

Todd Simonson:

Okay. Unless you want to, I'm not going to play the entire back and forth conversation you had with her.

Paul Matejcek:

That's fine.

Todd Simonson:

Okay. I mean, unless you...

Julia Fox:

No, I've watched it before.

Todd Simonson:

There was really nothing of note to me. And do you remember anything of note to you? Okay. You've had these types of conversations with her in the past?

Paul Matejcek:

Yes.

Todd Simonson:

She's kind of going on and on about whatever and you're trying to kind of get to more of the point.

Paul Matejcek:

Yes.

Todd Simonson:

Okay. Let me fast forward it then. Flynn takes off and starts searching other sheds. Do you remember that?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. And Franson kind of stays with you and she just kind of talks to Franson for a while. What are you doing while she's talking to Franson?

Paul Matejcek:

Just kind of watching her, thinking about, "Okay, where are we going to go from here? Is there anything else that we need to look for?" She's saying that she's shot in the face. Flynn's looking for somebody else, that kind of thing.

Todd Simonson:

Okay.

Speaker 2:

[inaudible 00:39:34].

Todd Simonson:

What am I going to? 6:42. Before I start asking questions again? What were you going to do with her? I mean, she was detained at this point?

Paul Matejcek:

Yes.

Todd Simonson:

What was the thought process, if you know?

Paul Matejcek:

Yeah. So while I was watching her and I'm listening to her, I can smell alcohol on her breath. I can hear the slurred speech. I can see the watery eyes. So I'm more than certain that she's under the influence of at least alcohol.

Todd Simonson:

All right. So you think you have a 647F?

Paul Matejcek:

Yes.

Todd Simonson:

Okay.

Paul Matejcek:

So I know that she gets combative when she finds out she's going to jail. So I'm like, okay. And this is the administrative conversation that I have with Flynn where I'm like, "What do you think? Where should we go from here? What do we have?" That kind of thing. We kind of cancel out that there was a fight, as far as her fighting with somebody else and it was just her at the scene that morning. So I'm kind of thinking like, "Okay, let's call AMR. Let's just have her get on the gurney and we'll send her away for intoxication because-"

Todd Simonson:

Why would you call an AMR for a 647F?

Paul Matejcek:

To say that she's... Well, I mean, we already asked her if she would be willing to go on the gurney, because she's more than willing to go into gurney to go to the hospital to get checked out than to go to jail. And then we can say that she's so intoxicated that she needs to be medically evaluated.

Todd Simonson:

Yeah. So normally a 647F would be... Is there a drunk tank in this department or-

Paul Matejcek:

We don't have one. No.

Todd Simonson:

So you have to bring her to MDF?

Paul Matejcek:

Yes.

Todd Simonson:

Okay.

Paul Matejcek:

Yeah, but that's when she became combative and that's when it switched from, this is not just an AMR, right? This is you're going to the drunk tank.

Todd Simonson:

Okay. Was there a thought about 5150?

Paul Matejcek:

Tried. I asked her the questions. Do you feel like hurting anybody? She says no. Ask her if she's thinking about hurting herself, she says no.

Todd Simonson:

Okay. I think Flynn actually might have asked that. Let me just play it. I'm going to play it from 6:28.

Speaker 2:

[inaudible 00:41:48].

Todd Simonson:

If I stop it here, it looks like you have a flashlight and Flynn is talking to you. Is that what you're talking about, like what are we taking her for?

Paul Matejcek:

Yes.

Todd Simonson:

Okay.

Paul Matejcek:

Well, not what are we taking her for, but where should we go from here?

Todd Simonson:

Okay. That's right. But I mean, was there a thought of about just leaving her there?

Paul Matejcek:

Absolutely not.

Todd Simonson:

Why not?

Paul Matejcek:

Because if she's to the point where she's throwing bottles down and she's hurting herself and she's not caring about it, who is to say that once people start to arrive more for work or be in that general area, who's to say that she's not going to throw them at them or she's going to walk out in traffic or something like that next to Lone Tree, which is a busy fairway, busy thoroughfare. If anybody goes and contacts her and says leave, it's more than likely that they're going to get into confrontation with her because of her actions.

Todd Simonson:

Right. So you didn't want to just leave her there to consort with the public?

Paul Matejcek:

No.

Todd Simonson:

Okay. So you're trying to figure out how to resolve this by having some reason to take her for either 647F or some other applicable legal means.

Paul Matejcek:

Yes.

Todd Simonson:

Okay. I'm starting at 6:46.

Speaker 1:

Yeah, why is it so dirty over here? What do you do with all this stuff?

Todd Simonson:

Is that you?

Paul Matejcek:

Yes.

[redacted]:

You know what? I'm sick and tired of you following me, dude. Why don't you stand down, quit following me.

Paul Matejcek:

It's at this point where-

[redacted]:

I can do whatever the fuck I want, man. You two fucking shining lights in my eyes and shit.

Speaker 1:

Yeah?

[redacted]:

I mean, how often do you guys fucking kill these fools, like murder me?

Speaker 2:

Why are you yelling?

Todd Simonson:

Okay, so I'm going to stop it at 7:16. Was that Flynn who said, why are you yelling?

Paul Matejcek:

No, that was Dave Franson.

Todd Simonson:

Oh, that Dave Franson. Okay.

Paul Matejcek:

[inaudible 00:43:43].

Todd Simonson:

So [redacted] kind of erupts at a question you asked, like, was it, why is it so dirty around here?

Paul Matejcek:

Yeah.

Todd Simonson:

What was the point of that question?

Paul Matejcek:

Just to see if she was the one that was causing like all the garbage that was on the ground. It looked like somebody had just taken their trash can and just dumped it right in front.

Todd Simonson:
Okay. Were you trying to antagonize her in any way?

Paul Matejcek:
No.

Todd Simonson:
Okay. She starts yelling, quit following me, dude and complains about shining flashlights in her face.

Paul Matejcek:
Mm-hmm.

Todd Simonson:
Had she erupted like that at you in the past?

Paul Matejcek:
Yes.

Todd Simonson:
Okay.

Paul Matejcek:
She goes through... And this is why I think she was under the influence of drugs as well, because she just does giant mood swings and that's one of them. She's low. She's calm at first or not calm, but calmer at first. And then on the blink of an eye, she's just erupting like that.

Todd Simonson:
So kind of a roller coaster of emotions?

Paul Matejcek:
Yes.

Todd Simonson:
And that's typical with her?

Paul Matejcek:
Yes.

Todd Simonson:
Okay. When she said quit following me, dude. I mean-

Paul Matejcek:
I have no idea what she's talking about.

Todd Simonson:
You've never like followed her anywhere?

Paul Matejcek:
No.

Todd Simonson:
You've only responded to calls where you're dispatched to them?

Paul Matejcek:
Yeah.

Todd Simonson:
Okay. Flynn asks if she's thinking about harming herself or others and he's about to ask it-

Paul Matejcek:
Was it Flynn or was it me? I believe it was me.

Todd Simonson:
Oh, I'm sorry. It's hard to tell.

Speaker 1:
You thinking about harming-

Paul Matejcek:
That's me.

Todd Simonson:
Okay. So it's 7:17 you're the one who say, are you thinking you're harming yourself? Right?

Speaker 1:
... yourself?

[redacted]:
No.

Speaker 1:
You thinking of harming anybody else?

[redacted]:
Yeah.

Speaker 1:

Yeah. That was a softball question. You did not hit that one.

V1 :
I don't play softball.

Speaker 2:
I don't either.

V1 :
And thank you for following me.

Speaker 1:
For finding you?

V1 :
No quit following me.

Speaker 1:
Oh, okay.

V1 :
Yeah. Yeah. Thank you.

Speaker 1:
Why you have so much beer?

V1 :
What do you mean beer? I can drink beer whenever the fuck I want. It's not beer, dude.

Speaker 1:
It is. It's Budweiser.

V1 :
So the fuck what?

Paul Matejcek:
I think there was Budweiser cans at that point.

V1
I don't give a fuck if it's beer or not. I drink as much beer as I fucking want.

Paul Matejcek:

All right. No, excuse me. At that point I could see the beer cans in her pocket because they were extended out.

Todd Simonson:

I think there were three total.

Paul Matejcek:

Yes.

Todd Simonson:

And they were in her jacket pocket?

Paul Matejcek:

Yes.

Todd Simonson:

She was wearing kind of like a denim jacket.

Paul Matejcek:

So she has three jackets on. Sh had a denim jacket underneath and then another sweater underneath that and then like another jacket. She was wearing three.

Todd Simonson:

Okay. I'm going to play it. Franson is about to mute his microphone in a second. I'm going to ask a question 8:01. So I'm going to stop it at about 8:10 on the video, Franson mutes his microphone. How do you do that?

Paul Matejcek:

There's a button on the side.

Todd Simonson:

Do you know why he did at the time?

Paul Matejcek:

Yeah, we were going... Or she was just going in circles. There was nothing really else that we were going to get out of her as far as the statement, but he just decided I'm going to take... I guess, and say that he just decided just to keep the video rolling just in case.

Todd Simonson:

So, I mean, I've looked at your policy. Is there a provision that says you can just turn off your camera when you don't think it's going to capture anything anymore?

Paul Matejcek:

I'm not sure if it says that in our policy.

Todd Simonson:

Oh, so why did you deactivate yours?

Paul Matejcek:

Just because I was having an administrative conversation with Flynn.

Todd Simonson:

So that's allowable to mute or turn off your video when you're having an administrative conversation?

Paul Matejcek:

Yes.

Todd Simonson:

An administrative conversation includes like trying to figure out what you're going to detain or arrest somebody for?

Paul Matejcek:

What we're going to do with them after they're arrested.

Todd Simonson:

Okay. And that's what you were doing with Flynn and Franson?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. So the remainder of the video is without audio.

Paul Matejcek:

Yes.

Todd Simonson:

For the next minute or so before you ended up kicking V1 what's being discussed?

Paul Matejcek:

So I looked at Flynn and I was like, "What do you think?" He's like, "Well, she's 647." And I'm like, "Yes, but what else aside from that?" Should we... And that's where I was bringing up, should we just call AMR and just have her go and get medically evaluated for her level of intoxication? Or is she going to go to the MDF and then she explodes again. I'm like, okay, this is, we're obviously past the point of just AMR.

Todd Simonson:

And what's she saying this time when she exploded?

Paul Matejcek:

The same stuff. "Why are you following me? Why... I see you in my dreams," just nonsense.

Todd Simonson:

Did she get upset that you called her some other name?

Paul Matejcek:

I think Franson actually called her a different name.

Todd Simonson:

What did he call her?

Paul Matejcek:

I don't remember, like Jennifer or something.

Todd Simonson:

Okay.

Paul Matejcek:

Just a different female name. Maybe it was Flynn, but she became, if I remember correctly, she became pissed about that too.

Todd Simonson:

Yeah. I'll tell you what? There's another video. I think it's Franson's dash cam that picks up a little bit of the conversation. Have you reviewed that?

Paul Matejcek:

No.

Todd Simonson:

Okay. Let's just do this video and then I'll play a little [inaudible 00:49:11] before we talk after that. So there's about a minute of more back and forth where you can't hear anything. Does that sound right?

Paul Matejcek:

Yes. And I'm just letting her yell at me that whole time.

Todd Simonson:

Was there any coordination during this audio-less minute about like deescalating? About how we're going to get her off the ground or what we're going to do to put her in a car or anything like that?

Paul Matejcek:

Yeah. So my deescalation in my head was if we don't put her in the back of the car, if we just let her sit here and we get the ambulance to come and take her, this is going to resolve her from finding out that she's going to go to jail and she's going to explode. So if we just keep her here, say, "Hey, we've got the ambulance on the way." She'll stay calm. I believe she'll stay calm. And then she'll be on her merry way to the hospital, which is something that she would much rather do instead of go to jail. If we put her in the back of the car now we're opening the door for her to go after us.

Todd Simonson:

So did you tell her that there was an ambulance on the way?

Paul Matejcek:

No. We hadn't made the call yet.

Todd Simonson:

Okay. So during this minute or so of silence, there's a conversation going on. We just can't hear it. And she's exploded at some point as you describe it.

Paul Matejcek:

Yes.

Todd Simonson:

Meaning she's ramped up her volume on her voice.

Paul Matejcek:

Yes.

Todd Simonson:

And she's saying what?

Paul Matejcek:

Random things. The, I see you in my dreams. I remember that specifically. You know, "Fuck this, fuck you." That kind of stuff.

Todd Simonson:

All right. So at some point, did you believe she was trying to stand up?

Paul Matejcek:

Yes.

Todd Simonson:

All right. Tell me when. I'm going to play it and then I don't know if you can see her. So she's down. Can you see her head right here? Like under the 30 second sign?

Paul Matejcek:

A little bit. Yeah.

Todd Simonson:

So if I manipulate this, it's going to continue to be a little in the way. So really just look closely. So we're at 8:36. I'm going to start just kind of going through if you can... Actually, I'll just play it. Tell me where she starts standing up.

Paul Matejcek:

Right there-

Todd Simonson:

Okay. So I'm going to stop it at-

Paul Matejcek:

... is when she like... So her legs were crossed because from my training in the Academy and being on the streets, we had people cross their legs.

Todd Simonson:

When you have them sat down?

Paul Matejcek:

When we have them sat down, when they're sitting on the curb, they cross their legs. Because it's, now if they uncross their legs, it's more likely that they're going to stand up or they're going to try and run away. So we always have them cross their legs. So that's how she was when she was placed on the ground. She's crossed her legs. So when she uncrossed her legs, I'm like, "Okay, now she's going to try and make a move." She has a history of running and fighting cops. This is it. This is where she's going to start to make that decision. And she rolled forward, or she uncrossed her legs and then she rolled forward. And [inaudible 00:52:21]-

Todd Simonson:

When you say she rolled forward, she was still on her butt.

Paul Matejcek:

Yeah.

Todd Simonson:

Yes.

Paul Matejcek:

But she's like trying to tuck her legs underneath her to stand straight up.

Todd Simonson:

Okay. So she was making movements that indicated she was going to try to stand?

Paul Matejcek:

Yes.

Todd Simonson:

Did she say she was going to try to stand?

Paul Matejcek:

No.

Todd Simonson:

Did she say I'm going to get out of here? Say anything about running? Anything like that?

Paul Matejcek:

No. But because of my prior history with her and her being violent and her running away multiple times from me, from other officers, I knew that this was not... She wasn't just going to stand up and just hang out.

Todd Simonson:

Did you give her any verbal commands?

Paul Matejcek:

Two. V1 stay seated. V1 sit down.

Todd Simonson:

Did Franson or Flynn give her any verbal commands?

Paul Matejcek:

I don't think so. No.

Todd Simonson:

V1 please stay seated.

Paul Matejcek:

V1 stay seated. V1 sit down.

Todd Simonson:

Did she seem to hear you?

Paul Matejcek:

Yes. I don't think she cared, but I know she heard me because I hadn't changed my distance. I had said it louder than I would have when we were conversating, as far as like, "Hey, are you thinking of hurting yourself or are you thinking of hurting anyone else?" So I know she could hear me, but as far as her acknowledging me, she did not make any acknowledgement.

Todd Simonson:
Okay. So about how far are you from her at this point?

Paul Matejcek:
I would say four to five feet.

Todd Simonson:
Is Flynn about the same?

Paul Matejcek:
Flynn's a little bit farther back. He's maybe like a foot or two behind.

Todd Simonson:
What about Franson?

Paul Matejcek:
Franson, the same distance. We all gave her her space.

Todd Simonson:
Okay. Is there anybody else in the parking lot that you know of?

Paul Matejcek:
In that area? No.

Todd Simonson:
Where's the RP, if you know?

Paul Matejcek:
So right here, Franson is looking westbound, Home Depot's behind. She was farther behind Franson.

Todd Simonson:
Okay. All right. I'm going to play, the kick's coming up right here, I think, 9:07.

Paul Matejcek:
So-

Todd Simonson:
So we just did the kick. So to me it looked like about three quick steps toward her. You raise your right foot and you kick her kind of in the left torso area.

Paul Matejcek:
Yes. So I know it sounds crazy, but when she undid her feet and she rolled forward, I thought at that point she was going to jump out at me because that's a V1 thing.

Todd Simonson:

What do you mean?

Paul Matejcek:

As far as like being unpredictable and how she comes at you. So in my head I was thinking, "Okay, she's hopped up on drugs and she's hopped up on alcohol. This would not surprise me if she jumped forward towards me." And then if she wasn't going to jump forward towards me, she was going to stand all the way up. And then she was going to come after us or she was going to try and run away or she's going to spit at us.

Todd Simonson:

Okay. She was handcuffed at the time?

Paul Matejcek:

Yes.

Todd Simonson:

Did that enter into your calculus about kicking her?

Paul Matejcek:

Yes. So you can see that she was standing in front of the door and I knew that if I go hands on with her, my face is going to be right next to her. And she's more than likely going to spit in my face because now her hands are tied behind her, they're handcuffed behind her back and she's likely to spit in my face because she's done that before to other people.

Todd Simonson:

Has she actually hit you in the face with spit?

Paul Matejcek:

Me, personally? No. So where she's standing, I was like, if I grab her, one, I'm going to get spit in the face, but I'm also going to have to try and throw her down to the ground to get her back onto her stomach, to be able to pick her back up or handle her however we need to, as far as putting her in a wrap or whatever it is to control her legs. So that way now she can't kick at us or slip her cuffs, which she has done before as well.

Todd Simonson:

When you say slip her cuffs, what do you mean?

Paul Matejcek:

Underneath and brings them-

Todd Simonson:

So she puts the cuffs underneath her feet and then brings them in front of her?

Paul Matejcek:

Yes.

Todd Simonson:

So she can do more with the hands in front of her?

Paul Matejcek:

Yes.

Todd Simonson:

Okay.

Paul Matejcek:

Which she's done before with me.

Todd Simonson:

Okay. Did she try that here?

Paul Matejcek:

No, because she was sitting on... She was on her butt at the time and then when she ruled forward as she was standing up, that's when I acted because I was trying to prevent all the above from happening. So if she wasn't going to spit at me and I go hands on with her and now I'm trying to put her back on the ground, on her stomach so that way we can control her, just in a prone position where that's the easiest to handle people. That's the safest way for us to do it. Or put her in a wrap or whatever it is, now she can't put her hands out to break her fall and she was more likely to hit her head or something like that. So what I saw here was she's got this solid backdrop behind her, as far as the wooden door. If I push her into the door, now she'll be thrown off balance. She could slide down the door, back onto her butt and not hit her head on anything.

Todd Simonson:

Okay. So let me just continue playing it at 9:12. Let me just back it up and see the whole kick. I want to start at 9:02. Okay. There's a kick at 9:08. She goes against the door kind of on the ground, on her butt. Is that right?

Paul Matejcek:

Yes, sir.

Todd Simonson:

And you pick her up?

Paul Matejcek:

Yes.

Todd Simonson:

And kind of hustle her over to your car?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. I'm going to stop there and ask you some questions. 9:25, as you're hustling her back to your car, did you intend to kick her with as much force as you did?

Paul Matejcek:

What do you mean?

Todd Simonson:

Well, I mean, it looks like you kicked her with enough force to send her back into the door. Did you intend to do that?

Paul Matejcek:

So the amount of force that I used would... And if you slow the video down, you can see where only the top of... like the ball of my foot actually contacts her where I'm extended. So my thinking was only an amount of force in order to knock her off balance into this door. I wasn't trying to field goal punt her through the shed. I wasn't trying to like harm her or break any bones or anything like that. I wasn't trying to hurt her. I was just trying to get her off balance into the door so that way she would go back down and that way I can get behind her, pick her up.

Julia Fox:

Slide down the door.

Paul Matejcek:

Slide down the door.

Todd Simonson:

So what you did is what you intended to do.

Paul Matejcek:

Yes. And I didn't use... I used only enough to push her off, but I wouldn't have used any more force if I had pushed her back down with my hands, if that makes sense.

Todd Simonson:

No, explain that to me.

Paul Matejcek:

I used the same amount, right? So regardless if I was pushing her with my foot or if I was pushing her with my hands, the same amount.

Todd Simonson:

You would've used the same amount of force to knock her off balance to get her on her butt in a position you could handle her without her spitting on you?

Paul Matejcek:

No, with my foot. So I would've used the same amount of force to push her with my foot as I would have with my hands to push her into that door so that way she would be off balance.

Todd Simonson:

Okay. So, you think if you used your hands, you would've shoved her-

Paul Matejcek:

The same amount of force.

Todd Simonson:

Okay.

Paul Matejcek:

The same amount of pressure.

Todd Simonson:

So I guess I'm just kind of asking in a roundabout way because it happens, kind of the, I don't know my own strength kind of thing. Did you intend to use the amount of force behind that kick as you did?

Paul Matejcek:

Yes, because I believe that was the least intrusive force method as well as that was the smallest amount of force to get her to do what I wanted her to do.

Todd Simonson:

Okay. Well, so when she had come out of the shed, initially you grabbed her by the arm and pulled her down to her butt. Why not just do that there?

Paul Matejcek:

Well, now my face is right next to hers. Say, if I approach her, how she was, how she's standing up, now my face was very close and she's more than likely going to spit on me. And I did not want to be spit on or in my face.

Todd Simonson:

So the kick was to prevent being spit on?

Paul Matejcek:

The kick was to allow as much distance between my face and hers as possible while still being able to put her into a seated position.

Todd Simonson:

Okay.

Paul Matejcek:

It was to keep that distance. I wanted to keep as much distance from between my face and hers so that way, if she does spit, well, now I have time to move my head. Whereas if I'm pushing her or if I'm right in front of her, now there's limited space or a shorter amount of space. It's more likely that she's going to spit in my face or in my mouth.

Todd Simonson:

Okay. Well, so Franson and Flynn are there. Why not ask them to grab her and escort her to the car or bring her to the ground or something like that?

Paul Matejcek:

After the kick or before?

Todd Simonson:

No, before the kick. I mean, Franson's to the side of her so I guess he's not in direct spitting range. Why not have him just go over?

Paul Matejcek:

Because she was already standing up here. She was already on her way up at that point and I wanted to... I knew that it was going to either be a fight or she was going to run away or she was going to spit on us like she has done in the past. So I knew that if I act now, act quickly, then I'm going to resolve the situation and she wouldn't be able to do any of those.

Todd Simonson:

Well she's handcuffed so why not just let her stand up and spit and run all she wants and then just grab her after that?

Paul Matejcek:

Because if she runs, then it's more than likely that we're going to have to tackle her. And now her hands are behind her back. And if she falls, how is she going to brace herself?

Todd Simonson:

So you were thinking about all those things before you actually kicked her?

Paul Matejcek:

Yes, as this is all going down.

Todd Simonson:

Okay. Did V1 say anything before you kicked her that might have prompted you to do the kick when you did?

Paul Matejcek:

Like a threat?

Todd Simonson:

Anything?

Paul Matejcek:

I don't recall her threatening me. I just remember her being aggressive in the tone that she was using, the fuck yous and stuff like that.

Todd Simonson:

Okay. Let me just... I'm going to toggle to another video. I usually have this screen and two other screens in front of me, so manipulating this is a little different. Okay. So I've got Franson's dash cam from his vehicle. I'm going to queue it up to 8:30 or so. Okay. I didn't know I was going to get some exercise. So just got to take my word for it. This is the dash cam from Franson's video. Okay? We have it at 8:30 and you can catch some of the conversation, bits of the conversation. Let me just make sure I have it as loud as it can go. So I'm going to start playing and I'll ask you some questions once I hit stop. Okay?

Paul Matejcek:

Mm-hmm.

V1 :

My name's not Jen. Okay? [inaudible 01:03:07].

Todd Simonson:

So at about 8:54, that's the sound of the kick, I believe.

Paul Matejcek:

Mm-hmm.

Todd Simonson:

I'm going to stop at 9:02. Could you tell what she was saying before that, the kick sound?

Paul Matejcek:

Not really.

Todd Simonson:

What I caught was quit calling me something. My name's not something, call me... Do you know what that meant?

Paul Matejcek:

So I think that's where somebody mixed up.

Julia Fox:

I thought she said my name's not Annette and you're not French.

Todd Simonson:

I think she said, you ain't rich. That's what I heard. You remember her saying, you ain't rich?

Julia Fox:

I thought she said my name's not Annette.

Todd Simonson:

Okay. And then at the end it sounded like she says, so you got to undo the handcuffs.

Paul Matejcek:

Yeah. Yeah. In her head, she thought that she wasn't in trouble or that she had done nothing wrong. So take off the handcuffs.

Todd Simonson:

That was the last thing she said before the kick. So you got to undo the handcuffs. Had she been complaining about the handcuffs at all?

Paul Matejcek:

No. And I was able to get my finger in there to make sure that they were good.

Todd Simonson:

Okay.

Paul Matejcek:

No, at that point, I didn't double lock them. I had just put them on and then I had later checked them for proper fit and double locked them.

Todd Simonson:

Okay. So you bring V1 back to your car. You search her there?

Paul Matejcek:

Yes.

Todd Simonson:

You find the three Budweisers and some other stuff on her?

Paul Matejcek:

Yes.

Todd Simonson:

What other stuff? I forget.

Paul Matejcek:

Just miscellaneous stuff. Napkins, I think there was a couple lighters. Yeah, just random little things. I want to say there was like a piece of broken glass or something in her pocket, but just a whole lot of nothing.

Todd Simonson:

Junk?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. And then once you searched her, you put her in the back of your car?

Paul Matejcek:

Yes.

Todd Simonson:

Any incident with that?

Paul Matejcek:

No.

Todd Simonson:

Did you discuss what had occurred with Flynn and Franson there in the parking lot?

Paul Matejcek:

Yes.

Todd Simonson:

Tell me about that.

Paul Matejcek:

So I searched her, put her in the back of the car. They were like, "What the heck?" Like they were kind of caught off guard.

Todd Simonson:

Did you know what they were caught off guard about?

Paul Matejcek:

Yes. About that, obviously, because I pushed her with my foot. So they were like, "Run us through what's going on? Or why you did that?" Franson hadn't had the same kind of contact. Both Franson and Flynn hadn't had the same kind of contacts that I had with her so I explained to them, "Hey look, she fights, she kicks, she bites, she spits. She does everything to not go to jail and because she's standing up, I was confident that she was going to either try and run. She was going to spit. She was going to kick us. She's going to try to slip out of her cuff, whatever it is, to not go to jail." And Franson was like, "Okay." He was just like, "I just haven't had that kind of contact with her or as many contacts with her as you have where she's like that." And yeah, Flynn, I remember him saying after because we watched the body camera footage together on scene still, waiting for AMR to show up. And he was like, "If she had taken a step forward, it would've been more justified." And I was like, "I didn't want her to get to that point. I didn't want to have to wait for her to try to attack us, actively attack us or actively run away. I wanted to stop it before all of that happened."

Todd Simonson:

So she had stood up before you kicked her, but she had not taken a step forward. Is that right?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. So did you have the feeling that Franson and Flynn thought your kick was excessive?

Paul Matejcek:

Yes.

Todd Simonson:

Did they say those things to you?

Paul Matejcek:

No.

Todd Simonson:

Just the way they were acting and Flynn saying I would've done something like that if she had taken a step?

Paul Matejcek:

He said that it was justified, or he said that he wouldn't have done something. He didn't say I would've done it. He said it would've been more justified if she had taken a step forward.

Todd Simonson:

I see. Did you call your Sergeant Alvarez?

Paul Matejcek:

Yes.

Todd Simonson:
While you were there at the scene?

Paul Matejcek:
On scene? No. On the way back to the department. Yes.

Todd Simonson:
Why didn't you call him on scene? I mean, it was a use of force. You knew that, right?

Paul Matejcek:
Yes. Yeah. I knew that he was going to get notified [inaudible 01:08:07].

Todd Simonson:
I'm sorry. I looked at your use of force policy. A kick is a use of force?

Paul Matejcek:
Yes.

Todd Simonson:
Okay. Flynn wrote a supplemental because he took his taser out, that's considered a use of force too?

Paul Matejcek:
A display, yeah.

Todd Simonson:
A display.

Paul Matejcek:
Yeah.

Todd Simonson:
Okay. So you're required, if you have a use of force, you tell the sergeant.

Paul Matejcek:
Yes.

Todd Simonson:
One of the things in, I think it's a use of force policy, under Supervisor's Responsibility is if possible the sergeant goes out to the scene. Any reason you didn't call him when you were out at the scene?

Paul Matejcek:

Between me, Franson, Flynn, I believe that we had enough experience that we were getting all the things that whatever Alvarez was going to need to take care of, we were doing it there. All we needed to do was notify him.

Todd Simonson:
Okay. Did you call an ambulance at the scene?

Paul Matejcek:
Yes.

Todd Simonson:
For what reason?

Paul Matejcek:
To have her checked out for as far as being kicked and the injuries to her face.

Todd Simonson:
Okay. Did AMR go to Home Depot?

Paul Matejcek:
Yes.

Todd Simonson:
And they checked her out in the parking lot there?

Paul Matejcek:
Yes.

Todd Simonson:
And they cleared her?

Paul Matejcek:
Yes.

Todd Simonson:
Did she complain of any pain to her torso where you kicked her?

Paul Matejcek:
No.

Todd Simonson:
Did she complain about the kick at all in your presence?

Paul Matejcek:

No.

Todd Simonson:

Okay. So once AMR clears her, what do you do?

Paul Matejcek:

I transport her back to the station. Call the Sergeant, "Hey, meet me at the Sally Port. Meet all three of us because I'd like to explain what happened in front of Franson and Flynn in case they saw something different than what I'm telling. Whatever it is, I just want to make sure that we're all on the same page."

Todd Simonson:

You told Alvarez that over the radio?

Paul Matejcek:

No. I told him.. That was my conversation with Flynn and Franson like, "All right cool. You guys... " They were more worried about duty to intercede type things.

Todd Simonson:

But duty to intercede is kind of a new addition to the use of force policy, correct?

Paul Matejcek:

Yes. Yeah. So they were worried like, "Okay, well are we going to get in trouble if we don't say anything?" I'm like, "It's not like I'm not going to say anything. I'm going to tell the Sergeant what happened. That's why we're going to go back to the station. That's why she's getting cleared. I've taken photos of her while she's in the back of the car. I'm going to take some more [inaudible 01:10:16] back at the station. We'll see if we can find or see if there's any injury on her at the station while the sergeant's there as well." So they're like, "Okay." So we all go back to the station. We all have this little powwow at the station, while I'm explaining to Sergeant Alvarez what happened.

Todd Simonson:

And how do you explain to Sergeant Alvarez what happened? What are you telling him?

Paul Matejcek:

We get this call. She's sitting down, she's in handcuffs. I know her to be combative and run and all of the above. She goes to stand up. In order to prevent her from escaping or spitting at us or fighting with us, I push her to end of the shed and she slides down.

Todd Simonson:

Why do you describe it as a push? It was a kick, right?

Paul Matejcek:

It was a push. I used it as a push.

Todd Simonson:

You used a push with your foot?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. You understand why people might describe it as a kick?

Paul Matejcek:

It's with a foot.

Todd Simonson:

And you described it as a kick in your report at one point, right?

Paul Matejcek:

A discretionary kick. Yes. But my intent was to push her into the shed, push her off balance into the shed. If I wanted to kick someone... I could see how that would be a kick, but that was not... My intent was to not... I didn't want to injure her so that's why I'm pushing her to the ground. Not kicking her. Like I said before, not throwing her through the shed, I'm just pushing her off balance with enough force with my foot.

Todd Simonson:

With your foot, while she's handcuffed.

Paul Matejcek:

While she's handcuffed.

Todd Simonson:

And you tell the Sergeant that she was handcuffed when you pushed her with your foot?

Paul Matejcek:

Yes.

Todd Simonson:

Did Franson and Flynn chime in with their input?

Paul Matejcek:

They said that I said everything exactly how it happened.

Todd Simonson:

Okay. Did they raise any issue with Sergeant Alvarez in your presence about the kick, whatever you want to call it, the push with your foot being excessive?

Paul Matejcek:

No.

Todd Simonson:

Did Alvarez asking you questions about what you had done during that meeting?

Paul Matejcek:

He asked if AMR had checked her out. I said, yes. He said, "Did you get any photos of her injuries?" I said, "I tried. I'm going to try again." She wasn't wearing a shirt underneath all her jackets. So I didn't lift up her jackets to get a picture of where to search for anything. We didn't have any females working to check either.

Todd Simonson:

So did you ever get to see the area of the torso that you contacted?

Paul Matejcek:

Only from like here down.

Todd Simonson:

So kind of mid thorax down?

Paul Matejcek:

Yes.

Todd Simonson:

You had lifted up that much?

Paul Matejcek:

She, yeah lifted. Yeah, because I asked her, "Hey, are you wearing your shirt," as I'm like picking it up to here.

Todd Simonson:

All right. How long was the conversation with you, Sergeant Alvarez, Flynn and Franson outside the Sally Port?

Paul Matejcek:

A few minutes.

Todd Simonson:

Did Sergeant Alvarez give you any directions about booking her, writing the report or anything?

Paul Matejcek:

He just said... He asked like, "Okay, where is she going now?" I was like, "Well, we're going to put her in the back of the transport van with CSO Sheffield. She's going to be going to MDF. She's already checked out by AMR. We're going to try photographing her again because she didn't want to be photographed while she was in the back of the car on scene." And then he's like, "Okay, well this is your Friday. You need to get the report in today." I'm like, "That's no problem," because at that time it was almost 7:00 so it was almost time for everybody to leave. I said, "Yeah, that's fine." He notified, I believe it was Sergeant Tonkel.

Todd Simonson:

Can you spell that?

Paul Matejcek:

T-O-N-K-E-L.

Todd Simonson:

He's a Sergeant where?

Paul Matejcek:

Here.

Todd Simonson:

But different shift?

Paul Matejcek:

Different shift. So Alvarez is the night, graves time, the graveyard guy. We were getting ready to get off, so Tonkel was starting his shift at 6:00. So he was going to be the one. I guess, they had coordinated that he would be the one to review the report and checked to make sure all the elements were made and whatnot before I go on my off time and then go into training.

Todd Simonson:

Okay. So you wrote this report at the end of that shift?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. It wasn't approved until May 10th.

Paul Matejcek:

Yes.

Todd Simonson:

By Sergeant Aguiar.

Paul Matejcek:

Yes.

Todd Simonson:

Where does he work?

Paul Matejcek:

Here.

Todd Simonson:

I know, but where? What part of the department?

Paul Matejcek:

The, was it Professional Standards Unit? PSU.

Todd Simonson:

So why did he end up approving the report?

Paul Matejcek:

So after I wrote my report and Tonkel reviewed it and then I believe Alvarez reviewed it that night, Alvarez had also notified Lieutenant Louwerens of this situation.

Todd Simonson:

Louwerens is spelled not like a Lawrence would normally be spelled.

Paul Matejcek:

You're right. It's L-O-U-W-E-R-E-N-S.

Todd Simonson:

Yeah, go ahead.

Paul Matejcek:

They reviewed it. And then I guess they still had questions after I had left, even though Sergeant Tonkel had already told me that it was good. It was, everything was there that needed to be there. A few weeks passed by, I guess. I thought my report was turned in at that point, I thought it was approved and ready to go. Then Sergeant Aguiar notified me that it was not approved and submitted. That it had been reviewed by several other, I guess, lieutenants and detectives and as well as a captain and they had questions, so they wanted me to come in and answer those questions until the report was finalized.

Todd Simonson:

What type of questions? Was it in an email kind of thing?

Paul Matejcek:

No, it was as far as like what happened to the beer cans and then it was grammatical stuff.

Todd Simonson:

Okay. So nothing about your description of why you kicked and what happened with the kick?

Paul Matejcek:

No. No.

Todd Simonson:

Okay. So your original draft of this report that you turned in, were there a lot of changes made between the original draft and this final draft?

Paul Matejcek:

No, just like medical stuff.

Todd Simonson:

Okay. All right. I noticed that you charge her with 243B, battery on a peace officer. Why is that?

Paul Matejcek:

So as I'm writing this report and she's being transported to MDF, CSO Sheffield is the one that transported her. So when he goes into the back to take her out of the back of the transport van, she tells him something similar to, "I have [redacted] or [redacted] and then proceeds to spit into his mouth." So that's where.

Todd Simonson:

That's the 243B?

Paul Matejcek:

Yes, sir.

Todd Simonson:

I see. Okay. And you said you intended to add a 148.

Paul Matejcek:

There should have been a 148 charge on there as well as she had resisted me. And that was why I was forced to act.

Todd Simonson:

So the resistance was her standing to her feet when you told her not to?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. How many drafts of this report were there, if you know?

Paul Matejcek:

Mine and then that.

Todd Simonson:

Okay, so there's two.

Paul Matejcek:

Yeah.

Todd Simonson:

Okay. Okay. I kind of reached the end of my questions. Is there anything you want to add?

Julia Fox:

No. I was just going to ask about whether the spitting post-event substantiated your understanding that she's a spitter? That you just referenced that.

Paul Matejcek:

So from all my contacts with her, I know her to be a violent person, non-cooperative with law enforcement, regardless if... whatever the circumstances are. If it's a small infraction for jaywalking or for her beating up her dad to the point where she's getting felony charges and convicted with felonies. I know her to be-

Todd Simonson:

She beat her up her dad?

Paul Matejcek:

Yes.

Todd Simonson:

And got convicted of felony charges for it?

Paul Matejcek:

Yes.

Todd Simonson:

Okay.

Julia Fox:

Convicted or charged?

Paul Matejcek:

I believe it was both.

Julia Fox:

Okay.

Paul Matejcek:

Yeah. Yeah. And just my knowledge of her rap sheet because I've arrested her before, with lengthy charges. Continuous resisting arrest, fighting with officers, spitting at officers, kicking at officers, biting officers, all the above. That's why I acted the way that I did.

Todd Simonson:

Okay. At the end of your report, you actually put down like the results of the criminal history search of V1 I assume, based on your prior context, you knew what her criminal history was?

Paul Matejcek:

Yes, but I was just detailing it even more so in the report.

Todd Simonson:

Okay. Had you ever used force on her before?

Paul Matejcek:

Just pulling her to the ground, that kind of thing.

Todd Simonson:

But nothing reportable?

Paul Matejcek:

No.

Todd Simonson:

Okay. Had you ever put a criminal history in her report before?

Paul Matejcek:

I believe so.

Todd Simonson:

Okay. Anything else you want to add? Julia, anything else you want to clarify?

Julia Fox:

No.

Todd Simonson:

Okay. I tell this to everybody I interview. If there's anything else that pops into your head, I want you feel free to contact me. Of course, contact Julia first. If there's emails or whatever, send them to my email. I'm willing to take whatever you want to give me. If there's stuff in those workbooks I didn't take a picture of.

Paul Matejcek:

So there is one picture. I'm not sure if we didn't... I don't know if we looked at it, but there is kind of a diagram of the best places or target places for a person to be struck as far as what... It says for impact weapon, but that also goes with like personal body weapons as well. And it says chest, ribs, midsection, legs, and arms. So where I kicked her or kicked pushed her was on that left abdomen, right where they're telling us to target.

Todd Simonson:

Yeah. Let me just take a picture of that one too. Learning Domain 33, chapter seven, page six. Cool. Guidelines for Impact Weapons. Okay. Got it.

Paul Matejcek:

And my intention is not to hurt her. I didn't want to use any force. If we could have avoided this altogether, then we wouldn't be sitting here. And if that option had come up, then we obviously we wouldn't be here. But she forced my hand to do something. And in order to prevent us from having to go more hands on with her, now she's got three officers on top of her on the ground. Possibly could hit her head because she's got her handcuffs and whatnot. She runs away, we tackle her, she hits her head. Whatever it is. Or she tries to kick at us tries to bite us, spits at us, whatever it is, that's why I acted the way I did. And that's based on my training and experience, with her being resistive and whatnot. So I don't think the amount of force that I used, I believe it was at like the least intrusive and reasonable. And I can see how it looks bad on camera, but where I was standing and from my point of view, I knew that there was a danger if she was to get to her feet.

Todd Simonson:

One thing I noticed in watching the video is what Flynn and Franson did or didn't do. They didn't move when you took those three steps and kicked her. Did you have any discussion about that with them? I've talked to both of them, they didn't perceive the same threat you did. They were surprised by the kick. They thought there were less intrusive means. Namely kind of pulling her to the ground with the arms or just escorting her to the car.

Paul Matejcek:

Yeah. So that would mean I would have to bring my face closer to hers. Right? And I know that she spits, which she eventually did, and that's why I didn't want to use my hands and just simply grab her and take her to the car.

Todd Simonson:

What about just deescalating, deescalating? Just sit down, sit down, sit down. Keep your distance until she does, or doesn't do that.

Paul Matejcek:

If she gets to her feet, that wasn't going to happen. There was no deescalating her from there.

Todd Simonson:

Just based on your prior experience?

Paul Matejcek:

Based on my priors.

Todd Simonson:

Okay. Yeah. All right. All right.

Julia Fox:

I did have one question very much on the periphery of all of this. And I meant to ask it earlier. Given the Home Depot events, would she have been eligible for a trespass arrest?

Paul Matejcek:

I don't think so because they weren't Home Depot employees. If there had been Home Depot employees, she could have been, but because Home Depot hadn't called on her, I don't think so. Yeah.

Julia Fox:

Yeah. And that's not an academy question. I mean, to me, it appears as though it's potentially a misdemeanor committed in your presence. She's in an area where she shouldn't be, circumstantially it's after hours. They're not open for business. These are items for sale, not habitation on site. So I was just curious.

Paul Matejcek:

I mean, if you look at it like that, yes. But is Home Depot at that time, were they available to be like, "Yeah, we don't want her here." No. So I don't know if I could have arrested her for that at that point.

Julia Fox:

Yeah. Okay.

Todd Simonson:

Let me ask you this. V1 is a local transient. Yeah?

Paul Matejcek:

Yes.

Todd Simonson:

Is there a local homelessness issue in Brentwood?

Paul Matejcek:

Yes. It's a growing problem.

Todd Simonson:

Okay. So do you deal... I imagine as a graveyard officer you deal with transients regularly?

Paul Matejcek:

Yes.

Todd Simonson:

I think I saw a video of you dealing with an African American transient earlier that evening somewhere in a big mall area. I don't remember where.

Paul Matejcek:

Across the street, literally across the street.

Todd Simonson:

It was not too long before this call with V1 right?

Paul Matejcek:

That was the warrant arrest.

Todd Simonson:

That was the warrant arrest?

Paul Matejcek:

Yes.

Todd Simonson:

Okay. Do you think you harbor any animosity toward transients since that you deal with that kind of stuff all the time?

Paul Matejcek:

Absolutely not. I regularly contact them. I specifically picked beat one because I know that there's a large homelessness population that's growing and I want to help minimize it by helping them get to where they need to be. And if you ask Sergeant Peart, who is our homeless liaison-

Todd Simonson:

Sergeant?

Paul Matejcek:

Peart, P-E-A-R-T.

Todd Simonson:

Okay.

Paul Matejcek:

I contact homeless people and I ask them what they need and what we can do to get them out of where they currently are. One specific one, maybe like a week or two before this incident, I contacted a homeless guy who's living underneath the overpass at Highway 4 and Sand Creek Road that we had multiple contacts with. His name is IP12. "Hey, IP12 what do you need to get out of where you are right now? Is there anything that we can do? If I go and find you a home, can I take you to that home tonight? If your answer's yes, hop in the car, let's go." And I've relayed that information to Sergeant Peart. So to say that there's animosity towards homelessness-

Todd Simonson:

Well, I'm not saying there is, I'm just asking you if maybe that might have-

Paul Matejcek:

Absolutely no.

Todd Simonson:

Okay.

Paul Matejcek:

There is none. No.

Todd Simonson:

All right. Okay. Anything else you want to add? We're going to go off. The time is 12:54. Thank you.

Todd Simonson:

Okay. We are on after some minor technical glitches. It is 4:42 in the afternoon. The date is Thursday, May the 26th of 2022. My name is Todd Simonson and I'm on zoom video conference call with Officer Josh Flynn of the Brentwood Police Department. Is that right?

Josh Flynn:

Yes.

Todd Simonson:

Okay if I call you Josh in this interview?

Josh Flynn:

Yes, sir.

Todd Simonson:

Okay. And you call me Todd, okay?

Josh Flynn:

Okay.

Todd Simonson:

Josh, you understand I'm recording this?

Josh Flynn:

Yes, I do.

Todd Simonson:

Did you get a notice? I believe it was from Chief Hanson about today's interview and the expectations?

Josh Flynn:

Yes, Captain Herbert gave it to me.

Todd Simonson:

Okay, great. Just tell me a little bit about your professional career, any prior law enforcement before you came to the city of Brentwood?

Josh Flynn:

I started a law enforcement career in 2014 in the state of Kansas at Hutchinson PD. A town very much like Brentwood. And then in 2016, lateraled out to Brentwood PD.

Todd Simonson:

Okay. And you've been at Brentwood for about six years?

Josh Flynn:

Yes.

Todd Simonson:

Okay. And where have you been assigned during your time at Brentwood?

Josh Flynn:

So I've been a patrol officer the entire time, but I've also had collateral duties for teaching assignments and training assignments such as medical, active shooter as part of the SWAT team, field training officer.

Todd Simonson:

You are a field training officer?

Josh Flynn:

I was. I recently left Brentwood and got out of the profession and came back in March 1st.

Todd Simonson:

March 1st of this year?

Josh Flynn:

Yes.

Todd Simonson:

How long were you out the profession for?

Josh Flynn:

About nine months.

Todd Simonson:

Nine months.

Josh Flynn:

So I left in June of 2021. Came back March 1st, 2022.

Todd Simonson:

Out of curiosity, what'd you do for those nine months?

Josh Flynn:

I went into the private sector and tried to do work in construction for a big company, doing a safety coordinator type work.

Todd Simonson:

Okay. So we're going to talk about April 23rd of this year. Where were you assigned in April?

Josh Flynn:

I was patrol graveyards and that specific night I was actually driving undercover car because we had a rash of burglaries at one of our Walgreen stores. So I was driving around the city doing special enforcement. Full uniform but in a UC car.

Todd Simonson:

Okay. Do you wear eyeglasses while you're on duty?

Josh Flynn:

I do.

Todd Simonson:

I mean, I've watched the video a few times and I [inaudible 00:03:00] the eyeglasses on this time.

Josh Flynn:

Yes.

Todd Simonson:

And who else is on your team or your squad? I don't know what you call it.

Josh Flynn:

So our team is comprised of at the time Sergeant Alvarez, Dave Franson, Tanner Kephart, Jordan Stroben and Paul Matejcek.

Todd Simonson:

Okay. I may spell some of these names. Dave Franson is F-R-A-N-S-O-N?

Josh Flynn:

Correct.

Todd Simonson:

Officer Kephart. How you spell his last name?

Josh Flynn:

K-E-P-H-A-R-T.

Todd Simonson:

Stroben?

Josh Flynn:

S-T-R-O-B-E-N.

Todd Simonson:

And Matejcek is M-A-T-E-J-C-E-K. Is that right?

Josh Flynn:

Yes.

Todd Simonson:

Okay.

Josh Flynn:

Mate j check. That's how I remember it.

Todd Simonson:

And your sergeant in April was who?

Josh Flynn:

Alvarez.

Todd Simonson:

He's no longer your sergeant?

Josh Flynn:

No, he's recently moved to day shift and we've acquired Sergeant Wernholm and that'll again change in a couple weeks and we'll get Sergeant Tonkle.

Todd Simonson:

Eric Wernholm?

Josh Flynn:

Yes, sir.

Todd Simonson:

I grew up in Moraga. He's a year ahead of me. I think I played on his dad's little league team.

Josh Flynn:

Okay.

Todd Simonson:

Okay. Have you talked to anybody on your team about this investigation or the allegations of the incident?

Josh Flynn:

No, not after that day after it happened.

Todd Simonson:
All right. Have you reviewed the report?

Josh Flynn:
I have not.

Todd Simonson:
Did you write any sort of supplemental report? I didn't see one.

Josh Flynn:
No, I didn't.

Todd Simonson:
Okay. Have you reviewed any of the body worn camera footage from those?

Josh Flynn:
Nope. Not since that day.

Todd Simonson:
That day, what body worn camera footage did you review?

Josh Flynn:
We reviewed Officer Franson's body worn camera.

Todd Simonson:
Okay. So I think the one I'll show you probably is the same one. There's a number of different videos. It looked like you had about a three minute video and then you turned off your camera.

Josh Flynn:
I did.

Todd Simonson:
After searching some of the sheds in the Home Depot lot?

Josh Flynn:
Yes.

Todd Simonson:
Why did you turn it off at that time, do you remember?

Josh Flynn:
I thought we were done. I thought the contact was about to be over. I thought my involvement was over.

Todd Simonson:

Right. Okay. Have you been through defensive tactics training? I assume you have, you're a police officer?

Josh Flynn:

Yes.

Todd Simonson:

In the academy?

Josh Flynn:

In the academy and just recently at the police department as well.

Todd Simonson:

And who's the instructor there at the police department?

Josh Flynn:

We have several, but I believe the sergeant in charge of it is Nance, N-A-N-C-E.

Todd Simonson:

Okay. Did your whole team attend that same training?

Josh Flynn:

Yes.

Todd Simonson:

Including Officer Matejcek?

Josh Flynn:

Yes.

Todd Simonson:

Okay. And basically what is the training... how long does the training last, the one you just did and what's the curriculum?

Josh Flynn:

I believe there was a 10 hour training day. We went over policy as it relates to use of force. And more specifically that day we were going over the new duty to intercede law that's just been passed or... yeah, I think just passed recently. And then in the actual hands-on training, we were learning a lot of grappling type techniques for being able to use certain techniques to control people, or I guess control subjects without having to be overly appearing violent, I guess.

Todd Simonson:

Okay. The training that you're speaking of, was that before this incident, the incident took place on April 23rd. When was the training?

Josh Flynn:

Yes. I can look on my phone and see when that training was.

Todd Simonson:

Sure. That would be great. Just so you know, you're the first person I've talked to so I'm probably going to you more questions. Some of them even.

Josh Flynn:

No problem. You know, without pulling up the schedule, I couldn't tell you.

Todd Simonson:

That's okay. I can find out some other way. Don't worry about it.

Josh Flynn:

Yeah.

Todd Simonson:

All right. How much have you worked with Officer Matejcek in the past?

Josh Flynn:

We used to be on four month rotations as a regular schedule. I think I worked one or two rotations with him.

Todd Simonson:

Okay. How do you get along with him?

Josh Flynn:

Decently well.

Todd Simonson:

Okay. I usually ask the question because obviously I don't know you from Adam or Officer Matejcek.

Josh Flynn:

Right.

Todd Simonson:

Are there any big issues between you where he might say you're not telling the truth about him or anything like that?

Josh Flynn:

No.

Todd Simonson:

Okay. So let's go to the shift at issue here. Since it was a graveyard shift I assume you straddled midnight, yes? You start one day and then another?

Josh Flynn:

Yes. We start at 20:00 hours and end at 07:00 hours.

Todd Simonson:

All right. And do you have certain days off during the week or do you rotate them?

Josh Flynn:

We rotate. We're four on four off.

Todd Simonson:

All right. So this was Sunday, April 22nd into Monday, April 23rd. It would've started at 20:00 hours. This particular call came in, it looks like at about 05:24. So you were near the end of your shift at that time, yeah?

Josh Flynn:

Correct.

Todd Simonson:

Okay. Had there been any significant calls before that Home Depot call that might have affected your ability to observe what occurred at Home Depot?

Josh Flynn:

Nope.

Todd Simonson:

And I'm going to try to test your recollection here. I probably know the answer but will still ask the question. Do you remember what the call was at Home Depot?

Josh Flynn:

To the best of my knowledge I believe it was a subject in the shed area of Home Depot. Screaming. I think the original call might have said screaming... possibly screaming for help. But whoever the reporting party was affected enough by it that they didn't want to go over to the sheds and check it out themselves.

Todd Simonson:

And were you actually dispatching the call or did you just show up as cover?

Josh Flynn:

No. Due to the nature of the call, I just responded as a cover officer.

Todd Simonson:

Who was dispatched?

Josh Flynn:

Well, it's Officer Matejcek's beat, so I know he was and I think Officer Franson answered up as a cover officer as well.

Todd Simonson:

Okay. I don't know how the beats work. How many beats in the city and what beat is Home Depot on?

Josh Flynn:

We have four beats in the city and Home Depot's in beat one.

Todd Simonson:

That's on Lone Tree Way?

Josh Flynn:

Yes.

Todd Simonson:

Okay. Had you gotten calls like this in the past of homeless folks in the...

Josh Flynn:

Yes.

Todd Simonson:

Okay. So did you meet with the RP? I think her name was IP8 .

Josh Flynn:

I did not. I believe that was Officer Franson.

Todd Simonson:

Okay. Where did you go to when you arrived?

Josh Flynn:

I arrived first on scene in the undercover car. And just due to the fact that it was Officer Matejcek's call and I was in an undercover car, I waited for his arrival just near the car that I was driving.

Todd Simonson:

What kind of car were you driving?

Josh Flynn:

I think it's a Ford Fusion.

Todd Simonson:

Okay. And where did you park the undercover Ford Fusion?

Josh Flynn:

I parked to the north... well, yeah the north side of the parking lot but to the west of all of the storage sheds.

Todd Simonson:

And the storage sheds are kind of in a line like I see in the video or is it just one line?

Josh Flynn:

Correct. Yeah, just one line of sheds at the north end of the parking lot facing south.

Todd Simonson:

Okay. Home Depot keeps them unlocked?

Josh Flynn:

Yeah.

Todd Simonson:

They haven't learned their lesson yet?

Josh Flynn:

No. Constant issue.

Todd Simonson:

Okay. All right. How did you ultimately come upon the person in the shed?

Josh Flynn:

Officer Franson, after speaking with the RP, came over and told us that we should focus our attention to the center area of that line of sheds. And so as we approached the sheds we... I don't know how our attention was drawn to this one specific one, but I specifically remember the door being pulled shut very hard. And it was very obvious that somebody retreated back inside the shed and pulled the door shut.

Todd Simonson:

That's a clue.

Josh Flynn:

Yes.

Todd Simonson:
So at that point you didn't know the identity of that person or the gender?

Josh Flynn:
No idea.

Todd Simonson:
Okay. I'll show you the video, but eventually you got the person out of the shed. Did you recognize her?

Josh Flynn:
Not immediately. Last time I dealt with her was quite a while ago.

Todd Simonson:
And it's V1 just for the record.

Josh Flynn:
Correct.

Todd Simonson:
V1 correct?

Josh Flynn:
Yes.

Josh Flynn:
Yes. She had lost a lot of weight and looked, I guess, further gone as far as drug user appearances.

Todd Simonson:
So what type of prior contact before this call had you had with her?

Josh Flynn:
Much of the same, intoxicated in public, yelling, screaming, causing issues for paying customers of various businesses in Brentwood.

Todd Simonson:
And business owners will call on her?

Josh Flynn:
Yes.

Todd Simonson:
Okay. How many prior contacts do you think you've had with V1 ?

Josh Flynn:
Probably half dozen or so.

Todd Simonson:
Okay. Has she ever been violent with you before?

Josh Flynn:
Not with me, no.

Todd Simonson:
Aggressive or erratic with you before?

Josh Flynn:
Just loud yelling.

Todd Simonson:
She yells?

Josh Flynn:
Yeah.

Todd Simonson:
Do you know her to be a methamphetamine user?

Josh Flynn:
Yes.

Todd Simonson:
Do you know her to be a heavy alcohol user?

Josh Flynn:
Yes.

Todd Simonson:
Okay. Do you know if she's flagged for officer safety? Either in dispatch or in records or something?

Josh Flynn:
I actually don't know if she's flagged with dispatch, but I know that the majority of officers know that she has aggressive tendencies. And I know that she has spit on officers in the past.

Todd Simonson:
Do you know if she spit on Officer Matejcek in the past?

Josh Flynn:

I have no idea.

Todd Simonson:

Do you know if he's had any contacts where she's been violent toward him?

Josh Flynn:

I don't know. I know that he knew her just like I did, but I don't know what contacts he's had with her in the past.

Todd Simonson:

Had you had any prolonged discussions with Officer Matejcek about V1 before this particular call? If you recall?

Josh Flynn:

No.

Todd Simonson:

Okay. Let me just kind of show you a couple things in this video. I'm going to try to share my screen here. And this is Franson's video. It's 13 minutes and 49 seconds in length. I'm not going to show you the whole thing. Can you see my screen here?

Josh Flynn:

Yes.

Todd Simonson:

Okay. This is the line of sheds that you were talking about?

Josh Flynn:

Correct.

Todd Simonson:

Okay. I'm going to play it. I started at zero. I'm just fast forwarding. You guys are shining lights on a particular shed. And I think the sound starts at 30 seconds. I'm just playing this until I'm at a point [inaudible 00:16:02]. I'm playing at 53 seconds. Actually I'm going to stop at 1:03. So I just played a snippet in which V1 comes out of the shed and Officer Matejcek kind of pulls her by the left arm and forces her to the ground and then he ultimately handcuffs her. You saw?

Josh Flynn:

Yes.

Todd Simonson:

Did you have any issue with the force he used to pull her to the ground or handcuff her?

Josh Flynn:

No, he gave her multiple commands to sit down and stop and she wasn't listening. And so I felt it was appropriate to get her to the ground and detain her in handcuffs.

Todd Simonson:

I know this is probably irrelevant, I'll ask it nonetheless. Was she being detained for something or is she under arrest at the time or what was the plan if there was one?

Josh Flynn:

I think we were all surprised that she came out of the shed and we had given multiple commands to... for whoever was inside before we knew it was her, we gave multiple commands for whoever was inside the shed to come out and nobody emerged from the shed. And that's ultimately why we had to open the door and figure out what was going on.

Josh Flynn:

I think for me personally I was overwhelmed by what it looked like inside the shed. It was very obvious that struggle or erratic behavior had happened just with broken bottles and trash everywhere. And then when we opened the door, who we found out to be V1, was standing I mean almost nose to the door. And at least for myself I was very surprised. You always want to expect that there's somebody behind the door. And we knew there was somebody behind the door, but for her to be that close to the door was definitely a shock. And I think when this is only me assuming, but if it was me in Officer Matejcek's position and she started walking towards him after I just got surprised by somebody inside a door, I think your natural reaction is to detain that person and figure out why weren't you listening to me? Why didn't you open the door and why didn't you come out when I told you to?

Todd Simonson:

Yep. So there was some broken glass outside this shed?

Josh Flynn:

I don't remember where it was, but I remember thinking, wow somebody had a time here.

Todd Simonson:

Hmm. And then what was inside the shed? It was hard to tell from the camera.

Josh Flynn:

It's a bunch of trash, newspaper, toilet paper. It smelled like alcohol and feces.

Todd Simonson:

Yeah. What was her condition if you could tell? Did she seem under the influence of meth or alcohol or both? Could you tell?

Josh Flynn:

At least alcohol.

Todd Simonson:

Yeah. Could you smell it coming off of her?

Josh Flynn:

Yes.

Todd Simonson:

All right. Let me just kind of fast forward here a little bit. What was she holding in her hands? Unless she dropped some stuff out of her hands at the time, looks like you're shining a flashlight down that.

Josh Flynn:

Yeah. I actually don't know what was in her hands.

Todd Simonson:

Did she have any narcotics on her, do you recall?

Josh Flynn:

Not that I know of. No. She had numerous cans of beer in her jacket. I remember that.

Todd Simonson:

Like three cans of Budweiser?

Josh Flynn:

Yeah.

Todd Simonson:

Yeah. Okay. I'm going to fast forward here. It looks like you're checking around the shed. And then I think if I recall correctly from your video, once she's detained in the handcuffs and seated on her butt, you go start searching other sheds. Do you remember that?

Josh Flynn:

Yes.

Todd Simonson:

You're going to disappear off this video, but I looked at your video quickly and it looks like you made sure there wasn't any other people in the adjoining sheds. Is that right?

Josh Flynn:

That is correct.

Todd Simonson:

Okay. And then you turned off your body worn camera because you thought there was no reason to continue having it on?

Josh Flynn:

Correct. I thought my involvement... I fully expected to clear the call. It seemed like at best we were going to arrest V1 for being intoxicated in public and she seemed to have calmed down. So since I was in a UC car, I intended to clear. I don't remember what made me stick around and not activate my camera, but I think maybe we are talking through the details about, well, do we have any crime? Is there any damage to the sheds? Who needs to go talk to the RP? The original RP and that type of thing.

Todd Simonson:

Where was the RP, if you know, when all this was going on?

Josh Flynn:

Close to Home Depot. I don't know. I never saw them. I never talked to them.

Todd Simonson:

Okay. Did you hear V1 say that she had been attacked by a male? I think she said Hispanic.

Josh Flynn:

I don't remember the Hispanic part, but I remember she kept on screaming about being shot and having lasers pointed at her and being beat up.

Todd Simonson:

Okay. Let me fast forward a little bit. Yeah. Fast forward. More at 3:33 there. So like five minutes and 24 seconds in you come... you reappear from behind the sheds. What had you been doing back there?

Josh Flynn:

I've been looking for any type of vandalism to the back of the shed. What kind of trash was behind the shed. Making sure there's no individuals back there or in between any of the sheds as well. There was also numerous empty beer cans and beer bottles back there. So I was trying to get a better idea of how intoxicated is she really. Was this all her or is that built up over time?

Todd Simonson:

Okay. Let me fast forward a little bit. I have it at... let's see. At 5:43, I noticed that you and other officers kind of tuck your hand behind your vest. Was it cold or was it...

Josh Flynn:

Yes, it was chilly that morning.

Todd Simonson:

Okay. Is that your ballistic vest that you wore over your uniform?

Josh Flynn:

Yes.

Todd Simonson:

Okay. Let me fast forward here a little bit. I'm going to stop it there at 6:45. It looks like you and Matejcek are kind of talking while V1 talking to nobody in particular. Do you remember what you were talking about?

Josh Flynn:

That was when we were discussing what type of crime we had or whether based on what she was talking about and how she was acting if she fits 5150 criteria. We were just kind of deciding what's the best course of action in that situation for what we had at the time.

Todd Simonson:

And what was Matejcek's input, if you remember?

Josh Flynn:

He's the one that brought up 5150. I'm also the only EMT at Brentwood and a former medical instructor. And so a lot of people rely on me for my medical opinion or that type of thing. And I was just telling him, I said, "We don't have enough for a 5150. She's not saying anything or there's nothing to indicate that she's a danger to herself or others other than yelling and screaming." And so I was telling him, "Let's think about a different route because 5150 doesn't fit here."

Todd Simonson:

Did he suggest a different route like a 647F?

Josh Flynn:

I did. I suggested a 647F and I believe I told him... I mean, I didn't find any damage. And I think the best we have is a 647F.

Todd Simonson:

Okay. Let me keep playing. I'm going to keep playing from 6:45 on to about eight minutes here. I'm going to stop it there at about 7:59. About a minute long dialogue with V1 that we just listened to. Is that pretty typical of her demeanor when you contact her in the past?

Josh Flynn:

Yeah, I would best describe it as a roller coaster. One minute you're just talking about the weather and then the next minute she's calling you all kinds of names and being very aggressive verbally. But pretty standard for her.

Todd Simonson:

Okay. So when I hit play here at eight minutes, there's a conversation that occurs between you and Matejcek. I couldn't quite make out what was said, but it sounds like Matejcek asks you a question like, "I think we have enough to something her." Let me just play it for you. I think I have the audio as high as I can go, yeah. Could you hear what he said?

Josh Flynn:

No, I can't hear any audio.

Todd Simonson:

Oh, you can't hear any audio?

Josh Flynn:

I can hear you, but I can't hear the video audio.

Todd Simonson:

Weird. Okay. So when I just played that minute long thing of the dialogue, could you hear her yelling? Like, "Why are you fucking talking..."

Josh Flynn:

No, I just remember it.

Todd Simonson:

Oh, weird, huh. I may be able to fix that. Hold on. Despite the fact that I've been using zoom during the pandemic, I'm still not a complete master at doing this. Hold on. Well, I'm not going to be able to do this, but I'll just keep playing. Let me just show you something here. So over at 8:05... so at 8:10 Officer Franson reaches up and turns off the audio to his body worn camera but the video continues. So for the rest of the video after 8:10 you can't hear anything. Do you know why he turned off his audio there?

Josh Flynn:

It's very common practice to turn off the audio during the time that we're discussing details of what we have as far as criminal elements of crimes and specific matters of the case, just to protect those conversations from being scrutinized in court, I guess, criminally.

Todd Simonson:

Okay. So that's pretty typical when you guys are discussing such as what can we take her in on something, so that you would mute your video?

Josh Flynn:

Right. And that lines up perfectly with that question from Matejcek to me. I think Franson took note of that and said, "Hey, I'm going to turn off my audio during this time." But again, that's just me speculating.

Todd Simonson:

Okay. Enough. What's the distance, if you can estimate, between V1 and Matejcek and you?

Josh Flynn:

Can you put it back up just as a refresher?

Todd Simonson:

Oh sure. Sorry. Hold on. Yeah, I forgot to re-share.

Josh Flynn:

Eight to 10 feet at best.

Todd Simonson:

You're a little closer than Matejcek there to V1

Josh Flynn:

I don't think so. I think we're about the same. The camera angle makes it seem weird but...

Todd Simonson:

Okay. And so between eight and nine minutes on this video, there's obviously dialogue going back and forth. You can kind of see her talking to you guys. And I assume there's some response. Do you remember what was being talked about then?

Josh Flynn:

There's when she would hit that low spot on the roller coaster and start being calm, we were trying to talk to her about what she was doing there, why she had alcohol. But then anytime we asked her a question that would just elevate her to screaming and yelling again. And her screaming and yelling is nonsensical things, calling us all kinds of names and referring to meth. And a lot of her yelling always in context with her and here as well, if you ask a question, for instance, we said one of the questions was, "When's the last time you used meth?" And that sent her into a tirade about, "You use meth. You're the meth king" and just hurling insults that have to do with methamphetamine. So it almost becomes the subject of her next rant.

Todd Simonson:

I see.

Josh Flynn:

And so I think during this time, we're trying to have normal conversations with V1 to find out if she needs help because she was talking about somebody chasing her. But then we also have the incident of her not listening to us and I was just trying to game plan together about what the best route or best option is while trying to have broken conversations with her as well.

Todd Simonson:

Do you remember, did you and Officer Matejcek and/or Franson try to coordinate what do we do with this person? She can't sit out there all night, so were you going to bring her to the car or what... was there any sort of coordination of a plan with her?

Josh Flynn:

Yeah. And that's what... this time, that's why I think Officer Franson turned off his audio was discussing what's our next step? What do we have as far as elements of a crime? And I remember looking at Matejcek and I said, "I think the best you have is 647F." And I told him, "If she doesn't... this is going to continue if we don't solve the problem right now. There's nothing to indicate that her behavior is going to change if we decide not to arrest her." And so I think that's when our... what would you call it? Our opinion changed to, okay V1 is going to need to go to jail for at least 647F at this point.

Todd Simonson:

All right. And you believe she met the elements of...

Josh Flynn:

Yes.

Todd Simonson:

... 647F, intoxication of alcohol?

Josh Flynn:

Yes.

Todd Simonson:

Okay. All right. So in a few seconds here, it looks like she's going to start to try to stand up. I'll play it until I see that. We're at 8:43 into the video right now. Looks like she's yelling at 8:53 at Matejcek. I'm going to stop. Okay. So that's when Matejcek starts approaching her. What was going on before Matejcek kicked her?

Josh Flynn:

A lot of her yelling more and more. I don't know if she caught on to our conversation about possibly sending her to jail, but her behavior... or not behavior I guess, her verbal statements toward us became aggressive in nature again.

Todd Simonson:

What was she saying, do you remember?

Josh Flynn:

I don't remember.

Todd Simonson:

Was she threatening violence on you? That she was going to get up and kick your ass kind of thing or...

Josh Flynn:

No, just the same, "You guys are pigs. You guys are this, you guys are that."

Todd Simonson:

Did anybody give her any sort of commands? Like, "stay seated".

Josh Flynn:

Yeah. All three of us told her to sit down and not stand up.

Todd Simonson:

Because you could tell that she was trying to stand up?

Josh Flynn:

Yeah, because of the way she was seated she had to move her body weight in a way in order to get up. And so all of us caught onto that. We were like, "V1 just sit down, just stay seated. You don't need to get up right now."

Todd Simonson:

So all three of you were saying that to her?

Josh Flynn:

Yes.

Todd Simonson:

Okay. Did you have any concerns about your safety or other officer's safety if she actually did manage to stand up?

Josh Flynn:

No. I thought the worst we'd have to do is maybe take a couple running steps to catch her if she tried to run since she was in handcuffs.

Todd Simonson:

Had she tried to run before that you know of?

Josh Flynn:

I don't know.

Todd Simonson:

Okay. Going to back it up a little bit here and then I'm going to play it through the kick. 9:04 we're starting. Officer Matejcek takes a couple steps forward and kicks her kind of in the left arm, chest area. Did you see that?

Josh Flynn:

Yes.

Todd Simonson:

All right. And it sends her kind of flying backwards into the shed door. And then how did she land? It was kind of hard to tell.

Josh Flynn:

Based on what I remember, she landed on her butt and then kind of fell to her left side or her momentum carried her to her left side.

Todd Simonson:

Okay. Did you have any idea that Officer Matejcek was going to do that?

Josh Flynn:

No clue.

Todd Simonson:

Do you know why he kicked her like that?

Josh Flynn:

No idea.

Todd Simonson:

Were you surprised when it happened?

Josh Flynn:

I was very surprised. I think the video reflects that also.

Todd Simonson:

Why do you say that? I didn't really look at your face or anything else.

Josh Flynn:

I almost slow motion look at Franson like what just happened?

Todd Simonson:

I'm just replaying it here. So you don't... Yeah, so I saw a little look there toward Franson at about 9:15 into the video. It doesn't appear that you or Franson really moved at all until after the kick and she was on the ground. Is that right?

Josh Flynn:

Yes.

Todd Simonson:

Why didn't you move?

Josh Flynn:

I didn't see V1 getting up as a major issue.

Todd Simonson:

Okay.

Josh Flynn:

I mean, we didn't want her to stand up, but I didn't feel like immediate safety issue.

Todd Simonson:

Okay. Because she was handcuffed or because she's smaller or because she's...

Josh Flynn:

Because she's handcuffed.

Todd Simonson:

Okay. In your view, were there other options involving less force that could have been used? Like grabbing her by the arms and sitting her down again or just escorting her and putting her in a police car?

Josh Flynn:

Those would've been my two options that I would've chose.

Todd Simonson:

Okay. Did you believe Officer Matejcek kick was reasonable force under the circumstances?

Josh Flynn:

No.

Todd Simonson:

Why?

Josh Flynn:

I didn't see the need to use that level of force in that situation.

Todd Simonson:

Okay. Did V1 say anything about the kick? There's a dash cam video that I could bring up, but she kind of just makes a loud grunt I could hear. Did she say anything immediately after the kick about it?

Josh Flynn:

No. She was quiet. I remember when... because we called for paramedics to come check her out and clear her medically. I remember at a certain point there she said something about, "You assaulted me" or, "The cops assaulted me" or something like that. But I couldn't be specific on what she actually said. I just know that there was a statement like that.

Todd Simonson:

All right. Are you, that is are Brentwood officers, taught either by Sergeant Nance or otherwise to kick a suspect in defensive tactics? Is there any training about kicking?

Josh Flynn:

There have been... we have not trained physically to kick people. I think where kicking has come into conversation is utilizing tools if you're in a hand to hand combat type of situation. And if you can utilize kicks in a hand to hand combat type of situation, then kicks would be allowed. But we don't specifically train on how to kick people, no.

Todd Simonson:

Okay. After the kick, Officer Matejcek kind of hustles V1 back to his car. Is that right?

Josh Flynn:

Yes.

Todd Simonson:

Okay. And she was going to be arrested for the 647F?

Josh Flynn:

Correct.

Todd Simonson:

Okay. The police report indicates that Matejcek also charged her with 243B, battery of a police officer. Do you know why?

Josh Flynn:

No, I did not know that.

Todd Simonson:

Okay. After the kick, did Matejcek ever tell you why he had kicked V1 like that?

Josh Flynn:

He said that she was standing up. He said that she had been aggressive with him in the past and he felt the need to get her back down to the ground as fast as possible.

Todd Simonson:

When did he tell you that?

Josh Flynn:

We had a sideline conversation about what we needed to do as far as getting her medical care because of the use of force and that type of thing. And we asked the question, we said, "Hey, why'd you choose to kick?" And that was the answer that he gave.

Todd Simonson:

When you say we, you and Officer Franson?

Josh Flynn:

Correct.

Todd Simonson:

Was that at his car?

Josh Flynn:

Yes.

Todd Simonson:

Okay. And so did one of you call the Sergeant to the scene?

Josh Flynn:

No, we did not.

Todd Simonson:

Any reason why? Are you supposed to in a use of force situation like that?

Josh Flynn:

No. We're supposed to make the sergeant aware of a use of force, but based on my knowledge, I don't think we have to call him out to the scene. We just have to make him aware that a use of force was done.

Todd Simonson:

Did someone make Sergeant Alvarez aware that a use of force had been done?

Josh Flynn:

Once we got back to Brentwood Police Station we did.

Todd Simonson:

Okay. Did medical go out and take a look at V1 at the scene?

Josh Flynn:

They did, yeah. AMR came out and checked her out.

Todd Simonson:

Did you discuss what occurred at all afterwards with Officer Franson?

Josh Flynn:

Yes. You can see that we're trailing behind Officer Matejcek.

Todd Simonson:

When he was kind of hustling her to the car?

Josh Flynn:

Right.

Todd Simonson:

Yeah.

Josh Flynn:

And just based on our conversation about why did that just happen? Because we didn't understand why that level of force was used. Once we got to the car Officer Franson told Officer Matejcek like, "Hey, we'll take it from here." Because we didn't know what was going on or if something had happened that we didn't see or there was another reason for the use of force. And so Officer Matejcek turned around, he just... I think he smiled at us and he's like, "No, I'm good. We're good." And everything seemed to be in control. So we let him finish his investigation into the arrest as far as getting the beer cans out of her jacket and going and talking to Home Depot employees.

Todd Simonson:

Okay. Do you know if any Home Depot employees, including the RP, who witnessed the kick?

Josh Flynn:

I have no idea.

Todd Simonson:

Okay.

Josh Flynn:

I didn't see anybody standing around, so my assumption would be no.

Todd Simonson:

All right. So the rest of the video till the end it looks like pulling beer cans out of her pockets and filling out paperwork. Nothing really of note. Was there anything of note that occurred at Officer Matejcek's car that you recall?

Josh Flynn:

No.

Todd Simonson:

Okay. Well, she's smiling there.

Josh Flynn:

Right. That rollercoaster.

Todd Simonson:

Yeah, the rollercoaster. Okay. I'm going to stop sharing then. Did Franson confide in you? Like you had an issue with the kick?

Josh Flynn:

He agreed. He said he didn't understand why that happened.

Todd Simonson:

Did Matejcek ever say, "Hey, I might have screwed up there" or make any admissions?

Josh Flynn:

No.

Todd Simonson:

Okay. Franson wrote a brief supplemental. Is there a reason you did not write a supplemental report?

Josh Flynn:

I wasn't really involved...

Todd Simonson:

Okay.

Josh Flynn:

... at all. So I was basically just standing there the whole time.

Todd Simonson:

Do you guys have to write reports if you pull out your taser?

Josh Flynn:

Yes. So that's why Officer Franson... you just refreshed my memory. That's why Officer Franson wrote it because he had pulled out his taser.

Todd Simonson:

Okay. Did you give any sort of statement to your sergeant or anybody else after this occurred?

Josh Flynn:

No.

Todd Simonson:

Did you talk to you to your sergeant or anybody?

Josh Flynn:

So Officer Franson, myself, Officer Matejcek, all met with Sergeant Alvarez when we got back to the police department together. And Officer Matejcek gave him the report of his that he had used force and how he had used force. And it was a very quick conversation where Sergeant Alvarez said, "Okay, I'll review video and we'll talk about it."

Todd Simonson:

Did you ever talk about it with him after he reviewed the video?

Josh Flynn:

No, because by the time we got back that evening, I believe Officer Matejcek was on administrative leave.

Todd Simonson:

Do you know how that occurred? Why he was put on admin leave?

Josh Flynn:

I have no idea.

Todd Simonson:

Okay. All right. I've kind of come to the end of my questions, Josh. Is there anything else you need to add that I didn't ask that you think I need to know about?

Josh Flynn:

I don't think so.

Todd Simonson:

Okay. You've got my contact information. If something comes up that pops in your brain and you think I need to know, I want you to feel free to contact me, okay?

Josh Flynn:

Sounds good. Thank you.

Todd Simonson:

Okay. Hold on. Don't hang up on me yet.

Josh Flynn:

Okay.

Todd Simonson:

So the time is, if my computer works, 5:28.

dTodd Simonson:

Okay. The time is 3:03 in the afternoon. The date is Monday, May the 30th of 2022. My name is Todd Simonson. I'm on a Zoom video conference call with officer David Franson of the Brentwood Police Department. Is that correct?

David Franson:

That is correct.

Todd Simonson:

And David, could you just spell your last name to make sure I have it right?

David Franson:

Absolutely. It's F-R-A-N-S-O-N.

Todd Simonson:

Great, thank you. You understand I'm recording this?

David Franson:

I do.

Todd Simonson:

All right. Did you get a notice, I think from Chief Hanson, about this interview and the expectations?

David Franson:

I did.

Todd Simonson:

Okay. Tell me a little bit about your law enforcement career, any prior law enforcement before you came to Brentwood?

David Franson:

Yes. So I worked for the San Mateo County Sheriff's Office, I began employment there in 2007, in May, as a correctional officer. I promoted to the rank of deputy sheriff in 2011. Spent most of my time at the Sheriff's office from 2011 to 2020, on patrol. A little of that was in the jail, and then did a few different things while I was there, but that's the gist of my law enforcement experience prior to Brentwood.

Todd Simonson:

And when did you start Brentwood?

David Franson:

Brentwood was June of 2020.

Todd Simonson:

All right. And where have you been assigned since you started in June of 2020?

David Franson:

Primarily graveyard shift. I did my training, part of it was on day shift on patrol, and then part of it was during graveyard shift. I've done a few shifts here and there on different shifts, but most of that has all been graveyard.

Todd Simonson:

Okay. I did graveyard for about four years and I don't think I'd want to do it again, so more power to you. Who was on your team in April?

David Franson:

Of this year?

Todd Simonson:

Yeah.

David Franson:

Okay. So Officer Matejcek, Officer Flynn, Officer Kephart, and Officer Stroben, and myself, and then our supervisor was Sergeant Alvarez.

Todd Simonson:

Okay. Matejcek, I'm going to spell because this thing will be transcribed. Matejcek is M-A-T-E-J-C-E-K.

David Franson:

I believe so, I struggle with that myself, but yes, I think so.

Todd Simonson:

I think it is. Officer Flynn is F-L-Y-N-N.

David Franson:

I believe so, yes.

Todd Simonson:

Kephart is K-E-P-H-A-R-T.

David Franson:

Yes.

Todd Simonson:

Strobin, S-T-R-O-B-I-N.

David Franson:

I think it's B-E-N.

Todd Simonson:
B-E-N. All right. Alvarez, A-L-V-A-R-E-Z.

David Franson:
Correct.

Todd Simonson:
Got it. Okay. Have you talked to anybody, including those you just named on your team, about this investigation or the allegation or the incident itself?

David Franson:
I've never discussed in detail, only the fact that there was the interview coming up.

Todd Simonson:
Okay. Who did you tell that to?

David Franson:
Well, Flynn and I knew about that.

Todd Simonson:
Okay. But nothing of substance?

David Franson:
Oh, no, no, I didn't talk at all about the actual ... no.

Todd Simonson:
All right. Have you reviewed the entire report about this incident?

David Franson:
No.

Todd Simonson:
So you haven't seen Officer Matejcek's report?

David Franson:
I have not.

Todd Simonson:
All right. And you wrote a short supplemental report, yeah?

David Franson:

Correct, I did.

Todd Simonson:

Okay. I'll ask you a little bit about that at the end, I think. Have you reviewed any audio or camera footage of this?

David Franson:

Only the portion of the footage that kind of related to what I wrote in my supplemental report, but nothing, I don't know if I, because I had no access to it, I had to request that through my sergeant who played it for me. So I don't know if where he played it for me was from the beginning of when that video began recording, or if it was at the beginning of the part I was asking to see, so I could just make sure I was writing an accurate supplemental report. And I did not see anything after a certain point either, so I have not had a chance to review the entirety of what I recorded.

Todd Simonson:

Okay. That's fine. So just for the record, I'm going to end up using one of the videos I have for you. I've got a vehicle video from you that doesn't seem to have much audio. And then I've got your body [inaudible 00:04:52] camera video, which is about 13 and a half minutes long. You're saying you didn't review the entirety of that one?

David Franson:

Neither one, no.

Todd Simonson:

Okay. Okay. Defensive tactics training, when's the last defensive tactics training that you went through?

David Franson:

Let's see, I can't tell you for sure, but it was recent, prior to that incident, it was quite recent. It may have been in April or March.

Todd Simonson:

And who taught that, if you recall?

David Franson:

Let's see, there were a few guys [inaudible 00:05:39]. Sergeant Aguiar was there for that.

Todd Simonson:

A-G-U-I-A-R?

David Franson:

A-G-U-I-A-R, correct.

Todd Simonson:

Okay. Was there a Sergeant Nance who headed it up?

David Franson:

I don't recall if he was there because I know he's been out on injury. I don't remember him being there for that.

Todd Simonson:

But is Sergeant Nance a defensive tactics instructor?

David Franson:

I'm not 100% sure on that either. I still feel kind of new there, so I'm still trying to figure out who the people are.

Todd Simonson:

I understand. Did Officer Matejcek attend, if you remember?

David Franson:

Yes, he was there.

Todd Simonson:

All right. And do you recall what they went over, the curriculum of that particular class?

David Franson:

I mean, we did a lot of hands on stuff for the defensive tactics portion. We did some of the force options simulator during that class. I know some of the classroom portion did cover, and I can't tell you sections or the laws or whatever on it, but the kind of the newer stuff, how we're mandated to report stuff to a supervisor.

Todd Simonson:

Mandated to intercede, that type of thing.

David Franson:

Intercede, that stuff, yeah.

Todd Simonson:

Okay. All right. How long is the course, is it over a couple of days or is it just one day?

David Franson:

That was a full day, that last course.

Todd Simonson:

Full day. Okay. All right. So I want to go to the date, the date of the incident, just for the record, was April 23rd. The call at Home Depot was at about 05:24. So working graveyard, what are your shift hours?

David Franson:

So we work between 20:00 hours, 8:00 PM and 07:00.

Todd Simonson:

So this was toward the end of your shift, right?

David Franson:

Correct.

Todd Simonson:

This call. Okay. Were there any significant calls leading up to the call at Home Depot, that you remember, that might have affected your ability to recall what happened at Home Depot?

David Franson:

No, not that I recall.

Todd Simonson:

Okay. So the call, you recall what the call was that got you to go to Home Depot?

David Franson:

I'm sorry, did you ask if I recall what the call was?

Todd Simonson:

Yeah. What you were dispatched to, to get there?

David Franson:

Yeah, basically. Do you want me to tell you?

Todd Simonson:

Sure.

David Franson:

It was a report of someone screaming, coming from the parking lot, it was a report of transients who lived in the storage sheds that were on display there in the Home Depot parking lot. That was pretty much the call.

Todd Simonson:

Have you been to calls like that in the past?

David Franson:

I have, not there specifically, but that type of call, yes.

Todd Simonson:

Okay. But not necessarily in the sheds at the Home Depot?

David Franson:

Not myself, no.

Todd Simonson:

Okay. And did you meet with the reporting party?

David Franson:

I did, briefly.

Todd Simonson:

And where was she and what did she tell you?

David Franson:

So when I kind of pulled into the plot, I drove in front of, I guess, to get to the storage sheds the way I came into the lot, I was driving by the front of the garden department anyway, and that's where she was. She kind of walked out toward me and I talked to her from my patrol car. She told me that she heard somebody yelling, coming from one of the central positioned, if that makes sense, the centralized the storage sheds, because there's a whole bunch in a line there. She said it was somewhere in the middle, she didn't know if there was one person or more than one person, she never saw anybody, so she couldn't describe who it was. And she also thought that whoever was yelling might have been experiencing some sort of a mental health episode of some sort.

Todd Simonson:

Okay. So I've seen the video, it's quite a few sheds in a big line in the front parking lot, right?

David Franson:

Correct.

Todd Simonson:

Okay. And are all the sheds left unlocked?

David Franson:

I think so, but I don't know, I didn't check them.

Todd Simonson:

And ultimately you found somebody in the shed, how did you come upon the person in the shed?

David Franson:

So after I briefly met with the RP, I drove over, I met with Officer Matejcek, Officer Flynn. We together kind of approached the front of the central positioned sheds. And as we were getting closer to them, suddenly one of the doors on one of the sheds kind of slammed shut, it was ajar, kind of slammed shut, and so kind of gave away that, okay, there's somebody in there. So there's no way it could have been wind or something like that. So I went to, let's see, the, I guess it would be the southeast corner of the shed, so the front right side facing the shed, and I kind of pounded with my fist on the side, announced

ourselves. I said something similar to, "Police Department, come out with your hands up." There was nothing.

David Franson:

So then I believe it was Officer Matejcek went to the door and kind of, I don't know, through sign language, body language, whatever, kind of indicated, hey, he's going to open the door. That's when I pulled my taser out, just for officer safety reasons, I didn't know who we're dealing with, who was in there, how many people were in there, if somebody was hurt, if somebody was armed, it was all sorts of things that could have been going on. So had my taser out, Officer Matejcek pulled the door open, and it was a female standing in the doorway, someone we've had numerous contacts with in the past, V1 V1 she was standing there. And so if that answers your questions, that's how we came in contact with her.

Todd Simonson:

Yeah. You got me right to about the place I'm going to start showing you a little bit of video. I mean, before I do, how many prior contacts had you had with V1 before this, if you know?

David Franson:

I can't, I mean, right now off the cuff, I can't recall if I had any where I was the primary officer. Actual contacts where I was just somehow associated or related to that contact, I would say less than five.

Todd Simonson:

Okay.

David Franson:

But I don't know for sure. But then hearing about all the other contacts everyone else has had, I knew that she was somebody who has been contacted numerous times by the police department.

Todd Simonson:

All right. Let me ask you about that in a second. Who was primary, who was cover on this particular call, if you remember?

David Franson:

So this would be Officer Matejcek's beat, he was working beat one and he was the primary officer, as far as I was concerned.

Todd Simonson:

And you were dispatched as cover?

David Franson:

Correct. But it's a little more complicated than that because I remember the call came out, I think, and I think, I could be wrong, but I think initially I answered up to cancel, and I can't be certain on that, but it was a little more complicated than just Officer Matejcek was dispatched and I was dispatched as cover. I think I answered up, somebody canceled me and then I canceled somebody else and ended up going,

but then Officer Flynn ended up showing up as well. So I was a cover unit, Officer Flynn was a cover unit as well.

Todd Simonson:

So since it was Matejcek's beat, he would normally be the primary, yes?

David Franson:

Correct.

Todd Simonson:

Okay. So based on what you had heard about V1 and your five or so contacts that you think you might have had before with her, did you know her as a meth user?

David Franson:

I've never evaluated her for drug influence, but I did make that assumption, I think, I mean, I can't say for sure, but I believe I had heard that she was a drug user and then I just believed that she was.

Todd Simonson:

What about a heavy drinker?

David Franson:

I don't know if before that incident, if I recall knowing that she was a heavy drinker, I don't know about that.

Todd Simonson:

Okay. What type of contacts had you had with her before?

David Franson:

I believe she had broken into a house one time, I kind of showed up after the fact on that one. She went through, it was a house that was almost done being built, and I don't know if it was her or somebody else that smashed the back window, she ended up going inside and she was hiding in a closet. They ended up pulling her out or not pulling her out, but had her come out, I think at gunpoint. And I was there after the fact when she was, I think, on a stretcher with AMR. I'm trying to think of other contacts. I don't know for sure, off the cuff. I know that one for sure.

Todd Simonson:

In the contacts you had had with her, did she act aggressively, I mean, excluding this one?

David Franson:

Sure. So I think when I first saw her on that one incident I just described, she was on a stretcher and I remember her yelling. It was not normal behavior by any means, but I didn't talk to her, I don't think, and I didn't know completely what was going on there. So I don't know if there was drug influence, mental health stuff, I'm not sure.

Todd Simonson:

Okay. Do you know of her acting erratically at times?

David Franson:

In general, like in the past?

Todd Simonson:

In general, in the past.

David Franson:

I've heard of that type of behavior from her, yes.

Todd Simonson:

Okay. What about violently? Do you know of any officers that she's been violent with in the past?

David Franson:

So I can't say that with certainty, I feel like, yes, I have heard of that in the past, but I can't say for sure. I don't know for sure. I can't tell you of an instance.

Todd Simonson:

Okay. All right. Let me pull up the video here, can you see this video?

David Franson:

Yeah. Let me try and turn my phone sideways, yeah, that's a lot better. Yeah, I can see it.

Todd Simonson:

Okay. So I've got it at 30 seconds, which is about when the sound starts. The Axons don't start the audio for 30 seconds, is that right?

David Franson:

I believe there's a 30 second buffer, so I think after that, approximately 30 seconds passes, then the sound kicks in.

Todd Simonson:

Okay. So I'm going to play it for about 30 seconds, and then I'll stop and ask a couple questions here.

David Franson:

Okay.

Todd Simonson:

Can you hear it?

David Franson:

I cannot hear anything other than you.

Todd Simonson:

I'm going to it at 1:06. So the person coming out of the shed there was V1, yes?

David Franson:

As far as I know, yes, it was.

Todd Simonson:

And you saw Officer Matejcek pull V1 to the ground and handcuff her.

David Franson:

Correct.

Todd Simonson:

Did you believe that the force he used the pull her to the ground and handcuff her, was reasonable under the circumstances?

David Franson:

I think at that point, yes.

Todd Simonson:

And in your view, what was going on at the time? Was she being placed under arrest or being detained to figure out what was going on or what?

David Franson:

I mean, based off the call for service to somebody yelling, screaming, we didn't know what was going on. So I mean, as part of our investigation, like one of my concerns I expressed to you a couple minutes ago, is we don't know if there's somebody else involved, if there's somebody else inside that's been, for example, stabbed or shot or somebody who overdosed, I don't know what's going on in there. And so for our safety, I think that was absolutely not only reasonable, but necessary at that time to detain her.

Todd Simonson:

Right. Okay. So I'm not going to play the several minutes of video leading up to the use of force that we're here about. Do you recall chatting with her for a few minutes, about a guy attacking her or shooting her with something in the nose?

David Franson:

I do recall her saying something about that.

Todd Simonson:

Yeah.

David Franson:

I can't tell you in detail what she said, I don't recall.

Todd Simonson:

All right. I do recall one bit where she denied using drugs to you.

David Franson:

I don't remember that, no.

Todd Simonson:

Okay. I'm going to fast forward. So you guys have, until the use of force we're going to talk about, which is at about nine minutes on this thing, you guys have this dialogue with her, you, Flynn and Matejcek, and then you kind of talk amongst yourself. What was going on during that time, just generally? Were you trying to figure out what to do with her or what?

David Franson:

Well, quite frankly, I don't recall most of what we talked about, but I'm assuming that yes, I mean, typically that's what we would be doing in a situation like this. "Hey, what do we have? Do we have a crime? If so, what crime, or what crimes do we have?" I recall her, I think, again, I can't tell you with 100% certainty, but I think one of the things we may have discussed was alcohol influence. I do remember smelling a strong odor of an alcoholic beverage coming from her person, her eyes were red and watery. I believe there was alcohol influence. I don't know at that point, I believe there was drug influence. I think the dialogue with her that Officer Flynn and I had, that I recall, was okay, that she was maintaining kind of a certain level of calm, and then I feel like all of a sudden it kind of ramped up and I'm not sure why that happened. Yeah.

Todd Simonson:

Yeah. So I think I know what you're talking about and I've actually got it time marked to start playing the video when she seems to start getting a little upset. I'm going to start it at, hold on, let me fast forward a little here. Actually, I'm going to stop sharing and see if I can get the sound to go here. Hold on. Okay, this might work. Can you hear it?

David Franson:

Yes, yeah.

Todd Simonson:

So I'm starting at 6:42 or so, 6:44. There's Flynn and Matejcek, the body armor camera's obviously on you. They talk for a little bit, you know what they're talking about? You can't hear them much at all.

David Franson:

I can't tell you. I don't know.

Todd Simonson:

Okay. I'm going to keep going. That's okay. I'm going to keep playing from here, 6:44.

Audio:
V1

Audio:
Yeah.

Audio:
Why is this so dirty over here? What'd you do with all this stuff?

Audio:
You know what, I'm sick and tired of you following me, dude. I don't understand, dude. Quit following me. I can do whatever the fuck I want [inaudible 00:21:58] you two, fucking shine lights in my eyes and shit.

Audio:
Yeah.

Audio:
I mean, how often do you guys fucking kill these fools, like murder me?

Audio:
Why are you yelling?

Audio:
Are you thinking of harming yourself?

Audio:
No.

Audio:
Are you thinking of harming anybody else?

Audio:
No.

Audio:
No. That was a softball question. You did not hit that one.

Audio:
I don't play softball.

Audio:
I don't either.

Audio:
Hey, thank you, for following me.

Audio:
For finding you?

Audio:
No, quit following me.

Audio:
Oh, okay.

Audio:
Yeah. Yeah. Thank you.

Audio:
Why do you have so much beer?

Audio:
What do you mean beer? I can drink beer whenever the fuck I want. It's not beer, dude.

Audio:
It is. It's Budweiser.

Audio:
So the fuck what?

Audio:
Cool. I said it was beer, you said it wasn't.

Audio:
I don't give a fuck if it's beer or not, drink as much beer as I fucking want.

Todd Simonson:
Let me stop it there. You there, Dave?

David Franson:
I'm sorry.

Todd Simonson:
I'm sorry, I couldn't tell you were still there. One of my screens disappeared. Could you hear and see all that?

David Franson:

I could, yes.

Todd Simonson:

So I stopped it at 7:58. So that was like a minute and 10 seconds of dialogue between you guys, or mostly Flynn and Matejcek and [redacted]. During that minute, what's the process that's going on? Are you guys just kind of talking to her to figure out what her condition is or what?

David Franson:

Maybe so, I mean, as a cover officer at that point, I'm standing off to the side and I'm really trying not to take the reins on it, because it's not my call. I'm there kind of doing what I'm trained to do, my reason for being there is in providing safety and covering the primary unit, being Matejcek. So what he was doing, I can't tell you for sure what was going through his mind, but I would assume he's trying to figure out what's going on with her. And I would think in the forefront of his mind would be alcohol influence, drug influence, trespassing, something like that, maybe even vandalism. I don't remember the condition of the shed.

Todd Simonson:

51-50, maybe too?

David Franson:

Maybe so. And I do understand that she has been 51-50d in the past. So I mean the way she was talking, could it have been drug influence? Absolutely. Alcohol? Sure. Mental health? Absolutely. Maybe all three, I don't know.

Todd Simonson:

Okay. I'm start it back here at 7:58. I want you to listen, Matejcek and Flynn discuss something, you can kind of hear what they say, but I couldn't catch the whole thing. It's going to come up real quick when I start this.

David Franson:

Okay.

Todd Simonson:

Did you hear that?

David Franson:

No, I didn't hear anything.

Todd Simonson:

I'm going to replay here. Oops. Oh, I didn't share the screen, that's why, hold on. Too many things.

David Franson:

I can only imagine.

Todd Simonson:
Okay. I'm going to back it up.

Audio:
No, quit following me.

Audio:
Oh, okay.

Audio:
Yeah. [inaudible 00:25:14] beer [inaudible 00:25:16] drink as much beer as I fucking want.

Audio:
[inaudible 00:25:24].

Todd Simonson:
Did you hear what they said there?

David Franson:
No.

Todd Simonson:
Okay. That's all right. It sounded like, think we have enough to something her, but it was really hard to tell. It was Matejcek asking Flynn.

David Franson:
I'm sorry, I don't recall. I can't hear.

Todd Simonson:
I'm going to keep playing a couple. That's your angle on the right?

David Franson:
Yes.

Todd Simonson:
And now you muted your audio. Do you know why you muted the audio there?

David Franson:
I'm assuming, I can't tell you for sure if there was something I was about to say, I think just game planning is why, and there being no need to record what we were going to discuss, but I don't know for sure what we said at that point. Sorry, again, I can't tell you.

Todd Simonson:

Yeah. When you say game planning, Dave, what do you mean?

David Franson:

I'm sorry, just trying to figure out what we're doing, what do we have, what route can we take to address this issue best?

Todd Simonson:

Okay. And so when officers do that, you're allowed to mute the audio?

David Franson:

Yeah. My understanding for perp policy at the police department, is we should be recording, it's not quite at a shall at this point. And as far as I'm concerned, yes, we are allowed to mute.

Todd Simonson:

Okay. And you and others have done that in the past?

David Franson:

Correct.

Todd Simonson:

Okay. I'm going to keep sharing. So for the next minute or so, you can't hear anything, obviously. I don't think there's audio for the remainder of the video, but you can tell that y'all talk, you just don't know what's said. You remember what you were talking about? I'm going to play it while I ask you questions. What was going on between the four of you?

David Franson:

You want me to just kind of narrate it if something comes up?

Todd Simonson:

No, no, I want you to describe what you remember and then I'll stop the video at the right place. But it's just the minute of silence where she's ... if you can see her here, can you see her at the bottom of the screen?

David Franson:

Barely.

Todd Simonson:

Yeah. So she's talking to you and it looks like Matejcek's talking to her there and Flynn's watching and I don't know what you're doing other than videoing. Do you know what's going on, what you're talking about?

David Franson:

I don't specifically remember saying anything myself, if this is, I'm assuming this is the part leading up to the kick.

Todd Simonson:

Yeah. So the kick's going to be in about 10 seconds, it's at 8:57 right now. So for about a minute.

David Franson:

Oh, okay.

Todd Simonson:

Silence, but you guys are obviously talking, I'm just wondering what you're all talking about.

David Franson:

I couldn't tell you, just because I don't recall. I don't believe there was anything of significance. It might have been similar to what was played when the audio was last activated. I just remember at one point she was upset, like she was seen or heard in the last video sequence, and then suddenly she stands up and I believe there were repeated orders to sit down. I don't know if I ever said that, but I know that at least Officer Matejcek or Officer Flynn did, and she did not comply with that.

Todd Simonson:

All right. Was she yelling, screaming when this was going on? I mean, did things kind of escalate? It seemed like for the first several minutes, she was fairly calm, and then before you muted, she escalated about following me and shining lights on her and that kind of thing. Did she stay escalated during this last minute before the kick, if you remember?

David Franson:

I don't remember exactly what she said much of anything, the significant part to me was when she stood up and refused to sit back down. I don't remember any dialogue that was significant from her.

Todd Simonson:

Do you notice that she was trying to start to stand up?

David Franson:

I was looking that way, I don't remember maybe the split second initial, her standing up, but I know that she stood up. I mean, I was facing that way, so I remember her standing up. I don't know if I saw her trying to kind of tuck her legs in a certain way to stand up, like if it was a longer process, like we had much of a warning, but I do remember her standing up, if that makes sense.

Todd Simonson:

All right. Did you have any concerns about your safety at all when she started to try to stand up?

David Franson:

No major safety concerns at that point.

Todd Simonson:

She was handcuffed still, yes?

David Franson:

That is correct.

Todd Simonson:

I'm going to play it through the kick here. I'm playing starting at 8:58. Oops, shit, I'm not sharing. Sorry, I'm going to [inaudible 00:30:40].

David Franson:

No problem.

Todd Simonson:

Okay, let me share it. Can you see it?

David Franson:

Yes, I can see it.

Todd Simonson:

Okay, 8:58 starting.

David Franson:

Okay.

Todd Simonson:

So I'm going to stop it there. You saw Officer Matejcek kick V1 there?

David Franson:

Yes, I did.

Todd Simonson:

About how far away was he when he started toward her? When he was standing there talking to her for a while, how far away was he from V1, do you think?

David Franson:

Oh man, just a rough estimate, maybe seven feet, eight feet.

Todd Simonson:

How far away was Flynn, about the same?

David Franson:

I'd say approximately the same, yeah.

Todd Simonson:

And how far away were you?

David Franson:

I was probably about the same as well, yeah, probably about seven, eight feet away.

Todd Simonson:

Okay. So what it looked like was Matejcek took two or three quick steps toward V1 and then used his right foot to kick her in the left torso area, and then she kind of goes sprawling back into the shed door and then falls to her buttocks. Does that sound about right?

David Franson:

That sounds about right, yeah.

Todd Simonson:

Do you know why Officer Matejcek kicked V1 like that?

David Franson:

No, I don't.

Todd Simonson:

Did you have any idea he was going to do that?

David Franson:

No, I had no idea.

Todd Simonson:

Were you surprised when he did it?

David Franson:

Absolutely, I'm still surprised.

Todd Simonson:

Okay. And you and Officer Flynn don't even seem to move when he did that, did you recognize that?

David Franson:

I did recognize that.

Todd Simonson:

I mean, the lack of movement to me as a officer, indicates that you didn't see the immediate threat that prompted whatever Officer Matejcek did.

David Franson:

Yeah, you're correct. I did not feel a threat near that level at that point at all.

Todd Simonson:

All right. In your view, were there other options involving less force that could have been used, like grabbing her arms to sit her down again or escorting her and putting her in one of the cars?

David Franson:

Yes.

Todd Simonson:

Okay. Did you believe officer Matejcek's kick was reasonable force under the circumstances?

David Franson:

No.

Todd Simonson:

I'm going to ask why, I'd like to hear your view.

David Franson:

Well, first of all, she's handcuffed. She's a fairly small person, that's comparing her to me. Officer Matejcek's size is different than mine, it's different than Flynn's, he's smaller than both of us as far as height.

Todd Simonson:

How tall are you?

David Franson:

I'm sorry, how tall am I?

Todd Simonson:

How tall are you, yeah?

David Franson:

Sorry, the phone's cutting out a little bit. I'm PII and about PII. So that's where I'm at.

Todd Simonson:

Got it.

David Franson:

Yeah. So comparing size, the fact that she's handcuffed, I believe she had been pat searched at that point, there's no concern. I mean, maybe biting, but she wasn't showing that as an indicator that she might bite us, or spitting, there was none of that going on. It was clearly just way too far, as far as force goes, for that. Like you said, grabbing an arm, verbal commands to light touch, to maybe a control hold, would be appropriate under those circumstances, from what I recall at that time of that incident.

Todd Simonson:

Okay. Are you taught in defensive tactics at all, either be it a San Mateo County Sheriff or Brentwood, have you been taught that there are situations where you could kick a suspect like that, if you remember?

David Franson:

I mean, I don't remember specifically talking about kicking a suspect in that situation. However, the way that continuum of force goes, I mean, for example, lethal force doesn't have to be from a firearm, it doesn't have to be from a vehicle or a blade, it can be anything, but that's if that situation requires that or reaches that level, and this, no.

Todd Simonson:

And this one did not, according to in your view, right?

David Franson:

No, unless I completely missed something, I don't think I did though.

Todd Simonson:

Okay. Before this incident, did you ever hear anything from Matejcek about V1, that is objectively negative things, like there might have been some other reason for him to have kicked her like that, other than what was going on at the time?

David Franson:

Not that I know of.

Todd Simonson:

Okay. Did you discuss this with him at all afterwards, did he ever tell you why he kicked her like that?

David Franson:

No.

Todd Simonson:

What about-

David Franson:

I'm sorry. Well, I never had a follow up conversation with him about the incident, I thought that's where you were going. Afterward, we did briefly discuss, Officer Flynn, Matejcek and myself. I think, from what I understood, and I don't remember what he said exactly, but he felt that her standing up was presenting some sort of a threat to him. I think, again, I don't remember what he said exactly, but the way that he spoke about it was almost like it was a justifiable use of force, and I did not agree with that. I never saw that and I still don't.

Todd Simonson:

Did you say, "I don't agree with that," or you just not say anything at all?

David Franson:

Well, when Officer Flynn and I talked to him about it, I actually did, I actually did, and I don't know what my words to him were, but I conveyed to him that that was too much. And so ultimately Officer Flynn and I talked to him, pulled him aside while we were still on scene, after V1 was in the back of the patrol car, saying, "Hey, we're going to have to talk to the Sergeant about what happened," just because of everything.

Todd Simonson:

So what was Matejcek's response?

David Franson:

So when I first, and again, I don't remember what I said to him, but I conveyed to him that I did not agree with it, and he sounded kind of defensive, which is unusual, because I've never really had a conversation with him where he was visually disagreeing with me and maybe taking offense to the way I was speaking to him, so to speak. I'm not a very confrontational guy, so I don't get in debates with him or anything, I agree with a lot of people and just kind of keep the boat from rocking, that's just my personality, that's the way that I am. But with him, that was kind of the first time I'd ever experienced him kind of come back at me, and I don't remember what he said, well maybe it was something about, "Well, what should I have done," or something, but it was kind of more aggressive. And I was like, "Man, he obviously doesn't agree with where I'm coming from."

Todd Simonson:

Okay. So this was a short conversation after V1 was in the back of the patrol car?

David Franson:

I don't remember where she was at that time. So when that exact conversation happened that I just described, that was very soon after the incident took place, but she had to have been in the car. I'm assuming, I just don't remember with 100% certainty.

Todd Simonson:

Yeah. So I'll just show you the rest of the video here, in fact I'm just going to fast forward through it. It looks like Matejcek pulls her up by arms and kind of hustles her back to his car, is that right? Let's see.

David Franson:

Yes, that would be his car.

Todd Simonson:

That's his car. He searched, it looks like you come up from behind him while he's searching her. Pretty sure he pulls out a few beer cans. Looks like the sun's coming up. I remember that feeling. Was there anything significant or remarkable about the search or putting her in the car, taking her to the jail, that you're aware of?

David Franson:

No, I don't recall any of that. I do know that after we left the scene, he returned to the station with V1 I believe that a CSO coming on for day shift was going to do the transport with her to the jail.

Todd Simonson:

Is that Alan Sheffield?

David Franson:

I think it was.

Todd Simonson:

Okay. Yeah. I have a sup report from him, I assume it's him. Yeah, so this video ends, it looks like right at the end of getting all the stuff out of her pockets and putting her in the car. Did you discuss it, I'm going to stop sharing, did you discuss it at all separately with Officer Flynn afterwards?

David Franson:

So we did discuss it. I don't know where Officer Matejcek went. While we're all on scene, all of our cars were kind of in the same general area in the parking lot. Officer Matejcek, I don't know where he went, if he went back to his car or he might have gone back to the front of Home Depot. I don't remember for sure. But at one point when he stepped away from Officer Flynn and myself, I think we both briefly discussed it and we were shocked. We were just completely like, "Where did that come from? What just happened?" So we were trying to process it and we were like, "Hey, did you see what I saw?" "Yes. Did you see what I saw?" "Yes." "Okay. So we're on the same page, why did that happen?" And we were both baffled by it.

Todd Simonson:

Had you ever seen Officer Matejcek do anything like that before?

David Franson:

No.

Todd Simonson:

Okay. Did Sergeant Alvarez come to the scene?

David Franson:

No.

Todd Simonson:

Did somebody notify him about what happened?

David Franson:

Yes.

Todd Simonson:

Who was that?

David Franson:

So I don't remember who initially notified him, but the plan from the scene and Officer Matejcek, Flynn and I agreed that we were going to return to the station and we were going to talk to the Sergeant, our Sergeant about it, Alvarez, before we went home. So basically as soon as we returned. I had to get gas, because my patrol car was real low, so I went to the courtyard real quick, got gas, and then I met with Officer Matejcek and Officer Flynn, who were already at the station. When I pulled into the back lot, officer Matejcek, Officer Flynnm and Sergeant Alvarez were all standing there by the Sally port. I walked up, they were waiting for me and we were all there together when the news was shared with Sergeant Alvarez of what happened.

Todd Simonson:

Who shared the news and what was shared?

David Franson:

Again, I'm sorry, I don't know verbatim what was said, but in essence, that this was the situation we came upon, what we were dispatched to, which I believe he was already aware of that we contacted V1 V1 at the shed. She was cuffed, she got mouthy, she stood up, Officer Matejcek kicked her. I don't remember verbatim what was said, but I think it was conveyed to him that it was a use of force and it may not have been a justifiable use of force.

Todd Simonson:

Who said that to him, who gave him kind of the synopsis that you just described to me?

David Franson:

So I think I was there, I may have said something, I don't remember what I said. It wasn't me, it may have been Flynn, or it may have been Matejcek, and I wish I knew for sure. I just can't tell you for sure, I'm sorry, but it was one of them

Todd Simonson:

But somebody raised the notion that it might not have been a justifiable use of force to Sergeant Alvarez during that meeting?

David Franson:

Yeah. And I don't know if it was that word specifically, but at least that's what I recall was message being conveyed to him at that time.

Todd Simonson:

Okay. How long did that meeting last for?

David Franson:

It was fairly brief, maybe just a few minutes. Less than five minutes, I would say.

Todd Simonson:

And this was right before you got off?

David Franson:

Correct.

Todd Simonson:

Okay. And then did he give you, Matejcek or Flynn, any next steps, any directions?

David Franson:

Not that I recall, and not at that point. Later on, I was directed to generate a supplemental report.

Todd Simonson:

Okay. I have your supplemental report in front of me, one page, and it looks like it ends where Matejcek detained V1 in handcuffs initially after kind of initially pulling her down to her a seated position. Why did you stop there and not describe the whole incident, including the use of force?

David Franson:

So first of all, I wasn't directed to do that. And the fact that first, I don't think I was going to be writing anything on it, as I was not the primary officer and I was not tasked with generating the use of force report. But later on, and I believe this came from Sergeant Aguiar, when he found out about me using a taser to point at V1, that's technically a use of force, so that needs to be documented. So that part, and then also the fact that I spoke with the RP initially, as opposed to Officer Flynn or Matejcek, so just to document my contact with her and drawing my taser and pointed at it V1.

Todd Simonson:

Did anybody instruct you not to include the use of force by Matejcek, or is that just pretty typical that he would cover that?

David Franson:

I don't think anybody directed me not to, nobody told me to, I think on my own it was, I just knew that I wasn't authoring the report, I wasn't authoring the use of force portion, and so I was just documenting those two main portions, so it would be included.

Todd Simonson:

Okay. The RP, I think her name was IP8, did she see any of the contact with V1 that you know of?

David Franson:

With our contact with V1

Todd Simonson:

Yes.

David Franson:

I don't know, I never talked to her after that.

Todd Simonson:

Okay. Did V1 complain of any injuries or pain from Officer Matejcek's kick, that you're aware of?

David Franson:

I think she, well, I don't know exactly what she complained of, but some kind of pain. And I do actually recall saying that maybe we should start medical attention and I think medical attention did actually come to the scene. Sorry, I didn't include that, I forgot about that.

Todd Simonson:

Okay. Do you know if she sustained any injuries from the kick? It looked like she had some cuts on her nose, but that's not where the kick was.

David Franson:

No, I think that was prior to our arrival. I know she wasn't transported by AMR, I don't think she was even treated. I think she was maybe quickly examined by AMR and they cleared the scene. So not that I know of, no, I don't know of any injuries to her person as a result of the kick.

Todd Simonson:

Was she complaining about the kick at all?

David Franson:

From what I recall, I think so, I don't know for sure, but I think that's what prompted me to suggest that we call medical attention, was just in case there was something related to that.

Todd Simonson:

Co AMR checked her at the scene, and then she was transported by Matejcek to jail?

David Franson:

To the police department.

Todd Simonson:

To the police department. And you have a holding cell, and then the CSO took her to MDF.

David Franson:

We do have holding cells there, I'm not sure if she ever went inside the police department or if she was transferred from vehicle to vehicle.

Todd Simonson:

I see. Is that what typically happens, that you'll transport somebody directly to MDF?

David Franson:

Sometimes it is common for that to happen, and if there's no reason for a prisoner to go inside the holding cell area, then we usually leave them in the car and transfer.

Todd Simonson:

Okay. All right. Did you have any more involvement with V1 that evening, after she was put in officer Matejcek's car and taken wherever she was taken?

David Franson:

No.

Todd Simonson:

Okay. So you reported to Sergeant Alvarez, you go off duty. Anything else about the incident, other than being noticed for this interview, that I need to know about?

David Franson:

No, I don't think so, no.

Todd Simonson:

Anything you want to add for the good of the order, before I go off the recorder?

David Franson:

Sure. That again, like I already said, I think, to you, that I was shocked by what happened. I never saw it coming. I'm still baffled as to why it happened, I don't understand it. But what I wanted to say is with that said, I never saw it happen, maybe part of the reason I'm surprised by that is because of Officer Matejcek and my history of working with him. This year is my first year really working with him, being on the same team. He's a good guy and he is a go getter. I've looked up to him as being a competent police officer who really does care about and value the job. So I think maybe that's why I'm surprised it happened from a guy like him. I respected him and I mean, his volume of arrests and just proactivity and I've worked with him quite a bit this year and seen him work and I'm impressed with the way he's talked to people and all that stuff, and he is been professional.

David Franson:

So I think all that stuff, considering that, and then seeing what happened, it was just shocking. I just never suspected that would happen. So anyway, that's all.

Todd Simonson:

Yeah, no, good enough, I appreciate that. And Dave, if you want to add anything else, this is not the last time you can talk to me, and feel free to contact me. And if we need to add to your statement, we can certainly do that. And you can send any, sometimes I have witnesses, documents, if there's any notes or anything you want to send me, feel free to send them to me, okay?

David Franson:

Okay. Sounds good.

Todd Simonson:

Okay. Let me go off, hold on, don't hang up on me yet. It's 3:55.

David Franson:

Okay.

THE CITY OF BRENTWOOD

MEMORANDUM

POLICE DEPARTMENT

DATE: September 9, 2019

TO: Officer M. Gibson
Officer P. Matejcek

FROM: Sergeant E. Huesman

SUBJECT: Letter of Recognition for BPD cases #1904282 & 1904283

On Saturday, August 31, 2019, at approximately 2130 hours, Officer Gibson was leaving the city corp yard when he heard the sounds of reckless driving in the area. He investigated and located IP2 doing "donuts" at the end of Elkins Way. Officer Gibson was familiar with IP2 and he was aware that IP2 has been the source of numerous complaints regarding reckless driving throughout the city, and that IP2 was actively involved in promoting illegal "side shows" in the region. In addition, during the previous weekend, the police department received a report of gunshots at an address associated to IP2 and one of his associates later turned up at a local hospital with a gunshot wound. Although the associate was uncooperative with that investigation, it is believed he was shot during some type of illicit activity at IP2 address.

With the above knowledge in mind, Officer Gibson conducted a traffic enforcement stop of IP2 on Elkins Way, and Officer Matejcek arrived to cover. During the course of the stop, the officers determined IP2 was on two counts of probation, one of which included a full search clause. IP2 and his vehicle were searched, and he was found to be in possession of approximately $10,500 in cash. No other contraband was located, so Officer Gibson arrested IP2 for the reckless driving and probation violation, and impounded his vehicle. Officer Matejcek then took the initiative to suggest a probation search be conducted at the addresses IP2 exercised dominion and control over. A set of keys were removed from IP2 person before he was sent to MDF.

Both officers led a subsequent probation search at Unrelated Address where IP2 keys were used to gain access to a large garage on the property. In and around the garage, the officers located two stolen vehicles, one of which was completely stripped and disassembled. The officers also located a suspected stolen racecar trailer and other evidence of an active "chop shop". Our Investigations unit was notified and detectives arrived to assume the follow-up investigation.

I would like to recognize both officers for this outstanding example of beat knowledge and display of initiative.

- OUTSTANDING POLICE WORK. THANK YOU. D8/459
- Great job Mike and Paul! Thank you for taking the initiative to follow up on this. D8/515

IP3 IP3 500k, 551, 522R, 595P

From: Webmaster
Sent: Tuesday, September 05, 2017 2:50 PM
To: PD, webmail
Subject: Recognition of Good Work

A citizen wants to recognize the good work of the Department. Details are included below:
Name:
Dave

Address:

Phone :

Email :

Comments :
I just wanted to thank the three officers who responded to the 911 call from IP2 Address **last night (Monday 9-4). I'm sorry I did not get their names. From the minute they arrived at the house they acted very courteous and professional. Even when things got a little chaotic, they kept control of the situation and handled everything with care and compassion. I wish there was more I could do to thank them. Please be sure their captain sees this, it isn't much, compared to what they did, but they need to know they are deeply appreciated. Thank you again!**

Verification:

IP3 IP3

From: IP3 IP3
Sent: Friday, September 24, 2021 12:45 PM
To: Rezentes, Ryan; Morten, Wade; Matejcek, Paul; Hall, Michelle
Cc: Wernholm, Eric; Maanao, Michael; =xPD Lieutenants & Captains
Subject: FW: THANK YOU

Good afternoon,

Please see below commendation for Officers Rezentes, Hall, Matejcek and Morten below! Great job! A copy of this email will be placed in your department files.

IP3 IP3 **Executive Assistant**
Police Department
9100 Brentwood Blvd
Brentwood, CA 94513-4000
Phone: 925.809.7701
Fax: 925.809.7803
jawalker@brentwoodca.gov

From: IP4 IP4 <IP4 email addr@gmail.com>
Sent: Friday, September 24, 2021 8:41 AM
To: PD, webmail <pdwebmail@brentwoodca.gov>
Subject: THANK YOU

CAUTION – EXTERNAL SENDER

Thomas Hansen, Brentwood Chief of Police:

Chief Hansen, I write to thank your department for responding to a call last night at 8:30 that turned out to be nothing. My neighbor on St. Julien Street in Trilogy at the Vineyards had gone to another neighbor and left her front door ajar causing her alarm to sound. Another neighbor knocked on my door asking what to do. After observing the door, I did call 911 and they transferred me to your department. After explaining the situation, 4 police cars arrived and calmed everyone while they went into the home to investigate. They happily found nothing and the owner thought that she had left the door ajar while setting her alarm.

Sorry for the long explanation but I wanted to relay how happy we are with your department and the kind, concerned and truly comforting officers that responded. Sorry I don't have their name but there were 4

officers who I would like to thank for taking great care of our community. We need more thanks for these folks who protect us and make us feel safe.

If you could look at who the officers were, I'd like to send them a thank you for a continuing job well done.

Again, sorry for the long email and a personal thank you to you for protecting our community and our residents.

Dr. IP4 IP4
IP4's Business Name
IP4 dedicated phone number

IP5 Business Name

IP5 Bus. Name & Addr

May 16, 2020

To the men and women of Brentwood PD,

It is with greatest honor and respect that we write this letter of absolute gratitude for your prompt work in capturing our would be burglar. The professionalism displayed by your staff starting with the dispatcher(s) handling the initial call to the field officers and supervisors that ensured this suspect would be caught rather than just deterred.

Throughout the entire experience we had with your team we were placed at ease and treated with utmost respect and professionalism. Your officers seem to see us as fellow Brentwoodians rather than just another case. Their eagerness to ensure the safety of our business and our family was displayed this week through their efforts. Please accept our sincerest gratitude and support.

Sincerely,

IP5

IP5 and IP6

Owners – IP5 Bus. Name

Brentwood, CA

Meza
J. Stanley
McBride
Rodriguez
Hernandez
Cooper

Mahoney
Laughridge

IP3 IP3

From: Nunemaker, Joseph
Sent: Tuesday, July 16, 2019 7:42 AM
To: =xPD All
Subject: Great job!

All,

I just wanted to send a quick kudos to Sgt. Orlando and his team from 3/21/19. Last week, a complaint was filed against IP12 for his involvement in Case 19-1384. The DA's Office will obtain a warrant for PC 207, PC 211 and VC 2800.2 with a bail amount of $1,120,000.

Great job Officers Matejcek, Smith, Morten, Lodge and Inerbichler.

THE CITY OF BRENTWOOD
HERITAGE • VISION • OPPORTUNITY

Joseph Nunemaker, Detective
Police Department
9100 Brentwood Blvd
Brentwood, CA 94513-4000
Phone: 925.809.7761
Fax: 925.809.7799
jnunemaker@brentwoodca.gov



IP3 IP3 Matejcek

From: PD, webmail
Sent: Tuesday, April 09, 2019 1:15 PM
To: PD, webmail
Subject: Recognition of Good Work

A citizen wants to recognize the good work of the Department. Details are included below:

Name IP IP7
Addre IP7 Address & ph
Phone
Email IP7 email @sbcglobal.net
Comments I wanted to commend Officer Matejcek for his kindness and help on March 17th. My Mom was at the IP7 Address and she passed away that night. The officer called me and when my husband and I arrived he was so very kind and helpful as I came to terms with my mother's death. He let me into her room, waited until he heard from the coroner, and then he also called the memorial chapel so they could pick up her body. He was calm, sympathetic and so good that I cannot state enough how much I appreciated it! When you get that call (and he was wonderful on the phone too), to have someone be there to help you through the first part of the process without being callous was great! Thank you again for your wonderful Police Officers! Best regards, IP IP7

CONFIDENTIAL MEMORANDUM

THE CITY OF BRENTWOOD

MEMORANDUM

POLICE DEPARTMENT

COPY

DATE: June 29, 2020

TO: Officer Paul Matejcek

FROM: Thomas Hansen, Chief of Police

SUBJECT: Administrative Investigation IA# 20-03

On May 07, 2020, you encountered [V2] during a welfare check. [IP] Ms. [V2] neighbor, alleged you engaged in misconduct during that encounter.

This complaint was investigated by Sergeant Miguel Aguiar. Based on his investigation, my findings are as follows:

- **339.5.9 (b) Conduct**

Unreasonable and unwarranted force to a person encountered or a person under arrest.

Disposition: **Not sustained.**

- **339.5.9 (g) Conduct**

Use of obscene, indecent, profane or derogatory language while on duty or in uniform.

Disposition: **Exonerated.**

This complaint will be kept in accordance with the City's Records Retention Policy. You should be aware that information contained in this investigation may be sought under a Pitchess Motion.

EVIDENCE AS TO THE ALLEGATIONS:

NOTIFICATION

On May 11, 2020, I received a Memorandum written by Sergeant Daansen documenting a Citizen's Complaint made against Officer Paul Matejcek (refer to "**Correspondence/ Memos**" tab for Memorandum documenting the Citizen's Complaint). Citizen [IP] called to report to Sgt. Daansen that he believed Ofcr Matejcek used excessive force in his encounter with [V2] and believed he was was unprofessional. Mr. [IP] lives next door to Ms. [V2] and observed the incident from outside his home.

Sgt. Daansen provided the Computer-Aided Dispatch (CAD) log and a Brentwood PD case associated with Mr. [IP] complaint, and the incident he referenced. Ofcr Matejcek had called Sgt. Daansen prior to Mr. [IP] complaint being received to inform Sgt. Daansen of the incident. Ofcr Matejcek's summary of the incident is written as part of Sgt. Daansen memorandum to document the complaint.

Ofcr McBride was assigned as the primary investigating officer and documented his contact with Ms. [V2] Ofcr Matejcek also documented his involvement in a supplemental report, referenced in BPD case #2002074.

On May 11, 2020, Chief Hansen directed me to initiate an Internal Affairs Investigation (IA 20-03) to formally look into the matter.

INVESTIGATION

All digital evidence (digital media, recordings, interviews, videos, etc.) collected during this internal investigation have been stored on a USB drive and attached as **(Exhibit 1)**.

Citizen's Complaint

On May 07, 2020, at approximately 1935 hours, Sgt. Daansen received a request to call Mr. [IP] and later documented Mr. [IP] allegations. Mr. [IP] believes he observed Ofcr Matejcek lose control of his emotions, resulting in his inability to keep the situation from escalating. Rather than de-escalating the encounter with Ms. [V2] Mr. [IP] believes Ofcr Matejcek escalated the event. Mr. [IP] observed Ofcr Matejcek run after Ms. [V2] when she ran away from him, and both fell to the ground with the officer trying to gain control of Ms. [V2] Mr. [IP] did not feel the actions of the officer were excessive at this point. However, he felt the officer's use of profanity during the remainder of the encounter was excessive, believing this escalated the situation. Ms. [V2] was belligerent, using profanity, out of control, and was not listening to the officer. When Ms. [V2] spit on Ofcr Matejcek he lost control. Mr. [IP] believed that the officer over-reacted when he threw his forearm into Ms.

V2 chest area in order to put her body position back to the stretcher. Ofcr Matejcek was yelling, "Don't you fucking spit on a police officer."

Ofcr Matejcek's act of throwing his forearm into Ms. V2 chest, while cursing at her, made Mr. IP believe it was out of anger; although not necessarily excessive. Mr. IP was not looking to get anyone in trouble but felt the moment Ms. V2 spit on the officer his behavior became inappropriate.

End of Summary

CAD Incident Report #2005070093

The incident was generated in CAD as incident #2005070093. The CAD incident report (Refer to **Exhibit 2-CAD Summary)** is summarized as follows:

- Officers McBride (X4) and Matejcek (X1) were dispatched to V2 Address for the report of a welfare check.
- The reporting party (RP), IP11 called to report that her friend, V2 was pregnant and made threats to drive her vehicle off a bridge. It was not specified which bridge. Per IP11 Ms. V2 is depressed but not diagnosed with any known illness or depression.
- A related vehicle description was obtained.
- Ms. V2 lives with her parents at the address provided.
- IP11 requested a call.
- Ofcr McBride calls IP11 prior to both officers responding to Ms. V2 address.
- Both officers arrive on scene and advise they have made contact with Ms. V2
- A request is made for an ambulance for AIDX (5150 W&I) by Ofcr McBride.
- Both officers advise they are Code 4 and clear the call on a Brentwood PD case.
- The event is closed.
- Two entries are made later in the event by a Dispatcher to include Medic 57 and EMS Personnel on that unit.

End of Summary

The following BPD personnel were on scene:

- Ofcr McBride
- Ofcr Matejcek

The following American Medical Response (AMR) personnel were on scene:

- Paramedic IP9

- Emergency Medical Technician (EMT) IP10

BPD Case 2002074

This incident was documented by Ofcr McBride under BPD case # 2002074 (Refer to **Exhibit 3-Original Report**)

I reviewed Ofcr McBride's report and it is summarized as follows:

- Ofcr McBride summarized his phone contact with RP- IP11 She provided a statement to include information that Ms. V2 had told her she was feeling depressed and had planned on driving her vehicle off a bridge.
    - Ofcr McBride activated his BWC and placed his cellphone on speaker to capture the conversation.
- Ms. V2 statement was concerning enough that RP- IP11 called to report her concerns and requested a welfare check.
- RP- IP11 has known Ms. V2 since 2012, and have been friends since meeting at a substance abuse program.
- RP- IP11 believed that Ms. V2 is depressed because she is in an abusive relationship, struggles with sobriety, and is nineteen weeks pregnant.
- She believes that because of these factors, it has taken a toll on Ms. V2 mentally and emotionally.
- Officers responded to and arrived at Ms. V2 residence to find her seated in the open rear hatch of her vehicle. She admitted to having feelings of wanting to kill herself and wanted help.
- Ofcr McBride requested an ambulance for a mental health evaluation hold.
- While speaking with Ms. V2 Ofcr McBride observed objective signs and symptoms of being under the influence of an intoxicant. He describes those signs and symptoms.
- Ms. V2 was displaying emotional instability. Ofcr McBride described Ms. V2 instability and displayed mood swings and emotional distress.
- AMR personnel arrived on scene and Ofcr McBride reviewed his observations and advised Ms. V2 met the criteria for a mental health evaluation hold.
- While Ofcr McBride completed documentation for the hold, Ofcr Matejcek and AMR personnel continued to speak with Ms. V2
- Ofcr McBride was not aware that Ms. V2 had fled from Ofcr Matejcek and AMR personnel, until he re-approached and observed she was handcuffed and on a gurney being strapped in.
- He assisted with securing Ms. V2 to the gurney and noted he observed that Ms. V2 was belligerent, uncooperative, yelling, and continuously removing her oxygen mask despite being told not to do so.
- AMR transported Ms. V2 to CCCRMC for evaluation.

End of Summary

I reviewed Officer McBride's VieVu body worn camera (BWC). Ofcr McBride has three segments of video, depicting his phone call with RP- IP11 his initial contact with Ms. V2 and subsequent contact with Ms. V2 after she is being placed in a gurney (refer to **EXHIBIT 1- Officer McBride's BWC; 1) RP IP11 Call; 2) Initial Contact with V2 and 3) Subsequent Contact with V2**

1) **RP IP11 Call-**

- Ofcr McBride establishes that RP IP11 concerns and allegations are consistent with what was related to Dispatch.
- Ms. V2 made statements that she wanted to be 5150'd and was planning to drive her vehicle off a bridge.
- RP IP11 voice inflection and tone appeared to be tearful and concerned for Ms. V2

End of Summary

2) **Initial Contact with V2**

- Ofcr McBride arrives behind Ofcr Matejcek and they park four homes down from Ms. V2 and both move up on foot.
- Ms. V2 is seated in the back of a vehicle with the rear hatch door open. A woman, later determined to be Ms. V2 mother, is standing next to her and is holding a cellphone. A second cellphone is laying on the back of the cargo area.
- Ms. V2 is tearful and refers to the woman present as "mom."
- Ms. V2 becomes upset with her mom after she makes the statement she just learned Ms. V2 5150'd herself.
- Ofcr McBride confirms Ms. V2 made the statement she wanted to drive her car off a bridge. He establishes Ms. V2 meets the criteria for a mental health evaluation. Ms. V2 admitted to depression, feelings that she needs help, having relationship issues, alcohol use, and overwhelmed.
- Ms. V2 mother offers to watch her daughter, and Ms. V2 agrees but expresses reservation about her step-father. Her reservations are due to the conditions in the household and asks both officers to look inside so she could show them. She doesn't want her daughter to remain with her parents long-term. Officer Matejcek diverts her attention to keep her outside.
- Ofcr McBride explains Ms. V2 is being placed on a hold.
- AMR arrives, and Ms. V2 becomes more upset and the tone changes between officers and Ms. V2
- Ofcr McBride turns to make contact with AMR personnel.

End of Summary

3) **Subsequent Contact with** V2

- Ofcr McBride's BWC activates and his camera captures Ofcr Matejeck manipulating handcuffs on Ms. V2 wrist.
- Ofcr Matejcek's BWC is not activated.
- Ms. V2 is laying back in the gurney with an oxygen mask on her face.
- Ofcr Matejcek asks Ms. V2 "Where else do you have injuries ma'am."
- Ofcr Matejcek states, "You said you're face hurts?" "Let me get a picture of it."
- Ms. V2 says something inaudible as Ofcr Matejcek takes a picture of the right side of her face with his cellphone. Ms. V2 refused to let Ofcr Matejcek take a picture of her left side of her face.
- Ofcr McBride asks an approaching male, determined to be Ms. V2 step-father to stay back and he would explain everything in a moment to him.
- Ms. V2 became irate and started demanding her cellphone and wallet. She directed her energy at her mother and step-father to retrieve her belongings.
- Ms. V2 looks forward toward the foot of gurney and says, "Don't even look at me you piece of shit." It is not clear who she is speaking to.
- Ms. V2 mom is on a cellphone and asks her an inaudible question. Ms. V2 response was because, "He just head pounded me into the ground for no reason." "You want to see my face."
- When Ofcr McBride asks Ms. V2 where her cellphone and wallet are located, her mother can be seen in the background holding a cellphone in the air (02:36 lapse time).
- As AMR personnel load Ms. V2 into the ambulance, she expresses being angry over her friend reporting her and says to her parents, "fuck all of you."

End of Summary

Officer Matejcek's Supplemental Report

Ofcr Matejcek documented his involvement in this incident as a supplement to BPD case # 2002074 (Refer to **Exhibit 4- Supplement #1 Report**)

I reviewed Ofcr Matejcek's report and it is summarized as follows:

- Ofcr Matejcek describes the details of the incident and Ofcr McBride's investigation factors, determining that a mental health hold for evaluation was necessary on Ms. V2
- Ms. V2 was upset, she displayed objective signs and symptoms of being impaired and those observations.
- Ms. V2 was emotionally upset and would transition from calm to angry. She became verbally aggressive toward Ofcr McBride.
- When AMR arrived, Ofcr McBride returned to his vehicle to complete the necessary forms.

- Ofcr Matejcek remained with Ms. V2 and tried to speak with her but she was uncooperative. She asked to say good-bye to her daughter. Her mother agreed to go inside to get Ms. V2 daughter and bring her outside.
- As soon as Ms. V2 mother entered the residence, Ms. V2 stood up from the vehicle, opened a floor compartment in the rear cargo area, and removed what appeared to be a white plastic bag containing a large bottle with a red twist top.
- She began to walk away, then ran toward the side of the house. As she opened the wooden gate, Ofcr Matejcek told her to stop. He believed that Ms. V2 was attempting to get away to avoid being placed on a hold.
- Ofcr Matejcek heard Medic IP9 state something similar to Ms. V2 had a bottle of alcohol.
- With Ms. V2 actions, coupled with Ofcr Matejcek's concerns she was trying to get away, he believed it was necessary to prevent her from doing so.
- Ms. V2 was able to push open and turn to close the gate behind her. Ofcr Matejcek kicked the gate open. Ms. V2 began to run away from him.
- Ofcr Matejcek grabbed Ms. V2 left wrist, and applied a rear twist lock, placing her arm behind her back.
- Ms. V2 attempted to strike Ofcr Matejcek with the bottle while yelling "let me go, get off me."
- Medic IP9 arrived to assist and held Ms. V2 right arm. They escorted Ms. V2 on her feet to the street where the gurney was staged. Medic IP9 released his grip as Ofcr Matejcek grabbed her right wrist from him.
- Ms. V2 pulled her right hand away from Ofcr Matejcek's grip and she attempted to punch him with her right fist. However, Ofcr Matejcek still had control of her left arm and wrist, preventing her from striking him.
- Ofcr Matejcek used his body to pull Ms. V2 to the ground, and used his right leg to knock her off balance to her stomach. She landed on the cement roadway.
- Ofcr Matejcek placed his knee in her back to hold her down so he could handcuff her. He told her to stop resisting, and directed her to put her right hand behind her back. She did not comply.
- Medic IP9 again stepped in to grab Ms. V2 right arm and pulled it behind her back so Ofcr Matejcek could handcuff her.
- After standing Ms. V2 up to her feet, and to the gurney, she continued to refuse to sit down. With the help of IP9 and IP10 they were able to force Ms. V2 onto the gurney.
- Ms. V2 sucked in air through her nose, making sounds consistent with someone preparing to spit. Ofcr Matejcek said, "Don't you dare spit on me." Ms. V2 spit in Ofcr Matejcek's direction and it landed on the ground. Spray from her spit landed on Ofcr Matejcek, and spittle hit his cap.
- Ofcr Matejcek used his right elbow to hold down Ms. V2 head, and placed his arm on the left side of her face; turning her head to the right and away from him to prevent her from being able to spit on him.

- Ofcr Matejcek stated something similar with "you don't fucking spit at the cops."
- Ms. V2 was belligerent and yelling profanities.
- An oxygen mask was placed over Ms. V2 mouth and nose by AMR personnel. She continuously attempted to remove the mask.
- Ms. V2 was eventually secured to the gurney with soft restraints.
- Ofcr Matejcek observed a cut to Ms. V2 left knee. He photographed the injury. He asked her whether she was injured elsewhere, and she said, "Look at my face." He attempted to photograph her face and she became uncooperative.
- Ofcr Matejcek did not observe any other visible injuries.
- Ofcr McBride returned to the scene from his patrol vehicle and Ofcr Matejcek informed him of the incident.
- Ofcr Matecjek did use profanity during the time he was trying to restrain Ms. V2 from resisting and following his commands. He explained his use of profanity was to get Ms. V2 to realize he was emphasizing the seriousness of his commands.
- Ofcr Matejcek notified Sgt Daansen immediately to make him aware of the incident and force used.
- Ofcr Matejcek did not activate his BWC.

End of Summary

V2 Recorded Interview

On May 12, 2020, at approximately 1350 hours, I called and interviewed Ms. V2 The interview was recorded with Ms. V2 consent and knowledge (refer to **EXHIBIT 1- V2 V2 Interview**). Ms. V2 related the following to me, in summary:

- Ms. V2 had been consuming vodka prior to officers arriving at her home.
- She is pregnant and has a four year old daughter. Prior to being transported to the hospital she wanted to say goodbye to her.
- She ran up the driveway to say goodbye, and ran to the backyard.
- While handcuffed, she was tackled by being picked up with her arms behind her and dropped to the ground onto her face.
- She was screaming to her mom to record the incident.
- Someone, she believes Ofcr Matejcek, did a factory reset on her cellphone. Her mom denied having wiped her memory from her phone. Mom said she thought Ofcr Matejcek had her phone.
- Ms. V2 did grab a bottle from the vehicle and was going to throw the bottle of Raspberry Smirnoff in the trash can.
- She believed there was 1/3 of the bottle remaining after consuming from the bottle. She admitted to having been feeling the effects of the alcohol.
- She does remember seeing her neighbor, to the right of her home, outside during the incident.

- Ms. V2 was yelling at Ofcr Matejcek for using force. She was upset at him, and did spit towards him.
- She was crying and had phlegm, so she needed to spit. She spat in Ofcr Matejcek's direction but not at him.
- She was also upset over not having her property.
- Ms. V2 knee was bleeding from the incident. She was not attended to by AMR personnel or the emergency personnel at CCCRMC. They never wiped it off or treated her. She has not sought treatment for any injuries.
- She believes her left shoulder was bruised and the left side of her face is sore from the incident.
- Ms. V2 did not see Ofcr McBride during the incident with Ofcr Matejcek. She believed he was in the driveway and didn't get involved.
- Ms. V2 ran from Ofcr Matejcek because he wouldn't let her see her daughter.
- Ms. V2 was not sure why she grabbed the bottle of alcohol to throw it away.

End of Statement

Ms. V2 agreed to allow me to meet with her to obtain photographs of her overall condition, and visible areas (shoulder, knee, face) where she believes she may have been injured.

At approximately 1425 hours, I drove to meet with Ms. V2 at her residence. She met me outside her residence. I took photos of her overall condition and areas she pointed out as being where she believes she may have sustained injuries (Refer to EXHIBIT 1- Photos of V2 Injuries). She agreed to sign a Medical Authorization Release form. She consented to allow me to request medical documentation from any medical evaluation or treatment she receives, related to any injury or injuries she believes were caused from this incident. At the time of my meeting with her in person, she had not decided whether to seek medical treatment for any injuries (Refer to "**Miscellaneous**" tab).

As of June 08, 2020, Ms. V2 has not reported she has sought medical treatment for any injuries sustained in this incident.

AMR Paramedic IP9 Witness Interview

On May 14, 2020, at 1030 hours, I interviewed AMR Paramedic IP9 IP9 by phone. Medic IP9 The interview was recorded with IP9 knowledge (refer to **EXHIBIT 1- Medic IP9 Interview**). IP9 agreed to speak with me and related the following to me, in summary:

- IP9 and his medical partner, IP10 responded to V2 Address on May 7th, 2020. He remembers the location and having contact with V2 as well as, Officers McBride and Matejcek.
- IP9 is a Paramedic with AMR and has ten years of experience.

- IP9 remembers Ms. V2 as being extremely emotional when he and IP10 arrived.
- Officer McBride was first to contact him, and he explained Ms. V2 was being placed on a mental health evaluation hold and the circumstances leading to that decision. Ofcr McBride would return to his vehicle to complete paperwork for the hold.
- Ofcr Matejcek was standing near Ms. V2 who was seated in the back of a parked vehicle in the driveway. IP9 and IP10 remained with Ofcr Matejcek and waited for Ofcr McBride to complete his paperwork so they could transport Ms. V2 to the hospital.
- Ms. V2 was asking to speak with her daughter, who is four years old and was inside the residence. Ofcr Matejcek was telling Ms. V2 that her daughter was being dressed by Ms. V2 parents. Ofcr Matejcek was reassuring her she would get to see her daughter to say goodbye to her.
- Ms. V2 had stood up, turned her back to him, and reached into a storage compartment in the back of the vehicle, where a vehicle jack would be stored.
- IP9 stepped back because he didn't know what she was reaching for and remembered thinking he didn't want any part of whatever she was reaching for.
- He initially didn't know what she had grabbed from the storage compartment.
- Ms. V2 began to walk away from the vehicle, toward the side of the house.
- He heard Ofcr Matejcek tell Ms. V2 to stop. She continued walking away from him.
- IP9 saw Ms. V2 begin to run, and he told IP10 she was running. Ofcr Matejcek chased after her and out of view to the side yard.
- When IP9 walked to see if he could help, he observed Ofcr Matejcek and Ms. V2 standing, and she was pushing Ofcr Matejcek away. Ofcr Matejcek had Ms. V2 detained, in an "arm lock" with both arms. Ofcr Matejcek started walking her to the street where the gurney was staged. She was not handcuffed.
- IP9 reached out to grab one of her arms to assist Ofcr Matejcek with directing Ms. V2 to the gurney to be seated. They were not trying to harm her and were trying to convince her to sit down on the gurney.
- As they approached the gurney, she pulled away from both Ofcr Matejcek and his grip.
- Ofcr Matejcek had grabbed Ms. V2 and forced her to the ground to her side.
- IP9 did not believe the takedown was a tackle. It looked more like a hip check or toss.
- IP9 went over to assist and help restrain Ms. V2 while Ofcr Matejcek handcuffed her. He grabbed one arm because she was still flailing.
- Once she was handcuffed, they stood her up and moved her to the gurney.
- IP9 and IP10 were working to place soft restraints on her ankles, when IP9 heard Ms. V2 begin to make sounds that made him believe she was going to spit.
- IP10 placed his gloved hand in front of her mouth to prevent her from spitting. He and Ofcr Matejcek moved back as Ms. V2 maneuvered her head to get around IP10 hand and she spit to the ground.
- Ofcr Matejcek placed his forearm down along the temporal area of Ms. V2 head to restrict her movement. He had his arm pressed down, but he did not strike her.
- She was irate, yelling profanities, and would not calm down.

- IP9 does not recall Ofcr Matejcek using profanity directed at Ms. V2
- Ms. V2 said something to Ofcr Matejcek regarding his feeling like he was big, and referenced his star bandana (his neck gator worn to cover his face as an alternative to a mask). IP9 believes she was referencing the face covering Ofcr Matejcek was wearing over his mouth and nose.
- Ms. V2 was using profanity, directed at Ofcr Matejcek. IP9 believes she said "Mother Fucker." She was saying something similar to, "I can't believe you are doing this to a pregnant female."
- Ms. V2 family was outside asking for her to calm down. IP9 felt the family being present made things worse.
- Ms. V2 was secured in four-point soft restraint but continued to pull the oxygen mask off her nose and mouth, despite asking her not to do so.
- Ofcr McBride arrived from his vehicle to join them.
- During transport, Ms. V2 continued being uncooperative. She was verbally demanding, telling IP9 what she needed or wanted.
- When they arrived at Contra Costa County Regional Medical Center, Psychiatric Emergency personnel chose to leave Ms. V2 restrained, and were discussing whether to sedate her to calm her down.
- IP9 believed Ms. V2 was intoxicated and was tested at the hospital. He did not know what her approximate percentage level BAC.
- IP9 did not know whether Ms. V2 was in fact pregnant. She told the hospital staff she was at twenty weeks.
- IP9 believes IP10 may have had Ms. V2 cellular phone but turned the phone over to Ms. V2 mother when they left the scene. IP9 did not see either officer possess the cellphone while he was on scene.

The interview concluded at 1100 hours.

AMR EMT IP10 Witness Interview

On May 14, 2020, at 1135 hours, I interviewed AMR EMT IP10 by phone. The interview was recorded with IP10 knowledge (refer to EXHIBIT 1- EMT IP10 nterview). IP10 agreed to speak with me and related the following, in summary:

- IP10 has been an EMT for AMR for three years.
- IP10 remembers working on May 7th, 2020, and responding to V2 Address for a 5150 W&I and information from dispatch that alcohol may be involved.
- IP10 and partner Paramedic IP9 arrived on scene and met with two officers. He did not recall either officer by name, however, he did remember that one officer was black (McBride) and one officer was white (Matejcek).

- IP10 remembers Ms. V2 as emotional. She was seated in the back of an SUV with the hatch open, and Ofcr McBride was explaining to IP9 that he was placing Ms. V2 on a mental health evaluation hold. Ofcr Matejcek was explaining to Ms. V2 that he could bring her daughter out to her. He seemed to be reassuring her and telling her things would be alright.
- IP10 was preparing the ambulance and gurney for transport and had minimal involvement with conversation. He was 30-40 feet away from IP9
- Ofcr McBride went back to his vehicle to complete paperwork.
- Ofcr Matejcek had gone up to the porch to speak with a female, he believes she was Ms. V2 mother. He believes Ofcr Matejcek was making arrangements with Ms. V2 mother to have her bring Ms. V2 daughter out to say goodbye. Ofcr Matejcek returned to the driveway.
- IP10 remembers seeing Ms. V2 standing up and turning her back to both IP9 and Ofcr Matejcek. He did not see what she had in her hand. It was some sort of a bag.
- IP10 observed both IP9 and Ofcr Matejcek step back.
- She removed something from the back of the vehicle and began to walk away between two parked vehicles, and he heard Ofcr Matejcek tell her to stop. He said it a few times.
- Ofcr Matejcek walked around to the outside of the parked vehicles to follow her.
- IP10 monitored from his position and did not have a visual. He heard a "bang" and did not know what it was.
- IP10 went looking for Ofcr McBride but did not see him.
- He later spoke with IP9 and he believed the "bang" was the sound of garbage cans on the side of the house.
- He heard yelling but believed it was IP9 and Ofcr Matejcek telling Ms. V2 to calm down.
- IP10 was standing at the gurney when he observed Ms. V2 walking toward him, and held by IP9 and Ofcr Matejcek. Her arms were behind her and she was not handcuffed at that time.
- As they approached the gurney, Ms. V2 pulled away and began to run.
- Ofcr Matejcek grabbed her from a step or two away, and did a sweep or used his leg as leverage at her hip or leg to take her to the ground. It was a "lower body heave" to get her to the ground. It was not a tackle.
- Ms. V2 landed on her side or onto her back. He wasn't sure. He did not see her on her face or Ofcr Matejcek pushing down on her face while on the ground. Ofcr Matejcek ended up on top of her to roll her to her stomach, as he was telling her to stop resisting. He gained control of her wrists and was able to get handcuffs on.
- IP10 again went looking for Ofcr McBride but didn't see him.
- Ms. V2 was now on her feet and was yelling at Ofcr Matejcek for taking her to the ground.
- They were able to get her on a gurney, secured the leg soft restraints, and he heard her makes sounds like she was going to spit.

- IP10 placed his hand up in front of her face to stop her from spitting. IP10 told her not to spit twice.
- She turned her head and spit between IP9 and Ofcr Matejcek.
- Ofcr Matejcek was closest to Ms. V2 upper torso, and IP9 near her feet.
- IP9 went to the ambulance to retrieve an oxygen mask to place over her face, to prevent her from spitting, and to provide oxygen.
- Ofcr Matejcek placed his forearm across Ms. V2 head to turn and hold her head to the side to keep her from spitting again. He did not strike her with his arm but was using force to keep her head against the gurney to control her from spitting again. It was a forceful press.
- IP10 did not hear anyone yelling profanities. He did not hear Ofcr Matejcek or Ms. V2 saying anything specific. Both were upset with each other.
- Ms. V2 continued to yell at them, and at her family. She was distressed.
- Ms. V2 cellphone was with a woman whom he believed to be her mother. The officers did not have the phone.
- When transported, Ms. V2 continued to remain upset. She would not calm down.
- While at the hospital, the emergency admitting medical personnel were considering whether to keep her in soft restraints because she would not calm down. They were discussing whether or not to medicate her.
- Ms. V2 was left in their same gurney, in soft restraints, rather than taking her out of restraints. IP9 and IP10 secured a different gurney to use to go back in service.

The interview concluded at 1201 hours

Witness Officer Interview

On May 18, 2020, at approximately 1000 hours, I interviewed Ofcr Christopher McBride in the Professional Standards Unit (PSU) office. The interview was recorded with Ofcr McBride's knowledge (refer to **EXHIBIT 1- Officer McBride's Interview**).

- Ofcr McBride was working and on duty on May 07, 2020. He recalled the incident and his encounter with Ms. V2 at V2 Address He responded with Ofcr Matejcek. Ofcr McBride was the primary investigating officer.
- Ofcr McBride placed a call to Ms. V2 friend, and Reporting Party, IP11 IP11
- RP IP11 told him that Ms. V2 told her that she was depressed, wanted to drive her vehicle off a bridge, and was 19 weeks pregnant. IP11 was asking for a welfare check on Ms. V2
- After speaking with IP11 he and Ofcr Matejcek responded to V2 Address to contact Ms. V2 Ms. V2 was contacted while seated in the back of a vehicle in the driveway. Her mother was present with her. Ms. V2 admitted to having made

statements to IP11 consistent with wanting to harm herself and agreed to get help for depression.

- Ofcr McBride did observe signs and symptoms of intoxication, and he smelled the odor of alcohol coming from Ms. V2 He did not know what her approximate level of intoxication was.
- Ms. V2 was upset over leaving her four year-old daughter and wanted to say good-bye. Her mother agreed to get the child and bring her outside to allow Ms. V2 to see her before she left.
- Ofcr McBride determined Ms. V2 met the criteria to place a mental health hold for evaluation and requested an ambulance.
- Ofcr McBride returned to his vehicle, parked two or three houses down the street to complete paperwork. He could see Ofcr Matejcek and AMR personnel and could tell they were speaking with Ms. V2 When he completed his paperwork, he returned to the scene.
- As he approached, Ofcr McBride observed Ms. V2 was being secured to a gurney. She was upset, yelling, and he was not aware of what had changed since he walked away. Ms. V2 mother was standing in the driveway with Ms. V2 daughter. Ms. V2 was calling Ofcr Matejcek an "asshole," and she complained about being "face planted."
- Ofcr McBride began to assist with restraining Ms. V2 to the gurney.
- Ofcr Matejcek explained to him that Ms. V2 had run from him, tried to hit him with a bottle, and he had to use force to subdue her. AMR had to help to control her. Ms. V2 had become irritated, and walked away from him. Ms. V2 had made it to the side yard gate, and tried to hold the gate closed on him. It was then that she tried to hit Ofcr Matejcek with a bottle. Ofcr Matejcek had to take Ms. V2 to the ground. Ofcr McBride did not remember how Ofcr Matejcek described how he took her to the ground.
- Ofcr McBride wished that he had known what had happened while it was occurring so he could have been present to assist. He did not hear Ofcr Matejcek broadcast via radio what was occurring. He did not hear anyone yelling.
- Ofcr McBride did not know where Ms. V2 cellphone was during the incident and did not recall ever seeing one. AMR had stated the hospital wouldn't allow her personal property.
- Ofcr McBride did not believe Ofcr Matejcek took Ms. V2 to the ground in the street, but rather at the gate.
- Ofcr Matejcek called an on-duty supervisor by cellphone after Ms. V2 was loaded on to the ambulance.
- Ofcr McBride remembered hearing Ofcr Matejcek say to Ms. V2 that she should never spit on a cop. He believes he heard, "You should never fucking spit on a cop."
- Ofcr Matejcek was upset when he said it.
- Ofcr McBride did not remember hearing Ofcr Matejcek use any other profanity.
- He did not see Ms. V2 spit at Ofcr Matejcek.

- Ofcr Matejcek did have his forearm against Ms. V2 collar bone area to hold her down in the gurney. He was not striking her but holding her down forcibly.
- AMR personnel had to hold Ms. V2 arms down. Ofcr McBride also had to hold her arms down to keep Ms. V2 from sitting up on the gurney.
- Ofcr McBride did see a fresh injury to Ms. V2 left knee. He did not see any other injuries. He believes she injured her knee when she was taken to the ground. He is not aware of any other injuries or complaints of pain.

I concluded my interview with Ofcr McBride at approximately 1030 hours.

End of Statement

CAD Event #2005070104 Summary

The CAD incident report (Refer to **Exhibit 5- CAD 2005070104 Summary)** is summarized as follows:

- An incident is created at 1930 hours relating the call as a service to citizen at V2 Address V2 Address
- Mr. IP is the RP. He requests to speak with a Sergeant regarding an earlier incident.
- Sgt. Daansen makes the call and closes the event.

IP Witness Interview

On June 1st, 2020 at approximately 1240 hours, I called Mr. IP to clarify his statement. He agreed to speak with me and consented to my recording the interview (Refer to EXHIBIT 1- IP Recorded Statement). He related the following to me, in summary:

- His attention was first drawn to movement along the side of his residence, as though someone was running.
- He headed toward the front door and after exiting to the front yard, he observed Ofcr Matejcek and AMR personnel standing Ms. V2 up to her feet.
- They walked her to the gurney, where she was being restrained.
- He did not see or hear Ms. V2 spit, however he heard Ofcr Matejcek say, "Don't fuckin spit on me." Mr. IP believes Ms. V2 must have spit.
- Ofcr Matejcek had his back to him, and he could not see whether he struck Ms. V2 with his arm or elbow.
- The body motion of Ofcr Matejcek was clearly his arm going down and his body forcing Ms. V2 back into the gurney.
- Mr. IP did not record the incident and does not have outside surveillance.

- Mr. IP believes that it was the officer's lack of ability to control his emotions that effected his ability to de-escalate the situation, and this affected his decision making.
- Mr. IP believes that an officer whom can't control his emotions should not be in law enforcement.

End of Statement

Subject Officer Interview

On June 04, 2020, at approximately 1834 hours, I interviewed Ofcr Matejcek in the Administrative Conference room. Ofcr Matejcek elected to be represented by Attorney Justin Buffington with Rains, Lucia, and Stern. The interview was recorded with Ofcr Matejcek's knowledge (refer to EXHIBIT 1- Ofcr Matejcek's Recorded Statement). Ofcr Matejcek told me the following, in summary:

- Ofcr Matejcek was on duty and responded with Ofcr McBride to V2 Address for a welfare check, and had contact with V2
- Ofcr Matejcek's role on scene was to cover Ofcr McBride while he investigated the welfare check on a pregnant female who made suicidal statements.
- Ofcr McBride had called the RP and informed Ofcr Matejcek that Ms. V2 was feeling depressed, and wanted to drive her vehicle off a bridge.
- Ofcr Matejcek did have his BWC on his uniform and did not have it activated. He did not believe there was reason to have it on initally. Ms. V2 was somber and wanted help so he did not sense there was a need to have the BWC on.
- Ofcr Matejcek was in an observer capacity and noticed Ms. V2 was unstable, and he could smell the odor of an alcoholic beverage emanating from her person.
- Ofcr McBride determined Ms. V2 met the criteria to be placed on a mental health hold for evaluation.
- Ms. V2 became upset and tension increased after she began asking to see her daughter. AMR had arrived and tension between Ofcr McBride and Ms. V2 increased.
- Ms. V2 asked Ofcr McBride if she could deal with this situation another time. This was an indication to Ofcr Matejcek she was not wanting to go to the hospital.
- Up to this point, Ofcr Matejcek did not have much in the way of conversation. In an attempt to calm things down, Ofcr Matejcek told Ofcr McBride to begin his required paperwork and he would remain with Ms. V2
- Ofcr Matejcek believed Ms. V2 was more relaxed with him. She made some statement about his being understanding. He wanted to keep things calm and tried to accommodate her request to see her daughter. Ofcr Matejcek asked Ms. V2 mother to get the child and bring her out to them.
- Medic IP9 was asking Ms. V2 questions and she seemed to be ignoring him.

- Ms. V2 stood up, reached into a compartment in the back of the vehicle she was seated in, and removed a white plastic bag containing something with a red cap. He didn't know what was inside the bag. He thought that it looked like a bottle, but he didn't know what type of bottle. Ms. V2 started to walk away. He thought she was going to enter the front interior compartment of the vehicle. Ofcr Matejcek did not feel threatened at this point because he was still just watching her and following her to see what she was doing.
- Ms. V2 walked passed the vehicle and began to run toward the side yard.
- Ofcr Matejcek believed she was now trying to flee to avoid being placed on a hold.
- Ofcr Matejcek followed her to the side yard, where she had gone beyond a wooden gate. She tried to slam the gate closed on him. He kicked the gate open and caught up to her in the backyard. She again tried to run from him.
- Based on Ofcr Matejcek's experience, he did not believe Ms. V2 was running to the backyard to throw the bottle away. He believed she was attempting to escape.
- Ofcr Matejcek was able to grab Ms. V2 by the left arm with both his hands. She swung at him with her right hand, which was still holding the plastic bag containing a bottle. Ofcr Matejcek was able to move out of the way and avoided being struck with the bottle. Medic IP9 followed him into the backyard. IP9 grabbed and removed the bottle from Ms. V2 Ofcr Matejcek does not know where the bottle ended up.
- Ofcr Matejcek did not take Ms. V2 to the ground but controlled her arms behind her back.
- Ofcr Matejcek did not request for assistance over the radio to alert Ofcr McBride. He did not yell or announce Ms. V2 was fleeing. Ofcr McBride was still seated in his vehicle filling out paperwork.
- Ofcr Matejcek believed that he was going to be able to stop Ms. V2 and bring her out from the backyard without incident, but it didn't turn out that way.
- He and IP9 walked Ms. V2 out to the front yard, to the street, where the gurney was staged. Ms. V2 pulled her right arm away from his grip and tried to punch him again but missed.
- He held onto his grip of Ms. V2 left arm and felt it was necessary to pull her to the ground to control her from striking him, and from trying to escape.
- He was conscious of Ms. V2 being pregnant and did not want to use any more force than necessary to control her.
- Ofcr Matejcek extended his right leg out and pulled Ms. V2 across his body to knock her off balance. He forced her to the ground, to her stomach, and placed her left wrist in a handcuff. Ms. V2 had her right arm under her stomach. She had stretched her arm out to brace her fall. She would not free her right arm when told to do so. Ofcr Matejcek and Perez had to pull her arm out from under her in order to handcuff her.
- Ms. V2 was yelling, "Get the fuck off me." Ofcr Matejcek was saying, "Stop fucking resisting."

- Ofcr Matejcek did not alert or use the radio to request assistance from Ofcr McBride because he was pre-occupied with restraining Ms. V2
- Ofcr Matejcek and IP9 stood Ms. V2 up and walked her back to the gurney, where she continued to resist and not cooperate. They had to push Ms. V2 onto the gurney. Ms. V2 was still handcuffed with her hands behind her back.
- As IP9 and IP10 were applying soft restraints on her ankles, Ofcr Matejcek had to physically hold Ms. V2 down. As he was doing so, he heard her suck in air through her nose and he believed she was about to spit. Ofcr Matejcek said, "Don't you dare spit on me."
- Ms. V2 ignored him and spit in his direction. She missed but spray struck his face and ballcap. Ofcr Matejcek did not have gloves on and wanted to prevent her from spitting again, so he used his elbow to direct her face to one side and away from him. He said to her, "You don't fucking spit at cops."
- IP9 applied an oxygen mask over her face to prevent her from spitting again. She kept trying to remove the mask from her face.
- Ofcr Matejcek did not strike Ms. V2 He applied his elbow to Ms. V2 left cheek and held her face down against the gurney. He did apply his elbow to Ms. V2 face quickly because she had just spit and he was trying to prevent her from spitting again. His sunglasses had fallen off his head during the struggle with Ms. V2 as he leaned in to hold her down.
- Ofcr McBride had arrived on scene and Ofcr Matejcek explained to him what happened. Ofcr McBride appeared shocked at what had happened while away from the scene.
- Ofcr Matejcek did take photos of Ms. V2 and documented her injury to her knee. Ms. V2 would not allow him to take a photo of her left cheek. She did not complain of any other injuries.
- Ofcr Matejcek called an on-duty sergeant and reported the incident and use of force.
- Ofcr Matejcek does not believe he let his emotions influence his ability to make decisions. He did not believe he became angry and lost control. He believed he remained as calm as he could, considering Ms. V2 behavior.
- Ofcr Matejcek used profanity to emphasize he was being serious when Ms. V2 would not cooperate.

I concluded my interview with Ofcr Matejcek at 1917 hours.

I took no further action and submitted this file to the office of Captain Herbert for review on June 09, 2020.