

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
AGREEMENT BETWEEN THE PARTIES

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In the Matter of a Controversy

between

VALLEJO POLICE OFFICERS'
ASSOCIATION,

Complainant,

and

Case No. LDF 20-1413

CITY OF VALLEJO,

Respondent.

Re: Termination of Jarrett Tonn.

_____ /

Before ALEXANDER "BUDDY" COHN, Arbitrator

Tuesday, March 21, 2023

Volume 2 (Pages 245 through 473)

9:30 a.m.

Held by

VIDEOCONFERENCE

Reported via videoconference by:
JULIEANN HAMILL, CSR No. 5151

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APPEARANCES

ARBITRATOR:

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ALSO PRESENT:

JARRETT TONN, Grievant

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1 VIA VIDEOCONFERENCE

MARCH 21, 2023

2 9:37 a.m.

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4 PROCEEDINGS ON THE RECORD

5 --o0o--

6 SHANE BOWER,

7 called as a witness by the association, being first duly
8 sworn or affirmed by the arbitrator, was examined and
9 testified as follows:

10 THE ARBITRATOR: Let's go back on the record
11 and remind everybody that the department has rested
12 subject to possible rebuttal.

13 We turn to the association side of the case.

14 The first witness has been called and sworn.

15 And for the record, sir, would you please give
16 us your full name, spelling your last name.

17 THE WITNESS: It's Shane Robert Bower,
18 B-O-W-E-R.

19 THE ARBITRATOR: Thank you.

20 And your position, if any, with the department?

21 THE WITNESS: I am currently a lieutenant and
22 the professional standards division commander for the
23 Vallejo Police Department.

24 THE ARBITRATOR: Thank you.

25 Josh, your witness.

1 MR. OLANDER: Okay. Thank you.

2 DIRECT EXAMINATION

3 Q. BY MR. OLANDER: Good morning, Shane.

4 A. Good morning.

5 Q. Real quick, Shane. Are you testifying this
6 morning pursuant to a subpoena from my office?

7 A. I am.

8 Q. Okay. And you mentioned that you are currently
9 the lieutenant and an internal affairs commander; is
10 that correct?

11 A. Correct. The correct term would be
12 professional standards, and internal affairs is one
13 component of that assignment.

14 Q. Okay. And you're the commander --

15 THE ARBITRATOR: I always say IA, so that's
16 okay.

17 THE WITNESS: I am, yes.

18 Q. BY MR. OLANDER: And you're the commander over
19 professional standards; is that accurate?

20 A. Correct.

21 Q. Okay. And do you currently have any other
22 ancillary duties or assignments outside of your role as
23 the commander over professional standards?

24 A. I do.

25 Q. And what are those?

1 A. I am currently the SWAT commander. I am the
2 department rangemaster. I still work as a peer support
3 member for the department's peer support team as well.

4 Q. Okay. And on June 2nd of 2020, what was your
5 rank and assignment?

6 A. I was a sergeant for the traffic division.

7 Q. Okay. Did you have any other ancillary duties
8 as of June 2nd, 2020, outside of your assignment in
9 traffic?

10 A. I did.

11 Q. And what were those?

12 A. At that time I was a member of the hostage
13 negotiation team. I believe at that time I was the
14 commander of that team.

15 I also worked as a firearms instructor. I
16 was -- so I had two stints as rangemaster, and I believe
17 at that time was about a one-year break from being the
18 rangemaster to being an instructor on that team and then
19 back to rangemaster again.

20 At the time I was also still peer support.

21 Our recruitment team was still somewhat in
22 play, so I had a role in that as well.

23 I think I've covered my assignments to that
24 point.

25 Q. Okay. And so in total how long have you been

1 the rangemaster for the Vallejo Police Department?

2 A. I think total time would be approximately
3 five years.

4 Q. Okay. And what duties generally is entailed
5 being a rangemaster?

6 A. So it's primarily managing the program as far
7 as who our instructors are, what our instructors are
8 going to be teaching. So managing the curriculum, the
9 budget as well as far as all the equipment, range
10 rental, things along those lines.

11 In my role I put out what I expect, to include
12 updates, legislative updates, policy updates, things
13 along those lines, to our range staff, but it's
14 primarily the range staff's responsibility to put
15 together training outlines.

16 But as the rangemaster, essentially anything
17 and everything that is firearms related for the Vallejo
18 Police Department falls somewhere under my
19 responsibility, to include even with the SWAT team and
20 the less lethal armory as well.

21 Q. Okay. And how long have you been a firearms
22 instructor or were you a firearms instructor?

23 A. Well, for the Vallejo Police Department, I
24 believe I started in 2010, but I have prior experience
25 in the United States Army as a firearms and tactics or

1 small arms and tactics instructor as well.

2 Q. Okay. And how long were you in the army?

3 A. A total of 21 years, reserve time with a
4 deployment and some active duty, short active duty
5 stints.

6 Q. And how long were you a firearms instructor for
7 the United States Army?

8 A. Approximately 17 of those 21 years.

9 Q. Okay. And, I'm sorry, how long have you been
10 employed with the Vallejo Police Department?

11 A. I started in Vallejo in October 1999, so over
12 23 years.

13 Q. Okay. Any other special assignments or
14 collateral duties as it relates to firearms and tactics
15 while employed with the Vallejo Police Department?

16 A. We had -- well, we have a patrol rifle program.
17 So I started off as a member at one of the first groups
18 of patrol rifle officers in the early 2000s. I was a
19 part of that. And then with the instructor position, I
20 am also a patrol rifle instructor. So that's a separate
21 in-house course that we do for all of our Vallejo
22 officers that express interest in carrying and having a
23 patrol rifle.

24 Q. Okay. And I know that this is -- I don't know
25 if you can answer this, but can you approximate how much

1 training you have completed in the areas of firearms and
2 tactics?

3 A. If you're asking for hours, I have absolutely
4 no idea. I can kind of summarize the types of training
5 I've been to, but it's a fairly significant amount in my
6 career both in law enforcement and as a soldier.

7 Q. Okay. And this is spanning your -- it sounds
8 like your 21 years in the United States Army on top of
9 your 23 years at the Vallejo Police Department?

10 A. Correct.

11 I should mention both prior to working for the
12 City of Vallejo, I was a deputy sheriff for [REDACTED]
13 [REDACTED] for two and a half years where I served on their
14 SERT team, which is their sheriff's emergency response
15 team, also received firearms training while there, along
16 with other tactics training.

17 And then prior to that, and there's a bit of an
18 overlap, I was a reserve officer for the [REDACTED]
19 [REDACTED] for approximately eight months prior to
20 going into the full-time academy, and that's when I took
21 the job at the [REDACTED].

22 Q. Is it fair to say too many hours to count in
23 terms of your firearms and tactics training?

24 A. Yeah. I mean, it would require me to go
25 through my POST transcript dating back to 1996 and

1 mining out that information there.

2 But, in addition to that, I've attended a
3 number of trainings where it's not POST-certified
4 training, so put on by private companies and whatnot,
5 and/or the federal government or through the military,
6 and none of that would reflect in my POST transcript.

7 But, as I said, I can summarize the types of
8 training and specify some of it, but to try to nail down
9 exactly or even close to an exact amount would be a
10 pretty large task to do.

11 Q. Okay. I think your summary is pretty
12 sufficient. We don't need to go through all those
13 years. We might be here for quite some time if we do
14 that.

15 Do you also -- obviously you train others as a
16 firearms instructor as well, correct?

17 A. I do.

18 Q. Okay. And you provide that training for the
19 Vallejo Police Department you mentioned?

20 A. I do.

21 Q. Okay. And approximately how many of those
22 trainings have you provided to the Vallejo Police
23 Department?

24 A. Again, kind of hard to answer. It goes
25 basically on we have what's called AOT, advanced officer

1 training schedule. That fluctuates as far as the amount
2 of firearms training we provide.

3 Historically we had a training session on the
4 range anywhere from four to six times a year for a full
5 day of training. More recently that's been brought down
6 to about two sessions a year to comply with the POST
7 perishable skills standards, which is four hours of
8 firearms training every two-year training cycle.
9 However, we exceed that by at least doubling that in
10 every two-year training cycle.

11 But, in addition to that training, we rent the
12 range for a variety of other training events. So, for
13 example, I mentioned the patrol rifle school. We will
14 run one or two of those every year or every other year.
15 That's 24 hours of instruction there that's provided.

16 We do new hire orientation.

17 We do -- another example would be kind of off
18 out aside from the norm is when COVID hit and officers
19 were required to wear personal protective equipment, we
20 saw a need to provide training with their equipment
21 while wearing that face mask, glasses, and rubber
22 gloves. So that was a whole separate firearms training
23 block that we provided to the members of the police
24 department.

25 So for me to say a number of hours would be,

1 once again, kind of difficult. I'm not trying to be
2 vague on this. It's just kind of a continuous thing.

3 For example, I was on the range providing
4 training three days just this last week. One was for
5 SWAT training and two were for new hire orientation.
6 And we try to incorporate any and all additional
7 training during those sessions to other members of the
8 department. It may be something as simple as an officer
9 needing to come out and qualify with a new firearm. It
10 may be something where we deem an officer needs remedial
11 training. So there's a broad category of training that
12 we provide.

13 If I had to average it, I would say I'm on the
14 range minimally two days a month providing some type of
15 training or instruction to members of the police
16 department. And that would be a low estimate.

17 Q. Thank you, Shane. That sufficiently answers my
18 question.

19 Now, would you say that members of your SWAT
20 team and members of CRT undergo more or -- of the same
21 amount of training as regular patrol officers with the
22 Vallejo Police Department?

23 A. So both of those assignments typically receive
24 a significant amount of additional training as opposed
25 to a patrol officer or, for that matter, even other

1 assignments within the department.

2 So having worked on the -- well, it was called
3 the crime suppression unit but it's what the CRT, crime
4 reduction team, ultimately was renamed. I spent four
5 and a half years on that team.

6 And then also with the knowledge of what SWAT
7 does, that's two separate assignments that both have a
8 significant additional amount of training involved on
9 top of the core amount of training that a patrolman or
10 somebody in another bureau would be required to do here.

11 Q. And when you provide firearms and tactics
12 training to members of the Vallejo Police Department,
13 does that training also involve discussions regarding
14 law and policies related to the use of deadly force?

15 A. Every time.

16 Q. And does that training also involve discussion
17 regarding human factors as it relates to the use of
18 deadly force?

19 A. It does.

20 Q. And can you please describe or define what
21 exactly human factors is in the context of the use of
22 deadly force?

23 A. So human factors is taking into account the
24 individual or individuals involved in a deadly use of
25 force. And it can start typically with what that

1 person's training and experience is, in both that type
2 of training and to include training beyond that.

3 Life experience is also a factor that comes
4 into play, all the way down to how much sleep that
5 person had the night before, how they perceive and react
6 to different types of threats or other challenges that
7 they may come across during their daily routine.

8 There's -- really it's -- it's hard to just
9 specify one specific definition to what human factors
10 incorporate because it's everything about that
11 particular individual or individuals and now you put
12 them into an extremely stressful environment where they
13 have a psychological and/or emotional reaction and a
14 physical reaction.

15 And we have an understanding of what the
16 general response is going to be for most law enforcement
17 officers, but there's always varying degrees of how an
18 individual will respond in this line of work, since
19 we're speaking specifically about deadly enforce
20 [verbatim] encounters.

21 Q. So that would be -- you know, to summarize, and
22 tell me if you agree, that when you're looking at human
23 factors, you're looking at the ways in which individuals
24 perform under stress?

25 A. Correct.

1 And I don't know if this would be the time to
2 mention it, but it's extremely important to factor in
3 the human aspect of it when analyzing it after the fact.
4 Because it's very common for somebody to analyze a
5 use-of-force encounter after the fact and completely
6 disregard what the individual was experiencing
7 psychologically and physically at the time.

8 Q. And you mentioned perception -- I think you
9 mentioned perception response or perception reaction.
10 What is that, again, specifically as it relates to the
11 use of deadly force?

12 A. Well, the individual sees what they perceive as
13 a threat, and then they have to formulate some type of
14 reaction to that threat.

15 So if they perceive that they are about to be
16 fired upon, or let's just say -- because it could be
17 more than just a weapon being used against them -- they
18 perceive that deadly force is going to be used against
19 them or maybe somebody else -- one of their partners, a
20 civilian, it could be any other person -- they have to
21 formulate how they are going to respond to that or react
22 to that.

23 And that -- you have the thought process, then
24 you have to have the physical component that accompanies
25 that following a thought process, which in this case or

1 in these types of situations would be using lethal force
2 against whatever the threat is.

3 Q. So does that perception response look at the
4 amount of time that it would -- generally takes a human
5 being to respond to a certain -- to a threat or, in this
6 case, to an officer responding to a threat?

7 A. Correct.

8 And going back through a variety of studies,
9 perception reaction, even in the most optimal
10 circumstances, is typically three-quarters of a second.

11 Now, there have been highly trained operators
12 or, for example, certain athletes, which is clearly not
13 the stress of a deadly force encounter, where that can
14 be reduced.

15 But for the average law enforcement officer
16 responding to a deadly threat, it's typically a little
17 bit longer than that three-quarters of a second, but
18 three-quarters of a second has been kind of generally
19 understood as being the fastest response time for a law
20 enforcement officer reacting to a deadly threat.

21 And it could also come into factors with things
22 like driving. A car pulls out in front of you, things
23 along those lines, where you perceive that danger to
24 yourself or others and then you have to formulate a
25 response.

1 Q. Now, have you ever been called upon as a
2 subject matter expert to render opinions and analysis
3 regarding firearms and tactics?

4 A. I have.

5 Q. Okay. And just generally, without getting into
6 the specifics of any, you know, cases, in what
7 capacities have you been called upon to render your
8 expert opinion regarding firearms and tactics?

9 A. Well, typically the use-of-force standpoint of
10 analyzing what the use of force was and then rendering
11 opinion as to whether it was justified or not.

12 And, furthermore, oftentimes to explain the
13 breakdown frame by frame of the event as it occurs,
14 because oftentimes untrained people will look at that
15 and formulate an opinion that may not be favorable
16 because they don't actually have all the facts or they
17 are not looking at it through the lens of a properly
18 trained person.

19 Q. Okay. And have you testified in court in the
20 area of use of force?

21 A. I have.

22 Q. Okay. Do you provide any analysis for your
23 city or the Vallejo Police Department regarding
24 officers' use of force?

25 A. I do.

1 Q. Okay. And have you ever testified in a setting
2 like this, in a labor arbitration setting, on the use of
3 force?

4 A. Not for -- no, not in this environment.

5 Q. Okay.

6 A. Not that I recall.

7 Q. That's fine.

8 Buddy, at this time I'd like to qualify Shane
9 as an expert in firearms and tactics.

10 THE ARBITRATOR: Jeb, any objection?

11 MR. BROWN: No.

12 THE ARBITRATOR: Thank you.

13 MR. OLANDER: Thank you.

14 Q. Shane, if you could please explain what a
15 high-risk stop or a felony stop is.

16 A. Okay.

17 Once it's determined that a subject has
18 committed a felony or may be some type of threat to you
19 or others, you formulate a plan of how to best approach
20 that.

21 So if we're talking a vehicle stop, typically
22 there would be some type of plan communicated. A
23 vehicle stop would be made behind the threat vehicle or
24 the suspect vehicle. Distance would come into play here
25 between the coordinating officers. People -- the

1 officers responding would have their weapons drawn.
2 They would coordinate with who would be giving commands
3 to the suspects. If the suspects are cooperating, they
4 will give them the commands and allow them to surrender.
5 They will communicate that there would be somebody that
6 would be physically responsible for apprehending that
7 person, so that would be your less lethal or arrest team
8 option in those circumstances.

9 It also can apply to pedestrian stops from the
10 standpoint of stopping short, pointing weapons at the
11 suspect, giving commands to the suspect. And then
12 depending on what level of compliance you get from that
13 suspect, you take whatever action is necessary at that
14 point in time.

15 Q. Okay. And how, if at all, does the -- do the
16 principles of time, distance, and cover apply to
17 high-risk stops?

18 A. Well, it's supposed to work to the advantage of
19 the arresting officers and/or the officers that are
20 responding to the arrest or threat.

21 If you have the advantage of distance and time,
22 you can usually formulate a better plan or at least have
23 time to communicate how you go about doing that.

24 Also, if you are able to have -- and the
25 standard is that you would have more officers there than

1 the amount of suspects that you would be engaging at
2 that point in time.

3 Time and distance comes into play with a lot of
4 things as it pertains to us, but it's only fair that I
5 mention, we don't always have that luxury of time and
6 distance when encountering subjects, whether it's a
7 deadly force scenario or not.

8 Q. And is a high-risk stop consistent with
9 principles of deescalation?

10 A. It is.

11 Q. And how so?

12 A. If you have the ability to use the time and
13 distance and gain the tactical advantage over the
14 suspect, you may have -- you buy yourself time to
15 formulate that plan.

16 You also may give the suspect time to decide to
17 surrender at that point in time.

18 But if at that point in time they decide to
19 present a deadly threat and the officers have to respond
20 to that, that distance, time, and position that they are
21 in should and typically does provide the advantage to
22 the officers to neutralize that threat.

23 Q. Now, in your opinion based on your, you know,
24 23 years with the Vallejo Police Department, generally
25 how experienced are officers at the Vallejo Police

1 Department in conducting high-risk felony stops?

2 A. I would -- in this case I would say extremely
3 experienced in conducting high-risk stops.

4 Q. And why do you say that?

5 A. The City of Vallejo is a very, very busy city.
6 We routinely conduct high-risk stops. It's also
7 routinely covered in training from the very beginning,
8 from the new hire orientation all the way through
9 advanced officer trainings.

10 Our officers are routinely stopping stolen
11 vehicles. They are routinely doing felony car stops for
12 a variety of crimes, typically violent crimes. So
13 there's that.

14 Then you factor in our short staffing which is
15 something we've experienced for -- well, going back to
16 the early 2000s. They are going to have more exposure
17 per officer to these types of events. I shouldn't say
18 they are not -- I should say they do have, not going to
19 have, they do have more exposure to these type of
20 events.

21 A felony car stop in the City of Vallejo is --
22 and I try to shy away from using the word "routine" as
23 it pertains to law enforcement, but it really truly is a
24 routine thing that our officers are engaging in in this
25 city as opposed to other cities with lower crime rates,

1 lower criminal populations. It may be a rare experience
2 in a lot of other municipalities.

3 Q. And would you say that members of CRT and
4 members of SWAT have more or the same level of
5 experience with high-risk stops than your patrol
6 officers at Vallejo?

7 A. I can tell you from experience that the CRT
8 team has significantly more experience and training in
9 conducting high risk, not just stops, but contacts in
10 all aspects.

11 Q. Okay. And have you heard of the phrase "action
12 beats reaction"?

13 A. Correct.

14 Q. And is that an aspect of human factors and
15 perception response time as it relates to the use of
16 deadly force?

17 A. It is.

18 Q. And what -- and what is the training concept
19 behind the phrase "action beats reaction"?

20 A. So action is the first event -- I mean, it's
21 self-explanatory, but it's the first event. And then
22 whoever is reacting to it has to process what is
23 happening, formulate a plan, and then react.

24 So you're always at a disadvantage when you're
25 reacting to something. So this is where training, your

1 experience comes into play and, to some degree, even
2 luck, where your ability to overcome whatever that
3 action is taken against you and come out successful with
4 your reaction.

5 Q. Now, in the context of an analysis regarding
6 the use of deadly force and Penal Code section 835a,
7 what does the phrase "present ability, opportunity, and
8 apparent intent" mean to you?

9 A. It means that the -- from the officer's
10 standpoint, is that what you're asking me?

11 Q. Yes.

12 A. Okay. It means that the officer's perception
13 is that that person, quite literally, has the ability to
14 use deadly force or is a deadly threat to them or
15 others. They have the ability to carry that out, and
16 the officer has to formulate a plan and react to that.

17 Q. Now, is that based upon the officer's
18 perceptions at the time or looking at the situation in
19 hindsight to determine whether that person actually had
20 the ability to cause a threat or to be a deadly threat?

21 A. It has to be looked at from the officer's
22 perception at the time. To look at it in hindsight is a
23 disservice to what that officer is experiencing at the
24 time and leaves out relevant facts.

25 Q. Is there any part of a use-of-force analysis

1 that you conduct that analyzes that officer's
2 decision-making using a hindsight determination?

3 A. If I'm understanding you correctly, we only
4 look at it in hindsight, but you have to take in the
5 factor of what was occurring at the time. You can't
6 just look at it and parse out individual actions because
7 you're not taking all relevant factors into account.

8 You can't recreate the stress of the event in
9 hindsight, analyzing it through video, interviews, or
10 reading a report.

11 Q. And does the fact that a subject that had
12 deadly force used upon them, turns out after the fact to
13 not be armed, does that change the analysis as it
14 relates to the present ability, opportunity, and
15 apparent intent?

16 A. It does not.

17 Q. And why is that?

18 A. Because the officer perceives the threat at
19 that time taking into account all of the events leading
20 up to that encounter and the events that are occurring
21 during that encounter.

22 So to look at it from the hindsight standpoint,
23 you have the luxury of seeing that an object may not be
24 a deadly weapon or in the sense of a deadly weapon that
25 could be used in the event as it played out.

1 So I know we're steering away from this event
2 specifically, but the item in question could in fact be
3 used as a deadly weapon. If it's perceived to be a
4 different item, such as a firearm, it's perceived as a
5 deadly weapon in that situation at that distance.

6 Does that make sense?

7 Q. It does.

8 A. Not to confuse the answer here.

9 Q. No, it does. Thank you.

10 And, you know, we have talked a bit about human
11 factors, the psychology of, you know, being in a deadly
12 force encounter; but in your capacity as a firearms and
13 tactics instructor, have you studied the behavior of
14 officers following their involvement in a critical
15 incident?

16 A. To some degree, yes.

17 Q. Okay. And in what degree?

18 A. Well, from the standpoint of being present in
19 these situations, having been in an officer-involved
20 shooting, and other deadly force encounters in the
21 military, quite a few, but from the law enforcement
22 standpoint too, the training. So I'm --

23 (Reporter interruption.)

24 Q. BY MR. OLANDER: Go ahead, Shane, if you recall
25 where you were, continue from there.

1 A. Well, so the training I've received is, so
2 Force Science, I'm Force Science certified.

3 Q. And what is Force Science?

4 A. So Force Science is an internationally
5 recognized training that breaks down everything leading
6 up to, during, and after a use-of-force incident, taking
7 in human factors, taking in distance, time, taking in
8 all relevant factors and breaking down in a -- you know,
9 for lack of better terms, a scientific formula of how
10 these things occur, and they do come up with a better
11 explanation than what is oftentimes understood by the
12 naked eye.

13 It can get as detailed as for events that are
14 captured on camera, the speed at which it's being
15 recorded, because some of those, if you slow them down,
16 there will be gaps in time.

17 I know I'm kind of going off topic on here, but
18 Force Science also takes into account, along with the
19 human factors training and the force encounters analysis
20 training, it takes into account the officer's emotional
21 response, psychological response, and physical response
22 to these events leading up to it, during the event, and
23 after the event.

24 Q. Okay. And so in your experience in Force
25 Science and your first-hand experience as you discussed

1 in the military, have you experienced officers engaging
2 in behaviors that sometimes maybe do not make sense or
3 statements that don't make sense following a shooting?

4 A. Absolutely.

5 Q. Okay. And what does Force Science and your
6 personal experience teach you about those types of maybe
7 bizarre statements or actions that officers may engage
8 in following a critical incident?

9 A. Well, the person, the officer, has just been
10 put into an extremely stressful situation. They have a
11 wide range of emotions. What they say, what they do, or
12 how they react can be a wide variety of things.

13 They may say something and not even recall that
14 they said it. Some people may even have the inability
15 to formulate words or coherent sentences. Some of them
16 are still processing -- really probably all of them are
17 still processing the events in their mind while they are
18 trying to formulate thoughts and verbalize what they
19 want to say, although it may not necessarily be coming
20 out coherently or in the manner in which they intended
21 it to come out.

22 Q. And in your -- oh.

23 A. And there's the other side of that, too, where
24 people can communicate clearly.

25 I mean, and I can tell you from experience, you

1 can -- you can experience a wide range of these
2 emotions, physical and psychological responses,
3 regardless of how many of these events you've been in.
4 Whether it's your first, your second, your third, you
5 may experience some of these what would be considered
6 negative or odd reactions after you've already
7 experienced these events before and had a more coherent
8 reaction.

9 Q. And what, based upon your training, are the
10 causes for these types of behaviors or emotional
11 responses?

12 A. I mean, in the most simplest terms, the stress.
13 They have just perceived that their life and maybe the
14 life of others has been threatened. They have been put
15 into this situation where there is potentially a sensory
16 overload. They had to formulate a plan to eliminate
17 that threat that has now occurred. The amount of stress
18 there is above and beyond what most human beings
19 encounter in their lifetime.

20 Q. Now, have you conducted, I mean, you know,
21 trained others at the Vallejo Police Department
22 regarding shooting through a vehicle's windshield?

23 A. We have.

24 Q. Okay. And what did that training consist of?

25 A. So without going into the weeds of all of our

1 training outline content, but as it specifically relates
2 to that, it is shooting into and out of vehicles. So we
3 get loaner vehicles from the tow yards so we are
4 actually able to physically shoot through a windshield
5 and not just discuss it.

6 Now, there is discussion at training events
7 regarding the range, ballistics, any potential
8 deviation, other auditory/visual factors that come into
9 play when it comes to shooting, in particular, out of a
10 vehicle through a windshield, and also to include the
11 side windows of a vehicle. Then we put the officers
12 through the actual shooting scenario.

13 So in our outlines we have a wide range of
14 different shooting courses. So we have to tailor that
15 to what you would be doing while seated in a vehicle
16 perceiving the threat.

17 So in our training environment we have some
18 type of threat command or threat indicator. It can be a
19 visual indicator, it can be a verbal command, that's the
20 best way that we can replicate that, and then the
21 officer has to engage that threat from within the
22 vehicle through the windshield, or the side window, but
23 typically through the windshield.

24 And we explain the reasoning behind that,
25 because some of the criticism or things that come up is,

1 well, why did the officer not exit the vehicle and not
2 shoot through the windshield. Well, time is of the
3 essence in these scenarios. If it gets to the point
4 where an officer has to fire a weapon through the
5 windshield, that is the most immediate and safest way to
6 address the threat.

7 If you're taking the time to stop a vehicle if
8 it's moving or put the vehicle in park if it's in drive,
9 potentially undo a seat belt, open a door, this is all
10 critical time that you're losing, plus dividing your
11 attention under this extremely stressful and deadly or
12 potentially deadly situation. You have to engage a
13 threat in the quickest, most efficient way, and that
14 includes engaging, so drawing your firearm, acquiring
15 the target through the windshield, and then firing
16 through that windshield.

17 So in the discussion portion of this, we
18 discuss how typically shooting through a windshield from
19 the interior of the vehicle will create a slight
20 deviation upward of the projectile. If you can fire
21 rounds through the same hole, you reduce any deviation
22 of that bullet, that projectile, finding its target.

23 Now, I should also note, that deviation is
24 minor. It is very minimal. So it's not you're drawing
25 your weapon, you're firing through a windshield, and you

1 run the risk of shooting somebody three feet high or to
2 the left or to the right, because, as I stated, it's
3 typically an upward deviation.

4 So in the training we provide -- and I
5 confirmed this -- it's between 20 yards and 35 yards
6 from inside the vehicle.

7 Once the person is successfully engaging the
8 target from within the vehicle, once we determine that
9 threat is neutralized, usually through a verbal command,
10 we will have them exit the vehicle, take a position of
11 cover, not hindered by the vehicle, and then formulate
12 the plan to approach, or we will end the scenario at
13 that point in time. There's a variety of routes we can
14 take with that.

15 Now, as far as -- I'll spend less time on this.

16 As far as shooting into a vehicle through a
17 windshield, there is a slight deviation downward.

18 So we tell officers -- we train officers that
19 if you have to shoot into a vehicle at a threat, expect
20 the vehicle -- or that the projectile is going to take a
21 slight downward motion as it enters through the
22 windshield.

23 Once again, if you can put the rounds through
24 the same hole, you're going to have less chance of that
25 projectile deviating downward and hit the target that

1 you're aiming at.

2 Q. Now, when you are training officers on shooting
3 through a windshield, and specifically from within a
4 vehicle outside, do you train them in regards to how
5 many rounds they should fire?

6 A. We train our officers to fire until the threat
7 is neutralized or they no longer perceive the threat.

8 Now, with the -- very, very -- there is an
9 exception on occasion, but not under these
10 circumstances.

11 So just so I'm not leaving any stone unturned.
12 For example, if it's sniper training, which is clearly
13 not what we're talking about now, that would be a
14 scenario where you're not having the officer
15 continuously fire. It is a precise shot.

16 But in handgun encounters, rifle encounters,
17 whether it's through a windshield or from a vehicle or
18 standing, whether behind cover or not, behind cover, we
19 train our officers to shoot until the threat is
20 neutralized, until they no longer perceive that threat.

21 And then, furthermore, once they stop firing,
22 to go into a low, ready position and then assess for any
23 potential threats, assess the threat that you had just
24 neutralized, and hopefully take a look around to kind of
25 break the potential of tunnel vision and be able to gain

1 your facilities a little better at that point in time.

2 Q. Now, how does perception response time factor
3 in to your training in regards to shooting at a
4 potential threat until that threat is neutralized?

5 A. Well, your perception reaction is the initial
6 threat that you're seeing. You are formulating that
7 plan. You're reacting to that.

8 Now, if you're asking me about during that
9 encounter or --

10 Q. Yes.

11 A. -- post after the encounter --

12 Q. I'm talking about during the encounter, how
13 does perception response time factor in in terms of the
14 officer's perception that the threat is no longer there?

15 A. Well, there's a lot of factors that come into
16 play here, but primarily they are watching that threat
17 dissipate or should be processing that.

18 Now, there is -- and it has been proven -- a
19 delay in what the officer is seeing. There's, for the
20 lack of better terms, a catch-up. The officers, in the
21 processing of that, what they are registering, what they
22 are processing is there's a lag time from what the
23 suspect may be doing.

24 And so Force Science has broken this down to
25 the umpteenth degree explaining how oftentimes a suspect

1 will be shot in the back because they present a threat,
2 the officer perceives the threat, they respond to the
3 threat, they begin firing, and at the point that the
4 suspect may be turning, the officer at that point is
5 still responding, reacting to the threat as it was
6 facing them, and so there is a lag time in that
7 perception reaction as the event is occurring.

8 Q. Now, when firing through a windshield, do you
9 train officers to fire multiple rounds in quick
10 succession?

11 A. Yeah. I mean, it goes back in line with we
12 train our officers to shoot until the threat is
13 neutralized.

14 In most deadly force encounters using a
15 firearm, officers are going to be rapidly firing their
16 weapon. We do not train an officer in those types of
17 encounters to only shoot one round unless they clearly
18 see that the threat has ended. But typically it is
19 more. And even the physical response in most
20 officer-involved shootings is that the officer fires a
21 volley of rounds.

22 And oftentimes, in the interview process
23 afterwards, an officer will generally state and believe
24 that they fired less rounds than they actually did. But
25 studies have shown, with the processing of the threat,

1 with the physical reaction to the threat, that
2 oftentimes officers fire more.

3 But we do train officers to fire multiple
4 rounds to neutralize a threat. And once they determine
5 a threat is no longer a threat, or their perception is
6 that it's no longer a threat, that is when they stop
7 firing. Then they assess for any additional threats,
8 they assess the threat that they just engaged, and then
9 they formulate a plan to react or however they are going
10 to react after that.

11 Q. Now, moving forward to June 2nd of 2020, did
12 you have any role in the criminal investigation of the
13 critical incident involving Detective Tonn?

14 A. No, not the criminal investigation.

15 Q. Okay. Did you respond to the scene on June 2nd
16 of 2020?

17 A. I did. Well, I guess -- let me correct myself.
18 I was thinking criminal.

19 Yes. As far as the officer-involved shooting
20 incident, yes, I did respond there with the traffic
21 division to do the forensic mapping of the scene.

22 Q. Okay. So you firsthand went to the scene, you
23 mapped it in order to gather distances and the
24 measurements of that shooting scene?

25 A. Correct.

1 Q. Okay. Did you have any other participation in
2 the officer-involved shooting investigation?

3 A. Only interviewed by OIR who is my next role in
4 any of this.

5 Q. And that's for the administrative investigation
6 regarding the shooting?

7 A. Yes.

8 Q. Okay. So what was your understanding of why
9 you were asked to come and provide a statement in the
10 administrative investigation?

11 A. My understanding is I was brought in to give
12 expert or person-most-knowledgeable analysis of the use
13 of force in this event.

14 Q. Okay. And so -- and what were you -- so
15 generally were you asked about the use of force during
16 that administrative interview?

17 A. Well, yes. And also as far as our training and
18 specific to the weapon used, distractionary device,
19 things along those lines as well.

20 Q. Were you also called in on the administrative
21 investigation to discuss the tactics utilized by
22 officers during this incident?

23 A. Correct.

24 Q. Okay. What information, if any, was provided
25 to you prior to your interview with the OIR Group?

1 A. Very little. And as the interview or the
2 process began, I prefaced it with stating, "I don't have
3 all the facts or access to the report of this event."
4 So I was clarifying I'm answering questions based on
5 what they are asking me without having any additional
6 knowledge of what the investigation actually found.

7 Q. Let me ask it this way.

8 Did the OIR Group provide you with any reports,
9 videos, or anything else to review prior to your
10 interview?

11 A. No.

12 Q. So other -- sorry. Strike that.

13 Now, since your administrative interview, have
14 you had the opportunity to review the OIR Group's report
15 or any other investigation materials regarding the
16 June 2nd, 2020, critical incident?

17 A. I have read the complete OIR report shortly
18 after it came out, and then I have reviewed it again
19 more recently.

20 Q. Okay. And did you review that report more
21 recently in preparation for your testimony here this
22 morning?

23 A. I did.

24 Q. Okay. Now, are you familiar with the facts
25 regarding the meeting between [REDACTED] and

1 Detectives Tonn, [REDACTED] and [REDACTED] prior to them
2 entering the Walgreens parking lot?

3 A. I only found out the amount of time -- well,
4 they advised me that -- and by "they" I mean the OIR
5 investigators or interviewers -- advised me that they
6 had met prior to responding in to the Walgreens parking
7 lot. Only after the report came out did I find out that
8 that was roughly 5 to, I believe, 15 seconds.

9 So, yes, I was given some of that information
10 prior to being interviewed, but found out the exact
11 amount, or what was believed to be the amount, after the
12 fact, after I was interviewed.

13 Q. Okay. What is your understanding in regards to
14 what happened during that meeting between the three
15 detectives and [REDACTED] [REDACTED]

16 A. That the detectives met with [REDACTED] [REDACTED]
17 They were advised that the -- they were going to respond
18 or directed to respond to the Walgreens through two
19 different avenues of approach, and then they went. And
20 that very little communication or not a lot of
21 communication occurred during that short meet-up with

22 [REDACTED] [REDACTED]

23 Q. And you used the word "directed." So did
24 that -- in your review of the materials, was that your
25 interpretation of that meeting between the [REDACTED] and

1 the detectives was that the [REDACTED] was giving them a
2 directive?

3 A. Well, from the materials, yes.

4 And I don't want to step out of my lane here,
5 but the mere fact that that team was at the ready and
6 deployed that night, taking into consideration all the
7 events that were leading -- you know, leading up to
8 this, both days and hours and minutes up to this
9 particular response, and that a captain was out in the
10 field, that if a [REDACTED] has this team that is better
11 trained and is the purpose of them being there is to
12 address these events that are occurring in the city
13 during this timeframe, the [REDACTED] calls them over there
14 and advises they are going to go in there, yeah, I
15 interpret that as a directive from one of the
16 highest-ranking members of the department, and that
17 these highly trained detectives and SWAT operators are
18 the people that are specifically trained and expected to
19 respond to these type of events.

20 Q. So would you expect the detectives in this
21 scenario, Tonn, [REDACTED] and [REDACTED] to push back
22 against the [REDACTED] or to tell him they disagreed with
23 the plan or anything of that nature?

24 A. No.

25 And to further explain that, if they had more

1 information going into it, maybe, but you have this
2 captain that's telling them this. There's nothing in
3 what the [REDACTED] directive is that would be
4 considered, in my opinion, unethical, immoral, or
5 illegal or outside of policy. They are responding to
6 crime that is occurring in the city, which is what we
7 are expected to do.

8 And I should note that I've worked with
9 [REDACTED] [REDACTED] for many years, and he was a very
10 efficient and very knowledgeable patrol officer and
11 detective in his career here.

12 So I would think that these younger detectives
13 are responding to a person of significantly higher rank,
14 that has an abundance of training and experience, that
15 they wouldn't need to or feel the need to -- and I'm
16 speculating on this -- to challenge the captain's
17 decision.

18 And, furthermore, the belief may be is they are
19 just going to go in there and effect an arrest or
20 prevent looting.

21 So I don't see a reason -- if I were in that
22 vehicle with the three detectives, I can tell you from
23 my standpoint, I would have been, okay, we are going to
24 do this. I may not like every aspect of it, but I'm not
25 going to challenge what the [REDACTED] did or advised them

1 to do or directed them to do.

2 Q. Now, based on your expertise in law enforcement
3 tactics, what would you conclude that the plan was at
4 that time?

5 A. The plan was to go in and prevent the further
6 looting and destruction of a business in the City of
7 Vallejo. The plan was to take two avenues of approach,
8 presumably to prevent escape, and then effect an arrest
9 on any or all of the subjects that are engaging in the
10 criminal activity.

11 Q. Would you -- in your opinion, was this a poor
12 plan by [REDACTED] [REDACTED] and the detectives?

13 A. I don't think it was a poor plan from the
14 standpoint of approaching a crime in progress from more
15 than one avenue.

16 I think bigger picture, with all the events
17 that were going on in the city, could the assessment by
18 the [REDACTED] have been made that is there a need to go
19 address this, and you could argue that either way.

20 Our job is to protect life and property in the
21 city, to respond to crimes in progress, to make arrests,
22 to keep the peace, and ultimately that's what officers
23 were responding to do.

24 Q. Would you expect under these circumstances for
25 the officers to wait and call additional resources

1 considering that you had three SWAT operators and a
2 captain?

3 A. No. I mean, in the perfect world or ideal
4 scenario, you'll always have more people available to
5 you, but the reality of this particular incident is you
6 have what you have available to you at that time.

7 And, yes, furthermore, you have three highly
8 trained CRT detectives that are also SWAT operators that
9 work together in a very tightknit, cohesive unit, not
10 just once, but times two, being CRT and SWAT.

11 So given the tools that are available at the
12 time, given the personnel that's available at the time,
13 would you want more bodies? Yes. If you had more
14 bodies, would you take them? Yes. Did they have the
15 luxury of doing all that in a very short period of time?
16 I don't believe they did. So I think they used the best
17 tools and people that were available to them at the time
18 to go in and carry out this plan.

19 Q. Do you think that four officers conducting a
20 high-risk felony stop is a sufficient number?

21 A. Four could be -- I mean, you have to take into
22 account how many people you're encountering, but if
23 everyone is cooperating, four, it could be done with
24 four.

25 Q. Do you believe that their plan and the way that

1 they executed the plan constituted a failure to utilize
2 other available resources?

3 A. I think under the circumstances they used what
4 they had available to them. I don't see it as
5 necessarily a failure from the standpoint of not having
6 additional resources available but still having to
7 address the issue.

8 Q. Now, are you also familiar with the facts in
9 regards to the officers' approach through the Walgreens
10 parking lot?

11 A. From the standpoint -- yes, that [REDACTED] [REDACTED]
12 was going to enter from the Broadway Street side and
13 that the detectives were going to enter in from the
14 Redwood Street side, therefore -- I mean, essentially it
15 would be triangulating the target area and the target
16 crowd.

17 Q. And would a felony vehicle stop under these
18 circumstances be an appropriate enforcement action?

19 A. From their positioning or under the
20 circumstances?

21 Q. Under these circumstances.

22 A. If you have the ability to make a felony stop
23 upon arriving on scene, then by all means you could make
24 a felony stop.

25 I mean, you do have to take into consideration

1 other concerns in the area. If you have a vehicle that
2 you want or a pedestrian that you want to make that
3 felony stop on but you have another group of people in
4 close proximity, you may want to reassess that plan at
5 the time.

6 Q. Do you look at this incident and view it as an
7 inappropriate response, meaning a felony stop under
8 these circumstances?

9 A. I don't see it as an inappropriate response. I
10 think that you go in there with a plan to prevent crime,
11 utilize a felony car and/or pedestrian stop, if you can,
12 but understanding that they can reassess if they begin
13 that engagement process and determine that it's not
14 going to work out, they can reassess.

15 But that's the nature of not only this job, but
16 in particular that team, they have the ability to -- or
17 should have the ability to make decisions quickly,
18 formulate plans, and execute those plans.

19 Q. Now, are you familiar with [REDACTED] [REDACTED]
20 broadcast as the detectives were approaching the
21 pharmacy window?

22 A. Yes, that he stated the subjects are armed or
23 may be armed.

24 Q. Okay. And in your experience and expertise,
25 generally how would you expect that type of broadcast to

1 affect the responding officers?

2 A. Well, it absolutely should heighten their
3 awareness from the standpoint of now they are going into
4 a potentially significantly more dangerous situation.

5 THE ARBITRATOR: Can I interrupt one second?

6 MR. OLANDER: Yes.

7 THE WITNESS: Yes.

8 THE ARBITRATOR: Make sure I'm keeping up.

9 Sir, do you know what an exigent circumstance
10 is?

11 THE WITNESS: I do.

12 THE ARBITRATOR: When [REDACTED] said -- well,
13 strike that.

14 Put yourself in the car with the other three
15 for a second, if that's possible. Okay?

16 When [REDACTED] says they are armed or may be
17 armed, do you in your mind think I'm going into an
18 exigent circumstance?

19 THE WITNESS: In my mind you are potentially
20 going into an exigent circumstances.

21 And I apologize for not giving you a yes or no
22 on that because we respond to armed subjects fairly
23 regularly, whether it's an actual shooting and there's
24 an armed subject or a report of an armed subject. And
25 oftentimes we go to these. You don't just not go

1 because now, if anything else, it could be argued there
2 is a greater need for police to respond because you have
3 somebody that's armed that could potentially be a threat
4 to anyone else in society at large. So I would say the
5 need for us to respond is greater if you know that
6 somebody is potentially armed or is armed.

7 THE ARBITRATOR: Okay. Thank you.

8 Josh, I'm sorry to interrupt. I'll try not to.

9 MR. OLANDER: That's okay, Buddy, anytime.

10 THE ARBITRATOR: Please continue.

11 MR. OLANDER: Okay. Thank you.

12 Q. Now, after hearing -- after the detectives
13 heard that broadcast, would you expect them -- and again
14 I'm asking you to look specifically at the facts of this
15 case and the timing and the distances -- would you
16 expect those officers to at that point retreat or
17 reposition their vehicle on approach?

18 A. Well, under these circumstances, my
19 understanding is [REDACTED] [REDACTED] was pulling into the
20 lot. So, no, I would not expect them to retreat under
21 these circumstances.

22 Q. And why is that? You mentioned [REDACTED] [REDACTED]
23 Why is that significant in your analysis?

24 A. Well, you now have him in close proximity to
25 the threat. And as we know, his vehicle was struck by

1 fleeing suspects, and [REDACTED] [REDACTED] sustained injury
2 from that. You can't leave another officer there. You
3 have to formulate a plan to be there. Once again,
4 having additional resources and officers on scene is
5 beneficial to that. Those three detectives were the
6 additional officers responding to the scene at the point
7 where [REDACTED] [REDACTED] is now in the parking lot.

8 Q. Would you expect those officers in the truck to
9 stop the vehicle and then put the vehicle in reverse?

10 A. No, absolutely not. Not with [REDACTED] [REDACTED] in
11 the parking lot and potentially being engaged by the
12 suspects that are there.

13 Q. What does priming mean?

14 A. It's a term used when information or even in
15 some cases misinformation that is put out typically over
16 the air, over a radio, that now primes somebody to
17 potentially respond to something that may not actually
18 be the case, or can be the case.

19 So by putting out that somebody, for example in
20 this case and others, that somebody is armed or may be
21 armed, you should be priming those officers to going in
22 expecting an armed subject, although it may not be the
23 case.

24 It can have positive and negative effects on
25 the individuals responding and the outcomes.

1 Q. Now, upon the detectives approaching the
2 pharmacy window, all three of them, both Detectives
3 Tonn, [REDACTED] and [REDACTED] have all stated that they
4 perceived what they believed to be an imminent threat of
5 death or serious bodily injury.

6 Is that your understanding of the facts of this
7 case?

8 A. Yes.

9 Q. Okay. Now, [REDACTED] [REDACTED] and [REDACTED] as
10 they perceived what they believed to be an imminent
11 threat of death or serious bodily injury, did not draw
12 their weapons.

13 Would you expect them to do so under the
14 circumstances of this case?

15 A. No.

16 Q. Why not?

17 A. Well, let me clarify. Not at that point in
18 time.

19 So you have [REDACTED] [REDACTED] whose
20 responsibility is to drive. You have [REDACTED] [REDACTED]
21 who, based on reports and my understanding is, has a
22 flash bang or a diversionary device. You have
23 Detective Tonn seated in the back seat with a rifle.

24 So my understanding of this is you have your
25 designated lethal force option with a rifle from what I

1 interpret is the most stable shooting platform under
2 these circumstances. The other two have their assigned
3 responsibilities at that point in time.

4 Now, Detective Tonn being the designated lethal
5 threat response, in the event that something were to
6 happen to him and he is no longer effective in
7 addressing a threat, then by all means the other two
8 would have to formulate a secondary plan to then engage
9 a threat with lethal force.

10 But to have them try to multitask, especially
11 for [REDACTED] [REDACTED] while driving, is not fair to
12 state that he should be focusing on driving and using
13 lethal force at the same point in time or same time.

14 Q. Would that be -- oh, sorry. I didn't mean to
15 interrupt you. I thought you were done. You can
16 continue.

17 A. Sorry. I'm a little long-winded here.

18 But then to also have [REDACTED] [REDACTED] whose
19 primary focus is to use a diversionary device, you're
20 now asking, under very tense, stressful circumstances,
21 for that person to now multitask and have both a
22 distractionary device and lethal force is unreasonable,
23 especially when you have, once again, predetermined that
24 Detective Tonn is going to be the lethal force option.

25 And of those three positions in that vehicle

1 and the equipment that was present, that was, in my
2 opinion, the best decision to distribute those
3 responsibilities going into that scenario.

4 Q. And so the distribution of those
5 responsibilities would be consistent with Vallejo Police
6 Department training?

7 A. I would say with Vallejo Police Department
8 training and training across the board with many other
9 agencies.

10 Q. Now, do you think that the fact that
11 [REDACTED] [REDACTED] and [REDACTED] [REDACTED] did not draw and
12 fire their weapons is indicative of there not actually
13 being an imminent deadly threat?

14 A. I do not.

15 Q. Why not?

16 A. Because, once again, they each had their other
17 responsibilities that they were essentially, for the
18 lack of better terms, assigned, and then by the time
19 they would have had the opportunity to engage with
20 lethal force, there was no need to.

21 Q. Now, have you also reviewed the body-worn
22 camera evidence that captures Detective Tonn shooting
23 through the windshield of that truck?

24 A. I have but not recently.

25 Q. Okay. What's your recollection of that

1 body-worn camera video?

2 A. That he has the Colt Commando, or M4, with a
3 suppressor on it, and he engages the -- Mr. Monterrosa
4 through the windshield -- I don't recall the exact
5 distances -- with a quick volley of shots from the
6 seated rear-seat position centered facing the threat.

7 Q. Okay. And based on your expertise in firearms
8 and tactics and the training you've provided, was the
9 manner in which Detective Tonn fired through that
10 windshield consistent with his Vallejo Police Department
11 training?

12 A. Yes.

13 Q. And why is that?

14 A. Because we have taught officers to engage
15 through windshields at varying distances in the safest
16 possible manner. He had the center-most position. He
17 had a shoulder-fired weapon with a suppressor on it and
18 engaged an immediate threat.

19 Q. And does the fact that Mr. Monterrosa was shot
20 in the back of the head change your conclusion that
21 Detective Tonn's actions in firing through that
22 windshield were consistent with his training?

23 A. I'm sorry. Can you repeat?

24 Q. Yes.

25 Does the fact that Mr. Monterrosa was shot in

1 the back of the head change your conclusion that
2 Detective Tonn's actions in firing through the
3 windshield were consistent with his training?

4 A. I believe that his actions were consistent with
5 training. And the shot placement on the threat is of
6 lesser concern to me because time and time again it's
7 been shown that once a suspect is being fired upon, they
8 can do -- have a variety of reactions in a very short
9 period of time. So the mere fact that somebody is shot
10 in the rear portion of their body does not take away
11 from the perceived threat and/or reaction that the
12 officer reacts with.

13 So the short version is I believe that
14 Detective Tonn was in line with our training and policy
15 as it pertains to shooting a vehicle from a windshield
16 or addressing a threat.

17 MR. OLANDER: Thank you.

18 I have no further questions at this time.

19 THE ARBITRATOR: Let's go off the record.

20 (There was a discussion held off the record.)

21 THE ARBITRATOR: Let's go back on the record.

22 I'll ask if there is any cross.

23 MR. BROWN: Yes.

24 Thank you.

25 THE ARBITRATOR: Your witness.

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CROSS-EXAMINATION

Q. BY MR. BROWN: Good morning, Shane. How are you?

A. Good. How are you?

Q. Good.

When you were describing the mechanics of conducting a felony stop, you said that you conduct a felony stop from behind the suspect, right?

A. Well, ideally.

Q. So --

A. That's not always the case.

Q. But the reason that you conduct a felony stop from behind the suspect in part is to have a tactical advantage over the suspect, right?

A. Correct.

Q. And that also gives you hopefully more distance and the ability to have some cover as you're giving commands to a suspect, right?

A. Ideally, yes.

Q. You're familiar with Penal Code section 835a?

A. I am.

Q. Okay. The totality of circumstances definition states the totality of circumstances means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the

1 use of deadly force.

2 Is that your understanding of that definition
3 in 835a?

4 A. Yes.

5 Q. So you've given significant training and
6 participated in significant training regarding both
7 shooting into and shooting out of a vehicle, right?

8 A. That's correct.

9 Q. And when you shoot through glass, the glass
10 shatters, right?

11 A. Well, that requires a little more than a yes or
12 no answer.

13 Q. Okay. Go ahead.

14 A. So you have different types of glass. So if
15 we're specifically talking about a windshield, which is
16 a safety glass, there is some shattering, but it's not
17 in the traditional sense of, say, a house window or even
18 the tempered glass on the passenger sides of a vehicle.

19 Q. But there's shattering of the windshield as you
20 fire from inside a vehicle?

21 A. Yeah. I mean, from the standpoint of glass
22 breaking, yes, glass is breaking when you fire a bullet
23 through a window.

24 Q. And firing in that contained area from firing
25 inside a vehicle, there's going to be increased noise;

1 is that fair?

2 A. Yes.

3 Q. I understand that in this circumstance that
4 we're talking about there was a suppressor on on the
5 weapon that was fired, but there's still going to be
6 some noise both to the officer shooting and partner
7 officers in the vehicle, right?

8 A. Yes.

9 Q. Oh. As an officer is firing, you said the
10 training is to fire until the threat is resolved or
11 neutralized?

12 A. Correct.

13 Q. And so there is a constant perception by the
14 officer who is firing of the threat; is that right?

15 A. There should be, yes.

16 Q. And there's a constant reevaluation of that
17 threat because, as you said, you don't know how many
18 rounds have to be fired, right?

19 A. Correct.

20 Q. And that perception is primarily going to be
21 visual; is that right?

22 A. Primarily, yes.

23 Q. Oh. You don't have any training in psychiatry
24 or psychology, do you?

25 A. Not -- well, I've spent ten years in

1 psychological operations for the United States Army, so,
2 and I've taken some college courses in psychology, but I
3 am not a psychiatrist or a psychologist.

4 Q. Okay. The Force Science class that you took --
5 well, strike that.

6 How many classes have you taken from Force
7 Science?

8 A. I've taken one one-week class in Force Science
9 certification.

10 MR. BROWN: Okay. I don't have anything
11 further.

12 THE ARBITRATOR: Any redirect?

13 MR. OLANDER: Yeah. One moment, please.
14 Sorry.

15 THE ARBITRATOR: Off the record.

16 MR. OLANDER: Thank you.

17 (Pause in proceedings.)

18 THE ARBITRATOR: Let's go back on the record.

19 Shane, thank you very much for your
20 participation in this matter.

21 THE WITNESS: You're welcome.

22 THE ARBITRATOR: All witnesses are subject to
23 possible recall. I do my best to try not to get anybody
24 recalled; we want you to go on about your day. Nice to
25 meet you. Be well.

1 And we are off the record.

2 (Recess.)

3 THE ARBITRATOR: Let's go back on the record.

4 Officer, would you please raise your right
5 hand, please.

6 JASON POTTS,

7 called as a witness by the association, being first duly
8 sworn or affirmed by the arbitrator, was examined and
9 testified as follows:

10 THE WITNESS: Yes, I do.

11 THE ARBITRATOR: Okay. Let's show the next
12 witness for the association has been called and sworn.

13 And for the record, sir, would you please give
14 us your full name, spelling your last name.

15 THE WITNESS: Jason Potts, P-O-T-T-S.

16 THE ARBITRATOR: Thank you.

17 And your position, if any, with the department?

18 THE WITNESS: With the City of Vallejo, at the
19 time it was captain.

20 THE ARBITRATOR: And now?

21 THE WITNESS: Chief, public safety director for
22 the City of Las Vegas, department of public safety.

23 THE ARBITRATOR: Las Vegas.

24 THE WITNESS: City of Las Vegas, yes,
25 department of public safety.

1 THE ARBITRATOR: Let's go off the record.
2 (There was a discussion held off the record.)
3 THE ARBITRATOR: Back on the record.
4 Josh, your witness.

5 MR. OLANDER: Thank you, Buddy.

6 DIRECT EXAMINATION

7 Q. BY MR. OLANDER: Good morning, Jason.
8 Can I call you Jason?

9 A. Yeah, of course.

10 Q. Okay. Thank you.

11 Good morning. Thanks for being with us. I
12 know you're very busy.

13 A. Yeah. Thanks for having me.

14 Q. Of course.

15 Before we get into this, are you testifying
16 here this morning pursuant to a subpoena from my office?

17 A. I am. A subpoena, yes.

18 Q. Thank you.

19 And I understand you are the chief of police
20 for public safety out in Las Vegas.

21 How long have you been in that position?

22 A. Going on nine months now.

23 Q. Okay. And prior to your position as the chief
24 of police in Las Vegas, were you employed at the City of
25 Vallejo?

1 A. I was.

2 Q. Okay. And that was with the Vallejo Police
3 Department?

4 A. It was, yes.

5 Q. And how long were you employed by the Vallejo
6 Police Department?

7 A. About 22 years. I started in December of 2000,
8 and I left June 16th or so of 2022.

9 Q. And if you could just summarize for us your,
10 you know, various ranks and assignments and special
11 duties while you were employed with the Vallejo Police
12 Department.

13 A. Sure.

14 So I moved up the ranks. Started as an officer
15 and then I moved up the ranks to captain.

16 In the times that I was there at the City of
17 Vallejo, I was -- I worked specialized assignments such
18 as crime suppression, a major case section, homicide,
19 DEA, drug task force in Oakland, FBI violent gang task
20 force in Solano County, FTO, lieutenant, bike patrol
21 sergeant, IA investigator.

22 I have pretty much -- I had a fabulous career
23 at the City of Vallejo and pretty much did everything
24 except for traffic.

25 Q. And so you ended your career with Vallejo as a

1 captain you said?

2 A. I did.

3 Q. And what was your overall sort of
4 responsibilities? What did you oversee as a captain?

5 A. So I oversaw at the time operations bureau.
6 And I was also the ESU, which stands for emergency
7 services unit commander.

8 And I failed to mention I was also a SWAT
9 operator for about a little over three years, going on
10 three and a half years for the City of Vallejo.

11 So at the time I was the ESU, emergency
12 services unit commander. It was -- the chain of command
13 for that was I was the captain overseeing the SWAT team,
14 and then I had a tactical commander in Lieutenant Bob
15 Knight.

16 THE ARBITRATOR: Let's go off the record for
17 one second.

18 (There was a discussion held off the record.)

19 THE ARBITRATOR: Okay. Back on the record.

20 THE WITNESS: So if I could just go back.

21 I was the emergency services unit commander
22 with Lieutenant Knight as the tactical commander. And
23 that was -- that night I was the operations bureau
24 captain and also serving as the incident commander or
25 emergency services unit commander.

1 Q. BY MR. OLANDER: And as the emergency services
2 unit commander and the incident commander on June 1 of
3 2020, who did you report to?

4 A. The chief of police.

5 Q. And you were -- so as the incident commander
6 and the emergency services unit commander, just
7 generally in those, you know, days prior to June 1, and
8 including that day, what were your general
9 responsibilities?

10 A. I'm gathering intel, keeping an eye, an
11 assessment on what was going on in the region.

12 At the time we had -- as you know, it was
13 during the protests surrounding George Floyd. There was
14 also COVID.

15 So it was a very challenging time in law
16 enforcement. I don't think that's unknown to anyone.
17 And so we were gathering information and sharing our
18 information with other law enforcement partners.

19 I had been on the phone with some of my
20 counterparts around the area in the Bay Area, and we
21 knew that there was some looting going on days leading
22 up to June 2nd, Walnut Creek being one that comes to
23 mind, and we were gearing and ramping up to prepare for
24 that ordeal.

25 Q. What type of intelligence did you gather, and

1 just briefly, regarding the looting and these activities
2 that you believed were coming to Vallejo?

3 A. Sure.

4 It was open source. There was lots of
5 information. There was a -- Walnut Creek, for example,
6 I think the days leading up to that had quite a few
7 looters, you know, attack, if you will, for lack of a
8 better term, that area and steal and loot from the
9 stores in Walnut Creek. Oakland was also dealing with
10 it. We knew it was coming our way.

11 And we also had --

12 THE ARBITRATOR: A little slower.

13 THE WITNESS: We knew it was coming our way,
14 and so we looked at some of the open source information.

15 There was one in particular on social media by
16 the name, we called it lootination [phonetic]. And so
17 this lootination document, if you will, or a flyer, was
18 circulating around social media at the time.

19 Q. BY MR. OLANDER: Okay. And as you were
20 gathering all of this intelligence regarding looting
21 activities and these individuals, were you passing off
22 that information to then Chief of Police Shawny
23 Williams?

24 A. Yes, absolutely.

25 Q. Okay. Was that part of your job duties as

1 well, to keep Chief Williams apprised of these potential
2 threats coming to the City of Vallejo?

3 A. Yes. And he was very particular about being
4 informed.

5 Not only that, homicides or any type of
6 shootings, it was well-known that he needed to know that
7 information pretty -- pretty quickly.

8 Q. Okay. And then at some point these -- you
9 know, these groups -- and would you call these
10 coordinated looting groups?

11 A. Yes, they were absolutely coordinated looting
12 groups.

13 I'm sure we'll get into what I saw on June 2nd,
14 but it was something unlike I hadn't seen in my career.
15 I don't think anyone had seen it.

16 Q. Why don't you go ahead and just explain that
17 briefly for us now.

18 THE ARBITRATOR: Just one beat slower, Chief,
19 please.

20 THE WITNESS: Sorry. It's hard for me to speak
21 a little slower. I'll try my best.

22 So June 2nd was unlike something I had never
23 seen in my career. They had cars -- carloads of
24 suspects and subjects attacking our city, looting our
25 pharmacies, looting our stores, targeting our gun store

1 on Springs Road. There were reports of shots being
2 fired in the air. There were pursuits.

3 In fact, just moments before I took over the
4 command post, I was in a pursuit with Lieutenant Drew
5 Ramsay at the time. It ended in a -- I believe a crash
6 and a gun being recovered that was thrown from a car.
7 So we knew that there were a lot of armed subjects.

8 In fact, there were reports of subjects
9 shooting in the air.

10 Again, carloads of looters.

11 In fact, carloads of looters actually going to
12 our command post. I recall specifically our command
13 post was at Best Buy, and we chose Best Buy because we
14 knew that would be a target for these looters. And they
15 actually drove into our area in our command post about
16 three or four cars.

17 In fact, the pursuit, just before we had set up
18 at the command post at Best Buy, they had looted the
19 pharmacy across the street, Best Buy on
20 Admiral Callaghan.

21 We actually literally saw them looting it in
22 front of us as if they didn't care that they were doing
23 it in front of us.

24 Q. BY MR. OLANDER: Chief, I want to -- or, Jason,
25 you mentioned June 2nd a few times now.

1 Just to orient you on the date. So the
2 officer-involved shooting was at about 12:30 in the a.m.
3 on June 2nd.

4 So are these events you're talking about, were
5 they June 2nd, or did these events happen before?

6 A. My apology. I just see it as June 2nd as that
7 date. It's June 1st leading up to June 2nd.

8 Q. Okay. Thank you.

9 And at some time prior to June 1, are you
10 familiar with an incident that happened at the Vallejo
11 Police Department?

12 A. Prior to June 1?

13 Q. Yes, or around that date. I don't know the
14 exact date, but was the police department attacked in
15 any way?

16 A. I mean, there was protests constantly leading
17 up to and around that time period. Constantly -- you
18 know, just constantly under siege, if you will.

19 Q. Okay.

20 A. There were folks putting graffiti -- I mean,
21 graffiti -- marking up the sidewalks. I believe at some
22 point around that time period we had some windows broken
23 and those type of things. I don't know the exact dates,
24 though.

25 Q. Okay. And did the police department have to

1 take any sort of defensive action in terms of protecting
2 the police department from these individuals?

3 A. Yeah. We had our SWAT team called out. We had
4 SWAT -- our SWAT officers, some of them on the roof of
5 our building. We had our mobile field force team, which
6 is our -- deals with protests. They are the ones that
7 kind of use the riot gear, if you will, helmets and
8 specialized equipment. And so just constantly under
9 siege would be a good way to describe it.

10 Q. All right. Would you say that these
11 individuals that, you know, were attacking the police
12 department were merely just putting some graffiti on the
13 ground, or was it more than that?

14 A. I mean, by and large a lot of them just
15 protesting, right, but there were a few pockets of
16 folks, you know, marking up the concrete, throwing rocks
17 at our windows.

18 You know, at some point -- and, again, I
19 don't -- the dates around that time period, there were
20 reports of folks throwing rocks at us, iced water
21 containers.

22 In fact, there was a report that somebody we
23 thought was throwing a molotov cocktail at us. That
24 was -- we couldn't substantiate that, but there was lots
25 of issues of just very violent, aggressive behavior

1 toward officers at the time.

2 Q. Okay.

3 A. Sideshows. When we say sideshows, people doing
4 stuff in front of Amador and Georgia. Just being very
5 belligerent and very riotous would be a good way to
6 describe their behavior.

7 Q. When you say Amador and Georgia, you're talking
8 about streets --

9 A. Yes, right adjacent -- sorry. Right adjacent
10 to the police department.

11 Q. Okay. And speaking specifically on June 1, so
12 you've mentioned vehicle pursuits, these groups of
13 looters.

14 You know, when did you start your shift on
15 June 1st?

16 A. 8:00 a.m. like I start as a captain. 8:00 a.m.
17 I typically worked 8:00 a.m. to 6:00 p.m.

18 Q. Okay. Was Chief Williams working that day, if
19 you recall?

20 A. Yes.

21 Q. Do you recall when he started his shift on
22 June 1st?

23 A. I don't, but if I'm just looking at his
24 customary times, he would get in before me, typically
25 around 7:00, and he would leave a little bit earlier;

1 but...

2 Q. Work a full day, though?

3 A. Yeah, of course. He'd always work a full day
4 and then some.

5 Q. Okay. And then I asked you this similar
6 question before, but throughout the June 1st of 2020,
7 were you keeping Chief Williams apprised of all of
8 these different criminal events happening throughout the
9 city?

10 A. Of course. Absolutely.

11 Q. Okay. So was he relying on your information in
12 addition to, you know, what was potentially going out
13 over the radio?

14 A. Yeah, absolutely.

15 So I was looking for some direction and just
16 making sure that he was aware of what we're doing and
17 what we are thinking about. He was my boss so I wanted
18 to make sure he was aware of all our steps and our
19 phases and where we were going with this.

20 Q. Okay. Now, moving forward to that evening, do
21 you recall what time this command post was set up in the
22 parking lot of the Best Buy?

23 A. So it was dark. We started right before it got
24 dark, but we started to set it up right around before it
25 got dark. So if it's June 1st, gosh, I'm thinking 7:30,

1 8:00-ish type of thing, maybe a little bit earlier. I
2 don't recall exactly.

3 Q. Okay. And were you there at that time?

4 A. Yes.

5 Q. Okay. And absent that pursuit that you
6 mentioned earlier, were you essentially at that command
7 post throughout that evening of June 1st?

8 A. I was the incident commander, yes, assigned to
9 that command post.

10 Q. Okay. And do you recall whether Chief Williams
11 was present at that command post?

12 A. Yes, he was.

13 Q. And do you recall when Chief Williams arrived
14 at the command post?

15 A. I was there before he was. He got there after
16 I was involved in this short pursuit, vehicle pursuit,
17 with Lieutenant Ramsay, and that was when we briefed our
18 SWAT team.

19 Q. Okay. Was Chief Williams present during that
20 briefing of the SWAT team?

21 A. He was.

22 Q. Okay. Was he aware of what directives or
23 briefing you were giving -- or that was being given to
24 the SWAT team?

25 A. Yeah. Our directive, the commander's intent,

1 if you will -- I was the incident commander -- was
2 arrest looters, period. Arrest looters and keep our
3 city safe. That was the mission.

4 Q. Okay. And was the chief -- was Chief Williams
5 aware that that was the mission that night?

6 A. Yes.

7 Q. In your opinion, based on your experience that
8 night, was the chief aware of -- or strike that. Let me
9 start again.

10 Were there a variety of felony vehicle stops
11 occurring throughout that night in the City of Vallejo?

12 A. You characterized it as felony vehicle stops.
13 I'd say, yes, there were a lot of vehicle stops. Were
14 some of them felonies? Yes, they were felony stops
15 because there were felonies being committed in our
16 officers' presence, so yes.

17 Q. So we'll call them high-risk stops --

18 A. Yes.

19 Q. -- felony stops --

20 A. High-risk stops is what I would characterize,
21 because some of those aren't, right, they might just be
22 vandals, you know, whatever, but, yeah, they were
23 high-risk stops.

24 Q. So high-risk stops were being conducted not
25 just for significant violent crimes but for

1 burglaries --

2 A. Exactly.

3 Q. -- vandalisms --

4 A. Yes.

5 Q. -- and all nature of crimes that night?

6 A. All nature of crimes.

7 We were trying to keep a lid on violence,
8 riotous behavior in our city.

9 Q. Okay. Was that -- would you characterize the
10 enforcement directive to be something like maximum
11 enforcement or zero tolerance?

12 A. Yeah, I've heard that term "maximum
13 enforcement."

14 I would say yes. We wanted to keep our city
15 safe, and we wanted to make sure that these looters knew
16 there were consequences to their behavior, and we were
17 going to arrest them for their riotous, violence
18 behavior because, in my mind, if we allowed them to do
19 that and take over our city, it would get out of hand.

20 Q. And so was Chief Williams, to the best of your
21 knowledge, aware that these high-risk stops were
22 occurring throughout the city that night?

23 A. Yes. He heard the traffic stops and the
24 pursuits, just like I did. I was next to him at that
25 pursuit so -- or at the command post --

1 Q. Okay.

2 A. -- so I'm assuming he heard them.

3 Q. I'm sorry. I think we talked over each other.

4 Can you repeat that again?

5 A. I'm assuming he heard them. And I don't recall

6 our exact conversation about -- surrounding that, but I

7 assume he heard the traffic stops and the pursuits.

8 Q. And you're assuming that because he was next to

9 you listening to radio traffic at the command post?

10 A. Yes.

11 Q. Okay. Now, at any time that night while you

12 were with Chief Williams at the command post, did he

13 ever voice an objection to the tactics being employed by

14 your officers?

15 A. Absolutely not.

16 Q. All right. Now, Chief Williams testified

17 yesterday, and he testified that at some point he asked

18 you to review the OIR report regarding Detective Tonn's

19 shooting in that critical incident.

20 Did Chief Williams ask you to review the OIR

21 report?

22 A. Yes, months after he received it, but yes.

23 Q. Okay. And do you recall why he asked you to

24 review the report?

25 A. Our command staff was going to discuss it,

1 myself, Deputy Chief Ta at the time, and Captain Tribble
2 at the time.

3 Q. Okay. And did Chief Williams specifically ask
4 you for your opinions regarding the OIR report?

5 A. Yes.

6 Q. Okay. And did you express your opinions to him
7 regarding that report?

8 A. Yes.

9 Q. Do you recall what those opinions were?

10 A. Yes.

11 Q. And what were those opinions?

12 A. So I told him it was, first off, poorly
13 written. It talked about deescalation for the sake of
14 deescalation.

15 And so, in my mind, when we talk about
16 deescalation, it's stabilizing a scene. A lot of times
17 folks say it is rapport building or slowing things down,
18 and sometimes you can't. There's shifting priorities,
19 and there's dynamic needs. And so those things don't
20 always occur in policing.

21 And so I talked about the fact that this
22 emphasis on deescalation was just unrealistic and
23 far-fetched and not a one-size-fits-all proposition in
24 policing. We can't do deescalation in every situation.

25 I also talked about the fact there was ability,

1 opportunity, intent questions or concerns, and we talked
2 about that as well.

3 Q. What were your concerns regarding the ability,
4 opportunity, and intent?

5 A. So when we talked about the ability,
6 opportunity, and intent, I told our chief that, you
7 know, the subject had the ability, had the opportunity,
8 and had the intent if our officer believed he was armed
9 with a firearm. And we talked about that quite
10 frequently.

11 Q. Okay. Did Chief Williams appear to be
12 receptive to your opinions regarding, first,
13 deescalation?

14 A. No. He just looked at me. He didn't really
15 give me a whole lot of feedback. I don't recall what
16 was said, but he just listened at that point.

17 Q. Okay. How about in regards to ability,
18 opportunity and intent, you said you had a variety of
19 conversations with him about that. What was his
20 response?

21 A. He was hung up on the fact that the subject
22 didn't have a firearm. And we talked at length about,
23 you know, what happens if he did have a firearm. And we
24 can't think of these things in a vacuum in a 20/20
25 hindsight.

1 You know, we talked about Graham versus Connor
2 and our officer's mindset and what he believed at the
3 time.

4 Q. And so is that your way of saying that you have
5 to look at what the officer perceived at the time --

6 A. Yes.

7 Q. -- assuming that it is an objectively
8 reasonable perception when you analyze whether the use
9 of force is justified?

10 A. Yes.

11 MR. OLANDER: Okay. I have no further
12 questions at this time.

13 THE ARBITRATOR: Let's go off the record.

14 (There was a discussion held off the record.)

15 THE ARBITRATOR: Let's go back on the record.

16 I'll ask if there is any cross.

17 MR. BROWN: Yes. Thank you.

18 THE ARBITRATOR: Your witness.

19 CROSS-EXAMINATION

20 Q. BY MR. BROWN: Good morning, Jason. How are
21 you?

22 A. I'm doing well. Yourself?

23 Q. Good. Thanks.

24 Congratulations on your promotion.

25 A. Thank you.

1 Q. When [REDACTED] [REDACTED] self-deployed in the field
2 that night, that was unusual, wasn't it?

3 A. It was an unusual night. So, yes, if you're
4 asking me just on its face. But if I can elaborate on
5 the context, I don't think it's fair just to say that,
6 because it was something we had never seen ever. And I
7 think that's well-documented by a lot of law enforcement
8 professionals. It was an unbelievable night. It was
9 something I'll never forget, and anyone that was working
10 that night wouldn't forget. You have to be there to see
11 it.

12 So if you're asking if it was unusual, yes.
13 But I have to elaborate and give it more context because
14 of the situation we were dealing with.

15 Q. Sure.

16 In the context of law enforcement agencies --
17 now you've been a member of two. In law enforcement
18 agencies, the chief ultimately has the final decision on
19 discipline, right?

20 A. He does.

21 MR. BROWN: Okay. I don't have anything else.

22 THE ARBITRATOR: Any redirect?

23 MR. OLANDER: No.

24 THE ARBITRATOR: Chief, thank you for
25 participating in this matter. Nice to meet you, sir.

1 THE WITNESS: Thank you. Nice to meet you.

2 THE ARBITRATOR: As I tell all witnesses, they
3 are subject to possible recall, but I do my best to see
4 that nobody is recalled.

5 Congratulations on your appointment. Enjoy
6 your life. You're excused, sir.

7 Let's go off the record.

8 (Recess.)

9 (There was a discussion held off the record.)

10 ROBERT KNIGHT,
11 called as a witness by the association, being first duly
12 sworn or affirmed by the arbitrator, was examined and
13 testified as follows:

14 THE ARBITRATOR: Let's go back on the record
15 and show the next witness for the association has been
16 called and sworn.

17 And for the record, sir, would you please give
18 us your full name, spelling your last name.

19 THE WITNESS: Yes. Robert Knight, K-N-I-G-H-T.

20 THE ARBITRATOR: Thank you.

21 And your position, if any, with the department?

22 THE WITNESS: I'm currently a temporary upgrade
23 at the rank of captain. I'm currently assigned to the
24 California Department of Justice reform task force that
25 our department is -- the reform efforts our department

1 is going through.

2 THE ARBITRATOR: Thank you.

3 And June 2020, what was your rank?

4 THE WITNESS: On June 2020, I was a police
5 lieutenant assigned to the professional standards
6 division that oversees internal affairs.

7 THE ARBITRATOR: Josh, your witness.

8 MR. OLANDER: Thank you very much.

9 DIRECT EXAMINATION

10 Q. BY MR. OLANDER: Good morning, Bob. Can I call
11 you Bob?

12 A. Sure.

13 Q. Okay. All right, Bob. So going back to that
14 last question regarding your rank as of June 2020, in
15 addition to being the professional standards division
16 lieutenant, did you have any other ancillary duties or
17 assignments?

18 A. Yes. I was also -- one of my ancillary duties
19 was as the lieutenant SWAT commander, the commanding
20 officer of the SWAT team that I took over at some point
21 in late 2018 I believe. So I'd been doing it a couple
22 of years.

23 Q. Okay. In terms of being a SWAT commander or
24 just kind of generally speaking, what were -- what were
25 your duties and responsibilities?

1 A. My duties were ultimate command and control of
2 the members of my SWAT team, the regulation of training,
3 the administration of -- and overall approval of
4 operations plans, and day-to-day tasks of the team.
5 That was overall my responsibilities for the SWAT team.

6 Q. Okay. And who did you report to in that
7 capacity as the SWAT commander?

8 A. We have -- in our department we have a larger
9 umbrella called the emergency services unit, ESU. I
10 don't know if that's come up yet in this case. That
11 encompasses several specialized units within the
12 department. Mobile field force who handled kind of the
13 riot control, crowd control type situations. We have
14 our hostage negotiators, TAC dispatchers, TAC team that
15 fly the drones and the robots. These are under a large
16 umbrella of emergency services, and that is overseen by
17 a captain. And the commanding officer of ESU was
18 Captain Jason Potts at the time of this incident.

19 Q. And going back to being the lieutenant at
20 professional standards, what were your duties and
21 responsibilities in that capacity?

22 A. Yeah.

23 So I -- I began as the professional standards
24 lieutenant at the end, say, October of -- September or
25 October of 2019.

1 Professional standards is a -- kind of a large
2 division. It oversees several aspects of the
3 department. It oversees personnel and hiring. It
4 oversees all departmental training, internal and
5 external. It oversees all public records act requests,
6 all Pitchess motion requests. It is the housing
7 gatekeeper of all personnel records. And so we have the
8 custodian of records. Often I'm designated as the
9 custodian of records or one of my staff for Pitchess
10 motions and other type of similar inquiries.

11 And then it -- professional standards is the
12 division that oversees the office of internal affairs.
13 So it has a lot of moving parts.

14 It had a lieutenant, two sergeants, and -- I
15 might not get this exact right -- at least three support
16 staff I think, of professional staff. It's grown since
17 that incident, but yeah.

18 Q. And who did you report to in your position as
19 the lieutenant overseeing professional standards?

20 A. During the two years I was in that command
21 officer position, that varied. Initially when it first
22 started, historically that lieutenant has always
23 reported to a captain who has reported to the chief of
24 police. However, during that time there was the
25 creation of a deputy chief -- an assistant chief

1 position that ultimately morphed into a deputy chief
2 position. So I reported to I think at one time it was
3 six different commanding officers during that two-year
4 period.

5 Q. All right. And in your position as the -- did
6 you see that, slow down a little bit, Bob?

7 A. Got it.

8 Q. Okay. In your capacity as the professional
9 standards lieutenant, did you at all report to or
10 interface with the chief of police at that time, Shawny
11 Williams?

12 A. Yes.

13 Q. Okay. And in what capacity would you interface
14 with Chief Williams? For what purpose?

15 A. So a couple different ways. Being as though
16 the office of internal affairs is obviously a very
17 significant unit within a police department and the fact
18 that it, you know, is a portion of the discipline
19 process, a person who is in charge of professional
20 standards is going to fairly regularly interact with the
21 chief more than other, probably, lieutenants.

22 However, after [REDACTED] [REDACTED] left the
23 department on some type of leave after this incident, I
24 began direct reporting to the chief of police. He was
25 my direct report boss for a period of months, I believe,

1 until the assistant chief came, which is Joe Allio came.
2 I then began reporting directly to him. Then he left
3 the department, and I again reported directly to Shawny
4 Williams in a direct report capacity.

5 So my answer is, as the professional standards
6 lieutenant, you always kind of --

7 THE ARBITRATOR: A little slower.

8 THE WITNESS: -- you always kind of interact --
9 oh, my gosh, I'm going so slow -- you always kind of
10 interact with the chief of police more than other
11 lieutenants. However, on two separate occasions, I
12 direct reported to the chief as my boss. So that was a
13 level of access that was kind of that top level of
14 interaction.

15 Q. BY MR. OLANDER: You said two different
16 occasions. Do you mean like incidents or durations of
17 time?

18 A. Two separate durations of time, once when
19 [REDACTED] left and then the other one when the assistant
20 chief, Joe Allio, left the department.

21 Q. And do you recall when [REDACTED] [REDACTED] left the
22 department?

23 A. I don't remember the exact date, but it was a
24 short period after the Monterrosa shooting. So June,
25 July, August, some point thereafter.

1 Q. Okay. And then so you -- and at that time
2 period you were directly reporting to the chief again in
3 your capacity as the professional standards lieutenant.
4 And I think you said that that was for a period of
5 months. Is that --

6 A. Yeah. I'm really bad with timelines, but, yes,
7 it was a period of months until the assistant chief was
8 brought in.

9 Q. And do you remember when you then again, after
10 the assistant chief was brought in, began reporting
11 directly to the chief of police? Approximately.

12 A. I don't remember when he -- oh, sorry.

13 Q. That's okay. Just approximately.

14 A. Yeah.

15 I don't remember when Joe Allio was brought in.
16 I think he only stayed -- my recollection is he only
17 stayed for three months or so. And then I direct
18 reported again to the chief for months and periods --
19 you know, a decently long period of time where I had
20 regular meetings with him, conversations, investigative
21 updates, and that was all the way up until Mike Kihmm
22 was hired as a deputy chief. And that was -- yeah, that
23 was, well, kind of -- I think that was right at the very
24 end of the year in 2020, December, kind of around
25 Christmastime of 2020-ish, if that's right. I could be

1 totally off, but that's my recollection.

2 Q. Is that the same year as the Monterrosa
3 shooting or a different year?

4 A. I think it would be the same year, so a good
5 six months later after that. So, again, I'm not exactly
6 positive. Dates and timelines are my Achilles heel.

7 Q. Okay. No problem. That's fine.

8 And then just, you know, very briefly -- or,
9 actually, how long were you with the Vallejo Police
10 Department?

11 Or how long have you been -- as of June 2020,
12 how long had you been with the police department?

13 A. I got hired in September of 1999 so, yeah,
14 21 years, something like that.

15 Q. Okay. So you've been there about 23 years now,
16 approximately?

17 A. Yes.

18 Q. Okay. All right. And if you could just very
19 briefly sort of walk us through some of your duties and
20 assignments, excepting the ones you've already gone
21 over?

22 A. Okay. I got hired in September of 1999. I
23 have worked a variety of assignments in my career:
24 Patrol, crime suppression unit, a street-level task
25 force.

1 I worked five years for the drug enforcement
2 administration, was deputized as a federal task force
3 officer. From there I went back to patrol. I was an
4 FTO. In patrol I was promoted to sergeant where I
5 worked patrol.

6 And then in 20- -- late 2015, early 2016 I
7 believe, we created a unit called the crime reduction
8 team. I was the supervisor of that team for, I don't
9 know, a year and a half, shy of two years, until
10 staffing constraints caused us to have to collapse the
11 team, back to patrol.

12 At that point I went -- I was pulled into
13 professional standards. So I became -- or, sorry, into
14 professional standards where I became the internal
15 affairs sergeant. So I was an internal affairs
16 investigator for one year in that capacity where I, from
17 there, was promoted to lieutenant back to patrol.

18 And then while I was on patrol for, I don't
19 know, a year-ish, I put in for the professional
20 standards division commander position, which is a
21 lieutenant-ranked position, and I was selected by then
22 Chief Joe Allio -- he was the chief, interim chief --
23 for that position. And that was just prior to Shawny
24 Williams being brought on board as the chief, which I
25 believe occurred in November 2019.

1 So Shawny Williams and I, within just a few
2 months' period, started our positions at the same time.

3 Q. Okay. And so in terms of your -- just your
4 experience within internal affairs, you were an internal
5 affairs sergeant for approximately one year; is that
6 accurate?

7 A. Yes.

8 Q. Okay. And then as the lieutenant over
9 professional standards, exactly how long were you in
10 that position?

11 A. I was in that position for just over two years
12 before I requested to be removed from the position.

13 Q. Okay. All right. Now, going back to around
14 about June of 2020, or June 1st, 2020, can you kind of
15 briefly describe what was happening in the City of
16 Vallejo at that time period?

17 A. Yes.

18 We -- we had had several days of civil unrest,
19 protests that occurred at various locations around the
20 city, but I distinctly remember during that weekend,
21 following the death of George Floyd, several of the
22 protests and/or riots began to center around at the
23 Vallejo Police Department at 111 Amador Street.

24 So it was basically several days of all hands
25 on deck. I remember saying in my interview with the

1 OIR Group that, you know, it's kind of a fog of all the
2 things that happened. We didn't go home much. We spent
3 more hours at the police department and the city dealing
4 with these spats of civil unrest and riots and threats
5 upon the police department.

6 So I was the SWAT commander at that time over
7 the umbrella of emergency services unit, we were getting
8 used, and operation planning, tactical planning, as
9 intelligence came in. So it was a -- it was a pretty
10 chaotic, several-day period.

11 Q. You mentioned sort of, you know, attacks on the
12 police department. What specifically was happening at
13 the police department and what was the tactical response
14 to those events?

15 A. There was -- everything was really intelligence
16 driven. There was -- we were receiving online threats,
17 you know, slews of online threats that, you know, they
18 were going to take over the police department and break
19 through. We had had some broken windows to our
20 facility.

21 That is truly the hub of our police emergency
22 response and our communications 911 dispatch center is
23 in the basement, so -- it's in the basement, so we had
24 some extreme concerns related to our ability to maintain
25 emergency response services.

1 So our focus ultimately as those days
2 progressed focused on consolidating our resources to
3 protect the police department and our emergency --
4 ability to respond to emergencies in the city.

5 Q. And this may not be possible, but do you have
6 any approximation of the number of arrests that were
7 made in those days around June 1st related to looting
8 and other criminal activity in Vallejo?

9 A. I don't. I don't.

10 Q. Would that be -- would you be able to
11 approximate whether it was more than 25?

12 A. I don't. I actually don't think I could put a
13 number to it. I would honestly even say that based on
14 the size of our department, the staffing we had at the
15 time, there probably wasn't as many of arrests as should
16 have been made because of the overwhelming
17 outnumberedness that we were encountering. So I think
18 those arrests would be selective in nature. So I don't
19 have the exact number.

20 Q. That's fair.

21 A. Yeah.

22 Q. That's fair. Thank you.

23 Now, I'd like to move to the evening of
24 June 1st, 2020.

25 What was your duty and assignment that evening?

1 A. That evening I got a call from Jason Potts that
2 said that there was -- more civil unrest was occurring.
3 The environment had changed somewhat, that the focus was
4 not on the police department, it had changed to a mobile
5 criminal acts of looting at a variety of locations, to
6 include places like big box stores, pharmacies, drug
7 stores.

8 Our concern was we are home to one gun shop in
9 Vallejo. So there was a gun store. They were talking
10 about looting in those locations.

11 So Jason Potts told me that we needed to
12 mobilize the SWAT team for manpower purposes, that they
13 had already activated the mobile field force unit, which
14 I had talked about is primarily the ones that deal with
15 civil unrest, looting, riots, et cetera.

16 So I was coming in on the night of the 21st --
17 or, sorry, the night of the 1st, June 1st, kind of
18 midway through. It was an active scene by the time I
19 got there that evening.

20 Q. Okay. And did you respond to a command post?

21 A. Yes. Ultimately I think I went to the police
22 station initially, but I talked to Jason Potts and I
23 said, hey, where is the command post. He indicated it
24 was going to be at Best Buy up on Admiral Callaghan Lane
25 and Plaza Drive, which is kind of the hub of our

1 shopping district in Vallejo.

2 Q. Do you recall approximately what time you
3 responded to the command post?

4 A. I don't recall. In my interview I think I even
5 remember not recalling the exact time but that it was
6 dark. It was dark. I kind of had pinpointed a few
7 incidents that had occurred as I was driving there, so I
8 think we could get a time, but it was dark, so it was
9 the evening time.

10 Q. Okay. That's fine.

11 And at some point while you were at the command
12 post, did you give a SWAT debrief?

13 A. Not a debrief --

14 Q. I'm sorry. A SWAT briefing. I apologize.

15 A. I wouldn't call it actually a SWAT briefing,
16 because it wasn't just SWAT, although SWAT personnel was
17 there. There was multiple outside agencies that had
18 come for mutual aid. There was commanding officers
19 there. This is after some discussion with Jason Potts
20 about what our plan was going to be, and we gave an
21 operational briefing to all personnel that were there.

22 Q. And what was the nature of that operational
23 briefing, to the best of your recollection?

24 A. The nature of the briefing was to give the
25 personnel that had come to help us, that is, our

1 personnel, VPD, as well as outside agency personnel,
2 some clear direction of what we wanted them to do.

3 Because the environment of criminal acts was
4 kind of evolving and ongoing, we didn't know where they
5 were going to occur. So the decision -- a quick-quick
6 decision was made to divide the city up into sectors,
7 you know, kind of large sectors, and assign individual
8 groups of officers, preferably of the same agency so
9 they could all be together, to patrol certain areas and
10 be responsible for those geographic areas to observe
11 criminal acts, you know, contain any people looting or
12 committing criminal acts, and conduct enforcement action
13 as appropriate.

14 We thought that was the best plan at the time
15 because we didn't have exact information of, hey, they
16 are going to hit Target right now, hey, they are going
17 to go to blank store.

18 Also, a lot of the drug stores and pharmacies
19 had already been hit once or twice, and bands of looters
20 were going back to those stores because they were
21 unaware that other -- other looters had already went to
22 those stores. Hoping that makes sense.

23 So it was kind of a free-form plan that was
24 flexible, but it was a plan.

25 Q. And so when you say apprehend looters, you're

1 talking about arresting those looters?

2 A. Yes.

3 Q. Okay. So was -- is it the case that the
4 directive was that looters were to be arrested that
5 night?

6 A. Yes. Yes, if appropriate, if you caught
7 somebody in the act of looting, my expectation of a
8 commanding -- one of the commanding officers, not the
9 only one, would be to make an arrest, yes.

10 Q. And do you believe that expectation was clearly
11 conveyed to the law enforcement folks that attended that
12 briefing?

13 A. I think it was, because the overall sense of
14 that evening was, hey, this is -- we're being overrun.
15 There's a level of criminal activity that is occurring,
16 ongoing and occurring that we can't stop. We have to --
17 we have to take some type of law enforcement action to
18 kind of curtail, curtail the activity. And, you know,
19 one of the ways to curtail that activity would be
20 enforcement action, arrests, if appropriate.

21 Q. Do you recall whether then Chief Shawny
22 Williams was present at that briefing that you gave?

23 A. Yes, I do. I know Jason Potts was there. I
24 know that Shawny Williams arrived at some point. My
25 recollection was that he was there. There was, I mean,

1 dozens and dozens and dozens of officers, but I do --
2 you know, he's the boss. I was aware. I was aware he
3 was there.

4 Q. Okay. Now, did you have any involvement in the
5 investigation of the June 2nd, 2020, critical incident?

6 A. Yes.

7 Q. Okay. And what involvement did you have?

8 A. So after the officer-involved shooting
9 occurred, shortly thereafter, I changed hats from SWAT
10 commander to back of my current assignment at the time
11 which was the division commander of professional
12 standards.

13 Anytime there was an officer-involved shooting
14 or fatality that invoked the fatal-incident protocol, it
15 would be my responsibility to initiate the
16 administrative investigation to be conducted by my IA
17 sergeant at the time, Sanjay Ramrakha.

18 I can spell that if you need it. That's
19 R-A-M-R-A-K-H-A.

20 THE REPORTER: Is that two words?

21 THE WITNESS: No, one word, Ramrakha. Sanjay
22 is his first name, S-A-N-J-A-Y.

23 Q. BY MR. OLANDER: Okay. So I believe you
24 mentioned so your internal affairs sergeant. And then
25 what would your involvement be specifically in the

1 internal investigation that you were initiating on
2 June 2nd of 2020?

3 A. Yeah.

4 So we had had these discussions with Shawny
5 Williams prior to this even occurring that, you know,
6 our agency was prepared, and has always been prepared,
7 but was also prepared to conduct an internal
8 investigation into an officer-involved shooting. So we
9 were assigned as the internal affairs administrative
10 investigators of the Monterrosa shooting.

11 I called out Sanjay Ramrakha. He responded to
12 the scene. We participated as the administrative
13 investigators on all case briefings that night. We
14 attended a scene walk-through. We observed the criminal
15 investigations that internal investigators do. We were
16 able to give input, input to the investigators asking
17 the questions, things that we wanted for our
18 administrative investigation. We were able to guide
19 some of those questions like we do and that began the
20 parallel investigation of the criminal investigation and
21 the administrative investigation.

22 Q. Now, at some point was the Vallejo Police
23 Department internal affairs unit and professional
24 standards removed from the administrative investigation?

25 A. Yes.

1 Q. Okay. And do you recall when, approximately,
2 that happened?

3 A. I recall, I want to say it was about two days
4 later-ish, I was in Jason Potts's office talking about
5 the events, talking strategy.

6 Jason Potts is also a former IA investigator,
7 for years, actually.

8 And while I was in his office what I believe is
9 two days later, Shawny Williams walked into his office
10 and referenced that he had just had a meeting with the
11 city manager, Greg Nyhoff -- I don't know how to spell
12 that.

13 Q. N-Y-H-O-F-F, I believe.

14 A. And Shawny Williams advised Jason Potts and
15 myself that, based on his meeting with the city manager,
16 that the department was going to contract the services
17 of OIR Group out of Southern California, who had just
18 done an overall assessment of our police department,
19 were paid to do that, that they were going to conduct
20 the IA investigation now.

21 And I -- I mean, my jaw just dropped. I said,
22 "Chief, that is a really bad idea." And I started to go
23 down a laundry list of reasons why it's not a good idea,
24 number one being they were not even there the night.
25 They are deprived of all of this valuable information

1 that was gleaned during the criminal -- initial criminal
2 interviews, investigation, evidence that was observed
3 and discussed, number one.

4 And he kind of -- I don't want to say he
5 shushed me, but he kind of stopped me and said, hey,
6 it's political or it's -- it was a political decision or
7 it's political, and that obviously I was not happy
8 about. And I said something to the effect of, hey, we
9 are not politicians, this is not a good idea. And he
10 just left. You know, he quickly, abruptly left.

11 So that was kind of the -- that first
12 interaction of when we were kind of pulled off the case
13 and then OIR Group was -- we were notified they were
14 going to be brought in. They were brought in quite some
15 time later. A lot of time had transpired, in my
16 opinion, valuable time.

17 And then I switched to the role of not being
18 the commanding officer of the IA to a liaison role. I
19 became a liaison with the OIR Group and the primary
20 investigator, Steve Connolly.

21 Q. So your -- internal affairs was taken off the
22 administrative investigation, and then at some point
23 once OIR began their administrative investigation, you
24 were tasked with being you said a liaison?

25 A. Yes.

1 Q. Okay. So what exactly were your job duties as
2 the liaison with the OIR Group?

3 A. I would have routine phone calls with Steve
4 Connolly. I was providing copious amounts of documents
5 to him, the audio files, the police reports, the
6 interview documents.

7 The criminal investigation was ongoing during
8 this time, so I would provide him -- I provided him the
9 criminal report, but then I would also provide him
10 updated supplemental reports that were conducted.

11 I assisted him with sending out and crafting,
12 drafting notices for interviews of witness officers,
13 subject officers. Helped him with that.

14 I had countless decisions about case decisions
15 and case strategies.

16 I had several conversations with him about our
17 specific policies and protocols related to internal
18 investigations and the way that we conducted them and
19 our policies that governed certain ways things are done.

20 So, yeah, it was quite a bit -- quite a bit of
21 contact with Mr. Connolly.

22 Q. And did that -- and did your role as a liaison
23 between the police department and the OIR Group continue
24 throughout the OIR Group's administrative investigation?

25 A. It did. It did. It seemed to go pretty hot

1 and heavy and frequent until there was a time when, you
2 know, being an administrative investigator myself, I
3 could tell there was the point where Mr. Connolly had
4 got to the point where his investigation was kind of
5 wrapped up and then he needed to write it up.

6 I didn't speak to him as much then, but after
7 that, when he was, I believe, drafting the report, we
8 had some clarification conversations during that time,
9 but I think -- my point being that the contact kind of
10 tapered off.

11 Q. What do you mean when you say "clarification
12 conversations"?

13 A. There was -- there was a couple that stuck out
14 in my mind. One of the initial ones was before he was
15 going to interview three of the involved officers, Tonn,
16 [REDACTED] and [REDACTED] there was a discussion about kind
17 of what I would do if I was the investigator and the
18 type of -- I wasn't guiding his questions. We were
19 talking about it, not about the case specifically, but
20 more about investigations in general, to really use the
21 criminal interview as a starting point, a foundation
22 point for the interview and what you needed thereafter.

23 You know, I had conveyed to him what occurred
24 that night, that I had got to ask numerous clarifying
25 questions, I got to drive some of the questioning and

1 what occurred there, and he was -- he seemed very strict
2 on wanting to do a full interview from beginning to end
3 despite the criminal interview.

4 Q. Let me stop you there, Bob, for a second. I
5 want to get some clarification.

6 So what -- why was it significant to you, based
7 on your training and experience, to utilize the
8 voluntary criminal statements that were taken on
9 June 2nd, 2020, as, I think you said, a foundation or
10 starting point?

11 A. Well, for a couple of reasons. First and
12 foremost, that is going to be one of the most pure
13 statements you're going to obtain from someone involved
14 in something like that as the incident had just
15 occurred. You're going to get the most raw recollection
16 from those things.

17 As time goes on -- and I can't remember when
18 the interviews of the officers occurred. It was months,
19 I mean almost -- probably a half a year later, that that
20 is not -- from my opinion as an investigator, not the
21 time to go from A to Z with a fresh statement,
22 especially as recollections change and now you're asking
23 people to recall details that they had already provided
24 the details of. There's multiple pitfalls in doing
25 that.

1 It's really best practice to use the
2 criminal -- the voluntary criminal investigative
3 interview, if you get one, and use that as the
4 foundation for any further building blocks that you need
5 from an IA interview.

6 Q. Does the Vallejo Police Department have any
7 policies regarding conducting administrative interviews
8 in officer-involved shootings?

9 A. Yes.

10 Q. And do any of those policies specifically
11 discuss what you're talking about now in terms of the
12 utilization of a criminal voluntary interview as a
13 foundation for the administrative investigative
14 interview?

15 A. Yes. Policy 306 addresses this exact topic
16 that I'm talking about. And it cautions interviewers
17 from duplicative questions, duplicate interviews. And
18 it reinforces the fact of asking questions that need
19 further clarification for the policy violation aspect of
20 the investigation.

21 Q. And so that was a concern to you that that
22 policy be followed. Is that what you're referencing?

23 A. Yes. It was clear that they were just going to
24 do a complete, fresh interview, which was part of the
25 pitfalls of having them do the investigation, one of the

1 initial pitfalls, yes.

2 Q. Okay. And you said "initial pitfalls." So
3 were there other pitfalls that you believed were
4 occurring?

5 A. I do remember closer to the end of my
6 conversations with Steve Connolly, I remember having a
7 very lengthy discussion with him about he was seeming --
8 seemingly struggling with the timing of the events that
9 led up to and just prior to and after the
10 officer-involved shooting.

11 He was looking at material that I had provided,
12 such as CAD reports from police dispatch, body camera
13 videos, audio files of the dispatch recordings, and he
14 was struggling to put those timeframes together.

15 And his understanding of those timeframes were
16 much longer than what actually occurred, to the point
17 where I had to go, hey, time out, Steve, this -- this
18 long stretches of time that you're talking about, or
19 this rushing of time that you're talking about, is
20 inaccurate.

21 One of the reasons -- this is kind of technical
22 in nature, but I'll make it real quick.

23 One of the reasons was he was struggling with
24 the dispatch audio.

25 The way our dispatch audio is produced is when

1 there's dead time in air from when there's one radio
2 transmission to another radio transmission, it
3 doesn't -- when you produce the audio recording, it does
4 not lay into the file all that dead space. It takes
5 those two audio events and puts them together. So it
6 will be radio traffic, radio traffic, radio traffic, to
7 where in his understanding, those timelines were not
8 jiving, in that [REDACTED] [REDACTED] asked for backup to the
9 scene, officers arrived at the scene, they were moving
10 into the parking lot. And these things on the radio
11 were happening very rapidly.

12 And I was trying to explain to Steve Connolly,
13 you have to pair those audio transmissions to the CAD
14 reports as best you can because there's, at times, I
15 don't know the exact times but -- I'd have to look at
16 the report, but there was minutes sometimes that went
17 by. And I don't -- and I got the sense that he was
18 really feeling like this was a rushed -- a very rushed
19 situation.

20 And we had a pretty -- I don't remember how
21 long it was, but it was a pretty lengthy conversation of
22 me trying to get him to understand that sequence.

23 And then ultimately, when I ultimately read the
24 report, seeing that that sequence wasn't even in there,
25 I was shocked.

1 Q. Okay. So the timing is important to you in an
2 internal investigation and especially in a shooting. Is
3 that fair to say?

4 A. Yes and yes, also when you're using it as part
5 of your analysis of whether the force was reasonable.

6 Q. Now, you mentioned the CAD reports. That would
7 be an acronym for computer-aided dispatch; is that
8 correct?

9 A. Yes.

10 Q. Okay. Now, are the times noted by a dispatcher
11 100 percent accurate?

12 A. No. There's a variety of factors that come
13 into play.

14 The transmission comes over the radio, the
15 dispatcher has to copy it, type in the abbreviated
16 version of what the person said. So that's going to
17 take some time.

18 Also there's the timestamp associated with the
19 CAD software. There's going to be timestamps associated
20 with the body-worn camera. And those are always going
21 to be sometimes, you know, off a couple of minutes here
22 and there.

23 So you have to take in the totality -- when you
24 try to create a timeline, you really have to take in the
25 totality of all the information to come up with a valid

1 timeline. And it's not easy, especially if you don't
2 know the department's software and, you know, things we
3 use.

4 Q. Okay. I want to -- I'll come back to that in a
5 little bit, but I want to switch gears just briefly.

6 Now, you were also contacted as a witness in
7 this administrative investigation, correct?

8 A. Yes.

9 Q. Okay. And what was your understanding as to
10 why you were interviewed as a witness regarding this
11 critical incident?

12 A. It was relayed to me, and ultimately after I
13 got interviewed, it was in the genre of my role as a
14 SWAT commander, what the overall mission was, and kind
15 of morphed at the end.

16 I just reviewed my audio interview. It was
17 like an hour and 41 minute audio interview. It really
18 kind of -- and then it started to kind of morph into
19 what occurred in the parking lot of the Walgreens, the
20 officer-involved shooting, and whether that was in
21 keeping with the overall mission.

22 So there was some kind of -- went down a little
23 bit of questioning on me on that, along with the tactics
24 and flash bang.

25 But we spent a lot of time about some things I

1 kind of just talked about today, about what the mission
2 was and the briefings and what the planning that went
3 into that night's pre -- before the incident.

4 Q. So in terms of the mission of that night from
5 the briefing, did you explain to OIR similar to how you
6 explained it to us today in terms of enforcement of
7 looting?

8 A. Yes, but, you know, in much greater detail than
9 I did today, but yes.

10 Q. Okay. All right. And then you said they also
11 asked you about certain tactics that occurred at the
12 Walgreens or in that response?

13 A. I did notice that. That was towards the very
14 end, maybe the last ten minutes, where they really
15 started to talk about my opinion of tactics and whether
16 what had occurred, and I gave some opinions there.

17 And, you know, in the summary of my statement,
18 it was pretty -- it was decent, but those things were
19 kind of left out of the summary in the OIR report, but I
20 did hear it in my audio, yes.

21 Q. What was your opinion regarding I think you had
22 said that whether the actions were consistent with the
23 mission that you had conveyed at the briefing? Is that
24 an accurate representation?

25 A. Yes. I just remember towards the end of the

1 interview, Mr. Connolly asked me something about, you
2 know, the events that transpired, you know, just prior
3 to -- I don't know exactly what he asked, but he goes,
4 hey, was that in keeping with the plan, you know, the
5 mission that night, and I said yes.

6 I said -- you know, I remember saying something
7 to the effect of, hey, had [REDACTED] [REDACTED] gone right and
8 contained that side of the parking lot, had the three
9 CRT SWAT officers gone left and gone in the parking lot
10 and all the looters raised their hands and safely
11 surrendered, we wouldn't be here today. I remember
12 saying that. I said that was a completely acceptable
13 outcome. That was a completely acceptable tactic, and
14 we wouldn't be here. That's obviously not what
15 happened. And he kind of -- I don't want to say stopped
16 questioning me on that but, you know, he just kind of
17 moved along.

18 Q. Okay. So just kind of recapping to be clear.
19 So when you're talking about the acceptable outcome, you
20 know, are you talking about the shooting, or are you
21 talking about the officers' tactics as they responded
22 into the Walgreens to apprehend looters?

23 A. Yes, that, the latter.

24 And, again, I remember even giving the example
25 of a voluntary surrender by all involved to Mr. Connolly

1 and saying, hey, we wouldn't be here today, you know,
2 had that -- had that tactic been -- you know, what the
3 outcome that should have occurred, you know, that police
4 officers, I don't know, they do daily. You know, they
5 take people into custody who voluntarily surrender to
6 their orders and to their authority as the police, red
7 and blue lights. And it was kind of very brief at the
8 very end of the interview, but...

9 Q. So specific to the officers conducting, you
10 know, or attempting to conduct a high-risk stop in the
11 Walgreens, was that consistent with the directive or
12 mission that you gave to your officers at the briefing
13 at the command post?

14 A. Yes. I mean, under the guise of, you know,
15 identifying criminal activity, deterring criminal
16 activity, if you observe criminal activity, conducting
17 enforcement action as appropriate, yes.

18 Moving into a parking lot, activating your red
19 and blue lights, identifying yourself as the police,
20 conducting a high-risk vehicle stop or arrest would be a
21 completely standard -- standard way to handle that.

22 Q. Okay. And do you recall also being questioned
23 about the meeting between [REDACTED] [REDACTED] and the CRT
24 detectives or SWAT operators, Tonn, [REDACTED] and
25 [REDACTED]

1 A. Yes.

2 Q. Okay. And what was -- and do you recall being
3 questioned about whether that was, you know, poor
4 tactical planning on their part?

5 A. No. Actually, I remember, and I recall after
6 listening to it again, that I kept saying that although
7 it may seem odd to say this, the plan worked. Right.
8 The plan worked in that there was an officer patrolling
9 in these high-valued targets, high-probability targets,
10 drove by a pharmacy, saw looters, didn't rush in, got on
11 the radio, said I need some help here -- I don't
12 remember what exactly he said -- I've got looting going
13 on at the Walgreens, I need additional units. Didn't
14 rush in. Called for additional resources.

15 Three officers in one car, [REDACTED] [REDACTED]
16 and Tonn, showed up. They formulated a plan, quick
17 plan, but a plan. I go right in this parking lot, you
18 go left. And that is standard police protocol.

19 So I remember telling Steve Connolly the plan
20 worked. We identified criminal activity. Officers were
21 in the process of conducting enforcement action as part
22 of their job as police officers, and unfortunately a
23 fatal encounter occurred.

24 Q. So this is a quick plan, but you said it's also
25 standard enforcement practice?

1 A. Yeah. We're not all going to go like a train
2 go in one side and then the suspects just drive out the
3 other end. There's containment. There is use of cover
4 and distance, ala your police vehicle, a felony traffic
5 stop, high-risk traffic stop. You can now slow things
6 down when you have the cover of a vehicle.

7 If the subjects are voluntary complying, you
8 can give people commands and have them voluntarily
9 surrender one at a time. You know, we've all seen this
10 either on TV, police officers have done it hundreds of
11 times. This is standard practice. And tragically it
12 never -- the event never got to that culmination point.

13 Q. Would you expect the detectives under that
14 circumstance to, you know, push back on [REDACTED] [REDACTED]
15 or tell him they needed to do something different -- or
16 [REDACTED] [REDACTED] -- before leaving that -- the corner
17 there before they entered the Best Buy? Or, sorry, the
18 Walgreens?

19 A. I mean -- that's a tough one. Yes. I mean,
20 you'd like to say, yes, they should push back if it
21 was -- a couple of things.

22 If it was a completely egregious plan, yes, you
23 should go, hold it, time out, captain. I know you're a
24 captain, but what do you want to do here?

25 But the plan, albeit quick, is -- was not a bad

1 plan. Because I would -- what I didn't find in the OIR
2 administrative report, which what would have been a
3 better plan. And a better plan can't really be,
4 unfortunately, do nothing, just stay there and watch
5 these people conduct a criminal act, complete the
6 criminal act, and flee before you even pull into the
7 parking lot. I guess you could do that, but is that
8 really then doing your job, especially on a night like
9 that?

10 I never saw and I cannot think of, you know,
11 viable -- a viable plan and go, man, they did A, if they
12 would have done B, man, you know, this -- this plan
13 would have worked perfectly.

14 And I don't really see plan C, being do
15 nothing, as an option, because if you have that as an
16 option, you could have just not come in to work, I
17 guess, really.

18 So I guess that's kind of an extreme example
19 for my point, but I hope that answers your question.

20 Q. Okay. Now, at some point -- well, let me ask
21 you this. So I assume that in your capacity as an
22 internal affairs sergeant you wrote internal affairs
23 investigation reports?

24 A. Yes.

25 Q. Okay. Do you recall how many?

1 A. I don't know. Upwards of 50, probably close
2 to, conservatively.

3 Q. Okay. And in your capacity as the professional
4 standards lieutenant, did you have an opportunity to
5 review and approve the internal affairs investigative
6 reports written by others?

7 A. Yes, quite a few more of those, probably
8 conservatively well over a hundred. And that runs the
9 gamut from minor -- you know, minor complaints,
10 unfounded investigations, to all the way up to
11 termination, termination investigation, or
12 investigations that resulted in termination of
13 employment, so yes.

14 Q. And just from a sort of basic, you know, level,
15 what would you expect to see in an investigative report
16 that came across your desk for review and approval?

17 A. Something that's really important in
18 administrative investigation, especially since the
19 standard of proof is preponderance, it has to be fact
20 based. We say this in kind of the internal affairs
21 world is fact finder, fact finder. You have to be a
22 fact finder, and that's number one.

23 Number two, something that's very important as
24 an investigator in general is to never start with an end
25 state in mind. Right. You have to go through the

1 investigative steps, finding facts, obtaining
2 information, not knowing what your end result is going
3 to be.

4 In my opinion, based upon my experience, one of
5 the fatal flaws of an internal investigator,
6 administrative investigator, is having an end state in
7 mind and running your case to meet that end state. It's
8 a -- it's bad practice.

9 So those are kind of some important tenets that
10 we have at the Vallejo Police Department and that are
11 kind of industry-wide important factors when conducting
12 an administrative investigation.

13 Q. Okay. Now, as the administrative investigation
14 regarding Detective Tonn's shooting was progressing,
15 what were your expectations as the professional
16 standards lieutenant, if any?

17 A. Well, I had several expectations. Obviously my
18 expectation was that having outsourced this
19 investigation, I wanted to provide all the available
20 information that I would have had available to me as the
21 administrative investigator to the OIR Group.

22 My expectation was that this investigation was
23 going to be done timely, because the more time that goes
24 by, the more time you're losing people's recollections
25 and valuable, you know, investigative information. I

1 was concerned that was not happening timely.

2 I had an expectation of a thorough,
3 comprehensive work product, ala the IA report at the
4 conclusion of this investigations that the city paid
5 for.

6 And I expected to review that investigative
7 report as my role in professional standards as the
8 division commander and my role as the liaison with Steve
9 Connolly to at least evaluate it for factual accuracy.

10 Q. And at some point did you have an opportunity
11 to review the OIR report?

12 A. At some point eventually I did, yes, not -- not
13 right away after we had obtained it as a department.

14 Q. Okay. After the department obtained the OIR
15 report, did you make any request to review that report?

16 A. Yes.

17 Q. Okay. And who did you make the request to?

18 A. I made an official request. I actually
19 intentionally did it kind of officiously on email.

20 I sent it to the chief at the time, Shawny
21 Williams, and my boss at the time, Deputy Chief Mike
22 Kihmm. And I wrote a pretty comprehensive,
23 bullet-pointed request of why I believe it was
24 appropriate and necessary for me to review this internal
25 affairs report to make sure it was accurate and before

1 any next investigative steps occurred.

2 We obtained -- the department, I understand,
3 obtained the report in June 2021. I made this request
4 via email July 13th of 2021 I think. I never got a
5 response from Shawny Williams. He ignored it. I had to
6 follow up a couple weeks later with Mike -- with Mike
7 Kihmm, my boss.

8 He related to me that Shawny was not going to
9 approve my request to review the report. He wouldn't
10 say why and said that he was upset, upset or angry, that
11 I had sent this email, especially in light of our
12 department having a pretty significant public records
13 request volume, like significant volume, compared to
14 other departments our size.

15 He was, I think, concerned that I made that
16 request and unhappy. And, frankly, I didn't care
17 because I think it was something that was very important
18 to occur that didn't occur.

19 Q. And why was that important to you to occur?

20 You mentioned, you know, making sure it was
21 factual, but were there other reasons that you believed
22 it was important for you to review that report?

23 A. Yes. I believed it was important because Mike
24 Kihmm told me that -- all he told me was that the report
25 found that the officer's force was objectively

1 unreasonable.

2 And I could not understand, based upon the --
3 all the information that I had reviewed, looked at, and
4 provided to Steve Connolly, how that finding or
5 determination could have been made. I wanted to know
6 how. And I wanted to know that he was using the
7 information that I had provided him appropriately,
8 number one, and, number two, that he understood it.

9 You know, again, Steve Connolly is a very
10 intelligent man. I take nothing away from him in terms
11 of that. But as an actual investigator, I had some
12 concern about his level of understanding on some of
13 these issues, just me personally.

14 Q. Okay. So you said, you know, that you had
15 concerns over his investigation. You mentioned earlier
16 deficiencies. You know, if you can just articulate
17 those for us in terms of your review of the report and
18 what you found were deficiencies.

19 A. A couple of big things that stuck out to me is
20 obviously the issue of reinterviewing all the parties,
21 the officers that were involved.

22 It appeared to me in his summary of their
23 statements he relied heavily, if not almost all,
24 probably not all, but close to all of his summary was --
25 in the report was relied upon the secondary IA report

1 that occurred a substantial period later. There wasn't
2 as much reference to the criminal investigation as I
3 would have expected.

4 In our reports we often use quotes from the
5 transcripts to kind of really enumerate certain things
6 that officers say. That didn't occur as much as I would
7 have expected.

8 I looked at the -- where the report really took
9 some turns is he used a witness, Sergeant Shane Bower
10 they used as kind of a hybrid expert witness. I think
11 in the report it listed him as something like in his
12 capacity as the rangemaster and expert in firearms and
13 tactics or something, and used that -- a person in his
14 report as a witness, yet it appears deprived that
15 witness of all of the investigative information to
16 review and give a real thorough assessment.

17 Then when the witness did not give a thorough
18 assessment, they took a whole investigator's note
19 section and said why they are not taking into account
20 anything that Sergeant Bower said. I think that was a
21 bad use of a witness and would have expected then some
22 type of other expert witness to render an opinion on the
23 tactics and the force reasonableness, having obtained
24 all the information.

25 However, what it appears is the OIR

1 investigators, Mike Gennaco and Steve Connolly, instead
2 went down that road themselves and went on, and they
3 classified a section of the report called analysis or
4 some type of analysis, which was, I mean, to be frank,
5 it was one of the worst case of actual just opinion, not
6 analysis, it wasn't factual analysis, it was just their
7 opinion -- no offense to lawyers -- but the lawyer's
8 opinion of what occurred and the reasonableness or lack
9 thereof. And it was a really -- fell short to me on
10 lots of levels.

11 Finally, the last two things I noticed were it
12 lacked what most officer-involved shooting internal
13 investigations that I have seen that we have conducted
14 will have a section dedicated to the analysis of the
15 video evidence and an actual analysis of it. That
16 probably could have been obtained if you had a good
17 expert. It would probably have killed two birds with
18 one stone. But in the absence of that use-of-force
19 expert, there should have been a body camera or video
20 analysis of the events and how that shaped into their
21 findings.

22 And, finally, this issue of timeline I think is
23 very important. I already kind of testified about it.

24 However, if you're using your opinion to say
25 one of the major reasons the lethal force was

1 unreasonable is that the officers had a bad plan, it was
2 too rushed, and they went in too quickly, I think you're
3 negligent by not putting some type of timeline analysis
4 in there to outline and support your opinion.

5 Anytime an internal -- I'll wrap with this.

6 Anytime an administrative investigator gets
7 into their opinion, you're getting into gray waters,
8 man. You're getting into dicey, dicey territory. You
9 want everything to be very factual based. And the
10 facts, almost in bullet-point fashion, should speak for
11 themselves.

12 In our department we have changed it. We never
13 give findings as internal affairs investigators. We
14 give factual bullet points. And in the past we have
15 given recommendations: Based upon the above facts, we
16 believe this supports a finding of blank, sustained,
17 exonerated, et cetera.

18 We've actually gotten away from that now as a
19 department, and we give the determination of findings
20 and recommendations to another body. It's a bureau
21 captain that gets just the factual report, and they make
22 their own findings that the chief gets to ultimately
23 agree or disagree with.

24 OIR Group conducted their investigation, they
25 gave their opinion and cited it as analysis and fact,

1 and then they made their own findings. And I believe
2 that's just -- it created this environment of a
3 catastrophically bad administrative investigation.

4 I don't say that lightly. I don't. I don't
5 say that lightly.

6 Q. Now, what is the Vallejo Police Department's
7 critical incident review board?

8 A. It is a composition board of members within the
9 police department. It's governed by policy 301, our
10 policy manual. And it outlines and it creates a
11 mechanism, a secondary mechanism, for our department to
12 review critical incidents that involve the use of force
13 that generally involve a fatality. Those are the givens
14 that you will initiate a CIRB.

15 And it's a way for we can have commanding
16 officers, training -- members of the training
17 department, members of professional standards, and at
18 least two subject matter experts that can convene and
19 take a thorough review and evaluation of an incident to
20 see if it, I mean, you name it, comports with policy,
21 whether or not our department training is sufficient,
22 whether our policy manual addresses the actions
23 appropriately. It's a way of taking a really good
24 holistic look at an incident.

25 And if the board sees things that either the

1 administrative investigation didn't catch or things that
2 it didn't address, or if it recommends further review,
3 those recommendations can be made by the board through
4 the chief.

5 So it's a -- I don't want to say it's unique
6 only to our department, but our department has been
7 doing it for quite some time.

8 Q. Just real quick. You used the phrase CIRB in
9 there. Was that just an acronym for critical incident
10 review board, C-I-R-B?

11 A. Yes. Sorry.

12 Q. That's okay. I just wanted to make sure that
13 the court reporter had that.

14 And so is it fair to say that you expected this
15 case to go to the critical incident review board?

16 A. Yes, 100 percent.

17 Q. And is it true that this case did not go to the
18 critical incident review board?

19 A. No. To this day it still has not gone to the
20 critical incident review board.

21 Q. Okay. And based on your understanding of the
22 Vallejo Police Department policy 301 regarding critical
23 incident review boards, do you believe that that's a
24 violation of that policy?

25 A. Yes, I do.

1 And I had this conversation with Shawny
2 Williams personally when I was direct reporting to him.
3 I can't even remember how many times that I was trying
4 to be a good subordinate and give good recommendations
5 and good advice to go, chief, you can -- how much longer
6 are we going to wait to convene the critical incident
7 review board?

8 And, I mean, he just changed his answer so many
9 times that, you know, I just -- it was clear that he did
10 not want to convene a critical incident review board.
11 And I just think it was -- I mean, he's the chief, but
12 it was just not a good decision.

13 Q. And in your tenure or your experience with
14 critical incident review boards, how many cases
15 involving serious critical incidents have not gone to
16 the critical incident review board?

17 A. I don't know of any personally that have not at
18 some -- you know, have gone to the critical incident
19 review board.

20 Q. This is the only one that you're aware of?

21 A. The only one that I'm aware of. It would take
22 a while sometimes, but it would always go.

23 I mean, we get to the point where -- to make
24 the point, we would hold critical incident review boards
25 sometimes if an officer shot a dog, you know, had to

1 shoot a dog for some type -- in the performance of their
2 duty.

3 So critical incident review boards were I won't
4 say a routine thing, but they always occurred. If it
5 was an officer-involved shooting at a person,
6 100 percent it would occur.

7 THE ARBITRATOR: Let's go off the record one
8 minute.

9 (There was a discussion held off the record.)

10 THE ARBITRATOR: Back on the record.

11 MR. OLANDER: One moment, please.

12 (Pause in proceedings.)

13 MR. OLANDER: That's all I have for this
14 witness at this time.

15 THE ARBITRATOR: Josh, I want you to know, by
16 taking a break I'm not cutting you off.

17 MR. OLANDER: Oh, I know that, sir. You
18 just -- your timing was right.

19 THE ARBITRATOR: Okay. I had a feeling.
20 Let's go off the record.

21 (There was a discussion held off the record.)

22 THE ARBITRATOR: Let's go back on the record.
23 I understand there's no cross-examination.

24 Captain, thank you for your participation in
25 this matter. As I tell everybody, witnesses are subject

1 to possible recall. I'll do my best not to have people
2 recalled.

3 Nice to meet you, sir.

4 And we are off the record.

5 (There was a discussion held off the record.)

6 THE ARBITRATOR: Let's go back on the record
7 and show we are going to break for lunch until 1:30
8 sharp, and we are off the record.

9 --o0o--

10 (AFTERNOON SESSION)

11 --o0o--

12 (There was a discussion held off the record.)

13 JARRETT TONN,

14 called as a witness by the association, being first duly
15 sworn or affirmed by the arbitrator, was examined and
16 testified as follows:

17 THE ARBITRATOR: Let's go back on the record
18 and show we have returned from our luncheon repast.

19 The next witness for the association has been
20 called and sworn.

21 And I'd ask you, sir, to please give us your
22 full name, spelling your last name.

23 THE WITNESS: My name is Jarrett Tonn, T-O-N-N.

24 THE ARBITRATOR: Thank you.

25 And you are the grievant in this proceeding?

1 THE WITNESS: Yes, sir.

2 THE ARBITRATOR: Josh, your witness.

3 MR. OLANDER: Thank you very much.

4 DIRECT EXAMINATION

5 Q. BY MR. OLANDER: Jarrett, how long were you
6 employed with the City of Vallejo prior to your
7 termination?

8 A. Approximately eight years.

9 Q. Okay. And did you have any prior law
10 enforcement experience?

11 A. I did.

12 Q. And where was that?

13 A. I worked for seven years as a police officer
14 and detective for the [REDACTED]

15 [REDACTED]

16 Q. And while you were an officer with the [REDACTED]
17 [REDACTED] can you please sort of run us through
18 some of the duties and assignments that you had while
19 there?

20 A. Yes.

21 My first assignment was to the patrol division
22 where I did normal police patrol. I then was assigned
23 as a detective investigating gang and crimes against
24 persons within the City of Vallejo.

25 Q. Vallejo or [REDACTED]

1 A. I'm sorry, with the [REDACTED]
2 And then I was assigned to the [REDACTED]
3 [REDACTED], which is a regional gang
4 task force, as an investigator.

5 I also was assigned to the regional [REDACTED]
6 [REDACTED] joint
7 SWAT team as a SWAT operator.

8 Q. How long were you a SWAT operator for the [REDACTED]
9 [REDACTED]?

10 A. Almost four years.

11 Q. And when did you leave the [REDACTED]
12 [REDACTED]?

13 A. I left the [REDACTED] in August of
14 2014.

15 Q. Was there a particular reason why you left
16 [REDACTED]

17 A. Yes. I was hired as a police officer with the
18 City of Vallejo.

19 Q. Okay. But did you leave [REDACTED] for any reasons
20 to go to Vallejo?

21 A. I wanted to work at a department that had a
22 larger breadth of assignments. At [REDACTED] there wasn't a
23 lot of opportunities for special assignments, especially
24 as it related to investigations; and if there were, the
25 assignments that I did have, they were limited to a two-

1 or three-year tenure. And I knew at the Vallejo Police
2 Department you could spend considerable more time as a
3 detective. And so that was something that interested
4 me.

5 Q. And in regards to the City of Vallejo, can you
6 please give us sort of your resume as to your duties and
7 assignments there?

8 A. Yes.

9 I was initially, again, assigned to patrol
10 where every officer starts out at. I spent a little
11 over a year in patrol.

12 In 2016 I was assigned to the newly formed
13 crime reduction team, also known as CRT, which was a
14 part of the investigations division.

15 In 2018 I joined the SWAT team as a SWAT
16 operator. And I was on both CRT and SWAT up and
17 through -- up to my termination date.

18 Q. And when you were -- in your capacity as a CRT
19 detective and SWAT operator, those assignments require
20 specialized training?

21 A. They did.

22 Q. And in reference to just CRT, what type of
23 training did that entail?

24 A. I've been to multiple Robert Presley, they are
25 called Institute of Criminal Investigation investigative

1 courses which are run through a local college for
2 affiliation.

3 I did an 80-hour gang investigator course, an
4 80-hour narcotics investigator course, an 80-hour
5 homicide investigator course, an 80-hour basic
6 investigator course.

7 I've also received ongoing training through
8 additional agencies, including Los Angeles Police
9 Department, Sacramento Sheriff's Department, and other
10 local law enforcement agencies in the area of
11 investigations, including surveillance techniques and
12 electronic surveillance.

13 Q. Now, in terms of the, again, CRT, with that
14 specialized training, a lot of it focuses around
15 investigations. And so is that kind of a primary role
16 in your capacity as a detective in CRT?

17 A. Yes.

18 So throughout my tenure at CRT, the mission
19 changed slightly. When we initially started, we were
20 more of a proactive investigative unit where we would do
21 a lot of -- we would initiate investigations ourself,
22 whether it was into gang members or narcotics or persons
23 with firearms.

24 Shortly after the inception, our mission
25 changed to a more reactive type unit. And specifically

1 our two main tasks were the apprehension of wanted and
2 violent persons, or fugitives, and being tasked with
3 covert surveillance to both apprehend wanted persons and
4 to gain additional evidence for ongoing criminal
5 investigations.

6 Q. And what type of specialized training did you
7 undergo in reference to being a SWAT operator starting
8 back to your time at the [REDACTED] Police Department?

9 A. In the year 2011, I attended an 80-hour FBI
10 basic SWAT course, which is a requirement in the State
11 of California for all SWAT operators to attend and
12 graduate from.

13 While a member of the [REDACTED] SWAT team, I
14 attended training on average of twice a month. This
15 included generally one of those days a month was a
16 tactics day, dedicated to SWAT tactics, and the other
17 one was a live fire day at the range that included
18 tactics and live fire.

19 I also attended an advanced FBI SWAT course
20 that dealt with hostage rescue and other more advanced
21 SWAT techniques.

22 I also attended a 40-hour advanced handgun
23 firearms course put on by the Sacramento County
24 Sheriff's Department and their firearms staff and SWAT
25 team members.

1 Q. And in terms of the -- and what are the general
2 duties -- you talked about CRT and those roles. What
3 would be the primary duties of a SWAT operator?

4 A. The primary duty of a SWAT operator is to
5 respond to crisis and high -- sorry, critical incidents
6 specifically that are static in nature, meaning we
7 generally assist in barricades, hostage rescue, search
8 warrants at a given location, and that -- and so you're
9 responding to something that's already occurred,
10 whereas -- and there's no real investigative procedures
11 that are used during that -- during that incident.

12 You're responding as a tactical operator to
13 provide better resources and better equipment and better
14 training and to alleviate the burden on patrol officers
15 who might be facing a situation that is beyond their
16 capabilities or beyond what their training and their
17 equipment allows them to handle.

18 Q. And you may have touched on some of these
19 points, but what would you say the main differences are
20 between CRT -- your duties in CRT and your duties in
21 SWAT?

22 A. I would say the primary difference, number one,
23 is that CRT there is an investigative component, where a
24 SWAT is merely reactive.

25 And, number two, my duties as a CRT detective

1 almost always involve covert plainclothes surveillance.
2 Whereas as a SWAT operator, I am fully wearing marked
3 gear and not in an attempt to conceal my identity as a
4 police officer and to react to a given incident.

5 Q. And at any time during your tenure with the
6 [REDACTED] and Vallejo Police Departments, were you ever
7 assigned any supervisory roles or duties?

8 A. Yes, I was.

9 Q. And what were those?

10 A. In late 2020, I was made the department SWAT
11 team leader. I was responsible for overseeing all
12 training. I was responsible for direct tactical
13 movement of specific operators during an operation and
14 to carry out the tactical plan of the SWAT commander.

15 Whereas the SWAT commander is offsite during a
16 SWAT operation, likely back at a command post, I would
17 be in direct field supervision of the other 18 or so
18 SWAT operators who were present on scene at a tactical
19 situation.

20 In addition to that, again in -- starting in
21 approximately July of 2020, I was made the permanent
22 acting sergeant, the designated acting sergeant of my
23 CRT unit. Whereas when my sergeant was unavailable for
24 any number of reasons, whether it be vacation or another
25 meeting or whatnot, I would be the direct field

1 supervisor of the entire crime reduction team unit.

2 Q. How many officers or detectives, rather, were
3 on the crime reduction unit?

4 A. So it fluctuated a little bit. Between five
5 and six on CRT and then our SWAT team had about between
6 15 and 18 operators that I was in charge of.

7 Q. Okay. And so you mentioned you became the
8 designated acting sergeant for CRT in July 2020. Was
9 that correct?

10 A. That's correct.

11 Q. And you said late 2020 you became the SWAT team
12 leader. Do you recall about what month that might have
13 been?

14 A. I believe it was November or December. There
15 was -- I was made the -- one of two SWAT team leaders.
16 There was two total, so I was designated as one of those
17 SWAT team leaders.

18 Q. Okay. And how long did you serve as the
19 designated acting sergeant for CRT?

20 A. Up until I was put on admin leave for the
21 second time in relation to this shooting that we're
22 discussing.

23 Q. Okay. And how about your role as the SWAT team
24 leader, how long did that last?

25 A. The same, up until I was put on admin leave for

1 the second time in this officer-involved shooting.

2 Q. Okay. Now moving to the events around the date
3 of June 1st.

4 What involvement in terms of in your role as
5 CRT did you have leading up to June 1st of 2020 as it
6 relates to the civil unrest in Vallejo?

7 A. So the civil unrest both in Vallejo, the
8 Bay Area, and nationwide had been happening, give or
9 take, for a week leading up to June 1st. This was in
10 the direct aftermath of the George Floyd incident in
11 Minneapolis.

12 As one of our department's investigators and
13 personally specializing in a lot of social media
14 investigations was one of my focuses early on at the
15 police department, I was tasked with gathering
16 intelligence and providing briefings to command staff
17 members regarding potential looting or other criminal
18 behavior associated with the ongoing events of the riots
19 in the Bay Area.

20 Q. And, you know, we've heard a lot throughout the
21 past couple days about the civil unrest in Vallejo, but
22 just could you please give us a summary from your
23 perspective as to how those events were playing out in
24 the city?

25 A. Yes.

1 So during the previous week, things had
2 began -- started to become progressively worse within
3 the City of Vallejo. What had initially, maybe a week
4 or so earlier, started out as demonstrations, quickly,
5 especially during nighttime hours, had started to become
6 violent in nature and had included a large amount of
7 vandalism.

8 Specifically in the three or four days up until
9 June 1st, there had been numerous, for lack of a better
10 word, attacks on the police department. People had
11 tried to break in to the lower level dispatch center,
12 which is accessible through the ground floor.

13 Snipers from the SWAT team had to be deployed
14 onto the roof of the Vallejo Police Department in order
15 to provide cover and observation of ongoing activity.

16 Numerous rocks and bricks had been thrown
17 through the windows of the police department in the days
18 leading up to it.

19 Several people had been arrested in the back
20 parking lot, which at the time was not very secure. And
21 I actually don't believe that there was even a locking
22 gate at the time for the police department.

23 At one point distractionary devices, such as
24 flash bangs and, for lack of a better word, tear gas had
25 been used onsite to disperse vandals and people that

1 were causing damage in trying to enter the police
2 department facility.

3 The department had placed concrete K-rails,
4 such as you would see on the freeway, around the police
5 department and had actually blocked off both
6 intersections to prevent vehicle access to the street
7 that the police department was on.

8 As a SWAT team member, I had received constant
9 email updates about the SWAT team was on standby that
10 whole week almost, and different members of the SWAT
11 team had been called in depending on their normal shift.

12 So, for instance, if SWAT operators were on
13 duty as patrolmen, patrol officers during a certain
14 shift, they were asked to bring their SWAT gear and
15 participate in station security during that time.

16 Q. What was the general, you know, tenor around
17 the police department at this time?

18 A. So I had numerous discussions with command
19 staff during that time in my role as an investigator and
20 in briefing them, and they were highly concerned about
21 what was going to happen. There was a high concern that
22 the police department was going to be overrun.

23 Numerous emails went out about what would
24 happen should people breach the police department.
25 There had actually been a discussion on whether or not

1 deadly force would be used immediately upon breaching
2 the police department should people try to gain access.

3 So there was a high level of concern from an
4 administrative standpoint. My immediate supervisor in
5 investigations was concerned.

6 There was a high concern that we needed to
7 gather intelligence online, which we did.

8 And there was just a general feeling that
9 things were not getting better; they were getting
10 progressively worse on a day-by-day basis.

11 Q. Now, specifically on June 1st, 2020, was that a
12 regularly scheduled shift for you?

13 A. It was not.

14 Q. And were you called in to work that day?

15 A. Yes, I was. I was out to dinner with my family
16 and received a phone call that I was being ordered in to
17 work.

18 Q. And did you understand in what capacity you
19 were being ordered in to work for?

20 A. So initially I received a phone call from my
21 investigations sergeant, and the general tone of the
22 conversation was come in to work, we don't know exactly
23 what you're going to do yet, but it's getting bad and we
24 need people here.

25 Now, that mission was refined while en route to

1 the police department. I received communication from
2 Lieutenant Bob Knight, who was the SWAT lieutenant, as
3 well as my investigations lieutenant again, that the
4 members of the SWAT team were going to respond as SWAT
5 operators.

6 Q. Approximately what time, if you recall, were
7 you ordered to head in to work?

8 A. I believe I got the call around 6:00 p.m. while
9 I was out to dinner. I don't live in the county so it
10 took me a little bit to go home, get my equipment, and
11 then respond to the City of Vallejo. I probably got to
12 the City of Vallejo around 9:00 o'clock.

13 Q. All right. And where did you respond?

14 A. Initially I went to my CRT office to meet with
15 [REDACTED] [REDACTED] and [REDACTED] [REDACTED] who were also
16 on the SWAT team and were also on the crime reduction
17 team with me.

18 Q. Now, while you were en route to the CRT office,
19 you touched on this a little bit, but did you receive
20 any additional intelligence about what was going on in
21 the City of Vallejo?

22 A. I did.

23 Q. And what was that?

24 A. There was several things.

25 The first thing was I had multiple

1 conversations with on-duty officers about what was
2 happening in the City of Vallejo, and I was told that
3 there were -- there was ongoing looting. People had
4 been breaking into specifically pharmacies and other
5 what we deemed to be high-value targets. I received
6 updates via SWAT team members about what was happening.

7 And probably most importantly was I was
8 listening to my police radio on the drive in to work
9 which took me approximately an hour.

10 Q. Okay. What kinds of information were you
11 gathering from the police radio?

12 A. It was unlike anything I had ever heard, the
13 amount of radio traffic. And bear in mind the City of
14 Vallejo is a very busy city, especially per capita, it
15 was just unlike anything I had ever heard.

16 I was hearing vehicle pursuit after vehicle
17 pursuit after vehicle pursuit in such rapid succession.
18 Some of them would last only a few seconds and someone
19 might crash. Some were starting to go out of town.

20 I was hearing multiple priority one dispatches,
21 which is where they actually sound a special alarm over
22 the radio to indicate that this is a priority,
23 highest-priority dispatch, such as shootings in
24 progress, carjacking, at least one, multiple robbery
25 attempts, armed robbery attempts.

1 And, very unusually, I heard people on the
2 radio that I would never normally hear.

3 I heard Captain Potts engage in a vehicle
4 pursuit that started to go out of town.

5 I heard a watch commander engaged in a vehicle
6 pursuit, a lieutenant, which is -- doesn't normally
7 happen.

8 I heard [REDACTED] [REDACTED] engaged in a felony
9 attempt to take down a burglary suspect, I believe
10 actually at the same Walgreens where the shooting
11 happened but earlier in the night.

12 I heard [REDACTED] [REDACTED] involved in a foot
13 pursuit on foot of a suspect.

14 And I just knew from what I was hearing this
15 was unlike anything else I had ever experienced.

16 Q. So what did you do upon arriving at the CRT
17 office?

18 A. So after I arrived at CRT, I believe my
19 detective sergeant was there, CRT sergeant. We had a
20 quick conversation just of almost disbelief. We were
21 trying to determine what's going on. And my detective
22 sergeant said, you know, you guys are with SWAT.

23 And we decided to consolidate vehicles. It was
24 not a situation where you would want to ride by yourself
25 that night. And because there were three of us, it

1 didn't make sense to have two people in one car and one
2 person in another car since someone was the odd man out.

3 We decided to consolidate into
4 [REDACTED] [REDACTED] truck because his vehicle, out of
5 all of our detective vehicles, was the largest vehicle
6 and the roomiest to have multiple people in it.

7 Q. And what type of clothing and gear did you
8 deploy with?

9 A. So I was wearing a blue SWAT uniform with
10 Vallejo Police Department patches on the shoulder and a
11 star on the front. And I was wearing a black tactical
12 vest with the words "police" on the front and back and
13 my star on the front.

14 Q. And in terms of gear that you deployed with,
15 did you deploy with any gear that would be unique to
16 your role as a SWAT operator?

17 A. Yes.

18 Q. And what was that?

19 A. So each SWAT operator has what they refer to as
20 a kit, and generally it's kept in one bag. And that
21 includes your heavy tactical vest, which provides a
22 higher level of ballistic protection than your normal
23 vest does, your ballistic helmet with communications
24 headset, flash bangs. And then I also brought, which
25 everyone in the vehicle did, our SWAT-issued rifle.

1 Q. Now, we've heard a lot of testimony about where
2 everyone was seated in the vehicle.

3 [REDACTED] [REDACTED] was driving; is that correct?

4 A. That's correct.

5 Q. And then [REDACTED] [REDACTED] was in the front
6 passenger seat leaving you in the rear seat?

7 A. Yes.

8 Q. Okay. Now, how did the three of you come to
9 sit in your respective areas within that truck?

10 A. That truck is [REDACTED] [REDACTED] car, so it
11 was just assumed he would be driving. I actually jumped
12 in the back seat because I'm only about 5-11,
13 [REDACTED] [REDACTED] is about 6-3. So generally I give him
14 the front seat because it's a lot roomier, and I know he
15 needs the room. So I just naturally jumped in the back
16 seat and told him he could ride in the front.

17 Q. Now, did you at that time have any discussion
18 amongst the three of you as far as what your respective
19 roles would be inside that vehicle?

20 A. [REDACTED] [REDACTED] was the first one to discuss
21 roles. And he had a flash bang and decided that he
22 would operate the flash bang.

23 Also, all of our rifles -- there wasn't a lot
24 of room in the front. So [REDACTED] [REDACTED] and
25 [REDACTED] [REDACTED] had placed their SWAT rifles in the

1 rear of the truck, so they didn't have access to them.
2 And then it just was natural that I decided to take the
3 lethal or long cover as I was the only one that had
4 access to my rifle, and [REDACTED] [REDACTED] had already
5 taken the less lethal option of a flash bang.

6 Q. Okay. Would it not have made sense for
7 [REDACTED] [REDACTED] to also have his rifle up with him in
8 the front seat?

9 A. It's pretty tight. Again, he's a big guy, and
10 that truck is, while the biggest vehicle we have, it's
11 got a big center console area. There's a computer
12 mounted in there, so it really limits the area of the
13 passenger. He has more leg room, but he's kind of
14 squished. And so there's really not a way to --
15 especially if you're going to be longterm driving
16 around -- have a rifle up there with you.

17 Q. Now, so what did the three of you do upon
18 deploying into the field when you left the CRT office?

19 A. So we drove to the command post, which was
20 located at the Best Buy on Admiral Callaghan, per the
21 instructions given to us from Lieutenant Knight.

22 Q. And so what was the purpose of meeting at the
23 command post?

24 A. The purpose was to discuss and brief on what
25 the SWAT team was going to be doing specifically.

1 One of the things -- I should have mentioned
2 this too.

3 One of the things I noticed as I actually drove
4 into town, and we saw them later at the command post,
5 was literally saw seven cars driving together on the
6 freeway with their lights off, weaving in and out of
7 traffic, and as we are going to the command post --
8 sorry, on the way to the command post, and then they go
9 the same direction as us, and as we're pulling into the
10 command post, this pack of seven cars pulls into the
11 Walgreens and starts looting it.

12 We had not received any briefing yet so we
13 ignored that. We went right to the command post,
14 because we knew that whatever was going to happen, we
15 had to receive some sort of briefing and had a unified
16 response to the situation.

17 Q. And who was in charge at the command post?

18 A. So in charge specifically -- there was multiple
19 people at the command post. I am assuming you mean
20 command staff?

21 Q. Well, yeah. I'm asking who was -- was there
22 somebody who was designated to be in charge of the
23 command post?

24 A. So of the overall command post, Captain Potts
25 was the incident commander. He was there with

1 Chief Williams. And then Lieutenant Knight was there as
2 the SWAT commander. So we had a lieutenant, a captain,
3 and a chief there.

4 Q. And what was your understanding of
5 Chief Williams's role if Lieutenant Potts was there as
6 the incident commander?

7 A. So I noticed -- and I actually spoke to
8 Captain Potts on scene. He was the investigations
9 captain at the time. And, again, I had been briefing
10 him throughout the days leading up regarding what was
11 going on. And I know that he was discussing something
12 with Chief Williams. They seemed to be figuring out
13 what was happening.

14 I know Chief Williams was listening to the
15 radio. He had a radio on his belt and so did
16 Captain Potts. And then Captain Potts and
17 Lieutenant Knight ended up meeting together and then
18 briefing the SWAT team.

19 Q. So who was your direct supervisor on the
20 evening of June 1, 2020?

21 A. So my direct supervisor was Lieutenant Knight.

22 Q. And then did you receive a briefing by
23 Lieutenant Knight?

24 A. I did.

25 Q. Okay. And what did that briefing entail?

1 A. The briefing entailed directing SWAT resources
2 to respond in a way to supplant the patrol officers who
3 were responding to the looting calls.

4 In other words, we were told that patrol was
5 not able to respond to the amount and volume of calls
6 for service and that we were to spread out in the city
7 and assist them -- assist them specifically and also
8 assist to respond to broadcasts, calls for service we
9 saw regarding to the looting, and to take enforcement
10 action.

11 Q. And so what did you understand your specific
12 mission to be the night of June 1, 2020?

13 A. What we were told was we were to go out and
14 arrest the looters we were either dispatched to or came
15 across.

16 Q. Now, did any part of your mission as directed
17 by Lieutenant Knight on June 1, 2020, include, you know,
18 conducting surveillance or, you know, gathering
19 intelligence like you would in your role as a CRT
20 detective?

21 A. It did not.

22 And if I could add, we were in an unmarked
23 truck, but that was only because the Vallejo Police
24 Department doesn't even have enough patrol vehicles for
25 all the patrol officers. There's been times when you're

1 waiting for someone to bring a car in.

2 And so the purpose of us being in an unmarked
3 truck was nothing more than there's no other vehicles to
4 drive. This was the only option we had are one of our
5 detective vehicles, and specifically this one was able
6 to fit all of our equipment. So it had nothing to do
7 with any sort of undercover capacity. It just happened
8 to be there's no other cars in the City of Vallejo.

9 Q. Now, approximately how long were you at that
10 command post before you deployed into the field?

11 A. I would say roughly 45 minutes.

12 Q. Okay. And then what did you do upon --

13 THE ARBITRATOR: Pardon me one second. I
14 apologize.

15 Did his truck have bells and whistles, I mean
16 lights and siren?

17 THE WITNESS: Yes, sir. So all of our
18 detective vehicles, including [REDACTED] [REDACTED] truck,
19 were equipped with red and blue lights --

20 THE ARBITRATOR: Okay. Thank you.

21 THE WITNESS: -- and a siren.

22 THE ARBITRATOR: That's all.

23 Please pick it up, Josh. Sorry to interrupt.

24 MR. OLANDER: Nope. That's a good question.

25 No problem. Anytime.

1 Q. Then what do you do upon leaving the command
2 post?

3 A. We started to drive I believe --
4 (Internet dropped.)
5 (Record read.)

6 Q. BY MR. OLANDER: Okay. Go ahead.

7 A. We started to drive towards the south side of
8 Vallejo. I believe there was a call for service, a
9 shooting call. While en route to that call, we were
10 redirected to a burglary attempt at the local gun store
11 in the middle of the city.

12 Q. And did you end up responding to that gun
13 store?

14 A. We responded to the gun store, and we were
15 notified that just prior to our arrival the looters were
16 unable to access it and had left towards a different
17 part of town.

18 Q. And then after leaving the gun store, at some
19 point you met up with [REDACTED] [REDACTED]

20 A. Yes.

21 Q. Okay. Now, how do you know [REDACTED] [REDACTED]

22 A. I know that he's the captain of the Vallejo
23 Police Department. He was the second in command, the
24 highest-ranking captain at the time.

25 I don't -- I've barely talked to him. He's

1 just somebody -- because he's an administrator, I -- my
2 office, I should say too, is offsite from the police
3 department. So I don't have a lot of contact with
4 administrators in general, but I don't know if I had
5 ever had more than a passing conversation with
6 [REDACTED] [REDACTED] up until this point.

7 Q. So had you ever worked with him prior to
8 June -- sorry. Have you ever worked with [REDACTED] [REDACTED]
9 prior to June of 2020?

10 A. No.

11 Q. Was he ever -- was [REDACTED] [REDACTED] ever your
12 supervisor at the Vallejo Police Department?

13 A. I think he -- I mean, he's everyone's
14 supervisor on patrol at some point. I mean, he was the
15 patrol captain. But, no, I never -- he was never my
16 supervisor or anyone I even remotely direct reported to.

17 Q. So how was it that you came to meet up with
18 [REDACTED] [REDACTED] near the Walgreens?

19 A. We were driving north on Tuolumne approaching
20 Redwood when [REDACTED] [REDACTED] broadcast that he had viewed
21 or was viewing a burglary in progress at the Walgreens.

22 Q. Okay. All right. I'm going to do the share
23 screen Google map here.

24 Okay. I'm going to show you what has been
25 previously marked as the Union Exhibit Z-3.

1 (Association Exhibit Z-3 was marked for
2 identification.)
3 Q. BY MR. OLANDER: Does this appear to be a
4 Google map -- does this appear to be a Google map?
5 A. Yes, it does.
6 Q. And do you recognize this location?
7 A. I do.
8 Q. Okay. Can you please describe for the record
9 what location this is?
10 A. This is the intersection of Redwood Street at
11 Broadway, which is where I met [REDACTED] [REDACTED] and where
12 the Walgreens where the officer-involved shooting
13 occurred.
14 Q. Okay. And is that Walgreens depicted in this
15 Google map?
16 A. Yes, it is.
17 Q. Okay. Is that this big, white square here with
18 the red marker?
19 A. Yes.
20 Q. Okay. And is that -- is the address of that
21 Walgreens 1050 Redwood Street?
22 A. I believe so.
23 Q. All right. Now, if you could please -- if you
24 could please identify for me where you recall meeting
25 with [REDACTED] [REDACTED]

1 A. Would you like me to do it?

2 Q. Sure, you can do it, since you're here.

3 A. Is it okay?

4 Q. It is. Good luck.

5 A. Somewhere right in this vicinity.

6 Q. Okay. Just FYI, you have to kind of start a
7 little bit to the left. So if you want to --

8 A. Right there.

9 Q. Okay. Could you please mark that -- hold on,
10 not yet. Could you please mark that location with a
11 number 1?

12 A. (Marking.)

13 Q. There you go. Okay. Very good.
14 And does that depict, to the best of your
15 recollection, where you met with [REDACTED] [REDACTED]

16 A. Yes. It might be slightly to the left there,
17 but that's -- it's right in that area.

18 Q. Okay. All right. And where were you within --
19 were you still in the back seat of the vehicle at that
20 time?

21 A. Yes, I was.

22 Q. Okay. Was your window -- I assume there was a
23 window on that back passenger door? Is this a
24 four-door --

25 A. Yes. It's a crew cab, full four-door pickup

1 truck.

2 Q. Okay. Was that window up or down? Do you
3 recall?

4 A. It was up.

5 Q. Okay. And could you hear the conversation --
6 or could you hear what [REDACTED] [REDACTED] was saying to

7 [REDACTED] [REDACTED]

8 A. Yes. I leaned forward to hear what they were
9 saying.

10 Q. Okay. And what do you recall [REDACTED] [REDACTED]
11 saying to [REDACTED] [REDACTED]

12 A. He pointed to the Walgreens and made a
13 statement of they are going in and out of the
14 drive-through window. And he pointed, and we all were
15 looking and saw -- I should speak for myself -- and so I
16 looked and saw the looters.

17 Q. Okay. Did you say anything to [REDACTED] [REDACTED]
18 during this meeting?

19 A. I did not.

20 Q. Okay. Did [REDACTED] [REDACTED]

21 A. He did not.

22 Q. Okay. How about [REDACTED] [REDACTED]

23 A. He did not.

24 Q. Okay. So [REDACTED] [REDACTED] directs your attention
25 to the Walgreens.

1 Does he say anything after that?

2 A. Yes.

3 Q. And what was that?

4 A. He pointed to northbound Broadway, or to the

5 north side of the Walgreens, and he said, "I am going to

6 go that way," then he pointed to the south side of the

7 Walgreens, and he said, "You go that way."

8 Q. Okay. And what happened next?

9 A. He drove off.

10 Q. Okay. Approximately how long do you estimate

11 that meeting lasted?

12 A. Ten seconds.

13 Q. Did you have an understanding based upon that

14 brief meeting as to what you would all be doing next?

15 A. I did.

16 Q. What was your understanding?

17 A. Based on the fact that [REDACTED] [REDACTED] pointed

18 to two different directions, I understood that he wanted

19 to triangulate our positions in an effort to contain and

20 contact the looters, which would be done through a

21 high-risk stop for enforcement, or felony stop.

22 I should say those are synonymous terms, high

23 risk and felony stop. They are just different ways of

24 saying you don't get out of your vehicle and chase

25 someone on foot. You attempt to maintain a safe

1 distance from the suspects and utilize whatever cover
2 you have in order to assess and respond to the
3 situation, which was what my understanding was.

4 Q. Okay. What is your level of experience in
5 conducting high-risk stops?

6 A. I mean, I don't think hundreds is too much. No
7 less than a hundred, 150 high-risk stops.

8 Q. Okay. And is that just at the City of Vallejo,
9 or does that include your experience at [REDACTED] as well?

10 A. At [REDACTED] and on the [REDACTED] gang
11 suppression unit, that was one of our primary tools that
12 we used. We did a high number of high-risk stops on
13 gang members and armed felons.

14 Q. How often would you say -- I understand it's an
15 approximation, but how often would you say you conduct
16 high-risk stops in the City of Vallejo in your capacity
17 as a patrol officer?

18 A. I think a conservative estimation would be
19 several a week if you work a standard patrol week.

20 Q. Did you conduct a lot of high-risk stops in
21 your capacity as a CRT detective?

22 A. Yes.

23 Q. And is it fair to say you participated in
24 training regarding conducting high-risk stops?

25 A. Yes. I would say as a police officer that's

1 probably one of the more common trainings we've ever
2 had, which is on high-risk stops of either vehicles or
3 people.

4 It's really the same tactic, I should say,
5 either way. Whether you're confronting a person who is
6 in a vehicle or someone who is outside of a vehicle, the
7 high-risk stop is the same. And so it's a very
8 ubiquitous tactic that you can use on a wide variety of
9 scenarios. So it's something that's trained constantly.

10 Q. And in your training and experience, is a
11 high-risk stop an example of utilizing deescalation?

12 A. So deescalation is a concept, and it may or may
13 not be appropriate to a given scenario. It utilizes
14 concepts of deescalation such as, again I mentioned, you
15 don't just get out and run to tackle a suspect. You
16 wait by your vehicle. You give verbal commands. You
17 use time on your side as much as possible. Principles
18 of cover.

19 So it envelopes principles of deescalation, but
20 it itself is not used in the same type of scenario where
21 you would think of deescalation, nor is deescalation
22 trained in those type of scenarios.

23 Q. I appreciate the clarification on that.

24 And can you describe at least in terms of the
25 training you have received on deescalation?

1 A. So the primary purpose of deescalation, as we
2 have been trained as a department, it's actually on the
3 Lexipol website, which is the governing body that comes
4 up with the Vallejo Police Department policies, is to be
5 used primarily for persons in crisis, not crimes in
6 progress.

7 And so while there is an overlapping of
8 principles where, as I said, you want to use cover, you
9 want to use time on your side, you want to maintain
10 distance, the actual technique of deescalation would be
11 where there is not a crime in progress and where there
12 is the ability, the known ability at the time, of
13 establishing communication with that person in crisis.

14 True deescalation requires a communication, a
15 two-way communication.

16 And so I always think of it as deescalation
17 might be someone on their front porch waving a gun
18 around. You don't know if they are suicidal. They
19 haven't made any threats. Very vague behavior. And
20 there's no active felony. And if there is a crime,
21 there's maybe barely a crime or not something that poses
22 an immediate threat to the public.

23 We have never once as an agency -- and I'm very
24 well-versed in training in different agencies -- have I
25 ever had deescalation training as it relates to a crime

1 in progress. That's just -- again, there might be some
2 concepts that merge, right, distance, cover, time, but
3 deescalation is where there is the ability to have a
4 two-way communication and primarily for crimes --
5 persons in crisis and mental health situations.

6 And, in fact, if you read the history of where
7 deescalation comes from, it comes from these calls where
8 they are suicidal people who are armed who don't pose a
9 threat to anyone else, and the concept then becomes
10 let's deescalate this. Let's not force an armed
11 encounter with someone who is not a criminal, not
12 committing a crime, who is not actively posing a threat.
13 There's no felony that's been committed. That is a
14 situation for deescalation. It has never ever have I
15 seen it used for a crime in progress.

16 THE ARBITRATOR: Let's go off the record for
17 one minute.

18 (Recess.)

19 THE ARBITRATOR: Please continue.

20 Q. BY MR. OLANDER: Jarrett, are you familiar with
21 the Vallejo Police Department's policy on deescalation?

22 A. I am.

23 Q. Okay. And prior to June 2020, did you receive
24 any training by the Vallejo Police Department on that
25 policy?

1 A. No.

2 In fact, one of the reasons I'm so familiar
3 with this topic of deescalation was this was a brand-new
4 policy to our police department. It was enacted in
5 February of 2020, around much discussion, because it was
6 a hot-button topic just within the field of law
7 enforcement.

8 And so the policy went into effect in February
9 several months prior to the shooting. And other than
10 being read the policy, we never received any training on
11 the topic of deescalation, certainly not as it related
12 to any crimes in progress.

13 In the months leading up to the policy being
14 adopted, all of the conversations had been in relation
15 to specifically suicidal individuals and persons
16 experiencing mental health crisis, but there had been no
17 training whatsoever from the police department as it
18 relates to deescalation and its role in crimes in
19 progresses -- in progress, excuse me.

20 Q. Okay. I want to get back to your meeting with

21

22 So, you know, you mentioned this was, you
23 approximated, about ten seconds, correct?

24 A. Yes.

25 Q. There was no sort of back-and-forth

1 conversation at all?

2 A. There was no back-and-forth conversation.

3 Q. Okay. Considering how brief that meeting was
4 and how little was said, how is it your understanding
5 that you and your partners would be conducting a
6 high-risk stop once you entered the Walgreens parking
7 lot?

8 A. Number one, that felony or high-risk stop is so
9 secondary in nature, it doesn't need much communication
10 other than the direction of travel you want to go.

11 And a perfect example of that would be on
12 patrol, if you get behind an armed vehicle or a stolen
13 vehicle and you -- and you decide to stop it, there's no
14 communication between patrol officers that this is going
15 to be a felony traffic stop. No one gets on the radio
16 and says, guys, felony traffic stop. That's just what
17 you do. And maybe one car goes to the right and one car
18 goes to the left. You might choreograph it like a
19 dance, but it really is a dance. You have a leading
20 partner, if they go left, you go right, but the general
21 tactic, it's unspoken.

22 It's assumed that in certain situations, that
23 being high-risk or felony situations, that is going to
24 be used. Because the alternative would be, what,
25 running after someone and chasing them and tackling

1 them. Those are the dangerous things you want to avoid.
2 Me running and grabbing a suspect, that's dangerous. I
3 don't want to do that. That's not a sound tactic
4 anymore. That's policing in the 1980s. That's not
5 policing now. That's not using the principles of
6 distance, time, and cover.

7 But the felony stop provides you all the safety
8 that you could hope to get, absent, you know, some crazy
9 thing of having an armored car, provides you the
10 reasonable safety you need to deal with these armed or
11 high-risk individuals.

12 And so it's just -- it's second nature. No one
13 ever gets on the radio and says, high-risk traffic stop
14 time. It's just you're dealing with this type of
15 scenario, you turn your lights on, and the dance begins,
16 and you go to your position. And it's so intuitive,
17 especially at the Vallejo Police Department.

18 Yes, maybe when I was at [REDACTED] if we did a
19 felony traffic stop, it was more coordinated, but we did
20 not do them that often. This is a multi a week, if not
21 a shift thing, and you know what to do. It's expected
22 you know what to do.

23 Q. Now, did you understand [REDACTED] [REDACTED]
24 directive to be a direct order?

25 A. Absolutely.

1 Q. And would it be fair to say that [REDACTED] [REDACTED]
2 at that time was your superior officer?

3 A. Except for the chief, he was the most superior
4 officer at the police department.

5 Q. And was [REDACTED] [REDACTED] order, in your
6 opinion, a legal order?

7 A. Absolutely.

8 Q. Would his order constitute a violation of
9 department policy or training at the -- from the Vallejo
10 Police Department?

11 A. Not at all.

12 Q. And would you consider [REDACTED] [REDACTED] order,
13 based on your training and experience, to constitute a
14 plan?

15 A. Absolutely.

16 Q. Okay. All right. So I want to refer you back
17 to what I've previously marked as Exhibit Z, Union
18 Exhibit Z-3.

19 So -- and just -- you don't have to mark it up,
20 but if you can just give us a direction from when
21 [REDACTED] [REDACTED] drove away from your vehicle, which
22 direction did he go?

23 A. So [REDACTED] [REDACTED] made this right or northbound
24 turn towards the north entrance, the northernmost
25 entrance of the Walgreens, and he pulled into the lot a

1 car length or two, and then he triangulated his vehicle
2 to point towards where the looters had been exiting.

3 Q. Okay. So you said northbound, so northbound
4 Broadway?

5 A. That's correct.

6 Q. Okay. And if you can go ahead and mark where
7 his vehicle came to rest with an H, please.

8 A. (Marking.)

9 Q. Thank you.

10 Okay. And which direction did you and your
11 partners go?

12 A. We traveled westbound on Redwood across
13 Broadway, and we turned into the first of the two
14 southern entrances into Walgreens.

15 Q. Okay. Could you please mark that entrance with
16 the number 2?

17 A. (Marking.)

18 Q. Does that 2 accurately reflect where you pulled
19 into the parking lot?

20 A. Yes.

21 Q. And that will be, I guess, [REDACTED] [REDACTED]
22 pulled in?

23 A. I'll make it a little -- sorry.

24 Q. Okay. And does that H for [REDACTED] [REDACTED]
25 represent where his vehicle came to rest?

1 A. It does.

2 Q. Now, approximately how long did it take you and
3 your partners to travel from the 1 position where you
4 met with [REDACTED] [REDACTED] to the 2 position where you
5 entered the parking lot?

6 A. Roughly ten seconds between 1 and 2.

7 Q. Okay. And do you know or recall where you were
8 when [REDACTED] [REDACTED] entered the north entrance to the
9 Walgreens parking lot on Broadway?

10 A. I don't know specifically when he entered. I
11 know it was prior to us because I ended up seeing him
12 there, but I couldn't tell you how many seconds prior to
13 us getting in the lot that he got into the lot.

14 Q. Okay.

15 A. Does that make sense?

16 Q. Yes.

17 Now, you mentioned that you were armed with
18 your rifle that night, correct?

19 A. I was carrying my department rifle, SWAT rifle,
20 which had a light and a suppressor, or silencer,
21 attached to the barrel.

22 Q. Okay. And what would be the purpose of the
23 suppressor?

24 A. The suppressor is designed so that it can be
25 shot in close quarters without causing hearing damage to

1 other officers.

2 Q. And do you practice firing that rifle in
3 trainings near your partners?

4 A. Right on top of each other, yes.

5 Q. Okay. So is it fair to say that that's
6 something that your partners would be used to?

7 A. Yes.

8 Q. Okay. And is there a reason that you were --
9 now, did you also have a handgun?

10 A. I did.

11 Q. Okay. Is there a reason that you would have
12 the rifle at the ready in the back of that truck versus
13 just having your handgun?

14 A. Yes.

15 Q. And what reason or reasons would that be?

16 A. So the purpose of carrying a rifle, in general,
17 is it provides better ballistics. Meaning it can defeat
18 things such as armor, certain armor, certain barricades,
19 if that's necessary, glass, and that it provides a
20 longer distance to which you can shoot and be accurate.
21 Meaning you can stay farther back from a potential
22 threat and, if you need to engage that threat, still be
23 accurate.

24 Q. Okay.

25 A. More so than a pistol would.

1 Q. And is there an advantage to having a rifle
2 when conducting a high-risk stop?

3 A. Yes.

4 Q. And what is that?

5 A. There's a number of advantages. Just
6 generally, a rifle provides a more stable shooting
7 platform. It's a shoulder-mounted weapon. It's going
8 to be secure. It's more accurate. It has a holographic
9 sighting system attached to it so you are more precise
10 in your shooting. It allows you, again, to maintain
11 cover and be accurate.

12 It also has a higher magazine capacity which,
13 in a certain situation, would cause you to have to
14 reload less often and therefore not be behind, and
15 especially if you're dealing with an armed individual
16 who also has a rifle.

17 Q. And you touched on this little bit in reference
18 to [REDACTED] [REDACTED] but why were [REDACTED] [REDACTED] and
19 [REDACTED] [REDACTED] not armed with their rifles as well?

20 A. Well, specifically [REDACTED] [REDACTED] is
21 driving, and you can't drive and have a rifle slung
22 around you. It's going to get wound up in the steering
23 wheel. That's never an acceptable thing to do.

24 As far as [REDACTED] [REDACTED] he was the less
25 lethal flash bang-designated person. So that just

1 wasn't his role that day. And, as I mentioned before,
2 the confines of where he was sitting and the computer
3 mount, it just made that too cumbersome to be driving
4 around on extended patrol with a rifle.

5 Q. Okay. Now, moving back to Exhibit -- Union
6 Exhibit Z-3, do you recall the path of travel that your
7 CRT truck made through the Walgreens parking lot?

8 A. I believe I do. It was -- there was some
9 weaving in and out, but I believe I do.

10 Q. Okay. Would you mind -- and I'm just going to
11 grab this real quick so that I can access this for you.

12 If you could please do your best to draw that
13 path of travel --

14 A. Sure.

15 Q. -- and just stop at where you believe the truck
16 ultimately came to a stop.

17 A. I believe we went this way.

18 Q. I'm sorry, guys. We are going to go back and
19 I'm going to do this again.

20 Why don't you try that one more time.

21 A. So I believe it was -- we went through here,
22 made this turn -- it's not straight.

23 Q. That's fine.

24 Okay. So can you please now -- we will switch
25 it back to here.

1 Can you please mark with a 4 where that vehicle
2 came to a rest, to the best of your recollection?

3 A. (Marking.)

4 It might be a little -- sorry. It went a
5 little right.

6 Q. Just do an undo.

7 Okay. Just take your time until you get it.

8 A. (Marking.)

9 Q. Does that accurately reflect, to the best of
10 your recollection, where the truck came to a stop?

11 A. Yes.

12 Q. Okay. And where is the Walgreens pharmacy
13 drive-through in relation to the number 4?

14 A. So it's this outcropping roof right here, this
15 gold-colored one coming out of the white square, that is
16 the pharmacy drive-through.

17 Q. Okay. And can you also please -- now, while
18 you were traveling through the parking lot, do you
19 recall getting the update from [REDACTED] [REDACTED]

20 A. I do recall that.

21 Q. And what did you hear [REDACTED] [REDACTED] air over
22 the radio?

23 A. I heard [REDACTED] [REDACTED] broadcast the suspect
24 was in black and armed.

25 Q. Did you hear [REDACTED] [REDACTED] say "armed,

1 possibly armed"?

2 A. I remember hearing "armed." I don't recall if
3 I heard -- I've listened to the audio so many times now,
4 I don't believe in the moment I heard the "possibly
5 armed."

6 And, again, part of that is that this was -- I
7 might be getting ahead of myself, but only seconds
8 before the shooting. So I was also trying to focus on
9 what to see, but I remember him saying something to the
10 effect of in the black armed.

11 Q. Okay. And could you please mark on Exhibit Z-3
12 with the number 3 where you believe the truck was when
13 you heard [REDACTED] [REDACTED] air that the subject was armed?

14 A. I'm sorry. What number?

15 Q. Number 3, please.

16 A. (Marking.)

17 Q. Does that accurately reflect where you recall
18 hearing -- where the truck was when you recall hearing
19 [REDACTED] [REDACTED] air the subject was armed?

20 A. It does.

21 Q. Okay. And what did the phrase "armed" mean to
22 you exactly?

23 A. The only thing armed ever means in the context
24 of law enforcement is firearm. That is the -- if you
25 say someone is armed, you mean they have a firearm, and

1 that is unambiguous. If someone has a knife or a bat,
2 or you pick something else, you would specify that
3 because that would be a deviation from the standard term
4 "armed."

5 Q. Do you recall what was going through your mind
6 once you heard [REDACTED] [REDACTED] air armed?

7 A. Yes.

8 Q. And what were you thinking?

9 A. The first thing I thought was I need to see and
10 identify this armed person because that now is my number
11 one threat.

12 And specifically now, now it's not just a
13 burglary or a looting, now it's a person with a firearm,
14 and safety and figuring out who this armed individual
15 is, is my number one concern.

16 Q. And what did you do, if anything, to prepare
17 for the potential once you heard that broadcast, that
18 you were possibly going to encounter someone that was
19 armed?

20 A. So the first thing I tried to do, actually, was
21 to open my door. As I'm looking, I reached over to open
22 my door, because what I wanted to do was be able to exit
23 my vehicle and not be stuck inside of a car, because you
24 don't want to be stuck in a vehicle if someone is
25 shooting at you. I need the ability to be able to get

1 out, either move or reposition, engage a target, but I
2 wanted to we call it prepping the door, open it slightly
3 and get ready to get out.

4 However, the second I reached for it, I felt
5 that it was locked. And I don't know why my brain
6 thought this, but I immediately assumed that he had the
7 child locks on, which ended up being correct.

8 So there was no way -- so I would have had to,
9 I think -- and this is after the fact -- you have to,
10 like, open it twice in a row to defeat the child locks,
11 but I just remember grabbing it to open it and going,
12 man, it's not opening, and then going, I got to take a
13 better position.

14 And so what I did was I immediately scooted to
15 my left to center myself between [REDACTED] [REDACTED] and
16 [REDACTED] and to maintain visual or to identify this
17 person that [REDACTED] [REDACTED] said was armed.

18 Q. Now, at that time did you have any conversation
19 with your partners after hearing [REDACTED] [REDACTED] make
20 that announcement?

21 A. There was no conversation whatsoever. There
22 was so much going on, I just -- my number one thought
23 was figure out who has this gun and watch them and make
24 sure that they don't shoot at us.

25 Q. Okay. Now, at the time you heard the

1 broadcast -- sorry. Strike that.

2 You mentioned getting ready to exit the
3 vehicle. You said you did not want to be in the vehicle
4 if someone started shooting at it.

5 Why not turn the vehicle in a different
6 direction, stop it and reverse, or some other type of
7 tactic involving, you know, moving the vehicle away from
8 the individuals at the Walgreens?

9 A. So in answering that question, I don't know if
10 you want me to pop this out now. I understand that that
11 was a criticism in the report. I know you're asking me
12 that now, so I don't necessarily want to speak out of
13 turn, but in the moment, there was -- between that and
14 the shooting, number one, there's no time.

15 Number two, which is I'm not driving the
16 vehicle. And I'm not putting any blame on
17 [REDACTED] I think he acted completely
18 appropriately. I would have done the same thing and
19 continued in our plan, but I am making a distinction
20 that I'm a back passenger so I am bound to the wishes of
21 the driver. But I think he did the right thing for what
22 it's worth.

23 And, again, you're asking me in hindsight why
24 we wouldn't have done something.

25 [REDACTED] was already in the lot. We had

1 seen him. You don't ever leave a cover unit behind.

2 If we would have backed up -- I mean, even if
3 there was time, even if we could have prior to seeing
4 what I believed to be a threat, you don't leave someone
5 uncommunicated in that situation, especially now that
6 someone is armed.

7 I mean, it would have been bad enough if we
8 changed plans on just what the initial looting was,
9 completely unacceptable dereliction of duty,
10 unacceptable to now leave [REDACTED] [REDACTED] after he just
11 said someone's got a gun. That is, I...

12 Q. Take your time, Jarrett. Take a breath.

13 A. I get emotional because I've heard the
14 arguments, and I would rather be killed than leave him
15 behind. You don't do that.

16 And it upsets me for so many reasons that we
17 can get into later, but I heard the argument.
18 Especially now, not in spite of that there is an armed
19 person, especially because there's an armed person, you
20 do not deviate. You stay with him. I'm going to take a
21 bullet for him or any other person I work with.

22 And to suggest that somehow now that there's an
23 armed broadcast, especially because there's an armed
24 broadcast I should put my car in reverse or abort or
25 confuse the situation, is -- would have been a

1 dereliction of duty and that you could have fired me
2 for.

3 You want to fire me, fire me if I leave
4 [REDACTED] [REDACTED] after he says that there's an armed
5 individual and then I leave. You don't leave.

6 And on top of all of that, there was no time
7 for any discussion or anything else.

8 And I'm sorry for getting upset. It's just
9 that is at the heart of this whole report, that you
10 leave someone who just said I see someone with a gun,
11 but you want now these other officers to turn around.

12 I cannot fathom that thought process. That
13 thought process blows my mind that you would even -- how
14 dare someone suggest that we leave this captain when he
15 just said he saw someone with a gun.

16 So, no, there was no time. It was not a
17 scenario where that would happen. It was not
18 appropriate. There was no time. And it would have been
19 the wrong thing to do.

20 Q. Okay. I want to back up a little bit.

21 From position 2 to 3, approximately how much
22 time do you think passed?

23 A. From 2 to 3 was probably five seconds or so.

24 Q. Okay. All right. Now, when [REDACTED] [REDACTED]
25 aired that someone was armed, were you able to locate a

1 subject in all black that you believed [REDACTED] [REDACTED]

2 was referencing in that broadcast?

3 A. Almost immediately, as I was reaching for the
4 door, I was able to look and then, as I said, I centered
5 myself, I was able to see a person in black. And that
6 person I immediately noticed was running in a manner
7 that, based on my training and experience, I believed he
8 had a firearm.

9 So immediately I believed I had identified --
10 in fact, he was the only person I even saw running at
11 that time. I believed I had identified the person that
12 [REDACTED] [REDACTED] had referenced as the armed individual.
13 He was also wearing all black.

14 Q. Okay. And you said it was based on your
15 training and experience, he appeared to be somebody --
16 he appeared to be armed to you. Why do you say that?

17 A. So when people are running, they are generally
18 trying to go as fast as they can. And the normal
19 running motion is hands pumping with your -- hands and
20 arms pumping with your legs. That is not how that
21 individual was running. They had their hands down by
22 their waist. They looked like they were codling an
23 object in the exact same manner.

24 And one reason that's common with people with
25 guns in my experience also is when criminals carry guns

1 in their waistband, they don't carry a holster. It's
2 not secure like a police holster is where if I run it's
3 not going to just fall out. They generally have
4 firearms just shoved in their pants. And it's common
5 for these objects to fall out. And so to prevent them
6 from falling, criminals run and hold their waistband to
7 prevent this firearm from falling out. So that was the
8 type of running that that individual was doing.

9 Q. Was that individual that you saw the person who
10 was later identified as Sean Monterrosa?

11 A. Yes, it was.

12 Q. Okay. Now, if you can please, again referring
13 back to Union Exhibit Z-3, can you please identify
14 approximately where you saw Mr. Monterrosa running?

15 A. Do you want me to put a --

16 Q. No. You can just identify it and -- okay. You
17 can put an X.

18 A. (Marking.) Roughly -- where I initially saw
19 him was roughly coming out from underneath the area of
20 the drive-through cover.

21 Q. Okay. And in which direction was he running?

22 A. He was running eastbound towards Broadway,
23 specifically to a vehicle that was parked there.

24 Q. Okay. Do you recall what that vehicle looked
25 like?

1 A. It was a dark sedan.

2 Q. Okay. And what did he do in reference to that
3 vehicle?

4 A. So the back door on that sedan was open as he
5 was running towards it. He ran, and almost as if you
6 would hand something off, he partially got inside the
7 vehicle. His feet were still on the ground outside of
8 the vehicle, but he leaned in where I could no longer
9 see the top third of his body, and then he abruptly got
10 back out and the vehicle took off.

11 Q. Okay. Now, based on that observation in terms
12 of Mr. Monterrosa kind of leaning into that vehicle,
13 what were you expecting him to do?

14 A. As he was running towards the vehicle, my
15 thought was he's going to get in that car. I see the
16 door open. He's going to dive in or jump in, and that
17 car is going to take off.

18 And I specifically remember thinking I wonder
19 if we are going to get into a vehicle pursuit. This is
20 not a pursuit-rated vehicle. This is a pickup truck.
21 And I started working through a little bit of what that
22 would look like, but that thought only lasted a split
23 second because he ended up exiting the vehicle.

24 Q. Okay. Do you -- did it appear to you, based on
25 your observations, that the vehicle left him behind, or

1 did he intentionally get out of the vehicle?

2 A. The vehicle did not leave him behind. He had
3 every opportunity to get in that car and did not.

4 Q. Okay. And when you saw him abruptly turn out
5 of the vehicle as you described, did that surprise you?

6 A. It did.

7 Q. Okay. And can you explain why?

8 A. It surprised me because I was set on him
9 fleeing, and now I have him not fleeing, which caused me
10 to go through a whole host of thoughts, but the thought
11 no longer was now he's fleeing. Now I have a person who
12 I believe, number one, was the armed individual
13 [REDACTED] [REDACTED] had referred to.

14 Number two, based on what I saw, I believed had
15 a firearm, or consistent with a firearm, and now he's
16 not fleeing. He's -- he ignored his avenue of escape,
17 and now he is doing something different, what is that
18 that's about to happen.

19 Q. Okay. And what did he do after turning out of
20 that vehicle?

21 A. So he turned and began running -- and as I'm
22 saying this, I'm trying to break down milliseconds, so
23 it might sound expanded, but this is within a
24 second-ish.

25 He turned, began to move in a western direction

1 away from the vehicle, and then at which point he
2 abruptly spun. And I then saw an object protruding from
3 his waistband, which looked exactly like the butt of a
4 firearm. He grabbed that object and started to take
5 a -- what looked like a half-kneeling type of position
6 while facing our truck.

7 Q. Why did this object to you -- you said a butt
8 of a handgun. So could you please describe what you saw
9 that made you think it was the butt of a handgun?

10 A. It was dark. It was elongated. It was about
11 three or four inches long. It, at that distance, looked
12 exactly like the butt of a handgun.

13 And I'm also filtering that through at the time
14 [REDACTED] statement. The way I saw him running
15 and when I saw that object, I 100 percent believed that
16 that was the butt of a handgun. It looked just like it.
17 It looked just like it independently, and then given
18 everything else, my only thought was that's a gun.

19 Q. And as Mr. Monterrosa was taking a
20 half-kneeling position as you described it, what --
21 based on your perceptions, what did you believe his
22 intentions were at that time?

23 A. I was convinced Mr. Monterrosa was going to
24 fire at the officers and me, my partners and myself.

25 Q. Now, in your training and experience, were

1 Mr. Monterrosa's actions at that time consistent with
2 somebody surrendering to law enforcement?

3 A. Absolutely not.

4 Q. And why not?

5 A. Well, the first thing I would say is at no
6 point did Mr. Monterrosa ever put his hands up. And
7 I've been doing this for 15 years. That is the
8 unconditional sign of surrender. If you want to
9 surrender, everyone knows, it's universal, you could go
10 to a different country and, if you put your hands up,
11 you're surrendering. That is the sign of surrender.

12 And coupled with that, the opposite of
13 surrender, and what everyone knows is you don't put your
14 hands to your waist. Every normal person or suspect
15 knows that the police are aware that handguns are kept
16 in a waistband. And they know, if I move my hands
17 towards my waist, the police are going to think I'm
18 going for a gun.

19 In fact, I have had people put their hands up
20 so far in the air because they are worried they are
21 going to be shot because they have a gun. And so they
22 throw their hands up in the air, "Don't shoot me, don't
23 shoot me, don't shoot me." That's the surrender. None
24 of that happened.

25 And not only did that not happen, he grabbed an

1 object, and not just grabbed it, he grabbed it in the
2 same manner that you would grab a firearm.

3 Q. What do you mean "in the same manner that you
4 would grab a firearm"?

5 A. He grabbed it with his hand over the backside,
6 like you would upside down, hand on the hammer to grab
7 it, and that grabbing was consistent with someone who
8 would be grabbing a firearm.

9 Q. And what did you do?

10 A. I believed Mr. Monterrosa was grabbing a
11 firearm, more specifically drawing a firearm from his
12 waistband to shoot at me and my partners. I felt that
13 there was an immediate threat.

14 I was worried about myself. I was most worried
15 about [REDACTED] [REDACTED] who had already started to exit
16 the vehicle. And I was very -- I didn't know if
17 [REDACTED] [REDACTED] had even seen Mr. Monterrosa. I was
18 worried that in the process of exiting his car, he
19 wouldn't have seen him because maybe the door blocked
20 him, and I felt I had no choice because I knew I had
21 seen the threat. I knew there was a threat, and I knew
22 that I was the only one to be able to react to this
23 threat, so I fired my duty rifle at Mr. Monterrosa.

24 Q. Approximately how much time passed between the
25 time you heard [REDACTED] [REDACTED] broadcast and you

1 discharging your rifle?

2 A. Less than five seconds. Probably closer to
3 three or four.

4 Q. You heard the testimony yesterday by Shawny
5 Williams. And he mentioned his expectation that based
6 on your training that you would yell "gun," because, you
7 know, all officers are trained to yell "gun."

8 Do you recall that testimony?

9 A. I do.

10 Q. Okay. Is there a reason that you can
11 articulate as to why you did not alert your partners
12 that you saw a gun by yelling "gun, gun, gun"?

13 A. Yes.

14 Number one, that's not consistent with
15 training. That's not the number one thing you do.

16 The number one thing you do if a threat needs
17 to be addressed, if someone's life is in immediate
18 danger, is you do your absolute best to stop that
19 threat.

20 Yelling "gun" may or may not be helpful to
21 [REDACTED] or [REDACTED] I might yell
22 "gun," and they still would be shot. What needs to
23 happen is I need to respond with deadly force to prevent
24 them from being shot.

25 If you can yell "gun" or if it's applicable,

1 that might be appropriate, but it's never more
2 appropriate than actually taking action. Words are not
3 going to save [REDACTED] [REDACTED] They are not going to
4 save [REDACTED] [REDACTED] Words are not going to save me
5 in that moment. Action is the only thing that can
6 happen to hopefully save my partners and myself.

7 Q. How many rounds did you fire?

8 A. I fired five rounds.

9 Q. And how quickly did you fire them?

10 A. In less than a second and a half.

11 Q. Why did you discharge your rifle in that
12 manner, meaning, you know, five rounds in less than a
13 second and a half?

14 A. Well, that's how I've been trained to shoot
15 through a windshield. When shooting through a
16 windshield, you need to shoot enough rounds to ensure
17 success and still be reasonable, meaning probably
18 unreasonable to shoot 30 rounds, also unreasonable to
19 shoot one round. If you shoot one round and you miss,
20 that threat is still there and your partners could be
21 dead.

22 So I decided -- and I don't -- I can't tell you
23 why five. In the moment it felt like a reasonable
24 amount of rounds to make sure that, given the glass and
25 given the scenario, I would have a high likelihood of

1 success.

2 Also, that amount of rounds -- and, again, I
3 don't know why five and not four or not six, but that
4 short burst of rounds ensured that the target,
5 Mr. Monterrosa was still on target, meaning a subject
6 can't really move very far in a second. He may have
7 taken a step, but your target is now not somewhere
8 completely different.

9 It's a reasonable amount of rounds to defeat
10 the glass and, if there was a trajectory issue, a minor
11 trajectory issue, to ensure successful stopping of the
12 threat while still being reasonable and making sure
13 that your target is still where it was when you began
14 firing.

15 Q. Now, were you counting the rounds as you fired
16 them?

17 A. I was not.

18 Q. Okay. You mentioned that you've been trained
19 to fire through a vehicle windshield. When did you
20 receive that training?

21 A. So specifically I received quite a bit of
22 training, extensive training on shooting through
23 windshields.

24 I was first exposed to shooting through
25 windshields as a member of the [REDACTED] SWAT team. We

1 received several different trainings where we actually
2 brought vehicles out, we sat in the vehicle, we shot our
3 pistols, we shot our rifles from inside the vehicle to
4 understand trajectory and to see how that worked and to
5 discuss the tactics around it.

6 I also shot extensively from inside a
7 vehicle -- stop?

8 Q. No, go ahead.

9 A. -- during the 40-hour advanced pistol course
10 that I took at the Sacramento Sheriff's Department.

11 I received specific training as a member of the
12 Vallejo Police Department SWAT team from shooting from
13 inside a vehicle through the windshield to a threat.

14 And there's been numerous tactical discussions
15 around that.

16 Q. One moment while I...

17 One moment.

18 A. Am I talking too fast?

19 Q. No.

20 Just get rid of this.

21 (Pause in proceedings.)

22 THE ARBITRATOR: Anything further?

23 MR. OLANDER: Yes. I'm just getting rid of
24 this exhibit.

25 THE ARBITRATOR: Oh, okay.

1 MR. OLANDER: I need to save it before I close
2 it or we lose it.

3 THE ARBITRATOR: When it gets really quiet, I
4 think I missed something.

5 MR. OLANDER: Yeah. Sorry.

6 MR. BROWN: Can we take a couple minutes while
7 Josh is working on the technical issues?

8 THE ARBITRATOR: Do you need five or three?

9 MR. BROWN: Five is fine.

10 THE ARBITRATOR: Let's take five.

11 Off the record.

12 (Recess.)

13 THE ARBITRATOR: Back on the record.

14 Please continue.

15 MR. OLANDER: Thank you.

16 Q. Okay, Jarrett. So you just went through some
17 of the training that you attended. So you spoke about
18 the training with the task force, so the SWAT team here
19 in [REDACTED] County.

20 You also participated in training with the
21 Vallejo Police Department?

22 A. That's correct.

23 Q. Okay. And so how much training with the
24 Vallejo Police Department did you attend on shooting
25 through windshields?

1 A. So we have discussed it numerous times. I've
2 done it once, I think actually twice, but once for sure
3 where we actually brought cars out. We brought cars out
4 to the range fairly often. And we had a very extensive
5 block I believe in 2019 regarding shooting from inside a
6 vehicle through a windshield. We actually sat inside
7 the vehicle again, fired our weapons at a target through
8 the glass to learn how best to do that.

9 Q. Okay. I'm going to go ahead and share my
10 screen again and show an exhibit we have seen once
11 before here. This is the Union Exhibit Y.

12 Do you recognize this document, Jarrett?

13 A. I do.

14 Q. Okay. And does this appear to be an itinerary
15 for a training on April 5, 2019?

16 A. Yes.

17 Q. Okay. Was this -- did you attend this
18 training?

19 A. I did.

20 Q. Okay. Did you attend this training in your
21 capacity as a SWAT operator?

22 A. Yes.

23 Q. All right. And I see here from 1300 to
24 1700 hours it says shooting from or into vehicles?

25 A. Yes.

1 Q. Okay. Did you participate in that block of
2 training?

3 A. Yes, I did.

4 Q. Okay. And this Vallejo Police Department SWAT
5 training AAR on page three of Exhibit Y, does this
6 appear to be an after-action report?

7 A. Yes, it does.

8 Q. And here on page four under number six, does
9 this appear to indicate that there was training on
10 shooting through glass?

11 A. Yes.

12 Q. Okay. And do you recall specifically doing
13 that training?

14 A. I did.

15 Q. Okay. All right. Page five, is this -- it's
16 entitled "Vallejo Police Department Range
17 Qualification."

18 Is this your range qualification form?

19 A. Yes, it is.

20 Q. Okay. And just for the record, what does this
21 indicate?

22 A. This indicated that I passed both the rifle and
23 pistol qualification course on that training date of
24 April 5th, 2019.

25 Q. Okay. And lastly here on page six of Union

1 Exhibit Y, we have a POST course roster indicating Tonn,
2 Jarrett, it has I believe your badge number and POST ID;
3 is that correct?

4 A. That's correct.

5 Q. Does this state that you successfully passed
6 this training course?

7 A. Yes, it does.

8 Q. And if you recall, what sort of were the
9 main -- I'm done with this exhibit, Exhibit Y.

10 Can you recall what the main training points
11 were specifically in regards to shooting from within a
12 vehicle through the front windshield?

13 A. Yes.

14 We discussed trajectory and the upward movement
15 of a bullet, although within 50 yards it's negligible,
16 but we did discuss that.

17 We discussed a concept such as porting,
18 meaning, if possible, to try to shoot through the same
19 hole or the same area of the glass as much as you can.
20 We also discussed that that's not often possible but
21 that is the optimal situation to have the less -- the
22 least amount of traj- -- of bullets affected by the
23 trajectory.

24 We discussed the concept that I described
25 earlier which was to shoot a reasonable amount of rounds

1 in order to defeat the glass while still being on target
2 in a rapid succession. Again, so that your target has
3 not moved, you want to do it within a second, a
4 reasonable amount, and then to assess the threat after
5 that.

6 Q. Okay. Now, moving again back to June 2nd,
7 2020. At the time that you fired your rifle, do you
8 recall whether the truck was in motion or stopped?

9 A. I believed it was stopped. I looked at the
10 video extensively. I believed it stopped. It had just
11 stopped. I believe there is a little motion from an
12 object coming to rest so rapidly that had been moving,
13 meaning I think the truck is rocking back a little bit,
14 but I believe it to be stopped. If it's not stopped,
15 it's so close to stopped, I can't tell the difference.

16 Q. All right. So after you fired your rifle, what
17 happened next?

18 A. I fired my rifle. I realized I needed to get
19 out of the vehicle. So I exited the vehicle on the
20 passenger side to be on the same side as

21 [REDACTED] [REDACTED] And I don't know why I went out the
22 passenger versus the other side. I don't know if it was
23 because I found the door to be locked. I don't recall
24 that decision. I just, for some reason, went on the
25 same side as [REDACTED] [REDACTED]

1 Q. And I just want to be clear. [REDACTED] [REDACTED]
2 was driving?
3 A. That's correct.
4 Q. So that was the driver's side, not the
5 passenger side, so it's --
6 A. I'm sorry.
7 Q. -- the rear passenger door on the driver's side
8 of the truck?
9 A. The rear passenger door, driver's side. My
10 apologies.
11 Q. That's okay.
12 Okay. Now, there were some statements that you
13 made after exiting the vehicle that have been criticized
14 by the OIR Group and Chief Williams. Are you familiar
15 with the statements that I'm referencing?
16 A. I am.
17 Q. Okay. So the first statement, and I think it's
18 maybe better characterized as a question that you stated
19 on scene was, "What did he point at us?"
20 Do you recall that statement?
21 A. I do.
22 Q. Okay. So what did you mean when you made that
23 statement or said that question after exiting the
24 vehicle?
25 A. Yes.

1 So, number one, I was just -- I think shock is
2 the best word. I was just absolutely shocked at what
3 had happened.

4 And my shock started with, within a second or
5 second and a half, I had a person who I thought was
6 fleeing, and my mind said fleeing, getting into a car,
7 he's going to take off, to that same person then doing
8 what I believed to be drawing a gun to shoot at me.

9 And so as I'm exiting the car, I'm in utter
10 disbelief of how this just happened. It's not what I
11 thought was going to happen. It's not what I -- I
12 thought we were going down the route of vehicle pursuit,
13 Mr. Monterrosa is going to get in a vehicle, and now he
14 has what I believed pulled a gun to try to -- or pulling
15 a gun to try to shoot me and my partners.

16 And so part of my statement was absolutely
17 disbelief, like what just happened, like not -- not I
18 didn't know what happened, I knew what I saw, he
19 absolutely in my mind had a gun and was going to shoot
20 my partners and myself.

21 But in the overall scope of what just happened,
22 my mind is saying what the heck, what just -- like I
23 want to swear, I won't, but what just happened, like, I
24 cannot believe this, what just happened.

25 Also, I didn't know what [REDACTED] [REDACTED] and

1 [REDACTED] and [REDACTED] [REDACTED] had seen. Did they see that
2 he just tried to pull a gun? Are they aware that he is
3 armed?

4 There had been -- it had happened so fast that
5 I needed to say something to let them know I'm in
6 absolute disbelief. And, frankly, just like the
7 adrenaline and the surprise and, you know, a word salad
8 comes out in my attempt to communicate with them of what
9 just happened, what kind of gun is this, I don't -- what
10 just occurred.

11 And I don't know why my brain picked those
12 words. That's how it came out. It was just an
13 absolutely shocking statement of I thought this guy was
14 going to run and get in a pursuit and now he just tried
15 to pull a gun on me and shoot me and within a split
16 second.

17 Q. Did you -- at that time did you have any doubt
18 that Mr. Monterrosa was -- had grabbed and was drawing a
19 firearm?

20 A. I had no doubt whatsoever.

21 Q. Did you have any doubt that Mr. Monterrosa was
22 intending to shoot that gun at you?

23 A. I did have no doubt. I 100 percent -- now,
24 I've been a cop for 15 years. I've never ever, ever had
25 that moment that says you're about to be shot. And you

1 and your partner is about to be shot. And I've been in
2 very crazy, stressful situations with armed people.
3 I've never had that moment where you go -- like, your
4 brain goes, like, it's going down now, you are about to
5 be shot.

6 And that just -- like I've been in all -- I've
7 captured hundreds of murder suspects, literally, in my
8 role as CRT. I have never ever before or since had that
9 moment of this guy is about to shoot at us. And that's
10 100 percent what I believed to be happening.

11 And I -- you know, I don't know why my brain,
12 again, said those things. I don't -- it was just utter
13 disbelief, but I had not one ounce of doubt at that
14 moment.

15 Q. Did you doubt that Mr. Monterrosa posed an
16 imminent threat of death or serious bodily injury to you
17 or your partners?

18 A. Not at all. I 100 percent believed he was an
19 imminent threat and about to shoot at us.

20 Q. After you asked this question, you know, "What
21 did he point at us," did [REDACTED] [REDACTED] respond?

22 A. I've heard the audio again since. He's -- in
23 the moment I don't even know if I heard what he said.
24 Again, we've -- so much time has elapsed since this
25 happened. In the moment I think I heard him say

1 something like I'm not sure, but also I've watched this
2 video a bunch of times. I know that's what he said. He
3 said, "I don't know."

4 Q. Okay. Then you make another statement that's
5 captured on body-worn camera. You say, you know, "He
6 pointed a gun at us."

7 A. Yes.

8 Q. Do you recall that statement?

9 A. Yes, I do.

10 Q. Okay. What was your intent behind making that
11 statement?

12 A. So, honestly, I think I'm kind of, in one
13 sense, snapping out of this what just happened and I'm
14 like, I know what just happened. Like, I'm completely
15 shocked that this went the way it did, but now I know I
16 have to communicate to my partners, to [REDACTED] [REDACTED]
17 to [REDACTED] [REDACTED] that he has a gun and he tried to
18 shoot us.

19 And, again, I don't know specifically why word
20 salad came out and I said point. I don't know if I
21 meant pull or draw. I was trying to convey that he
22 tried to shoot us. And I'm snapping out of this what
23 just happened to I have to -- I have to say something.
24 I didn't know if he was -- I didn't know if he was hit,
25 to what degree. I didn't know any of that. I have to

1 say something to let these people know there's a person
2 who just tried to shoot us and he's got a gun.

3 And, again, point or pull, I don't know why it
4 came out like that. I could only speculate. But I knew
5 that I had to try to say something to let everyone else
6 know what was going on because I didn't know if there
7 still was a threat.

8 Q. And, now, so what happened next?

9 A. At some point, pretty rapidly, we converged on
10 Mr. Monterrosa to detain him.

11 In the process of that, he was -- it was
12 discovered that he had a framing hammer sticking out of
13 his waistband. And then we began first aid.

14 Q. Now, around that time when Mr. Monterrosa is
15 being handcuffed and searched, you appear on the video
16 to have a pretty emotional reaction.

17 Do you recall that from the video?

18 A. Yes.

19 Q. Do you recall that at the time?

20 A. Yes.

21 Q. Okay. And you say something to the effect of
22 what sounds to me like, you know, fucking stupid,
23 something of that nature?

24 A. Yes.

25 Q. Does that sound right?

1 A. Yes.

2 Q. Okay. What was that in reference to?

3 A. You know, I was feeling a thousand different
4 emotions at once. One of the emotions was to discover
5 that someone acted so much like they had a firearm and
6 it was a hammer, I just -- I was just dumbfounded. Why
7 would you do what you did. Why would you do that.

8 And I was upset. I was upset I just shot
9 someone I was so certain had a gun only to find out it
10 was something that just looked like a gun.

11 I just -- you don't want to shoot anybody. You
12 don't want -- I don't want to shoot anybody. I don't
13 want to hurt someone. I don't want to kill someone that
14 doesn't have a gun. And I was just feeling the weight
15 of all of that come down on me.

16 And I still to this day don't know why he did
17 what he did. I just -- I was just upset is the -- is a
18 gross understatement, but I was just upset.

19 Q. You make another statement to [REDACTED] [REDACTED]
20 that's captured on the body-worn camera, just something
21 to the effect of I don't fucking need this.

22 Do you recall that from the body camera
23 footage?

24 A. Yeah.

25 Q. Do you recall making that statement at the time

1 or what you were thinking at the time?

2 A. Yes.

3 Q. Okay. What was that statement about?

4 A. You know, we all knew why we were out there.
5 We were all out there in the wake of George Floyd. We
6 were there because of a police brutality incident.

7 And all these what maybe started as peaceful
8 protests that have now devolved into riots and looting
9 were all because of that type of officer, you know,
10 excessive force in that case, and now for me to have
11 just shot someone who only had a hammer in the middle of
12 a nationwide and statewide and Bay Area protest over
13 that, I just knew, like, my life would never be the
14 same.

15 And I don't -- I don't mean to sound like I did
16 not care about shooting someone, but I'm being honest in
17 the moment, I just knew, like, this is bad. This is
18 bad. This is going to cause more of what we are out
19 here trying to stop. I'm going to be in the news.
20 Like, I've been doing this long enough to know that this
21 is going to be a high-profile incident, and in that
22 things are never going to be the same.

23 And, again, I can't imagine what it's like to
24 lose a son. I can't imagine that. I'm not trying to
25 minimize their loss, I'm really not, but that's what I

1 was feeling. And it has been.

2 Q. Has been what?

3 A. Because of what has happened and the route that
4 the department took and the things that they have said,
5 my life -- and, again, I don't even like talking about
6 my life because I didn't lose anybody, I get that, but
7 my life is never going to be the same.

8 I can't coach my kid's Little League game.
9 They are going to Google who I am, and I don't want
10 parents complaining.

11 My reputation -- look -- and, again, that's so
12 minimal. I didn't lose anybody. I'm not meaning to
13 minimize that, but I knew that there was a potential
14 that this went sideways in the sense that I knew the
15 politics behind this. I knew -- we know what goes on in
16 law enforcement. We know where the path of least
17 resistance is for a department to go.

18 And -- and it -- my life is never going to be
19 the same, and my kids are never going to be the same,
20 and my wife is never going to be the same.

21 And I think that's also wrong because I think I
22 did the right thing. I don't think I did the wrong
23 thing. Even to this day, I replay this a thousand
24 times, and there was no other option. No other option.

25 I would never leave [REDACTED] [REDACTED] especially

1 after him being -- saying that there was somebody armed.
2 We were doing what everyone asked us to do. And for the
3 department then, for whatever political purposes, to
4 just come up with some bizarre explanation to say that
5 this was wrong, you know, when he had something that
6 was -- looked just like a handgun, he acted just like he
7 had a handgun, and it is a huge, huge tragedy, and I
8 would tell that to his family.

9 I feel terrible. This is a huge tragedy. I
10 still know that I did the right thing, given what I had
11 to work with. And -- and it's just -- there's no making
12 this right for anybody.

13 But, I mean, the way this was handled, it
14 just -- it tore me up, because I had the department ask
15 me to go protect property and to stop looting only then
16 to say, well, because you shot him maybe this one
17 call out of the whole night you shouldn't have protected
18 property. Maybe you should have done something
19 different. Maybe on this one traffic stop out of the
20 whole night this one shouldn't have happened.

21 And they are only saying that because it ended
22 in a shooting. No one else who did the same tactics the
23 entire night was ever disciplined or even talked to.
24 There was no memo that went out to say, hey, guys, we
25 did a bunch of felony traffic stops that night, maybe we

1 shouldn't have done that. There's nothing. This was it
2 ended in a shooting, therefore, we are going to find a
3 bunch of reasons why somehow this one case was
4 different.

5 And that has been the chief's approach from day
6 one. And I don't like attacking the chief, I don't like
7 criticizing people but, you know what, I find it ironic
8 that if this had been maybe another person's
9 officer-involved shooting, I might have been called as
10 the expert, because I do consider myself an expert in
11 these areas. I've been doing this for a long time. And
12 for them to ask me to do something, and which we did it,
13 and then them just to say, well, this one was different,
14 this is the one looting that you shouldn't have
15 responded to, this is the one looting where you
16 shouldn't have done a felony stop, this is the one
17 looting where you shouldn't have listened to a superior
18 officer, or this is the one looting that maybe didn't
19 need to be enforced, just I can't escape the
20 ridiculousness of that.

21 And this has been three years of my life.
22 Like, family stress, life stress. It's like I don't
23 even see how you can say that. Like, this is so
24 backwards.

25 And the reason I'm emotional is because it's

1 three years of me not having anyone to -- no process to
2 vent this through. Like, I've not been able to say this
3 to anybody.

4 And I just don't see how the chief can say this
5 one, this one, I was there all night, but this one
6 shouldn't have happened, and this is the one you
7 shouldn't have gone to. This one shouldn't have been
8 enforced. This one was somehow done wrong.

9 It was done all night by captains, by
10 lieutenants, by detectives, by officers. This -- at the
11 same Walgreens in fact this had happened earlier that
12 night. It happened where it was in a foot pursuit.

13 But this one, because it ended in a shooting,
14 and that to me is completely in hindsight, that just
15 says we don't like the outcome, therefore we have to say
16 your tactics were bad or your judgment is bad, your
17 decisions were bad because we don't like the outcome,
18 and I think that's so unfair. Like, just grossly
19 unfair. Then why do you ask us to go out there. You
20 could have stopped it. You could have said, guys, we're
21 standing down.

22 The chief could have said, I hear all these
23 things happening, what are we doing, let's shut it down
24 for the night, but he didn't. And then he wants to say
25 that we're responsible for doing what he sent us to do,

1 it's just so wrong to me. It's so wrong. And I can't
2 get past that.

3 THE ARBITRATOR: Anything further?

4 MR. OLANDER: A few more questions. Almost
5 done.

6 Q. Are you ready?

7 A. Yeah. I'm sorry.

8 Q. That's okay.

9 So in your notice of discipline that you
10 received from Chief Williams, he -- one of his
11 conclusions is that based on a statement you made to
12 detectives on June 2nd, 2020, you know, that you -- a
13 statement that you waited too long to fire your weapon
14 in a previous shooting, you made a rush, and ultimately
15 improper judgment to use deadly force in this case.

16 Are you familiar with Chief Williams's
17 conclusion?

18 A. I am. I am.

19 Q. Okay. What is your response to
20 Chief Williams's conclusion that you relied on this
21 previous shooting and that informed your decision-making
22 on this shooting?

23 A. Well, my first response would be to look at the
24 transcripts of what I said, because I read OIR's summary
25 of what I said and it was not even remotely close to the

1 transcript.

2 They asked me about a previous shooting and
3 what I learned. My exact wording was I learned that you
4 need to deal with every situation on its face and deal
5 with it as it happens. And you can't -- you can't look
6 at other incidences one way or another to judge a new
7 incident, you just have to deal with what you have and
8 what you know.

9 And then I read my summary and they say, while
10 Detective Tonn stated that he hesitated before and he
11 resolved not to hesitate again, or something to that
12 effect, and I never said that. I said you judge a
13 situation on its face, and that just because you've been
14 in a previous shooting, it doesn't -- shouldn't affect
15 another shooting.

16 The great irony of that, though, is that OIR
17 wants to almost infer that because I was in another
18 shooting I'm somehow more okay with being in another
19 shooting, when the reality of it is, being in a previous
20 shooting makes me want to never be in another shooting.

21 You know, that's the great twist of them is
22 their inference is, well, he was in one shooting, he is
23 fine with being in another shooting. No, it's the
24 opposite. I've been in one shooting, I want to be in --
25 I never want to be in another shooting again. No one's

1 life is better after being in an officer-involved
2 shooting. No one wants to be in that.

3 So it's the complete opposite inference that
4 they made, number one; and, number two, I never said
5 that.

6 Q. Now, the OIR Group and Chief Williams also both
7 concluded that your decision to use deadly force on
8 June 2nd, 2020, was based upon a generalized fear rather
9 than a specific fear.

10 Are you familiar with that conclusion?

11 A. I am.

12 Q. Okay. And what is your response to that?

13 A. My number one response is I could not have been
14 more clear to the OIR Group that this was not a
15 generalized fear.

16 And the way I explain it and still explain it
17 is, your assessment of a threat is almost like the TSA
18 terrorist level of threats, and there's different
19 colors. And in law enforcement we start somewhere
20 between green and yellow, probably on yellow, that's why
21 they issue us firearms because we are dealing with
22 people that may be armed or there's a possibility. And
23 every time you get a new additional fact on a call or
24 when dealing with someone can move you up or down that
25 threat continuum.

1 And I was very clear with them that going to
2 this looting, I was on a yellow maybe. And maybe we
3 went a little bit past yellow that night because there
4 had been so many armed encounters, but that still
5 doesn't get you to where you should be shooting someone.

6 And then as we make our approach, we hear that
7 someone is armed now. [REDACTED] [REDACTED] broadcast that.
8 Now that moves me from a more general to now a specific
9 I have someone who might be armed, and now I'm at dark
10 orange.

11 And then I see Mr. Monterrosa and he's running
12 consistent with a firearm with his hands down by his
13 waist, and now I am at -- going closer to red.

14 Then he spins, and now I see an object that I
15 believe is a firearm, not just the way he's running, not
16 just the broadcast, but including those things, moving
17 from general to specific, and now my threat is he
18 definitely has a gun, combined with now he's grabbing
19 that gun, now my threat is as specific as can be, now
20 I'm at red alert.

21 And as he spins, grabs it as a firearm, spins
22 and takes a shooting position, now I'm at the most
23 specific fear I could have which is I'm about to be shot
24 and my partners are about to be shot.

25 I didn't shoot Mr. Monterrosa because he was

1 looting. I did not shoot him when he was running when I
2 thought he may have a firearm. I didn't shoot him
3 merely because I saw the object coming out of his
4 waistband. I shot him because of all those things
5 culminating in him grabbing that object, starting to
6 what I believe remove it from his waistband while taking
7 a shooting position, and that is the specific reason why
8 I shot Mr. Monterrosa.

9 MR. OLANDER: That's all I have at this time.

10 THE ARBITRATOR: Let's go off the record.

11 (There was a discussion held off the record.)

12 (Recess.)

13 THE ARBITRATOR: Okay. Let's go back on the
14 record.

15 I'll ask if there is any cross.

16 MR. BROWN: Yes.

17 THE ARBITRATOR: Your witness.

18 MR. BROWN: Thank you.

19 CROSS-EXAMINATION

20 Q. BY MR. BROWN: Mr. Tonn, good afternoon. I
21 know it's been a long process, but I think we're in the
22 home stretch. So I just have a few questions.

23 You had testified earlier that part of your job
24 duties with regard to being assigned to CRT included an
25 intelligence gathering?

1 A. Yes, sir.

2 Q. And as part of that process, in the days
3 leading up to June 1st into June 2nd, you were
4 monitoring social media and learning about criminal
5 activity throughout the Bay Area, right?

6 A. That's correct.

7 Q. That included learning about gun stores being
8 robbed?

9 A. Yes.

10 Q. And law enforcement officers being attacked?

11 A. That's correct.

12 Q. Okay. With regard to your intelligence
13 gathering, you had an understanding that people were
14 armed, that there were people out conducting this
15 criminal activity and some of them were armed?

16 A. That's correct.

17 Q. And it's fair to say that given everything
18 that's going -- that was going on at this time, both
19 that you learned through your intelligence gathering and
20 through what you heard at the briefing, there was a
21 heightened state of alert; is that fair?

22 A. Yes. Again, this was unlike anything we had
23 ever experienced in my tenure.

24 Q. And everybody understood that at the command
25 post?

1 A. Yes.

2 Q. With regard to the conversation with
3 [REDACTED] [REDACTED] is it fair to say that you thought that
4 you would be using the tactics that you had used
5 throughout your career to conduct a felony stop?

6 A. That's correct.

7 Q. And you thought that this was going to be a
8 situation in which time was on your side, right?

9 A. So that -- that's kind of an ambiguous
10 question. I'm not sure what you mean by time on my
11 side.

12 Q. Sure. Let me clarify that.

13 Generally speaking in law enforcement, in
14 particular in tactical units and tactical settings, the
15 desire is to try to slow an event down and to use that
16 as an advantage to law enforcement, a tactical
17 advantage; is that fair?

18 A. Yes, that's fair. Generally speaking, yes, you
19 want to be able to have enough time to have the
20 resources you need to do whatever task you're set out to
21 do.

22 Q. Right. And you had mentioned the OIR interview
23 that you had.

24 And do you remember that interview?

25 A. Yes, I do.

1 Q. Do you remember saying to the interviewers,
2 let's see: (Reading)

3 Again, don't hear me say that
4 this was the best plan. I will
5 concede that the planning portion
6 wasn't there. But given what we were
7 doing, and given that the train had
8 already been -- was already going,
9 you know, 80 miles an hour, there was
10 no -- there wasn't time to broadcast
11 anything, there wasn't time to ask
12 anything, there wasn't time to say
13 anything, I mean, it was, literally,
14 hey, he's armed, 1,000, 2,000 --
15 shooting. That quickly. (end of
16 reading)

17 Do you remember saying that?

18 A. I do.

19 Q. Oh. Did anybody give any commands out there
20 that night?

21 And what I mean is -- that's a bad question.
22 Let me ask it more specifically.

23 Once your vehicle and [REDACTED] [REDACTED] vehicle
24 were both on scene at the Walgreens, did anyone give any
25 commands to any of the suspects that was seen?

1 A. Are you talking about prior to the shooting?

2 Q. Yeah.

3 A. Well, prior to the shooting, because of the
4 timing of the shooting, no one had really fully exited
5 their vehicle or was in a place to do that. So I did
6 end up giving commands to Mr. Monterrosa, who was down,
7 to show his hands, but no one -- it wasn't able to get
8 to that stage because of the threat Mr. Monterrosa
9 presented, if that makes sense.

10 Q. So the commands you just talked about were
11 commands that you gave after the shooting?

12 A. Yes. The threat of Mr. Monterrosa -- that he
13 posed, believing I was about to be shot, we never got to
14 the next step, which would have been to exit our
15 vehicles and give verbal commands, but his actions
16 dictated that otherwise.

17 Q. Right. Let me read for you another quote from
18 your interview.

19 And, Josh, it's page 53 starting at line 16.

20 In my mind, there was a reason -- I'm sorry.

21 In my mind, there was a reason he was not
22 either fleeing -- you want me to wait until you get
23 there?

24 MR. OLANDER: Just give me the page number one
25 more time, please.

1 MR. BROWN: Sure. It's 53 starting at line 16.

2 MR. OLANDER: Thank you.

3 MR. BROWN: Sure.

4 Q. It says: (Reading)

5 In my mind, there was a reason
6 he was not either fleeing or
7 complying with -- with getting on the
8 ground. And, in fact, I've had
9 numerous people get on the ground.
10 People rarely get down and face you.
11 They go away from you or run away
12 from you, and he had already been
13 running from us, so there was no, you
14 know, there was a time that he could
15 have laid down on the ground.

16 [REDACTED] [REDACTED] had already given
17 commands for him, you know, for these
18 people to surrender. And so, by him
19 not fleeing, and then turning, given
20 that he was armed, I saw him with
21 the -- running like someone who would
22 be armed, and coupled with the
23 turning and seeing what was in his
24 waistband, I immediately thought he's
25 shooting at us so his friends can get

1 away. That was just 100 percent and
2 I don't know why I was able to
3 process and I actually made that
4 thought in my head. I think that
5 link of he's shooting -- he's going
6 to shot -- I think that's a
7 typographical error -- at us so his
8 friends can get away. And I remember
9 just thinking that very distinctly,
10 as he does that motion and grabs the
11 objection -- probably another
12 error -- in his -- in his waistband.
13 That's what was going through my
14 mind. (end of reading)

15 The part I want to focus on that, Mr. Tonn, is
16 on page 53, line 22, the line [REDACTED] [REDACTED] had already
17 given him command -- given for him -- strike that --
18 "[REDACTED] [REDACTED] had already given commands for him, you
19 know, for these people to surrender."

20 How do you know that?

21 A. So independently I don't remember. Part of
22 this was this interview was done approximately
23 eight months after the shooting. And I'm not trying to
24 make an excuse for not remembering something. I just
25 want to say that one of the issues was this had been so

1 talked about. You know, there was no orders to not
2 discuss this. There was no don't talk about the
3 shooting. We had at different times thought about it or
4 round-tabled it or -- and so I don't remember if I -- as
5 I sit here, I don't remember if I heard him saying that
6 or if I knew that he gave commands.

7 The more I think about it, I believe that he
8 had exited his vehicle and given commands, but I don't
9 know if I saw that firsthand or if that was something I
10 had heard after the fact.

11 And, again, I'm not trying to be evasive at
12 all. I just --

13 Q. No. I understand.

14 A. I don't remember if I heard him say that or if
15 this is based on, again, eight months later, it's all
16 been discussed. So I can't specifically answer that.
17 If you ask me if I specifically remembered him giving
18 commands, I cannot say that I did.

19 Q. I mean, from a practical standpoint in both the
20 way that you've testified and the way that your partner
21 officers testified, I, frankly, don't know how that
22 would be possible. I'm not doubting your recollection
23 at all, but, I mean, just with the practicality of it,
24 you testified earlier that the window was rolled up when
25 you met with [REDACTED] [REDACTED] Let me ask that question.

1 As you were making the entry into Walgreens,
2 were the windows of the front passengers, [REDACTED] and
3 [REDACTED] were they up or were they down?

4 A. I believe they were down.

5 Q. Okay. All right. Go ahead.

6 A. No. That's it. I'm sorry.

7 Q. Yeah, that didn't make any sense to me so I
8 wanted to ask you about that.

9 A. If I can just clarify one second.

10 I believe, and I don't know if this is where it
11 came up, but [REDACTED] [REDACTED] was in the parking lot --
12 and this is all in seconds, but before us. So I don't
13 know if that helps at all. But he made it in because he
14 had a shorter distance. He didn't have to zig zag
15 through the concrete barriers.

16 So he was in there, and I believe he exited his
17 vehicle and then was rammed or had to get back in as the
18 car was coming at him and was rammed by the car that
19 Mr. Monterrosa had partially got inside.

20 Q. As you were driving to the point of rest and as
21 you were in the car that was being driven to the point
22 of rest in the Walgreens parking lot that, if I remember
23 correctly, you marked as 4 on Union Exhibit Z-3, did you
24 ever see [REDACTED] [REDACTED] out of his vehicle or was your
25 focus on the suspects?

1 A. My focus was on the suspects. I did see his
2 car. It all was happening so fast I cannot tell you if
3 he was in or out of his vehicle.

4 Q. Okay. Certainly the broadcast from
5 [REDACTED] [REDACTED] is what really elevated your focus to the
6 suspect that met [REDACTED] description of someone in
7 black, they are armed, possibly armed, that quote; is
8 that fair?

9 A. Yeah. I appreciate you saying that because
10 that was kind of my point, which is it wasn't some
11 general fear, it was precipitated by that specific
12 broadcast. So, yes, that was really what made me, in
13 this instance, fearful that someone had a firearm was
14 [REDACTED] [REDACTED] specific broadcast.

15 Q. And you knew -- as we talked about a little
16 earlier, you knew that given all of the criminal
17 activity that was going on in the days leading up to
18 this both in the Bay Area and specifically in Vallejo,
19 that suspects were armed?

20 A. Some suspects were armed, yes.

21 Q. Yeah. Certainly.

22 A. But working in Vallejo, we -- that's, I hate to
23 say, but a normal assumption or a common occurrence.

24 Q. When you fired through the windshield, the
25 windshield suffered damage and it made it a bit more

1 difficult for you to see out from the windshield; is
2 that fair?

3 A. Yes, it did -- it did damage it. It made it
4 somewhat difficult.

5 And, again, part of this is I've seen so many
6 photographs of it, in hindsight, after looking at the
7 photographs, it really actually didn't damage that much
8 of the windshield. I don't know if I just had tunnel
9 vision. Obviously where I had been looking through my
10 site was distorted a little bit, but in the big scheme
11 of the windshield, the windshield was actually not that
12 messed up.

13 Q. Where you were shooting, where the rounds went
14 through, that had damage?

15 A. Yes, that's correct.

16 Q. And that made it difficult to see at least in
17 that area?

18 A. That's correct.

19 Q. You didn't give any commands prior to using
20 force?

21 A. I did not.

22 Q. And no one -- no one in your vehicle was even
23 in a position to give commands; is that fair?

24 A. That's correct.

25 Q. You never saw Mr. Monterrosa actually pull and

1 present any sort of weapon?

2 A. He did not -- if I could just -- he didn't
3 point anything. It definitely never -- he didn't draw
4 it. It never cleared -- fully cleared his waistband if
5 that's what you're asking.

6 Q. Yes.

7 A. Yes. Correct.

8 Q. But it's your testimony that he actually had
9 his hand on what we now know to be a framing hammer,
10 that he actually had his hand on that. And is that the
11 point where you actually fired?

12 A. That's correct. Coupled with the spinning and
13 the shooting position but, yes, that was the moment
14 that, like I said, he's pulling a gun. And, again,
15 we're differentiating split tenths of a second but, yes,
16 it was the grabbing of the hammer that was....

17 Q. Yeah. Look, this is the curse of being an
18 attorney is, you know, years later we are trying to
19 break down things into tenths of seconds, and it's never
20 fair to anybody that we get testimony from.

21 But I have heard lots of officers sort of
22 describe a line in the sand as they are involved in an
23 incident and they make a determination that, okay, if
24 this happens, now I'm going to use force, whether it's
25 deadly force or some other level of force.

1 In your mind, was the grabbing of that wooden
2 handle that was protruding from his waistband, was that
3 your line in the sand?

4 A. It was grabbing the handle as he spun to face
5 towards us. If you're asking me if he had spun without
6 grabbing the handle that would have been different, yes.
7 It was the grabbing of the handle during that whole
8 movement, yes.

9 Q. Did he spin and grab the handle at the same
10 time? I mean, relatively speaking, was that concurrent?

11 A. You know, at what exact moment his hand
12 reached, if it was during the turn or -- I can't break
13 it down that far. All I know is when he was facing us,
14 his hand was on it in what looked like pulling it out of
15 his waistband.

16 Q. Did the spin and the vehicle driving away sort
17 of happen close in time, or was there -- did you
18 perceive a separation in time between the vehicle
19 driving away and him spinning and going to a knee?

20 A. Once he did not get in the vehicle, he was my
21 primary focus, especially after the armed broadcast and
22 the way he was running. So definitely he was my main
23 focus.

24 The vehicle was in my periphery, obviously,
25 but, you know, when he didn't get in, he became my main

1 focus, if that makes sense. He was my immediate threat
2 because he was the person that I believed to be armed.

3 Q. Were there any other suspects that were on foot
4 at the time that you fired?

5 A. I do not believe so.

6 Q. Did you see anybody else in black when you
7 fired?

8 A. I did not.

9 Q. The five rounds that you fired, you fired all,
10 as you testified, in a second-and-a-half burst. Is it
11 fair to say that you fired them all together and there
12 was no break between any of the rounds that you fired?

13 A. That's correct.

14 MR. BROWN: Okay. Thank you, Mr. Tonn. I
15 don't have anything else.

16 THE WITNESS: Thank you very much.

17 THE ARBITRATOR: Josh, any redirect?

18 MR. OLANDER: No, Buddy. Thank you.

19 THE ARBITRATOR: Let's go off the record one
20 second.

21 (Pause in proceedings.)

22 THE ARBITRATOR: Let's go back on the record.
23 I just have one or two that I hope won't open
24 Pandora's box.

25 Now, sir, if I understand the big picture,

1 you're out to dinner with your family and you get the
2 call to come in, correct?

3 THE WITNESS: That's correct, sir.

4 THE ARBITRATOR: Did you hear me earlier in
5 this hearing ask a witness about an exigent
6 circumstance?

7 THE WITNESS: I did.

8 THE ARBITRATOR: Okay. Do you know what an
9 exigent circumstance is?

10 THE WITNESS: As my -- just so we have the
11 definitions the same, I would say an exigent
12 circumstance is something where you're compelled to act
13 where you may not normally act because the circumstances
14 are so dire. Is that fair to say?

15 THE ARBITRATOR: Okay. When you went in, did
16 you have the mental picture that you were going into an
17 exigent circumstance?

18 Just yes or no, sir.

19 THE WITNESS: No.

20 THE ARBITRATOR: Now, at some point in time the
21 three of you in the truck talked to [REDACTED] Remember
22 that?

23 THE WITNESS: I do, sir.

24 THE ARBITRATOR: And if I remember, it's the
25 one at Broadway and -- Broadway and Redwood.

1 THE WITNESS: Yes, sir.

2 THE ARBITRATOR: Just a few seconds.

3 Once you hear [REDACTED] who apparently is not out
4 in the street that much, at that point did you think you
5 were getting into an exigent circumstance?

6 THE WITNESS: I did not, sir, other -- not for
7 that night. And I just differentiate that because --

8 THE ARBITRATOR: The answer is no, correct?

9 THE WITNESS: No. Correct.

10 THE ARBITRATOR: Okay. Then the truck goes
11 into the Walgreens parking lot where -- did you know at
12 that point in time there was looting going on?

13 THE WITNESS: I did.

14 THE ARBITRATOR: Okay. At that point in time,
15 did you think, oop, I'm getting into an exigent
16 circumstance? Not necessarily using that word, I mean,
17 just...

18 THE WITNESS: I did not, no.

19 THE ARBITRATOR: Okay. At some point in time
20 you move up -- not you, but the truck moves up further,
21 and you come across in front of you, roughly 100 yards
22 at one point, the car with Monterrosa.

23 Do you remember that?

24 THE WITNESS: I do.

25 THE ARBITRATOR: Okay. Now, again, I'm not

1 saying did you use this word to yourself, but did you
2 think this is going to be an exigent circumstance?

3 THE WITNESS: No.

4 THE ARBITRATOR: Okay. Just to back up a
5 little. At what time, if any, did you put on your body
6 camera?

7 THE WITNESS: I activated my body camera as I
8 was exiting the pickup truck, which then activated the
9 two-minute buffer that has video but no audio.

10 THE ARBITRATOR: Okay. And this is after the
11 shot? Or the shot?

12 THE WITNESS: This was after the shot. It all
13 happened in a manner that I was focused on other things
14 and did not think of my body cam at that moment.

15 THE ARBITRATOR: Okay. I know no one thinks
16 this is the outcome determinative issue, but are you
17 familiar with the body camera policy?

18 THE WITNESS: Yes, sir, I am.

19 THE ARBITRATOR: Okay. What is your
20 understanding of when an officer is supposed to turn on
21 the body camera?

22 THE WITNESS: So my understanding of our policy
23 as written is it is for uniformed personnel, and they
24 are supposed to activate it when they believe that they
25 are going to have contact -- there's several reasonings,

1 but essentially if they are going to have contact with
2 any suspects or take any enforcement action.

3 THE ARBITRATOR: Okay. This is, again, not
4 that relevant.

5 Have you ever heard the expression my old daddy
6 used to use that foresight is better than hindsight by a
7 damn sight?

8 THE WITNESS: I actually have not heard that,
9 sir, no.

10 THE ARBITRATOR: Okay. Well, in hindsight,
11 would you agree that the association, the department,
12 you, and the arbitrator -- I got to watch my words --
13 might have more information if we had the video of
14 Monterrosa on his knee, bending, turning? Again, in
15 hindsight, would you think that --

16 THE WITNESS: Sure.

17 THE ARBITRATOR: -- would be helpful to
18 everybody?

19 THE WITNESS: Well, sir, so our body cam was
20 on. It did record the time of the shooting. It's just
21 the angle of everyone's body camera did not capture the
22 shooting itself, but the time of the shooting was
23 recorded on all of the officers' body cameras.

24 And then as far as external surveillance video,
25 that may have been helpful, that had been damaged the

1 night before by looters. But my body cam did record the
2 time of the shooting, if that makes sense.

3 THE ARBITRATOR: Okay. Now I'm confused. I
4 thought just a second or two ago you said it came on
5 when you left the truck.

6 THE WITNESS: So, yes, thank you for asking
7 that question.

8 Our body cameras come with what's called a
9 two-minute buffer, which means that the body camera is
10 always recording and recording over itself in two-minute
11 increments.

12 When you activate your body camera, it actually
13 goes back in time and shows the previous two minutes
14 that the camera had recorded.

15 Now, that video, the only difference is it
16 doesn't contain the audio, but it does contain the
17 video.

18 So my body camera showed -- was recording video
19 from two minutes prior to the shooting onward. So the
20 buffer mode -- and that's the exact reason for buffer
21 mode is so that if you forget to turn it on, where it
22 would have been useful for, in this case, the
23 association and myself, you could activate it, and it
24 has that video saved in its memory from the previous
25 two minutes.

1 Does that make sense?

2 THE ARBITRATOR: Okay. Final question.

3 If I understand your testimony, again using
4 hindsight, if your body camera was on at the time that
5 you ran into [REDACTED] or when you entered the parking lot
6 or when you first saw Monterrosa and the car, it would
7 not have helped me or helped the situation because the
8 body camera from everybody in the car didn't capture the
9 movements of Monterrosa in that timeframe?

10 THE WITNESS: Yes, sir, that's what I'm saying,
11 they were on but not helpful in --

12 THE ARBITRATOR: Thank you.

13 Anything further for this witness?

14 MR. OLANDER: Nothing on our end.

15 THE ARBITRATOR: Does the association rest
16 subject to possible surrebuttal?

17 MR. OLANDER: Yes.

18 THE ARBITRATOR: Let's go off the record.

19 (There was a discussion held off the record.)

20 THE ARBITRATOR: Back on the record.

21 We're talking about an objection to Association
22 Exhibit Z-1, 2, and 3 where the markings were made.

23 MR. BROWN: The only objection that I'll make
24 is the lack of precision with those markings. Certainly
25 those were all estimates, but with the understanding

1 that those markings were all estimates, as I think
2 Mr. Olander indicated during the testimony of all the
3 witnesses who marked the exhibits, then that's fine.

4 THE ARBITRATOR: Thank you.

5 MR. OLANDER: And I agree with that.

6 THE ARBITRATOR: Thank you. They are received.
7 (Association Exhibits Z-1, Z-2, and Z-3 were
8 admitted into evidence.)

9 THE ARBITRATOR: Let's go off the record.

10 (There was a discussion held off the record.)

11 THE ARBITRATOR: Let's go back on the record.

12 Pursuant to our off-the-record discussions,
13 there is no rebuttal so of course no surrebuttal.

14 The parties have agreed to waive oral closing
15 argument and will file post-hearing briefs through the
16 arbitrator 60 calendar days after receipt of transcript.

17 I will ask the court reporter, as she has done
18 many times in the past, to set the exact briefing
19 schedule in her cover letter to the arbitrator with
20 copies to counsel.

21 Again I would ask that counsel send the
22 arbitrator an electronic copy of their filing at the
23 deadline plus just by U.S. mail a hard copy of their
24 filing.

25 As I mentioned a minute ago, if at the deadline

1 either of you need a few more days, just work it out
2 between yourselves. You don't have to reach out to me
3 unless there is a real problem.

4 In addition, as I said, if either of you finish
5 early, please feel free to send your filing to me. I
6 assure you it's no advantage because I don't look at any
7 case until it's fully submitted.

8 Now, I want to thank counsel for my luck. And
9 my luck is I have two very experienced counsel who have
10 a fine presentation in the case, and I assure you that
11 your arbitrator has a very good understanding of the
12 case.

13 If I could give you any suggestion as to your
14 closing argument -- and this is what I usually do in
15 these cases -- I would suggest that you assume that the
16 arbitrator doesn't know very much about use of force and
17 the use-of-force continuum. So if you're going to argue
18 that, you should argue it as if it's a brand-new person.
19 You don't have to follow my suggestion; that's up to
20 you.

21 Anyway, it's nice to work with you. I hope to
22 see you one day again in the future.

23 Mr. Tonn, good luck to you however this comes
24 out.

25 THE WITNESS: Thank you, sir.

1 THE ARBITRATOR: Julie, as always, thank you
2 for your help. And I know you had with Josh's firm a
3 five-day case up in Redding so you got plenty of work to
4 do, but we are interested in this case.

5 Nice to see you all, and we are off the record.

6 (Time noted: 4:20 p.m.)

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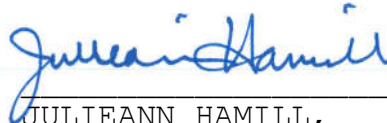
25

REPORTER'S CERTIFICATE

I certify that the proceedings in the above-entitled cause were reported at the time and place therein named by me, a duly Certified Shorthand Reporter and a disinterested person, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of April, 2023.



JULIEANN HAMILL,
California CSR No. 5151

---o0o---

1 **April 13, 2023**

2
3
4 ALEXANDER COHN, Arbitrator/Mediator
5 P.O. Box 4006
6 Napa, California 94558
7 acohnarb@comcast.net

8 Re: In the Matter of a Controversy between VALLEJO
9 POLICE OFFICERS' ASSOCIATION, and CITY OF VALLEJO,
10 Re: Termination of Jarrett Tonn

11 Dear Mr. Cohn:

12 I am enclosing this note with the transcript to
13 inform you that the briefs in this matter shall be
14 deemed to be timely filed if they bear the postmark date
15 of **June 13, 2023**.

16 Very truly yours,

17 JULIEANN HAMILL, CSR 5151

18 cc: All counsel

MR. BROWN: [13] 263/11 297/23 301/10 320/17 321/21 428/6 428/9 449/16 449/18 454/1 454/3 462/14 468/23 MR. 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