

**SUBJECT OFFICER**

**OFFICER CHERI MILLER**

**AUGUST 19, 2020**

Sgt. Cummings: This is Sergeant Cummings, Internal Affairs Bureau. Today is Wednesday, August 19, 2020 at approximately 1005 hours. I'm here with Officer Cheri Miller who's the subject officer in Administrative Investigation 20-0001 requested by Chief Andrew Greenwood. The purpose of this investigation is to assess whether or not you followed General Order U-2 and General Order V-6 when you discharged your firearm in an occupied vehicle. This interview will also assess any training issues that may be associated with the incident. This is in regards to an incident that occurred on July 30, 2020 at approximately 2118 hours.

Also present in the room is Officer Miller's attorney, Mr. Harry Stern (Rains Lucia Stern) and Sergeant Melero of the Internal Affairs Bureau.

Officer Miller have you read, understood and signed the Lybarger admonition?

Ofc. Miller: Yes.

Sgt. Cummings: And do you have any procedural questions at this time?

Ofc. Miller: No.

Sgt. Cummings: And you do understand that this is an official Internal Affairs Bureau investigation and you are to be truthful and direct with your answers?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. So before we get started I want to preface the interview with something that my intent is not to recreate the event. Okay. You've already done that with Homicide so I'm not gonna ask you what happened from A to B.

Ofc. Miller: Okay.

Sgt. Cummings: I'm very familiar with what happened. So that was created by Homicide. We're not gonna redo that. The intent of this interview is I want to focus solely on policy, training and your mind-state okay cause that's what's really

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important here. Right?

Ofc. Miller: Okay.

Sgt. Cummings: So forgive me if some of the questions may seem rhetorical or repetitive. Okay?

Ofc. Miller: Okay.

Sgt. Cummings: Since the incident, have you had the opportunity to review your body cam?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. And have you had the opportunity to review the statement that you provided to Homicide?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. And have you seen any other videos other than your body worn camera video?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. And what video was that?

Ofc. Miller: The body worn camera like the one that Harry has. It's like a slower it's slowed down.

Mr. Stern: Yeah. We prepared a slow-motion version of what you provided and I can share that with you.

Sgt. Cummings: Okay. Not a problem. So you haven't seen any witness videos or anything like that?

Ofc. Miller: No. Nothing related as far as evidence. No.

Sgt. Cummings: Okay. Alright. So Officer Miller, how long have you been a police officer with the Berkeley Police Department?

Ofc. Miller: A year and nine months I believe.

Sgt. Cummings: And do you have any prior law enforcement experience prior to BPD?

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Ofc. Miller: I worked for Hercules Police Department for approximately three months as a police officer.

Sgt. Cummings: Okay. And prior to your law enforcement experience, did you successfully complete the California POST Certified Academy?

Ofc. Miller: Yes.

Sgt. Cummings: What academy did you attend?

Ofc. Miller: Contra Costa County.

Sgt. Cummings: During the academy, were you trained in firearms and tactics?

Ofc. Miller: Yes.

Sgt. Cummings: What about high-risk stops?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. Were you trained in tactical de-escalation?

Ofc. Miller: Yes.

Sgt. Cummings: After being hired by the Berkeley Police Department, did you successfully complete the Field Training program?

Ofc. Miller: Yes.

Sgt. Cummings: And during the Field Training program or any time after, were you trained on General Order U-2 (Use of Force)?

Ofc. Miller: Yes.

Sgt. Cummings: What is your understanding of General Order U-2 as it pertains to lethal force and the discharging of a firearm by a police officer in the course of their duties?

Ofc. Miller: Initially the first on the U-2 policy is when an officer reasonably believes that their own safety is being not questioned but in a sense like you know they fear for their life. They reasonably believe that their life is in danger whether it be

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by death or serious bodily injury from an involved suspect whether that be you know a firearm being used or a vehicle being used to possibly harm that officer. The second one is involving like a fleeing felon who you reasonably believe is still capable of causing serious injury, or bodily injury, or death to someone else including citizens, or witnesses, or anyone standing in the vicinity.

Also in the course of training as well to discharge or dispatch like an animal you know a lethal or aggressive animal, or an animal who may be injured and that's the best way to kind of take them out of their misery.

Sgt. Cummings: Okay. During field training or any time thereafter, where you trained in General Order U-2 as it pertains to the use of non-lethal force?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. And what is your understanding of when police officers are allowed to use non-lethal force?

Ofc. Miller: To de-escalate a situation involving; there's different circumstances I'm assuming. But you know you utilize that tool like with less lethal options to get a suspect to comply who doesn't present like a serious threat of needing to use lethal force. So you utilize less lethal or you use other force whether it be hands-on type of thing like to take a suspect down physically if they're not compliant or whatnot. So there's different you know uses you can use in that regard.

Sgt. Cummings: Okay. I'm gonna ask this question. During field training or any time after. Were you trained on Penal Code 835a and its relative subsections which is the Penal Code that governs peace officer's use of force? Were you trained on that during field training?

Ofc. Miller: I won't say specifically. But I do recall seeing that box when we go through the material ourselves and then also from the academy being aware of that.

Sgt. Cummings: Okay. Do you recall anything about that training that you went through?

Ofc. Miller: Just familiarize myself with the necessities of using force like when you can use it to make an arrest, to maintain order, to prevent an escape of a suspect and overcome any kind of resistance by any suspects.

Sgt. Cummings: And during FTO or any time after, were you trained in tactical de-escalation?

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Ofc. Miller: Yes.

Sgt. Cummings: And what is your understanding of what tactical de-escalation is?

Ofc. Miller: Utilizing you know the tools that you have whether it be verbal commands. Verbal jargon is very important when communicating trying to get a suspect or someone to comply with that you want them to do. And being tactical about it is also about being your placement where you're standing, what type of officer safety issues you may be having to deal with at that time. So being aware of your surroundings, the parties that are involved, knowing what you have and then also calling for resources when necessary.

Sgt. Cummings: And during your Field Training program or any time thereafter. Were you trained in high-risk vehicle stops?

Ofc. Miller: Yes.

Sgt. Cummings: And what is your understanding of how high-risk vehicle stops are conducted?

Ofc. Miller: Generally it stemmed from some type of a traffic stop where you know that you have some type of a felonious type of situation. Whether it be a felon in the vehicle or a felony that's occurred as a crime and you want to present like lethal options like an instance of drawing a firearm, or an AR, or whatever weapon you have at that time. Giving commands to try to command the individuals to respond to what you want them to do and that way you can you know present less of an officer safety issue by having them comply, put them in handcuffs and then you can further investigate once the scene is secure. Once you have all parties involved you know restrained and you can further investigate what you really have.

Sgt. Cummings: During FTO or any time thereafter, have you participated in firearms and tactics training?

Ofc. Miller: Yes.

Sgt. Cummings: And what training can you recall attending?

Ofc. Miller: I believe I've attended two firearms training which include shotgun and then recently, less lethal training that also utilized us to use our firearms. I can't recall any other ones at this time.

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Sgt. Cummings: And during Field Training program or any time thereafter, have you qualified in an approved range with the firearm that you were carrying the evening of the incident?

Ofc. Miller: Yes.

Sgt. Cummings: And if you can recall, when was the last time you qualified with that particular weapon?

Ofc. Miller: I can't recall exactly when we've had so much stoppage in training. I don't know exactly when that was.

Sgt. Cummings: Okay. And during field training or any time thereafter, have you participated in a departmentally approved force options training (i.e., scenario trainings, simunitions) any sort of training similar to that?

Ofc. Miller: No.

Sgt. Cummings: Now we'll kind of go through some of the statements that you made to Homicide and see if can clear them up as they pertain to training or policy issue.

Ofc. Miller: Okay.

Sgt. Cummings: And try to get some clarification with some of those things. So on your statement to Homicide you stated that during the incident, your foot had been run over. At what point during the incident did you realize that your foot had been run over?

Ofc. Miller: When Lieutenant Hong came on scene and he demanded or requested I get that officer safety statement. After I spoke with him, I noticed that my foot was throbbing through my right foot like the toe area specifically and I had no issues prior to the incident with my foot (either one of my feet). I noticed that something immediately was wrong because it was like I said there was nothing wrong with my foot prior to throughout the entire you know.

Sgt. Cummings: Okay. And when Lieutenant Hong arrived on scene, is that following the discharging of your firearm?

Ofc. Miller: Yes.

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Sgt. Cummings: Okay. In your statement to Homicide you stated that you heard a commotion and you saw people running through the CVS parking lot in a struggle and you assumed that it was a robbery. Why did you assume that it was a robbery and not some sort of other crime?

Ofc. Miller: Specifically with the female suspect that was wearing white. I saw her running. She's the one I saw initially before I made my way over to the parking. She appeared to be struggling with someone and I saw some product or merchandise seems like that fell from her and she was the one that was yelling. That was the one that caught my attention. So that's why I assumed it was a robbery that she was struggling with someone cause I saw, once I got on scene, a CVS Loss Prevention clerk once I got on scene that was present.

Sgt. Cummings: Okay. And once on scene, why did you feel the need to draw your weapon upon contacting the male driver?

Ofc. Miller: So when I first got on scene, I was immediately the other suspects had already got back in the vehicle. The male suspect was the one that was still outside of the vehicle and was telling him to you know. I was giving him commands to stop, show me his hands and he was not complying at all. He constantly kept reaching inside of the vehicle, standing up, turning around away from me so I couldn't really see what was in his hands if he had anything in his hands. His clothes were very big; I couldn't see if he had weapons.

So you know I was just giving him repetitive commands to just stop and comply just *hey, let me see your hands; just slow down, stop*. He was not listening. Being that there were other people involved as well as like in the vehicle, I made the decision to pull my service weapon because I didn't know what I had. I didn't know if anybody had weapons. I didn't know what he was doing. He wasn't listening to any of my commands. So physically he just was not complying. Verbally he would be like *okay, okay*. But his hands and his arms were doing a lot of other things.

Sgt. Cummings: Okay. So in your statement to Homicide you stated that you told the driver to get back into the car because you were treating it like a felony stop. Why did you treat it like a felony stop? Go ahead. Why did you treat it like a felony stop?

Ofc. Miller: So when I was telling him to comply with my commands, I had already my service weapon drawn on him. So once the subject was able to get back to the driver side of the vehicle and he had grabbed the keys from the trunk, I told

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him to get back in the car to keep him contained in the vehicle because prior to that he was not responding to any of my verbal commands. He hadn't been searched. I didn't know what he was doing more or less. So I thought tactically it would be best to keep him in the vehicle, have him place the keys on top of the car. That way I can keep all parties contained until cover arrived and we can better assist what we had.

Sgt. Cummings: Okay. So considering you were treating it like a felony stop, why did you feel the need to approach the driver side window?

Ofc. Miller: I only approached the driver side of the vehicle once the vehicle started because it wasn't running, it wasn't started the entire time even after I told him to put the keys on top of the car. The car was not running and he was trying to get my attention. I just tell him, "Stay in the car! Stay in the car!" Then I heard the car start. So that's when I proceeded to get closer to the vehicle so he could hear me further state *turn the car off, stop what you're doing, just stay put, turn the car off*. That's basically I just said the whole time- *turn the car off...turn the car off!* He was not complying.

Sgt. Cummings: And so what were you hoping to accomplish by actually approaching the window?

Ofc. Miller: That he could hear me and turn the vehicle off and then cover could arrive and we could proceed from there.

Sgt. Cummings: And so with that being said. Have you participated in any departmentally approved training that trains you to approach the driver side window alone during the felony stop?

Ofc. Miller: No.

Sgt. Cummings: And when you heard the vehicle start, what did you believe was happening or was about to happen?

Ofc. Miller: I believed that he was getting ready to probably attempt to drive off and flee the scene.

Sgt. Cummings: Okay. And in your statement to Homicide you stated that you wondered if the driver was reaching for a gun. Did you believe at the time that he was reaching for a gun?

Ofc. Miller: I did at the time because he only had one; his left hand was the only hand I



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could see and his right hand was still moving around inside the vehicle. At this time the vehicle was on still and the passenger was telling him to *stop, stop, stop* like you know turn the car off I'm assuming. And he's like, "You do it, you do it!" So I didn't know what that was in reference to some type of weapon in the vehicle, or a gun, or whatever. So that's what I assumed that made me even feel a lot you know like more unsure/more afraid of what was getting ready to transpire.

Sgt. Cummings: Okay. And believing that the driver or the passenger may have been potentially reaching for a gun. Why did you decide to remain near the window?

Ofc. Miller: So I could see and reiterate you know to establish my command presence like *hey, I want you guys to stop*. I felt like having my service weapon out you know made me feel like I could do that job and just tell them like *hey, listen, I want you guys to stop; we can discuss this all after the fact but I need you guys to turn the vehicle off*, so we can move forward.

Sgt. Cummings: Okay. So when the vehicle begin to roll backwards at an angle and you had not yet gained compliance. Why did you decide to move closer to the driver side window?

Ofc. Miller: I don't believe I moved closer to it; I was just tracking the vehicle. I had already gotten close once the vehicle started.

Sgt. Cummings: Okay. So on your statement to Homicide you stated that when the car moved forward over a raised curb, you believed that they were gonna run you over or shoot you. You also stated at the time that you were standing next to the car on the driver side. How do you believe that the vehicle would have accomplished running you over, standing next to the driver side?

Ofc. Miller: Initially the vehicle was straight toward the cement block that was right in front and then the vehicle had now, once it backed up, it angled toward me. So I'm standing you know. The vehicle is parallel. I'm parallel to the vehicle. Now the vehicle is backed up and it's angled toward running into me. So that's the threat that I perceived that this vehicle can now actually is in a position to run me over.

Sgt. Cummings: Okay. And at that point, were you standing in front of the vehicle or were you still standing alongside the vehicle?

Ofc. Miller: I was on the driver side of the like the open driver side window area.

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Sgt. Cummings: Okay. So believing that you potentially may get run over or shot. Why did you remain near the window?

Ofc. Miller: I remained near the window because we take an oath not to retreat and I felt you know. Like I said I thought cover was coming and things were happening so quickly like I just maintained my position.

Sgt. Cummings: You also stated during your interview to Homicide that you kept your gun pointed at the driver side of the vehicle. Were you actually pointing at the vehicle or the driver?

Ofc. Miller: I was pointing at the driver.

Sgt. Cummings: During your statement to Homicide you also stated that when the car jumped the curve and came closer to you, you fired two rounds at the driver. In order to fire those two rounds at the driver you've had to be aiming at the driver. Correct?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. So you were aiming at the driver?

Ofc. Miller: Yes.

Sgt. Cummings: Did you give a verbal warning before firing?

Ofc. Miller: No. I did not.

Sgt. Cummings: Was it feasible to do so?

Ofc. Miller: At the time, no. In my opinion, no. Just with everything else going on.

Sgt. Cummings: Why do you believe it wasn't feasible?

Ofc. Miller: Just speaking from my experience. At the time, I wasn't thinking that far ahead. I didn't think the vehicle was going to proceed in a way that it did. So I didn't know that I was going to actually fire the shots until the vehicle started coming towards me. Things happened so quickly I didn't give that warning like *I'm going to shoot if you try to run me over*. I just wasn't processing in my mind to verbalize that at the time.

Sgt. Cummings: Okay. You also stated during your statement to Homicide that you fired two rounds at the driver and you thought the car was stopped because you hit him. Why did you believe that you hit him?

Ofc. Miller: I didn't think; I didn't believe I had actually hit the vehicle. I just assumed. That's why I only shot the number of shots that I did and I was trying to assess what if I did hit the vehicle. But it continued out the parking lot.

Sgt. Melero: So just for clarification. When you shot, did you think you hit the driver or did you think you hit the vehicle?

Ofc. Miller: I thought I hit the driver and the vehicle. Honestly. That's what I thought cause I'm tracking the car and it's moving faster than I thought and I just you know trying to defend myself, just shot the number of rounds that I shot. I thought I hit at least you know the driver side of the vehicle which may have struck him.

Sgt. Melero: Okay.

Sgt. Cummings: Was there any indication to you at the time the driver was hit?

Ofc. Miller: Not at the time. No. I didn't hear like any *ow*, or *oh my God*, or anything. The car just sped. So I didn't see or hear anything.

Sgt. Cummings: Okay. When the vehicle came closer to you. Do you believe that the driver was intentionally trying to hit you or trying to flee?

Ofc. Miller: I believe he was trying to hit me.

Sgt. Cummings: And why do you believe that?

Ofc. Miller: I believe that because my proximity to the vehicle and me constantly giving him commands that he was adamant on trying to flee but I'm in the way of him fleeing. So I knew that he was trying to get away from the scene. I'm standing right in the middle of him being able to flee the scene.

Sgt. Cummings: And again this may seem a little repetitive. Why didn't you just back away from the vehicle when it began to move?

Ofc. Miller: I don't; I mean I think I readjusted but from the video from myself, it looks like I did attempt to step back. I can't be for certain because the camera is on my body. But I can't be for certain as if I did or didn't. But I just know I

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didn't move like all the way fully back and just let them drive off because you know I had already established that I'm trying to take control of the scene. I want to find out what's going on. I know I have a crime here and you know I want to further investigate what's happening. I didn't think that you know that it was going to turn into the situation that it did. I didn't think that they were gonna flee and try to run me over. What transpired I didn't think that was gonna transpire so.

Sgt. Cummings: Okay. Do you believe that you even had the opportunity to back away from the vehicle?

Ofc. Miller: At that time, no, because the closeness to the vehicle. I was so close. I didn't think I could get away fast enough in order for them to not eventually like run me over. I don't think I would have been able to move back fast enough.

Sgt. Cummings: As the vehicle fled the parking lot, do you believe that it was pursuable per BPD policy General Order V6?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. Why did you choose not to pursue it?

Ofc. Miller: I didn't pursue the vehicle initially because I thought I had struck someone and I was trying to assess if the vehicle was going to eventually stop. But then once it went outside of the parking lot, I saw it hit like the sidewalk or curb area and just kind of bounced up and just proceeded eastbound on Rose. So I didn't know. By the time I got in my vehicle, I didn't think I'd be able to really track where it went. I also thought cover was pretty close enough to kind of take over for me in that instance.

Sgt. Cummings: And if you had to describe why you would've pursued the vehicle. I know you didn't. But under General Order V6, why would you have pursued the vehicle?

Ofc. Miller: Because it attempted to run me over and that's a crime in itself you know attempted murder or whatever. It ran me over in a sense so that's why. If anything that's why I would pursue it because it just committed another crime on top of you know robbing the CVS.

Sgt. Cummings: Okay. In your statement to Homicide you stated that you arrived on scene, you broadcasted it "theft in progress" via the radio. If you believe that it was a robbery, why did you not broadcast "robbery in progress"?

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Ofc. Miller: Well when I initially saw what was transpiring, I thought it was a theft. Then once I finally got on scene, that's just the first thing that came out of my mouth as opposed to kind of really processing everything that was happening because it was just very chaotic. People screaming, people running, no one listening to anything I was saying. So I at least wanted to put out something what I know I had at the time like *this is what's transpiring right now – it's in progress – so can I get some assistance.*

Sgt. Cummings: And based on that, what information were you acting on? What did you see? What did you hear?

Ofc. Miller: Like I said I saw the female suspect was struggling with someone and I saw the product confirmed on the ground near the rear of the trunk of the vehicle and I did see CVS I believe (I don't know his name; I never got his name). I don't generally work that beat but I did make contact with him the day prior. He was on the driver side. It looked like he may have had a camera or something, or writing something down and he was like pointing at the male driver on the driver side. But he didn't you know say anything as far as like verbally about what was going on. I didn't get the chance to question him about what was transpiring at the time.

Sgt. Cummings: Okay. It's kind of a follow-up question. According to your radio traffic you requested a code 198. If you believe that there was a robbery in progress, why did you ask for a code 1 rather than a code 3?

Ofc. Miller: Did I say code 198? I don't think I said it like that in the radio traffic. I believe I said I had a theft in progress and then they sent who they sent. I don't recall saying *can I get a code 198.*

Mr. Stern: We can listen to that.

Sgt. Cummings: Okay.

Ofc. Miller: Yeah. I don't know anything about exact radio traffic. I'm sorry.

Sgt. Cummings: Not a problem. Okay. And this is coming from your statement and there's a reason I'm asking it. In your statement to Homicide you stated that you associated the male suspect's high-pitched voice with being homosexual.

Ofc. Miller: Hmm-mmm.

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Sgt. Cummings: How was that relevant to you? And it's a multiple part question.

Ofc. Miller: So, I guess it's not a great way to say it, but being a homosexual myself, I have a lot of friends (male friends) that are gay and they have high-pitched voices. That's just how they're carrying them; they're very feminine. The male's voice was very high-pitched and his mannerisms were very you know like people that I interact with all the time. It wasn't like a very masculine way of kind of like you know expressing himself. It was very feminine in a sense. So that's where that stemmed from. Just his mannerisms about how he was moving his hands, the way he was speaking. He had a very high-pitched voice.

Sgt. Cummings: Okay. And did your belief in his sexuality play a role in how you decided to handle the situation or manage the scene?

Ofc. Miller: No.

Sgt. Cummings: Okay. That's what I was getting at.

Ofc. Miller: I didn't put it all together until after the fact anyway. I just was like oh wow you know that's what I had so.

Sgt. Cummings: During your interview with Homicide they asked you if you could tell who was operating the vehicle. In that statement you said no. You weren't sure who was causing the vehicle. So I'm gonna ask you if you weren't sure who was causing the vehicle to move in which you described as "towards you." Why did you decided to fire?

Ofc. Miller: Not specifically saying when I didn't know for sure. I didn't know who had their hand on the wheel. It was obvious that he was the one that was controlling the gas and the brake because that's where he's seated. But in relation to that statement, I didn't know who was controlling the wheel because he did have his left hand that was closer to my view going up and down. His right hand I couldn't see but then I also saw the female passenger kind of lean back and forth over. And they're yelling back and forth at each other like, "Hey, I don't know what's wrong with my car" and he's like telling her, "you do it...you do it!" She's also saying, "Stop the car...stop, stop, stop!" So I didn't really know truly who was in control of the steering wheel is what I should have specified.

Sgt. Cummings: Okay. So you stated to Homicide that you shot at the driver when the vehicle angled towards you and went really fast. Where were you standing in

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relationship to the vehicle at the time that the vehicle accelerated?

Ofc. Miller: Still on the driver side of the vehicle (driver side window).

Sgt. Cummings: Okay. In your statement to Homicide you told them that you held your position and you were not thinking about the fact that you could be ran over. You stated that you were adamant about not letting the vehicle flee. Did you fire at the vehicle or did you fire at the driver to prevent it from fleeing?

Ofc. Miller: I fired at the driver to prevent it from running me over.

Sgt. Cummings: Based on where you were standing. Were you attempting to use your body as a barricade to prevent the vehicle from fleeing?

Ofc. Miller: I mean I guess in hindsight, yes. Like I said I was just trying to establish my presence. He wasn't following any verbal commands so I thought me putting myself closer to him/closer to the vehicle, he could see that you know I'm telling you to do something and I want you to comply.

Sgt. Cummings: Okay. You kind of answered this question but I'll run it by you again. In your statement to Homicide you stated that you shot at the driver to eliminate the threat to prevent yourself from possibly be run over. At what point did you realize that the driver was the one operating the vehicle?

Ofc. Miller: At the time, well, he had ducked kind of down and just. I saw his body turn so that's how I figured he was the one that was controlling everything. Prior to that, he wasn't complying but he was trying to give me this false sense of like *I'm listening to what you're saying*. But the whole time he was not physically complying with anything what I was saying. So I knew that he was the one that was kind of like running most of the whole thing.

He was the one in the driver seat. He was the only that I was you know trying to talk to and was not listening. Not that I really had much dialogue with the other individuals but they were the ones pleading like *please don't...just let us go, let us go*. He was adamant on not trying to have any kind of verbal jargon with me at all and he was not compliant physically the whole time.

Sgt. Cummings: So during your statement to Homicide. You stated that you aimed down at the driver and then shoulder and neck area. Did you acquire a sight picture?

Ofc. Miller: Yeah. I did because of my location and my proximity to the vehicle and where I was standing. That's where I was originally you know that's what I

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was aiming at because that's who I could see and who was the one that was in control of the vehicle so I thought.

Sgt. Cummings: And what was in that sight picture?

Ofc. Miller: His head just like the left side of his body. More or less-- shoulder, head, neck area.

Sgt. Cummings: Okay. And at the time that you discharged your firearm. What was your perception? I'm not asking for exact distances. But what was your perception of how far from the driver you were?

Ofc. Miller: Within a foot.

Sgt. Cummings: Okay. And from that distance, are you trained to "point-shoot" or acquire a sight picture?

Ofc. Miller: Point-shoot.

Sgt. Cummings: Did you make a conscious decision to shoot?

Ofc. Miller: Yes.

Sgt. Cummings: When you fired, were you concerned about striking either of the passengers in the vehicle?

Ofc. Miller: Yes. I was. Yes. That's why I was specifically pointing at the driver and I couldn't see where they were exactly. But I know they were in the vehicle and that cinder block that was right behind it so my angle that I had was more or less directed at the driver.

Sgt. Cummings: Okay. What do you recall being your backdrop at the time that you fired?

Ofc. Miller: The cinder block wall.

Sgt. Cummings: Okay. So during your interview with Homicide you were asked if the driver made any threats towards you. You stated, "No, he just pretended like he didn't hear me; it seemed like he was just trying to get out of there and flee." Do you believe that you created an exigency to shoot when you didn't move out of the way or move away from the vehicle?

Ofc. Miller: No.



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Sgt. Cummings: And you already told me that you believed he was intentionally trying to run you over.

Ofc. Miller: Yes.

Sgt. Cummings: Okay. Do you believe that you placed a need to apprehend a suspect as a higher priority than a protection of your own life?

Ofc. Miller: Yes.

Sgt. Cummings: Do you believe that it was necessary to prevent their escape?

Ofc. Miller: Yes.

Sgt. Cummings: Why do you believe that?

Ofc. Miller: Because we took an oath to do this job and do expeditiously. Like I said it states that you don't retreat when you're trying to arrest or investigate a crime. So that's where that stemmed from.

Sgt. Cummings: At the time that the vehicle was attempting to drive forward prior to you actually discharging your weapon. Did you suspect that the driver to be a felon?

Ofc. Miller: Yes.

Sgt. Cummings: What did you believe? What crime do you believe he may have participated in?

Ofc. Miller: Robbery from the CVS.

Sgt. Cummings: At the time of the incident, do you believe that there was an imminent threat to life or threat of great bodily injury by allowing the vehicle to flee?

Ofc. Miller: No.

Sgt. Cummings: Okay. During your interview with Homicide you were asked, "What do you think would have happened had you not fired at the vehicle?" You stated, "I don't know; it would have just fled." At the time, why did you not just allow it to flee?

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Ofc. Miller: I didn't allow it to flee because I was standing in the path of it fleeing.

Sgt. Cummings: Okay. So this goes back to your Homicide interview right after the question that I just asked you. You stated that you thought there was still more people in the parking lot and that there might be people in the vicinity at the time. Did you actually see anyone or you just believed that there would still be possibly?

Ofc. Miller: At what point?

Sgt. Cummings: Well as the vehicle was fleeing and you're discharging your firearm.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: You told Homicide that there was possibly people in the parking lot. I'm asking do you remember seeing people in the direction that the vehicle flee or do you believe there was possibility?

Ofc. Miller: I did see movement in a vehicle. It was a black vehicle parked in the middle of the parking lot but no one was outside of the vehicle.

Sgt. Cummings: So during your interview with Homicide you were asked what you thought you hit when you fired. You stated, "If not the driver, the driver's door because you heard what sounded like metal." What do you believe; I'm going to ask you this again only because it's part of the question. What do you believe you were aiming at when you discharged the firearm?

Ofc. Miller: I believe I was aiming at the driver

Sgt. Cummings: Okay. So in your statement to Homicide you told them that you were about a foot away from the vehicle when you fired and you also said that was your "perception to me as well" that you were approximately a foot away. As an officer that's received training in firearms and is qualified with the weapon that you were carrying. Do you believe that you should have been able to hit what your intended target?

Ofc. Miller: Yes. Yeah.

Sgt. Cummings: In your statement to Homicide you stated that you were near the A-pillar on the driver side of the vehicle while you pointed your firearm at a downward angle into the driver's area. To me that indicates that the majority of the front end of the vehicle was already passed you. Why do you believe that you

would have or could have been run over from that position?

Ofc. Miller: Because you still have the front-end, I mean the back-end, of the vehicle that hasn't passed by and they are still at the angle that he was taking was still you know directly very close to me. Not directly at me because I was still on the side of the vehicle but the angle that he was taking. There is still the rear of the vehicle was a cause for concern.

Sgt. Melero: Can I ask? So you're concern about the rear-wheel cheat?

Ofc. Miller: Yeah.

Sgt. Melero: And the rear wheel coming towards you?

Ofc. Miller: Yeah because the way like I'm saying like the way I was standing and the angle that the vehicle was taking was still coming at me. Whether the front-end had passed me, there's still the rear vehicle that still has to follow and track that same direction of flight.

Sgt. Melero: Okay. So I know we've asked this in several ways but I just want to clarify during that specific moment.

Ofc. Miller: Uh-huh.

Sgt. Melero: You're concerned about this rear-wheel cheat coming towards you. Did you consider simply backing up a step or two?

Ofc. Miller: Not at the time. No, I didn't.

Sgt. Cummings: Okay. So I'm gonna ask this question; you covered it. But it kind of has a following question. So during your interview to Homicide you were asked, "Why didn't you just back up" and you stated, "officers don't necessarily retreat." You already explained that to me.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: I'm just gonna ask you one more time. What did you mean by that statement?

Ofc. Miller: When I took an oath as an officer, they tell you you're not you know you don't retreat in instances where crimes are being committed. You know if you're trying to investigate something and someone is not responding or not complying, then you know you establish that command presence to let

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yourself be heard. To establish that you know your authority has to be respected in the sense like *look, I'm here to figure out what's going on; just respond to what I'm telling you to do and we can figure it out from there.*

Sgt. Cummings: And so the following question to that is: Is retreating a consideration in tactical de-escalation as it was taught to you?

Ofc. Miller: Certain circumstances. Yes. I don't know if you want me to be specific but if like you're taking on you know live fire from another like a firearm, then yes, you would definitely want to retreat and find cover so.

Sgt. Cummings: Alright. So at this time what we're gonna do is we're gonna stay live on the recorder. I'm going to allow you to watch your body cam video and I'll have a few questions for you as it pertains to your body cam video.

Ofc. Miller: Do I need to come on that side or are you just going to turn it around?

Sgt. Cummings: No. I'm going to turn it around for you.

Ofc. Miller: Okay.

Sgt. Cummings: You can stay where you are. I'm just gonna make sure I pull up the right video and then we can play it back a few times if we have to, to actually break it down. So I'll just let it play through once and then we'll ask questions and we'll find the spots that we need to.

Ofc. Miller: Okay.

**[Officer Miller's body cam video playing in the background]**

**Male subject:** Excuse me.

**Ofc. Miller:** Stay in the car!

*\*Vehicle engine starts\**

**Ofc. Miller:** Turn the car off!

**Male subject:** Excuse me.

**Ofc. Miller:** Turn the car off now! Turn the car off now! Turn the car off.

**Male subject:** I don't need to.

**Ofc. Miller:** Turn the car off now okay! Turn the car off now!

**Female subject:** Turn the car off! Turn the car off!

**Ofc. Miller:** What are you doing? Turn the car off!

**Male subject:** Turn it off for me! I can't do it!

**Female subject:** Turn it off!

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**Male subject:** Turn it off!

*\*Shots fired\**

**Ofc. Miller:** Two shots fired. Vehicle is fleeing. Ford Fusion heading. Ford Fusion heading westbound on Rose. Last seen from location. Westbound Rose. Westbound Rose. Ford Fusion occupied by three black males. Correct. One black male, two black females. Negative. I fired two rounds. The vehicle almost ran me over. Dark blue occupied by one black male, heavysset, wearing I believe a blue top and blue pants. Passenger was a black female, long hair, unknown clothing. Rear passenger was also a black female, unknown clothing.

Sgt. Cummings: So I'm gonna let it play until you give your public safety statement to Lieutenant Hong and then I'll stop it and we'll talk about some of the things.

**Ofc. Miller:** Blue Ford Fusion. Unknown year. Older model. Had a temporary plate. [REDACTED]

[REDACTED]. Adam 2. Loss Prevention was also out here because they were detaining (attempting to detain) three here.

**Lt. Hong:** I need; I'm ordering you to give me a public safety statement.

**Ofc. Miller:** Okay. Gotcha. Okay.

**Lt. Hong:** Which direction did you fire?

**Ofc. Miller:** So direction was this direction right here.

**Lt. Hong:** Okay. This way?

**Ofc. Miller:** Yeah.

**Lt. Hong:** Alright. Is there any outstanding evidence to your knowledge?

**Ofc. Miller:** Two shots fired. Product here from the vehicle.

**Lt. Hong:** From the vehicle?

**Ofc. Miller:** Yeah

**Lt. Hong:** Okay.

**Ofc. Miller:** I might've probably struck the front of the vehicle like the front driver side tire.

**Lt. Hong:** Driver side?

**Ofc. Miller:** Yeah. Tire. Yeah.

**Lt. Hong:** I'm sorry. I just had to run out of the station.

**Ofc. Miller:** Yeah.

**Lt. Hong:** Are you okay?

**Ofc. Miller:** Yeah. I'm good.

**Lt. Hong:** Alright. Let me see other questions here. It's been a long time.

**Ofc. Miller:** I know. I was gonna say. I know it's been awhile.

**Lt. Hong:** Okay. How many outstanding?

**Ofc. Miller:** Three.

**Lt. Hong:** Three.

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**Ofc. Miller:** One black male. Two black females.

**Lt. Hong:** Okay. And they were both all in the car?

**Ofc. Miller:** All of them. Yeah. They ran out. I was across the street at the Safeway on the west curb line from this direction and I saw a commotion going on over here. I turned my lights on, saw Loss Prevention trying to detain these individuals. I came over, turned my lights on. I was like, "Berkeley Police...Stop! Stop!" He stops. They're still in the car. I told them to put the keys on top of the car; I guess those were not the keys to the vehicle. They were probably some other keys because he put the keys in the ignition and was like, "Oh I can't stop the car!"

**Lt. Hong:** That's fine. You don't need to say anything anymore.

**Ofc. Miller:** Gotcha.

Sgt. Cummings: I'm gonna stop it here. I'll stop it here. I have a couple of questions and we may need to run a few portions of it back. So you had the opportunity now to review your body camera. Correct?

Ofc. Miller: Hmm-mmm. Yes.

Sgt. Cummings: And were there any parts depicted in the video that were different from your recollection?

Ofc. Miller: Yeah. The order in things happened like my exact proximity to the vehicle could obviously be more seen. The exact location of where the vehicle was parked and the raised curb that I really wasn't aware of at the time. I saw that in that in the body camera footage that I was on top of a raised curb and there was you know. It's difficult for the vehicle to go over something and that's what it was that he was going over initially.

Sgt. Cummings: Okay. Anything else from your recollection based on what you saw?

Ofc. Miller: Like just now or initially?

Sgt. Cummings: So take me back to what you remember cause it's important for me to understand what you remember from that night.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: What differs from what you actually see on the video? Describe some of it. I'm just asking you. There's nothing else, there's nothing else. But if there is something, I want you to have that opportunity.

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Ofc. Miller: Okay.

Sgt. Cummings: To say what was different from your recollection to what you actually saw on video and then we can try to figure it out.

Ofc. Miller: I wouldn't say nothing is different per se just from the point of where the camera was started to up until now. I don't think there's anything different.

Sgt. Cummings: Okay. So what I want to do is we're gonna rewind the video and I kind of want to mirror or actually mesh your recollection with the video a little bit.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: So I can get a better understanding. So I'm gonna rewind it and I want you to actually pause the video at the point; and we'll mark it with the time on the video and we'll discuss it where you felt like you were about to be run over. Okay?

Ofc. Miller: Okay.

Sgt. Cummings: So I will rewind it and then I will have you either tell me "pause it" or you can pause it. Just tell me to pause it at that point.

Ofc. Miller: Okay.

**[video playing]**

**Male subject:** Excuse me.

**Ofc. Miller:** Stay in the car!

*\*Vehicle engine starts\**

**Ofc. Miller:** Turn the car off!

**Male subject:** Excuse me.

**Ofc. Miller:** Turn the car off now! Turn the car off now! Turn the car off.

**Male subject:** I don't need to.

**Ofc. Miller:** Turn the car off now okay! Turn the car off now!

**Female subject:** Turn the car off! Turn the car off!

**Ofc. Miller:** What are you doing? Turn the car off!

Right there. Stop.

Sgt. Cummings: Right there?

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Ofc. Miller: Yeah.

Sgt. Cummings: You want me to run it back for you Mr. Stern?

Mr. Stern: Yeah. That would be great. And what are we looking for?

Sgt. Cummings: So I want her to, based on her best recollection, to tell me at what point she felt endangered so I can pause it on the video and just make mention of it.

Mr. Stern: Sure.

Sgt. Cummings: Go ahead and tell me to pause it again.

**[video playing]**

*\*Vehicle engine starts\**

**Ofc. Miller:** Turn the car off!

**Male subject:** Excuse me.

**Ofc. Miller:** Turn the car off now! Turn the car off now! Turn the car off.

**Male subject:** I don't need to.

**Ofc. Miller:** Turn the car off now okay! Turn the car off now!

**Female subject:** Turn the car off! Turn the car off!

**Ofc. Miller:** What are you doing? Turn the car off!

**Male subject:** Turn it off for me! I can't do it!

**Female subject:** Turn it off!

**Male subject:** Turn it off!

Ofc. Miller: Stop.

Sgt. Cummings: Okay. So roughly 11 seconds in, 12 seconds in.

Ofc. Miller: Yeah.

Sgt. Cummings: The video that I have playing.

Ofc. Miller: Yes.

Sgt. Cummings: Okay. And as far as your body cam activation goes. Why did you decide to activate your camera at the moment you did rather than sooner?

Ofc. Miller: Well I believe I thought I had activated it and I realized that it wasn't running.



So I immediately just double-tapped it.

Sgt. Cummings: Okay.

Ofc. Miller: Yeah. I thought I had already had it running initially.

Sgt. Cummings: Okay. At what point did you think you activated it when it didn't activate?

Ofc. Miller: At what point did I think I did?

Sgt. Cummings: Yeah.

Ofc. Miller: Once I got on scene and got out of the car cause that's normally when I activate it. I thought that's when at that point when I was talking or attempting to talk to the male suspect on the driver side when I first got out the car. So I don't know roughly about what time that was. But that's when I thought I had activated it.

Sgt. Cummings: And how did you realize that it wasn't activated?

Ofc. Miller: I looked down; it was flashing green.

Sgt. Cummings: Okay. So and we can watch it again if you need to. But according to the video that we just watched. You appeared to initially – and I say “appear” because I'm on the outside looking in – initially point your firearm in the direction of the driver. But as the vehicle begins to accelerate, it appears as if you lowered your muzzle below the window line and then slightly canted towards the front wheel fender area and fired. So were you trained to lower the muzzle of your firearm and canted away from the intended target upon firing?

Ofc. Miller: No.

Sgt. Cummings: Okay. After watching the video, does that differ from what you believed that you were aiming at?

Ofc. Miller: Yes.

Sgt. Cummings: Okay. And just to play “devil's advocate,” it appears as if you were intentionally avoiding shooting at the driver. Did you avoid shooting at the driver?

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Ofc. Miller: No.

Sgt. Cummings: Okay. In your public safety statement ordered by Lieutenant Hong following the shooting, you stated that you believed that you struck the driver side front tire area. Later in your Homicide statement, you stated that you believed you had hit the driver if not the driver's door. What changed your mind and/or your recollection from the time you're on scene until your interview with Homicide?

Ofc. Miller: When I finally was able to see the BWC and I heard the shots. It sounded like it hit metal so that's when I assumed that that's what I struck. But when I was on scene, I didn't hear any response like a verbal like *oh my God I got shot* or anything from the driver. That's what I thought was I hit at least the driver side of the vehicle if I didn't strike him. The window was down, there's no glass that shows that you know he was struck inside the vehicle. So I assumed that at the least that I struck the driver side of the vehicle (the front driver side of the vehicle).

Sgt. Cummings: That was in your statement to Homicide. Correct?

Ofc. Miller: Yes.

Sgt. Cummings: But on scene you believed that you had actually hit the front wheel.

Ofc. Miller: That's what I thought I struck. Yes.

Sgt. Cummings: Okay.

Ofc. Miller: That's what I thought my rounds went.

Sgt. Cummings: Okay. Do you have any follow-up on that?

Sgt. Melero: Yeah. So on scene you believed that. Sorry. On scene you believed that you struck the left front wheel.

Ofc. Miller: I assumed that I did. Yes.

Sgt. Melero: That was your belief?

Ofc. Miller: Yes because of the sounds from you know what it struck. It didn't sound like it hit anything else. It didn't sound like it hit a person cause like I said I didn't get a response from my intended target.

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Sgt. Melero: Okay. So I'm not sure if we have an answer to this yet. So what changed your mind as to later on believing that you struck the driver or the driver area?

Ofc. Miller: My mind wasn't changed. It was confirmed that I didn't strike the driver cause the vehicle didn't stop. We didn't have a victim and then when I watched the BWC, it shows that there was really no momentum that shows that what I was shooting at was actually struck like the driver.

Sgt. Cummings: So when you spoke to Homicide, why didn't you just tell them "I believe I hit the front tire" rather than "I believe I hit the..."? That's what we're trying to figure out is on scene you believe you struck the front tire but when you talked to.

Mr. Stern: I do want to be clear. That wasn't her statement. It's on video. It says "front area of the car; front tire."

Sgt. Cummings: Okay.

Mr. Stern: We can play it.

Sgt. Cummings: Well I'm talking about her statement to Homicide.

Mr. Stern: Right. But she told Homicide my recollection as I'm looking at my notes right now and I have the transcript. She told Homicide that she thought she hit either the driver or the driver side door.

Sgt. Cummings: Correct.

Mr. Stern: In the public safety statement, she said, "I think I hit the front of the car maybe the left tire." That's the difference.

Sgt. Cummings: Okay. Yeah, yeah. Fair enough.

Ofc. Miller: That doesn't mean that was my intended target. My intended target was the driver but unfortunately for whatever reason whether it be stepping off a curb or you know not having a good planted stance, that's where I believe that they actually struck.

Sgt. Cummings: No. I understand that a hundred percent. I know exactly what you're saying. It's just that I'm wondering why on scene you believe you hit the front of the car area but then in your statement to Homicide, you believe you had hit the

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driver's area. Like there's a big; I don't want to say big. There's sort of a discrepancy there. I'm just wondering why you wouldn't have said *well, yeah, I believe I was shooting at the driver but I believe I hit the front of the car tire area*. The same statement that you told Lieutenant Hong. That's what we're trying to figure out. Why was what you believe you struck different to Lieutenant Hong than what you believe you struck different to Homicide? Do you understand what I'm asking?

Ofc. Miller: Yeah. I don't know. I can't say for certain why there's that discrepancy. I just know that I hadn't seen the BWC. When I was on scene everything was chaotic. I just thought that's what I may have struck because the vehicle didn't stop. There wasn't a victim. It just continued to proceed out of the parking lot. So that's what at least that's what I thought I hit and that's what made me. You now obviously my mistake in saying what I thought without knowing any of the facts and not being able to review the footage and whatnot. That just sporadically came out of my mouth.

Sgt. Melero: So just to clarify and I'm sorry if I keep asking over and over. But it's still not really clear. So we're not questioning what you intended to shoot.

Ofc. Miller: Right.

Sgt. Melero: Right? We're not questioning that. What we're asking is when you gave the public statement to Lieutenant Hong, you said, "I believe I struck the left front area, front wheel area." Right?

Ofc. Miller: Hmm-mmm.

Sgt. Melero: This is all before you had an opportunity to watch the body worn camera video.

Ofc. Miller: Right.

Sgt. Melero: I understand that.

Ofc. Miller: Hmm-mmm.

Sgt. Melero: When you gave the statement to Homicide prior to watching your body worn camera video, you stated, "I believe I struck the driver's door, the driver's area."

Ofc. Miller: Hmm-mmm.

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- Sgt. Melero: And so what we're trying to ascertain is what happened between one statement and the other. What made you change your mind or your perception?
- Ofc. Miller: I don't believe there's nothing specifically that made me change my perception. It's just that's what I thought at the time. I was very nervous. I didn't like I don't; I can't really give you an exact you know reasoning for it. I didn't really know it differed that much. I didn't know. That's basically how I felt when I gave the officer statement. That's how I felt when I talked to Homicide so.
- Sgt. Cummings: Okay. And I know and this is kind of why we don't like officers to actually watch their body cam video before interview because it can change your perspective and your perception of what happened.
- Ofc. Miller: Hmm-mmm.
- Sgt. Cummings: And it can often be confusing which is why we like to hold it till the end and you just give us what you want. So if it was a body cam video that changed your mind, we understand it.
- Ofc. Miller: Hmm-mmm.
- Sgt. Cummings: But that's what we're trying to get at is to see what happened between the time you left the scene and the time you interviewed with Homicide. That's all that was about.
- Ofc. Miller: Okay. No, I understand that. I mean I just don't have an answer as to why you it differentiates a little bit or however much you perceive it to be. I don't have an answer for that.
- Sgt. Cummings: Okay. And this is kind of has been answered but I had it written down just based on the video. Based on your action seen on the body camera footage coupled with the fact that you told Lieutenant Hong that you believe that you struck the front wheel tire area (or front wheel area), it appears that you were intentionally trying to shoot at the front tire.
- Ofc. Miller: Hmm-mmm.
- Sgt. Cummings: Were you intentionally shooting at the front tire?

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Ofc. Miller: No.

Sgt. Cummings: Alright. I believe that's all the questions I have for you at this time. And just for clarification, I'm gonna give you a map. It's the Safeway the 1400 block of Shattuck.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: Between Safeway and CVS. To the best of your recollection, I want you to kind of draw a circle where you were parked.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: And then the route you took into the lot. If you could do that for me I'd appreciate it.

Ofc. Miller: There's a crosswalk somewhere over in this vicinity. I don't see it on the map but I want to say I was parked maybe; you said circle the area?

Sgt. Cummings: Or just draw a dot where you believe you were parked.

Ofc. Miller: Okay. I was parked in this area here.

Sgt. Cummings: Okay.

Ofc. Miller: And this is the direction that I took.

Sgt. Cummings: Okay.

Ofc. Miller: I believe the driveway is like right in here to go inside the parking lot.

Sgt. Cummings: Okay. Got you. Alright. Thank you.

Ofc. Miller: Hmm-mmm.

Sgt. Cummings: Mr. Stern do you have any questions for follow-up comments for your client?

Mr. Stern: Yeah. I got a few things if you guys want to indulge me I'd appreciate it.

Sgt. Cummings: Go ahead.

Mr. Stern: Let me just find the right notes here. As far as the Penal Code 835 training,

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have you since January of this year received any follow-up training on that changes to the law?

Ofc. Miller: No.

Mr. Stern: Okay. Are you 100% sure your foot was run over by the car? What are your thoughts on that?

Ofc. Miller: At the time I didn't; I wasn't aware that I had been run over until a couple of moments after like adrenaline had been pumping and then I realized that something was wrong with my right foot.

Mr. Stern: Okay.

Ofc. Miller: I didn't know at what point when the vehicle ran over my foot. However, I wasn't hurting prior to the incident and I was very close proximity to the vehicle. So that's how I believe I was injured.

Mr. Stern: Do you recall telling Homicide that two things about the tactical issue concerning having the driver get back in the car? One, it was a felony stop that we discussed quite a bit. But the second was more like a routine traffic stop if you pulled someone over and they try to walk back towards you. How do you routinely handle that?

Ofc. Miller: Were you asking me to clarify or just kind of?

Mr. Stern: No. Do you recall telling Homicide that?

Ofc. Miller: Yes.

Mr. Stern: Okay. So I mean I guess I could ask this question this way you know looking at everything now, watching the body worn camera a bunch of times, going through two interviews. This isn't the standard but you know. Are there things you might consider doing different tactically in this situation?

Ofc. Miller: Absolutely. From the moment it transpired. Everything I critiqued was something I would have done differently the majority of things. Yes.

Mr. Stern: Okay. And are you 100% sure that you maintained your position on the raised curb?

Ofc. Miller: No. I can see when I was watching the BWC that I didn't maintain it the

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whole time. It looks like I kind of like stepped back or something. I don't know what happened but that's when my gun went down from aiming at the driver more toward the ground. So I don't know what transpired there. I don't know if there's any other footage but I don't know. I don't know what happened but I could see it in the BWC and I thought I was more kind of like at a steady stance you know maintaining my sight picture and whatnot.

Mr. Stern: I want to follow-up on this question that the investigators asked. It was a good one. It had to do with the barricade. Are you saying that he tried to; let me put it this way. Did you ever stand in front of the front-end of this vehicle?

Ofc. Miller: No. Never

Mr. Stern: Okay. When you're on the side of the car, was your intention to use your body as a physical block from the car moving forward? In other words, did you put yourself in a position that at the time you put yourself there that you thought you were blocking the car to stop?

Ofc. Miller: I wasn't purposeful enough to be like I'm going to stand here to not get them to leave. But I was just trying to maintain my command presence and reiterate the commands that I was trying to give at the time.

Mr. Stern: Okay. What did you mean when you said that you had placed your safety basically ahead of – no – that you placed apprehending the suspect ahead of your safety?

Ofc. Miller: Well at the time I was more concerned about finding out what was going on to confirm if I had a robbery. I was trying to gather as much information as I could but I couldn't do that if the suspects were not complying and you know making an attempt to flee the area.

Mr. Stern: Okay. When you answered that question, was your intent to state that you disregarded your own safety or that you put yourself intentionally in a position of danger?

Ofc. Miller: No. That's just the fact that I put myself in that position to try to do my job.

Mr. Stern: Okay. I don't have any other questions.

Sgt. Melero: Yeah. One question. So you just stated that there are things that you would have done differently.



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Ofc. Miller: Correct.

Sgt. Melero: Can you clarify that?

Ofc. Miller: I would have for one probably not have.

Mr. Stern: And not going to work doesn't count. Okay.

Ofc. Miller: Not have the suspect (the male suspect) get back in the vehicle. I think would have probably prone him out commanding him to get on the ground and probably defeated the whole fleeing of the vehicle. That's the biggest one I believe is the one I should've would do differently. And definitely you know make sure my body worn camera is on so I can you know we can get a full grasp of what actually transpired. Those are the biggest things. Obviously know different commands or whatnot but those were the two biggest things that I definitely think I could have done differently that would've affected the outcome.

Sgt. Melero: I have no other questions.

Mr. Stern: I'll put this part on the record and we'll just kind of a teaser I'll get it to you. So I had the thing slowed down and put in conjunction with the audio, put some markers when the shots were fired. I'll send this stuff to you. I think in a way it shows a lot different picture. Some of the stuff that I picked up on that I actually want to flush out a little bit more. It has to do with her position and the car going over the curb so it being different levels.

Sgt. Cummings: Hmm-mmm.

Mr. Stern: And it looks to me. I haven't studied it enough because I just got this back yesterday that looks like that probably changes what. To follow-up on the questions you asked of lowering and aiming down.

Sgt. Cummings: Hmm-mmm.

Mr. Stern: So in other words, the car is initially lower. Then it goes up, then it goes down. The one thing that I will tell you is that the three shots were fired in less than a second in about .93 of a second which is very fast. I'm not a "force" science person and all I know is the basic concept. So when thinking about this usually it's like a third perceive/a third react. It's actually higher than that but assuming that lower number is true. That's like 2/3 of a second.

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If you take the first shot on the slow-mo video I can show you and go back 2/3 of a second, that would probably give you a real good idea of what the threat that she was responding to is. At that point, the car is basically coming you know sliding. It's obvious. There's no point that the car is coming at her head-on thank God.

Sgt. Cummings: Hmm-mmm.

Mr. Stern: But the car is in a much closer position. It looks like she moved back to me but I have to do more work on that. So I'll send you that stuff.

Sgt. Cummings: Yeah. I appreciate that.

Mr. Stern: I know you guys have more expertise on this stuff than I do. But I think it will be helpful to you.

Sgt. Cummings: Yeah. Absolutely.

Mr. Stern: Thank you.

Sgt. Cummings: We'll definitely look at that. Any comments or anything you want to leave us with or are you satisfied with where you are with the interview?

Ofc. Miller: Yes. I mean I've never been in this situation so I didn't really know what to expect but I mean I felt comfortable the entire time so I could at least say that.

Sgt. Cummings: Okay.

Mr. Stern: Are you talking about with these guys?

Ofc. Miller: With IA? Yeah. I've never think I'd ever be in this situation. Not even not just for this level you know that we're dealing with. But just I've never been in trouble before. I never had to be investigated for anything. So I'm just like just you know. This was a very overwhelming experience but you guys were very professional so I appreciate that.

Mr. Stern: I second that.

Sgt. Cummings: Alright. With that, we'll conclude the interview. It is approximately 1112 hours.