

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER CARROLL**

**INTERVIEWED BY:       SERGEANT WATTS**

**DATED:                   UNKNOWN**

1 **Q: SERGEANT WATTS**

2 **A: OFFICER CARROLL**

3 **DN: ATTORNEY DON NOBLES**

4 **YS: (YORK SUDA)**

5 **AC: (ANGIE CHOW)**

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9 **Q:** And then I'll take his, some information. And then I'm going to read PD admonition  
10 regarding BWC. District Attorney's office is going to obviously read a statement regarding how  
11 they view our policy and then I shall read your statement by counsel. We'll pause the interview,  
12 you'll have time to review BWC, and then we'll come back and go through the interview. All  
13 set?

14 **A:** Copy that.

15 **Q:** Okay. So, my name is Gary Watts, I'm a Sergeant with SFPD Homicide. To my right is?

16 **YS:** York (Suda), I'm an inspector with the DA's office, Internal Affairs, uh (inaudible) unit.

17 **AC:** (Angie Chow), I'm an assistant district attorney.

18 **DN:** Don Nobles, POA attorney.

19 **Q:** And you, sir?

20 **A:** Officer Corbyn Carroll, star number 987.

21 **Q:** Can you spell your first name?

22 **A:** C-O-R-B-Y-N.

23 **Q:** And Carrol, C, double R?

24 **A:** Double R, double L.

25 **Q:** Date of birth?

1 A: [REDACTED].  
2 Q: Date of entry? Month and year?  
3 A: [REDACTED]  
4 Q: Current assignment?  
5 A: Mission Station.  
6 Q: How long at Mission?  
7 A: Four months.  
8 Q: And your current shift?  
9 A: Swings.  
10 Q: 16 to 02?  
11 A: Correct.  
12 Q: Uniform or plain clothes?  
13 A: Uniform.  
14 Q: And were you partnered?  
15 A: Yes.  
16 Q: On the 6<sup>th</sup>. And your partners name?  
17 A: Ari, A-R-I, Smith-Russack.  
18 Q: I'm sorry, spell it-  
19 A: A-R-I.  
20 Q: R-E-I?  
21 A: A-R-I.  
22 Q: I, yeah.  
23 A: Smith-Russack, common spelling, hyphen Russack, R-U-S-S-A-C-K. I don't remember  
24 his star number.  
25 Q: No problem. And your call sign on the 6<sup>th</sup>?

1 A: 14 David.

2 YS: Wait, wait that was your partner Smith-Russack I'm sorry.

3 Q: And you carried department firearm?

4 A: Yes, sir.

5 Q: And that is a sig 226?

6 A: That's correct. It's 226R.

7 Q: Do you carry a secondary gun?

8 A: No.

9 Q: And were you driving a department vehicle that night?

10 A: Yes, I was.

11 Q: Do you know which vehicle it was?

12 A: Believe it was 157. Black and white.

13 YS: What was the call sign again?

14 A: 3 Davie 14 David.

15 Q: And you were the driver or passenger?

16 A: I was the driver.

17 Q: All right, Corbyn. I'm Sergeant Gary Watts, with the San Francisco police department.

18 The SFPD along with the SFDA and SFDAI are conducting the criminal portion of an officer  
19 involved shooting investigation involving yourself, employed by the City and County of San  
20 Francisco. The incident occurred on 3-6-18 at approximately 2236 hours in the City and County  
21 of San Francisco. The following interview will be both audio and video recorded. I would like to  
22 ask you some questions regarding this incident, but before I do, I want you to know that you are  
23 not under arrest. You do not have to answer my questions, you understand?

24 A: Yup.

1 Q: You can stop answering any questions and are free to leave at any time, you understand  
2 that?

3 A: Yes.

4 Q: Have you been ordered to give a statement regarding this incident by anyone?

5 A: No.

6 Q: Have you been compelled by anyone to give a statement?

7 A: No.

8 Q: Is this a free and voluntary statement?

9 A: Yes.

10 Q: In this case there is video evidence that you'll have an opportunity to view after you have  
11 given your initial statement. Video evidence has limitations and may depict the events differently  
12 than you recall and may not depict all the events as seen or heard by you. Video has a limited  
13 field of view and may not capture events normally seen by the human eye. The frame rate of  
14 video may limit the cameras ability to capture movements normally seen by the human eye.  
15 Lighting as seen on the video may be different than what is seen by the human eye. Videos are a  
16 two dimensional medium and may not capture depth, distance or positional orientation as well as  
17 the human eye. Remember, the video evidence is intended to assist your memory and ensure that  
18 your initial statement explains your state of mind at the time of the incident. Prior to reviewing  
19 the video, I'm going to ask you (inaudible) information which I've already done. Then I would  
20 like you to provide a statement about your actions regarding this incident to include what drew  
21 your attention to the area, the actions that required the use of force and then your response and  
22 why. And the assistant district attorney's going to read a statement from the DA's office.

23 AC: The district attorney disagrees with San Francisco Police Department's interpretation of  
24 the body worn camera policy. The DA believe that the policy allows the subject officer to see  
25 only his or her body worn camera and before providing an initial statement about what happened.

1 Under SFPD's interpretation, officers may review videos depicting events that they were not  
2 even present to witness. Furthermore, the police department's interpretation afford officers a  
3 special privilege, specifically access to evidence that other subjects and even eyewitnesses do not  
4 receive. The DA is working with SFPD to resolve this issue. Although the DA disagrees with  
5 how this interview will be proceeding, we are committed to independently investigating the  
6 incident and we will be participating in the interview.

7 Q: Okay. Officer Carroll, we'll read your statement.

8 A: Okay.

9 Q: On March 6<sup>th</sup> at approximately 10:30, another unit broadcast they were flagged down by  
10 victim, who was robbed with a firearm in the area of 21<sup>st</sup> and Capp. Upon arriving at the stated  
11 location, I observed a suspect in an open trunk of a double-parked black Honda. The suspect did  
12 not comply with orders given to him in English and Spanish to show both of his hands. Less  
13 lethal force in the form of a beanbag gun was used without success. Shortly thereafter, as the  
14 suspect brought his left hand from concealment, with what appeared to be a firearm, fearing for  
15 my safety and the safety of officers on the scene, I discharged my firearm. Okay. So, we're going  
16 to take a pause in this room. We're going to view the BWC. Have a moment to talk with your  
17 attorney and then we'll (inaudible).

18 END OF INTERVIEW  
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1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 7, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August  
14 2019.

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16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER CASSINELLI**

**INTERVIEWED BY: SERGEANT CAGNEY**

**DATED: MARCH 8, 2018 TIME: 1510 HOURS**



1 **Q: SERGEANT CAGNEY**

2 **A: OFFICER CASSINELLI**

3 **AL: ANDREW LAW**

4 **MY: MEGAN HIYASHI**

5 **TB: TONY BRASS**

8 Q: Yeah. I don't know where you, did you, were you at TTF for a while, or?

9 A: That's where I did my FTO.

10 Q: Oh, so that's probably why we bumped into you back in the day then. He did FTO back  
11 last year sometime.

12 A: I was at Ingleside for probation.

13 Q: Oh, oh, so that's it.

14 A: Yeah. That's it.

15 Q: Oh, I get you.

16 A: Yeah.

17 Q: When did you transfer out to, to Mission?

18 A: Early December. Yeah, we were done.

19 Q: Oh, so he, he had a good eight months to watch you in action.

20 A: Oh yeah, yeah. It was great.

21 Q: It's all right. I tell him stories; you don't believe them though you know. At least all  
22 yours it really doesn't count.

23 A: No, no.

24 Q: Mine don't, you know.

25 A: Yeah right. We had a good little crew.

1 Q: Yeah. I did 5 years in the Mission. Back in the 90's.

2 A: Oh, yeah.

3 Q: Yeah. Couldn't wait to leave if you want to know the truth.

4 A: I, I've gotten mixed things.

5 Q: It's busy, it's busy. I'm not, I'll never-

6 A: It is. Very-

7 Q: Say it wasn't a busy station.

8 A: It is very.

9 Q: It's a little bit eclectic is the word I would use. I trained at, I did my probation at Northern

10 and I couldn't wait to go back. It took a few years like from Mission and then I went back to

11 Norther so, okay. Can you spell your last name?

12 A: C-A-S-S-I-N-E-L-L-I.

13 Q: And how do you say it?

14 A: Cassinelli.

15 Q: Cassinelli. Got ya.

16 A: Yes.

17 Q: All right. So, what I'm going to do is just it's, it's pretty straight forward, this process. It

18 sounds a little bit more complicated than it is. So, John Cagney, Sergeant SFPD, Homicide. It's

19 going to be [REDACTED]. Date, time is going to be 3-08 of 18, the time's going to be a little over,

20 past 15, so make it 1510 hours. We're here with officer Cassel-

21 A: Cassinelli.

22 Q: Cassinelli. And how do you say, what's your first name?

23 A: Stephen.

24 Q: Stephen.

25 A: Yeah. PH.

1 Q: And what's your star, Officer Cassinelli?

2 A: 1104.

3 Q: 1104. And what's your date of birth?

4 A: [REDACTED]

5 Q: And when did you come in the department?

6 A: Date of hire was, approximately, [REDACTED].

7 Q: Sounds more than approximate, but.

8 A: I'm trying to think, cuz I started like a couple days after the Academy and everything so.

9 Q: At Company D, we talked about that, right?

10 A: Yes.

11 Q: And how long you been there?

12 A: Approximately two and a half months.

13 Q: Two and a half, huh?

14 A: Two and a half, three months.

15 Q: And you're working swings, or, or nights?

16 A: Mids.

17 Q: Mids.

18 A: Uh-huh.

19 Q: So, 2017.

20 A: Yes.

21 Q: Class B's yesterday, or night in question?

22 A: Yes. Class B's.

23 Q: Did you have a partner?

24 A: I did. Officer Tupper.

25 Q: Do you know his star?

1 A: I want to say it's 4115.

2 Q: 4115?

3 A: 4115.

4 Q: What was your call sign that day?

5 A: 3 David 13 Edward.

6 Q: 3 Davie 13 Edward. I think I interviewed officer Cody, what was his, it's Cody  
7 something.

8 A: Sean Cody?

9 Q: Was he in your car too?

10 A: He was in the car.

11 Q: Okay. So, you had three guys-

12 A: We did-

13 Q: In the car. Okay. So, Sean Cody?

14 A: Yes.

15 Q: Right. Got ya. So, it was Tupper and Cody in the car?

16 A: Yes.

17 Q: And was your firearm a 226?

18 A: Yes.

19 Q: Were you using a extended range or a AR?

20 A: No.

21 Q: During this incident, I mean.

22 A: Oh, during the incident, yes.

23 Q: You were?

24 A: Me specifically?

25 Q: Yes.

1 A: No.

2 Q: No. Okay. So-

3 A: No. Just 226-

4 Q: You're just using your pistol?

5 A: Yes.

6 Q: And do you remember the car you were driving?

7 A: I want to say it was 067.

8 Q: 067. Marked car?

9 A: Yeah. It was a marked car.

10 Q: And were you driving or passenger?

11 A: I was driving.

12 Q: Driving. All right. So, it's a little goofy, the whole set up. What we'll do is this, we'll

13 have you introduce yourself. I'll introduce myself again, we'll go all the way around the room.

14 A: Okay.

15 Q: And then, basically, you're familiar with the DGO's on body worn cameras, right? Have

16 you reviewed it with your attorney?

17 A: I believe so, yes.

18 Q: Yes. So, you'll have an opportunity to kind of give a brief statement about what

19 happened.

20 A: Uh-huh.

21 Q: And then, you know, with your advice of counsel you can, you can determine as to

22 whether you want to watch body worn camera, your own or other people's body worn cameras,

23 does that make sense?

24 A: Yes.

25 Q: All right. So again, John Cagney, from SFPD Homicide. Star 341. Counsel?

1 AL: Andrew Law of the district attorney's office.

2 MH: Megan Hiyashi with district attorney's office, star 111.

3 TB: Tony Brass with Officer Cassinelli.

4 Q: And again, you know, why don't you give us just a brief statement, people call it  
5 different things. State of mind statement, or brief statement about the incident in question. Then  
6 consult with your attorney regarding that, body worn camera policy.

7 A: Sure. So on, on March 6<sup>th</sup>, 2018, at approximately 10:30 pm, while in a marked patrol  
8 vehicle and in full uniform. We were flagged down by a suspected male victim yelling, "pistola,  
9 pistola" while pointing in the direction of a person running and then jumping into the trunk of a  
10 vehicle. I conducted a felony stop on the vehicle in the area of 21<sup>st</sup> Street and Capp Street. The  
11 suspect did not comply with verbal commands given to him in both English and Spanish, to  
12 show both of his hands. Less lethal force was used, in the form of a beanbag gun with negative  
13 results. Shortly thereafter, as the suspect brought his left hand from concealment and extended  
14 his arm, I saw a muzzle flash. I returned fire in fear for my safety and the safety of other officers  
15 and the safety of citizens.

16 Q: Are you concluding your statement?

17 A: Yes.

18 Q: Okay. Counsel?

19 AL: For the record, the district, well, do you want to ask about the body worn?

20 Q: Oh, do, do you elect to, through the advice of counsel to look at your body worn camera  
21 or any other cameras pursuant the DGO regarding BWC?

22 A: Yes.

23 AL: And are you requesting to review more than your own body worn camera, with respect to  
24 this incident?

25 A: Yes.

1 AL: Okay. For the record, the district attorney disagrees with SFPD's interpretation of the  
2 body worn camera policy. The DA believes that the policy allows the subject officer to view  
3 only his body worn camera after providing an initial statement about what happened. Under  
4 SFPD's interpretation officers may review videos depicting events that were not even present,  
5 they were not even present to witness. Furthermore, the police departments interpretation affords  
6 officers a special privilege, specifically, access to evidence that other subjects and even  
7 eyewitnesses don't receive. The DA's working with SFPD to resolve this issue. Although the DA  
8 disagrees with how this interview will be proceeding, we are committed to independently  
9 investigating the incident and will be participating in (inaudible).

10 Q: Counsel?

11 TB: We're ready to go.

12 Q: Okay.

13 END OF INTERVIEW  
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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER CHIU**

**INTERVIEWED BY: SERGEANT BANWICK**

**DATED: MARCH 8, 2018 TIME: 1652 HOURS**

1 **Q: SERGEANT BANWICK**

2 **A: OFFICER CHIU**

3 **AL: ANDREW LAW**

4 **MY: MEGAN HIYASHI**

5 **TB: TONY BRASS, ATTORNEY**

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7  
8 Q: Okay, this, this interview is being done regards to case number [REDACTED].

9 Today's date is March 8<sup>th</sup>, 2018. It's approximately 1652 hours. We'll just go around and state  
10 our names, so it's on the record. I'm Sergeant Martin (Banwick) with the SFPD Homicide detail.

11 AL: Andrew Law of the district attorney's office.

12 MH: Megan Hiyashi, start number 111 with the district attorney's office.

13 TB: I'm Tony Brass with Officer Chiu.

14 Q: Okay. So, Officer Chiu I'm going to ask you just a few questions here and then I'll, I'll  
15 be reading you something. Just know that this is interview is being video taped and audio taped,  
16 okay? All right. Can you spell your full name for me, please?

17 A: Yes. First name, Loren, L-O-R-E-N.

18 Q: Okay.

19 A: Last name Chiu, C-H-I-U.

20 Q: Okay. What's your star number?

21 A: 1306.

22 Q: 1306. And what's your date of birth?

23 A: It's [REDACTED] [REDACTED] [REDACTED].

24 Q: Okay. What's your date of entry into the police department?

25 A: I believe that was [REDACTED], September.

1 Q: [REDACTED]?

2 A: Yeah.

3 Q: Okay. What's your current assignment with the police department?

4 A: I'm assigned to company D, mission station.

5 Q: Okay. And how long have you been assigned to company D?

6 A: Approximately one to one and a half years.

7 Q: And what shift do you work?

8 A: Swing shift.

9 Q: Swing. And what is the start time for swing shift?

10 A: 1600.

11 Q: Okay. And you work until what time?

12 A: 02.

13 Q: 02. Are you uniformed or plain clothes?

14 A: Uniform.

15 Q: Okay. Were you working with a part, a partner on the night of the incident?

16 A: Yes.

17 Q: Okay. Who was that?

18 A: That was Officer Gustilo.

19 Q: Can you spell his name?

20 A: G-U-S-T-I-L-O.

21 Q: Okay. And can you remember what your call sign was?

22 A: Yes. It was 3 David 15 David.

23 Q: All right. What is your issued firearm that you carry?

24 A: It's a Sig Sauer, P226.

25 Q: Okay. Okay. Do you carry a backup weapon or a secondary handgun?

1 A: Not on duty.

2 Q: Okay. The night of the incident, did you deploy with either a long rifle shotgun or  
3 something besides your service weapon?

4 A: No.

5 Q: Okay. Do you remember what vehicle you used the night of that incident?

6 A: I believe that was black and white 139.

7 Q: 139. Were you the driver or the passenger?

8 A: Passenger.

9 Q: Okay. Okay. I'm going to be, I'm going to be reading something. If you don't understand  
10 something, just stop me and let me know so I can explain it to you, okay.

11 A: Okay.

12 Q: All right. I'm Sergeant Martin Banwick with the San Francisco police department. The  
13 SFPD along with the SFDA and the SFDAI are conducting the, the criminal portion of the  
14 officer involved shooting investigation involving a member of the San Francisco police  
15 department. The incident occurred on March 6<sup>th</sup>, at approximately 1030 hours in the City and  
16 County of San Francisco. The following interview will be both audio and video recorded. I'd like  
17 to ask you some questions regarding the incident, but before I do, I want you to know some  
18 things: you're not under arrest. You do not have to answer any of my questions. Do you  
19 understand?

20 A: Yes.

21 Q: You can stop this, stop answering any questions and are free to leave at any time, do you  
22 understand?

23 A: Yes.

24 Q: If you, or, have you been ordered to give a statement regarding this incident by anyone?

25 A: No.

1 Q: Okay. Have you been compelled by anyone to give a statement?

2 A: No.

3 Q: Is this a free and voluntary statement?

4 A: Yes.

5 Q: Okay. This is the video admonishment. In this case, there's video evidence that you will  
6 have, that you will have an opportunity to view after you've given your initial statement. Video  
7 evidence has limitations and may depict the event differently than you recall. It may not depict  
8 all of the events as seen or heard by you. Video has a limited field of view and may not capture  
9 events normally seen by the human eye. The frame rate of video may limit the camera's ability to  
10 capture movements normally seen by the human eye. Lighting as seen in the video may be  
11 different than what has, than was seen by the human eye. Videos are a two dimensional medium  
12 and may not capture depth, distance or positional orientation as well as the human eye.

13 Remember, the video evidence is intended to assist your memory and ensure that your initial  
14 statement explains your state of mind at the time of the incident. Prior to reviewing, viewing the  
15 video I may ask you basic biographical information that I would like you to provide a statement  
16 about your actions regarding this incident to include, what drew your attention to the area. The  
17 actions that required you to use force and then your response and why. Okay. So, I've gotten the  
18 biographical information from you.

19 TB: Do you want to give your initial statement?

20 A: Yes. On March 6<sup>th</sup>, 2018 at approximately 10:30 PM, while in a marked patrol vehicle in  
21 full police uniform, my partner and I responded to the area of 21<sup>st</sup> and Capp Street to assist a  
22 Mission police unit who was flagged down regarding a robbery with a firearm. Upon arrival, I  
23 observed an individual in the rear trunk which was slightly ajar of the vehicle. The suspect in the  
24 trunk did not comply with orders given to him in both English and Spanish to show both of his  
25 hands. Leth, less lethal force in the form of a beanbag gun was used without success. Shortly

1 after I saw the suspect bring his left hand out of, from concealment. Saw gun powder smoke  
2 coming from his hand and heard a gunshot. I returned fire in fear of my safety and the safety of  
3 other officers on scene.

4 Q: Okay. I can get you, are, are you-

5 TB: I'm going to hang on to it, yeah.

6 Q: Okay.

7 TB: Yeah.

8 Q: Do you have something-

9 AL: Didn't ask about the body worn cameras.

10 Q: Do, do you want to take a look at your body worn camera prior giving an in-depth  
11 interview?

12 A: Yes.

13 AL: And about other-

14 Q: Yeah. You have the ability to look at, at other peoples-

15 A: Yes.

16 Q: Body worn camera also.

17 AL: So, the district attorney disagrees with SFPD's interpretation of the body worn camera  
18 policy. The district attorney believes that the policy allows the subject officer to see only his  
19 body worn camera after providing an initial statement about what happened. Under SFPD's  
20 interpretation officers may review videos depicting events that were not even present, they were  
21 not even present to witness. Furthermore, the police departments interpretation affords officers a  
22 special privilege. Specifically, access to evidence that other subjects and even eyewitnesses don't  
23 receive. The DA is working with SFPD to resolve this issue. Although the DA disagrees with  
24 how this interview will be proceeding, we are committed to independently investigating the  
25 incident and will be participating in the interview.

1 Q: Okay. So, with that read, you want to look at the body worn camera?

2 A: Yes.

3 Q: Okay. So, what I'll do is I'll, I'll stop the recording now. We'll go do that and we'll come  
4 back.

5 A: Okay.

6 Q: Okay. The time is approximately 1704 hours.

7 END OF INTERVIEW

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I, the undersigned, hereby certify as follows:

That the foregoing transcript, page 1 through and including 8, to the best of my knowledge and belief is a full, complete and true transcription of certain tape recordings as described below to the best of my ability to hear, understand, identify speakers and transcribe said recordings, with the exception of any portion indicated as (inaudible), and words contained in parentheses, which indicate the best guess. (Any errors, changes or omissions should be brought to my attention for correction.)

That said tape recordings were furnished to CTI Transcription Services, 79 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability, and requested to be transcribed.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August 2019.

/s/ Kathy Kay  
KATHY KAY  
By Electronic Mail



**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER GUSTILLO**

**INTERVIEWED BY:       SERGEANT BANWICK**

**DATED:                    MARCH 8, 2018   TIME: 1456 HOURS**

1 Q: SERGEANT BANWICK

2 A: OFFICER GUSTILO

3 YS: YORK SUDA

4 AC: ANGIE CHOW

5 DN: DON NOBLES

6  
7  
8 Q: Okay before we get started I just want you to know that this is being audio recorded and  
9 video recorded.

10 A: Yes sir.

11 Q: So just go around, we'll tell everybody who we are so you can know who you're dealing  
12 with. I'm Sergeant Martin Banwick with the San Francisco Homicide Detail.

13 YS: Inspector York Suda with the DA's office.

14 AC: I'm Angie Chow and I am assistant district attorney.

15 DN: Don Nobles POA Attorney.

16 Q: Okay. So this is in regards to case number [REDACTED] Today's date is March 8, 2016  
17 and it's approximately 1456 hours. Could you give me your name please?

18 A: Juan Daniel.

19 Q: Can you spell the last please?

20 A: Daniels, actually I have one.

21 Q: One name.

22 A: I have one name it's Juan Daniel.

23 Q: Okay just spell it for me then.

24 A: I'm sorry. Juan and then – I have two first names I should say. It's totally confusing

25 Q: Okay.

1 A: And then last name is Gustilo.  
2 Q: Why don't we just spell it all right.  
3 A: Sorry, J-u-a-n you had it right.  
4 Q: Uh-huh.  
5 A: And then it's space Daniel, last of Gustilo.  
6 Q: Can you spell that?  
7 A: G-u-s  
8 Q: Uh-huh.  
9 A: T-i-l-o  
10 Q: All right and what's your star number?  
11 A: 1469.  
12 Q: Okay and your date of birth?  
13 A: [REDACTED].  
14 Q: Okay. And what was your date of entry into the police department?  
15 A: Is that my, the date I graduated from the academy?  
16 Q: Your hire date?  
17 A: My hire date I believe was June, I'm sorry May [REDACTED]  
18 Q: [REDACTED].  
19 A: [REDACTED], I'm sorry [REDACTED]  
20 Q: [REDACTED] all right.  
21 A: Correct.  
22 Q: And what's your assignment?  
23 A: I'm at Mission Station Company D  
24 Q: Okay. All right how long have you been at your current assignment?  
25 A: I've been here since July of last year. July -

1 Q: Is that '17.  
2 A: Approximately July 17th, 2017 I'm sorry  
3 Q: What shift do you work?  
4 A: I work swings.  
5 Q: And what's the hours that you work for swings?  
6 A: 1600 to 02.  
7 Q: Okay. Do you wear uniform or plain clothes?  
8 A: Uniform sir.  
9 Q: Okay. Were you working with a partner?  
10 A: Yes, I was.  
11 Q: Who is your partner?  
12 A: Officer Loren, L-o-r-e-n last is Chiu, C-h-i-u  
13 Q: C-h-i-u.  
14 A: Star is 1306.  
15 Q: Do you know what your call sign was that night?  
16 A: We were the 3 David 15 David.  
17 Q: The type of firearm that you carry? You carry a Sig Sauer?  
18 A: Sig Sauer 226.  
19 Q: 226. Do you carry a secondary firearm or a backup gun?  
20 A: I do not sir.  
21 Q: Okay. On the night of the incident did you deploy with a long rifle or shot gun or ERIW?  
22 A: No.  
23 Q: Okay. Do you remember what vehicle you used on the night of the incident?  
24 A: I was the driver of 139.  
25

1 Q: Okay. I'm going to read you a statement. If you have any questions here ask me about  
2 okay?

3 A: Yes, sir.

4 Q: I'm Sergeant Martin Banwick of the San Francisco Police Department. The SFPD along  
5 with the SFDA and the SFDAI are conducting a criminal portion of an officer involved shooting  
6 investigation involving a member employed by San Francisco Police Department. This incident  
7 occurred on March 6, at approximately 2230 hours in the City and County of San Francisco. The  
8 following interview will be both audio and video recorded. I'd like to ask you some questions  
9 regarding this incident, but before I do I want you to know these following things. You're not  
10 under arrest. You do not have to give an answer to my questions. Do you understand?

11 A: Yes sir.

12 Q: You can stop answering any questions and are free to leave at any time. Do you  
13 understand?

14 A: Yes.

15 Q: Have you been ordered to give a statement regarding this incident any anybody?

16 A: No.

17 Q: Have you been compelled by anyone to give a statement?

18 A: No.

19 Q: Is this a free and voluntary statement?

20 A: Yes, it is.

21 Q: Okay this is the video admonishment. In this case there is video evidence that you will  
22 have the opportunity to view after you have given your initial statement. Video evidence has  
23 limitations and may not depict the events, your recall and may not depict all of the events as  
24 seen or heard by you. Video has a limited field of view and may not capture events normally  
25 seen by the human eye. The frame rate of video may limit the camera's ability to capture

1 movements normally seen by the human eye. Lighting, as seen in the video may be different than  
2 what has, than was seen by the human eye. Videos are a two dimensional medium and may not  
3 capture depth, distance, or positional orientation as well as the human eye. Remember, the video  
4 evidence is intended to assist you in your memory and ensure that your initial statement explains  
5 your state of mind at the time of the incident. Prior to viewing the video I may ask you basic  
6 biographical information that I would like you to provide a statement about your actions  
7 regarding this incident to include, what drew your attention to the area. The actions that required  
8 you to use force and then your response and why.

9 AC: So, the district attorney disagrees with San Francisco Police Department's interpretation  
10 of the body worn camera policy. The DS believes that the policy allows the subject officer to see  
11 only his or her own body worn camera after providing an initial statement about what happened.  
12 Under SFPD's interpretation, officers may review videos depicting events that were not even  
13 present to witness. Furthermore, the police departments interpretation affords officers a special  
14 privilege. Specifically, access to evidence that other subjects and even eyewitnesses do not  
15 receive. The DA is working with SFPD to resolve this issue. Although the DA disagrees with  
16 how this interview will be proceeding, we are committed to independently investigating the  
17 incident and will be participating in the interview.

18 Q: Okay. I will be reading the written statement. So the initial statement by Officer Gustilo.  
19 On March 6, at approximately 10:30, another unit broadcast that they were flagged down by a  
20 victim who was robbed with a firearm in the area of 21<sup>st</sup> Street and Capp. Upon arriving at the  
21 stated location, I observed a suspect in an open trunk of a double-parked black Honda. Suspect  
22 did not comply with orders given to him in English and Spanish to show both of his hands. Less  
23 lethal force in the form of a bean bag gun was used without success. Shortly thereafter, as the  
24 suspect brought his left hand from concealment with what appeared to be a firearm, fearing for  
25 my safety and the safety of the officers on scene, I discharged my firearm. Okay. Sign that. Did

1 you wanna review your video?

2 A: I would.

3 Q: Okay I'm gonna stop the recording.

4 AL: Time

5 Q: It is 1504 hours.

6 END OF INTERVIEW

1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 8, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August  
14 2019.

15  
16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
19  
20  
21  
22  
23  
24  
25



**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER CARROLL**

**INTERVIEWED BY:       SERGEANT WATTS**

**DATED:                   UNKNOWN**

1 **Q: SERGEANT WATTS**

2 **A: OFFICER CARROLL**

3 **DN: ATTORNEY DON NOBLES**

4 **YS: (YORK SUDA)**

5 **AC: ANGIE CHOW**

7 Q: All right Corbyn you got a chance to review the footage-

8 A: Yes, sir.

9 Q: Why don't you just start out; you came on shift. Talk about from when you came on the  
10 shift. Just, lead us up to when you got the call to respond to 21<sup>st</sup> and Capp, okay?

11 A: Yeah. Yeah.

12 Q: Sure.

13 A: Started shift. Normal, grab keys, rifle, beanbag gun, load the car. I think we went to three  
14 calls. Most exciting one was, paramedic got kicked in the chest or something like that, so we  
15 basically went, went to St. Luke's and just sat on him the whole time. Nothing too exciting. Cut  
16 an 849(b) and a citation for the 243(b)(4), I can't remember what the charge is. Nothing else  
17 really stuck out after that. Did just kind of some normal 915 homeless calls. Had people – ask  
18 them to move off the street or something like that.

19 Q: So, it was a homeless call, right? These sorts-

20 A: Yeah, 915 homeless calls, like just, they want move on the street, so we just go kind of  
21 talk to them, explain, and they usually just move along. Went and got a burrito. Ate the burrito.  
22 Three quarters into my burrito, my partners listening to a critical incident going on in Taraval. I  
23 hear code 33 on my radio, which for us is like the, stop talking, everybody clear the air kind of  
24 thing. Russack went back to A4 which is our radio station for Pic. Heard Cass go over the radio,  
25 saying he's following a 1030 or a suspected 1030, felony vehicle for a robbery. Or, I

1 presumptive or not at that point, I didn't know. Either way, robbery and he wanted more units.  
2 So, bolted down the stairs. Got out to the car, heard Smets who is usually my partner yelling,  
3 wait up, wait up. Smets opened the back seat, or the, the passenger side back door. Jumped the  
4 car. Pretty sure I was driving before his door was even closed. Bottomed out, went wrong way  
5 down the alley next to the Elbow Room. Hooked a right, after that went down to 19<sup>th</sup>, hooked a  
6 left on 19<sup>th</sup>, hit to Capp. Saw one, two police cars going that time. Hooked a right onto Capp,  
7 landing us at 21<sup>st</sup>. Put the car in park, 3<sup>rd</sup> car on the scene. Parked on I think like the righter side  
8 of where the vehicles were stacked. Exited the vehicle, drew out my weapon. Had it on low  
9 ready walking up. (inaudible) procedure as far as a felony vehicle stop. Started listening to Cass  
10 give commands to our suspects. Was arrest team with Smets on first guy. Helped Smets halfway  
11 back to one of the cars. After we handcuffed him, and I went back to the arrest team for second  
12 guy in the trunk, noticed that there was people standing behind the car who were not involved,  
13 who I think for a second thought they were involved. Told them to move. Make sure I know  
14 where Russack was and he was to my left behind the red pickup truck I believe. Made sure he  
15 was good and see if he could see what was going on. I could tell there was somebody else in the  
16 back seats. Trying to see if he could get a better view. At that point our suspect was acting just  
17 not, not following directions given. He obviously was fiddling with something. Show us his right  
18 hand, but he wasn't exiting the trunk of the vehicle. He wasn't fully shutting the trunk, but he  
19 wasn't letting it go fully open. I can't even honestly tell you how long of a period it was. It  
20 seemed like we spent a good 5 plus minutes trying strictly to convince him to exit the vehicle.  
21 That point we have normal civilians in the immediate area. We have multiple cops on the scene.  
22 We have Spanish translation and English giving orders. Santana (attacks) him with the beanbag  
23 gun. Doesn't seem to do a whole lot. It was a good hit, upper body, shoulder, rib cage area.  
24 Continue to give more commands. Seemed like he was trying to like amp himself up to me,  
25 personally. Like getting him ready to do something. He just was you know moving his body real

1 funny and like his arms and just kind of, I don't know. I, I'm assuming getting himself jacked up.  
2 And then, at that point I see what seemed to be an object similar to that of a handgun. I hear a  
3 declaration is what I took it as, saying, "fuck you" and one muzzle flash. At that point, due to the  
4 safety of civilians around the area, myself and my other colleagues I fired 13 rounds. Cleared my  
5 magazine, reloaded and recharged my weapon and continued to point at that point. Started,  
6 shouted red light afterwards, cuz there's usually like a pause symbol for the beanbag. But I  
7 figured we, at that point, shot enough rounds to the point where we were sufficient enough to re-  
8 evaluate our scene. Everybody stopped firing. Then reorganized. Called for other units. I'm sure  
9 Sergeants and Lieutenants were notified at that point too. I wasn't really aware, made sure all my  
10 other officers were clear, no one else was hit or shot I should say. They grabbed the shields,  
11 made the approach, I hoped in behind Nagai who was behind officer Smets. We then placed  
12 handcuffs onto our subject who was in the trunk. Cuffed him, flipped him over, Smets checked  
13 for a pulse. He said there was no pulse, I started CPR until I switched out when they were putting  
14 on the Halo patch.

15 Q: I'm sorry, which officer was checking for a pulse?

16 A: Officer Smets.

17 Q: Thank you. Do you have any prior military experience?

18 A: No. I do not.

19 Q: Do you know the difference between cover and concealment?

20 A: I believe I do. Concealment, I would figure would be actually hiding. Cover would be  
21 something that, you know like a fire hydrant where I can see that, a person could see that I'm  
22 behind a fire hydrant, but there would still be a point to where you could potentially cause  
23 damage to my body.

24 Q: So, you arrive on the scene and you said you were the second or third unit?

25 A: Third unit.

1 Q: Third unit on the scene, okay. You get out the car, you're low ready, you take a knee and  
2 you cover.

3 A: No. I was pretty much up in front.

4 Q: And what did you see from the vehicle when you, when you arrived on scene? Were  
5 commands already being given?

6 A: Commands were already being given to the driver. Driver was stepping out of the vehicle  
7 as I was running up, which is why I drew my weapon at that point. I couldn't see his hands  
8 clearly. I think it was just prior to him raising his hands, which is why at that point I believe that  
9 there was enough firearms being pointed, so I holstered my weapon and I pulled out my  
10 handcuffs and decided to be arrest team.

11 Q: So, the driver comes back, you arrest the driver and then what happened?

12 A: Walk him back, I don't know, 20 yards, 15 yards with Smets. I let Smets throw him in the  
13 car. I didn't see anybody else coming out for arrest team, so then I went up to, I can't even  
14 remember who I grabbed cuffs from, but I, I went up to somebody else. I grabbed their cuffs and  
15 again was arrest team at that point.

16 Q: How are you feeling at that time?

17 A: Calm.

18 Q: Okay. And then you can see another person in the trunk?

19 A: Correct.

20 Q: Okay. Could you see his hands, both hands?

21 A: No. One.

22 Q: Just one hand, which hand?

23 A: Right hand.

24 Q: So, officers are giving commands in both English and Spanish?

25 A: Correct.

1 Q: And was the, was the person in the trunk complying with those commands?

2 A: No.

3 Q: What were you thinking this time cuz he's not giving, he's not responding to commands?

4 A: At that point just with the call initially being for a robbery with a gun, like we got more  
5 information as we're driving to the call, cuz my body cam is buffering, you can't really hear us  
6 talking about it. But like there's definitely like, we were aware that there was at least a gun seen.  
7 At that point, I figured the likelihood that he had a gun, probably solid, the likelihood that  
8 anything was going to come from it, probably not high.

9 Q: And so the ERW was deployed and you said it didn't do any good. And then what were  
10 you thinking?

11 A: That point I was thinking, ERIW is deployed; he's still not following directions. He  
12 hasn't got out of the car yet, so, I'm assuming at that point he definitely has some type of  
13 weapon in the vehicle with him. He knows this routine, presumably because I feel like any other  
14 person that has never gone through this would have definitely given up at this point. Like just  
15 followed commands and just turned into a robot basically. So, at this point, I, I then redrew out  
16 my firearm because I believed there to be a threat that could be imminent.

17 Q: And then, you mentioned that the suspect said, "fuck you."

18 A: Correct.

19 Q: Did you hear that?

20 A: Yes, I did.

21 Q: Clearly?

22 A: Clearly.

23 Q: And when he said, fuck you, then what were you thinking?

24 A: 100 percent thought he was going to go for it.

25 Q: Explain.

1 A: He was going to shoot-

2 Q: That he was going to shoot.

3 A: 100 percent. He's either going to get out of the car and charge or he was going to, he was  
4 going to do something.

5 Q: And were you behind any cover or concealment at the time?

6 A: No.

7 Q: And then what happened after, after that?

8 A: Immediately saw an object in his hand which I believe to be a firearm-

9 Q: Okay.

10 A: And then saw a muzzle flash seconds after that. If not less than a second after that. I don't  
11 know, I can't time it but after seeing that, then I fired 13 times.

12 Q: And why was that?

13 A: I shot until the threat was over. I perceived that whole time there to be a threat.

14 Q: Did you think that the firearm that the suspect had was pointed towards you?

15 A: Couldn't tell you. It was enough that I saw the muzzle flash. So, if I was able to see the  
16 muzzle flash, it was in my general direction.

17 Q: Is this the first time someone's ever fired a weapon at you?

18 A: Yes.

19 Q: Is it the first time you've ever seen a suspect ever fire a weapon at the police?

20 A: No.

21 Q: Tell me about the first time you saw, saw-

22 A: The first time he ended up giving up the gun. But he had it, he had it out. It was a  
23 shooting in the Richmond where they shot, somebody shot at a vehicle. We responded to that as  
24 backup. And then another time in the Taraval, someone exited their house holding a rifle out of  
25 the building and immediately dropped it, as soon as we drew down on him.

1 Q: And was this the first time someone has ever fired a gun-

2 A: Directly at me, yes.

3 Q: Okay. And how were feeling when that gun was fired?

4 A: Scared for people around me. Fear for their safety.

5 Q: I noticed in the video when the driver of the vehicle's brought back that you said, you  
6 saw a female in back of the vehicle?

7 A: Correct.

8 Q: Who were you telling that to?

9 A: Just saying it, well, I mean, I wanted to confirm, cuz I mean, I, I confirmed it with  
10 Russack. Making sure that, I don't know, maybe I was seeing something. I don't know, there  
11 was a bag in the backseat, or, like I don't know. Whatever people could keep in their cars. And  
12 then I was just saying in general for everybody to know that there was a X or a female in the  
13 back seat.

14 Q: How'd you know it was a female?

15 A: I assumed. By long hair.

16 Q: Okay. Do you try to give any commands to the female in the back seat, does anybody try  
17 to give commands to her? Or were people just focused on the suspect in the back of the truck?

18 A: Not that I'm aware of, no. That's kind of why I was saying it, just so maybe we didn't get  
19 so tunneled then on. But at the same time, at that point, our male subject was posing way more of  
20 a threat.

21 Q: Sure. You said you fired 13 rounds, reloaded.

22 A: Yup.

23 Q: And then, revaluated the scene?

24 A: Correct.

25 Q: And then assisted the other officers with the arrest of the suspect in the back of the trunk?



1 A: Correct. And I did CPR.

2 Q: Did the suspect respond to CPR?

3 A: As in?

4 Q: When you're giving CPR-

5 A: I, I couldn't tell if he had a heart rate again or anything like that. There was no grunting  
6 or groaning if that's what you mean. But, regardless of that I would keep going until I got  
7 switched out.

8 Q: And what about the female, what happened to her when you guys approached the  
9 vehicle?

10 A: She was screaming.

11 Q: Do you remember what happened?

12 A: She was pulled out of the vehicle by another unit. I think she saw the suspect on the  
13 ground and continued to scream even louder at, at, she was arrested that's all I really know. I  
14 wasn't paying a whole lot of attention to be honest.

15 Q: York?

16 YS: In regards to your, how you carry your weapon and your magazines.

17 A: Correct-

18 YS: Do you always carry your ammo topped off? Or your magazines topped off?

19 A: Oh yeah, they're always full. I check them probably two times a shift.

20 YS: So, 12, 12 and 12 and 12 and plus one in the chamber?

21 A: One in the chamber. Barney bullet and then 12, 12 and 12, yes, sir.

22 YS: And you said you checked out a patrol rifle?

23 A: I did not check out a patrol rifle, Smith-Russack checked out a patrol rifle. I'm not patrol  
24 rifle trained, sir.

1 YS: Okay. If you know and you might not. Does SFPD policy, do you, does it carry, does it  
2 have a 20-round magazine, do you know anything-

3 A: I, I'm assuming it is a 20-round magazine. I do not know for a fact cuz like I said, I have  
4 not been trained. I know how to fire an AR. I'm totally capable and competent in it, but as far as  
5 SFPD standards, I do not know.

6 YS: Okay. So then at the end of this incident you turned over your firearm to?

7 A: I gave a new, or I gave my firearm to -- I can't even remember what officer. Super nice  
8 guy from the range. I received my new Sig 226R, loaded it, chambered a round, de-cocked it,  
9 undid my magazine, put in my new 12<sup>th</sup> round. Loaded it and then put two new magazines in my  
10 belt.

11 YS: So, the equipment you originally had your, your magazine that's in the gun, the two  
12 magazines on your belt, and the gun you turned over to the range staff, or did you keep your  
13 magazines?

14 A: I did not keep my magazines and one magazine I left at the scene.

15 YS: Okay. Is that the empty one?

16 A: That's the empty one.

17 YS: The one in the gun should be 11 plus one and the chamber?

18 A: It's one currently in the gun, should be 11 plus one in the chamber.

19 YS: And then you have one full extra magazine that-

20 A: Correct.

21 YS: Turned over to the firearms people.

22 A: Correct. Yes, sir.

23 AC: You mentioned that you had seen the female in the car, you saw long hair, how was she  
24 positioned in the car?

25 A: Back right seat.

1 AC: Was she just sitting full up, right up?

2 A: Like side cocked maybe onto her left hip.

3 AC: Okay.

4 A: Like left, like, she was like kind of trying see, kind of thing, but I mean she could've been  
5 doing whatever. It was just kind of a presumption that as far as what I was going off of. I  
6 wouldn't like bet money on it or anything like that.

7 AC: Okay. So, she was seated in the rear passenger seat and she appeared to be looking out  
8 the back window to see what was going on?

9 A: I believe, yes.

10 AC: Did you ever talk to her or ever say anything?

11 A: As far as she screaming, then yes, I did after the shots were fired. But prior to that, no I  
12 wasn't 100 percent sure that's why I was double checking with Russack and then I mean, I'd  
13 rather be wrong and have it a bag be moving or something like that and say that there's someone  
14 in the backseat and look like a jackass like that. Rather than there actually be a person and they  
15 get injured when they didn't need to be.

16 AC: Did anyone confirm that, at the time, not afterwards, but at the time, did anyone confirm  
17 yeah, that's, there's someone in the back seat, there's a woman in the back seat?

18 A: I believe Russack helped me confirm that, yes.

19 AC: And that was prior to shots being fired?

20 A: Correct.

21 AC: You had handcuffed, arrested the driver, did he say anything to you at all?

22 A: A lot of like, what the fucks, and what's going on, and for, kind of just freaking out I  
23 guess you could say.

24 AC: And is that, when was he saying all of this?

25 A: During the arresting after the arresting.

1 AC: So, this is prior to shots being fired?

2 A: Yeah. Oh, yeah, definitely prior to shots being fired, yeah.

3 AC: Did you hear the guy in the trunk, the suspect in the trunk, did you hear him say  
4 anything?

5 A: The only-

6 AC: As you were sort of getting up and arresting the driver and coming back?

7 A: No. At that point, I, I guess looking back at it I should've been a little bit more concerned  
8 about how close I was, but at that point I figured he was staying in there cuz no directions have  
9 been ordered to him yet. And he would be a very simple, compliant person, just like the driver  
10 was.

11 AC: So your assumption was that the, the guy in back of the trunk was going to be compliant?

12 A: Absolutely.

13 AC: Okay. At what point did you realize this is, things had pretty much changed?

14 A: Ten seconds after the beanbag round, beanbag round was hit on the body.

15 AC: Who was by you where you were standing? Which officers?

16 A: I had Russack on my left. I had pretty much everybody else was to my right that I'm  
17 aware of. Cassinelli was to my right for sure. His partner was on the other side of his car,  
18 Tupper. I could see the list of everybody there. O'Rourke was on the other side. Chiu was by me;  
19 he was to my right. I think a little behind me. Gustilo was also by me and behind me. I think  
20 Gustilo, yeah, Gustilo is who I took, I took his cuffs from him. So they would be behind me on  
21 my right-hand side.

22 AC: Were they behind, were they out in the open like you or were they (inaudible)

23 A: I think they were behind a car I think. Well like kind of behind a car. Just like due to  
24 angle maybe, but again, I couldn't tell you cuz they were behind me.

25 AC: Okay. How about Smith-Russack, the, what was he-

1 A: Smith-Russack was behind a car, the red Ford pickup I think is what it was.  
2 AC: So as far, was anybody else out in the open like you, or?  
3 A: Yeah, no. I don't think so.  
4 AC: And so, and the reason why I'm asking this is cuz you mentioned that you were very  
5 much scared for other people's safety-  
6 A: Uh-huh.  
7 AC: Were you worried about your own safety as well?  
8 A: It currently wasn't my job to worry about my own safety at that point.  
9 AC: What do you mean by that?  
10 A: I'm just trying to make sure everybody gets home.  
11 AC: Did you recognize the suspect in the back of the car? The trunk?  
12 A: Like as a known person?  
13 AC: Like have you ever seen him before?  
14 A: No. Couldn't tell you.  
15 AC: And how about the driver, have you ever seen him-  
16 A: Never seen him before.  
17 AC: And then you saw the girl afterwards, I think.  
18 A: I couldn't even tell you what she looks like to really be honest with you.  
19 AC: Okay. So she's not someone you would ever recognize?  
20 A: I couldn't recognize her right now.  
21 AC: Okay.  
22 YS: Is that because you didn't deal with her?  
23 A: I, yeah, I just, I, yeah. I didn't really look at the suspects face to be 100 percent honest  
24 with you.  
25

1 AC: During that break that we had taken, you had a chance to look at your own body worn  
2 camera?

3 A: Correct.

4 AC: Did you look at any other video?

5 A: No. I did not.

6 AC: Okay. And have you seen any of the videos that are available on media?

7 A: Yes, I have.

8 AC: Okay. And how many videos have you seen?

9 A: One.

10 AC: Okay. Can you describe for us what you saw?

11 A: It was from the opposite angle of me. It was on like KTVU channel 4, whatever it was. I  
12 like watched 5 seconds of it and I just left the room and went and continued to cook dinner. I  
13 mostly just heard the shots. I don't really need to see over again, I know what I saw.

14 AC: And the account that you have just provided, was it any way effected by any of the videos  
15 that you see in your body worn camera and the 5 seconds of the KTVU video?

16 A: No.

17 AC: Okay. In any of the video that you see, did it sort of differ from your recollection at all,  
18 or?

19 A: No.

20 AC: No more questions.

21 Q: Diagram Corbyn, not to scale and not accurate. This is Capp street, east sidewalk, west  
22 sidewalk, 21<sup>st</sup>, 22<sup>nd</sup>, the suspect vehicle. Just put an X where you, where you think you stood  
23 during this incident. Just put your initials next to it, please.

24 YS: When he's done signing it, could you indicate like just where you think Castinello was,  
25 just as a frame of reference.

1 A: Who's Castinello?

2 YS: I mean, Cass, you said, he said-

3 A: Oh, Cassinelli? Oh yeah, sorry, Cass. My bad. I'm sorry, yeah, we do the whole, we were  
4 classmates. Cass's door was right here. So he'd be there. And Tupper was right there. And he's  
5 be there.

6 YS: Like put a C and T or something.

7 A: Yeah. So, Steve Cassinelli and I can't remember Tups first name, Tup-

8 YS: And then you were running with Smets and-

9 A: Yeah.

10 YS: Ru-

11 A: Russack.

12 YS: Sorry. Can you just generally where they went.

13 A: I think this car was a little farther up.

14 YS: Okay.

15 Q: It's not accurate.

16 A: I put Ari Russack right there, I have no clue where Smets went.

17 YS: Okay.

18 A: No frickin' clue.

19 YS: So, do you think, or do you recall if you two, you and, and Russack were the most-

20 A: 100 percent Russack was the farthest to the left. 100 percent.

21 YS: Okay.

22 A: Besides that, I don't know. This makes it look like I was-

23 YS: So, you're asking him cuz he's, if, if I'm correct, you guys have the sounds, looks like the  
24 best angle.

25 A: Well, I mean-

1 YS: Into the side of the car (inaudible)-

2 A: I mean, it kind of sounds bad but I was like he can, if I walk up over here, I'm -- I'm  
3 pretty open right there to begin with. But like I'm, I'm, I have my firearm out, like I know the  
4 risk I'm taking as far as that. But like Russack's like junior to me and that's like my partner, so I  
5 especially get him home. So, he can hide behind the truck and he can hide behind the engine  
6 block and at that point, I'm pretty sure he could've got a pretty solid view. I don't know how he  
7 got the view. I don't know if he did that, but it was safer for him to go check than it was for me  
8 to get five feet away from this guy who I'm pretty sure had a gun, but I wasn't planning on him  
9 using it.

10 YS: So, your statement earlier that you said it was your job to get everybody else home, does  
11 that mean that your basically excepting a little bit of higher risk, but (inaudible) there and letting  
12 your, having your junior partner have the cover?

13 A: Yeah. I guess so.

14 YS: Dangerous position.

15 A: I don't believe so.

16 YS: Cuz you were ready.

17 A: I mean, I felt safe, but.

18 YS: Okay.

19 Q: That's it.

20 DN: I have nothing.

21 Q: All right. 1430 hours.

22 END OF INTERVIEW



1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 17, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August  
14 2019.

15  
16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
19  
20  
21  
22  
23  
24  
25

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER CASSINELLI**

**INTERVIEWED BY:       SERGEANT CAGNEY**

**DATED:                    MARCH 8, 2018**

1 **Q: SERGEANT CAGNEY**

2 **A: OFFICER CASSINELLI**

3 **AL: ANDREW LAW**

4 **MY: MEGAN HIYASHI**

5 **TB: TONY BRASS**

7 Q: Now I think you got that right; this is you?

8 AL: Yep, that's me.

9 Q: So you're good?

10 AL: That is me. I left a lot of my stuff someplace, but.

11 Q: So, Officer Cassinelli, what we're gonna do is, this is a diagram. I keep making jokes  
12 about it but essentially you can see it's not exactly professionally done but at least it'll give you  
13 some kind of, you know, some concept of, of what we're talking about.

14 A: Yeah definitely. Uh-hum.

15 Q: Have you had a chance to take a look at your body worn camera?

16 A: Yes.

17 Q: Did you have an opportunity to view any other body worn cameras?

18 A: Yes.

19 Q: And who was that?

20 A: Officer Nagai.

21 Q: Officer Nagai? And did you take a look at any media? It's not a big deal but anything on  
22 TV, channel 5, KTVU?

23 A: I was watching the news and I saw the incident that they put briefly the morning after.

24 Q: So, so you've seen some media portrayals?

25 A: Yes.

1 Q: And since we , you know, started the tapes again, we're just gonna go around the room  
2 one more time if that's okay.

3 A: Okay.

4 Q: [REDACTED], Cagney, SFPD Homicide.

5 MH: Inspector Megan Hiyashi, DA's office.

6 Q: Counsel?

7 AL: Andrew Law District Attorney's Office.

8 Q: Counsel?

9 TB: Tony Brass on behalf of Officer Cassinelli.

10 Q: Perfect. And Officer Cassinelli, this is, this is how I like to do it. I've done a lot of these  
11 so, I think what works good, is just to go ahead and give kind of like a narrative in your own  
12 words. No questions from us. Just kind of tell it in your own words. What you think is important,  
13 you know, what you, you did, what you thought you should have done. You know, the whole,  
14 you know enchilada essentially.

15 A: Uh-hum.

16 Q: And then we'll probably break it down with some more specific questions when we go  
17 around the room. Does that make sense?

18 A: Yes.

19 Q: Alright, cool, so why don't you just take us through it, the best of your, your ability.

20 A: Okay my partner, Officer Tupper and I and Officer Cody was in the back seat. We were  
21 just on patrol in the area of 21<sup>st</sup> and Capp. We were driving westbound, I believe, 21<sup>st</sup>  
22 approaching Capp, when I saw a couple people in the intersection they were flagging us down.  
23 And I mean, they were pretty frantic. They were pointing at someone who was running away. So  
24 we drive up to see what's going on. And then multiple people started saying you know, while  
25 pointing at the guy who's running, "pistola, pistola." So not having really any further info than

1 that, you know, we continue to follow the guy that's running who they were pointing at. We see  
2 him run on the sidewalk then jump into the, what seemed like in a waiting vehicle with the trunk  
3 already opened. As soon as he hops in the trunk, the car starts to drive a little bit. He tries to  
4 close the trunk. I immediately activate my overhead lights and sirens. The vehicle does kind of  
5 veer to the right and eventually stop. Meanwhile the suspect's still trying to close the trunk and  
6 the driver is about to get out of the car. And then we pretty much conduct a felony stop on him. I  
7 put out the basic info kinda what we have. I think I put it out as 20, 28<sup>th</sup> and Capp rather than 21<sup>st</sup>  
8 where we actually were but. At that point, all we had was pretty much someone saying, this  
9 guy's running with a gun so we didn't have a whole lot the potential suspect with the gun was  
10 gonna be the one in the trunk. And at this point, you know, my partner and I are out of the car,  
11 our guns pointed at both individuals. I'm trying to give commands to the driver. He's already  
12 half-way out of the car. I try to give multiple commands to the driver and the individual in the  
13 trunk to show me their hands. And then wait for more units to proceed with the felony stop. I'm  
14 able to make contact with the driver. He ends up obeying everything I'm telling him to do.  
15 Comes out of the car, he gets detained. Then we put all our focus on the individual in the trunk  
16 who I continue to give multiple commands to. And as I'm giving him commands, he begins to  
17 hide his left hand, turn his body, just not really following what we're trying to tell him. Figuring  
18 that he might be a Spanish speaking individual, we'll try to get a Spanish speaker on scene. I  
19 believe one was there and she immediately got on the PA. Trying to give him, you know, I  
20 believe, I mean I don't speak Spanish, but I believe what she was saying was pretty much what I  
21 was saying. Trying to give him basic commands to show his hands and follow directions. At this  
22 point, I believe, you know, I was only focused on the car but, obviously there were several other  
23 officers there and I heard someone say, red light, you know, less lethal which means, you know,  
24 obviously they're probably gonna hit them with the beanbag. As soon as everyone's saying, red  
25 light, red light, you know, I hear the shot deployed for the beanbag. I see it make contact with

1 him. Again, they're giving him more commands to show his hands, do this and that. Again, he's  
2 not following them. I could see his left hand just continually go in and out from what I could see  
3 it to concealing it behind his body. And then, you know, all of a sudden, he makes an explosive  
4 movement from the trunk, says something loud. I can't determine what he said. I just know he  
5 said something. I couldn't even say if it was English or Spanish or anything but, makes an  
6 explosive movement. Takes his left hand and points it directly at us and I see a muscle flash. And  
7 that's when I returned fire. I feared for my life and I feared for, you know, the other officers  
8 around him, and also the citizens that are also in the area.

9 Q: Okay, so that's kind of your narrative statement then?

10 A: Yeah.

11 Q: Alright.

12 A: I mean just a little, I was trying to be a little more in depth but-

13 Q: You know what, why don't we do this first. You know we're gonna ask, you know,  
14 obviously some more detailed questions but.

15 A: Uh-hum.

16 Q: Kind of walk us through, you know, this is gonna be the suspect vehicle, okay?

17 A: Okay.

18 Q: And why don't we do this. why don't you number it and circle it for anything that's  
19 significant on the document.

20 A: Okay.

21 Q: So go ahead and, and maybe, if you can, if you remember exactly where your car  
22 positioning was with this rather (inaudible) unfortunately.

23 A: Yeah definitely.

24 Q: Yeah.

25 A: Our car was the main lead car right here.

1 Q: Alright, so maybe throw that one. And maybe show your-

2 A: Okay.

3 Q: Your, you're one there, yeah.

4 A: One?

5 Q: And just show us what your sitting or standing position was.

6 A: So I was the driver of that car.

7 Q: Okay.

8 A: The door was open.

9 Q: Okay.

10 A: I was in the crease of the door and the car right behind the, the A pillar for cover.

11 Q: Gotcha.

12 A: I believe my partner, Officer Tupper, was in the other crease of the door. I mean I didn't,

13 I never really took focus off the individual in the trunk so I couldn't really say where everybody

14 was.

15 Q: Sure.

16 A: While I was giving verbal commands, or at least, you know, when we didn't -- when we

17 were the only car here and the driver was half-way out, we could still had eyes on the guy in the

18 trunk. And I felt officers to my left, so I knew other officers were there. At this point, we were

19 able to make, you know, communication with this guy. So I asked for an arrest team. This guy

20 came back, stopped about here. They stopped and detained him. But I feel like I'm just kind of

21 speaking freely. If you want me to answer like more specific.

22 Q: No, no we will.

23 A: Okay.

24 Q: No you, you gave us what we're talking about so that's the position of the car.

25 A: Okay yeah. So I was, I was right here.

1 Q: I gotcha. And is, it sounds like, essentially that's where you maintained your position  
2 mostly with this incident.

3 A: Yeah, I was there the entire time.

4 Q: I gotcha. Let me ask you this, so when you're in the radio car, you're driving. Are you at,  
5 this is gonna be, is, was between 21 and 22 this incident, is that right?

6 A: Yes.

7 Q: When you saw the individuals flagging you and your, the other two officers down.

8 A: Uh-hum.

9 Q: Were you in the intersection of 21 and Capp? Or were you.

10 A: Yeah, we were --

11 Q: Were you coming up Southbound? Were you coming up on one of the side streets  
12 (inaudible)?

13 A: We were coming Westbound on 21<sup>st</sup> approaching Capp Street.

14 Q: Okay.

15 A: And right when we got into the intersection is when everyone started flagging us down.

16 Q: And they were in the intersection or off on a, a sidewalk or? If you remember.

17 A: I believe, I mean, they were close I think to the -- I want to say the north whatever it  
18 might be, northwest sidewalk.

19 Q: Okay.

20 A: But still in the street I believe.

21 Q: Right.

22 A: Is when they're flagging us down and another guy was closer to our car. He kinda, ran up  
23 to the car and pointed at that guy.

24 Q: So, and what they're pointing at, if I understood your, when you, you gave your narrative  
25 statement.



1 A: Uh-hum.

2 Q: They're pointing at an individual and that individual's running?

3 A: Yes.

4 Q: Is that what you saw?

5 A: Yes.

6 Q: Okay, and you saw this individual, where was he, and what was he wearing, if you

7 remember, and where was he headed?

8 A: So at the time.

9 Q: Go ahead, this is, you know.

10 A: Oh yeah, yeah, yeah, sure.

11 Q: Yeah, it's kinda just kinda give us an idea.

12 A: So is this kinda the intersection back here?

13 Q: Yeah, let's just call that, even though it's not to scale but.

14 A: Okay. So I saw him back here.

15 Q: Right.

16 A: As soon as they were rad, flagging, flagging us down you know, they're pointing at a guy

17 who was over in this direction.

18 Q: Right, so closer to the to the west side of Capp Street?

19 A: Closer to the westside and the sidewalk and everything.

20 Q: Okay. Right.

21 A: And I saw somebody running, you know, down the west sidewalk of Capp.

22 Q: And he's on the sidewalk?

23 A: I believe, I mean, based off what I remember.

24 Q: Sure.

25 A: I believe so yeah.

1 Q: Got you.

2 A: And I just see a figure running and everyone's pointing at him. So we see him running. I  
3 looked back at, to try to get more info and that's when-

4 Q: Right.

5 A: You know, they shout, "pistola, pistola."

6 Q: And that was clear to you?

7 A: And that was clear.

8 Q: Okay. So he's running down the sidewalk aligned-

9 A: Uh-hum.

10 Q: Was there anything about his, his flight, you know, I know that you have a couple years  
11 in the police department now. You know, I have a number of years in the police department,  
12 people sometimes if they're armed, sometimes they run a little bit different than people who are  
13 not armed.

14 A: Uh-hum.

15 Q: Was there anything about his running that, that was distinctive or stood out in your  
16 memory? Or was it just a guy running down the street?

17 A: It was just a guy running. From what I remember he had a black hooded sweatshirt on. I  
18 couldn't see like, you know, if his hands are tucked or of his hands are doing anything. I didn't  
19 get that close into detail cause we had to look at him then look back at the individuals that  
20 flagged us down to see what was going on. But he continued on the sidewalk and we were able  
21 to see him as he was running, seemed like full sprint along.

22 Q: So he was running full sprint?

23 A: He was running full sprint.

24 Q: Was someone who was trying to run away?

25 A: Exactly.

1 Q: Right.

2 A: I mean from what he seemed to be wearing, you know, jeans and a hooded sweatshirt.

3 Q: Were these folks really indicating anything other than this guy running? Or were they  
4 pointing up at a car or anybody else at the scene?

5 A: No, they.

6 Q: From what you saw.

7 A: From what they told us, I mean, the brief interaction that we did have, they were just  
8 pointing at the individual who was running and saying, pistola, pistola.

9 Q: Right, and you guys are still in your vehicle?

10 A: We're still in our vehicle.

11 Q: And they're outside basically pointing up the street.

12 A: Pointing at the, yeah, pointing at the guy who's running.

13 Q: Alright. So take us back, the guy is running. He's got the black sweatshirt on and he's  
14 running up the sidewalk. What happens next?

15 A: So we slowly follow him. We can see him -- I mean there's parked cars along here but  
16 we can see him slowly. And then he cuts into the street and he pretty much dives headfirst into a  
17 what appeared to be a waiting vehicle with the trunk already open.

18 Q: Is that the first time you really came into your even awareness that there was a car there?

19 A: Yeah, like a full, yeah. No, I didn't even see the car.

20 Q: Right, didn't even, didn't even trip until, right.

21 A: Yeah, cause all our focus was on the people that were flagging us down and then, you  
22 know, the individual was running. Then as the people are flagging us down again. And then we  
23 followed the guy who was running.

24 Q: Oh, I would imagine that was a bit of a surprise to see that move, right?

25 A: Oh very, yeah.

1 Q: Was there anything about the car itself. It's double parked. Are there lights on, can you  
2 see brake lights or anything about the vehicle other than the, could you tell if even the trunk was  
3 already open prior to him jumping in or? The first time he sees the car as he's jumping in?

4 A: I couldn't tell if it wide open or if it was just unlatched but from what I saw, he got into  
5 the trunk very quickly. He didn't stop to lift the, lift the trunk hood or anything like that or the  
6 lid.

7 Q: And do you remember, I mean-

8 TB: (inaudible)

9 A: Yeah.

10 Q: Do you remember any brake lights being on or any car lights or anything like that?

11 A: No, I don't but I mean as soon as he was inside of the trunk.

12 Q: Right.

13 A: Enough to where he wasn't, you know, hanging halfway out the car started to drive.

14 Q: Okay, so it driving and-

15 A: Yeah.

16 Q: When the car starts to pull off, how quickly you and your partners up there, to the car. I  
17 mean a couple car lengths or, or accelerating towards that car?

18 A: We're accelerating towards the car.

19 Q: Okay.

20 A: And the car starts moving and that's when we activate the, our overhead lights and siren.

21 Q: Right. Talk to us about the car driver's reaction to the lights or whatever he did. Does he  
22 try to pull off like, accelerate away from you folks? Does he, does he go a feet up? Does he stop  
23 immediately? If you could just kinda walk us through that.

24 A: No. It was, it was a little weird. It wasn't really either one. He didn't, you know,  
25 accelerate hard enough to you know, screech the tires or anything. But it wasn't, he immediately

1 just, you know, pulled over. It was a very slow kind of roll and then like he didn't really know  
2 what to do.

3 Q: That's what it was, what?

4 A: That's what it seemed like.

5 Q: To you?

6 A: Just cause I mean, we hit him with the lights and he kinda drove straight and then just  
7 made a veer off to the right not, you know -- as a normal person would pull over as if they were  
8 being stopped by the police, but.

9 Q: Gotcha, could you tell when you pulled over did he turn the car off or was he still in  
10 gear?

11 A: I only remember it was on because he asked me later when I was trying to order him out  
12 of the car, can I shut the car off? And I told him, no.

13 Q: Oh.

14 A: So I just know the car was on.

15 Q: I got you. So he pulls over, and how car -- how many car lengths, if any, did you think  
16 he, you know, rolled up the street before he came to a complete stop?

17 A: I want to say, approximately maybe, you know, maybe one car length, maybe two.

18 Q: Right.

19 A: I don't recall that, but I mean he, he, I don't think he drove very far.

20 Q: Gotcha.

21 A: Yeah.

22 Q: And what's the guy in the trunk doing as he's headfirst?

23 A: He's trying to hold the, he's trying to hold the lid down while they're driving away.

24 Q: Okay.

1 A: Yeah I think, I mean, obviously I think, he's trying to close it completely so he's not  
2 visible but he's, he's just trying to hold it.

3 Q: Right.

4 A: Yeah.

5 Q: When you say that you lit up the car, you know that's, that's kind of a cop term, right?

6 A: Okay, yeah.

7 Q: So, it kinda, kinda describe what we're talking about here. Did you activate your red  
8 lights? Do you hit the siren? Did you do both? Did you do spotlights? If you remember.

9 A: Yeah, we activated our overhead forward-facing red light, siren, and I also buzzed the the  
10 horn as well.

11 Q: Okay. I got you. So, I assume now you're stopped? Your partners are stopped in the car  
12 with you?

13 A: Uh-hum.

14 Q: He's stopped. The guy's still in the trunk?

15 A: Yes.

16 Q: So the next step is, I, I assume you guys jump out of the car?

17 A: I immediately jump out of the car, point my firearm at the car.

18 Q: Right. Can you tell what your partners are doing?

19 A: No, not at the time. I was just purely focused on the people in the car.

20 Q: Do you remember who was running the radio?

21 A: I, I put out the initial information.

22 Q: Alright, so you're asking for additional units?

23 A: Yeah, I put out what we had, you know.

24 Q: Is it a code 33 kind of thing, or?

25 A: Yeah, definitely.

1 Q: So it was a code 33.

2 A: So I hop out of the car, kind of did it and then get on the air, code 33 and pretty much  
3 give the basic info of what we got.

4 Q: Do you remember putting out something out about a, a 221 gun involved?

5 A: Definitely.

6 Q: Alright so, the responding officers know that there's a weapon involved?

7 A: Yes.

8 Q: And at that point, you're not sure who if anybody has a gun. Is that correct?

9 A: I mean from what we based on, our information from being flagged down, we believed it  
10 to be the individual in the trunk.

11 Q: Makes sense, right?

12 A: Yeah.

13 Q: Alright. So, are you gonna start issuing commands as soon as you, you know, you guys  
14 are in a position to do that or are you gonna wait for additional units? How does that work?

15 A: It's always better to have an additional unit but based off the drivers reactions, I mean, he  
16 was trying to get out of the car so we immediately kind of, try and freeze it. He's trying to talk to  
17 us, kinda, you know, asking what's going on and everything like that. But, meanwhile the guy in  
18 the trunk is just kinda remaining where he's at and, you know, before I knew it, I guess other  
19 officers are there.

20 Q: Right, so when you say the guy is, is trying to ask what's going on, or what have you,  
21 that's while he's still in the, in the driver's position?

22 A: He's still in the, he's, he's kinda halfway side saddled out of the uh driver's seat.

23 Q: And he's, he's so you're communicating with him?

24 A: I'm communicating with him.

25 Q: And he's like, what's going on kinda thing.

1 A: Yeah.

2 Q: Right.

3 A: I mean he had his hands out of the car. He's trying to get out of the car, so.

4 Q: Right. And were you handling most of the commands at that point?

5 A: Yes.

6 Q: And your commands to him were what?

7 A: I told him he needed to show him his, show him, show me his hands repeatedly. You  
8 know, I don't know exactly when the other officers did get there, but you know, our plan was to,  
9 you know, get him out first. Get him detained so. We gave him verbal commands which he  
10 followed okay. And he got out of the car, walked backwards, gave him a couple instructions and  
11 then I asked for an arrest team and couple guys ended up going up and detaining him.

12 Q: So your role is essentially to direct other officers and at least complete the process of him  
13 getting out of the car and being taken into custody, but you didn't physically participate in that?

14 A: No, I didn't. Yeah, just the command portion.

15 Q: Okay. And then, tell me when your attention shifts back over to the trunk during this  
16 process?

17 A: As soon as he was detained, our focus was now on the, the person in the trunk. I mean I  
18 knew the other officers were already focused on that guy because my partner, Officer Tupper, I  
19 mean he was well aware of this was the possible 220 or the person with the gun inside the trunk  
20 as well so. I mean I couldn't see what Officer Tupper was doing but I can only say that he was  
21 focused on the, the main individual in the trunk.

22 Q: Do you remember you or your partners or anybody at the scene speaking hey, the 221 is  
23 probably gonna be the guy in the trunk or, you know, that's the guy that we saw running?

24 Anything like that, that information, you know, getting out, to being disseminated among the  
25 officers that were at the scene.



1 A: You know I don't remember if I specifically said that that was it. Because we were the  
2 first on scene so I kinda just don't remember actually spreading that info but-

3 Q: I gotcha. And then how about did the driver ever say anything specific about the guy in  
4 the trunk or you know, anything about a gun, or anything about what he was doing, or anything  
5 directly that you remember that was specific about what was going on other than, hey what's  
6 going on type of thing?

7 A: No, I don't remember cuz all I was doing just was trying to give him verbal commands to  
8 get out of the car which he followed pretty good. But specifically regarding the incident, I don't  
9 remember him saying anything in detail.

10 Q: Right, okay. And you remember, obviously someone's in the trunk. This guy is in  
11 custody. Now, did you remember seeing anybody else in the car?

12 A: Just the individual in the trunk, that was it.

13 Q: Okay, so, as you well know, it turned out there was a female in the car.

14 A: Yeah.

15 Q: But that wasn't apparent to you?

16 A: You know, I had no idea.

17 Q: No idea?

18 A: Yeah.

19 Q: Okay. So, let's -- he's being taken out.

20 A: Uh-hum.

21 Q: The driver, he's in custody. He's, I assume he's being led away somewhere, correct?

22 A: Yes.

23 Q: Alright, so your attention's back on the trunk?

24 A: Yes.  
25

1 Q: So why don't you walk us through what he's doing and what his reaction if any is to the  
2 commands being spoken whatever else might happen.

3 A: Okay, so I mean, right off the bat, even when both occupants were in the vehicle, we  
4 were able to get him to show both of his hands in the trunk. And then after the first individual  
5 was detained, you know, again, like you said, we put a lot of focus on the second guy and again,  
6 I mean, I tried repeatedly just to get him to show both of his hands. I tried to give him clear  
7 instructions you know, lift the, lift the -- lid of the trunk open, to step out of the car and  
8 everything like that. I mean he really didn't seem to move or comply with any of those specific  
9 like, what I felt pretty clear instructions.

10 Q: So is it fair to say you didn't feel that he was complying with commands?

11 A: No, not at all. And then you know, it got to a point where he started to kinda turn, he  
12 eventually kind of turned to his back. He would hide his left hand. I know myself and, you know,  
13 several other officers, you know, kinda did the loud, you know, hey hey, like let me see that left  
14 hand. An then you know, maybe he's feeling that this guy might not speak English. I asked if  
15 there was a Spanish speaker anywhere around. And I believe, you know, moments later, another  
16 officer got on the PA who did speak Spanish, started giving him, you know, similar commands.

17 Q: What was the significance in your mind based on your training experience about not  
18 being able to see this guys, both his hands?

19 A: Oh I mean, obviously having a weapon. I mean, that's were people keep weapons away  
20 from wherever we can see them usually. And as soon as we don't see their hands, you know,  
21 those are the things that hurt us cuz people get the weapons by reaching for them in places you  
22 know, that are concealed usually.

23 Q: So you were concerned about not being able to see his left hand?

24 A: Oh, definitely.

25 Q: And him not complying with your orders and everyone else's orders to show his hands?

1 A: Yes.

2 Q: Alright.

3 A: Yes.

4 Q: And in your mind, this is the individual that potentially may be armed?

5 A: Yes.

6 Q: Alright. So, kinda walk us through again, so he's not complying. Again, you can't see the  
7 left hand.

8 A: Uh-hum.

9 Q: And I think there was an extended range impact weapon deployed at some point?

10 A: Yes, there was.

11 Q: Was there some decision that you were involved in in deploying that weapon or?

12 A: No, I never made any, I never put out the suggestion for the extended range impact  
13 weapon, but I think that must have just been discussed with someone else. I just heard you know,  
14 the kinda language we use whenever we deploy something like that. So someone, you know,  
15 immediately said, you now, red less lethal. And I heard a bunch of other people repeat it which  
16 means they're gonna deploy and, you know, hit this guy with the beanbag.

17 Q: And what's the significance of officers issuing that alert, that an extended range will be, a  
18 red light is gonna be deployed?

19 A: It's a less, less, it's a less lethal option of force.

20 Q: Right. And the point is of announcing it?

21 A: Yes.

22 Q: The point is?

23 A: Oh to let other officers know that it's not gonna be gunfire. It's gonna be a less lethal use  
24 of force.

1 Q: And the reason being, is based on your training experience, officers, is to try to prevent  
2 anyone mistaking that for a gunshot. Is, is that how it works?

3 A: Yes. Yeah.

4 Q: Okay. So the extended range impact weapon is deployed and, if I understand when you  
5 were giving the narrative part of this.

6 A: Uh-hum.

7 Q: You actually saw it strike the individual. Is that correct?

8 A: I did.

9 Q: Do you see where it hit him?

10 A: I want it, I mean, not specifically. It hit somewhere up, the upper portion of this body. I  
11 couldn't tell if it was you know, the shoulder or the chest area. It hit him somewhere around the  
12 right side of the center portion of his upper body.

13 Q: What was his reaction if, if you could tell?

14 A: You know, I could see him kinda cringe as if, you know, he got hit with something pretty  
15 powerful. Kinda rolled back, made a couple grunt sounds it seemed like.

16 Q: So you, you actually heard that?

17 A: I, yeah from what I remember, yeah.

18 Q: And then I think you said, I think I even wrote it down that explosive movement.

19 A: Uh-hum.

20 Q: Did that fall pretty in close proximity to the extended range impact?

21 A: Yes.

22 Q: And then, kinda walk us through, what does that mean exactly in, and kinda describe it in  
23 the best to your account.

24 A: So just from his position in the car, I mean he was laying down on his back, maybe  
25 halfway on his right side the whole time we had interaction with him. And from the point where

1 he did get hit to the maybe right before I saw what I saw, you know, he went from his relaxed  
2 state to an immediate roll to his right side with his left hand coming from wherever he had it  
3 concealed. It seemed like he was attempting to get out of the car all in one motion. I saw his left  
4 arm, you know, extend directly at us and I saw a muscle flash.

5 Q: So, the explosive movement you're describing is essentially him putting himself in a  
6 position based on your description.

7 A: Uh-hum.

8 Q: To bring the gun into play.

9 A: Yes.

10 Q: Or, and or to get out of the trunk.

11 A: Yes.

12 Q: Right. And you said you saw the muzzle flash?

13 A: I did.

14 Q: Did you, did it feel directed at you specifically or do, could you see where this muzzle  
15 flash was oriented towards?

16 A: From my point of view, I felt like it was directed at our car and our vehicle. I couldn't  
17 say, you know, directly at me personally or, but-

18 Q: Right. Well, how did you feel? Did you feel like he was shooting at you?

19 A: I felt like I was, oh exactly, for sure, yeah I felt.

20 Q: So, you thought he was shooting at you?

21 A: Yes, for sure.

22 Q: I got you. Man, you know I know its -- these are difficult questions sometimes to ask but.

23 A: Uh-hum.

24 Q: What's going through your mind when you see a muzzle flash and I would guess foot  
25 wise, what would you estimate how close you were?

1 A: From the, where he was in the trunk to where I was?  
2 Q: Yeah.  
3 A: Maybe 15 feet, 20 feet.  
4 Q: So you were pretty close?  
5 A: Pretty close.  
6 Q: So what's going through your mind, you know, in that brief second when you see the  
7 muzzle flash?  
8 A: This guy's shooting at me and I might die. I have to, you know, protect myself.  
9 Q: And, what response did you have to that?  
10 A: I started firing back.  
11 Q: Right.  
12 A: Uh-huh.  
13 Q: Do you remember how many times you fired?  
14 A: No, not exactly.  
15 Q: Right. Do you know if you did a magazine change?  
16 A: I did do a magazine change.  
17 Q: Do you remember if you engaged the second magazine?  
18 A: I did engage the second magazine.  
19 Q: So you fired one magazine and then some rounds in the second magazine?  
20 A: No, I never fired.  
21 Q: The second mag.  
22 A: The second mag.  
23 Q: So one magazine, a change, and then stop firing?  
24 A: Yes.  
25 Q: That's fair.

1 A: Yeah.

2 Q: Okay, I got you. Did you see your rounds impacting?

3 A: No, I couldn't see exactly where they were hitting.

4 Q: Okay. I got you.

5 A: Yeah.

6 Q: What happens after the shooting is over?

7 A: People start yelling out, shots fired. You know, I see him in the trunk, the lids kinda

8 halfway down. He doesn't appear to be moving. And at that point is when I, you know, heard a

9 female scream from inside the car.

10 Q: Okay.

11 A: Uh-huh.

12 Q: And did you see this person screaming in the car? Did you see a body, you know, a

13 silhouette or anything like that?

14 A: After the fact. I mean I heard the screaming and then, you know, someone said, hey

15 there's an X in the car. So-

16 Q: Were you involved in, in taking her into custody?

17 A: I believe, yeah. I, I went up to her and grabbed her left hand and helped her get in

18 handcuffs.

19 Q: Did you clear, did you personally clear the trunk first, or were other officers handling

20 that?

21 A: No, other officers were handling that.

22 Q: Did you ever see the individual in the trunk clearly?

23 A: Clearly, no.

24 Q: No?

25 A: No.

1 Q: Did you ever see that individual with a gun or a gun at the scene?

2 A: No.

3 Q: Never did?

4 A: No.

5 Q: I got you. During this entire incident and, believe it or not, I'm almost done.

6 A: Uh-hum.

7 Q: Do you remember anything specifically the person in the trunk said to you or said to any  
8 of the officers that you could hear?

9 A: Not specifically based off memory. I mean, I just remember he said something, yelled it  
10 when he made that explosive movement out of the car, so.

11 Q: Oh so you're, you're not sure?

12 A: No, I'm not sure exactly what he said.

13 Q: Any, and this is another difficult question to, to really answer but, could you really  
14 characterize this guy's demeanor because this thing took a while based on at least our review-

15 A: Uh-hum.

16 Q: Of the body worn camera and what we've seen as well. I mean this kinda was a little bit  
17 more drawn out than some of these incidences can be.

18 A: Yeah.

19 Q: Was, was there any kind of way to characterize his demeanor through, through most of  
20 this?

21 A: Like.

22 Q: Like was he defiant? Was he, you know, confused? Was he angry or, you know, it was  
23 really difficult to say?

24 A: I mean it's difficult to say. I mean, it appeared to be like, I couldn't understand anything  
25 this guy was saying. But it's here, like after he was hit with the beanbag, I know he kinda like



1 crouched down and he might have appeared to be talking to himself or mumbling. But again, I  
2 wasn't close enough to hear what he might have been saying.

3 Q: I got you.

4 A: Yeah.

5 Q: How about the female when you assisted taking her into custody? Did she say anything to  
6 you?

7 A: Not that I recall, no.

8 Q: No?

9 A: I mean she was just screaming.

10 Q: And you didn't interact with the driver at?

11 A: No.

12 Q: At the scene?

13 A: No.

14 Q: I think that's, that's pretty much all I have, so. Ma'am?

15 MH: How well could you see him? Because it seemed like it was kinda dark and I know cars  
16 not really well lit.

17 A: We had our spotlight on him so I could see him pretty good.

18 MH: Okay.

19 A: Uh-hum.

20 MH: Alright. And how many muzzle flashes did you see?

21 A: I saw one for sure.

22 MH: One for sure?

23 A: Uh-hum.

24 MH: Okay. And you said that you emptied your magazine?

25 A: Yes.

1 MH: So how many rounds total do you think would be fired?

2 A: Usually on patrol our, our magazines are loaded for 12, then we keep one in the chamber.  
3 So if I had to say approximately, I'd say 13 rounds.

4 MH: Okay. Okay, that's all I have.

5 Q: Counsel?

6 AL: Just a couple questions. You said you saw one muzzle flash. How many shots did you  
7 hear?

8 A: At least.

9 AL: Coming from the car?

10 A: Coming from the car, at least one be, and that's right when I started firing.

11 AL: The driver, as you were extracting the driver, you said he was making some comments,  
12 asking what's going on. Was that, that was in English?

13 A: Uh-hum. Yes.

14 AL: You were comm, so you were communicating with the driver in English?

15 A: Yes.

16 AL: Did you hear any type of verbal response from the person in the trunk in any language?

17 A: Nothing clearly. I mean other than, you know, just grunt noises, kinda mumbling, and  
18 then that one thing he yelled once he made the movement out of the car.

19 AL: The other, the other officers that you were riding with, do you know where they were  
20 during this incident?

21 A: Officer Tupper was on the passenger side between the car and the open door. And then  
22 you know, Officer Cody, I don't exactly remember where Officer Cody was. I never looked back  
23 to see where he might have been.

24 AL: And do you know what other officers responded to this call?  
25

1 A: Besides all of the ones that were involved in the shooting or? I mean, I know there's a lot.  
2 I don't know.

3 AL: Well, let me clarify.

4 A: Okay.

5 AL: Did you see officers shoot their weapons?

6 A: Yes.

7 AL: And who did you see shoot?

8 A: Let me rephrase that. I didn't see but I could hear. I mean there was someone just to my  
9 left and I could hear right in my left ear. So I didn't physically see them shoot but I heard it.

10 AL: And do you know who that officer was?

11 A: No, I don't.

12 Q: Counsel?

13 TB: After the, the less than lethal is, is fired, there's a pause, correct?

14 A: Correct.

15 TB: And, after that -- after that pause, did any officer fire before being fired upon?

16 A: No.

17 TB: Did you?

18 A: No.

19 TB: Okay, that's all.

20 Q: We'll terminate the interview now. It's 1420 hours. Thank you.

21 END OF INTERVIEW  
22  
23  
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I, the undersigned, hereby certify as follows:

That the foregoing transcript, page 1 through and including 27, to the best of my knowledge and belief is a full, complete and true transcription of certain tape recordings as described below to the best of my ability to hear, understand, identify speakers and transcribe said recordings, with the exception of any portion indicated as (inaudible), and words contained in parentheses, which indicate the best guess. (Any errors, changes or omissions should be brought to my attention for correction.)

That said tape recordings were furnished to CTI Transcription Services, 79 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability, and requested to be transcribed.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of August 2019.

/s/ Kathy Kay  
KATHY KAY  
By Electronic Mail

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER CHIU**

**INTERVIEWED BY:       SERGEANT BANWICK**

**DATED:                   MARCH 8, 2018   TIME: 1721 HOURS**

1 **Q: SERGEANT BANWICK**

2 **A: OFFICER CHIU**

3 **AL: ANDREW LAW**

4 **MH: MEGAN HIYASHI**

5 **TB: TONY BRASS, ATTORNEY**

6  
7 Q: Okay. This interview is in regards to case number [REDACTED]. It's an interview with  
8 Officer Chiu, star number 1306. Loren, you, you had a chance to take a look at the, your body  
9 worn cameras and who was the, the second officer that you looked at the body worn camera?

10 A: That was officer Nagai's.

11 Q: Okay. All right. Having watched that, are you prepared to give a more detailed  
12 statement?

13 A: Yes.

14 Q: Okay. So, the, the night of the incident, you were working the 3 David 15 David with  
15 your partner-

16 A: Officer Gustilo.

17 Q: Gustilo, okay. So, and you started at, at 16, at 1600?

18 A: Yes.

19 Q: Okay. Can you kind of tell me what happened that day, was it, was, was it a normal day,  
20 a slow day, busy day, or?

21 A: It was pretty, it was busy, but for myself and my partner we were detailed, you know, we  
22 didn't handle that many runs at first cuz we were first detailed to do the transport. And then, we  
23 were detailed to a hospital watch for the majority of our shift.

24 Q: Okay. Do you remember what time that you guys were finished with the hospital detail?

25 A: I believe it was around 2130 hours, 2100.

1 Q: Okay. And okay. Okay. 2130, you said?

2 A: Yeah. Somewhere around there.

3 Q: Okay.

4 A: When midnights start to come on.

5 Q: Okay. So, prior to, to responding to Capp street, can you tell me what you guys were  
6 doing prior to your response to Capp street?

7 A: We were just on regular patrol. We weren't on any calls or anything, we're just patrolling  
8 the Mission district.

9 Q: Okay. Tell me how were you, how were you notified of, of things going on and what  
10 happened?

11 A: We first heard a midnight unit broadcast that there were some citizens that flagged them  
12 down regarding a guy running to a car armed with a pistol in regards to a, a robbery.

13 Q: Okay. Then what happened?

14 A: Then we started a response. They first put it out at 20<sup>th</sup> and Capp Street. We got to Capp  
15 Street. We were going southbound on Capp towards 20<sup>th</sup>. We didn't see them there. Saw lights  
16 further up ahead at 21<sup>st</sup> and that's when we saw the initial unit that had conducted what appeared  
17 to be a felony stop on a suspect vehicle.

18 Q: Okay. And then what happened?

19 A: After that, we exited our vehicle. I positioned myself by the driver's side door, right  
20 behind the officer there.

21 Q: Okay. And then what happened?

22 A: Meanwhile, orders were being given to the driver at that point, to exit the vehicle. And  
23 that driver complied, came backwards. And throughout the entire thing I could, it was, it was a  
24 weird scene. I saw a guy in the trunk of the vehicle. Which was very, very odd.

25 Q: Okay.

1 A: And all throughout the entire time, his left hand whilst officers were giving orders to that  
2 suspect in the trunk, would not show us his left hand. It would come out periodically and it  
3 would, he would put it back down. And we wouldn't be able to see his hand, so he wasn't  
4 complying.

5 Q: Okay. And what happened after that?

6 A: After that, we, I believe there were officers on scene that use both English and Spanish to  
7 give orders. Seeing if the suspect would be able to understand Spanish since he wasn't  
8 complying. He was still doing the same thing; his left hand would come out periodically and  
9 would go back down and it appeared like he was reaching for something. Then an officer on  
10 scene, I believe that was Officer Santana, deployed a less lethal round once and then more orders  
11 were given. Suspect did not comply to the orders. And then all of a sudden I heard the suspect in  
12 the trunk yell something along the lines like, fuck it, fuck this or fuck you. And then I saw his  
13 left hand move and I saw what appeared to be like gun powder smoke and I heard a gunshot. I  
14 thought he fired at us, so I fired, I returned fire.

15 Q: Okay. And after that what happened?

16 A: After that happened I, we, I fired until I perceived that the threat was stopped. Officers on  
17 the scene, I believe continue to try to extract a, I guess a third occupant of the vehicle. A female  
18 on the scene. Kind of stood back to the left to make sure -- to make sure there were no other  
19 occupants in the vehicle and that was the end of my involvement.

20 Q: Okay. Let's go back to when you first heard the radio call. So you, you and your partner  
21 were on patrol, do you remember where you were when you first heard the radio call?

22 A: It was somewhere I believe on Mission Street. So, if we're going northbound or facing  
23 northbound in the Mission District it would be on the, the west side of the Mission District from  
24 Capp street.

25 Q: Okay. And so what was the, the radio calls at 211/221.



1 A: Right. And then the, the particular radio traffic was that there was a, a 909 that had  
2 flagged a midnight unit, officers down, regarding a man, individual that was armed with a pistol  
3 running to a vehicle.

4 Q: Okay. So the radio code for 211/221 what is that, what's it stand for?

5 A: It's a, it's a robbery with a gun.

6 Q: Okay. So, as you start to respond to, to the call, did you respond code 3, did you respond  
7 code 1, do you remember?

8 A: I don't remember.

9 Q: Okay. As you're responding, what's going through your mind.

10 A: That there was officer on scene that had visual on a guy running away with a gun. And so  
11 we're trying to get there as, as fast as possible to help those midnight units out, cuz we were  
12 relatively, in my opinion, close by. So we were trying to get there to, to help the other officers on  
13 scene.

14 Q: Okay. So when you come, come on scene, how many police cars are there?

15 A: Just one.

16 Q: Just one. So, you're the second unit to actually, to actually come on scene for the call for  
17 help?

18 A: Correct.

19 Q: What, where did you position your radio car from the, from the first car that was on  
20 scene?

21 A: It was to the rear to the left.

22 Q: Okay. So, to the left of the radio.

23 A: Yeah. Of the radio car, correct.

24 Q: Okay. And you got out of the radio car? At what point did you take your pistol out of its  
25 holster?

1 A: Right away.

2 Q: Right away. Okay. And what was going through your mind that you felt you had to take  
3 the pistol out of your holster?

4 A: That someone there in that car had a, was armed with a, with a handgun.

5 Q: Okay. When you first got out of the car, did you take a position by your car or did you,  
6 did you move?

7 A: I moved, I moved to the driver, the officer that was located behind the driver's side door,  
8 to let him know that I was there.

9 Q: Of the first unit?

10 A: Yes.

11 Q: Do you remember what the officer was that you were behind?

12 A: I believe it was Cassinelli.

13 Q: Cassinelli, okay. And at this time you see the, you see the car, had, had the, or, how many  
14 occupants were in the car at the time?

15 A: At, when I first came on scene, I only saw two. I saw the, an individual in the rear trunk as  
16 well as an individual by the driver's side.

17 Q: Okay. Was he already, that was, the individual by the driver's side, was he already out of  
18 the car or was he seated inside the car?

19 A: He was seated inside the car, but he was partially out with his hands and he was kind of  
20 looking back towards us with both his hands.

21 Q: What officer, or was there an officer giving instructions to the, the occupants of the car?

22 A: Yes.

23 Q: Do you remember who that officer was?

24 A: No. I don't remember.

25 Q: Okay. Was it in English, or Spanish, or do you remember?

1 A: It was in English.

2 Q: Okay. And the driver was complying or not complying?

3 A: The driver was complying.

4 Q: Okay. So, did more officers come, or was it just the two of you that were conducting the  
5 felony car stop.

6 A: When I was there, my, I didn't notice any other units come on scene. I was, after that  
7 driver was coming out I was focusing on, on whether or not one of the occupants had a gun.  
8 After the driver was complying my attention was drawn solely pretty much on the occupant in  
9 the, the rear trunk.

10 Q: Okay. Do you remember who took the, the driver into custody? Or did you witness any of  
11 the driver being taken into custody?

12 A: Yes. I think that was officer Carroll and Officer Smets, I believe.

13 Q: Okay. Was, did they walk the driver back to the radio cars, or did they go forward to  
14 handcuff the driver, does that make sense?

15 A: I believe we had the, the suspect was walking back towards us.

16 Q: Okay. When the suspect was walking back from the, from the suspect vehicle, could you  
17 tell if there was any communication between him and the person that was in the trunk of the  
18 vehicle?

19 A: No. I, I didn't notice anything like that.

20 Q: Okay. So, so when this was going on and the, the driver's being taken into custody,  
21 you're really focused on the person in the trunk?

22 A: Uh-huh.

23 Q: Can you describe to me what the lighting was for that, while you watched the, the suspect  
24 that was in the trunk of the car?

25 A: It was lit with I believe spotlights from our vehicle.

1 Q: Okay. Was it, was it lit up very well that you could, you could really see him well or was  
2 it-

3 A: Yeah. It was-

4 Q: Difficulty seeing him?

5 A: It was, it was, it was lit up pretty well that I could see.

6 Q: Okay. And he was lying how in the trunk?

7 A: He was lying with his torso faced towards us slightly, I guess, I want to say, I guess,  
8 along side the right rear of his back was lying down with his knees bent.

9 Q: Was any part of his body out of the trunk?

10 A: It looked like his knee or his leg was coming out a couple times from time to time.

11 Q: And you described, you could see his right hand?

12 A: His right hand was slightly up, I believe he was trying to, or he was holding on to the  
13 trunk, or some part of the trunk.

14 Q: And what about the left hand?

15 A: Left hand kept, was either kept going behind his left side under his waist band or  
16 something like that and it'd periodically come up.

17 Q: How did that make you feel?

18 A: It made me feel very uneasy.

19 Q: Okay. What was, what were your concerns and your worries?

20 A: That he was reaching for a gun.

21 Q: Okay. And you base that on, on what?

22 A: The very fact that his, when commands were given to him to show us his hands and his  
23 other hand, it would come up and then it would go right back down.

1 Q: Okay. How long, and I know you to be estimating, how long did that go on for? That,  
2 that, the officer was giving instructions during the felony car stop and the, the subject was, was  
3 putting his hand behind his waistband and bringing it back out?

4 A: It was quite a while.

5 Q: Okay. And at some point, you said you heard the suspect say something?

6 A: Yeah. All I remember, I don't, I don't know, remember his, I'm not entirely sure what the  
7 last part of his sentence was, but it, I knew he said, fuck and it was either, this or you.

8 Q: Okay. And then, he produced his left hand?

9 A: Yes.

10 Q: And were you able to see anything in his left hand?

11 A: No. All I saw was the gun powder smoke and a gunshot.

12 Q: Okay. How did that make you feel?

13 A: I thought he shot at us.

14 Q: Okay. Were you scared?

15 A: Yes.

16 Q: Scared that he was shooting at the officers and, and you?

17 A: Yes.

18 Q: Okay. And you described to us that you returned fire?

19 A: Yeah.

20 Q: Was that the motivation for returning fire?

21 A: Yes, I returned fire in self defense and in defense of others. My officer, my fellow  
22 officers on the scene.

23 Q: Okay. Do you remember how many rounds that you fired?

24 A: No.  
25

1 Q: Okay. Did you make any kind of a tactical reload or combat reload with your firearm  
2 after the, the initial volley of gunfire?

3 A: No.

4 Q: Okay. Now, at some point people go up to the, I'm sorry, let me go back. At, at what  
5 point did, or did you see anybody else in the car?

6 A: I believe -- I did not see a, a individual, another individual in the car until someone stated  
7 that there was an X in the back.

8 Q: Okay. At what point, at what point did they state that?

9 A: I don't remember.

10 Q: Okay. Now did you advance on the car when there was a group of officers that went up  
11 and took the subjects into custody, were you part of that group or did you stay back?

12 A: No. I stayed back.

13 Q: Okay.

14 A: I initially moved to the left cuz I thought we, my partner and I were the only officers on  
15 scene. So I was about to be the, the arresting team to go apprehend that suspect, but two officer  
16 came from the rear of my left side to take custody of that suspect. And so I moved back to my  
17 position.

18 Q: Okay. So, you, you had the one position by the radio car, you briefly moved to the left or  
19 right?

20 A: Left-

21 Q: Okay. And how long do you think you were in that position?

22 A: For a little bit and then I moved back, maybe like, maybe like 5 to 10 seconds.

23 Q: Okay. When, when you were trained on the vehicle and the suspect shot at you and you  
24 shot back, were you standing, kneeling, in a prone position, do you remember?

1 A: I don't remember. I remember going -- I remember I was transitioning from standing up  
2 and to kneeling to gain maybe a different perspective as to what he was doing with his hands  
3 underneath, cuz I didn't know what was going on behind his back.

4 Q: Okay. And do you remember if there was an officer on your left or right?

5 A: I know that there was that initial officer to my right by the driver's door. On my left, I  
6 believe it was my partner.

7 Q: Okay. Anyone in front of you or behind you?

8 A: No.

9 Q: Okay. So you stayed back and provided cover for the officers that went up?

10 A: Yes.

11 Q: Okay. At what point, what point did you holster your weapon?

12 A: I holstered my weapon after the threat was stopped in the trunk and after officers had  
13 extracted the, the remaining occupant and it was clear.

14 Q: Okay. At what point did you notify supervisor that you'd been involved in an officer  
15 involved shooting?

16 A: After, right on scene.

17 Q: Okay. Do you remember what the sergeant was that, that you notified?

18 A: I think it was Sergeant Sugars.

19 Q: Sugars. Okay. So, it was, it was immediately after, there wasn't a delay in, in that  
20 notification?

21 A: No. It was pretty much right after everything had kind of settled.

22 Q: Okay.

23 A: And we were making sure that you know nobody else was hit. We returned to the, the I  
24 believe it was the west sidewalk of Capp Street. And kind of gathered my partner and tried to see  
25

1 who else was involved and then a sergeant was on scene, so we let him know that we were  
2 involved in the shooting.

3 Q: Okay. Did you recognize, or have you had any contact with the subject that was in the  
4 trunk or do you know that subject at all?

5 A: No. Not the, not the one in the trunk.

6 Q: How, how about the driver?

7 A: The drive, I believe I recognized him from prior contacts.

8 Q: Okay.

9 A: Out in the Mission District.

10 Q: Okay. Do, do you know him good enough that you would know his name, or just that you  
11 reco, you recognized him just by, by seeing him?

12 A: I would recognize him by name.

13 Q: Okay. Do you know what kind of contacts there were that you had, had with him?

14 A: Yes. The very first contact I had with him was an incident that I believe I was working  
15 with my partner, Officer Mendoza one night. And we had pulled over a vehicle, it was a two  
16 door, I believe a black vehicle. I can't remember the, the model or make. But he was a driver in  
17 that vehicle and that traffic stop we pulled him over for his front head lights. And there were  
18 approximately four to five people in the back seat and we identified all of them. He was very  
19 cordial with us. We identified all the passengers. We identified one of the passengers in the back  
20 a juvenile to be a missing person. They were very cordial with us. We advised them, they were  
21 let go and we remained with the juvenile so that we can transport him back home. Did a transport  
22 search, located a small handgun in a sock from that juvenile's sweatpants. And so we knew that  
23 there was something up with that car, we broadcasted it to dispatch. And I believe the subsequent  
24 week after that another coworker of mine, Officer Jaswari told me that he had stopped that  
25



1 individual and I believe it was his girlfriend and he had located a, I don't remember if it was a  
2 real 221, a gun, or a fake gun in the female's purse.

3 Q: Okay.

4 A: And then I believe a couple weeks or months after that my coworker Officer Jaswari had  
5 another contact with him. And they found a, a fake, a gun in his trunk.

6 Q: Okay. So, the first contact that you had what was, how, how long ago was that?

7 A: I think it was about a year ago.

8 Q: Okay. How about the female that was inside the car, do, had you had any contacts with  
9 her?

10 A: No. No. I don't, I don't remember contacting her at all.

11 Q: Okay.

12 A: I believe, I know that I had another separate contact with the driver, and I don't know if  
13 that's the same girlfriend that he was with at that same time, but it was on Florida Street  
14 regarding a domestic violence incident.

15 Q: Okay. I have -- this is a very rough sketch of Capp Street that night. So this is, this is 21<sup>st</sup>,  
16 this would be 22<sup>nd</sup>, here's the suspect vehicle. This is totally not to scale, this is just to try to  
17 orientate us on, on where the police cars were and where people were.

18 A: Uh-huh.

19 Q: Looking at this, if you can, would you be able to recognize which radio, the radio cars are  
20 marked with a PD. Do, would you be able recognize with radio car was yours?

21 A: I believe it was this one. If this is the initial.

22 Q: Okay.

23 A: Car on scene that was, this was us.

24 Q: Could you just a, a put an X on that and then initial it?

25 A: Yes.

1 Q: Okay. So, so when you first got out of the radio car you took up your first position?

2 A: Yes.

3 Q: Can you, on here, recognize where you might, where that first position was?

4 A: Yes. It would be right here next you-

5 Q: Okay. Could you just write P1 and put a circle on it?

6 A: P1.

7 Q: And initial it. Okay. Now when you, you moved at one point, where did you move from

8 here?

9 A: I moved over here.

10 Q: Okay. Could you put a P2 there, circle it, and then put initial? And is this, is this where

11 you were when the shooting occurred, or did you move again?

12 A: I, I believe that was where I was at, at the time of the shooting.

13 Q: Okay. Is there any, did you take on a third position, or was this, was this the last position

14 you took?

15 A: I think that was the last position I took because I kind of transitioned from there, back

16 there and then back to here. I tried to gain better vantage point on whether or not there are other

17 occupants in this car. And, as well as what was going on with his hands over here in the trunk.

18 Q: All right. Okay. Do you have any questions?

19 MH: Yeah. So, since we're on that, did you have any, at the time when you shot, did you have

20 any cover in front of you?

21 A: No.

22 MH: Okay.

23 A: Did not.

24 MH: So, yeah, that's probably where you were, or somewhere over there.

25 A: Uh-huh.

1 MH: Okay. Do you remember him saying, I, I know you said you heard him saying something  
2 to the effect of, fuck it, fuck this, right before he, you felt like he shot from the trunk. Do you  
3 remember hearing him say anything else prior to that?

4 A: No.

5 MH: Now you say that you saw gun powder coming from the car, did you hear any gunfire?

6 A: Yes. I heard gunfire.

7 MH: How many rounds?

8 A: One.

9 MH: One.

10 A: At least one. I thought he might've shot off another one after that, but I was sure that  
11 there was one gunshot, when I saw that gun powder smoke from his hand.

12 MH: Okay. Okay. Did you see a gun in his hand?

13 A: No. I, all I saw was that gun powder smoke ring or whatever from his hand. And the  
14 sound of a gunshot.

15 MH: All right. Did you see like a muzzle flash?

16 A: No. I didn't see a muzzle flash, that was that gun powder and the sound of the gunshot  
17 that I was like, oh, he shot.

18 MH: You were being fired on.

19 A: Yeah.

20 MH: Okay. Okay. You said that your partner was next to you, Officer Castillo-

21 A: Gustilo

22 MH: Gustilo. Where was he right there on, on the map?

23 A: I don't remember specifically. He was somewhere around here, cuz I remember after the  
24 fact, or when we first on scene he was there. And then after the fact, I think when, when we, I  
25

1 was, you know making sure everyone's was good, I was like, you good, you good and we were  
2 like kind of checking other, if we had any holes in us or anything like that.

3 MH: Okay. Do you know who else fired? Or did you see anyone else firing?

4 A: No. The only person I saw fire was Officer Santana when he deployed the less lethal. But  
5 I didn't see anyone else fire.

6 MH: Okay. Okay. How many rounds, I know you said you don't how many times you fired.  
7 How many rounds do you usually keep in your magazine?

8 A: 12.

9 MH: Okay. And then you keep one chambered?

10 A: Yes.

11 MH: Okay. Okay. Then you're not, and then you handed over your weapon, so you don't  
12 know, you haven't heard what count you had?

13 A: Yeah.

14 MH: Okay. Okay. What was he doing when he was in the car? When you heard, when, all the  
15 commands. I know you said he just, he wasn't, you just would see his left hand drop and-

16 A: Uh-huh.

17 MH: You know, and then you were getting that feeling of unease, but was he moving around  
18 other than that during the, when they were calling back the driver and-

19 A: I mean, his leg, his right leg looked like it was trying to come out from time to time and  
20 then went back in. And his right hand kept like, cuz the trunk wasn't open all the way. It was like  
21 slightly pulled down I guess. he was kind of like pulling it up and down sort of.

22 MH: Oh, so he was pulling it, okay.

23 A: I'm not sure. All, cuz I was like well, he's showing his right hand. His left definitely he  
24 wasn't showing us. It'd come up from time to time, go back down and it seemed like he was kind  
25 of like fidgeting back there somewhere under leg, reaching under his leg or something like that.

1 It would come up and it would kind of go back down. Other than that, I couldn't really notice  
2 any other movement. I was just focused on that left hand. Cuz I could see his right hand, but I  
3 definitely couldn't see his left hand from time to time.

4 MH: Okay. Okay. And for you, you know when you said the word, like unease, I mean that's  
5 certainly a feeling that's kind of a universal feeling that would you know, police officers feel like  
6 there's something wrong.

7 A: Uh-huh.

8 MH: I mean, what was that -- to you what does that mean? I mean when you, you drew your  
9 weapon and to point it, you know in that situation, I mean what were you, what, was that  
10 something you just felt uneasy other than it's uneasy. What was that making you feel like? What,  
11 to draw your weapon and point it at him, and when they were, when he's firing at you, what,  
12 what made you fire back?

13 A: I was scared. I thought, I would either, I was shot, my partner was shot. I was afraid that  
14 he would keep firing at us if we didn't return fire. And if we were shot and if we were down I  
15 was afraid that he'd go around throughout the city and continue shooting people so-

16 MH: Okay. All right. Thanks.

17 AL: Just a couple of questions. You mentioned that you had previously interacted with the  
18 driver of the vehicle.

19 A: Yes.

20 AL: Did I hear you correctly. Okay. At what point when you arrived at the scene did you  
21 realize that -- were you able to make this identification?

22 A: When he was walking back, when he was being drawn back. His build, his face, his hair  
23 and if that is the person I'm thinking it was, that's when I recognized who he was.

1 AL: Okay and this is before the shooting occurs.

2 A: Yes. So I mean based on my prior contacts I believed that there was possibly merit to a  
3 gun being on board somewhere.

4 AL: After the shooting, did you hear the person in the trunk say anything?

5 A: Sorry, can you say that –

6 AL: Did you hear any other noises coming from the person in the trunk? Any verbal  
7 response?

8 A: No.

9 [knock at door]

10 UM: Do you have a key in the lot?

11 A: Yes, I do.

12 UM: Which one is yours?

13 A: The one on the left.

14 UM: Right here?

15 A: No I'm sorry, you're right.

16 UM: This one.

17 A: Yeah thanks.

18 AL: Officer Chiu, do you speak Spanish?

19 A: No, I do not.

20 AL: Okay. Just so we're clear on the sequence. An officer deployed the ERIW

21 A: Yes.

22 AI: How many times was the ERIW deployed?

23 A: Once, I believe.

24 AI: How long after the ERIW was deployed did the person in the trunk say, fuck this or fuck  
25 you, approximately?

1 A: I don't remember, maybe like a minute, two. Time started getting a little wonky. I  
2 remember the officer that was giving the Spanish commands continue to give those Spanish  
3 commands and then all of a sudden the shooting happened.

4 AL: And approximately how far away were you standing when the shooting occurred?

5 A: I was relatively close cuz I mean I know that the first initial police car on scene was  
6 pretty close. More than usual than like we would do a felony car stop. So I mean maybe like 15-  
7 20 feet?

8 AL: The first live gunshot, not less lethal shot, came from the trunk. Did I understand you  
9 correctly?

10 A: Yes. That was the one that the suspect fired.

11 AL: Okay and then in response you fired?

12 A: Yes.

13 TB: When you fired in response, did you wait to see if other officers fired?

14 A: No, I just fired in response to that one gun shot that I heard.

15 TB: And when you fired in response, were you convinced that you were being fired upon?

16 A: Yes.

17 TB: Okay I nothing else.

18 Q: Do you have anything maybe we didn't ask that you think is important for us to know or  
19 that you'd like us to know?

20 A: I don't think so.

21 Q: I'm going to end this interview. It's approximately 1749 hours.

22 END OF INTERVIEW  
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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER GUSTILLO**

**INTERVIEWED BY: SERGEANT BANWICK**

**DATED: MARCH 8, 2018 TIME: 1536 HOURS**

1 **Q: SERGEANT BANWICK**

2 **A: OFFICER GUSTILO**

3 **YS: YORK SUDA**

4 **AC: ANGIE CHOW**

5 **DN: DON NOBLES**

6  
7 Q: Okay, this in regards to case number [REDACTED]. It's the interview with Officer Gustilo.  
8 Today's date is March 8<sup>th</sup>, 2018 and approximate time is 15:36 hours. Okay, Officer Gustilo, you  
9 had a chance to take a look at, at all the video that you wanted to look at?

10 A: Yes, sir.

11 Q: Okay. So the night that, the night of the incident, can you tell me what time you started  
12 work that night?

13 A: Started work that day?

14 Q: Yeah.

15 A: We started at 1600 hours.

16 Q: 1600, okay. Had you worked earlier in the day or done any overtime or court time earlier  
17 that day?

18 A: No.

19 Q: Okay. And who were you working with?

20 A: Officer Chiu.

21 Q: Officer Chiu, alright.

22 A: C-H-I-U.

23 Q: C-H-I-U, okay. Is he your regular partner or is he someone new to work with?

24 A: We work, we're not partners but we work regularly together.

25 Q: Okay.

1 A: Approximately half our week we spend together.

2 Q: Okay. So this, this event happened on, on Capp Street. Prior to going to it, what were you  
3 doing, uh, what were you and your partner doing?

4 A: We had just finished a call on 15<sup>th</sup> and Valencia and we were driving Southbound on  
5 Valencia towards 16<sup>th</sup>.

6 Q: Okay, do you remember what the call was that you were coming from?

7 A: It was a, I believe it was a trespasser call.

8 Q: Okay.

9 A: On the steps of the church there on between Julian and, on 15<sup>th</sup> between Julian and I can't  
10 remember the street that's west of that but, in that area.

11 Q: Had you completed that call or, did this call for assistance?

12 A: We did. We did.

13 Q: Okay, so you had completed it?

14 A: We completed that call.

15 Q: Okay, so tell me, so tell me what happened next? What, what did, what'd you hear on the  
16 radio and, and what actions did you take?

17 A: So it was a brief code 33 call. I can't remember the unit exactly what unit it was, if it was  
18 a 13 Edward or a 15, David 15 Edward, or David 13 Edward. But I believe it was a code 33,  
19 211/221 in car, in some form or fashion. Was the call that came out. The next, they, they told us  
20 it was on 19<sup>th</sup> and Capp where they were. I, I just don't think they had, knew exactly where they  
21 were at. So we proceeded -- sorry no, that's, that's how it came out.

22 Q: Okay. So tell, so tell me what happened next?

23 A: So then we, I was driving uh Southbound on Valencia approaching 16<sup>th</sup>.

24 Q: Okay.

1 A: I made a left onto 16<sup>th</sup> Street, now heading Eastbound on 16<sup>th</sup>, approaching Mission. Past  
2 Mission hit Capp, made a right on Capp. And then headed Southbound on Capp until we got to  
3 the other unit, the primary unit, which was just south of 21 Street and Capp.

4 Q: So were you responding code three or code one?

5 A: Code one.

6 Q: Code one, okay.

7 A: Code one, correct.

8 Q: Okay so, when, when you came on scene. What did you see?

9 A: I observed the primary unit uh, who I believe was Officer Cassinelli and Officer Tupper.  
10 We I pulled up to their, the left of their vehicle, just, just behind their vehicle.

11 Q: Okay.

12 A: I observed Officer Cassinelli outside of his door giving directions to, I saw a black Honda  
13 Civic with a male in the trunk and the trunk was, was open. And I believe he was holding it  
14 down with, I believe his right hand. There was another male in the driver's side door. I can't  
15 remember if at the point we got there he was still sitting in the car, but I know he was either just  
16 outside, his leg was out or, he was out and he was kinda yelling, you know, I don't know what's  
17 going on. Something to that affect. Officer shortly thereafter, do you want me to continue from  
18 there? Keep going?

19 Q: Yeah, yeah.

20 A: Officer Cassinelli was giving him directions to directed him back towards us. I believe at  
21 that point, at some point, I don't know exactly, Officer Smets and Officer Corbin arrived on  
22 scene. And they acted as the arrest team to detain the first gentleman, who was in the driver's  
23 seat. They brought him back and then we were attempting to contact the gentleman in the trunk  
24 of the vehicle directing him to show us his hands. Directing him to come out of the vehicle. I  
25 believe there was some thought that he maybe was a Spanish speaker. So Officer Banegas got on

1 the radio car's mic, gave him directions, I believe in both English and Spanish. He didn't comply  
2 to those, to, to those directions. And the whole time we were trying to communicate with him. I,  
3 I don't know the exact number of times, but he on numerous occasions would have his right hand  
4 holding the, the hatch and his left hand would be in his chest area and then drop to his side. And  
5 that's really, that was what concerned us most that we couldn't see that left hand. And multiple  
6 instructions were given to him telling him that if he did not keep his hands where, you know,  
7 where we could see him, he would be shot. At one point, I believe it was Officer Santana, used  
8 the less lethal to, he fired a bean bag round at the, the subject. I'm not sure if he struck him or he  
9 struck him. But I know I believe he let go of the hatch at that point. Again we instructed him to  
10 show us his hands. Moments later, the individual reached to his side, picked up a firearm,  
11 pointed in the direction of myself and other officers. At that point, I and other officers fired our  
12 firearms at, at the individual. We feared for our lives and the -- I feared for my lives and the  
13 safety and lives of my, my co-workers and the other officers on scene. So we fired our firearms  
14 at the subject who pointed the weapon at us.

15 Q: Okay, what happened after that?

16 A: Well after that we gave the -- there was talk of a female in the back. We gave her  
17 commands to exit the vehicle. She, she did not immediately comply and it, we don't know if it  
18 was the shock or you know, whatever. We approached the vehicle, detained her and other  
19 officers began emergency medical response on the individual who was struck by our gunfire.

20 Q: Okay. Okay after that, did you do anything else?

21 A: I moved up, I walked up Capp Street, or, yeah Capp Street. I walked south towards 22<sup>nd</sup>  
22 just to check for any other if there was anyone who was hit by fire or any other potential  
23 suspects. Once it was clear, I returned to the scene where a lieutenant directed us. He corralled  
24 everyone and we went in for direction at that point.

1 Q: Okay. Let's go back to when you started to respond. So you, so you were responding to  
2 what kind of call? What when, when you heard the assistance call.

3 A: It was a robbery with a gun involved.

4 Q: Okay, so what kind of things were going through your mind as you were responding to  
5 the, to Capp Street?

6 A: Safe avenue approach. Yeah I, I know it's a, anytime you hear any kind of robbery with a  
7 gun, any kind of, you know, we, we, I've done felony car stops. Anytime you hear gun, and you  
8 have a car and you have suspects, you, your, you get a little worked up and you know, you feel,  
9 you know, you -

10 Q: There's some anxiety because it's a dangerous call?

11 A: There's some feelings there. correct, yes. The danger is there. You know the danger's  
12 there.

13 Q: Okay, so when you came 97, when you came on scene, you got out of the police car?

14 A: Correct.

15 Q: Okay, at what point did you draw your, your pistol or after coming on scene?

16 A: I believe it was immediately, as soon as I exited my vehicle.

17 Q: Okay, when you came on scene, tell us again exactly what you saw.

18 A: First thing I saw is, I pulled up as I saw Officer Cassinelli outside his door. And then the  
19 first thing I noticed was the individual in the trunk of the car.

20 Q: Okay.

21 A: Laying inside of the trunk.

22 Q: Okay, and you could see one hand or both, both hands?

23 A: I could see one hand from where I was at holding the hatch.

24 Q: Okay.

25 A: Hatch of the, the trunk of the vehicle.

1 Q: Okay, now did you communicate with any other officers when you came on scene?

2 A: I cannot recall.

3 Q: Okay.

4 A: I think I told Smith-Russack at one point to keep eyes on the X while we were making  
5 our way towards the vehicle cause he was furthest up and could have the best vantage point I  
6 believe on the X.

7 Q: So did you, did you see the X prior in the car prior to the, the shooting or did you see  
8 that?

9 A: I can not recall.

10 Q: Okay.

11 A: I can not recall. The, I, my biggest concern at the time was the individual who I could  
12 clearly see was in the trunk and who I could clearly see moving his hand up and down.

13 Q: Okay.

14 A: In the rear of the vehicle.

15 Q: Did you, did you take one position when you came on scene or did you take a position  
16 and move, or did you readjust?

17 A: I moved.

18 Q: Okay, so when you first got, came on scene, where did, where did you go from there?

19 A: I believe I positioned myself, my partner and I both positioned myself behind Officer  
20 Cassinelli.

21 Q: Okay.

22 A: I believe that's where I was. And my thought was that if this guy, we were first on scene,  
23 if this guy comes back now, we're gonna move in and arrest him.

24 Q: Okay.

1 A: Officer Corbin came from around. I believe he walked up and did that and then I took a  
2 position outside I believe behind a car that was to the parked car to the far left. And then I moved  
3 in closer from there.

4 Q: So you initially took cover behind a car?

5 A: Uh-hum.

6 Q: Were you standing or kneeling or prone?

7 A: I believe I was, at one point I might have been kneeling, but I can't recall exactly.

8 Q: Okay. So you took the position and then you, did you have a good clear view of the, the  
9 car with the suspect in it?

10 A: I did.

11 Q: Okay, how was the, the vehicle lit up or, or what was the lighting like with the, where the  
12 vehicle was?

13 A: I believe Officer Cassinelli and Officer Tupper had their, their lights focused on the  
14 vehicle.

15 Q: Lights you've got, a spotlight or, or?

16 A: The spotlights.

17 Q: Headlights of the car or a combination?

18 A: I believe it was, I believe it was both.

19 Q: Okay, and was it lit up sufficiently that you could see, you could see the subject lying in  
20 the trunk?

21 A: Yes.

22 Q: Okay. So you took that first position and then what were you feeling or what was going  
23 through your mind that you, that you moved to the second position?

24 A: I can not recall. I think, I think what it was, was Officer Corbin and Officer Smets moved  
25 into to handcuff the individual. And I was concerned about the person in the rear.



1 Q: There's just the, the driver, their handcuffing the driver of the car?

2 A: The driver who had, who had been directed back, who complied.

3 Q: Okay.

4 A: And they were working in an area that was, if I can remember correctly, was kind of in

5 front of the Cruiser, and the Honda Civic was here. So they were within range of that Civic.

6 Q: Okay.

7 A: And I believe I moved over to cover because I knew there was still someone in the.

8 Q: Okay, so you, so you repositioned yourself to cover the two officers that were making the

9 arrest on the driver?

10 A: Right. Correct.

11 Q: Okay. So when you got to that second position that you took, do you remember if you

12 were standing, kneeling, prone?

13 A: I cannot recall.

14 Q: Okay. That second position, what kind of a, a, a visual of the suspect vehicle did that

15 afford you?

16 A: I could still see, I could see the suspect, the subject in the rear of the car.

17 Q: Okay. Uh, now did you stay there, or did you reposition a second time?

18 A: I believe once they had the driver, once we had him in custody, I moved back closer to

19 my partner Officer Chiu.

20 Q: Okay.

21 A: And then I believe Officer Carroll moved to my left.

22 Q: Okay, so Carroll's on your left and was Chiu on your right or in front of you or behind

23 you?

24 A: He was on my right. He was on my right.

25

1 Q: Okay. So you heard, when you first got there, they were doing the felony, the felony car  
2 stop was in, in process.

3 A: Correct.

4 Q: And you could hear officers giving commands to the, the subjects that were in the car?

5 A: Correct.

6 Q: Do you remember if that was in English or Spanish?

7 A: It was in English.

8 Q: It was English, okay. Was that, was it on the P-A or was it just being done verbally?

9 A: It was verbally.

10 Q: Okay. And at some point, did the person that was giving the, the instructions to the driver  
11 and occupants did that change, or did it stay the same person the entire time?

12 A: It changed.

13 Q: Okay, did the direct, the instructions by the police continue in English or did they ever  
14 transition to Spanish?

15 A: They transitioned to Spanish once Officer Banegas came on scene.

16 Q: So, as she's giving instructions what is the guy that, the suspect in the trunk of the car  
17 doing?

18 A: He's, he's still laying in the car. His head was towards the driver's side of the vehicle.

19 And he's, we've, I could see him continuously like I said, moving his hand from his chest  
20 stomach region where we could kind of get an eye, visual on it, down to his side. Which I didn't  
21 personally look because I wasn't sure if there was a firearm there or not or you know, what he  
22 was concealing with his left hand.

23 Q: Okay.

24 A: And reaching forward movement to.

25 Q: So how were you feeling when you kept losing sight of his left hand?

1 A: I was very concerned.

2 Q: Okay what were, what were you concerned, what, what was?

3 A: I was, I was concerned there was a firearm in and due to the nature of the call, the call  
4 being a firearm, an armed robbery with a firearm, I was concerned this was the individual with a  
5 firearm and that he was possibly reaching for it.

6 Q: And your fear stems that if he had a firearm that.

7 A: If he had a firearm, I was worried he was gonna pull it out and shoot at us.

8 Q: Okay. As the officer continued to give the instructions to the, the suspect that was in the  
9 trunk, did he follow the instructions? I know some of them would be in Spanish and you might  
10 not understand but, what was he doing, what was he doing while she was giving the instructions?

11 A: It didn't, it didn't appear that he was, it, it, it almost appeared like he was going through  
12 some internal monologue. I, I don't know if he was thinking about what he was doing. It didn't  
13 appear he was complying to any of the commands that were given to him in English or Spanish.

14 Q: Could you hear if he was saying anything or, or?

15 A: I personally could not, no.

16 Q: Okay. So the, so the instructions are continuing to be given, and at some point somebody  
17 deploys less lethal on the subject in the car?

18 A: Correct.

19 Q: Okay, and were you able to see that deployment of the less lethal?

20 A: I did.

21 Q: Could you see where the, where the beanbag round struck the subject?

22 A: I, I can't say for sure. It looked like it may have hit him in the hand or in that area where  
23 he, he quickly let go.

24 Q: Okay.

25 A: I know that.

1 Q: Okay, and was there a response from the, the subject that was hit with the less lethal?

2 A: He looked like he was hit or startled by it and he let go of the, the trunk. There wasn't  
3 any, if you're asking for compliance, I, there wasn't any at that time.

4 Q: Okay. Did he say anything at that point?

5 A: At that point, no.

6 Q: Okay. So then how much time okay, so then after the, the less lethal is, is deployed, tell  
7 me what happens next?

8 A: It was a few, I don't think any more, no more than 30 seconds the individual reached  
9 down to his side again. Brought a firearm up and pointed in our direction. And at that point, I  
10 fired my firearm and everyone else on, everyone -- multiple officers I should say. I shouldn't say  
11 everyone. Multiple officers discharged their firearm.

12 Q: So when he brought his hand forward, what were you feeling?

13 A: I was fearful that he was gonna shoot one of us.

14 Q: Could you see the, the gun in his hand?

15 A: I could.

16 Q: Okay, were you able to see the gun discharge?

17 A: I don't remember if I saw it get discharged but I can remember it coming up and seeing,  
18 and seeing it in, as he brought it up, he yelled, he gave a yell. I don't remember if it was an  
19 expletive or if it was a, excuse my language but a "fuck" or just a "ahh." But I heard a yell. I saw  
20 the gun come up as he simultaneously brought it up. And then I, I discharged my firearm.

21 Q: Okay. Were you able to tell how many rounds or, if he, if he fired his firearm?

22 A: At that moment, I could not tell.

23 Q: So you didn't, you, you don't remember seeing, are you, you didn't see the, the pistol  
24 discharge?

25 A: I saw the firearm but I, I don't remember. I cannot recall if I saw a flash from the pistol.

1 Q: Okay. Do you remember how many rounds you fired?

2 A: I want to say two maybe three, but I can't be, I can't be certain.

3 Q: Okay. When the, when the, when the subject brought his -- his left hand approaching you

4 saw the firearm, what was the lighting like at that point?

5 A: It was the same.

6 Q: And, and it was clear, and you could, you could see?

7 A: Yes.

8 Q: Okay. And, uh so after you, you, uh delivered your rounds, what did you do next?

9 A: I think we -- we held our spots just to wait to see if the threat had been stopped at that

10 point.

11 Q: Okay.

12 A: I de-cocked my weapon.

13 Q: Okay.

14 A: And just continue to wait. I believe another unit grabbed a shield and we waited until

15 they were ready, and they moved in as an arrest team for the female who was in the back. And I

16 provided cover you know, on the, keeping eyes on the person in the back just making sure I

17 could see their hands and-

18 Q: The female that was still in the car?

19 A: Correct, correct.

20 Q: Was the female handcuffed up at the car or was she walked back to the radio cars?

21 A: I believe she was cuffed once out, just outside of the, the driver's side door.

22 Q: Now, your participation in that was just to cover the officers that was, that were.

23 A: I was just, correct, I was just covering.

24 Q: Okay, at what point did you holster your weapon?

25

1 A: I believe as I walked back from, I can't remember exactly if I, if I walked out to, toward,  
2 I believe I still walked out towards 22<sup>nd</sup> on Capp and then I walked back. I can't remember  
3 exactly but it was once I was walking back towards my, my patrol, my vehicle that I, holstered  
4 my weapon.

5 Q: Okay, did you participate in any of the first aid on the subject that was in the trunk?

6 A: I did not because there was already three officers there and they all had, you know, they  
7 were, it was a very congested scene.

8 Q: Okay. Did you have any interaction with, other than covering the officers that took the  
9 female into custody, did you have any more interaction with her at all?

10 A: No, I did not.

11 Q: Okay. At what point, or, did, did you notify your sergeant that you're involved in a  
12 (inaudible)

13 A: It was once, I can't recall exactly, but it was, there was a point where we all walked to the  
14 west side of Capp Street that the first person I remember telling was Sergeant Sugars.

15 Q: Okay.

16 A: As he was on scene he asked, you know, were you involved, were you involved, and he  
17 just kind of corralled us in and (inaudible) walked over.

18 Q: Okay so that was pretty, was that fairly soon after the shooting or was there a much time  
19 that they.

20 A: It was, no.

21 Q: Okay.

22 A: It was, it was fairly quick.

23 Q: Okay. Do you have any questions?

24 YS: What did, what did, what did Sergeant Sugars do with you?  
25

1 A: He just corralled those that were involved and kind of kept right where we were on that,  
2 on the west side of Capp Street.

3 YS: Corralled the shooters you mean?

4 A: Correct. Those, those who deployed their firearms.

5 YS: You said you fired two to three times? Is that correct?

6 A: As, as best as I can recollect. I can't be for sure, certain, but I know it was something.

7 YS: And you carry a Sig 226, .40 cal?

8 A: Yes, sir.

9 YS: You carry three, two magazines on your belt and one in the gun?

10 A: Yes, sir. Yes, sir.

11 YS: You carry the gun with one in the chamber plus the magazine with 12 fully loaded?

12 A: Yes, sir.

13 YS: And your spare magazines, shoots (inaudible) you keep those fully topped off at 12, 12  
14 rounds?

15 A: Yes, sir.

16 YS: Did you do a mag count afterwards or did you just give your magazine and guns to the  
17 firearms?

18 A: Just, just gave it to CSI.

19 YS: Okay. So they would do that count, not you?

20 A: Correct.

21 YS: Um-

22 Q: Did you do any type of reload or tactical reload or anything like that?

23 A: I did not.

24 Q: Okay.

25 A: I did not reload, no.

1 YS: You might have said it, but I might have missed it, do you have a recollection or  
2 knowledge of how many times the suspect fired or might have fired, if he fired at all?

3 A: I was not sure that he fired. I said I saw the firearm come up, but I didn't see the  
4 discharge.

5 YS: Okay. Let's see. What was the lieutenant on scene? You said a lieutenant made some  
6 directions?

7 A: Lieutenant Banta.

8 AC: Very early on, you had mentioned an X in the car. Just for the record, what do you mean  
9 by X? Are you referring to the woman that you, the woman in the back seat?

10 A: Yes, we, we refer to women as X's um in our daily or our normal line of work.

11 YS: (inaudible)

12 A: I'm sorry?

13 YS: The term, just used as a term.

14 A: Correct. Correct.

15 AC: And during the break, you had the chance to watch your body worn camera?

16 A: I did.

17 AC: Okay, did you see any other video?

18 A: I did not.

19 AC: And have you seen any of the video that is posted on the media?

20 A: I've seen what's on the news, yes.

21 AC: Okay, so how many videos would that be?

22 A: I believe, might have been CBS and Fox. I can't, I think that's all we have at our house.

23 AC: Okay, so do you think you've, do you know how many different videos that you've seen  
24 on the media?



1 A: Just what, what I saw on the news is yesterday, yesterday evening or what, I can't  
2 remember what's today Wednesday, or Thursday?

3 YS: Today's Thursday.

4 A: Yeah.

5 AC: I don't know either.

6 A: I don't, I don't remember how many videos and I don't, like I, I can't tell if they were  
7 different videos they were posting or that they're showing on the news. It's just, you know, a, it's  
8 kind of, it's hard to kinda watch sometimes, you know. Just brings back that, yeah, so.

9 AC: I understand. Did any of the videos that you've seen either on the news or your own body  
10 worn camera, did it at all differ from your recollection of what you remember seeing?

11 A: Not that I can, not that I can think of. Other than, I believe there's one video that you can  
12 actually see the firearm go off, his firearm go off first. I think that was NBC.

13 AC: Okay. And the, the account that you had provided us, was that, did it include any details  
14 on things that you'd seen on the videos or is it just purely what you remember about what  
15 happened?

16 A: It is purely what I remember, yeah.

17 AC: And the suspect in the back trunk, did, had you ever seen him before?

18 A: Uh, no.

19 AC: How about the, the X, the female?

20 A: The female? I, I didn't even see her face. I just, I just kinda remember seeing the long  
21 darker hair.

22 AC: Okay.

23 A: And then refer, people referring her on scene as the X, in the rear of the vehicle.

24 AC: And how about the driver if the car?  
25

1 A: The driver I didn't, I, I, I know I asked him in trying to get the female to comply, I  
2 thought maybe we could find out her name -- she'll you know, kinda snap out of whatever she  
3 was in. And I asked him real quick, but I don't remember seeing his face or what he looked like.  
4 That was it-

5 AC: Did the driver ever say anything to you?

6 A: Not that, other, other than when I asked him, hey what's her name? I think he said her  
7 name was [REDACTED] and then that was it. That was all.

8 AC: Okay, and you never heard him say anything else?

9 A: Other than that was his girlfriend. I could hear him in the background. I remember him  
10 saying, that's my girlfriend in the car. And that's, that's all I can remember.

11 AC: Okay.

12 X: Would (inaudible) number of, so bear with me if I've asked this.

13 A: Sure.

14 X: From where you were, were you present when the driver was taken out of the car? I think  
15 you said you were.

16 A: I was.

17 X: Did you hear any statements made from the guy in the trunk or the driver at that time  
18 when the driver was being taken out?

19 A: The only person that I can recall saying anything at that time was the driver and  
20 something to the effect of, I don't know, what is this all about.

21 X: Okay.

22 A: That's, that's, that's what the one thing that I didn't, that was the only thing that really  
23 stuck into my head as far as something that he may have said.

24 X: And, I'm sorry that these are kinda getting (inaudible) the suspect, so you never, did you  
25 hear him say anything at all during this?

1 A: Well which, the guy in the trunk?

2 X: The guy, I'm sorry, the guy in the trunk.

3 A: I did not. The only thing I, I remember distinctly him distinctly remember coming from  
4 him was the yell before the, before he pointed the weapon at us.

5 X: Okay.

6 A: And I couldn't recall if that was a, a curse word or if it was just a yell or whatever.

7 X: Alright.

8 Q: So we've got this is a very, very not to scale, kind of crude kind of sketch of, of Capp  
9 Street that night. This right here is the suspect vehicle.

10 A: Uh-hum.

11 Q: These are the parked vehicles on the side and then these are uh, the SFPD radio cars. Can  
12 you give us an idea if you can, can you recognize which car, what, what car might be positioned  
13 where you, where you pulled up? Okay, let me just make an X (Inaudible) on that.

14 A: Just X on it?

15 Q: Oh, an X on it and then if you can put your initials next, okay. So where, when you, when  
16 you took your first position, can, can, can you, on the diagram put, show me where you took that  
17 first position before you repositioned?

18 A: I want to say I was over here.

19 Q: Okay. Will you put an X there and, and initial it. And then maybe put first position on  
20 here, 1P. alright, that's fine. Okay so then when you repositioned, where did you go?

21 A: I believe I was in this vicinity here.

22 Q: Okay.

23 A: To try to keep eyes on the trunk because they -- they handcuffed the driver in this area  
24 here.

1 Q: Okay so when they handcuffed him, you were actually in the, they were in your field of  
2 fire so.

3 A: Correct.

4 Q: You, you repositioned, if you could put write, write down there a little X where, where  
5 you took your second position and then initial it and just write 2P on there. Okay, yeah. Do you  
6 remember moving any -- so this when, when the, when the shooting occurred, this is where your  
7 location was?

8 A: I believe I was closer to here because I believe Officer Carroll moved.

9 Q: Okay, so.

10 A: He so, I, I'm, after they had handcuffed the driver and brought him back.

11 Q: Okay.

12 A: I moved here, and I remember Officer Carroll coming behind me because he took my  
13 handcuffs from my rear.

14 Q: Okay.

15 A: And he moved here where I was.

16 Q: Okay. Okay. Put an X where you were here and then if you, same thing, just print 3P,  
17 okay.

18 YS: Officer Carroll took your handcuffs cause he's already used his set on the first person?

19 A: He used his set on the driver. And he took mine out of the, I have a patch, a pack in the  
20 rear of my belt.

21 Q: Uh-hum.

22 A: And he pulled that out.

23 Q: Do you know if those, did you ever get those handcuffs back or did?

24 A: I did not.

25 Q: Do you know if.

1 A: As far as I understand, I asked Officer Carroll where they were at, he said they were on  
2 the subject that was in the rear of the vehicle.

3 Q: Okay, so he, those were the handcuffs that, that at least what Carroll told you.

4 A: As far as I know.

5 Q: Is that those are the handcuffs that, that he used to handcuff, okay.

6 A: Correct, and my star is on them so.

7 Q: Okay.

8 YS: Do you know where your, approximately where your partner went?

9 A: My partner was here in this area.

10 YS: So he's like on, with you?

11 A: Yeah, correct.

12 YS: Okay. Did he, did he also, I mean, were you guys kind of paired up the whole time or did  
13 he go to the sidewalk?

14 A: No, he was, he was mostly in this area with Officer Cassinelli.

15 YS: Okay, thank you.

16 Q: Do you remember if you got on the radio at all um?

17 A: I did not.

18 Q: Before and after? Okay.

19 A: I did not.

20 Q: Okay.

21 A: Usually it, choose my partner he, one of us will direct on the radio and or, you know,  
22 passengers on the radio and when we're at something like this, I figured someone back here  
23 would be directing kind of what's going on up here since we're all, you know, eyes on what's in  
24 here.

1 Q: Is there anything that you'd like to say that maybe we didn't ask or that you think is  
2 important for us to know about the incident?

3 A: Not that I can think of off the top of my head.

4 Q: Okay.

5 YS: Do you know, I'm sorry. Do you know who fired the ERIW, the beanbag?

6 A: It was Officer Santana.

7 YS: Do you know where he was positioned?

8 A: He was somewhere, I can't, I can't, I can't for certain. I know he was on; I believe he was  
9 on, I, you know, I want to say he was on this side of the car but.

10 YS: Would that be near Cassinelli and near Chiu and, in that, in that vicinity?

11 A: Correct. In that, in that vicinity. I, and I'm not 100 percent certain. I just know it came, I  
12 mean, considering I'm over on this, he was onto, he was on the right side of me. Whether it was  
13 on this side or this side of the car, I am not 100 percent certain.

14 YS: Okay.

15 Q: Alright. You have anything counselor?

16 DN: No.

17 Q: Okay. I'm going to uh stop the interview. It is 1407 hours. I'm sorry, 1607 hours.

18 END OF INTERVIEW  
19  
20  
21  
22  
23  
24  
25

1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 23, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August  
14 2019.

15  
16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
19  
20  
21  
22  
23  
24  
25

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER ISHIDA**

**INTERVIEWED BY:       SERGEANT PARKER**

**DATED:                   UNKNOWN**



1 **Q: SERGEANT PARKER**

2 **A: OFFICER ISHIDA**

3 **AL: ANDREW LAW**

4 **MH: MEGAN HIYASHI**

5 **TB: ATTORNEY TONY BRASS**

6  
7 Q: Okay. Now we're back on record. And just so we just go around the room once again and  
8 say our (inaudible), I'm Sgt. Parker, homicide division.

9 AL: Andrew Law, district attorney's office.

10 MH: Megan Hiyashi, district attorney's office.

11 TB: Tony Brass with Officer Ishida.

12 Q: Okay. And then here interviewing officer-

13 A: Officer Ishida.

14 Q: Ishida. Okay then, and you guys had a chance to view your video?

15 A: Yes-

16 Q: (inaudible) star?

17 A: Star number 2035.

18 Q: Okay. Let's start off with the 6<sup>th</sup> of March. The day of the incident, what, what time did  
19 you start your shift?

20 A: 2100.

21 Q: 2100?

22 A: Yes, sir.

23 Q: Okay.

24 AL: Sorry to interrupt. Please put on the record which body worn cameras, the officer viewed.

25 Q: Okay. That's fine. Okay. So, which body worn camera did you, did you view?

1 A: I reviewed my own footage.

2 Q: Okay.

3 A: And that of officer Nagai, N-a-g-a-i

4 AL: And, and any other footage besides the-

5 A: That's it.

6 Q: Okay.

7 A: Okay.

8 Q: So, you start your, started your shift at 2100?

9 A: Yes, sir.

10 Q: And I think you mentioned you had two partners that night?

11 A: Yes.

12 Q: Okay. And they were officer Wynkoop and Bohena?

13 A: Bohannon. That's is correct, sir.

14 Q: Bohannon, okay then. Is it normal for you to have two, two officers?

15 A: No. They're both recruit officers.

16 Q: Okay then-

17 A: And I was tasked with both of their training that night.

18 Q: Okay. Okay. So, do you remember what you guys were doing prior to the actual call for

19 you know, assistance that put you out at Capp Street. Do you remember what you were doing?

20 A: Yeah. We were in the middle of a traffic stop.

21 Q: Okay. You remember where the traffic, traffic stop was?

22 A: We were at Mission Street and 20<sup>th</sup> Street.

23 Q: Okay. And if you could just take it from there and just kind of let me know, kind of walk

24 us through what happened?

25

1 A: Sure. Mission and 20<sup>th</sup> Street, in the middle of a traffic stop. I hear a unit call code 33.  
2 Clear the air. We weren't sure if it was a Mission unit or Bayview unit so we kind of you know  
3 stopped to wait for more information. Once it was confirmed it was a Mission unit and I heard  
4 code 33 at 20<sup>th</sup> and Capp. So, we ended our traffic stop and we headed towards Capp and 20<sup>th</sup>.  
5 While we were on your way to 20<sup>th</sup> and Capp, we heard over the air, it's actually going to be at  
6 21<sup>st</sup> and Capp. So, we came south on Capp from 20<sup>th</sup>. Upon our arrival I see at least one, two  
7 patrol vehicles and effecting a felony stop on a Honda, the trunk open and I see an individual in  
8 the trunk. I see Officer Nagai with a weapon pointed at the trunk. So, I go to support officer  
9 Nagai and I point my weapon at the trunk. And I hear multiple people yelling at him, "hey, let me  
10 see your hands, get out of the trunk." I see that he's not listening to these commands. So, I point  
11 my firearm at him cuz of the, the units had also advised us that the call was involving a, a  
12 firearm. They'd been flagged down so that the occupants in that vehicle were in possession of a  
13 firearm. He continues to not follow commands. Eventually I think it's officer Santana starts  
14 yelling commands at him in Spanish. And then, officer Banegas comes on scene and uses a  
15 vehicles PA system to give him instructions in Spanish. He still is not listening to his commands,  
16 both in English and Spanish. And while they're giving him these commands, I see him make  
17 several, like reaching motions towards his rear waist band while he's in the trunk. And he's  
18 advised multiple times, don't do that. He continues to do it. Officer Santana made the decision to  
19 use the ERIW, less lethal to gain compliance. To get him out of the trunk. I heard officer Santana  
20 yell, red light. And we all echoed, red light, so we knew that it was going to be a less lethal  
21 round. And I know San, officer Santana hit him once and the subject still didn't comply. And  
22 then you hear him, I, I can see him talking to himself. I, I can't hear what he's saying. But then I  
23 hear him say like "man, fuck you" and then I see a muzzle flash come from the trunk and, and  
24 two gunshots. And then, I, I thought I was going to get shot, I thought he was going to shoot the  
25 other officers on scene, so I returned fire.

1 Q: Okay. Continue.

2 A: He kind of falls back into the trunk, like the trunk lid kind of closes on him. But we don't  
3 know necessarily the threat has been ended. You know, he could be just be lying in wait for a  
4 second ambush. So, I know two officers. I, I forget who had them, but they brought the ballistics  
5 shields. So, we approached the car and I, again, I don't know who, but someone extricates him  
6 from the trunk and cuffs him on the ground. While they're doing that, I clear the trunk in case  
7 there's more than one person. I, I do see like a handgun in the, in the trunk. Other units, I don't  
8 know who, got the female passenger out of the car. I don't know who did that. So then he's on  
9 the ground and we -- multiple gunshot wounds of course. So myself, officer Carroll and officer  
10 Smets begin rendering aid to him.

11 Q: Uh-huh.

12 A: And then, I think the ambulance came on scene and obviously they're better equip to  
13 render aid to him. So, I was relieved of that and then I was just told to go meet with the OIC.

14 Q: Okay. Now, you said Officer Bo, Bohannon was driving?

15 A: Yes, sir.

16 Q: Okay. Do you remember where you guys parked when you initially got to the scene?

17 A: So, we're, we're south on Capp.

18 Q: Uh-huh.

19 A: Approaching 21<sup>st</sup>. And the, the stop is just south of 21<sup>st</sup> Street and I see that there's  
20 already multiple cars already in a felony stop position. So, I thought another car is not going to  
21 do anything, it's just going to get in the way. So I had officer Bohannon position it so that it  
22 would just block traffic from like civilian traffic from continuing south on Capp Street.

23 Q: Okay. I want to show you this. This is a, this is not the scale, this is kind of a, a drawing  
24 of, or we won't even call it a, a sketch.

25 A: (inaudible).

1 Q: A sketch.

2 A: A rough sketch.

3 Q: Of, an extremely rough sketch of the, of the street that night.

4 A: Okay.

5 Q: Okay. So, we got Capp Street here. This is the suspect vehicle.

6 A: Uh-huh.

7 Q: Okay. And then, these cars may or may not be most likely not in the positions they are,  
8 but this is just a rough sketch.

9 A: Okay.

10 Q: All right. So, 21<sup>st</sup> is up here and this is 20<sup>th</sup>. Or, no, nope, nope, nope, nope, 21<sup>st</sup>, this is  
11 going on to 22<sup>nd</sup>. Okay.

12 A: Yes.

13 Q: So, where would your car have been parked?

14 A: I, he literally put it to the best of my recollection, in the crosswalk.

15 Q: So, this would've been south and not depicted on-

16 A: Correct.

17 MH: Uh-huh.

18 Q: Okay.

19 A: Okay.

20 Q: So, at some point, okay, you had to get, you had to have gotten out of the car.

21 A: Yes.

22 Q: Okay. Okay. Now, do you remember where you ended up, where you initially went, went  
23 once you got out of the car?

24 A: May I, can I-

25 Q: Yes. Yes.

1 A: Okay. This might be too much, do you know which one of these is supposed to be that  
2 red pickup?

3 Q: We, we, like I said, this is just-

4 A: I understand.

5 Q: Yeah.

6 A: Okay. So, to the best of my knowledge, this would be the closest. Sorry it's the second  
7 one. Based on this very rough sketch.

8 AL: Do you want to borrow my pencil?

9 Q: No. I'm, I'm going to have him do that.

10 A: Yeah. I'll have it. Okay. So, to my recollection, this is the, can I draw this?

11 Q: Yes.

12 A: Okay. So, this is the red car where I saw the truck where officers stacked up.

13 Q: Okay. And where were you specifically?

14 A: I don't really remember this car being here. I, like to my mind this position is where like  
15 officer Tupper was with the rifle trained on the trunk.

16 Q: Okay.

17 A: I don't specifically remember a car being here. I just know that officer Nagai had picked  
18 a position in the open. And so, I went to go support him and position myself, we're probably a  
19 little bit further back, but I positioned myself behind him in support.

20 Q: Okay. So, why don't we do this, why don't we write Nagai right, right here. And then,  
21 this if all intents and purposes would be you, correct?

22 A: Yeah.

23 Q: Okay. Okay. Okay. Now, now we working with something. All right. So, you, you get to  
24 this point here.

25 A: Uh-huh.

1 Q: Okay. Do you remember when you, when you took your firearm out?

2 A: Yeah. I, I came up behind the guy and assessed the situation and I saw the individual in

3 the trunk. And I was, I heard over the radio, there's a gun, a firearm involved.

4 Q: Okay.

5 A: And he's not listening, and as soon as I came on the scene, I heard people yelling, "hey,

6 get out of the trunk, let me see your hands." And I could see right away he's not listening. So

7 basically, as soon as I came up on Nagai, I took out my firearm.

8 Q: Okay. And you said that there were people giving him directions, meaning commands?

9 A: Uh-huh.

10 Q: Do you remember roughly how many people were giving him commands?

11 A: Maybe 2 or 3 people.

12 Q: Okay.

13 A: Yeah.

14 Q: Were they in a vicinity, anywhere in the vicinity where you were?

15 A: I know it's, I know, I heard Cassinelli, Officer Cassinelli giving commands.

16 Q: Okay.

17 A: And he would've been here.

18 Q: Okay.

19 A: At one point I do hear officer Rotschi tell the officer, or the suspect, "let me see your

20 hands, get out of the trunk."

21 Q: Okay.

22 A: And then, I, I couldn't tell you who else was yelling.

23 Q: Okay.

24 A: Yeah.

25 Q: Do you, do you speak Spanish?

1 A: Very little, high school Spanish.

2 Q: Okay. Okay. Was the information or the commands given to the suspect who was in the  
3 trunk, were there, were they in English or were they in Spanish, or?

4 A: Upon arriving on scene, all initial commands were in English.

5 Q: Okay.

6 A: And then we, officers on the scene thought, well perhaps there's a language barrier. And  
7 then, I, I heard officer Santana speak Spanish. Start giving commands in Spanish. And officer  
8 Banegas, who speaks Spanish, give commands in Spanish.

9 Q: Okay. Now, your, you're right, directly right behind Officer Nagai.

10 A: Nagai, yes, sir.

11 Q: Nagai, okay. What is your vantage point in terms of your field of view?

12 A: I could see the entire car.

13 Q: Okay.

14 A: This, I could see the entire suspects' vehicle.

15 Q: Okay. So, you saw him the entire time?

16 A: I did.

17 Q: Okay. So while commands were being given to him, was he responding to those  
18 commands, in terms of-

19 A: Was he complying is what you're asking?

20 Q: Complying, responding?

21 A: No.

22 Q: Okay.

23 A: He was not.

24 Q: So, take us from that point where, I think you said Officer Banegas

25 A: Uh-huh.



1 Q: Got on the, the-

2 A: The PA-

3 Q: The PA system-

4 A: Uh-huh.

5 Q: Take us from that point.

6 A: So, she starts giving commands in Spanish from my limited high school Spanish, I heard  
7 her say something to the effect of, "Senor, show us your left hand, show us your left" -- I think  
8 she even threw in a please. "Show us your left hand, please." He, he kept, and then he just wasn't  
9 registering and at least, I can remember 2 or 3 times, he, he does like this behind his waistband  
10 and it's just not a good feeling.

11 Q: Uh-huh.

12 A: I remember, like I specifically remember telling the guy like, that's not good. Like let's  
13 watch that left hand. So she continues to give instructions in Spanish. It's very clear that he is not  
14 listening to these instructions. And then, I think I stated this earlier, but then officer Santana  
15 made the decision to use the ERIW to gain compliance.

16 Q: Okay.

17 A: (inaudible) follow procedure, red light, we all echoed red light. He sent one bean bag  
18 round and it hit the suspect. And the suspect didn't, it didn't seem to phase, he didn't get out of  
19 the trunk.

20 Q: Okay. But you, and you still had visual on him the entire time?

21 A: The entire time-

22 Q: When he got hit by the-

23 A: By the bean bag, yes.

24 Q: Okay.

1 A: And then, he continues to reach around the trunk. And then, eventually, I mean, again, I  
2 can see him talking to himself. I don't know if he's talking to someone or himself. I couldn't  
3 hear what he was saying. But then I hear him yell, "man, fuck you" and then he comes up and I  
4 hear, I see a muzzle flash and I see two, or hear two gun shots.

5 Q: Okay. How'd it make you feel?

6 A: I thought I was going to get shot.

7 Q: Okay. Then what happened?

8 A: So, out of fear for my safety and the officers on scene, I just returned fire with my, my  
9 handgun.

10 Q: Okay. Do you remember how many times you shot?

11 A: 13.

12 Q: 13 times?

13 A: Yes.

14 Q: Okay. Do you remember any, was any other cops in your vicinity, could you remember  
15 anybody shooting as well?

16 A: I know Officer Nagai shot. Cuz he was front left of me.

17 Q: Uh-huh.

18 A: I couldn't, I couldn't specifically tell you who else I saw shoot.

19 Q: Okay.

20 A: I mean, cuz I'm, I was focused on the trunk. And, and Officer Nagai just happens to be in  
21 that prereferral.

22 Q: Okay.

23 A: And I saw him shoot, but-

24 Q: Okay. So, after the shooting stops, okay, then what?  
25

1 A: So, like I said, he kind of like collapses into the trunk and the trunk lid closes on him.  
2 And we're not sure if the threat is truly over cuz he could just be playing possum and then  
3 ambush us as we approach the car. So, two officers go and get ballistic shields.

4 Q: Okay.

5 A: And approach the trunk. And we, someone removes him from the trunk. And while, after  
6 they remove him, I checked the trunk to make sure there's no one else in there with him and I see  
7 a, a handgun in there. Someone else removes the female passenger from the rear and place,  
8 detains her. I don't know who did that. And again, I see him on the ground, and he's got multiple  
9 gunshot wounds, so, myself, Officer Carroll and Officer Smets begin rendering aid to him.

10 Q: Okay.

11 MH: Okay. When, remind me, when you got on scene, was the driver out of the vehicle at that  
12 point?

13 A: Oh, he was being, I'm sorry, you're, I, you mean the driver of the suspect vehicle, of  
14 course, right? Not my car? I just-

15 MH: Of the suspect vehicle.

16 A: Got ya, sorry, I just want to make clear.

17 MH: Clear.

18 A: No, no. I got you. So, yeah, he's already detained, he's in cuffs. And I remember people  
19 walking him back to the car at this point.

20 MH: Okay.

21 A: Yeah.

22 MH: So, where were you physically when he was walking back to the car?

23 A: As he's, it's kind of like as he's coming towards the police, I'm going towards the car.  
24 So, we kind of like did a little opposite thing, I saw him go in the car. And then that's when I  
25 went up behind officer Nagai.

1 MH: Okay. Did you hear the, the suspect in the trunk talking to him? Or say anything to the  
2 driver as he's walking by, backwards, you know, to his-

3 A: I don't remember them having any conversation.

4 MH: Okay. Okay. And you said you fired 13 rounds.

5 A: Yes.

6 MH: Is that cuz you're one loaded, one in the chamber and-

7 A: Right-

8 MH: Okay. Did you reload?

9 A: I did-

10 MH: After that?

11 A: Yes.

12 MH: Okay. Can you kind of describe when you, you said you saw him fire, or you, you heard  
13 the muzzle, or -- can you describe kind of what, what was he doing? What did you see  
14 happening? Cuz you said you were watching him.

15 A: Uh-huh.

16 MH: He kind have been moving around, you saw his left hand kept reaching behind him.

17 A: Uh-huh.

18 MH: Can you kind of give a little bit more detail about what was happening at that time. Cuz it  
19 sounds like you had, you were right in front of him, you had a great view point.

20 A: Uh-huh.

21 MH: What did it look like when he fired?

22 A: I mean, I'm sorry, I, I'm not entirely sure.

23 MH: You said you saw-

24 A: Yeah.

25 MH: It was a flash.

1 A: Correct.

2 MH: And you saw two of them.

3 A: Yes.

4 MH: Right before he fired.

5 A: Uh-huh.

6 MH: What kind of movement was he making?

7 A: He honestly, he, I, he, he continued to keep reaching behind his, his back. And then right

8 before he fired he kind of just like paused. And it was like almost like he was, this is just my,

9 how I perceived it, almost like he was psyching himself up. You know, kind of just that pause

10 and then "man, fuck you," and then shots fired.

11 MH: Okay. What did he do when he was hit with the ERIW?

12 A: I mean, I saw him react to it, he flinched. And then he just stayed in the trunk. Like he

13 made no motion.

14 MH: Okay.

15 A: To get out. Yeah. I mean, I know it connected-

16 MH: Yeah.

17 A: And he just continued to stay in the trunk.

18 MH: And how many rounds did he take from that?

19 A: From the ERIW?

20 MH: Uh-huh.

21 A: Just the one.

22 MH: Just the one?

23 A: Yeah.

24 MH: Okay. Okay. Do you know where he was hit with that?

25 A: It's like, the upper body.

1 MH: Upper body somewhere?

2 A: Yeah.

3 MH: Okay. And you said you were just to the right or to the left of Officer Nagai?

4 A: To the right.

5 MH: And were you behind a car door, were you taking cover behind anything?

6 A: No. We were out in the open.

7 MH: You're out in the open, okay. Were you kneeling or standing?

8 A: Standing.

9 MH: Okay. And you said that you were fearful of being shot, is that correct?

10 A: Yeah.

11 MH: Which is fair enough.

12 A: Yeah. Yeah.

13 MH: I'm not, I'm not surprised that you'd be fearful of that.

14 A: Right.

15 MH: I'm just trying, I just want to make sure I have written down the right thing. And the only  
16 (inaudible) you'd seen him mouthing things, and, but the only thing you actually heard him, you  
17 distinctly heard him say, "man, fuck you?"

18 A: Yeah.

19 MH: And then he reached out and fired?

20 A: Correct.

21 MH: Okay.

22 AL: Starting with the sketch, I can't see it from back here. Did you put, is, is your location  
23 when you fired, marked in this diagram?

24 A: That is where I was when I fired.

25 MH: Right here.

1 AL: Okay. Okay. Approximately how far was that from the trunk of the-

2 A: Oh jeez.

3 AL: Vehicle. If you can estimate.

4 A: 30 feet maybe.

5 AL: When you arrived, what did, where did your partners go?

6 A: I know Officer Bohannon took cover behind a parked vehicle on the west sidewalk of  
7 Capp Street. I honestly, do not know where Officer Wynkoop ended up.

8 AL: How were lighting conditions into the, into the, the trunk area that you've been talking  
9 about?

10 A: It was illuminated by streetlights. And then I think some patrol vehicles used their  
11 spotlights on the car. But these car spotlights are pretty tragic, so I used my own personal  
12 flashlight to illuminate the, the trunk.

13 AL: You've been, just so we're clear on the record, you've been sort of motioning with your  
14 left hand that you saw the person, suspect reaching into his waistband with his left hand, just to  
15 be clear, that was the left hand-

16 A: Yes.

17 AL: That you saw?

18 A: Yes, sir.

19 AL: Does that mean that the suspect was leaning on his right, or how is he positioned?

20 A: He, he's on his, he's on his right, yeah.

21 AL: How many times did you see him reach toward his waistband area?

22 A: 2 to 3 times.

23 AL: You mentioned that, well first, talking about the ERIW, did you see him get hit with the  
24 RIW?

25 A: I did, yeah-

1 AL: Beanbag-

2 A: Yes.

3 AL: Did you, approximate, where did it hit him?

4 A: Upper body.

5 AL: You said something about him saying “man, fuck you”, was that after the ERIW shot?

6 A: Yes.

7 AL: Okay.

8 A: Not immediate. Just to clarify, not, it was not in response to the ERIW round. There’s a  
9 little bit of time passed and then he said those, those words.

10 AL: Okay. Approximately how much time would you say passed?

11 A: Jeez. My time perceptions all screwed up from that. I, I don’t know, maybe 20, 30  
12 seconds.

13 AL: How loud did, did, was that statement that the suspect made, man, fuck you?

14 A: I mean, he yelled it. Yeah.

15 AL: Did you see both muzzle flashes, visibly, did you actually see both of those shots, or did  
16 you see one?

17 A: I just saw the, I remember seeing the one, but I heard two.

18 AL: Okay. And in response you fired your weapon, correct?

19 A: I did.

20 AL: And just so we’ve got a clear record, you heard two shots? Before the shots that came  
21 from the Civic, did any officer use, or fire their weapon, not, not counting the ERIW into the  
22 Civic?

23 A: I’m sorry, I don’t (inaudible)

24 AL: In other words, you fired your weapon in response to that person, person in the trunk  
25 firing a weapon-



1 A: Yes-

2 AL: In your direction, correct?

3 A: That is correct.

4 AL: And to your knowledge, no, I'm going to strike that. I'm good.

5 Q: Okay.

6 TB: The shots from the Civic, how much time between shots one and two?

7 A: Oh, they were like one after the other.

8 TB: So, immediate?

9 A: Yes.

10 TB: Did you know there was anyone else in the car besides the person in the trunk?

11 A: No.

12 TB: That's all I have.

13 MH: And-

14 AL: I'm sorry.

15 MH: Oh. Just to clarify, do you, did you physically see him bring a gun out of the car, or, what

16 did you actually see him holding in his hand?

17 A: So, I saw, I've said it like three times, I'm sorry. I did see the muzzle flash. I mean I

18 couldn't tell ya what kind of gun he had. I mean, but I saw a muzzle flash and then I heard two

19 gunshots, so, I know that's a firearm.

20 MH: Okay.

21 A: You know.

22 MH: But, did you see an object, or you just, it's happen, I'm just trying to figure out like some

23 people have said they saw something, or some-

24 A: Got ya. No. I saw a muzzle flash, saw a muzzle flash, two gunshots.

25 MH: Okay.

1 A: Yeah.

2 MH: Okay.

3 AL: After you heard that (inaudible) did you say anything in response before shots-

4 A: No. I didn't have time, it happened like that.

5 AL: Okay. Were you present when, well, let me ask you this, did you see anyone else in the  
6 car?

7 A: No.

8 AL: Anyone else removed from the car after shots were fired?

9 A: Yes.

10 AL: Okay. And who was that?

11 A: A, a female passenger, I don't know her name.

12 AL: You, you said that you saw a gun in the trunk?

13 A: Uh-huh.

14 AL: When you went out there, can you, what type of gun was it if you, if you-

15 A: To be honest, I didn't really take the time, I mean, I, I knew obviously that the scene was  
16 going to be frozen and the last thing you want to do is just disturb it. So, I mean, I just, is, like a  
17 two-tone handgun.

18 Q: You all good?

19 TB: Last one. Did you give any commands before the ERIW was deployed? Did you give any  
20 commands when he was reaching around in the trunk, the suspect?

21 A: I said, "hey, stop reaching." And then before I was told that there were two Spanish  
22 speaking officers there, I did give, one attempted high school Spanish, cuz I thought, do what  
23 you can with what you have. But then I heard someone else speaking fluent Spanish, I was like  
24 all right.

25 TB: What did you say in Spanish?

1 A: Get out of the car.  
2 TB: Okay.  
3 Q: Cool. We all good? Okay.  
4 TB: All right.  
5 Q: We can end right here.

6 END OF INTERVIEW

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I, the undersigned, hereby certify as follows:

That the foregoing transcript, page 1 through and including 20, to the best of my knowledge and belief is a full, complete and true transcription of certain tape recordings as described below to the best of my ability to hear, understand, identify speakers and transcribe said recordings, with the exception of any portion indicated as (inaudible), and words contained in parentheses, which indicate the best guess. (Any errors, changes or omissions should be brought to my attention for correction.)

That said tape recordings were furnished to CTI Transcription Services, 79 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability, and requested to be transcribed.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of August 2019.

/s/ Kathy Kay  
KATHY KAY  
By Electronic Mail

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER NAGAI**

**INTERVIEWED BY: SERGEANT BANWICK**

**DATED: MARCH 8, 2018 TIME: 1156 HOURS**

1 **Q: SERGEANT BANWICK**

2 **A: OFFICER NAGAI**

3 **MH: MEGAN HIYASHI**

4 **AC: ANGIE CHOW**

5 **TB: TONY BRASS, ATTORNEY**

6  
7 Q: This interview is being done in regards to case number [REDACTED]. Today's date is  
8 Novem, I'm sorry, It's March 9, 2018 and the current time is approximately 11:56. Okay  
9 Nicholas you had a chance to take a look at your body worn camera?

10 A: Yes.

11 Q: Are you prepared to give a more detailed statement now?

12 A: Sure.

13 Q: So you started, you started your shift on March 6, at what time?

14 A: 1500 hours.

15 Q: 1500 okay. And you were with your partner Santana?

16 A: Correct.

17 Q: Is that your regular partner?

18 A: Yes.

19 Q: Okay. Can you kind of tell me what the day was like? How did your day start out and  
20 what kind of watch was it? Was it a busy watch, a quiet watch?

21 A: Pretty much before that it was pretty normal, chill. I don't think we had any paper. We  
22 were (inaudible) to the station to just kind of do, check emails and –

23 Q: Okay.

24 A: Kind of wind down I guess.  
25

1 Q: So were you at the station when you heard the incident going on on Capp Street?

2 A: Correct, yeah.

3 Q: Can you tell me exactly what you heard or what drew your attention to Capp Street?

4 A: I think it was the 13 Edward that was the primary unit on that. Kinda heard like excited or  
5 like kind of like excited radio traffic. Like stressed – their voice sounded stressed so my ears  
6 kind of perked up. And then I think it was called, someone called for code 33. So then – then  
7 dispatch I think advised that you know it's regarding a gun. Some sort of 211/221. So me, my  
8 partner and then another unit started sprinting out of the station. Got in our wagon and just  
9 started heading toward Capp.

10 Q: And then what happened?

11 A: Parked the vehicle. I exited the vehicle. Tapped my body worn camera upon arrival.  
12 Pretty much when we got on scene I saw the, someone, later I found out it was the driver but  
13 someone being walked out in handcuffs being put back in the patrol car. I unholstered and drew  
14 my department issued firearm at the low ready initially. Didn't really know what we had. Then I  
15 saw the suspect in the trunk of the car. I pointed it at the suspect in the trunk cuz could see his  
16 right hand, but his left hand constantly was like here. I know it looked like it was fishing for  
17 something.

18 Q: Okay.

19 A: And then I think in the video you could hear me, a couple of times yell at him, stop  
20 reaching, stop reaching. And –

21 Q: Do you remember saying that?

22 A: Yeah, I do.

23 Q: Okay.

24 A: And then you know another officer, Spanish speaking officer got on the PA giving out  
25 commands in Spanish as well. At that time I wasn't, you know, sure of the race of the subject.

1 But just being that we were in the Mission District that area is heavily Hispanic population. Kind  
2 of made sense for that to be done. Still wouldn't comply. Wouldn't show us that left hand.  
3 Someone deployed a bean bag round. In the video you could hear "red light, red light" meaning  
4 ERIW is out ready to deploy. Someone I think said like send it or go ahead. Gave the green light  
5 to deploy it. One round. I think it his subject's right arm. And then yeah my gun was still trained  
6 on the suspect in the trunk. And then the time of the incident you know all I heard was loud  
7 gunfire toward us from the trunk. And then it's when I fired back.

8 Q: Okay what happened after that?

9 A: After that, kinda retreated to cover for a little bit. Unbeknownst to me, I didn't realize  
10 that there was a female still in the car after the initial shooting. And then saw her, try to get her to  
11 come out. And then someone went to go retrieve some of the ballistic shields from one of the  
12 patrol vehicles. Me and a classmate, Officer O'Rourke, we headed up to driver's side to clear  
13 the trunk and then also to clear her out of the vehicle. And then there was another officer that I  
14 think handcuffed her and detained her and took her to another patrol car. After that pretty much  
15 re-holstered and went back to Company for debrief and what was gonna happen next.

16 Q: So let's go back to when you're first at the station and you hear the radio call come out. It  
17 was, you said it was a robbery with a gun call that came out?

18 A: Yeah.

19 Q: Okay. What was going through your mind when that call came out?

20 A: I wanted to get there as soon as we can because sounded like they had the vehicle or they  
21 had the suspect because just when you hear, I don't know, when you're on the job and you hear  
22 that kind of stress in co-workers voice, it's not like code 4. You know, we're all good.

23 Q: Right.

24 A: Sounded stressed out. And then someone called for a code 33. So we didn't even  
25 bothered putting ourselves on the route. We're just going.



1 Q: Do you remember if you responded code 3 or code 1?

2 A: We responded with lights and sirens. We didn't advise dispatch because we just wanted  
3 to keep the air clear in case things got dicey real quick.

4 Q: Yep.

5 A: So we're just going.

6 Q: As you're responding what's going through your mind? What are you thinking as you're  
7 responding to the call?

8 A: Not anything out of the ordinary just yet you know. We're just like another – could be a  
9 no merit call because I mean a lot of it – the 221, nothing was seen. There is no merit to any gun.  
10 But you never know until you get there. So you know not trying to stress myself out over what  
11 could've been nothing.

12 Q: Yeah, but a robbery with a gun would you consider that a pretty serious call?

13 A: Absolutely yeah.

14 Q: So you come on scene. At what point did you take your pistol out?

15 A: Well I saw, well there was quite a few units already that beat us there. They all had their  
16 guns out already. So when I saw that I was like well this is probably something serious. Because  
17 they were conducting pretty much a felony traffic stop at that point. Which is protocol for us to  
18 be firearm out.

19 Q: Right.

20 A: Yeah.

21 Q: So you took your gun out immediately and you took a position. And the position that you  
22 took what did that afford you, what type of a – vision. What did that afford you? Was it  
23 unobstructed out of the car or?

24 A: Yeah it was pretty unobstructed.

25 Q: Okay can you just -

1 A: No, that's okay. I was pretty much on the passenger side of one of the patrol cars. There's  
2 already people stacked like along one of the parked cars on Capp. So I was even on the left of  
3 those officers. Wasn't a lot of cover to be had. Then I set up shop where I set up so –

4 Q: At that point you had told us earlier that as soon as you're coming on scene they were  
5 taking a subject into custody. The officers that were already on scene were taking somebody into  
6 custody. When you got out of your car and took up your position and you were looking at the  
7 suspect vehicle what did you see?

8 A: That it was a black Honda Civic, paper plates. There was a male subject in the trunk. He  
9 was like lying on his back and then his right hand was still holding onto the trunk latch. So it  
10 wasn't revealing like his face or his full body. But just enough to see him fiddling around with  
11 something with his left hand. But at that time I didn't know what he was trying to fish for.

12 Q: What, so the trunk is all the way, he's holding the trunk lid?

13 A: Correct.

14 Q: And he's talking his left hand and is he putting it in front of him, behind him – where is  
15 he putting his left hand?

16 A: So his body was like this to us. It was holding it like this. And he was – it seemed like he  
17 was fishing for something that was on his left side of his body.

18 Q: Okay and at this time the officers are giving directions with a PA to the subject in the  
19 car?

20 A: Uh-huh.

21 Q: Do you remember what those, that was being done in English or Spanish?

22 A: Well, we were, we were yelling at 'em let me see those hands. You know the officers are  
23 like let's see those hands. Show me your hands. To which he wasn't complying. So then another  
24 officer was like hey let's get someone who speaks Spanish. And then you see in the camera  
25 Officer Banegas who is Spanish certified, go to the PA and she's just giving orders in Spanish.

1 Q: Now do you remember her getting on the PA?

2 A: I do, yeah.

3 Q: Do you speak Spanish?

4 A: I do.

5 Q: Okay could you understand what she was saying to the suspect in the car?

6 A: Yeah.

7 Q: Can you remember what she was saying?

8 A: It was like show me your hands, show me your left hand. Show me your left hand. So, it  
9 was pretty obvious that, the PA was loud so.

10 Q: Okay so let me ask you this, so when he would put his hand out of your sight how did  
11 that make you feel?

12 A; Like oh this is – this is about to get really dicey. It didn't make me feel good. Made me  
13 kind of fear for my own safety that this is –

14 Q: What was your fear?

15 A: That there was actually a gun in there. So even though there was a (inaudible) I was  
16 really open that you know he would just show us his hands, take him into custody and let it be  
17 that. But –

18 Q: Okay you told us earlier that at some point ERIW bean bag gun was used or deployed.

19 A: Uh-huh.

20 Q: Do you remember seeing that happen?

21 A: No, because that happened on the driver side of the patrol vehicle.

22 Q: Okay you explained that they put out a red light, red light. Once the, when the bean bag  
23 was deployed did you see it strike the suspect or were you able to see the round?

24 A: Yeah.

25 Q: At all?

1 A: Yeah. From what I remember it hit the subject's right arm or right forearm or something.

2 Q: Okay. What happened. What happened then when-

3 A: After he got hit?

4 Q: When the suspect was hit with the ERIW?

5 A: You know Officer Banegas is still asking him to show his left hand. And then from the  
6 video you hear him go "fuck you." And then-

7 Q: Can you remember him saying anything?

8 A: I don't-

9 Q: Independent memory?

10 A: From the video no. I mean from being actually there, no. All I heard was gunfire coming  
11 from that trunk which is why I returned fire.

12 Q: So did you, did you hear the gunfire, or did you see gunfire?

13 A: That night I only heard the loud gunfire.

14 Q: Did you see any actions from the subject that was in the car or did you just hear the  
15 gunfire?

16 A: I just heard it.

17 Q: Okay and what was going through your mind when you heard that gunfire?

18 A: We're getting shot at. So-

19 Q: And how did that make you feel?

20 A: Scared for my safety. And then there was plenty of us on scene that didn't really have  
21 that great of cover. So yeah returned fire.

22 Q: So do you remember seeing the gun at all?

23 A: No. I didn't even see it that entire night to be honest.  
24  
25

1 Q: Okay. Do you remember if he, when you returned fire do you remember if you were  
2 standing in a kneeling position or in a prone position?

3 A: Standing.

4 Q: Standing. Okay. Do you remember how many rounds you fired?

5 A: I don't-

6 Q: Do you remember if you did any kind of a reload, a tactical reload or a combat reload?

7 A: No.

8 Q: After you delivered the rounds did you change your position, or did you stay in the same  
9 position?

10 A: I think I retreated behind one of the cars and got into a little bit better of a place for cover.  
11 My gun was still out though because I didn't, at that time I didn't realize that there was another  
12 suspect in the vehicle.

13 Q: Okay.

14 A: Unknown if she had any weapons in the passenger compartment.

15 Q: At what point were you were made aware that there was a female in the vehicle?

16 A: Pretty much after the initial firing ceased and then you see her head pop up. And then  
17 she's like kind of, well for good reason she was freaked out.

18 Q: Was she saying anything or was she making any noises?

19 A: Yeah she was – you know probably frantically crying or just scared in general. I couldn't  
20 really distinguish what she was saying. Yeah, I was still kind of far away from her.

21 Q: Okay. Let's do this. We've got a very, this is not to scale. This is just kind of a rude  
22 sketch of the cars that night.

23 A: Uh-huh.  
24  
25

1 Q: So here's Capp Street. So this is 21<sup>st</sup> Street, this is 22<sup>nd</sup> Street. This box here represents  
2 the suspect vehicle. These are the radio cars that were here. Now, it's not to scale and it's just a  
3 rough draft to try to give us an idea. I know you responded in the patrol wagon.

4 A: Uh-huh.

5 Q: Was your car parked here or can you recognize where your car might in relationship to  
6 this drawing where your car might be parked?

7 A: I think we were probably near the intersection. Probably parked it like, I actually don't  
8 remember how he parked it. But –

9 Q: Okay just so, can you put an X where you think your radio, or your wagon was parked.  
10 Now so you got out of the wagon and did you walk, or did you run up to where the other officers  
11 were?

12 A: I kinda was jogging.

13 Q: If you can could you put, can you find here on the sketch where your first position was  
14 that you took when you first got here?

15 A: So if this is, is this the radio car that was-

16 Q: This would be the primary radio car.

17 A: Okay I would probably say uh, I don't remember a radio car being so close to it. Because  
18 I thought I was more next to a parked car.

19 Q: Okay. Are you, with your independent memory are you able to place yourself on here?

20 A: Not by this drawing. Because I know I was on the right side of the person that was doing  
21 the PA, but I feel like I was more next to a parked car though. I think it was like a silverish SUV  
22 or some sort.

23 Q: Okay.

24 A: But I don't remember the radio car being-

25 MY: Most people are saying that that car is further back.

1 A: oh okay.

2 MH: So kind of use it, the suspect car as your frame of reference.

3 A: Okay

4 MH: Like that's where he is, and this is the radio car. So kind of think about it like that

5 A: All right so I'm probably like somewhere like right here.

6 Q: Okay can you put a P1 and then circle it. Okay so did you change your position there or is  
7 that the position that you fired from?

8 A: I believe that's the position I fired from.

9 Q: Okay so after, after the shots were fired, did you change your position?

10 A: Yeah.

11 Q: Go ahead if you can – put P2 wherever you (inaudible)

12 A: I think it was probably about-

13 Q: Okay. So you also describe that you and, who's the classmate that you came, went to  
14 clear the car with?

15 A: O'Rourke.

16 Q: O'Rourke. Can you, can you show me just with the line, if you can remember what your  
17 route was to the suspect vehicle when you cleared it.

18 A: So I'm gonna draw to this and (inaudible)

19 Q: Okay.

20 A: Came up. He had the shield. We cleared the trunk first. And then we came over here.

21 Q: Okay now when you cleared the trunk was the suspect still in the trunk or was he, had he  
22 been moved?

23 A: He had been, it was kind of simultaneous. We kind of stop at the trunk and then he was  
24 pulled out and then someone started CPR like about right here.

25 Q: Okay.

1 A: And then once we hooked him up we walked to the, back passenger seat of the driver's  
2 side and then we were talking with the female.

3 Q: Now did you handcuff the female or?

4 A: I didn't.

5 Q: Did anybody handcuff the female?

6 A: I don't know. I'm sure there was. It wasn't me though.

7 Q: Okay.

8 A: I don't remember.

9 Q: Okay but once everything was code 4.

10 A: Uh-huh.

11 Q: It was at that time that you holstered your pistol?

12 A: Most likely yeah.

13 Q: Now did you, did you report that you'd been involved in an officer involved shooting to a  
14 supervisor?

15 A: Correct.

16 Q: Okay do you remember what supervisor it was?

17 A: I know that 113 and 105, sergeants Caldera and Perez were both on scene. I know  
18 Caldera was on scene for sure cuz I saw him to my left. Not sure when Perez got to the scene but  
19 yeah we made notifications pretty much right away.

20 Q: So you-

21 A: (inaudible)

22 Q: So you said that to Sergeant Perez or Sergeant Caldera?

23 A: I believe it was Sergeant Perez.

24 Q: Okay did he take a public safety statement from you?

25 A: Uh, which was what?



1 Q: Did he ask you any questions about the shooting as far as threats to the public or public  
2 safety?

3 A: I don't remember if that was done on scene or at the company.

4 Q: Okay and that was Sergeant Perez you said?

5 A: Yeah.

6 Q: Do you have anything?

7 MH: How was the lighting there for you?

8 A: It was lit by streetlamps from what I can remember.

9 MH: And do you have – were you using a flashlight or anything extra?

10 A: No.

11 MH: Okay all right. Were you, how were you able to see his movements and hands, I mean  
12 was it sufficient enough for you to see?

13 A: I think someone else was shining a light onto the trunk to where it was pretty well lit, and  
14 you could see him moving around in the trunk.

15 MH: Okay but you yourself weren't carrying an extra flashlight?

16 A: I was but that wasn't really my priority at that point.

17 MH: Okay. When he – when you felt, when you heard a round being fired, when you heard the  
18 firing.

19 A: Uh-huh.

20 MH: Did you see a muzzle flash or gun powder anything like that coming from the-

21 A: From my recollection no. I just heard the round come off from the trunk and then I  
22 returned fire.

23 MH: Okay. What kind of movement were you seeing from the trunk when you heard a round?  
24 Like did you see a gun or anything?

25 A: At that time no, for me it happened so fast so-

1 MH: Okay and it was just one round that you heard?

2 A: At least yeah.

3 MH: Okay.

4 A: Not sure.

5 MH: Were any – and you were there with Officer Santana, do you know where he was?

6 A: I mean retrospect I think he was, well he was on the left side, the driver's side of the  
7 patrol vehicle. I believe he was the one that delivered the ERIW round.

8 MH: Do you know who else was firing?

9 A: In the group of us?

10 MH: Uh-huh.

11 A: Um, I mean I don't remember everyone there, but I know there's at least ten of us.

12 MH: Okay but you don't remember seeing anybody else at the time of the shooting?

13 A: Like looking to my left and right to see who?

14 MH: Uh-huh.

15 A: No, yeah.

16 MH: Okay. Okay. You mention that you heard him say "fuck you." When did that happen?

17 A: After watching the video

18 MH: Oh so because of the video you heard?

19 A: Yeah.

20 MH: When did that occur in the video or?

21 A: Pretty much right before or as he's punching out with the pistol and firing at us.

22 MH: Do you recall at the time, I know it's hard when the video because it's easy, you know it  
23 kinda helps with the recall.

24 A: Yeah.

25 MH: Which is fair enough. But do you recall hearing him say anything at the time?

1 A: Before he actually shot?

2 MH: Or just while you were there yeah before the shooting or even at the time?

3 A: Not really no.

4 MH: Okay.

5 A: Yeah.

6 MH: So according to the video he was saying fuck you right at the time he shot. Is that  
7 correct?

8 A: Yeah.

9 MH: I don't want to put words in your mouth.

10 A: Yeah.

11 MH: Okay.

12 A: If not before as he's doing it, yeah

13 MH: Okay. How long do you think it was between the ERIW and him shooting, receiving,  
14 being shot with the ERIW round?

15 A: Ten seconds.

16 MH: Okay.

17 A: 10-20 seconds I'd say.

18 MH: Okay. I know you were saying that you started to feel uneasy and uncomfortable because  
19 he was dropping his left hand behind him. How many times do you think he was doing that?

20 A: I'd say about like five times prior to him actually shooting which I think was making us  
21 all feel uneasy. Because I know Ishida who was right next to me. He's just like oh this – this is  
22 gonna be bad.

23 MH: Uh-huh Just cuz he's not, he's fishing for something/ And it was your understanding  
24 based on the call that – I mean the call came out as 221, somebody with a gun. Did you have any  
25 reason to believe that there was anyone else other than him that had the gun? I mean -

1 A: Yeah. I mean well you see the driver getting escorted probably by someone else's video  
2 in the beginning. That's why I saw, when I was like taking my position he was already getting  
3 walked back. But after the shooting, I had no idea there was another person in the car. And then,  
4 you know, if he had a gun she could possibly have a gun.

5 MH: Right.

6 A: So yeah-

7 MH: Okay. And when you were clearing the car and you were dealing with her, what was she  
8 saying to you?

9 A: I don't really remember her saying much of anything other than her complying with let  
10 me see your hands. You know, exit the vehicle. Do not move your hands at all pretty much. And  
11 then after someone – I'm not sure if, she was probably handcuffed but I didn't hear her say  
12 much.

13 MH: Okay.

14 A: Other than like hysterically crying because-

15 MH: She was screaming away.

16 A: Yeah.

17 MH: Did you see anything, when you walked by the trunk did you see anything? See a gun or?

18 A: No, I didn't at that time.

19 MH: Okay I'm good.

20 AC: Just a few questions. Okay so it looks like you were on the westside of the street?

21 A: Yes.

22 AC: There were also officers over on the east side of the street?

23 A: Correct.

24 AC: And approximately how many officers were there when you got there?

25 A: I'd say over 12.

1 AC: When you, it sounds – you said you had heard the gunshot, but you didn't see it.

2 A: Uh-huh.

3 AC: How did you know that it was coming from the guy in the trunk and not from another

4 officer sort of around you? The other side of the street?

5 A: Just cuz we were all facing southbound and we were focused on that one object.

6 AC: Uh-huh.

7 A: When it sounded like it was coming at us, that's when, you know, out of fear for my

8 safety and that's why I decided to fire back.

9 AC: So you could tell it was coming from the other side of the street and not from-

10 A: Correct yeah. Because I mean when Santana deployed the ERIW you could hear it

11 distinctly coming from-

12 AC: This side of the street?

13 A: My left side, yeah.

14 AC: During the break you watched your body worn camera?

15 A: During that, I'm sorry?

16 AC: The break that we had taken.

17 A: Correct.

18 AC: Did you watch any other video?

19 A: No.

20 AC: and have you also seen any other videos that might be posted in the media?

21 A: Yes.

22 AC: Which videos did you see?

23 A: I watched a bunch of news videos that were leaked to news stations from civilians cell

24 phones, cell phone videos. I mean before the actual shooting took place, whoever lives on Capp

25 Street, if you have a second story apartment it's pretty much you had front row seats to what

1 happened. It's just how it went down. Cuz I looked up both sides and you know you see families  
2 in their windows just, you know, so yeah.

3 AC: Do you know approximately how many videos you might've seen on the media?

4 A: Three to five. Some of them had been the same but yeah.

5 AC: And you mentioned that from looking at the videos you now see details from the videos  
6 that you independently remember. The fuck you from the video it sounds like.

7 A: Uh-huh.

8 AC: The actual gun being shot from the suspect in the trunk.

9 A: Uh-huh

10 AC: Were there any other details in the account that you had provided to us that you don't  
11 independently remember. It's a detail you got from the video?

12 A: Well yeah. From one of the media cell phone videos it captures pretty much from an  
13 angle like this. The suspect's head was pretty much right here, and this video seems to be  
14 catching it from an angle facing this way. Northwest I guess. And you actually see the pistol  
15 leave the trunk area, fire off one or two rounds. You see the initial smoke coming from his barrel  
16 and then our barrel, I mean our rounds hitting the trunk. Pretty much very, very shortly after. So I  
17 mean, I didn't see the actual initial muzzle flash on scene. Definitely heard it, but I mean that cell  
18 phone video that was captured by whoever was taking it in my mind there is no doubt that the  
19 subject fired first.

20 AC: Okay.

21 A: Yeah

22 AC: But the other details that you provided today, you know, for example the fact that you  
23 saw his right hand – that you saw the right hand get hit by the bean bag gun. The fact that that  
24 you saw the left hand going back maybe five times behind him and moving around. The fact that  
25 you had talked with, I think you said something next to you, Ishida, and you said oh this is gonna

1 be bad. All those details that you provided; those are from your independent memory of what  
2 had happened is that right?

3 A: Correct.

4 AC: Okay.

5 TB: From that night, what was the suspect shooting at?

6 A: Us, the officers

7 TB: I have nothing else.

8 Q: Okay anything else? Okay I'm going to conclude this interview it is approximately 1226  
9 hours.

10 END OF INTERVIEW  
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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER O'ROURKE**

**INTERVIEWED BY: SERGEANT WATTS**

**DATED: MARCH 8, 2018 UNKNOWN TIME**

1 **Q: SERGEANT WATTS**

2 **A: OFFICER O'ROURKE**

3 **YS: YORK SUDA**

4 **AC: ANGIE CHOW**

5 **DN: DON NOBLES, ATTORNEY**

7 Q: Okay. So you've had a chance to review your BWC?

8 A: Yes.

9 Q: Okay. Why don't we start from, when you came on shift that evening; tell us what kind  
10 of night it was and then let's go on to say the call that you heard on 21<sup>st</sup> and Capp.

11 A: Alright. Um, start off the night, me and my partner Mike Rotschi we're pretty much  
12 always together. This both of our Mondays so it's our first day back at work after the weekend.  
13 We -- I think it started off as a pretty busy night and we were rolling around looking for a  
14 specific guy that that had been put out on a bulletin. So we stopped some people down behind  
15 the Best Buy. And then right before the call came out, I had stopped a guy that was riding his  
16 bike on the sidewalk cuz I thought he had like a boosted X-Box or something.

17 Q: Uh-huh.

18 A: So we were out with him at 16<sup>th</sup> and South Van Ness at a gas station when I heard the call  
19 come out. And, I can't remember who it was. I know it was Tupper and his partner and they put  
20 out that they had just been flagged down by someone regarding a robbery with a, with a firearm,  
21 a handgun. I think they said it was a semi-automatic and it was seen. And then we went from 16<sup>th</sup>  
22 and South Van and we started to go to 19<sup>th</sup> and Capp where it came out. And then they said that  
23 they had the car at 21<sup>st</sup> and Capp.

24 Q: And then what happened?  
25

1 A: So we showed up on scene. I think we might have been like the second or third unit there  
2 cuz our car was right behind the primary car. And we jumped out. Mike was driving. He got out  
3 of the left side. I got out of the right side. I grabbed the rifle and then I put the, took up a position  
4 of cover where I could watch the vehicle, suspect vehicle just to the -- so on the west part of the  
5 sidewalk maybe 10 yards, 15 feet, about a car length away. And then I could see the suspect  
6 vehicle which matched what they said, black Honda Accord. And they had the vehicle pulled  
7 over right there and they were starting to give commands. And then a lot of people started  
8 showing up.

9 Q: Okay.

10 A: So they started giving commands. I'm not sure who the unit was to my left who was  
11 giving the commands. And then so they got the driver out and I was aware that they, the driver  
12 complied, and he got out. And I could see somebody was in the trunk pretty much the entire  
13 time. There was never a question about it. I think they even said it over the air, someone's in the  
14 trunk. Which seemed really odd. But so I saw them giving commands and I kept seeing the guy  
15 in the trunk and he was -- his head was facing to the East and he was laying down supine inside  
16 of the vehicle. And you could kind of see him, his right hand coming in and out, but you could  
17 never see his left hand. He wasn't pulling it out. And I could just see him in the back there and  
18 they kept giving him commands, kept giving him commands. And then Banegas, Officer  
19 Banegas they called her up cause she speaks Spanish. Maybe they thought he spoke Spanish. But  
20 they're giving him all commands in English, show me your hands, just comply, show me both  
21 your hands. And then Banegas started giving him commands in Spanish. And I even gave him a  
22 couple commands in my limited Spanish. Same thing; show me your hand, (arriblos los manos).  
23 And so, at a certain point, they reported the ERIW, the beanbag shotgun. They fired one round.  
24 They announced it, red light, red light. Everybody echoed it, red light, which is our command to  
25 not fire, mistake it for gunfire. They hit him. I saw it hit him at least once or I saw him react to it,

1 the suspect in the back. And he flinched. And then continuing commands, continuing commands.  
2 And then before, I think before they shot the ERIW, I yelled at my partner, Mike, to come grab  
3 the AR. And he grabbed the AR from me and then he had the AR on the guy. And then I was still  
4 pretty much in the exact same position with my handgun at that point. And then at a certain  
5 point, the suspect in the back of the car, he, he yelled something. I'm not sure what it was but  
6 I'm sure he yelled something. And then, I saw his hand come out real fast and then he fired at  
7 least two or three rounds and then I returned fire.

8 Q: And then what happened?

9 A: So I fired. I did a reload on my pistol. I could tell that it looked, looked to me like the  
10 threat was over, like he wasn't returning fire like our, our fire had been effective. So I did my  
11 reload. I was in the same position and then I heard them yelling that we were gonna get him out  
12 of the car. They started yelling for ballistic shields for our bullet resistant shields. So I ran to the  
13 back of my car and I grabbed a, I keep a heavy vest with rifle plates and a helmet in there. I  
14 threw that over myself and then I took my camera off my chest mount, put it on my body armor  
15 mount and then they had already gone up and retrieved the suspect from the trunk. And I think  
16 they yelled that they were gonna begin lifesaving um, CPR and first aid. Then me and my partner  
17 went up to the car where there was a female in the car, in the back seat. And my partner and I got  
18 her out. I gave her commands. She complied 100 percent. Showed me her hands. We got her out.  
19 Mike handcuffed, my partner, Mike Rotschi handcuffed her. I patted her down to make sure she  
20 wasn't hit. There was no blood and then also, you know, patted her down to make sure she didn't  
21 have any firearms on her. My partner took her and then I grabbed a dog out of the back of the  
22 car. There was like a Pitbull puppy or something. Made sure the dog wasn't injured either. And  
23 then I put the dog in another radio car somewhere in the back. Took my best off and then I told  
24 my sergeant that I had fired my handgun and engaged the suspect and he kinda sequestered me  
25 off to the side.

1 Q: Did the sergeant ask for a public safety statement from you?

2 A: He didn't ask for it at the time. I think he -- I was later asked it at the station like the

3 formal but he just asked like, did you fire a weapon? And I said, yes.

4 Q: Okay, and who's the sergeant?

5 A: Sergeant Shugars.

6 Q: Shugars. I just want to ask you a couple of questions real quick.

7 A: Uh-hum.

8 Q: What kind of call, you said, the call was a, what was the call?

9 A: Robbery with handgun.

10 Q: It was robbery with a handgun, okay. And do you remember who was initially giving

11 commands in English at the scene to the persons in the Honda?

12 A: Tupper's partner. I'm really bad with names. I can picture his face, but I can't remember

13 his name off the top of my head.

14 Q: Okay, that's fine.

15 A: I recognized his voice, but I didn't actually see him like yelling.

16 Q: Did you yell any commands?

17 A: I did.

18 Q: Okay. In English and in Spanish?

19 A: Just, I think I just yelled in Spanish.

20 Q: Okay.

21 A: Like, I said in Spanish (arabas, arreblos los manos).

22 YS: I've got photos of the (shooter).

23 Q: Yeah. You said that when you got to the scene the vehicle, the black car was there.

24 A: Uh-hum.

25 Q: Were giving, were you second on scene, third on scene, you remember?

1 A: I believe I had to have been probably second or third. I don't remember exactly.

2 Q: Okay.

3 A: I know our car was right behind the lead Tupper and his partner, the, the guys who put  
4 out the call and we were right behind them. There might have already been one other car, but I  
5 know we were to the front right on the West side of the sidewalk, so we were right behind their  
6 car.

7 Q: When you went on scene and took cover behind the car on the West side of Capp Street.

8 A: Uh-hum.

9 Q: But giving commands to the driver to come out.

10 A: Uh-hum.

11 Q: How soon did you notice the person in the trunk when you, when you got on scene and  
12 took a position of cover?

13 A: If not immediately than moments after.

14 Q: And what brought your attention to that?

15 A: The fact that the trunk was ajar and that I think his leg was sticking out of it the whole  
16 time where like you could see one side of his body, but I mean it was very apparent that they  
17 said, you know, they were yelling, we have one in the trunk, one in the trunk. I could see him  
18 pretty much the whole time which was what was the weirdest thing about the whole call.

19 Q: Oh. Are you AR trained?

20 A: No. That's why I handed off my rifle.

21 Q: How come your partner didn't grab the rifle out of the car and when you?

22 A: I think he was just in a rush.

23 Q: Okay.

24 A: So I grabbed it and, I mean it's, honestly first nature for me. [REDACTED]

25 [REDACTED] so I grabbed the rifle. And then I kinda thought, I should hand this off to Mike because

1 he's the primary guy, so I yelled at him. And I said, Mike come take the rifle. And he took it  
2 from me.

3 Q: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 Q: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A: [REDACTED].

11 Q: [REDACTED]

12 A: [REDACTED]

13 Q: [REDACTED]

14 A: [REDACTED]

15 Q: Okay. So they fired, someone fired the beanbag after they gave a red light command.

16 A: Yes.

17 Q: How are you feeling at the time?

18 A: I was pretty sure that things were not gonna go well. I had just a really bad feeling cause  
19 the guy, the whole, the whole thing, the robbery, the guy being in the trunk. I was just figuring  
20 that he was probably the primary robbery suspect, and he wasn't listening to commands. I had a  
21 really bad feeling. For pretty nervous and as I actually really scared that he was gonna pop out of  
22 there and try and kill us.

23 Q: So they fired the beanbag. You saw the beanbag hit the guy in the trunk.

24 A: I saw him react to it.

25 Q: React to it?

1 A: Definitely. He, I think it must have hit him somewhere in the upper body cause he kind of  
2 flinched or kinda moved that whole portion of his body.

3 Q: Uh-hum. Was he saying anything after he was struck with the beanbag?

4 A: I don't remember at what point but I was aware that at some point, it seemed to me that  
5 he was yelling. He yelled something maybe just moments before he shot at us. But I heard him  
6 say something that it didn't sound like it come from a cop so, I'm not sure what he said but I  
7 heard him yell.

8 Q: And so you had this feeling, you're feeling really uncomfortable.

9 A: Very. I was more, less nervous for me cause I was behind good cover, but I knew that  
10 there was a whole lot of cops to my left that were honestly just like right out of the middle of the  
11 street.

12 Q: With no cover? Little cover?

13 A: Hardly, either no cover or a car door.

14 Q: No concealment, no cover?

15 A: Yeah.

16 Q: Yeah. And then, you saw and heard gunfire coming from the trunk?

17 A: Yes. 100 percent.

18 Q: What was your reaction to that?

19 A: I knew immediately that he was trying to kill one of my fellow police officers and I, it  
20 was my duty to protect them and protect myself because I didn't want them to get killed. So I  
21 returned fire.

22 Q: Do you remember how many rounds you fired?

23 A: 13.

24 Q: I think you said you, you did a reload.

25 A: Correct.



1 Q: So, when you did a reload, you put a fresh magazine into the well of your firearm?

2 A: Correct.

3 Q: After you dropped the, did you fire any rounds when you put the fresh magazine in?

4 A: No.

5 YS: When you reloaded, were you, was the side lock back so you were, you were empty from

6 the first magazine and the one in the chamber?

7 Q: Correct.

8 YS: So that's their twelve plus one?

9 A: Correct.

10 YS: Put a fresh mag of twelve and then that's the end?

11 A: That was the end yeah.

12 YS: So mag count at the end would be eleven plus one?

13 A: Yes. Should be, yeah. I always keep mine topped off so yeah.

14 YS: That was gonna be my next question. Does Castanello or Castanelli sound like the name

15 of the, the, Tupper's partner?

16 A: Yeah, that's him. (fat) guy, short hair, yeah.

17 Q: Excuse me. After the shooting had stopped, you, you and your partner went up to the car.

18 A: Uh-hum.

19 Q: And handcuffed a female who was in the back of the vehicle. Did you know there was a

20 female in the vehicle before the shots were fired? Did you know anybody, anybody else was in

21 the vehicle other than the person in the trunk? Did you see anything, did you see, did you hear

22 anything?

23 A: I'll be honest, the, my, everything at that point is kinda, kinda got scrambled. I was aware

24 that somebody was in my field of view besides the guy in the trunk, but I get the person in the

25 back seat confused with the person, the two guys down the street who were not involved. I, I'll, I

1 can't tell you that I was 100 percent sure but I, in my mind as I'm looking back on it, I believe  
2 that I was aware that somebody was in there.

3 Q: But, at the time, not looking back but at the time.

4 A: I can't, I can't.

5 Q: You can't, you weren't sure there was someone else in the car?

6 A: No. I don't think so. There's certain things that I can clearly picture in my mind's eye and  
7 then there's certain things that, when we went up there and handcuffed her, I was like yeah,  
8 there's someone in the car else but, yeah.

9 Q: And then you just mentioned that there were, I'll call them pedestrians, other pedestrians.

10 A: Uh-hum.

11 Q: So, were any commands given to those other pedestrians?

12 A: Yes.

13 Q: Okay.

14 A: So they were on the West side of the sidewalk. I think they had their hands up or they had  
15 their cell phones up.

16 Q: Uh-hum.

17 A: But it was evident that they were just clueless about what was going on, the gravity of the  
18 situation. And we yelled at them to get, get across the street and then they were, they walked  
19 across, in our backdrop, across the street with their hands up. And then they kinda stood behind  
20 another vehicle.

21 YS: Did you say they were on the west side of the street?

22 A: They were on the west side and they crossed to the east side. So we ordered them, get  
23 out, move. And then they walked across the street, kind of out what would have been our line of  
24 fire.

25 Q: So they were in the line of fire, the west side of the, of the street?

1 A: Uh-hum.

2 Q: Get out of the way.

3 A: Uh-hum.

4 Q: You're giving commands to move into the east side of the street out of the field of fire?

5 A: I didn't give them commands, but I was aware somebody was yelling at them to move.

6 Q: And, sorry, were you and your partner the most forward SFPD personnel toward the  
7 vehicle on the west side of Capp?

8 A: On the west side, yes.

9 Q: Okay.

10 YS: In regards to those two people, have you seen the news ved, news video of this shooting?  
11 That, that there's two video clips that are out in the media already?

12 A: Yes.

13 YS: In that view that's taken from the east side way down range from you guys, looking back  
14 northbound. There's two people on that sidewalk, on that east sidewalk there. Did you see that?  
15 Do you remember seeing those, those others?

16 A: Yes.

17 YS: I'm just trying to see if those are the same two people.

18 A: I think it was the same guys, those two, I think, two males.

19 Q: Uh-huh.

20 A: White male or Hispanic, light skin and they had their hands up at one point and then they  
21 just kinda like hid in the corner.

22 YS: Okay.

23 A: And I was aware, I believe that's the same two guys. They were the only people, other  
24 people I saw.

1 YS: So they were initially on the right side then they moved to the east side where they're  
2 captured in that video?

3 A: I believe so, yeah.

4 YS: So that video, they're on the East side.

5 A: Yes.

6 YS: Just wanted to clarify. Do you know if at any point, those people were contacted,  
7 identified, and interviewed?

8 A: I don't.

9 YS: Okay.

10 A: After, immediately after we brought the female, and I brought that dog out, Sergeant  
11 Shugars grabbed me and sent me down right at the corner on 19<sup>th</sup>, or of 21<sup>st</sup> and Capp at. There's  
12 a stairwell and he sat me down and said, hey, you know, just, we need to keep you separate.

13 YS: Oh, sorry what sergeant sat you down?

14 A: Shugars.

15 YS: Okay.

16 A: S-H-U-G-A-R-S.

17 YS: S-H-G. Want to do the diagram?

18 Q: Yeah. Did you know if the female was ever struck by gunfire or not?

19 A: No, I don't believe she was because when we pulled her out, Mike cuffed her and I  
20 touched -- I did like what they teach in the military and the police academy, I swept my hand  
21 down every large surface of her body and checked for blood to make sure she wasn't hit. And as  
22 soon as I knew she wasn't hit by anything serious, we, or Mike, Mike took her. I don't know  
23 what he did. I grabbed the dog.

24 YS: Were you in scene when the driver of the car was taken out?

25 A: Yes.

1 YS: So and you are already at that?

2 A: My position.

3 YS: Yeah, your position. Could you hear any, could you hear the suspect in the trunk say  
4 anything while the driver was being taken out or?

5 A: I heard -- I don't think it was the suspect in the trunk. I think it was the driver, he was  
6 yelling something. I don't know what it was. It was all, I don't know what it was. He was yelling  
7 a bunch of junk. But I didn't hear him say anything, the guy inside of the trunk, until I heard him  
8 say something, so.

9 YS: When you were detaining or extracting the female from the car, did she make any type of  
10 spontaneous statement about?

11 A: Uh-hum.

12 YS: Anything that had happened?

13 A: Well, not about what had happened. So when I came up, we didn't know if there were  
14 more armed people. I assumed that she was armed given the current situation. So she was in the  
15 back seat and I had my light and I had my pistol right up against the window, covering her,  
16 giving her commands. And she had her hands up. And I told her, just keep showing me your  
17 hands, keep doing exactly what I say. And she said, okay. And then, when we got her out of the  
18 trunk, or out of the back seat, cuffed her, patted her down. Then at that point she was, started  
19 saying, is he okay, or something like that. And then, she was gone from my presence.

20 YS: And did you take her out of the driver's side or, or the passenger side?

21 A: Driver's side.

22 YS: Pardon me?

23 A: Driver's side.

24 Q: So showing a, I've got a diagram it's not to scale.

25 A: Uh-hum.

1 Q: It's been used before, just purely to assist us in showing us where you were located at the  
2 time of the incident. So this is - intents and purpose, this is Capp Street.

3 A: Uh-hum.

4 Q: This is, down here will be 22<sup>nd</sup>. Back here is 21<sup>st</sup>. I put an S for the suspect vehicle. And,  
5 I'll use this as the lead patrol car. I'll put various units there. I mean, some of, again not to scale,  
6 but if you could just generally point to where you think you were.

7 A: I was right here.

8 Q: Okay.

9 A: It was a silver SUV crossover hatchback something. It didn't have a big bumper. I can  
10 tell you that.

11 Q: Okay. If you can just give me your initial next to that. Thank you. The two pedestrians  
12 you mentioned.

13 A: Uh-hum.

14 Q: They were initially on this side of the street.

15 A: Correct.

16 Q: And then they were given commands to, verbal commands to go to the other side of the  
17 street. Is that correct?

18 A: Correct.

19 Q: Okay.

20 YS: Roughly, since this is not to scale, can you just kind of an indicator of, did you shoot over  
21 this car? Or were you to the side or left? I mean, do you remember the, the alley?

22 A: I shot over.

23 YS: Okay, so somewhere along here?

24 A: Like that.  
25

1 YS: Okay. Okay. About, this is Sergeant Watts made this diagram, not, approx, which, where  
2 do you think your car is in this?

3 A: If it wasn't.

4 YS: Should be?

5 A: If it wasn't this, so I think this is a little more far, a little more forward than the way they  
6 were.

7 YS: Sure.

8 A: Cuz I think our, our nose was like right here.

9 Q: This is 67, I'll just put.

10 A: Uh-hum. We were 124. I think we were, we had to have been either this one or maybe  
11 this one, but we were right, right up front, to the front, right on the west side.

12 YS: Okay. Did you know where the driver suspect was, what car the driver suspect was  
13 detained in?

14 A: No.

15 YS: Okay.

16 A: Maybe this one because I tried to put the dog in one of these and they were like,  
17 somebody's already in there, so.

18 Q: Okay.

19 A: I threw the dog like in one of these cars.

20 AC: Have you ever seen the suspect before, the guy in the trunk?

21 A: No, I don't believe so.

22 AC: How about the driver in the car?

23 A: I don't believe so, no.

24 AC: And the girl?

25 A: No, not that I'm aware of but I meet a lot of people.

1 AC: And you had mentioned, we had taken a break, and you watched your own body worn  
2 camera.

3 A: Uh-hum.

4 AC: Did you watch any other video during that break?

5 A: Yes.

6 AC: And what did you watch?

7 A: Officer Gustilo.

8 AC: His body worn camera?

9 A: Correct.

10 AC: And it sounds like you have watched some of the media, some of the videos on the  
11 media?

12 A: Correct.

13 AC: And how many, what videos have you watched?

14 A: I think there was one on ABC 7, and one on KTVU. They had a, I don't have a television  
15 at home, but I watched it on my phone, on the online.

16 AC: And are there any other sources of information that you have looked at regarding the  
17 incident other than the ones I've just discussed?

18 A: No.

19 AC: Now you've, you know, given us a very detailed account of what it is that you had seen.  
20 Is what you -- is what you've told us based off of your memory or based off of some of those  
21 videos that you've seen?

22 A: Based off my memory.

23 AC: Okay, did any of the videos that you've looked at, have they at all differed from your  
24 own recollection?

25 A: No.



1 AC: That's it.

2 Q: Okay. Thank you. 13:24 hours.

3 END OF INTERVIEW

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I, the undersigned, hereby certify as follows:

That the foregoing transcript, page 1 through and including 18, to the best of my knowledge and belief is a full, complete and true transcription of certain tape recordings as described below to the best of my ability to hear, understand, identify speakers and transcribe said recordings, with the exception of any portion indicated as (inaudible), and words contained in parentheses, which indicate the best guess. (Any errors, changes or omissions should be brought to my attention for correction.)

That said tape recordings were furnished to CTI Transcription Services, 79 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability, and requested to be transcribed.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of August 2019.

/s/ Kathy Kay  
KATHY KAY  
By Electronic Mail

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER SMETS**

**INTERVIEWED BY:       SERGEANT CAGNEY**

**DATED:                   MARCH 8, 2018   TIME: 1245 HOURS**

1 **Q: SERGEANT CAGNEY**

2 **A: OFFICER SMETS**

3 **AL: ANDREW LA, DA'S OFFICE**

4 **MH: MEGAN HIYASHI, DA'S OFFICE**

5 **TB: TONY BRASS, ATTORNEY**

6  
7 Q: So we're back on the record on case number [REDACTED]. Cagney, homicide, and the  
8 time now is gonna be, let's call it 12:45. Considering we just reactivated the audio tapes, why  
9 don't we go around the room one more time. Officer can you introduce yourself?

10 A: Officer Colby Smets.

11 Q: John Cagney. Homicide. Counsel?

12 AL: Andrew Law with the DA's office.

13 MH: Megan Hiyashi with the DA's office.

14 TB: Tony Brass.

15 Q: Tony Brass. Officer Smets, you had an opportunity to look at somebody worn camera I  
16 understand?

17 A: I did.

18 Q: Just your own or other sources?

19 A: Mine and two others.

20 Q: Two others? Do you know who the other sources are off the top of your head?

21 A: Officer Nagai and Officer Smith-Russack.

22 Q: And how about media? You know the news, channel 5, KPIX anything like that?

23 A: I briefly saw a segment of like one media.

24 Q: So common news.

1 A: Yeah.

2 Q: Stories.

3 A: Uh-hum.

4 Q: Related to that. You know this is how I like to do interviews. I mean people, everybody  
5 has a different style. Hopefully, it works for you too. So what I like to do is maybe just have you  
6 tell your story in your own words in a narrative fashion. As long as you want, as short as you  
7 want. Whatever it is. Whatever you think you need to say about what you remember, what you  
8 did, what you didn't do. You know just your entire perception so that the incident is -- and then  
9 probably what we'll do is we'll start to break it down a little bit if we have more specific  
10 questions to address. And it'll probably kind of go around the room. It's a little bit cumbersome,  
11 but it seems to work pretty well. Does that work for you?

12 A: Works for me.

13 Q: All right. Perfect. So in your own words, please.

14 A: Okay. So I'm at the station. I'm by myself. I don't have a vehicle.

15 Q: Okay.

16 A: I don't even have one signed out because my partner took it to go to a critical incident  
17 response as a specialist. I'm running a report. I hear a code 33 behind a -- or I got, we got  
18 flagged down by someone who said there's a gun and I guess there was a language barrier. So all  
19 I know is like someone with a gun and they're doing a felony stop that the person went into -- of  
20 a car that the person with the gun went into. So they're behind a call, a car. I hear the code 33 at  
21 that station. So I run out of the station. I get into the first car that I see, which Officer Carroll and  
22 Smith-Rusick, they're both getting in. I think Carroll's driving. And I get in the back-right  
23 passenger seat in the cage. I hold the door open. I don't close it all the way so I can just get out  
24 when I get on scene. They don't have to let me out. When we get on scene, I see the felony stop  
25 taking place in front of me. I hear someone say get an arrest team. So I start putting on gloves

1 cause I'm gonna start handcuffing whoever that they call back. They called the driver back.  
2 Driver stops in front of the lead vehicle. And me and Officer Carroll grab him, put him in  
3 handcuffs. I take him back to the closest car behind the point vehicle. And I do a quick pat down  
4 search. I take something out of his right pocket, put 'em up on the trunk. And I set him inside the  
5 vehicle. I return back to the position of cover behind the car and then the door. I believe it's --  
6 don't remember the officer's name who's initially doing the callout. Whatever his name is he  
7 works on nights. I stand behind him. I'm at the low ready. I keep seeing the person, there's a  
8 person in the trunk. His head is facing to the left. If the car is forward, his head is this way. His  
9 feet are to my right. And the trunk is over him, but not all the way. You can just see the right side  
10 of his body. You can see his right hand. You can kind of see his head, some of his torso and his  
11 right leg. I, you cannot see his left. You can sometimes see his left hand, but then it keeps  
12 coming down behind his leg. So as I'm watching this several times, as I'm standing behind the  
13 officer calling out, he keeps reaching in. And we're all like "hey get -- see your hand, see your  
14 hand." He does it again and at that point I'm like this isn't just a normal -- I'm not going to stay  
15 at the low ready. I'm now going to go to the other side of the door. So the officer calling out is in  
16 between the door and the car and then I'm just on the other side of the door. I'm on my right  
17 knee, my left leg posted out. I'm (pied) around the door so I'm pointing my handgun directly at  
18 the guy in the trunk. He keeps reaching for something, I don't know what it is, but it's scary and  
19 concerning for me. And then I had -- we're yelling commands in Spanish. I am not, the guy next  
20 to me is. So I start asking around like hey let's try Spanish, or he's in English. I start saying hey  
21 let's try do it in Spanish. Officer Banegas comes up on a loudspeaker, starts doing it in Spanish.  
22 He's doing the same thing. There's no change in his, his movement or behavior. He still reaches  
23 for something. He's not complying to our orders. Next to me, Officer Santana brings up a ERIW  
24 and he's like "red light, red light" so we all, or I repeat it like we're supposed to. And then he  
25 says it again. Shoots one round. I observe it hit in the arm, the right arm of the guy in the trunk

1 and we – I assume the person who speaks Spanish is reissuing the commands. I don't speak  
2 Spanish. So I assume she's saying, let's see your hands, get out of the trunk, let's see your hands,  
3 come out back to us. He doesn't do anything. At some point in time, I remember seeing his face,  
4 and I'm – he like I could tell he just gives up and he throws his right arm up opening the trunk.  
5 And then he, or his left arm and then pushes the left arms toward us. I don't see what's in his  
6 hand. I don't see – I know it's black. I can't discern that it's a gun, but I see it fire at me. And at  
7 that point I'm like that is a gun. He just tried to fire at us. And then I shot at him. I emptied my  
8 whole magazine. He was still moving. I kept shooting. I emptied my magazine. I reloaded. He  
9 was not moving. We continued to call out again. He wasn't moving at the point. I saw hands  
10 come out of the backseat up to the rear window. Like and then a female started screaming. So  
11 I'm like crap there's – might be someone hurt in the back now because we just shot, and bullets  
12 might have over penetrated. So I checked the back of the car that we're in, that's we're posted up  
13 behind. There's a shield in there. I grab the shield. Myself and Sergeant Perez pushed up to the  
14 trunk with some officers behind us and I opened the trunk. I saw the suspect in the trunk still. He  
15 didn't appear to be breathing, but I saw a gun on his like next to his hip, his right hip. And I  
16 grabbed one of his hands, I think Officer Carroll grabbed his other and we pulled him out of the  
17 car, and we handcuffed him. And I heard the gun fall deeper into the trunk. Then I, we  
18 handcuffed him. I patted him down for more weapons. I checked for a pulse. He didn't have one.  
19 We rolled him over. I took his jacket off and his hoodie and I cut a fanny pack that he had draped  
20 over his shoulder and a his shirt off with a knife that someone provided me on scene because I  
21 didn't have one. And then Carroll started compressions and I put a uh a halo seal on the chest  
22 where I saw some chest wounds. And then medics got on scene shortly after that and took over  
23 medical aid. And then I left and spoke to sergeant about firing and stuff.

24 Q: Okay. I got you. Good enough.

25 A: Yeah that's I mean that's-

1 Q: I mean you obviously covered pretty much all of it. A couple things, so we do have this,  
2 again this is not a particularly impressive diagram. So maybe we could just kind of walk through  
3 at least the mechanics of you know where your initial car was, where you were when the incident  
4 actually occurs. But just to kind of set the stage, so you're at the station. You're by yourself. You  
5 don't have your partner and it's a call for help basically another unit.

6 A: Uh-hum.

7 Q: And there's, if I recall what you said, there was already a mention of a gun involved?

8 A: Yes.

9 Q: Is that correct?

10 A: Yes.

11 Q: All right. And there was a description of someone, or a vehicle involved?

12 A: I didn't hear a description.

13 Q: Just there was a gun-

14 A: I did not.

15 Q: And a location?

16 A: I heard a gun and-

17 Q: I gotcha.

18 A: Officers around saying it.

19 Q: So if you remember, about how close – how far into this incident did you get there? Were  
20 there already a lot of other officers already on scene? Were you one of the first cars there if you  
21 remember?

22 A: I think we were one of the first. We had to have been.

23 Q: Right.

24 A: Maybe-

25 Q: Do you remember roughly where your car was?



1 A: I think our car is here.

2 Q: So, you just go ahead and put an X there if you remember and kind of just kind of walk  
3 us through. Just circle it and maybe initial it. And then if I remember, and again you gotta jump  
4 in here if I'm getting the sequence wrong; is you glove up. You think it's an arrest situation.

5 A: Uh-hum.

6 Q: So you're obviously you're going to move up at some point.

7 A: Yeah.

8 Q: Is that correct?

9 A: Uh-hum.

10 Q: And talk us through a little bit about how that went. So obviously somebody had been  
11 ordered out of the car.

12 A: Yes.

13 Q: Or somebody was complying or doing something.

14 A: Yes.

15 Q: So kind of talk us through how that process worked if you remember.

16 A: So I, I'm assuming it's the driver.

17 Q: Okay.

18 A: Because there's no one now in the driver seat. And then the guy is standing here at the  
19 point that I come on scene.

20 Q: So we're talking-

21 A: The time the driver-

22 Q: Whoever it was.

23 A: Somebody was. Somebody's out of the car.

24 Q: Where you are, he's standing when you first see him.

25 A: Yeah.

1 Q: I got you. And he's-  
2 A: He's next to the car.  
3 Q: I understand.  
4 A: And his hands are up.  
5 Q: He's complying.  
6 A: Yeah.  
7 Q: As far as you can tell.  
8 A: Yes.  
9 Q: All right. (inaudible)  
10 A: So I hear someone say arrest team. And this is the car I believe that I'm taking behind.  
11 Q: Okay.  
12 A: This is the most the closest car of the suspect's vehicle.  
13 Q: And put an X there too just to-  
14 A: Um I stand here.  
15 Q: Right.  
16 A: I put my gloves on.  
17 Q: Right.  
18 A: I then move over to here.  
19 Q: Right.  
20 A: Where this guy has now walked back. Walked over.  
21 Q: Complying the whole time?  
22 A: Complying the whole time.  
23 Q: Right and do you even know there's anybody else involved in this?  
24 A: I see a guy in the trunk.  
25 Q: So you can see somebody in the trunk?

1 A: I can see him in the trunk still.

2 Q: Is there any talk right now amongst the people that you know the other officers on scene  
3 that they know he has a gun? That there's a gun involved or?

4 A: No. I know that there's that somebody in this car.

5 Q: Right.

6 A: Great chance they have a gun.

7 Q: But when you're walking up, it's actually a little bit dangerous to take somebody in  
8 custody.

9 A: Yes so, I see his hands-

10 Q: A little bit exposed.

11 A: Uh-hum.

12 Q: No one's telling you that guy in the trunk has a gun or anyone has a gun.

13 A: No. Maybe this guy might even have a gun.

14 Q: Exactly.

15 A: Yeah.

16 Q: So you're not sure. So you take him down with some folks and put handcuffs on him.

17 A: Yes.

18 Q: I get you.

19 A: And I picked him up and I put him in the back of this car.

20 Q: This car here. Now when you're dealing with this individual, does he – do you remember  
21 anything he may have said? Or-

22 A: Not off the top of my head.

23 Q: Right.

24 A: I knew he's kind of – I think he's confused on why we were doing, what we were doing.

25 Q: Right.

1 A: Which a lot of people doing felony stops act like.

2 Q: Sure. When you were coming up to take him into custody, do you remember anyone in  
3 the car? The person in the trunk, as you already know there's a female as it turns out in the car.

4 A: So yeah, the female, I had no idea until after we shot.

5 Q: After the fact. This guy, any contact? Any word? Any conversation? Any yelling,  
6 screaming? Anything from him?

7 A: Between them two?

8 Q: Or you and him?

9 A: No. No.

10 Q: Nothing? So as far that guy-

11 A: Not till after I come here-

12 Q: Yeah.

13 A: And I kind of add to the volley of lets see your hands, lets see your hands. That kind of  
14 stuff.

15 Q: I see. Is everybody kind of you know, and you can't speak for everyone, is everyone  
16 pretty much focused kind of like splitting their focus on the trunk and taking this guy into  
17 custody?

18 A: So I don't, I don't know what other people are doing.

19 Q: Right.

20 A: I know that they - I hear arrest team and I'm like, I see a bunch of officers already online.

21 Q: Right.

22 A: So I put on my gloves. I'm like I'll do the arrest team stuff.

23 Q: So you're not really paying much attention to the trunk at this point, right?

24 A: Not at this point.

25 Q: So he's in the radio car now. The driver. So what are you going to do next here?

1 A: I go back to right here. The door is open.

2 Q: Okay.

3 A: A guy right here.

4 Q: Right.

5 A: Who's like yelling all the commands.

6 Q: Okay.

7 A: I think it might be Cassinelli. That might be his name.

8 Q: Okay. Fair enough. Fair enough.

9 A: I'm standing here and I'm at the low ready. I'm not pointing my firearm yet.

10 Q: And so at this point, are you aware that their saying hey this guy in the trunk isn't

11 complying and he-

12 A: I'm observing it.

13 Q: Yeah.

14 A: And I'm watching him not comply.

15 Q: And you don't – no one knows if this guy is armed or not, but he's still not-

16 A: I didn't find one on this guy.

17 Q: Right.

18 A: So I'm assuming there's a greater chance now that at least this guy might have the gun.

19 Q: All right. Fair enough. So when you're observing him, kind of take us through. You've

20 kind of already – you know the words I keep hearing all the time from all the folks we've already

21 talked about which actually seems like a pretty appropriate term, is the guy is fidgeting. He's

22 moving his hands and he's moving-

23 A: Uh-hum.

24

25

1 Q: I don't want to put words in your mouth, but kind of walk us through the physicality of  
2 what his actions are. Is he responding to commands? Is he just doing his own thing in that trunk  
3 in terms of his movements?

4 A: So I'm, as far as what he's saying-

5 Q: Right.

6 A: I at no point in time remember hearing him saying anything.

7 Q: Anything at all?

8 A: I am focusing directly on his chest and his one hand.

9 Q: Right.

10 A: And then his other hand.

11 Q: Right.

12 A: So-

13 Q: Could, did he have – so kind of like were this at from the trunk, did he have his head –  
14 from what we're hearing is his head was pointed towards the east.

15 A: Yeah. Yes.

16 Q: Okay.

17 A: So he's facing this way.

18 Q: Did it look like he you know – it's a little weird for someone being in the trunk.

19 A: Yes.

20 Q: So that's why it's kind if hard for us to just sort of kind of picture it. I mean does he look  
21 like a guy that like dove in the trunk and his legs are still out? Or is he fully in the trunk? Or one  
22 leg-

23 A: One leg out and the other one is like on the edge of coming out.

24 Q: I got you.

25 A: Or it's like half in. But one is kind of it's not all the way out it's his foot's out.

1 Q: Right.

2 A: Yeah.

3 Q: And then he's – one hand you're not seeing regularly?

4 A: One hand I'm kind of regularly seeing.

5 Q: Okay.

6 A: And the other hand it's coming from right here.

7 Q: Right.

8 A: To digging down up here under the back leg which I cannot see.

9 Q: Right.

10 A: It's blocked by the front leg.

11 Q: And what's your interpretation of not being able to see the other hand? What's going

12 through your mind? What are you-

13 A: I'm thinking that someone who may have a gun might be trying to access the gun.

14 Q: Okay.

15 A: In a manner that we will not be able to see by hiding it or trying to grab it (inaudible)

16 Q: Right.

17 A: In order to shoot us.

18 Q: Right. And you said at this point you're low ready at some point or you're-

19 A: I keep seeing this-

20 Q: Right.

21 A: One of the reaches and the whole chorus of "hey let's see your hands, stop doing that."

22 Q: Right.

23 A: I'm like, I determined that that's a lot more merit than maybe I thought originally.

24 Q: So the threat level in your mind is up a little higher?

25

1 A: It spiked up.

2 Q: So you're coming up from a low ready to an engagement position?

3 A: Now I'm on point and I've moved to the other side of this door in the kneeling position.

4 Q: Talk a little about the -- as you mentioned that a lot of folks aren't familiar with it. With  
5 the red-light term and what does that mean to you and walk us through the process of the  
6 deployment of the extended range impact weapon.

7 A: So I see Santana come up with the orange shotgun.

8 Q: Okay.

9 A: Which I know is the beanbag gun. And he, he says red light or less lethal red-light red  
10 light. And then I hear that and that tells me do not shoot when you hear someone else shoot.  
11 Cause often times people do the sympathetic fire.

12 Q: Right. And talk a little bit about that concept is people understand.

13 A: One person shoots so other people shoot. Just instinctively.

14 Q: So your training experience you know that that's a factor.

15 A: That's a fact. So I tell myself, I hear this beanbag shot.

16 Q: Right.

17 A: Do not fire.

18 Q: I get you. And did you see the extended range actually employed?

19 A: I see it employed.

20 Q: And it strike-

21 A: I see the bag fly through the air and strike him in this area. It may be chest, maybe next to  
22 the arm, but I see it in this area.

23 Q: So you see it impacted?

24 A: I see it impacted.

25 Q: All right. And what's his reaction if any?



1 A: He throws his arm up and that's it.

2 Q: He throws his arm up?

3 A: Yeah.

4 Q: So you said something that was kind of interesting to me at least. You said something  
5 about an expression on his face.

6 A: Uh-hum.

7 Q: That he kind of gave up. I mean-

8 A: Yeah.

9 Q: Kind of walk us through how you made that assessment of his demeanor.

10 A: Because the whole time like I don't hear what he's saying.

11 Q: Right.

12 A: But I can see him and he's yelling or doing something but he's moving kind of with his  
13 mouth.

14 Q: Right.

15 A: I don't hear any words and I just see him kind of like stop and maybe like a little moment  
16 of calm before he made that final action of throwing the trunk open.

17 Q: Right.

18 A: And putting his left hand out.

19 Q: And again these are different interviews for everyone here because what's important,  
20 what sets you apart from a civilian or a suspect or something along those lines is your state of  
21 mind is a very important factor in how this entire process in your mind unfolds. And that's  
22 actually you know not to speak for the lawyers, but it's kind of like allele concept. So when you  
23 say the guy throws his shoulder up and he's you know doing whatever you're describing, what is  
24 that telling you?

25 A: That-

1 Q: What's your interpretation of his actions at that point?

2 A: I'm seeing a lot of fidgeting up to this point.

3 Q: Right.

4 A: And now I see a gross motor movement.

5 Q: And?

6 A: Now I think a threat is imminent.

7 Q: A threat is imminent?

8 A: Yes.

9 Q: And then what happens after he does this movement?

10 A: His hand comes out. There's a black object in his hand. It's pointing directly at us.

11 Q: Right.

12 A: And I hear a retort and a muzzle flash. And I put all that together.

13 Q: Right.

14 A: And I know that now that he's firing a gun at me.

15 Q: Right.

16 A: And then I shoot back.

17 Q: I got you. When you say a gun at you, I mean you're feeling specifically like he's-

18 A: I feel it's coming right at me.

19 Q: He's aiming at you?

20 A: Cause I am spiked now.

21 Q: Right. And you said retort and then you say muzzle flash. So we're talking a gunshot and

22 you actually see the physical-

23 A: I see the actual-

24 Q: Expression of that?

25 A: Yes.

1 Q: Could you hear a bullet go by?

2 A: I can't hear a bullet.

3 Q: Or anything like that.

4 A: I mean it's-

5 Q: Bullet strike, anything like that?

6 A: I see this. I'm instantly responding.

7 Q: Right.

8 A: So I'm not-

9 Q: And then you're going to engage right then and there, right?

10 A: I instantly engage.

11 Q: [REDACTED]

12 A: [REDACTED]

13 Q: [REDACTED]

14 A: [REDACTED]

15 Q: Right so you've – have you been in a situation not obviously comparable but to some  
16 degree a little bit comparable?

17 A: To some degree.

18 Q: Of people shooting at you?

19 A: Uh-hum.

20 Q: Or you having to shoot you know? You have?

21 A: Yes.

22 Q: Right. Was that a factor in how you handled this situation in terms of your training  
23 experience relying on that?

24 A: Absolutely not.

25 Q: No?

1 A: No.

2 Q: All right. Fair enough.

3 A: They're not comparable.

4 Q: No? They're not at all? Okay. Fair enough. But I mean you've had the experience of  
5 being shot at?

6 A: I have experience of being shot at and shooting back and-

7 Q: I guess what I'm trying to say is you know what being shot at.

8 A: Yes.

9 Q: Looks like and feels like.

10 A: Yes.

11 Q: Because it's happened to you before.

12 A: Yes.

13 Q: I understand.

14 A: And I felt that same feeling of fear.

15 Q: Right. Fair enough. I just wanted to get that out. Do you recall, one of these silly  
16 questions we have to ask, how many rounds you fired?

17 A: I – I didn't count them as I fired them.

18 Q: Right.

19 A: But I reloaded, and I didn't fire after I reloaded.

20 Q: So one magazine?

21 A: I know that I had one in the chamber and I have twelve in the magazine.

22 Q: So it was one magazine change?

23 A: One magazine change.

24 Q: But you didn't fire any of the new magazine.

25 A: I did not.

1 Q: Right. Did you shift positions after expending your rounds on this? I mean he apparently  
2 was; no one knew exactly what had happened to him after the-

3 A: Yes.

4 Q: I guess for lack of a better word the fusillade took place, right? All the shooting.

5 A: So I – I shoot-

6 Q: Right.

7 A: And I stay kind of behind the door-

8 Q: Right.

9 A: Until I see the hands of the female who's in the back seat and then I start to think like we  
10 need to get her out of there she may be hurt. We need to -- she's saying that she can't out. So that  
11 forces our hand to actually go up there cause if she is an innocent party, I gotta, we gotta do  
12 something. So I get the shield out of the back of the car-

13 Q: Okay.

14 A: And then that's when we moved up to the trunk.

15 Q: Right.

16 A: And that's what prompted to me – or in my opinion that's what prompted us to actually  
17 go up to the trunk now because she is in the back of the car.

18 Q: I get you. And you saw obviously the individual in the trunk?

19 A: I did.

20 Q: And you took some vitals?

21 A: Yeah.

22 Q: And did what you could in that respect and then I think you described already that you  
23 saw a gun and you actually heard the gun actually fall further into the-

24 A: Fall deeper into this. Yeah.

25 Q: Was he – looked like he was incapacitated when you saw him?

1 A: When I first saw him, absolutely.

2 Q: Yeah? He didn't say anything?

3 A: He said nothing. No.

4 Q: And through this entire incident, you said he's mouthed a few things, but you're not  
5 aware of any specific-

6 A: No.

7 Q: Infor- you know any conversation or anything he might have said?

8 A: No.

9 Q: No. Were you yourself giving commands?

10 A: I think I did the, I added to the "let's see your hands, don't reach or anything" but after  
11 they started speaking Spanish, I kind of stopped saying everything.

12 Q: I got you. And believe it or not I'm almost done, but one of the last question is, and again  
13 we've looked at some of the same things that you looked at. It looked like there was a pretty long  
14 period of time where commands were being issued, the extended range impact being deployed,  
15 and the actual shooting occurs. It seemed like there was quite a while, at least in my view where  
16 you know that individual had opportunities to comply. Did it look like from your vantage point,  
17 from your experience, did that individual ever made any effort to comply with the commands  
18 being given?

19 A: No.

20 Q: And no reaction to the extended range impact weapon other than that what you already  
21 described?

22 A: No.

23 Q: Okay. I think I'm done.

24 MY: Could you clarify, which vehicle did you put him in? The driver.  
25

1 A: I believe it put him back here. So this is the one that's on point. And it's, I don't  
2 remember once I-

3 MH: This is a loose diagram. Yeah.

4 A: Yeah no see once I got on scene, I'm not sure where vehicles were except for the one that  
5 I was posted behind.

6 MH: Okay. Okay.

7 A: And I know that I put him, I had put him in a car that was behind this one so I'm  
8 assuming it's this one.

9 MH: Okay.

10 A: And then I think we arrived in a car that's back here somewhere.

11 MH: All right. So it wasn't the first row? It was somewhere in the second.

12 A: No, I didn't put him anywhere in here. It was not in this one I know for sure. And it was  
13 behind back here.

14 MH: Okay.

15 A: See it's this one or this one. I'm pretty sure it's this one.

16 MH: And then you went back up and took position next to-

17 A: Next to the guy giving commands.

18 MH: And you thought that that was-

19 TB: Why don't we number the vehicles 1, 2 and 3.

20 Q: That would be good.

21 TB: So we know what this one and this one means.

22 A: Okay. So one is the one that I am, I shot from.

23 MH: Okay.

24 A: Three is the one I believe that I put the guy in. The driver. The first guy. The guy I  
25 handcuffed.

1 MH: Got you.

2 Q: And two, put two as the car you think you came out of, right?

3 A: Yes.

4 Q: Fair enough.

5 MH: Okay. Okay.

6 TB: And, and vehicle 4 is a possibility?

7 A: It's a possibility of a person what the car I may have put him in. Cause I don't remember

8 where other cars are.

9 Q: Okay. Understood.

10 TB: Could you number that as a 4.

11 A: Oh yeah sorry.

12 TB: No worries.

13 MH: And you took position alongside, you thought it was Cassanello?

14 A: Cassanelli.

15 MH: Cassinelli. Sorry.

16 A: Yes. Behind him.

17 MH: Okay.

18 A: Initially. Until I started seeing the repeated going reaching for something or fidgeting

19 back behind the knee.

20 MH: Okay.

21 A: And that's when I moved to the left side of the door.

22 MH: All right.

23 A: To get away from him. Because-

24 MH: All right. Were you kneeling or standing?

25 A: I was on my left knee and I had my right, right leg posted out. So I was kneeling.



1 MH: Okay.

2 A: But it was kind of like an extended knee so I could use most of the cover from the door.

3 MH: All right. Okay. And were you in that position the whole time? So you had a good, you  
4 were able to see?

5 A: I was in that position for the some of the English yelling, some of the Spanish yelling, the  
6 beanbag round and then the firing. And then after the firing until I went and got the -- until I got  
7 the shield.

8 MH: Okay.

9 A: So most of the time I was in that position. I was behind Cassinelli for maybe 30 seconds  
10 and then I moved back to that or went to that door.

11 MH: Okay. Do you recall ever during, you were, you said you noticed that he was like  
12 fidgeting around and kept kind of tucking his left arm. You could see the right arm you know  
13 kind if hanging-

14 A: Uh-hum.

15 MH: Moving around and one of his legs kind of hanging out of the car or the trunk, but you  
16 couldn't necessarily hear what he was saying?

17 A: No.

18 MH: At any point.

19 A: No.

20 MH: Do you recall, or do you remember anything that the driver might have said to you when  
21 you were handcuffing him and putting him in the car?

22 A: No.

23 MH: He didn't say anything?

24 A: I can't recall off the top of my head. I know he said something, but I'm not sure exactly  
25 what he said.

1 MH: Okay.

2 A: It was probably like why are you doing this or something like that.

3 MH: Okay.

4 A: Yeah.

5 MH: Okay. Um-

6 A: Or like what did I do. That's a common one for-

7 MH: That kind of thing, I didn't do anything wrong.

8 A: Yeah. Yeah.

9 MH: Sure. I'm trying to think – I had something – everything I was thinking of asking  
10 Inspector Cagney was asking right away. And you said you were aware that they had a gun when  
11 you went out to the call.

12 A: Yes.

13 MH: The call had come out as-

14 A: I don't often respond in bulk in mass to calls unless I hear it's a gun call and I hear  
15 officers saying they need help.

16 MH: Okay.

17 A: Like the code 33 to me is like oh I'm going to go out there because before he called it, I  
18 heard someone flagged him down and someone has a gun in that car so then they did the felony  
19 stop. And I'm like okay I'm out there. I'm going.

20 MH: All right so when you went you were kind of aware, but you didn't know which person?

21 A: No.

22 MH: Whether it was the driver or him-

23 A: No.

24 MH: Or somebody in the car.

25 A: Right.

1 MH: All right and there was at no point had you seen the gun anytime?

2 A: I have not seen a gun.

3 MH: Okay.

4 A: Until he fired it.

5 MH: And when you went up to him and approached him in the trunk to assess what you know  
6 injuries, if he was still alive, do you recall where you saw the gun in the trunk?

7 A: So he's in this trunk. And he's kind of sitting in it right? And here's the edge of the trunk-

8 MH: Uh-hum.

9 A: So the closest to us and it's right here. It's in the gap. Between him and the trunk.

10 MH: Okay.

11 A: So if this is the trunk, he's laying here, it's like laying right here. He's not holding it  
12 anymore. I think his arms are like down here or something.

13 MH: Okay.

14 A: But it's laying right here and then when we pulled him out, I could hear it fall deeper in.

15 MH: Okay. So the inner lip of the car like the (inaudible)

16 A: Like down to where the spare tire would be or whatever.

17 MH: I see. Okay. Okay.

18 A: I didn't see it, but like I could hear it clink down there.

19 MH: The clunk?

20 A: Yeah.

21 MH: Okay. Okay. Go ahead. Andrew.

22 AL: Starting with the sketch, did we, did you know where you were positioned when you  
23 fired your weapon?

24 A: Yes.

25 AL: Okay so does it have like a number next to it?

1 A: I'll do a big circle around it.

2 Q: It's number one.

3 AL: Number one? Okay. Approximately how far were you positioned from the trunk of the  
4 car?

5 A: So I don't know the exact, I didn't step it out or anything.

6 AL: Sure.

7 A: But I'm guessing anywhere from 20 to 30 feet. That's what I'm ranging. I'm not very  
8 great at judging distance.

9 AL: What were lighting conditions like when you arrived?

10 A: He was lit up. Somebody had a flashlight on him. And then I don't know if there were  
11 streetlights, but that was sufficient for me. I could see him, and I could – you know except for his  
12 hand. I could see him.

13 AL: You said you could see his facial expressions?

14 A: Yes. But yeah, I don't recall most of the facial expressions except for the mouthing. Like  
15 the him moving his mouth.

16 AL: Okay.

17 A: Yeah.

18 AL: But did I hear you correctly, you said you couldn't hear what he was saying?

19 A: I could not hear.

20 AL: The officers were giving commands in English and Spanish, with respect to the English  
21 commands, did you do you remember what was being said?

22 A: Show us your hands or we'll shoot. If you reach for something again, we'll shoot. Come  
23 back. Get out of the car. Commands in that, along those lines.

24 AL: Approximately from, to the extent, what type of, how long did these commands go on for  
25 approximately?

1 A: So I arrived on scene as someone was already out of the car.

2 AL: Uh-hum.

3 A: And I don't know, I can't speak for before that, but I'm guessing I don't know 5, 10  
4 minutes of commands alone.

5 AL: During the time that you were there?

6 A: Yeah.

7 AL: How many muzzle flashes did you see?

8 A: I remember seeing the one.

9 AL: And this is something that – this muzzle flash, is this something that you distinctly  
10 remember without having seen your body worn camera?

11 A: Yes.

12 Q: When you were, when you took position and you ultimately fired from that position, was  
13 there anyone next to you at that time?

14 A: So I remember Cassinelli being here. So we have a door between us. And then I  
15 remember Santana being to my immediate left. I don't know if he's right next to me or like  
16 maybe one guy over. And if there's someone in between us, I have no idea.

17 AL: Was there anyone else that you saw? Anyone in front of you?

18 A: I have no one else in my – like as soon as it all happened, my vision goes straight to the  
19 guy. I hear his shot. I hear no other shots. I don't hear my shots until it's all over.

20 AL: You mentioned something about being spiked. Could you just clarify what you meant by  
21 that?

22 A: That my adrenaline was peaked.

23 AL: How many ERIW shots were fired?

24 A: One.

25 AL: And how long after that ERIW shot did the person in the trunk fire?

1 A: Seemed like moments, but I can't tell you an exact time.

2 TB: Before the ERIW is deployed, is used, you could, could you see the suspect in the trunk?

3 A: Yes.

4 TB: Did you have him in the, in your sights?

5 A: Yes.

6 TB: At that point, no one shot him, correct? Before the ERIW.

7 A: No. No one shot him.

8 TB: From watching the video, could you see if other officers had him in their sights?

9 A: Yes.

10 TB: He was not covered by the trunk?

11 A: He was not.

12 TB: After the E-

13 A: It was like on top of him.

14 TB: The trunk?

15 A: But it's not fully concealing him.

16 TB: So he's not concealed at that point?

17 A: No.

18 TB: Then the ERIW is fired, correct?

19 A: Yes.

20 TB: And at that point could you still see him?

21 A: Yes.

22 TB: Was he covered by the trunk?

23 A: No.

24 TB: And after the ERIW is fired, could you still see him?

25 A: Yes.

1 TB: And before anyone fired, did you see the suspect fire?

2 A: Yes.

3 TB: Okay. That's all I have.

4 MH: One more question, could you just describe again, the ERIW was fired and then you saw  
5 he reached out. Could you describe what that was happening? How he was shot when you saw  
6 the muzzle flash and you saw him reaching over with his left hand, is that correct?

7 A: Uh-hum.

8 MH: And he fired.

9 A: So he, he, so from the point of the ERIW impact to the point he fired?

10 MH: Uh-hum.

11 A: So he gets shot around this area. He kind of does like one of these like ow that hurt  
12 things. Still now coming out. I see him throw his arm up as if, cause the hood is resting on top of  
13 him.

14 MH: Uh-hum.

15 A: It's like sitting on him. Throws is up to make it pop up and in that moment, he has  
16 something in his hand which he pushes directly at us and then that fires at us. Or at me. That's  
17 what I'm thinking.

18 MH: Okay.

19 A: So that's the moment of he kind of dual pushes the hood up and then come out to fire at  
20 us.

21 MH: He pushes up and punches forward.

22 A: Yeah.

23 MH: With his arm. Okay. And then this isn't going to sound like kind of a basic question, but  
24 you mentioned it a couple times that you felt your adrenaline was spiked and you felt a level of  
25 fear.

1 A: Yes.

2 MH: What were you fearful for?

3 A: My life. Thought I was gonna die or one of my friends were gonna die.

4 MH: Okay. I'm done.

5 Q: I think we're done. Officer Smets I appreciate you sitting down with us in a voluntary  
6 interview and we appreciate your cooperation. It's going to be 1315 hours.

7 END OF INTERVIEW



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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER SMITH-RUSSACK**

**INTERVIEWED BY:       SERGEANT WATTS**

**DATED:                   MARCH 8, 2018   TIME: 1825 HOURS**

1 **Q: SERGEANT WATTS**

2 **A: OFFICER SMITH-RUSSACK**

3 **YS: YORK SUDA**

4 **AC: ANGIE CHOW**

5 **DN: DON NOBLES, ATTORNEY**

7 A: I had one report to do and we had just, midnight units had just come on and so we were  
8 up in the breakroom having our lunch.

9 Q: Uh-hum.

10 A: And that moment we heard a call over the radio that a unit called a code 33, which means  
11 to clear the air cause it's an emergency.

12 Q: Uh-hum.

13 A: And said that there was a they had a possible 211/221 vehicle, which refers to a robbery  
14 involved with a gun.

15 Q: They say where?

16 A: I'm sorry?

17 Q: Did they say where?

18 A: Yes, I'm sorry. I believe they said 21<sup>st</sup> and Capp Street.

19 Q: Okay. So what happened.

20 A: Me and my partner rushed to our patrol car to assist the unit. Another officer, we later  
21 learned was Officer Smets got in the back of the patrol car.

22 Q: Uh-hum.

23 A: We rushed down to the scene where I witnessed a black Honda Civic on Capp Street. It  
24 appeared to be pulled over slightly to the right of the street. And there was a male suspect who  
25

1 was lying in the trunk. And there was a male suspect in the driver's seat, and a female suspect in  
2 the passenger seat.

3 Q: You could see that?

4 A: Once I had moved up to my position, I could see that.

5 Q: Okay. Hang on.

6 A: I'm sorry?

7 Q: And where was the female?

8 A: The female was in the passenger seat.

9 Q: Front passenger?

10 A: The front passenger seat. From what I could see.

11 Q: Okay. And then what happened?

12 A: So I had immediately upon coming onto the scene, I moved behind a red truck.

13 Q: Okay.

14 A: Or the engine block of a red truck to provide cover.

15 Q: Which is located on the east or west side of?

16 A: It would be located on the east side of the street.

17 Q: Okay.

18 A: Yeah.

19 Q: Yeah. And then? Then what?

20 A: Just to mention I had deployed the AR15 from our vehicle. And remained behind cover  
21 and pointed the rifle at the subject in the trunk.

22 Q: Okay. Then what?

23 A: The officers ordered the driver out of the vehicle.

24 Q: Yep.

1 A: The driver complied from what I could see with the commands and was taken into  
2 custody.

3 Q: And then what happened?

4 A: Then we were continuing to give the suspect in the trunk orders to show both of his  
5 hands. Suspect appeared to show one of his hands but refused to show the other one.

6 Q: Uh-huh.

7 A: I also gave him orders to show his hands which he ignored and the other officers on scene  
8 provided orders in English and Spanish to the suspect to show both of his hands.

9 Q: Yup.

10 A: The less lethal ERIW round was fired at the suspect to try and gain compliance.

11 Q: Yup and then what?

12 A: Suspect continued to refuse to show his hands. I then witnessed the uh suspect open the  
13 trunk and pull out what I believe to be a pistol. And I saw and heard two rounds fired in the  
14 direct of the officers who were directly behind the black Civic.

15 Q: Okay. Go ahead.

16 A: After, immediately after seeing the two rounds fired, I was in fear for the safety of the  
17 officers behind him and was not sure if they had been hit by the gunfire or not and I immediately  
18 discharged my AR15 directly at the suspect in the trunk. During that time I was also aware that  
19 there was a female in the either front or back passenger side of the vehicle and I made an attempt  
20 to point my rifle in a direction that would hit the suspect without hitting the female inside the car.  
21 Because at that point I did not believe that she was a, she was a threat.

22 Q: And then what happened?

23 A: As soon as I saw that the suspect had appeared to have gone limp and was no longer  
24 firing, I stopped firing my rifle and continued pointing it at the suspect. At that point I  
25 determined that there was no longer a present threat, or an imminent threat. The other officers on

1 the scene then took the suspect in the trunk, or excuse me, initially we gave him more orders to  
2 exit the trunk. We didn't get a response from the suspect.

3 Q: Uh-hum.

4 A: Other officers then approached the trunk, removed the suspect from the trunk and began  
5 administering medical aid. The female passenger was then ordered to exit the vehicle. And she  
6 complied and was taken into custody. Then immediately was notified by another officer that  
7 some of the shots had hit a nearby apartment building and I went over to the apartment building  
8 and searched it to make sure that no one was injured inside.

9 Q: Okay. Have you been trained on the AR15 as a patrol rifle?

10 A: Yes, I have.

11 Q: Okay and when was that training?

12 A: That was during my time in the academy. I'm not sure exactly which month.

13 Q: Oh okay. Are they training everybody at the academy with the patrol rifle now?

14 A: Yes sir.

15 Q: Very good. You said after the beanbag was fired, suspect still refused to show his hands.  
16 He was opening, opened the trunk, was he, was the trunk ever closed at any period of time? Was  
17 it sort of partially open partially shut?

18 A: It was partially opened sir.

19 Q: But was he playing around with the trunk up and down type of move?

20 A: At certain points he did move the trunk up and down.

21 Q: Okay.

22 A: Slightly.

23 Q: Do you remember how many rounds you fired?

24 A: No.

25 Q: Did you ever public safety statement to any supervisors?

1 A: Yes, I did.

2 Q: And who was that?

3 A: Sergeant um – sorry sir I’m blanking on the name, but I did give a public safety statement  
4 to a sergeant and I did tell another sergeant that I had a use of force.

5 Q: Okay.

6 A: I’m sorry sir, I can’t remember the name at the moment.

7 Q: No, that’s okay. If you can’t remember you can’t remember. That’s fine. And use of force  
8 to the same sergeant, right?

9 A: Sorry to a different sergeant sir.

10 Q: Different sergeant?

11 A: Yes sir.

12 Q: Okay.

13 A: Sergeant Sugar I believe was the one that I gave the public safety statement to.

14 Q: Got it.

15 A: Sorry.

16 DN: Sergeant Perez and Cal-

17 Q: Caldera?

18 DN: Were also on scene. Did you give the, talk to about the use of force? Does that sound  
19 familiar?

20 A: I don’t believe I talked to either of them specifically about the use of force.

21 Q: I’m good.

22 YS: Couple things, in regards to the AR training? Did you check out the gun or did your  
23 partner officer check out the gun? The AR15.

24 A: I checked out the gun sir.  
25

1 YS: And when you check it out, I don't know if there's a range master or range person or  
2 firearms person who you check it out from?

3 A: The station keeper sir.

4 YS: Station keeper. Thank you. How many magazines for the gun do they give you?

5 A: We are given one additional magazine and there's an additional magazine located or  
6 excuse me; we're given one magazine with an unloaded firearm and then there's an additional  
7 magazine that's located on the end of the gun.

8 YS: Side saddle?

9 A: Yes sir.

10 YS: And then do you load the magazines or are they preloaded?

11 A: We load the magazine.

12 YS: And how many, do you remember how many rounds you loaded into the magazine?

13 A: Uh no.

14 YS: Did you top it off?

15 A: I did not. I did not check the amount of rounds in the magazine.

16 YS: Oh okay so when you say you loaded it you mean you loaded the gun? You didn't load  
17 the magazine?

18 A: No sir. I did not load the magazine with any rounds. It's preloaded.

19 YS: So the – the magazines are handed to you-

20 A: Loaded.

21 YS: Preloaded.

22 A: Yes sir.

23 YS: And you just then put it in the gun. So in, when you're on patrol driving around, the car's  
24 in the, the gun's in the rack?

25 A: Yes sir.



1 YS: Is there one in the chamber or is?

2 A: No sir.

3 YS: So once you take the gun out to potentially deploy it, you chamber a round?

4 A: Yes sir. Once the AR is deployed, I chamber a round.

5 YS: After the shooting, did you maintain physical custody of the AR until you turned it over  
6 or did you put it in a car in a rack or the trunk?

7 A: I did maintain physical custody sir.

8 YS: Did you – how did you render it safe after the shooting? Did you just put the safety on, or  
9 did you unload it?

10 A: I was instructed to only put the safety on and that's what I did.

11 YS: So when you turned it over to the firearms people, it had a live round in the chamber, an  
12 unknown number of rounds in the magazine in the gun?

13 A: Yes sir.

14 YS: And whatever fullness the magazine that was on the stock was issued to you, still had  
15 those same number of bullets in it-

16 A: Yes sir.

17 YS: When you turned it in. Do you remember the address of that apartment that you said you  
18 went to go check on?

19 A: I do not.

20 YS: Was it on the east side or the west side?

21 A: It was on the uh west side.

22 YS: Did you, let's see, were you able to hear – were you able to hear or did you hear anything  
23 that the suspect in the trunk, did he say anything at any point through the incident that you could  
24 hear?

25 A: I did not hear him say anything.

1 YS: Okay do you, it sounded like you said you flanked out to the left to the east side of the  
2 street.

3 A: Yes sir.

4 YS: Do you recall where any other officers further to your left to the east side? Were you the-

5 A: No sir, not to my recollection.

6 YS: You were the most-

7 A: Yes sir.

8 YS: East. Do you know or think, were you, did you have the best vantage of the Honda? Of  
9 the, looking into like the driver seat and to the rear seat from – cause it's your-

10 A: I can't say for sure sir, but I was able to see -- I was instructed by another officer to see if  
11 there was anyone else in the vehicle and so that's why I took that vantage point because I was  
12 able to have a better view into the vehicle. But I can't say for sure whether I had the best vantage  
13 point.

14 YS: And who was that officer that instructed you to do that?

15 A: Officer Carroll. My partner.

16 YS: Okay that's your partner?

17 A: Yes.

18 AC: Just briefly, when we took the break and you looked at your body worn camera, did you  
19 look at any other video?

20 A: Yes. I looked at Officer Nigai's video.

21 AC: Officer?

22 A: Nigai.

23 AC: Any other video than that?

24 A: Just my own.

25 AC: And then uh there's some videos up on the media. Have you looked at any of those?

1 A: Yes.

2 AC: And which ones did you look at?

3 A: I've seen uh I believe two videos from uh, one from I want to say CBS and another from  
4 a citizen.

5 AC: In any of the videos that you've seen, whether it's your own body worn camera or the  
6 third-party videos, did any of them differ from your own recollection of what happened?

7 A: No.

8 AC: And the account that you have just provided us was it in any way affected by any of the  
9 videos that you've seen?

10 A: After the shooting, the only thing that was affected is I could not recall whether the  
11 suspect in the trunk was taken out first or the female in the passenger side. After the shooting had  
12 occurred. And so that just confirmed which of those events had occurred first.

13 AC: Anything other than that?

14 A: No.

15 YS: One other, I think you said but I don't remember, what was, what's the name of the title  
16 of the person who issues you and you turned in the-

17 A: The station keeper sir.

18 YS: Station keeper. Do you remember who that, was it the same station keeper that issued the  
19 gun and who you turned it into or different? And if so, do you remember names of either?

20 A: I don't recall who the station keeper was. That would definitely be on our records though  
21 and the gun was handed to a sergeant. I don't remember which one, but it was at the station. I  
22 had the gun on me until it was taken from me.

23 YS: By a sergeant?

24 A: By a sergeant.

25 YS: Not the, not the station keeper?

1 A: No sir, the station keeper just-

2 YS: So the sergeant then. Do you remember who that sergeant was?

3 A: I'm sorry sir, I don't recall.

4 YS: Okay. And then you said it'll be on a record as to who issued you the gun?

5 A: Yes sir, the station keeper would be on, there's a log.

6 Q: It's in the daily lineup.

7 YS: Okay. Thank you.

8 Q: Just one other thing Ari.

9 A: Yes sir.

10 Q: Just not to scale, I know it's not an accurate depiction, but this is the suspect vehicle?

11 A: Yes sir.

12 Q: Just show me roughly, there's a bunch of parked cars.

13 A: Yes sir.

14 Q: They're not in the position they were, but roughly where did you take up a position of

15 cover when you uh engaged the suspect in the trunk?

16 A: Approximately-

17 Q: Just put an X and sign your name. Initials next to it. Thank you.

18 YS: Also which car do you think, approximately which car do you think would be

19 representative where your car was when you guys pulled up to stop?

20 A: I believe, this one. I'm not 100% sure was -- 157 was our vehicle.

21 YS: That's it. Thank you.

22 Q: Don?

23 DN: No.

24 Q: Nothing? 1843.

25 END OF INTERVIEW

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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER TUPPER**

**INTERVIEWED BY: SERGEANT PARKER**

**DATED: MARCH 8, 2018 TIME: 1656 HOURS**

1 **Q: SERGEANT PARKER**

2 **A: OFFICER TUPPER**

3 **AG: ANGIE CHOW**

4 **YS: YORK SUDA**

5 **DN: ATTORNEY DON NOBLES**

7 Q: All right we are back on the record time is, let's make it 1656. This is Sergeant Parker,  
8 star number 462, homicide division. Just for the record we'll go around and say our names again.

9 YS: Inspector York Suda.

10 AC: Angie Chow.

11 DN: Don Nobles POA attorney.

12 Q: Okay. Josh, you had a chance to view your video?

13 A: Yes.

14 Q: Okay. Have you watched any other footage of the video other than your body worn  
15 camera i.e. you know news footage or anything like that?

16 A: Yes.

17 Q: Okay. What time did you start on the 6<sup>th</sup> that day?

18 A: 9:00 PM.

19 Q: 9:00 PM?

20 A: Yes.

21 Q: And then you guys went through line up and all of that?

22 A: Uh-huh.

23 Q: And then your partner that night was Officer Cassinelli?

24 A: Yes.

1 Q: Okay are you on FTO?

2 A: No.

3 Q: Is that your regular partner?

4 A: No. I'm on probation so I go to and from partners.

5 Q: To and from okay, okay all right. Do you remember the actual call you were on prior to  
6 the – prior to someone calling code 33? Do you remember what it was?

7 A: We handled, I wanna say a couple of calls before that. But, it could've been the A800  
8 out of Mission.

9 Q: Uh-huh.

10 A: But I'm not sure.

11 Q: Okay so just take me up to maybe a minute or so before that actual call came out, the  
12 code 33 came out?

13 A: Well, we actually on-viewed it

14 Q: You actually on-viewed it, okay

15 A: Yes.

16 Q: So take me to through that whole thing.

17 A: We were driving around 21<sup>st</sup> and Capp and as we were approaching Capp, the victim  
18 was, you know, waving his hand down. And we were coming up to him and he's pointing  
19 saying, "pistola, pistola" up the street. So we take a left on Capp. And I see someone run and  
20 jump into the trunk of a car. So the car starts coming off a little bit. The trunk is still open, and he  
21 starts pulling off. We get behind him and put the lights on and then they pull over. At that point  
22 we're executing a felony stop so I grabbed the rifle, and I'm focused on the guy in the trunk. My  
23 partner is focused on the driver and he's the one working the radio. So he called the code 33. At  
24 that point he started giving commands as well. Other units started responding. And then he  
25 instructed the driver to get out of the car, in which he gave him multiple commands on how to do



1 so. We ended up getting him back and into custody. Or cuffed and into custody. And then we  
2 were giving the guy in the trunk commands to see his hands. He wasn't – he was going back and  
3 forth from showing us his hands to reaching down where we couldn't see. We weren't sure so  
4 Officer Cassinelli asked if anyone speaks Spanish. And then another officer came and was giving  
5 commands in Spanish, which again he wasn't complying with. He would open the trunk, or with  
6 his right hand had the trunk open and the left one kept reaching down, down and up. And then  
7 they used, they called red light, which is our signal for a less lethal option and deployed that.  
8 Which, it, I wanna say it struck him. I'm not 100% sure but after that, same thing, he started  
9 reaching again with his left hand. And then eventually, you know, again officers were giving  
10 him commands to stop reaching. He came, pulled out, I didn't see what it was, but I just saw a  
11 muzzle flash. I fell down, got back up and then returned fire.

12 Q: Okay and can continue.

13 A: At that point, I didn't know another person was in the car, but she came through the, not  
14 the windshield but the back window. She popped up from there. Then they were giving her  
15 commands and entry – not entry. A clearing team came to detain her and once they got her out of  
16 the car they also had another team move up and start rendering aid to the suspect that was in the  
17 trunk.

18 Q: Okay all right. So, you and your partner, Officer Cassinelli, you're in the area of 21<sup>st</sup> and  
19 Capp?

20 A: Uh-huh.

21 Q: Okay. You're flagged down by two victims.

22 A: I just saw the one victim.

23 Q: Just saw one victim.

24 A: Yeah.

25 Q: Okay so one victim. And he was waving and yelling pistola pistola.

1 A: Uh-huh as he was pointing southbound Capp.

2 Q: Southbound Capp.

3 A: Yeah.

4 Q: Okay did you look in the direction that he was pointing?

5 A: Yes.

6 Q: Okay what did you see?

7 A: I saw a person run and jump into a trunk.

8 Q: And then did you partner see the same thing or did you tell him you saw someone jump

9 in the trunk or did he simultaneously say, hey there's somebody who jumps in the trunk?

10 A: At that point we didn't really communicate. I think he saw it as well. I can't really be sure

11 what he saw but he went right to the vehicle, but he went right to the vehicle as well.

12 Q: Okay did you guys put that out on the radio?

13 A: Well there's still – well he said someone is in the trunk. That was relayed over the radio.

14 Q: Okay and so you guys eventually were the first officers to that vehicle?

15 A: Yes.

16 Q: Okay and you said the vehicle kind of drove a short ways?

17 A: Yeah, it pulled out and then once we put the lights on, it came like kinda right back. I'm

18 not sure for why but yeah it pulled back a little bit.

19 Q: Okay. And then you exited the vehicle?

20 A: Uh-huh.

21 Q: Okay and you said you grabbed the rifle?

22 A: Yes.

23 Q: Have you been trained through the department training on use of a rifle?

24 A: Yes.

25

1 Q: Do you remember the date you went there?

2 A: No.

3 Q: Okay but you did complete it?

4 A: Yes, it was during our (inaudible) in the academy.

5 Q: Okay then successfully completed?

6 A: Yes.

7 Q: Okay cool. And you've taken the rifle out before in terms – when I say that I mean when

8 right before the shift-

9 A: Checking it out?

10 Q: Checking it out -

11 A: Yes.

12 Q: You checked it out before.

13 A: Yes.

14 Q: Okay cool. Okay so I wanna show you, this is a – this is not a Van Gough, this is just

15 somewhat of a sketch okay, of how the scene may have looked that night in terms of, so we have

16 a suspect vehicle here. These vehicles here is just drawing some of 'em I'm sure will probably

17 here, maybe some of 'em weren't there okay. But it just kind gives us an idea of what people

18 were that night okay.

19 A: Okay.

20 Q: Okay. So could you in your best recollection show me where your vehicle was?

21 A: I know you're saying it's not to scale, but I know like this one was really close. The

22 suspect vehicle was really close to the parked vehicles.

23 Q: Okay.

24 A: And then my door was right aligned midway of the trunk.

25 Q: Okay.

1 A: And we were close to the parked vehicles. I don't remember any police vehicles so I  
2 would have to say right around there.

3 Q: Okay so right around here.

4 A: Yes.

5 Q: Okay so I'm gonna have you just kinda draw a circle and just for reference, it's not to  
6 scale. It's not saying that you were actually at that location. Just for purposes of this interview  
7 that's all.

8 A: Okay so just the car, the entire car or the area?

9 Q: Just where you were. So we're assuming that this is your car, your vehicle.

10 A: Okay.

11 Q: Okay so you were right there.

12 YS: And you're in (shop) 67?

13 A: Yes.

14 YS: You wanna just write 67 on the box someplace.

15 Q: All right and so from your vantage point okay did you, were you out in the open? Were  
16 you close?

17 A: The door was propped open and I was behind it.

18 Q: So you was behind the door?

19 A: Yes.

20 Q: Okay so you had some sort of cover?

21 A: Yes.

22 Q: Okay what was your field of view?

23 A: Just a direct line from – me to the trunk. And then what was a lot going on around, it was  
24 kind of a broad view, but I had a focal point of the trunk.

1 Q: You had the focal point of the trunk.

2 A: Yes.

3 Q: And now you mention that the driver was eventually taken out of the vehicle correct?

4 A: Yes.

5 Q: And you said your partner Cassinelli

6 A: Yes.

7 Q: He was on the intercom giving directions?

8 A: I'm not sure if he was on the intercom giving directions. I know he was giving verbal  
9 commands.

10 Q: Okay so he's the voice that's speaking to giving the driver directions – hey come back,  
11 come back.

12 A: Uh-huh.

13 Q: And you could clearly see that?

14 A: The driver coming back? Yeah, it was more, again in – in, trying to remember what it's  
15 called.

16 DN: peripheral?

17 A: Yeah my peripheral.

18 Q: Okay.

19 A: Cuz again I was focused on the trunk and I could see him being, moving back.

20 Q: Okay so let's talk about the man in the trunk. Now while you're behind the door, were  
21 you standing? Were you on one knee? Were you kneeling crouched down?

22 A: I was propped against the door while I was kinda crouched but not in a full-

23 Q: Okay.

24 A: Like, I would say hinged at the hips with a slight bend in the knee.

25 Q: I gotcha, I gotcha. Now your focus was on the-

1 A: The trunk.

2 Q: The trunk.

3 A: Yes.

4 Q: Okay what could you see in the trunk?

5 A: I could see a person in the trunk. He had, again his right hand was kind of propping the  
6 trunk open. And he was sitting back, his head was eastbound. Yeah, that would be east.

7 Q: Okay.

8 A: So yeah his head was going on this side. His feet were right out this way.

9 Q: Okay. Was he entirely inside of the trunk or was part of him that was out of the trunk or?

10 A: For lack of a (call) he was in the trunk.

11 Q: He was in the trunk.

12 A: Yeah.

13 Q: Okay but you could see, you could see his arm?

14 A: His right arm yeah.

15 Q: You could see his right arm?

16 A: Yeah.

17 Q: Okay. What was the right arm doing, do you remember?

18 A: Yeah, it was holding the hood of the trunk.

19 Q: Okay.

20 A: The latch.

21 Q: And what other parts of him could you see if you can remember?

22 A: Face, torso, or not face. Like head, torso, legs, shoes and occasionally his left hand when  
23 he'd bring it out to show it and I would lose it when he would reach back down.

1 Q: Now when you say he'd reach back down was it reached back down in back of him or  
2 was it front of him or?

3 A: I just lost sight when it went past, like past his legs.

4 Q: Okay now Officer Cassinelli was giving out instructions.

5 A: Yes.

6 Q: To him. Do you remember what he was saying?

7 A: "Let us see your hands, let us see your hands" and then eventually the Spanish speaking  
8 officer came, and she was giving instructions as well. So, let me see your left hand. And then  
9 yeah they were just giving him multiple commands.

10 Q: Multiple commands so – so was anyone else other than Officer Cassinelli giving  
11 commands to the subject in the trunk?

12 A: Again, it was more in response but yeah I heard a lot of officers and I said it as well. Like  
13 don't reach or just let me see your hands, let me see your hands.

14 Q: Okay all right so you as well said, don't reach, don't reach.

15 A: Uh-huh.

16 Q: Do you think he could hear you when you said it?

17 A: Yes.

18 Q: Okay. Did he give any type of response to the commands that were given to him?

19 A: Occasionally like he would, cuz he reached multiple times so when we would say don't  
20 reach he would bring it back up.

21 Q: Uh-huh.

22 A: But in terms of, I believe one of the commands Officer Cassinelli said let me see both  
23 your hands and get out of the trunk slowly. I don't think at any point he attempted to get out of  
24 the trunk slowly and compliant with those commands.  
25

1 Q: Okay did he verbalize anything at all?

2 A: Not that I recall.

3 Q: Could you see his face at the time?

4 A: I could see that he was like, I thought he was talking to himself. I didn't know like who  
5 he was talking to, but he was saying something to himself.

6 Q: Okay could you actually, could you hear that over?

7 A: No, yeah I could hear him talking to himself. Again, I'm not exactly sure what he was  
8 saying but I could hear him talking to himself.

9 Q: Okay and then you said at some point the red light command came.

10 A: Uh-huh.

11 Q: You heard that.

12 A: Yes.

13 Q: About how long had it been when you had gotten out of the car, you pulled the rifle,  
14 during that time before you heard, red light, red light?

15 A: That's tough cuz like everything felt really fast.

16 Q: Okay.

17 A: So does it have to be an exact time or just.

18 Q: Just what you remember man.

19 A: I couldn't even – I wouldn't even be able to put a number on it.

20 Q: Okay fair enough, fair enough. All right so he was giving the command red light, red  
21 light?

22 A: That's

23 Q: Well

24 A: To communicate  
25



1 Q: To you guys exactly. So that command was given out?

2 A: Yes.

3 Q: Okay did you respond, red light, red light? Did you acknowledge that?

4 A: Yes.

5 Q: And then ERIW was deployed?

6 A: Yes.

7 Q: Okay how many times was it deployed? Do you remember?

8 A: One time.

9 Q: One time. Did you see the subject being struck by the ERIW bean bag?

10 A: I can't recall for certain.

11 Q: Okay.

12 A: I wanna say yes but I'm not 100% sure.

13 Q: So after the ERIW was deployed, did he comply at all?

14 A: No.

15 Q: No.

16 A: Yeah.

17 Q: What were you thinking? Thinking then I mean cuz you guys are giving him several,  
18 several commands. He hadn't responded or complied with your commands and then he was shot  
19 with a bean bag?

20 A: I was -- at that point, I didn't know what he was doing so I was kind of scared on what  
21 could happen.

22 Q: Okay okay.

23 A: You know

24 Q: Well, let's talk about what happened. Take me through the time after he was shot with the  
25 beanbag up into the time shooting start.

1 A: After he was shot with the bean bag they started giving him more commands again. And  
2 then he reached and that's when again, right after that I just saw a muzzle flash. And then I fell,  
3 got back up and returned fire.

4 Q: Okay and you say he was given more commands?

5 A: Yes.

6 Q: Were those commands in, were they in English or Spanish or do you remember?

7 A: The officer to the left of me she was giving in Spanish

8 Q: Okay. And along with her was anybody else continuing to give him verbal orders or  
9 commands?

10 A: Not that I recall.

11 Q: Okay so how much time you think had elapsed after the beanbag shot to when the  
12 shooting actually started?

13 A: Again, the relativeness of time, like it all feels fast, but I'll say maybe a minute if that

14 Q: Okay and then you say you saw a muzzle flash.

15 A: Uh-huh.

16 Q: Okay. Did you have your eyes on him the entire time?

17 A: Uh-huh.

18 Q: And you were right here, and you were kind of still crouched?

19 A: Uh-huh.

20 Q: And you had the rifle?

21 A: Uh-huh.

22 Q: Deployed? Or was the rifle trained at him?

23 A: Yes.  
24  
25

1 Q: Okay. did you see him come up?

2 A: Yeah, I couldn't see what was in his hand though. It was so quick. Literally just, and then  
3 a flash.

4 Q: A flash.

5 A: Yeah.

6 Q: Okay and did you hear a pop?

7 A: Um, not that I recall

8 Q: Not that you recall

9 A: Uh-huh.

10 Q: Okay but you saw a muzzle flash?

11 A: Uh-huh.

12 Q: Okay and then you fell down you said?

13 A: Uh-huh.

14 AC: Can I just briefly pause because there may be transcripts that get generated from this,  
15 you've been doing uh-hum a lot. Can you just say yeah so we can just remember to follow what  
16 they ask?

17 A: Yes.

18 Q: All right cool. So question – you were able to get back up?

19 A: Yes.

20 Q: And then you returned fire?

21 A: Yes.

22 Q: Okay do you remember how many times you shot?

23 A: Multiple times.  
24  
25

1 Q: Multiple times okay. Is that the only weapon that you, that you deployed? Did you deploy  
2 your service – your handgun?

3 A: No.

4 Q: Just the rifle?

5 A: Yes.

6 Q: Okay. And why did you shoot?

7 A: Because he used lethal force against me.

8 Q: Okay.

9 A: And yeah he shot at us and we returned fire to I guess stop the threat.

10 Q: Okay.

11 YS: You said you returned fire to stop the threat?

12 A: Yes.

13 Q: How long do you think the shooting lasted?

14 A: Like all the shots that?

15 Q: Yes, yes.

16 A: A few seconds, not long.

17 Q: Not long. Do you remember if any, how many times he shot? Or how many muzzle  
18 flashes you saw come from him?

19 A: I only saw one.

20 Q: You only saw one?

21 A: Uh-huh.

22 Q: Okay. Prior to that shooting, prior to shots being fired, did suspect say anything at all?

23 A: Not that I recall.

24 Q: Did you know anything, did you observe anything different about his body language. I  
25 know he was in the trunk or whatnot, but anything different that would give you, you know,

1 cuase to think that maybe something is going to happen?

2 A: Just the reaching. That's about it.

3 Q: Okay. So what happened after – what were your actions after the shooting stopped?

4 A: After the shooting stopped there was a team that cleared. They were asking for AED, so I  
5 went to the trunk of our car to look for an AED.

6 Q: Okay and AED, for the record?

7 A: Trying to remember, it's the pads for-

8 Q: Like a defibrillator?

9 A: Yes.

10 Q: Okay, okay all right. And continue?

11 A: After that the medics arrived shortly after and they took over in terms of the suspect and  
12 then they had two others. And then we grouped up with the lieutenant

13 Q: Okay and then what?

14 A: They took us back to Mission Station.

15 Q: Uh-huh.

16 A: Where we had to – where we were separated and wait, critical-

17 Q: Okay.

18 YS: Give me one second. Okay couple of just administrative things here. First off, when we  
19 reviewed, when we were in the room and we watched your body worn camera video.

20 A: Uh-huh

21 YS: I notice that the video the incident said March 7, 2018 as well as on the screen it said for  
22 today's date of viewing it, March 9. Well today is actually March 8.

23 A: Uh-huh.

24 YS: And is it correct that this incident actually happened on March 6<sup>th</sup>?

25 A: Yes.

1 YS: So your video, it looks like your video camera is off by one date. Do you guys, do you as  
2 when you're issued your body worn camera do you set the date or is set by the computer?

3 A: I honestly have no clue.

4 YS: Okay. All right so that's just we can all understand it looks like the device is off by a day.  
5 Okay. On that date your primary partner is Cass?

6 A: Cassinelli.

7 YS: Cassinelli.

8 A: Yes.

9 YS: Was Officer Cody in the backseat of the car with you guys that night?

10 A: Yes.

11 YS: And you're a mid, what was your shift again?

12 A: Midnights.

13 YS: Midnights so you're 2100 to 0700?

14 A: Yes.

15 YS: And Cody, is he-

16 A: He's midnights as well.

17 YS: He's midnights as well but he didn't have a partner.

18 A: Yeah he was a solo officer that night, so he rode with us.

19 YS: Is that for safety reasons he rides with you?

20 A: Yes.

21 YS: Officer safety reasons?

22 A: Uh-huh.

23 YS: As opposed to riding a one person car at night?

24 A: Uh-huh. Excuse me yes sorry.

25 AC: Good catch I didn't even notice that one.

1 YS: On your screen you do have any recollection where Cody went?

2 A: No

3 YS: Okay fair enough. You had made a statement that victim came up, you saw one person,  
4 said something about a gun, pointed. You saw a suspect run. You said Cass, you don't know if,  
5 what Cass saw or did but Cass, you said he went right to the vehicle. Do you mean he drove your  
6 patrol vehicle that you guys are in?

7 A: Yes.

8 YS: You guys are still in the car and you posted up. Essentially behind the slightly off set  
9 primary vehicle.

10 A: Yes.

11 YS: And what would be considered a standard felony stop positioning?

12 A: Yes.

13 YS: Did the black Honda, from the time that the suspect was running to it, or the guy that got  
14 in the trunk, was running toward the car. Jumps in the trunk. Did that vehicle had ever moved or  
15 drive away?

16 A: Yeah so when he jumped in it pulled off a little bit. And then Cassinelli put the lights on  
17 and then it pulled over.

18 YS: Okay. Can you guesstimate how far a car length, ten car lengths, a couple of inches?

19 A: One, maybe one and a half car lengths.

20 YS: Okay. You said initially an officer gave Spanish commands.

21 A: Not initially. No, they responded later. Officer Cassinelli was giving commands in  
22 English initially. And then later another officer responded to the scene where she gave Spanish,  
23 commands in Spanish.

24 YS: Over the PA.

25 A: Yes.

1 YS: Is that Banegas?

2 A: Honestly, I don't even know who.

3 YS: I thought you said it may have been okay that's fine. In regards to the, your duty gun. I  
4 know you didn't deploy your duty gun. Your 226-

5 A: Yes.

6 YS: But do you typically carry your magazine, three magazines, one in the gun, two on your  
7 belt?

8 A: Yes.

9 YS: Magazines all loaded up with 12?

10 A: Yes.

11 YS: And one round live. One live round in the chamber of your service gun?

12 A: Yes.

13 YS: And in regards to the AR, you check out the AR every day?

14 A: Uh-huh.

15 Q: And what are you issued with, like how many magazines are issued with the AR?

16 A: One that's in the mag well but not one in the chamber.

17 YS: Okay.

18 A: And then one on the side of the gun.

19 YS: In the side of the holster.

20 A: Yes.

21 YS: And are these 20 round mags?

22 A: 30.

23 YS: 30 rounds. And then how, do you know how many rounds you keep in there or what's  
24 your training in terms of magazine. They hold 30.

25 A: They're supposed to have 30.



1 YS: And you guys top them all the way off?

2 A: The keeper is supposed to be in charge of loading and downloading the gun.

3 YS: And, I'm just asking the question just to clarify. In your training here at SFPD with the  
4 30 round magazines, you said they're loaded with 30 or they load 30 and take two off? Take two  
5 off to carry them with 28? Okay that's fine. And then so you had your magazine in the gun.  
6 Magazine on the saddle. You put into battery, put one round, the live round in the chamber.

7 A: Yes. Wait when? Just patrolling?

8 YS: No, no when this incident – when you deployed the AR, you got it ready for-

9 A: Yeah after I pulled it out the rack.

10 YS: You made it ready.

11 A: Yeah, I charged the handle.

12 YS: And then after the shooting whom, who did you give the AR and magazines to?

13 A: Once we got back to Mission Station, Sergeant Sugars put it in the CSI locker.

14 YS: Sergeant Sugars?

15 A: Yeah.

16 YS: And after you shot the rounds with the AR, did you hold it or maintain physical  
17 possession of it, or did you secure it back into your car?

18 A: I maintained possession of it all the way to Mission Station.

19 YS: Okay when you drove back to the station did you put it in the rack and then take it out?

20 A: No.

21 YS: You just kept it?

22 A: I rendered it safe and then we drove back to Mission Station.

23 YS: Render it safe means you took the magazine out and cleared the chamber and had that  
24 round?

25 A: Rendering it safe can just be putting it on safety.

1 YS: Okay.

2 A: But I did what you said. I took the magazine out and I cleared the chamber.

3 YS: And what did you do with that round that you took out of the chamber?

4 A: I kept it with the magazine. I didn't put it back in, I just kept it with.

5 YS: So you just kept it adjacent to it for lack of a better word.

6 A: Yes.

7 YS: And after the shooting the AR because you only fired, well, you don't know exactly how  
8 many rounds you fired, correct?

9 A: Correct.

10 YS: But you didn't take, but at that time you didn't take the magazine out. Wasn't until the  
11 whole situation was safe?

12 A: Yes.

13 YS: Do you know if the patrol car you were in, by that window that you're crouched or  
14 leaning, do you know if those front doors or that patrol car have ballistic shielding in the doors?  
15 Sometimes the police cars –

16 A: Not to my knowledge.

17 YS: (inaudible)

18 A: I think it was one of the, an older vehicle.

19 YS: All right, and when you're crouched, I think I saw from your video that it looked like  
20 your, the passenger, the front door passenger window was rolled down and you were, had the  
21 long gun trained downrange through the open window, is that correct?

22 A: Correct.

23 YS: Okay. When you checked out your, did you do the vehicle check out of the car before  
24 shift? Do you guys do that.

25 A: Oh yeah.

1 YS: Pull the sheet. Do you walk around and note?

2 A: We don't get a sheet, we'll not it in CAD if we see any like damage or anything like that  
3 to the vehicle.

4 YS: Okay. Did you do the vehicle check out or did-

5 A: We both do it.

6 YS: Okay. Did you do the passenger side or do you guys both do 360 or do you divvy up the  
7 work and you get the driver's side and you get the passenger side?

8 A: Yeah.

9 YS: The reason I'm asking is I saw on the passenger front door there's a bullet hole in the  
10 door.

11 A: Yes.

12 YS: And I also saw on the hood of the car there looks what appears to be two skip rounds on  
13 the hood on the driver's side and I think there was also some type of defect on the driver's door  
14 that was pretty significant on the, on the top part of the door.

15 A: Yes.

16 YS: And I wanna know if, during your vehicle check out if you had seen any of that damage  
17 at the beginning of shift?

18 A: I didn't see any of that prior to the shift.

19 YS: Are you aware of or any time during this did you hear, or feel or sense your car taking  
20 rounds?

21 A: I can't say for certain. I am not sure why I fell.

22 YS: Uh-huh.

23 A: But if it was the door that got struck, I'm not sure if that's what caused it or if it was just  
24 a reaction, but that's-

1 YS: Meaning, and there's no fault here – meaning if – are you saying that it's possible that  
2 when you fell are you then saying that you might've fired through the door? I'm just-

3 A: No, no, no.

4 YS: Trying to understand. Then I'm just trying to understand what you're saying?

5 A: I'm saying from him shooting, hitting the door because I was propped on the door, I'm  
6 not sure if that's what caused the fall.

7 YS: Okay.

8 A: Or if it was just a reaction from me just try to move from seeing the muzzle flash.

9 YS: Okay just trying to clarify that.

10 AC: Very brief. When you saw the muzzle flash, did you see what direction the gun was  
11 pointed?

12 A: It looked like directly at me.

13 AC: You mentioned before that you, the guy in the trunk, he was talking to himself?

14 A: Uh-huh

15 AC: How do you know he was talking to himself and not to someone else?

16 A: I don't know. I didn't know, later I saw that there was a girl in the backseat. I didn't  
17 know who at the time who he was talking to. I just, I just saw him talking.

18 AC: Could you hear anything what he said?

19 A: I couldn't be for certain with what he was saying.

20 AC: Do you have any idea what he was saying, generally?

21 A: No

22 AC: Do you remember what language he was speaking in?

23 A: I want, English.

24 AC: And lastly, you had mentioned before that you had seen other video body worn camera,  
25 can you tell us what other videos you've seen?

1 A: It was just on the news. I'm not even for certain what channel it was.  
2 AC: Okay so you've seen some of the videos that were up in the media?  
3 A: Uh-huh.  
4 AC: Is that a yes?  
5 A: Oh yes sorry. Sorry.  
6 AC: And did you watch any other body worn camera footage other than your own?  
7 A: Yes.  
8 AC: And who's body worn camera BWC footage did you see?  
9 A: Officer Nagai.  
10 AC: Nagai. Did any of the video that you see differ from your recollection of what you saw?  
11 A: No.  
12 AC: And the account that you just provided us was that in any way effected or shaped by the  
13 video that you had, that you've seen?  
14 A: No.  
15 DN: I have nothing.  
16 Q: We good?  
17 YS: Yes.  
18 Q: All right so it is 1739? Go with that.  
19 YS: Yes.  
20 Q: Okay and we'll end it there.

21 END OF INTERVIEW  
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1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 25, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of August  
14 2019.

15  
16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER ISHIDA**

**INTERVIEWED BY:       SERGEANT PARKER**

**DATED:                   UNKNOWN**

1 **Q: SERGEANT PARKER**

2 **A: OFFICER ISHIDA**

3 **AL: ANDREW LAW**

4 **MH: MEGAN HIYASHI**

5 **TB: ATTORNEY TONY BRASS**

9 AL: I think we're on this side. Barry, you want this side?

10 Q: Huh?

11 AL: Which side do you want? It doesn't matter to us.

12 Q: Uh, yeah. I'll take this side.

13 AL: Oh no.

14 Q: Yeah. You know what, I'll sit here.

15 AL: All right. I've always sat on this side-

16 Q: Okay-

17 AL: In this room, so I just, I assume the video is rigged for this.

18 Q: I've never been in this room.

19 AL: And everybody's ready to go?

20 Q: Yeah. So, were on a, we on tape right now? And this is regarding an officer involved  
21 shooting. Case number [REDACTED] that happened on the 6<sup>th</sup> of March 2018. Just for the record,  
22 if we go around and state our, who we are, for the record. I'm Sergeant Parker, here with  
23 Homicide.

24 AL: Andrew Law with the District Attorney's office.

25 MH: I'm inspector Megan Hiyashi with the District Attorney's office.



1 TB: Tony Brass of 3223 Webster Street with Officer Ishida.

2 Q: Okay. And if you guys can bear with me, right off, I just want to get some personal

3 information from you. What's your, what's your name, sir?

4 A: First of John, J-O-H-N.

5 Q: J-O-H-N.

6 A: Last of, Ishida and that's I-S-H-I-D as in David, A.

7 Q: Okay. Ishida, what's, what's your star number?

8 A: 2035.

9 Q: 2035?

10 A: Yes, sir.

11 Q: Okay. And what's your date of birth?

12 A: It's [REDACTED] [REDACTED] [REDACTED].

13 Q: [REDACTED]?

14 A: Yes, sir.

15 Q: Okay. And when was your date of entry into the department?

16 A: I was hired by the department on [REDACTED] [REDACTED] [REDACTED].

17 Q: Okay. And your current assignment?

18 A: Mission station.

19 Q: Okay. How long have you been at Mission?

20 A: It's going to be about 2 years, sir.

21 Q: Okay. And shift you work?

22 A: Midnight.

23 Q: Midnight. Okay. So, the night of the incident were you, you were on duty, correct?

24 A: Yes, sir.

25 Q: Okay. What were you dressed, were you in plain clothes, were you in uniform?

1 A: Regular patrol uniform.  
2 Q: Okay. Full uniform?  
3 A: Yes, sir.  
4 Q: Do you work with anybody that night, did you have a partner?  
5 A: I had two.  
6 Q: Two?  
7 A: Yes.  
8 Q: Okay. Who, who were they?  
9 A: They were officer Wynkoop and that's W-Y-N-K-O-O-P.  
10 Q: Uh-huh.  
11 A: And officer Bohannon, B-O-H-A-N-N-O-N.  
12 Q: Okay. Bohannon, okay. And what was your call sign that night?  
13 A: We were the 3 David 91.  
14 Q: Okay. And you had your firearm with you that night?  
15 A: I did, sir.  
16 Q: Did you have a secondary firearm?  
17 A: I did not.  
18 Q: No. Okay. Were guys a foot beat that night, or were you in a vehicle?  
19 A: In a vehicle, sir.  
20 Q: In a vehicle. Was it a marked vehicle? Unmarked?  
21 A: Yes, sir.  
22 Q: So, marked. Okay. So that night, were you the driver? Passenger?  
23 A: Yes, sir.  
24 Q: Who was the driver?  
25 A: Officer Bohannon.

1 Q: Okay. You and Wynkoop were passengers?

2 A: Yes, sir.

3 Q: Okay. All right, so let's get into, let's get into, and, and you're aware this is a, it's a  
4 voluntary statement that you're giving. And right here you're represented by counsel?

5 B: Yes.

6 Q: Okay. All right. Are you familiar with the DGO on body worn cameras regarding  
7 reviewing, viewing video and making an initial statement?

8 A: Yes, sir.

9 Q: Okay. You want to make that statement?

10 TB: Yes. Go ahead.

11 C: On March 6<sup>th</sup>, 2018, at approximately 1030 pm, while in a marked patrol vehicle and in  
12 full uniform, I respond to the intersection of 21<sup>st</sup> Street and Capp Street to assist another unit  
13 with a felony stop of a vehicle with a firearm. The felony stop was conducted in the area of 21<sup>st</sup>  
14 Street and Capp Street. The suspect did not comply with orders given to him in English and  
15 Spanish to show both of his hands. Less lethal force in the form of a beanbag gun was used  
16 without success. Shortly thereafter, as the suspect brought his left hand from concealment, I  
17 observed a muzzle flash from his left hand and heard the sound of a gunshot. I returned fire in  
18 fear of my safety and the safety of the other officers on the scene.

19 Q: Okay. (inaudible). Okay. So, did you have a chance to look at your body worn camera?

20 A: No.

21 Q: Would you like to look at that, you have the opportunity to look at that or any other  
22 video, a video that's available.

23 A: I would sir. I would like to look at it.

24 Q: Okay. Any statement you want to make?

25 AL: Yes.

1 Q: Okay.

2 AL: The district attorney disagrees with the SFPD's interpretation of a body worn camera.

3 The DA believes that the policy allows a subject officer to see only his body worn camera after  
4 providing an initial statement about what happened. Under SFPD's interpretation, officers may  
5 review videos depicting events that were not even present, they were not even present to witness.

6 Furthermore, the police department's interpretation affords officers a special privilege.

7 Specifically access to evidence that other subjects and even eyewitnesses don't receive. The

8 DA's working with SFPD to resolve these issues, although the DA disagrees with how this  
9 interview will be proceeding, we will be, we are committed to independently investigating the  
10 incident and will be participating in this (inaudible)

11 Q: Okay. Well, the DA's statement is now in the record. Anybody else?

12 MH: No, sir.

13 Q: Okay. So, at this time we'll, we'll adjourn, and we'll watch the body worn camera, thank  
14 you.

15 TB: Thanks.

16 END OF INTERVIEW

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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER NAGAI**

**INTERVIEWED BY: SERGEANT BANWICK**

**DATED: MARCH 8, 2018 TIME: 1134 HOURS**

1 **Q: SERGEANT BANWICK**

2 **A: OFFICER NAGAI**

3 **MH: MEGAN HIYASHI**

4 **AC: ANGIE CHOW**

5 **TB: TONY BRASS, ATTORNEY**

6  
7 Q: This interview is being conducted in regards to case number [REDACTED]. Today's date is  
8 March 9, 2018 and the approximate time is 1134 hours. So let's just go around and we'll just  
9 introduce ourselves, so you'll know who everybody is here in the room. I'm Sergeant Banwick  
10 with the SFPD homicide detail.

11 MH: Inspector Megan Hiyashi star number 111 with the DA's office.

12 AC: I'm Angie Chow, I'm an assistant district attorney.

13 TB: Tony Brass with Officer Nagai.

14 Q: Okay. Officer Nagai, I'm gonna ask you just a few questions and then I'm gonna read  
15 you a statement or, yeah a statement. Can I get you to spell your full name for me please?

16 A: N-i-c-h-o-l-a-s

17 Q: Okay.

18 A: Last is N-a-g-a-i

19 Q: G-a-I okay. What's your star number?

20 A: 2017.

21 Q: What's your date of birth?

22 A: [REDACTED]

23 Q: What was your date of entry into the San Francisco Police Department?

24 A: I think that was [REDACTED] I wanna say [REDACTED].  
25

1 Q: Okay so [REDACTED]?

2 A: Yeah.

3 Q: And what's your current assignment?

4 A: Mission Station.

5 Q: How long you've been in your current assignment?

6 A: About a year.

7 Q: What shift do you work?

8 A: Swings.

9 Q: What's your starting time and ending time?

10 A: 15 to 01.

11 Q: On the night of this incident were you in uniform or plain clothes?

12 A: Uniform.

13 Q: Were you working by yourself or with a partner?

14 A: Partner.

15 Q: Who was your partner?

16 A: Officer Santana.

17 Q: Okay and do you remember what your call sign was?

18 A: 3 David 41 David.

19 Q: Were you in a radio car or were you on a foot beat that day?

20 A: Well, technically we are the foot beat, but we were doing like admin stuff at the station.

21 Q: Okay.

22 A: So we usually take our wagon out

23 Q: So you're in the patrol wagon?

24 A: Yeah, patrol wagon.



1 Q: Okay. Do you remember what the number was on that?

2 A: Wagon 599.

3 Q: Okay your department issued weapon, what type is it?

4 A: Sig Sauer P226.

5 Q: Okay. 226. Do you carry a back up or a secondary weapon?

6 A: No.

7 Q: On the night of the incident did you deploy with like a long gun or a shot gun?

8 A: No.

9 Q: Were you the driver or passenger in the vehicle?

10 A: Passenger.

11 Q: Okay. I'm gonna read you a statement. If you have any questions ask me so I can explain  
12 it to you, okay?

13 A: Sure.

14 Q: I'm Sergeant Banwick with the San Francisco Police Department. The SFPD along with  
15 the SFDA and the SFDAI are conducting the criminal portion of an officer involved shooting  
16 investigation involving a member employed by SFPD. The incident occurred on March 6, at  
17 approximately 2230 hours in the City and County of San Francisco. The following interview  
18 will be both audio and video recorded. I'd like to ask you some questions regarding this incident,  
19 but before I do I want you to know these following: You're not under arrest. You do not have to  
20 give an answer to my questions. Do you understand?

21 A: Yes.

22 Q: You can stop answering the questions and are free to leave at any time, do you  
23 understand?

24 A: Yes.  
25

1 Q: Have you been ordered to give a statement regarding this incident by anyone?

2 A: No.

3 Q: Have you been compelled by anything to give a statement?

4 A: No.

5 Q: Is this a free and voluntary statement?

6 A: Yes.

7 Q: Okay. In this case there is video evidence that you will have the opportunity to view after  
8 you have given your initial statement. Video evidence has limitations and may depict the events  
9 differently than you recall and may not depict all of the events as seen or heard by you. Video  
10 has a limited field of view and may not capture events normally seen by the human eye. The  
11 frame rate of the video may limit the camera's ability to capture movements normally seen by  
12 the human eye. Lighting, as seen on the video, may be different than what has, than was seen by  
13 the human eye. Videos are a two dimensional medium and may not capture depth, distance, or  
14 positional orientation as well as the human eye. Remember, the video evidence is intended to  
15 assist your memory and ensure that your initial statement explains your state of mind at the time  
16 of the incident. Prior to reviewing the video I may ask you basic biographical information. I  
17 would like you to provide a statement about your actions regarding this incident to include, what  
18 drew your attention to the area. The actions that required the use force and then your response  
19 and why.

20 AC: The district attorney's office disagrees with San Francisco Police Department's  
21 interpretation of the body worn camera. The DA believes that the policy allows the subject  
22 officer to see only his or her own body worn camera after providing an initial statement about  
23 what happened. Under SFPD's interpretation, officers may review videos depicting events that  
24 were not even present to witness. Furthermore, this interpretation affords officers a special  
25 privilege. Specifically, access to evidence that other subjects and even eyewitnesses do not

1 receive. The DA is working with police department to resolve this issue. Although the DA  
2 disagrees with how this interview will be proceeding, we are committed to independently  
3 investigating the incident and will be participating in the interview.

4 A: Read it?

5 Q: Go ahead.

6 A: So on March 6, 2018 at approximately 2236 hours Officer Santa, Star number 2097 and I  
7 responded to the area of 21<sup>st</sup> and Capp regarding a vehicle with a gun. Upon our arrival we  
8 activated our body worn cameras. An officer had already detained the driver in the black Honda  
9 Civic and walked him to the patrol vehicle. I unholstered and pointed my department issued  
10 firearm at the suspect located in the trunk. The suspect would not comply with orders given in  
11 English and in Spanish. Less lethal force was deployed via an extended range impact weapon, or  
12 the bean bag gun, but the suspect still did not comply with officers orders to reveal both of his  
13 hands. I then heard gunfire coming from the trunk of the vehicle and then returned fire in fear for  
14 my safety and the safety of my fellow officers.

15 Q: Okay. Do you want to view your body worn camera video?

16 A: Yes.

17 Q: Okay. I'm gonna stop the audio recording of this interview right now, it is approximately  
18 11:42.

19 END OF INTERVIEW  
20  
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1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 7, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August  
14 2019.

15  
16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER O'ROURKE**

**INTERVIEWED BY:       SERGEANT WATTS**

**DATED:                    MARCH 8, 2018 UNKNOWN TIME**

1 **Q: SERGEANT WATTS**

2 **A: OFFICER O'ROURKE**

3 **YS: YORK SUDA**

4 **AC: ANGIE CHOW**

5 **DN: DON NOBLES, ATTORNEY**

6  
7  
8 Q: Okay so I'll make some introductions and then I'm going to ask for your personal  
9 information.

10 A: Uh-huh

11 Q: And then I'm gonna read you an admonition about the body worn camera. I believe  
12 Angie the DA is gonna read a statement regarding the District Attorney's objection to viewing  
13 the BWC and then I believe your attorney has asked me to read your statement (of mind).

14 A: Okay.

15 Q: I am Sergeant Gary Watts from the homicide division and to my left, my right?

16 YS: Inspector York Suda with the San Francisco DA's (inaudible) investigation bureau, star  
17 112.

18 AC: Angie Chow, I'm an assistant district attorney.

19 DN: Don Nobles, POA attorney.

20 Q: And you are?

21 A: Sean O'Rourke officer.

22 Q: Spell your name for sure?

23 A: S-e-a-n last is, O'-r-o-u-r-k-e

24 Q: Star number?

25 A: 2214.

1 Q: Date of birth?  
2 A: [REDACTED].  
3 Q: Date of entry into the police department?  
4 A: [REDACTED].  
5 Q: Current assignment?  
6 A: Patrol, Mission  
7 Q: And how long at Mission?  
8 A: Almost two years altogether. Short break at Park but Mission two years.  
9 Q: And your current shift?  
10 A: Midnights.  
11 Q: 21 to 07?  
12 A: Yes sir.  
13 Q: Uniform or plain clothes?  
14 A: Uniform.  
15 Q: Did you have a partner?  
16 A: I did.  
17 Q: And his name?  
18 A: Mike Rotschi, R-o-t-s-c-h-i  
19 Q: And your call sign that night.  
20 A: David 14 Edward  
21 Q: Carrying a department firearm?  
22 A: Correct.  
23 Q: Sig 226?  
24 A: Yes, sir.  
25

1 Q: Carrying a secondary firearm?

2 A: No.

3 Q: Were you driving a department vehicle?

4 A: My partner drove but a marked radio car.

5 Q: Do you remember what number the car was?

6 A: 124.

7 Q: Okay. I'm Sergeant Watts, with the San Francisco police department. The SFPD along  
8 with the SFDA and SFDAI's office are conducting the criminal portion of an officer involved  
9 shooting investigation involving a member employed by the SFPD. The incident occurred on 3-  
10 6-18 at approximately 2236 hours in the City and County of San Francisco. The following  
11 interview will be both audio and video recorded. I would like to ask you some questions  
12 regarding this incident, but before I do, I want you to know that A: You are not under arrest. You  
13 do not have to answer my questions, you understand?

14 A: I understand.

15 Q: You can stop answering any questions and are free to leave at any time, do you  
16 understand that?

17 A: I understand.

18 Q: Have you been ordered to give a statement regarding this incident by anyone?

19 A: No.

20 Q: Have you been compelled by anyone to give a statement?

21 A: No.

22 Q: Is this statement a free and voluntary statement?

23 A: Yes.

24 Q: In this case there is video evidence that you'll have an opportunity to view after you have  
25 given your initial statement. Video evidence has limitations and may depict the events differently



1 than you recall and may not depict all the events as seen or heard by you. Video has a limited  
2 field of view and may not capture events normally seen by the human eye. The frame rate of  
3 video may limit the cameras ability to capture movements normally seen by the human eye.  
4 Lighting, as seen on the video, may be different than what is seen by the human eye. Videos are  
5 a two dimensional medium and may not capture depth, distance or positional orientation as well  
6 as the human eye. Remember, the video evidence is intended to assist your memory and ensure  
7 that your initial statement explains your state of mind at the time of the incident. Prior to  
8 reviewing the video, I will ask you basic biographical information which I've already asked.  
9 Then I would like you to provide a statement about your actions regarding this incident to  
10 include what drew your attention to the area, the actions that required the use of force and then  
11 your response and why. And the assistant district attorney has something to read.

12 AC: The district attorney disagrees with SFPD's interpretation of the body worn camera  
13 policy. The DA believe that the policy allows the subject officer to see only his or her own body  
14 worn camera after providing an initial statement about what happened. Under SFPD's  
15 interpretation, officers may review videos depicting events that they were not even present to  
16 witness. Furthermore, the police department's interpretation affords officers a special privilege.  
17 Specifically, access to evidence that other subjects and even eyewitnesses do not receive. The  
18 DA is working with SFPD to resolve this issue. Although the DA disagrees with how this  
19 interview will be proceeding, we are committed to independently investigating the incident and  
20 we will be participating in the interview.

21 Q: Okay. initial statement of Officer Sean O'Rourke. On March 6, at approximately 1030  
22 hours, another unit broadcast they were flagged down by victim who was robbed with a firearm  
23 in the area of 21<sup>st</sup> and Capp. Upon arriving at the stated location, I observed a suspect in an open  
24 trunk of a double-parked black Honda. The suspect did not comply with orders given to him in  
25 English and Spanish to show both of his hands. Less lethal force in the form of a bean bag gun

1 was used without success. Shortly thereafter, as a suspect brought his left hand from  
2 concealment, I heard two or three gunshots. Fearing for my safety and the safety of the officers  
3 on the scene, I returned fire. Okay so I'm gonna

4 YS: For the record, Officer O'Rourke and Sergeant Watts just signed that statement.

5 Q: Okay. So we're gonna just adjourn, suspend the interview for now. We're gonna review  
6 the body worn camera and then we're gonna come back I believe. Turn these off and then come  
7 back and turn them back on.

8 END OF INTERVIEW

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I, the undersigned, hereby certify as follows:

That the foregoing transcript, page 1 through and including 7, to the best of my knowledge and belief is a full, complete and true transcription of certain tape recordings as described below to the best of my ability to hear, understand, identify speakers and transcribe said recordings, with the exception of any portion indicated as (inaudible), and words contained in parentheses, which indicate the best guess. (Any errors, changes or omissions should be brought to my attention for correction.)

That said tape recordings were furnished to CTI Transcription Services, 79 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability, and requested to be transcribed.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August 2019.

/s/ Kathy Kay  
KATHY KAY  
By Electronic Mail

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER SMETS**

**INTERVIEWED BY: SERGEANT CAGNEY**

**DATED: MARCH 8, 2018 TIME: 1153 HOURS**

1 **Q: SERGEANT CAGNEY**

2 **A: OFFICER SMETS**

3 **AL: ANDREW LA, DA'S OFFICE**

4 **MH: MEGAN HIYASHI, DA'S OFFICE**

5 **TB: TONY BRASS, ATTORNEY**

6  
7  
8 Q: So you know what? Before we do everything official, just kind of give you a little  
9 breakdown you know how I generally do these. So we know we're going to give the initial  
10 statement.

11 A: Uh-huh.

12 Q: So what I'll do is this, is I'll get some biographical information from you. We'll go  
13 around the room make introductions. You can make your initial statement then obviously you  
14 know we'll stop at that point. Does that make sense?

15 A: Sounds good.

16 Q: All right so it's not that complicated. Brought a schematic of cars which as you can see is  
17 professional quality.

18 A: Yes.

19 Q: Yeah. So you'll be fine there. And then like I said, we'll just go forward. So I'll wait for  
20 everybody to be ready and we'll get started. You guys ready?

21 A: Ready.

22 Q: Yeah, it's John Cagney. Sergeant SFPD homicide. Case numbers gonna be [REDACTED].  
23 The date is going to be, uh it's 3/9, now right?

24 A: Yeah, it is.

1 Q: 3/9 of '18. The time is gonna be, let's call it 1153 hours here at the homicide detail.

2 Officer, can I get your full name please?

3 A: Name's Colby Smets.

4 Q: Can you spell your last name?

5 A: C-O-L-B-Y. And my last name is S-M-E-T-S.

6 Q: S-M-

7 A: E-T-S.

8 Q: E-T-H.

9 A: S. S.

10 Q: S. S. I got you. And what's your star?

11 A: 253.

12 Q: 253. And what's your date of birth?

13 A: [REDACTED].

14 Q: And when did you come out of the department?

15 A: Came into the department?

16 Q: Yeah.

17 A: [REDACTED]

18 Q: And I got S-M-E-T-

19 A: E-T-S.

20 Q: Now I got it. All right. And how do you say it, Smets?

21 A: Smets.

22 Q: Yeah, I got you. Makes it easier for me. And Company D?

23 A: Yes.

24 Q: How long at your current assignment?

25 A: One year.

1 Q: And what shift were you working?  
2 A: Swings.  
3 Q: (Class) B  
4 A: Yes.  
5 Q: Partner?  
6 A: Partner's not on scene.  
7 Q: Okay. Were you working with anybody?  
8 A: That day but he was he responded to the other critical incident as a spec.  
9 Q: I got you, so you were solo?  
10 A: On this yes.  
11 Q: Yeah, by yourself.  
12 A: I got into the back of someone else's car.  
13 Q: Yeah, I got you. All right and what was your call sign?  
14 A: 3 David 1 3 David Sam  
15 Q: Sam. Gotcha. Department issue 226?  
16 A: Yes.  
17 Q: Secondary?  
18 A: No.  
19 Q: Long rifle? Extended range? Did you deploy?  
20 A: No, I did not.  
21 Q: Okay. You remember the car you were driving?  
22 A: Wasn't driving one.  
23 Q: No, not at all? You were in somebody else's car.  
24 A: I was in somebody else's car.  
25 Q: Do you remember the number?

1 A: I do not.

2 Q: Okay. And so whose car were you in?

3 A: The 3 David 14 David.

4 Q: 3 David 14 David

5 A: Officer Carroll and Smith-Rusick.

6 Q: Okay. Gotcha. Smith-Rosick?

7 A: Smith-Rusick.

8 Q: Hyphenated?

9 A: I think yes.

10 Q: And you were a passenger I take it?

11 A: A back, rear back right passenger.

12 Q: Yeah passenger. Gotcha. All right, again I already introduced myself. You introduced  
13 yourself. John Cagney. Homicide Detail, Counsel?

14 AL: Andrew (Law) with the DA's office.

15 MH: And Inspector Megan Hiyashi Star number 111 with the DA's office.

16 Q: Counsel?

17 TB: Tony Brass of 3223 Webster Street.

18 Q: And considering the MOU regarding officer involved shootings, you'll have an  
19 opportunity to give kind of what they call, for lack of a better term is a state of mind statement.  
20 And at that point, if you elect you know with the advice of counsel, you'll be able to take a look  
21 at your body worn cameras. Does that make sense?

22 A: Yes.

23 Q: Okay. Wanna go ahead, say what you think.

24 A: On March 6<sup>th</sup> at approximately 1030 hours or 2230 hours, I responded to -- as the 3  
25 David 13 David Sam with the 3 David 14 David. We responded to the area of 21<sup>st</sup> Street and



1 Capp Street to assist a unit conducting a felony stop on a vehicle occupied by people or a person  
2 with a gun. Upon arrival, I assisted handcuffing the driver of the vehicle and returned to a  
3 position of cover behind a police vehicle. Many orders were issued in English and Spanish. The  
4 remaining suspect in the trunk of the suspect car. After several moments of ordering the suspect  
5 to comply, I observed the suspect in the trunk bring his left hand from a position of concealment  
6 and point and discharge a gun at myself and other officers. Prompting me to discharge my  
7 firearm at the suspect as I was in fear for my life.

8 Q: Fair enough. Are we hanging onto that or?

9 TB: I think it's taped; I'd rather hang on to it.

10 Q: Okay. Doesn't matter to me.

11 TB: Okay.

12 Q: So I would suspect from this point, with the advice of counsel, you're going to take a  
13 look at your body worn cameras, is that correct?

14 A: Yes.

15 Q: Right, is there any questions here?

16 AL: Yeah just for the record, I guess first I want to clarify today is March 8<sup>th</sup>. I'm not sure if  
17 you said the 9<sup>th</sup>.

18 TB: We did say 9<sup>th</sup>.

19 Q: That's on me. We were working kind of late last night so.

20 AL: And then another, with respect to the San Francisco Police Department's interpretation of  
21 a body worn camera, the District Attorney disagrees with that interpretation of the body worn  
22 camera policy. The District Attorney believes that the policy allows a subject officer to see only  
23 his body worn camera after providing an initial statement about what happened. Under SFPD  
24 notifications, officers may review videos depicting events that they were not even present to  
25 witness. Furthermore, the police department's interpretation affords officers a special privilege.

1 Specifically, access to evidence that other subject and even eyewitnesses don't receive. The DA  
2 is working with SFPD to resolve this issue. Although the DA disagrees with how this interview  
3 will be proceeding, we are committed to independently investigating the incident and will be  
4 participating in the interview.

5 Q: We're good right?

6 TB: Okay. Thanks.

7 END OF INTERVIEW

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**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF: OFFICER SMITH-RUSSACK**

**INTERVIEWED BY: SERGEANT WATTS**

**DATED: MARCH 8, 2018 UNKNOWN TIME**

1 **Q: SERGEANT WATTS**

2 **A: OFFICER SMITH-RUSSACK**

3 **YS: YORK SUDA**

4 **AC: ANGIE CHOW**

5 **DN: DON NOBLES, ATTORNEY**

6  
7 Q: Okay I'm gonna do some introductions. I'll just get some personal information and then  
8 I'm going to read you an admonition about the BWC. The DA over there is gonna read a  
9 statement from the District Attorney's office. And then I will read your statement of the facts  
10 okay. So again, I'm Sergeant Gary Watts, San Francisco PD Homicide Division.

11 YS: I'm Inspector York Suda DA's office.

12 AC: I'm Angie Chow. I'm an assistant district attorney.

13 DN: Don Nobles, POA Attorney.

14 Q: Okay and Ari, your full name?

15 A: It's A-r-i and then Smith, common spelling and then a hyphen Robert Union Sam Sam  
16 Adam Charlie King

17 Q: And your star number?

18 A: 4132.

19 Q: Date of birth?

20 A: [REDACTED].

21 Q: And date of entry, month and year?

22 A: [REDACTED].

23 Q: Current assignment?

24 A: Company D, Mission Station  
25

1 Q: And how long you at Mission?

2 A: Approximately three months. Same time as Officer Tupper.

3 Q: Your shift?

4 A: Swing watch. That'd be 1600 to 0200 sir.

5 Q: Uniform or plain clothes?

6 A: Uniform.

7 Q: Any partner on Tuesday night?

8 A: Officer Carroll.

9 Q: Your call sign that evening?

10 A: 3 David 14 David.

11 Q: And firearm you were carrying is department issue?

12 A: I was carrying department issued firearm and also a AR 15 in the car.

13 Q: Sig 226.

14 A: Yes sir.

15 Q: Any secondary firearm?

16 A: No sir.

17 Q: Black and white?

18 A: Yes sir

19 Q: Do you know what number vehicle?

20 A: Yes, 157.

21 Q: Driver or passenger?

22 A: I was in the passenger.

23 Q: Okay I'm Sergeant Watts, with the San Francisco police department. The SFPD along

24 with the SFDA and SFDAI's are conducting the criminal portion of an officer involved shooting

25 investigation involving a member employed by the SFPD. The incident occurred on 3-6-18 at

1 approximately 2236 hours in the City and County of San Francisco. The following interview will  
2 be both audio and video recorded. You are not under arrest. You do not have to answer my  
3 questions, you understand?

4 A: Yes.

5 Q: You can stop answering any questions and are free to leave at any time. Do you  
6 understand that?

7 A: Yes.

8 Q: Have you been ordered to give a statement regarding this incident by anyone?

9 DN: No.

10 A: No.

11 Q: Have you been compelled by anyone to give a statement?

12 A: No.

13 Q: Is this a free and voluntary statement?

14 A: Yes.

15 Q: In this case there is video evidence that you'll have an opportunity to view after you have  
16 given your initial statement. Video evidence has limitations and may depict the events differently  
17 than you recall and may not depict all the events as seen or heard by you. Video has a limited  
18 field of view and may not capture events normally seen by the human eye. The frame rate of  
19 video may limit the cameras ability to capture movements normally seen by the human eye.  
20 Lighting, as seen on the video, may be different than what is seen by the human eye. Videos are  
21 a two dimensional medium and may not capture depth, distance or positional orientation as well  
22 as the human eye. Remember, the video evidence is intended to assist your memory and ensure  
23 that your initial statement explains your state of mind at the time of the incident. Prior to  
24 reviewing the video, I will ask you basic biographical information which I've already done. Then  
25 I would like you to provide a statement about your actions regarding this incident to include what

1 drew your attention to the area, the actions that required the use of force and then your response  
2 and why. And the DA's statement.

3 AC: The district attorney disagrees with SFPD's interpretation of the body worn camera  
4 policy. The DA believes that the policy allows the subject officer to see only his or her own body  
5 worn camera after providing an initial statement about what happened. Under the police  
6 department's interpretation, officers may review videos depicting events that they were not even  
7 present to witness. Furthermore, the police department's interpretation affords officers a special  
8 privilege. Specifically, access to evidence that other subjects and even eyewitnesses do not  
9 receive. The DA is working with the police to resolve this issue. Although the DA disagrees with  
10 how this interview will be proceeding, we are committed to independently investigating the  
11 incident and we will be participating in the interview.

12 Q: So now I'll read your statement Officer Russack. On March 6, 2018 at approximately  
13 10:30 PM, another unit broadcast they were flagged down by a victim who was robbed with a  
14 firearm in the area of 21<sup>st</sup> and Capp. Upon arriving at the stated location, I observed the suspect  
15 in an open trunk of a double-parked black Honda. The suspect did not comply with orders given  
16 to him in English and Spanish to show both of his hands. Less lethal force in the form of a bean  
17 bag gun was used without success. Shortly thereafter, as the suspect brought his hand from  
18 concealment with what appeared to be a firearm I saw two muzzle flashes and I heard two shots.  
19 Fearing for my safety and the safety of officers on the scene, I returned fire. Your initials down  
20 there. And we will also suspend the interview of the review of BWC.

21 END OF INTERVIEW  
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IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August 2019.

/s/ Kathy Kay  
KATHY KAY  
By Electronic Mail

**IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**  
**DEPARTMENT OF POLICE ACCOUNTABILITY**

**CASE NUMBER: 42757**

**INTERVIEW OF:           OFFICER TUPPER**

**INTERVIEWED BY:       SERGEANT PARKER**

**DATED:                   MARCH 8, 2018   TIME: 1622 HOURS**

1 **Q: SERGEANT PARKER**

2 **A: OFFICER TUPPER**

3 **AG: ANGIE CHOW**

4 **YS: YORK SUDA**

5 **DN: ATTORNEY DON NOBLES**

6  
7 Q: All right we're on the record. This is Sergeant Parker. This is involving officer involved  
8 shooting case number 180 175 220. If we can go around the room and state our names just for  
9 the record.

10 YS: Inspector York Suda with the DA's office, DA investigations

11 AG: Angie Chow, I'm an assistant District Attorney.

12 DN: Don Nobles POA Attorney.

13 Q: Okay and?

14 A: Officer Tupper. Police officer.

15 Q: And I'm Barry, Sergeant Parker, P-a-r-k-e-r my star number 462. Today's date is the 8<sup>th</sup>  
16 of March 2018 and we can make time, let's make it at 1622. Let me get your first name?

17 A: Josh-

18 Q: Josh and

19 A: Tupper, T-u-p-p-e-r

20 Q: What's your star number Josh?

21 A: 4115.

22 Q: And your date of birth?

23 A: [REDACTED].

24 Q: And your date of entry into the department?

25 A: [REDACTED].

1 Q: [REDACTED] so? Do you remember the day you started the academy?

2 A: I don't have the exact date.

3 YS: Month?

4 A: I want to say [REDACTED]

5 Q: [REDACTED] okay we'll go with that. And what's your current assignment?

6 A: Q2 police officer at Mission Station.

7 Q: Mission Station. Okay and how long have you been at Mission?

8 A: For approximately three months.

9 Q: Three months okay. What shift do you work?

10 A: Midnights.

11 Q: Mids. Okay. So the incident that occurred on the 6<sup>th</sup> of March, were you in the plain,

12 working in plain clothes capacity or were you in full uniform?

13 A: Full uniform.

14 Q: Full uniform. And were you working with a partner that night?

15 A: Yes.

16 Q: And who was that?

17 A: Officer Cassinelli

18 Q: Cassinelli?

19 A: Yes.

20 Q: C-a?

21 A: S-s

22 YS: l-o?

23 A: Cassinelli, I believe it ends with an I

24 Q: C-a-s-s-a-n-e-l-l-i okay. Do you remember what call sign you were that night?

25 A: I believe the 13 Edward.

1 Q: Okay 3 David 13 Edward. And did you have your department issued firearm with you?

2 A: Yes.

3 Q: Okay.

4 YS: Is that a 226?

5 A: Yes.

6 Q: And do you normally carry a secondary weapon?

7 A: No.

8 Q: Okay.

9 A: Actually sorry in terms of like a shotgun or?

10 Q: No, no like a secondary handgun

11 A: Oh yeah no.

12 Q: Were you guys the foot beat that night or were you in a vehicle?

13 A: We were in a vehicle.

14 Q: Vehicle and was it a marked vehicle or unmarked?

15 A: Marked vehicle.

16 Q: Marked vehicle. All right. Were you the driver or the passenger.

17 A: Passenger.

18 Q: I'm assuming Cassinelli was the driver?

19 A: Uh-huh.

20 Q: Okay.

21 YS: Do you remember the shop number of your vehicle?

22 DN: The number on your vehicle?

23 A: [REDACTED]

24

25

1 Q: Okay. So for the record this is just, you know you're giving a voluntary statement. And  
2 you're represented by your counselor who is present. All right are you familiar with the DGO on  
3 body worn camera regarding reviewing video and making an initial statement?

4 A: Yes.

5 Q: Okay at this time do you want to make a statement?

6 DN: Yes. And we would like you to read it into the record

7 Q: Okay. For the record it says: on March 6, 2018 at approximately 10:30 PM while in a  
8 marked patrol vehicle and in full police uniform, we were flagged down by a male suspect victim  
9 yelling "pistola pistola" while pointing in the direction of a person jumping into a trunk of a  
10 vehicle. We initiated a felony stop on the vehicle in the area of 21<sup>st</sup> and Capp. The suspect did  
11 not comply with orders given by him in English and Spanish to show both of his hands. Less  
12 lethal force in the form of a bean bag gun was used without success. Shortly thereafter, as the  
13 suspect brought his left hand from concealment I saw a muzzle flash. I fell back, stood up and  
14 returned fire in fear for my safety and the safety of other officers on the scene. Okay.

15 YS: Just a quick question counselor, do you agree that he's giving a voluntary statement in  
16 compliance with the Beheler admonishment

17 DN: Yes, yes.

18 YS: (inaudible) okay.

19 DN: Yes we do. And sign and I guess the DA needs to make a statement. Just sign.

20 Q: I'll give you a second to make that statement. So have you had a chance to watch your  
21 body worn camera video?

22 A: No.

23 Q: Okay. Would you like to watch it at this time?

24 A: Yes.

25 Q: Okay and you would like to make a statement now.

1 AG: That's correct. Thank you. The district attorney disagrees with San Francisco Police  
2 Department's interpretation of the body worn camera policy. The DA believes that the policy  
3 allows the subject officer to see only his or her body worn camera after providing an initial  
4 statement about what happened. Under the SFPD's interpretation, officers may review videos  
5 depicting events that they were not even present to witness. Furthermore, the police department's  
6 interpretation affords officers a special privilege. Specifically, access to evidence that other  
7 subjects and even eyewitnesses do not receive. The DA is working with the police to resolve this  
8 issue. Although the DA disagrees with how this interview will be proceeding, we are committed  
9 to independently investigating the incident and we will be participating in the interview.

10 Q: Okay and it's read into the record. So, all right so at this time we'll stop the interview and  
11 then you'll have a chance to review your body worn camera video and any other video that's  
12 available to you. Okay.

13 A: Yes sir

14 YS: 1529?

15 AG: 1629

16 Q: 1629 yeah

17 END OF INTERVIEW  
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1                                    CERTIFICATE OF TRANSCRIPTION OF TAPE RECORDINGS

2                                    --o0o--

3                                    I, the undersigned, hereby certify as follows:

4                                    That the foregoing transcript, page 1 through and including 7, to the best of my  
5 knowledge and belief is a full, complete and true transcription of certain tape recordings as  
6 described below to the best of my ability to hear, understand, identify speakers and transcribe  
7 said recordings, with the exception of any portion indicated as (inaudible), and words contained  
8 in parentheses, which indicate the best guess. (Any errors, changes or omissions should be  
9 brought to my attention for correction.)

10                                   That said tape recordings were furnished to CTI Transcription Services, 79  
11 Pizarro Avenue, Novato, CA 94949, by The San Francisco Department of Police Accountability,  
12 and requested to be transcribed.

13                                   IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August  
14 2019.

15  
16                                   /s/ Kathy Kay  
17                                   KATHY KAY  
18                                   By Electronic Mail  
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