

Epperson, Julie

From: Rivera, Carmelin
Sent: Thursday, November 7, 2024 11:35 AM
To: Epperson, Julie; Mathew Zeman
Cc: Lendrea Curl; McCoole, Eric; John Caldwell; Schmottlach, Tristan
Subject: Re: Allegation of excessive use of force by SDPD on Marcus Evans

Captain Epperson,

I am forwarding this request to Detective Sergeant Eric McCoole. He is the IA investigator assigned to this case. (He is cc'd here).

Sergeant McCoole, please review this request and gather all the documents/evidence. Please coordinate with them, per the instructions on the email thread. Please cc Captain Epperson and Lieutenant Schmottlach on our end with any correspondence/updates. Thank you.

Lieutenant Carmelin Rivera
SDPD Internal Affairs

From: Epperson, Julie <jepperson@pd.sandiego.gov>
Sent: Thursday, November 7, 2024 11:07 AM
To: Mathew Zeman <mdzeman@fbi.gov>
Cc: Lendrea Curl <LSCURL@fbi.gov>; John Caldwell <JRCALDWELL@fbi.gov>; Schmottlach, Tristan <tschmottlach@pd.sandiego.gov>; Rivera, Carmelin <crivera@pd.sandiego.gov>
Subject: RE: Allegation of excessive use of force by SDPD on Marcus Evans

Thank you Matt, we will get started on this right away. We will coordinate with SA Caldwell and SA Curl.

Captain Julie Epperson #5111
San Diego Police Department
Internal Affairs/Professional Standards Unit
1401 Broadway
San Diego, CA 92101
MS 709
(619) 531-2735

From: Mathew Zeman <mdzeman@fbi.gov>
Sent: Thursday, November 7, 2024 10:34 AM
To: Epperson, Julie <jepperson@pd.sandiego.gov>
Cc: Lendrea Curl <LSCURL@fbi.gov>; John Caldwell <JRCALDWELL@fbi.gov>
Subject: [EXTERNAL] Allegation of excessive use of force by SDPD on Marcus Evans

Good morning Captain Epperson,

Thank you for speaking with me and considering our request. The FBI received a complaint that the San Diego Police Department used excessive force during an incident involving Marcus Evans on October 25, 2024. Where officers

encountered Mr Evans and used bean bag rounds and a police dog during the incident. At this time, our office and the United States Attorney's Office are assessing whether or not a Deprivation of Civil Rights Under the Color of Law investigation into the event is warranted or not.

Our office requests:

- Copies of police reports generated from the event
- Copies of Body Worn Camera footage from the event
- Copies of Department policies regarding Use of Force which were in effect at the time

In response to this request please coordinate with SA Caldwell and SA Curl, cced, or if you have any questions please contact me directly.

Thanks,

Mat

Mathew Zeman
Supervisory Special Agent
Squad PC-1
San Diego Field Office
Federal Bureau of Investigation
Desk: (858) 320-5730
Cell: (858) 583-2562

Epperson, Julie

From: McCoole, Eric
Sent: Thursday, November 7, 2024 1:45 PM
To: John Caldwell; Lendrea Curl
Cc: Epperson, Julie; Rivera, Carmelin; Schmottlach, Tristan; Shields, Milo; Mathew Zeman
Subject: RE: Allegation of Excessive Use of Force by SDPD on Marcus Evans

Agent Caldwell,

I'll be here, the address is 1401 Broadway in San Diego. You can call me when you arrive and I'll come down and let you in.

Thanks,

Eric

Eric McCoole #6755
Detective Sergeant
San Diego Police Department,
Internal Affairs Unit
(619) 531-2852 – Desk
(619) 540-7909 – Cell

From: John Caldwell <JRCALDWELL@fbi.gov>
Sent: Thursday, November 7, 2024 1:41 PM
To: McCoole, Eric <emccoole@pd.sandiego.gov>; Lendrea Curl <LSCURL@fbi.gov>
Cc: Epperson, Julie <jepperson@pd.sandiego.gov>; Rivera, Carmelin <crivera@pd.sandiego.gov>; Schmottlach, Tristan <tschmottlach@pd.sandiego.gov>; Shields, Milo <mdshields@pd.sandiego.gov>; Mathew Zeman <mdzeman@fbi.gov>
Subject: [EXTERNAL] Re: Allegation of Excessive Use of Force by SDPD on Marcus Evans

Sergeant McCoole,

As mentioned in our phone call. I'll be by Tuesday, 11/12, @ 0900 to pick up the requested information.

Thank you again.

Respectfully,

J.R.

From: McCoole, Eric <emccoole@pd.sandiego.gov>
Sent: Thursday, November 7, 2024 12:59:12 PM
To: Curl, Lendrea Sion (SD) (FBI) <LSCURL@fbi.gov>; Caldwell, John Robert (SD) (FBI) <JRCALDWELL@fbi.gov>
Cc: Epperson, Julie <jepperson@pd.sandiego.gov>; Rivera, Carmelin <crivera@pd.sandiego.gov>; Schmottlach, Tristan <tschmottlach@pd.sandiego.gov>; Shields, Milo <mdshields@pd.sandiego.gov>; Zeman, Mathew (SD) (FBI) <mdzeman@fbi.gov>
Subject: [EXTERNAL EMAIL] - Allegation of Excessive Use of Force by SDPD on Marcus Evans

Good Afternoon Special Agent Curl and Special Agent Caldwell,

My name is Eric McCoolle, I'll be your point of contact from the SDPD Internal Affairs Unit regarding the use of force investigation for Marcus Evans. At this time, I've been tasked with proving you with the following requested information:

- Copies of police reports generated from the event.
- Copies of Body Worn Camera footage from the event.
- Copies of Department policies regarding Use of Force which were in effect at the time.

I am in the process of digitally downloading the data (the body worn camera footage is taking the longest). I think it is far too much data to send via email, so I am saving it all to memory devices that I can physically prove to you. Please contact me to so we can arrange a time that I can provide you with this documentation.

Thanks,

Eric

Eric McCoolle #6755
Detective Sergeant
San Diego Police Department,
Internal Affairs Unit
(619) 531-2852 – Desk
(619) 540-7909 – Cell

Epperson, Julie

From: Marquardt, Stephen <Stephen.Marquardt@sdcca.org>
Sent: Thursday, September 11, 2025 3:02 PM
To: Clowers, Bernadette; Umstot, Ross
Cc: Quintos, Yesenia; Epperson, Julie
Subject: [EXTERNAL] RE: request for BWC sharing and reports on an incident

Good afternoon,

District Attorney Investigator Ross Umstot is available to come by this afternoon and pick up the materials. He is copied on this email. He will be reaching out to you in a few minutes.

Kind regards,

Stephen Marquardt
Chief, Special Operations Division
San Diego District Attorney's Office
office: 619-515-8720
cell: 619-987-0991

From: Clowers, Bernadette <bclowers@pd.sandiego.gov>
Sent: Thursday, September 11, 2025 2:55 PM
To: Marquardt, Stephen <Stephen.Marquardt@sdcca.org>
Cc: Quintos, Yesenia <yquintos@pd.sandiego.gov>; Epperson, Julie <jepperson@pd.sandiego.gov>
Subject: FW: request for BWC sharing and reports on an incident

DA Marquardt

I have the electronic copies of the case files you asked for; they are ready for pickup at your convenience. They will be at the San Diego Police Department Headquarters, located at 1401 Broadway, 7th Floor San Diego, CA 92101. If you are planning on coming down on Friday, Sept 12, the main lobby is closed, so if you call me, I can meet you outside. The office number is 619-531-2801.

Bernadette Clowers
Internal Affairs Unit
San Diego Police Department
619-531-2801

From: Nielsen, Brian <bnielsen@pd.sandiego.gov>
Sent: Wednesday, September 10, 2025 2:03 PM
To: stephen.marquardt@sdcca.org
Cc: Quintos, Yesenia <yquintos@pd.sandiego.gov>; Epperson, Julie <jepperson@pd.sandiego.gov>; Clowers, Bernadette <bclowers@pd.sandiego.gov>
Subject: RE: request for BWC sharing and reports on an incident

Hi Stephen,

I have shared the BWC videos with you via Evidence.com.

Let me know if you need anything else!

Brian Nielsen

Detective Sergeant

SDPD | Internal Affairs

1401 Broadway, San Diego, CA 92101

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From: Clowers, Bernadette <bclowers@pd.sandiego.gov>
Sent: Wednesday, September 10, 2025 8:52 AM
To: Nielsen, Brian <bnielsen@pd.sandiego.gov>
Subject: FW: request for BWC sharing and reports on an incident

Highlighted below is the email to share the BWC with DA Marquardt.

From: Quintos, Yesenia <yquintos@pd.sandiego.gov>
Sent: Wednesday, September 10, 2025 8:22 AM
To: Clowers, Bernadette <bclowers@pd.sandiego.gov>
Subject: Fw: request for BWC sharing and reports on an incident

Info for DA Stephen Marquardt

Yesenia Quintos, Lieutenant

San Diego Police Department

Internal Affairs

1401 Broadway

San Diego, CA 92101

(619) 531-2256

Email: yquintos@pd.sandiego.gov

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From: Epperson, Julie <jepperson@pd.sandiego.gov>
Sent: Tuesday, September 9, 2025 2:23 PM
To: stephen.marquardt@sdcca.org <stephen.marquardt@sdcca.org>
Cc: Quintos, Yesenia <yquintos@pd.sandiego.gov>
Subject: RE: request for BWC sharing and reports on an incident

Good afternoon Stephen,

We have received your below request. I am copying my lieutenant Yesi Quintos on this so she can facilitate getting you the reports. Also, I understand you are requesting the email from the FBI regarding them not pursuing charges. I will forward that on the next email. Please let me know if you need anything else.

Julie

Captain Julie Epperson #5111
San Diego Police Department
Internal Affairs/Professional Standards Unit
1401 Broadway
San Diego, CA 92101
MS 709
(619) 531-2735

From: Marquardt, Stephen <Stephen.Marquardt@sdcd.org>
Sent: Friday, September 5, 2025 10:48 AM
To: Denny, John <jdenny@pd.sandiego.gov>
Subject: [EXTERNAL] request for BWC sharing and reports on an incident

Good morning John,

With Lt. Tony Lessa out, I am reaching out to you. When you have a minute, could you please give me a call? My office has received a request from the public to review an incident involving SDPD officers, but no casefile on the matter was ever submitted to our office. I have reviewed the limited relevant information I can access but I would like my division to be able to conduct a complete and thorough review. In order to do that, I would need the BWC to be shared along with a copy of the reports, 911 recording, CAD, and any other documentation that would typically be provided. The incident was the October 24, 2024, contact with Marcus Evans (DOB: 0/23/1993). I believe the SDPD case number is 24043762.

I look forward to talking with you soon.

Kind regards,

Stephen Marquardt
Chief, Special Operations Division
San Diego District Attorney's Office
office: 619-515-8720
cell: 619-987-0991

Epperson, Julie

From: Marquardt, Stephen <Stephen.Marquardt@sdcca.org>
Sent: Friday, September 12, 2025 3:53 PM
To: Nielsen, Brian
Cc: Quintos, Yesenia; Epperson, Julie; Clowers, Bernadette
Subject: [EXTERNAL] RE: request for BWC sharing and reports on an incident

Hello again Brian,

The Spec Ops DDA I have assigned to this matter notified me that the compelled statements from the IA were shared with our office. I am not sure how that happened. I know we were all on the same page about the fact that compelled statements were the one thing that could not be shared with us. I have asked him to stop reviewing the materials and set everything aside. We will need to arrange for an exchange of materials.

Additionally, he noted that there are several items that were not provided to us for review that likely fall outside of anything compelled. Those items include police reports from the below-named officers.

1. Officer Robert Nelson #7443
2. Officer Ashley Pouchie/Bennett #1910
3. Sgt. Alan Dyemartin #6642
4. Officer Johnson #1644
5. Sgt. John Sullivan #6455 *may not have authored report, but was interviewed by IA
6. Officer Javier Flores #1041 *may not have authored report, but was interviewed by IA
7. Lt. Megan Bisesto #5797 *may not have authored report, but was interviewed by IA

If it is easier to give me a call so we can go over everything, I am available most of Monday morning.

Thankyou,
Stephen

From: Marquardt, Stephen
Sent: Friday, September 12, 2025 2:52 PM
To: 'Nielsen, Brian' <bnielsen@pd.sandiego.gov>
Cc: Quintos, Yesenia <yquintos@pd.sandiego.gov>; Epperson, Julie <jepperson@pd.sandiego.gov>; Clowers, Bernadette <bclowers@pd.sandiego.gov>
Subject: RE: request for BWC sharing and reports on an incident

Good afternoon Brian,

The way the BWC sharing was done will only allow me (personally) to view. I cannot download or share the BWC footage. I understand the need to maintain strict control over the content. If I could be given the ability to share, I can provide a link to the attorney and investigator within my division that I have assigned to review the matter. If I am able to download the 20 recordings, I can share the zip file with the DDA and DAI.

Thank you in advance for however you can facilitate this request. Please call me if you have any questions.

Kind regards,

Stephen Marquardt

Chief, Special Operations Division
San Diego District Attorney's Office
office: 619-515-8720
cell: 619-987-0991

From: Nielsen, Brian <bnielsen@pd.sandiego.gov>
Sent: Wednesday, September 10, 2025 2:03 PM
To: Marquardt, Stephen <Stephen.Marquardt@sdcd.a.org>
Cc: Quintos, Yesenia <yquintos@pd.sandiego.gov>; Epperson, Julie <jepperson@pd.sandiego.gov>; Clowers, Bernadette <bclowers@pd.sandiego.gov>
Subject: RE: request for BWC sharing and reports on an incident

Hi Stephen,

I have shared the BWC videos with you via Evidence.com.

Let me know if you need anything else!

Brian Nielsen

Detective Sergeant

SDPD | Internal Affairs
1401 Broadway, San Diego, CA 92101

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From: Clowers, Bernadette <bclowers@pd.sandiego.gov>
Sent: Wednesday, September 10, 2025 8:52 AM
To: Nielsen, Brian <bnielsen@pd.sandiego.gov>
Subject: FW: request for BWC sharing and reports on an incident

Highlighted below is the email to share the BWC with DA Marquardt.

From: Quintos, Yesenia <yquintos@pd.sandiego.gov>
Sent: Wednesday, September 10, 2025 8:22 AM
To: Clowers, Bernadette <bclowers@pd.sandiego.gov>
Subject: Fw: request for BWC sharing and reports on an incident

Info for DA Stephen Marquardt

Yesenia Quintos, Lieutenant
San Diego Police Department
Internal Affairs
1401 Broadway
San Diego, CA 92101
(619) 531-2256
Email: yquintos@pd.sandiego.gov

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From: Epperson, Julie <jepperson@pd.sandiego.gov>
Sent: Tuesday, September 9, 2025 2:23 PM
To: stephen.marquardt@sdcca.org <stephen.marquardt@sdcca.org>
Cc: Quintos, Yesenia <yquintos@pd.sandiego.gov>
Subject: RE: request for BWC sharing and reports on an incident

Good afternoon Stephen,

We have received your below request. I am copying my lieutenant Yesi Quintos on this so she can facilitate getting you the reports. Also, I understand you are requesting the email from the FBI regarding them not pursuing charges. I will forward that on the next email. Please let me know if you need anything else.

Julie

Captain Julie Epperson #5111
San Diego Police Department
Internal Affairs/Professional Standards Unit
1401 Broadway
San Diego, CA 92101
MS 709
(619) 531-2735

From: Marquardt, Stephen <Stephen.Marquardt@sdcca.org>
Sent: Friday, September 5, 2025 10:48 AM
To: Denny, John <jdenny@pd.sandiego.gov>
Subject: [EXTERNAL] request for BWC sharing and reports on an incident

Good morning John,

With Lt. Tony Lessa out, I am reaching out to you. When you have a minute, could you please give me a call? My office has received a request from the public to review an incident involving SDPD officers, but no casefile on the matter was ever submitted to our office. I have reviewed the limited relevant information I can access but I would like my division to be able to conduct a complete and thorough review. In order to do that, I would need the BWC to be shared along with a copy of the reports, 911 recording, CAD, and any other documentation that would typically be provided. The incident was the October 24, 2024, contact with Marcus Evans (DOB: 0/23/1993). I believe the SDPD case number is 24043762.

I look forward to talking with you soon.

Kind regards,

Stephen Marquardt

Chief, Special Operations Division
San Diego District Attorney's Office
office: 619-515-8720
cell: 619-987-0991

Liufau, Aida

From: McFarland, Jon'nae <McFarlandJ@sandiego.gov> on behalf of Commission on Police Practices <CommissiononPolicePractices@sandiego.gov>
Sent: Wednesday, October 30, 2024 10:53 AM
To: Liufau, Aida; O'Tousa, Mary
Subject: FW: [EXTERNAL] No badge numbers

Good morning,

Please see complaint below.

Thank you,

Jon'Nae McFarland(she/her)
Administrative Aide II
Office of the Commission on Police Practices
Procopio Towers, 17th Floor – Suite 1725
525 B Street
San Diego, CA 92101
Work Cell: (619) 638-7817
Email: McFarlandJ@sandiego.gov
CPP website: <https://www.sandiego.gov/cpp>

The City of
SAN DIEGO
- *A world-class city for all-*
City of San Diego Strategic Plan Vision

From: Obeid, Yasmeeen <YObeid@sandiego.gov>
Sent: Tuesday, October 29, 2024 10:35 AM
To: [REDACTED]
Cc: Parker, Paul <PRParker@sandiego.gov>; Commission on Police Practices <CommissiononPolicePractices@sandiego.gov>
Subject: Re: [EXTERNAL] No badge numbers

Hi [REDACTED]

Thank you for reaching out.

This email is considered a formal complaint. If you have additional details beyond what is included in the video/description, it's best to reply with the information or use our online webform to include everything. If all the information you have available to you is already included in this email, we will move forward with the complaint.

The most important information is usually: date, time, and location of the incident in addition to contact information for the complainant in case the assigned investigators have any questions. You can fill out the complaint form with the information you have and leave the rest blank. If you have additional footage or witnesses, make sure to include them.

Regarding the investigators, two investigators have been hired. The first investigator started yesterday and the second investigator does not have a confirmed start date yet.

Let me know if you have any additional questions.

Yasmeen Obeid
Community Engagement Coordinator
Office of the Commission on Police Practices
619-859-8542
Yobeid@sanidiego.gov

From: [REDACTED] >
Sent: Tuesday, October 29, 2024 1:23 PM
To: Parker, Paul <PRParker@sanidiego.gov>; Obeid, Yasmeen <YObeid@sanidiego.gov>
Subject: [EXTERNAL] No badge numbers

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<https://youtu.be/L2ERgHIR80k?si=mtemllorqOkQp0ze&sfnsn=mo>

Hi,
How do I file a complaint if I don't have the badge numbers in this video? How do i know if someone already did since there is no report out in open session. So if I fill out the complaint and have missing details is it accepted? Thanks and I want to confirm we don't have investigator yet that are hired?

McCoole, Eric

From: Epperson, Julie
Sent: Monday, December 9, 2024 7:21 AM
To: McCoole, Eric
Cc: Rivera, Carmelin; Schmottlach, Tristan
Subject: FW: SDPD UoF incident on October 24, 2024 (Marcus Evans)

Good morning Eric,

Please keep this email to document FBI declining to prosecute, and for tolling purposes. [REDACTED]
[REDACTED]

Hope you had a good weekend.

Captain Julie Epperson #5111
San Diego Police Department
Internal Affairs/Professional Standards Unit
1401 Broadway
San Diego, CA 92101
MS 709
(619) 531-2735

From: Mathew Zeman <mdzeman@fbi.gov>
Sent: Friday, December 6, 2024 4:57 PM
To: Epperson, Julie <jepperson@pd.sandiego.gov>
Subject: [EXTERNAL] FW: SDPD UoF incident on October 24, 2024 (Marcus Evans)

Hi Capt Epperson,

The US Attorney's Office responded earlier today with a declination in the Marcus Evans matter. Officially as of today, we will not be opening an investigation into this event.

Thank you,

Mat

Mathew Zeman
Supervisory Special Agent
Squad PC-1
San Diego Field Office
Federal Bureau of Investigation
Desk: (858) 320-5730
Cell: (858) 583-2562

From: Askins, Seth (USACAS) <Seth.Askins@usdoj.gov>

Sent: Friday, December 6, 2024 12:05 PM

To: Zeman, Mathew (SD) (FBI) <mdzeman@fbi.gov>; Caldwell, John Robert (SD) (FBI) <JRCALDWELL@fbi.gov>

Subject: [EXTERNAL EMAIL] - SDPD UoF incident on October 24, 2024 (Marcus Evans)

Hi, Mat and J.R. –

Per our earlier discussions and following review of the materials you've collected thus far, the U.S. Attorney's Office is declining to open a formal criminal investigation into the above-referenced incident at this time because it does not appear likely that there will be sufficient evidence to sustain a prosecution of any individuals under 18 U.S.C. § 242. If additional evidence is discovered during SDPD's review of this incident, please resubmit the matter for further consideration.

If you have any questions, please feel free to call at your convenience.

Best,
Seth

AUSA C. Seth Askins
Civil Rights Enforcement Coordinator
District Election Officer
U.S. Attorney's Office | Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101
Work: (619) 546-6692
Cell: (619) 490-9411

Liufau, Aida

From: McFarland, Jon'nae <McFarlandJ@sandiego.gov> on behalf of Commission on Police Practices <CommissiononPolicePractices@sandiego.gov>
Sent: Wednesday, October 30, 2024 10:38 AM
To: Liufau, Aida; O'Tousa, Mary
Subject: FW: [EXTERNAL] Fwd: Citizen's Complaint Marcus Evans
Attachments: Marcus Evans.pdf

Good morning,

Please see the complaint below from [REDACTED].

I understand IA has already received this complaint, but I still must forward your way. There is one additional complaint I will send regarding this incident.

Thank you,

Jon'Nae McFarland(she/her)
Administrative Aide II
Office of the Commission on Police Practices
Procopio Towers, 17th Floor – Suite 1725
525 B Street
San Diego, CA 92101
Work Cell: (619) 638-7817
Email: McFarlandJ@sandiego.gov
CPP website: <https://www.sandiego.gov/cpp>

The City of
SAN DIEGO
- *A world-class city for all-*
City of San Diego Strategic Plan Vision

From: Tran, Gloria <TranG@sandiego.gov>
Sent: Monday, October 28, 2024 6:50 PM
To: Parker, Paul <PRParker@sandiego.gov>; Golub, Olga <GolubO@sandiego.gov>; McFarland, Jon'nae <McFarlandJ@sandiego.gov>
Subject: FW: [EXTERNAL] Fwd: Citizen's Complaint Marcus Evans

Not sure if a complaint was filed. This is the same video that [REDACTED] sent.

Gloria Tran
Chair, Commission on Police Practices

The City of
SAN DIEGO

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From: [REDACTED] >

Sent: Monday, October 28, 2024 10:03 AM

To: Geneviève Jones-Wright <director@moralgovernance.org>; Dante Pride <dpride@pridelawfirm.com>; Timothy Scott <tscott@mckenzieescott.com>; Woodley, Dwain <dwain.woodley@sdcd.org>; maurice.lyles@gov.ca.gov; Dr. John E. Warren <jwarren@sdvoice.info>; JW August <jwaugustsd@gmail.com>; KPBS Newsroom <news@kpbs.org>; Jade Hindmon <jhindmon@kpbs.org>; Tran, Gloria <TranG@sandiego.gov>; Kylee Belanger <kylee@harmonyinlaw.com>; Kyra Greene <kgreene@cpisandiego.org>; Branden Sigua <bsigua@aclu-sdic.org>; Anthony Avalos <anthonyavalos@gmail.com>; eldglenn@gmail.com; Dargan, Eric <EDargan@sandiego.gov>; Voice of San Diego <info@voiceofsandiego.org>; Foster III, Henry <HLFoster@sandiego.gov>; Harrison, Tiffany <THarrison@sandiego.gov>; max.ellorin@sdcounty.ca.gov; Gibbs, Ariel <Ariel.Gibbs@sdcounty.ca.gov>; Newell-Tate, Chevelle <Chevelle.Newell-Tate@asm.ca.gov>; Damon Brown <Damon.Brown@doj.ca.gov>; Jchambers@fox5sandiego.com; craig.harris@10news.com; Fleming, Omari (NBCUniversal) <omari.fleming@nbcuni.com>; khessedal@kfmb.com; kholmes@kfmb.com; Christina Griffin-Jones <christina@womxnsworkconsulting.com>; Christie Love Hill <CLoveHill@aclu-sdic.org>; DonteT.Wyatt@sdcounty.ca.gov

Cc: Akilah.faizah@gmail.com; robbonta@gmail.com

Subject: [EXTERNAL] Fwd: Citizen's Complaint Marcus Evans

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

A formal complaint has been filed with an officer of the San Diego Police Department and I am forwarding you the email he submitted to his chain of command regarding the incident on 10/25/24 in which officers used excessive force(2-3 bean bag rounds and 2 K9 dogs deployed) on Marcus Evans knowing he was unarmed and not evading detention or arrest with only basketball shorts on (no shoes, no socks and no shirt).

The community is demanding the officers be put on administrative leaving pending the investigation and the Attorney General step in to monitor and review. In the conclusion if officers are found to have committed excessive force the community wants them charged and all officers who failed to intervene or report disciplined.

Black people are not substandard class of human beings! It is horrifying to continue to see our people treated worse than animals. I've never seen animals treated in the way Mr. Evans was treated on October 25th by San Diego Police Officers with Sergeants supervising. If I shot bean bags at a dog and released a dog to attack another dog the world would be in uproar!

Video Link:

[https://urldefense.com/v3/https://youtu.be/L2ERqHIR80k?si=0kCJfFSidBZRbaoQ_!!EMTEEnRo!Mw1ugrwiJ6pzlC6OUen503LTdzNeNfJbBRUVVtlxXCB1hobOQPdKstOd4ey-WTevVjsq54Y6PJZ8x6bldrlAn9Lk\\$](https://urldefense.com/v3/https://youtu.be/L2ERqHIR80k?si=0kCJfFSidBZRbaoQ_!!EMTEEnRo!Mw1ugrwiJ6pzlC6OUen503LTdzNeNfJbBRUVVtlxXCB1hobOQPdKstOd4ey-WTevVjsq54Y6PJZ8x6bldrlAn9Lk$)

Thanks,

[REDACTED]

----- Forwarded message -----

From: [REDACTED]

Date: Sun, Oct 27, 2024 at 1:19 PM

Subject: Citizen's Complaint Marcus Evans

To: Wahl, Scott <swahl@pd.sandiego.gov>, Connelly, Paul <pconnelly@pd.sandiego.gov>, Takeuchi, Shawn <stakeuchi@pd.sandiego.gov>, Manansala, Benjerwin <BManansala@pd.sandiego.gov>

Cc: Peterson, Vernon <vpeterson@pd.sandiego.gov>, Leos, Alberto <aleos@pd.sandiego.gov>, Stinson, Robert <rstinson@pd.sandiego.gov>, Dempsey, Bryan <BDempsey@pd.sandiego.gov>, dwayneharvey@yahoo.com <dwayneharvey@yahoo.com>, [REDACTED]

[REDACTED]
San Diego Police Department
Southern Division
1120 27th Street
San Diego CA 92154

McCoole, Eric

From: Pfannenstiel, Zach
Sent: Tuesday, January 28, 2025 3:28 PM
To: McCoole, Eric
Subject: Follow up answer

Hey Sir,

I just recalled an answer as I thought about it deeper. In the interview you asked was the CRT PowerPoint approved by In-Service and that answer was a yes. I just recalled I sent it to Mike Belz through my department email. I would guess more than a year ago. All classes we teach to the Regional Academy and new supervisors were sent up to them. These courses are building searches with K9 and CRT.

Thank you,

Zach Pfannenstiel
Sergeant
Canine Unit - Special Services Division
4240 Federal Boulevard
San Diego, CA 92105

From: [McFarland, Jon'nae](#) on behalf of [Commision on Police Practices](#)
To: [Liufau, Aida](#); [O'Tousa, Mary](#)
Subject: FW: [EXTERNAL] Police Officers who use Excessive Force Should be Fired
Date: Thursday, December 12, 2024 2:44:24 PM

Good afternoon,

Please see compliant below. I understand this compliant has already been submitted by multiple community members.

Thank you,

Jon'Nae McFarland(she/her)
Administrative Aide II
Office of the Commission on Police Practices
Procopio Towers, 17th Floor – Suite 1725
525 B Street
San Diego, CA 92101
Work Cell: (619) 638-7817
Email: McFarlandJ@sandiego.gov
CPP website: <https://www.sandiego.gov/cpp>



• *A world-class city for all-*
City of San Diego Strategic Plan Vision

From: [REDACTED] >
Sent: Wednesday, December 11, 2024 10:18 AM
To: Commision on Police Practices <CommissiononPolicePractices@sandiego.gov>
Subject: [EXTERNAL] Police Officers who use Excessive Force Should be Fired

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

Dear sir or madam:

Members of the San Diego Police Department used excessive force during the apprehension of Marcus Evans at his Valencia Park home. Those officers must be disciplined and those officers who have engaged in prior incidents of excessive force should be fired.

Mr. Evans came out of his home peacefully in response to the order by police officers. Mr. Evans was naked except for a pair of shorts, and his hands were in the air. He clearly did not have a gun, and the police officers could not have a reasonable belief that Mr. Evans was armed. Nonetheless the officers attacked Mr. Evans with excessive

force shooting him with bags of lead shot and ordering their dogs to attack and bite Mr. Evans.

This behavior by the police, violently attacking and wounding an unarmed man, cannot be tolerated.

I urge you to fully investigate and appropriately punish the police officers involved.

Thank you for your attention.

[REDACTED]

Liufau, Aida

From: McFarland, Jon'nae <McFarlandJ@sandiego.gov> on behalf of Commision on Police Practices <CommissiononPolicePractices@sandiego.gov>
Sent: Wednesday, October 30, 2024 9:49 AM
To: Liufau, Aida; O'Tousa, Mary
Subject: FW: [EXTERNAL] Video of Community Member in Southeast

Good morning,

Please see the compliant below from [REDACTED].

Thank you,

Jon'Nae McFarland(she/her)
Administrative Aide II
Office of the Commission on Police Practices
Procopio Towers, 17th Floor – Suite 1725
525 B Street
San Diego, CA 92101
Work Cell: (619) 638-7817
Email: McFarlandJ@sandiego.gov
CPP website: <https://www.sandiego.gov/cpp>

The City of
SAN DIEGO
- *A world-class city for all-*
City of San Diego Strategic Plan Vision

From: Obeid, Yasmeeen <YObeid@sandiego.gov>
Sent: Monday, October 28, 2024 6:51 AM
To: Commision on Police Practices <CommissiononPolicePractices@sandiego.gov>
Cc: Golub, Olga <GolubO@sandiego.gov>; Parker, Paul <PRParker@sandiego.gov>
Subject: Fw: [EXTERNAL] Video of Community Member in Southeast

Looping in Jon'Nae.



Yasmeen Obeid



Community Engagement Coordinator
Office of the Commission on Police Practices

☎ C (619) 859-8542

🌐 www.sandiego.gov/cpp

✉ YObeid@sandiego.gov

📍 CCP - 1200 Third Avenue, Suite 924, San Diego, CA 92101

*To subscribe or unsubscribe from our email updates list, please visit:
<https://www.sandiego.gov/cpp/contact>*

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

From: [REDACTED] >

Sent: Friday, October 25, 2024 6:22 PM

To: Tran, Gloria <TranG@sandiego.gov>

Cc: Bennett, Duane <BennettD@sandiego.gov>; Brown, Dennis <BrownDW@sandiego.gov>; Case, Doug <DCase@sandiego.gov>; Golub, Olga <GolubO@sandiego.gov>; Parker, Paul <PRParker@sandiego.gov>; Obeid, Yasmeen <YObeid@sandiego.gov>

Subject: Re: [EXTERNAL] Video of Community Member in Southeast

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

Will do. He's in the hospital right now. No pending charges.

Sent from my iPhone

On Oct 25, 2024, at 6:07 PM, Tran, Gloria <TranG@sandiego.gov> wrote:

Hi [REDACTED] did he file a complaint? If he would like to and doesn't know how, please have him contact CPP staff. Thank you.

Gloria Tran, Chair
Commission on Police Practices

From: [REDACTED] >

Sent: Friday, October 25, 2024 5:53:44 PM

To: Tran, Gloria <TranG@sandiego.gov>; Bennett, Duane <BennettD@sandiego.gov>; Brown, Dennis <BrownDW@sandiego.gov>; Case, Doug <DCase@sandiego.gov>; Golub, Olga <GolubO@sandiego.gov>; Parker, Paul <PRParker@sandiego.gov>; Obeid, Yasmeen <YObeid@sandiego.gov>

Subject: [EXTERNAL] Video of Community Member in Southeast

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

10/24/24

Community Member Mame: Marcus Evans

This was hard to watch and appears to be excessive force.



619 News Media on Instagram: "On 10/24/24 at approximately 11:27 pm, San Diego Police were called to MLK Park near 6400 Skyline for a report of a man displaying a weapon during an altercation. The victim stated the suspect entered his residence near the 6400 block of Duluth Avenue. Units established a perimeter around the house while they gathered details and came up with a game plan to make contact with the suspect. At approximately 12:08 AM, units made contact with the residents by using PA callouts. Several residents exited prior to the suspect exiting. The wanted suspect exited his residence, but did not leave his driveway. Officers made several attempts to have the suspect surrender, but he remained on his driveway. Officers deployed a bean bag round which knocked the suspect to the ground, but still failed to comply. Officers then used another bean bag round and a K9 was also deployed. After an unsuccessful K9 deployment, another dog was called in. A third bean bag round w

Watch and share reels with friends

Sent from my iPhone



Event # _____

SAN DIEGO POLICE DEPARTMENT/ COMMISSION ON POLICE PRACTICES COMPLAINT FORM

INSTRUCTIONS FOR COMPLETING THE COMPLAINT FORM:

Please describe the incident that led to this complaint, telling what happened from beginning to end. Be as clear and specific as you can be. What aspect(s) of the incident was improper (your specific complaint). How could it be resolved to your satisfaction? Please add additional pages as necessary. In order to investigate the incident completely, it is helpful to provide your name and information. The San Diego Police Department will accept third party and/or anonymous complaints. However, as a general rule for any investigation, if the information provided is insufficient, or if investigators are unable to contact complainants to ask essential questions, it may not be possible to complete the investigation due to a lack of clarifying facts.

COMPLAINANT'S NAME _____ HOME PHONE () _____
 ADDRESS _____ BUS. PHONE () N/A
 CITY _____ STATE _____ ZIP _____ DOB _____
 E-MAIL _____

INCIDENT LOCATION:

6400 block of Duluth, San Diego, CA 92114 DATE 10/24/24 TIME 2300 Hour

SDPD PERSONNEL INVOLVED: (Give as much detail as possible)

NAME: ALL OFFICERS ON THE SCENE Gender: _____ Race: _____ Badge #: _____ ID #: _____
 NAME: _____ Gender: _____ Race: _____ Badge #: _____ ID #: _____
 NAME: _____ Gender: _____ Race: _____ Badge #: _____ ID #: _____

WITNESS(ES):

NAME _____ HOME PHONE () _____ BUS. PHONE () _____
 ADDRESS _____ DOB _____
 NAME _____ HOME PHONE () _____ BUS. PHONE () _____
 ADDRESS _____ DOB _____

Please answer Yes/No: Did you include the following with this complaint? ☒ Video(s) ☐ Photo(s)

INCIDENT DESCRIPTION/COMPLAINT:

PLEASE SEE ATTACHMENT FOR COMPLAINT

Video LINK CAN BE FOUND HERE: <https://youtu.be/L2ERgHIR80k?si=LhYHcmFiTAC0tfUq>



Legal Requirement

California Penal Code Section 148.6 (a) (2) states in part:

A law enforcement agency accepting an allegation of misconduct against a peace officers shall require the complainant to read and signed the following advisory....:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CIVILIANS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CIVILIAN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement

DocuSigned by:
[Redacted]
748CC2A49C2E4E5...

11/6/2024

Signed by:
[Redacted]
DBF388C8B32B44C...

11/6/2024

Complainant's Signature

What next?

You can turn this completed form into any police station or storefront as well as Police Headquarters at 1401 Broadway in downtown San Diego. If you prefer, you can call (619) 531-2000 and ask to speak with a police supervisor, or forward this form electronically to sdpdia@pd.sandiego.gov.

If you have any questions, you can also call San Diego Police Department Internal Affairs directly at (619) 531-2801 or visit our website at: www.sandiego.gov/police/contact/complaint-faq

Lastly, you can also submit this form to the CPP at 1200 Third Ave. Ste 924, MS56G, San Diego, CA 92101, by phone at (619) 236-6296, or online at: commissiononpolicepractices@sandiego.gov

On 10/25/24 I, [REDACTED], submitted a complaint to the CPP who then forwarded the initial complaint to the San Diego Police Department's Internal Affairs Department for internal review. I am requesting that the initial complaint is amended to include this complaint. Also, I am requesting that it is treated as a Category I formal complaint.

On 10/24/2024, the San Diego police department responded to a call on Duluth Ave. The San Diego Police Department set up a perimeter at about 10:30pm -11:00pm. The family members were instructed to leave their home one at a time, including 2 adults and 2 juveniles. [REDACTED], the homeowner recently suffered 2 strokes and a heart attack. [REDACTED] health issues [REDACTED] and, at the time the officers arrived at the home, he was conducting [REDACTED]. After informing the officers of this, he was still forced to stay out in the cold without [REDACTED].

Marcus Evans exited the home with no shirt and no shoes, and only basketball shorts. Marcus' sparse clothing made it visually apparent that he had no weapons on him and posed no imminent threat. He had his hands up as he walked towards the officers and did a 360 degree turn to let the officers see that he had no weapons on him. It was clear that he did not have any weapons on him. He then sat down on the brick wall passively ensuring that his hands were visible at all times. He did not make any threatening or rapid movements. It does not appear that the officers utilized any deescalation techniques or attempted to use effective communication.

Although clearly unarmed, not actively resisting, and posing no threat to the officers, Marucs was shot multiple times with an extended range impact weapon and attacked and mauled by a k9. The first shot is in Marcus Evans stomach and he falls to the ground. While Marcus Evans lies on the ground from the first shot officers are clearly safe and standing around not seeking cover or concerned with a potential threat from the house or Marcus. Marcus was then shot again, still while his hands were up and visible. Then, the officers released the k9 to attack Marcus twice even though it was evident he posed no threat, either verbally or physically, and it was visibly clear he did not have a weapon on his person or anywhere in his immediate control. Below are the policies and constitutional rights violations included in this complaint.

COMPLAINT MATRIX	
Policies and Laws Violated	Description

<u>SDPD Policy 1.04 (V)(C)</u>	The use of canines, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon. Complaint: Marcus Evans was not actively resisting. Marcus was minimally clothed and turned around 360 degrees demonstrating he did not have any weapons. He sat down ensuring his hands were visible at all times. He did not make any movements or gestures to make any reasonable person believe he was armed or reaching for a weapon at any time. It was clear he had no immediate access to any weapons that could pose a threat to the officers. The use of canines were used against the department's use of force policy and "Use of Force Matrix". Alleged Violations: Excessive Force (With injury) and violation of search and seizure procedures.
<u>SDPD Policy 1.55 De Escalation (III)(G)</u>	The process of incident management and de-escalation includes, but is not limited to, the following: 1. Utilizing pre-engagement techniques 2. Assessing the overall scene 3. Establishing effective lines of communication 4. Using appropriate levels of reasonable force, based on the totality of the circumstances 5. Intervening whenever force being used appears unreasonable 6. Rendering aid and evaluating the need for medical assistance 7. Reporting of all force used during the incident 8. Reviewing the incident to ensure adherence to department Procedures Complaint: The officers that used the impact weapons and the k9 violated number 4 on the deescalation policy. Based on the totality of the circumstances - Marcus was wearing minimal clothing and it was visibility apparent that he was unarmed, he kept his hands visible at all times, and he was outside and officers had full view of the areas around Marcus to reasonably determine that he did not have immediate access to a weapon - the officers used excessive force when they utilized impact weapons and a k9 as a means of restraining him. The officers posture in the video of the incident displayed that they did not seem fearful or threatened. The officers could have utilized more reasonable force to apprehend Marcus, such as simply approaching him to restrain him. However, at no point did the officers use any of the more appropriate, and more reasonable use of force. All officers on the scene violated number 5 on deescalation policy. Not one officer was seen intervening when excessive use of force was used against Marcus. Additionally, after being shot multiple times by impact weapons and being mauled by a k9 to the point

	that Marcus' arm was visibly bleeding, no officers on the scene rendered any aid or evaluated Marcus' need for medical assistance.
SDPD Policy 1.55(V)(H)	Anytime unreasonable force is used, officers shall intervene, as required and defined in Department Procedure 1.56. Complaint: The officers that used the impact weapons and the k9 violated this policy. Based on the totality of the circumstances - Marcus was wearing minimal clothing and it was visibility apparent that he was unarmed, he kept his hands visible at all times, and he was outside and officers had full view of the areas around Marcus to reasonably determine that he did not have immediate access to a weapon - the officers used excessive force when they utilized impact weapons and a k9 as a means of restraining him. The officers' posture in the video of the incident displayed that they did not seem fearful or threatened. The officers could have utilized more reasonable force to apprehend Marcus, such as simply approaching him to restrain him. However, at no point did the officers use any of the more appropriate, and more reasonable use of force. All officers on the scene failed to intervene. Not one officer was seen intervening when excessive use of force was used against Marcus. Additionally, after being shot multiple times by impact weapons and being mauled by a k9 to the point that Marcus' arm was visibly bleeding, no officers on the scene rendered any aid or evaluated Marcus' need for medical assistance.
SDPD 1.56(V)(D)	An officer shall intervene by taking one or more of the following actions: 1. Verbally advising another officer. 2. Touching another officer to make their presence known. 3. Physical restraint of another officer to prevent and or stop an escalation of Force. Complaint: All officers on the scene failed to intervene. Not one officer was seen intervening when excessive use of force was used against Marcus. Additionally, after being shot multiple times by impact weapons and being mauled by a k9 to the point that Marcus' arm was visibly bleeding, no officers on the scene rendered any aid or evaluated Marcus' need for medical assistance. There is no evidence that any officer on the scene verbally advised another officer, touched an officer to make their presence known, or physically restrained another officer to prevent or stop an escalation of force.
SDPD Passive Resistance	Passive Resistance - behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to

Definition 1.04 (IV)(K)	the officer or another person. Definition: for review only
SDPD Active Resistance definition and use of force matrix 1.04 (V)(C)	The use of canines, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon Complaint: Marcus Evans was not actively resisting. Marcus was minimally clothed and turned around 360 degrees demonstrating he did not have any weapons. He sat down ensuring his hands were visible at all times. He did not make any movements or gestures to make any reasonable person believe he was armed or reaching for a weapon at any time. It was clear he had no immediate access to any weapons that could pose a threat to the officers. The use of canines were used against the department's use of force policy and "Use of Force Matrix". Alleged Violations: Excessive Force (With injury) and violation of search and seizure procedures.
SDPD Assaultive Behaviour 1.04(V)(C)	Definition: Assaultive Behavior - behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others. Complaint: Marcus Evans was not actively resisting. Marcus was minimally clothed and turned around 360 degrees demonstrating he did not have any weapons. He sat down ensuring his hands were visible at all times. He did not make any movements or gestures to make any reasonable person believe he was armed or reaching for a weapon at any time. It was clear he had no immediate access to any weapons that could pose a threat to the officers. Marcus did not make any verbal or physical threats against the officers. He did not display any physical actions or assaultive behavior against the officers that would deem him a threat. Therefore, the use of impact weapons and a k9 are excessive force for passive resistance. In addition, the use of extended range impact weapons and a k9 was unreasonable based on the totality of the circumstances. SDPD's own policies call for use of extended range impact weapons to only be used for active resistance, assaultive behavior, or life threatening behavior. Mr. Evans did not meet any of the definitions for the use of force to be deemed reasonable.
US Constitution 4th Amendment Unreasonable	Graham v Connor Objective Reasonableness Complaint: Marcus Evan's fourth amendment rights were violated. The use of force was not reasonable based on his nonaggressive

seizure	nonthreatening interactions with the police.
US Constitution 14th Amendment Discrimination based on race, color, national origin, sex, or religion	POST STANDARD: Fair and unbiased policing. Discrimination: RIPA Data use of force San Diego. According to RIPA data SDPD use of force is used at a higher rate and by more actual raw numbers. (Voice of San Diego 2022, SDPD Promised Racial Disparities in Enforcement Would Go Down. Instead, They've Crept Up.) Complaint: Use of force is used more often on Black people. This systematic behavior led to the excessive force where not one officer intervened on Marcus Evans. The use of excessive unreasonable force on Black people has become a trend
9.20 Courtesy Policy Page 31	Complaint: [REDACTED] was not rendered any medical assistance or assistance for [REDACTED] and removed from his home. He was treated with discourtesy. After Marcus Evans was transported to the hospital his wife repeatedly asked to speak to a supervisor. She was ignored. Her white neighbor requested to see a supervisor and one promptly arrived. This made Mrs Evans feel dehumanized during this traumatic experience.
4.01 Legal	Complaint: The Evans family was removed from their homes and the police conducted two searches of the home without consent and without a search warrant. The family members did not give verbal or written consent to search their home. The first search seems to be legal. This search conducted would have made sure officers were safe and the home was clear. The second search was illegal. Officers then went into the homes and completed another search without consent or a warrant violating their 4th amendment rights.

SAN DIEGO POLICE DEPARTMENT **GUIDELINE**

Use of Force Matrix

Suspect's Behavior

Compliant Behavior	Passive Resistance Behavior	Active Resistance Behavior	Assaultive Behavior	Life Threatening Behavior
Touch Verbal Control (Orders, explanations, requests, officer's presence)	Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence)	Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons may be used as defined in section V.C. of this procedure Impact Weapons –Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence)	Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet) Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence)	Firearms Hard Impact Weapons (Blows to the head, face, neck and throat are prohibited unless defending against life-threatening behavior as defined in this procedure.) Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet) Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence)

Reasonable Force Under the Totality of the Circumstances

Officer's Response

Crisis Response Team



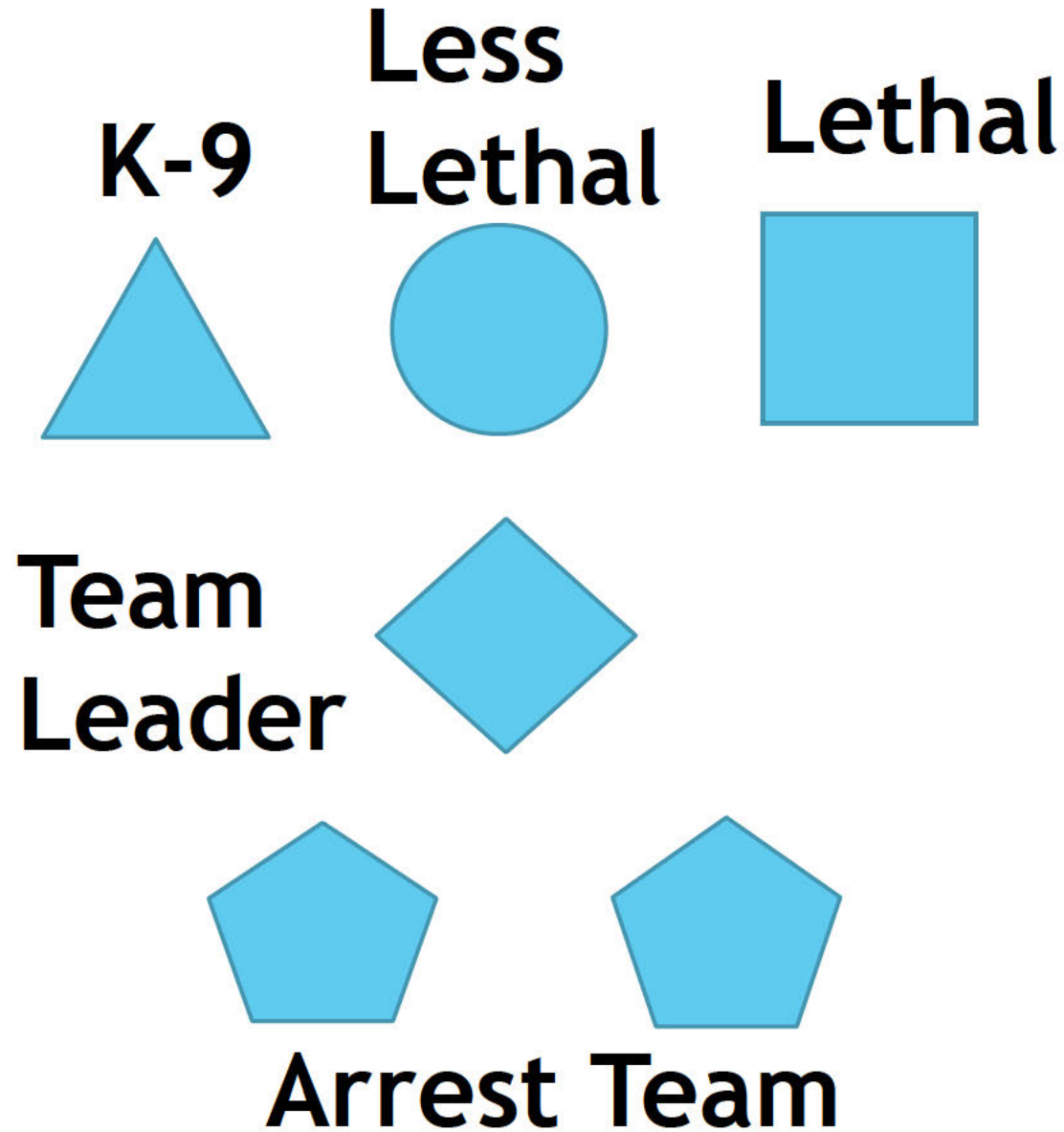
San Diego Police
Department
K-9 Unit

A close-up photograph of a black and tan puppy, possibly a German Shepherd, looking upwards with its ears perked. The puppy is wearing a blue collar. The image is positioned on the left side of the slide, partially overlapping a white diagonal band.

What is CRT?

- Coordinated response to a potentially deadly force situation
- A team to create an overwhelming show of force to gain compliance
- Gives officers time, distance, and multiple force options
- Goal is to minimize force used and increase likelihood of success

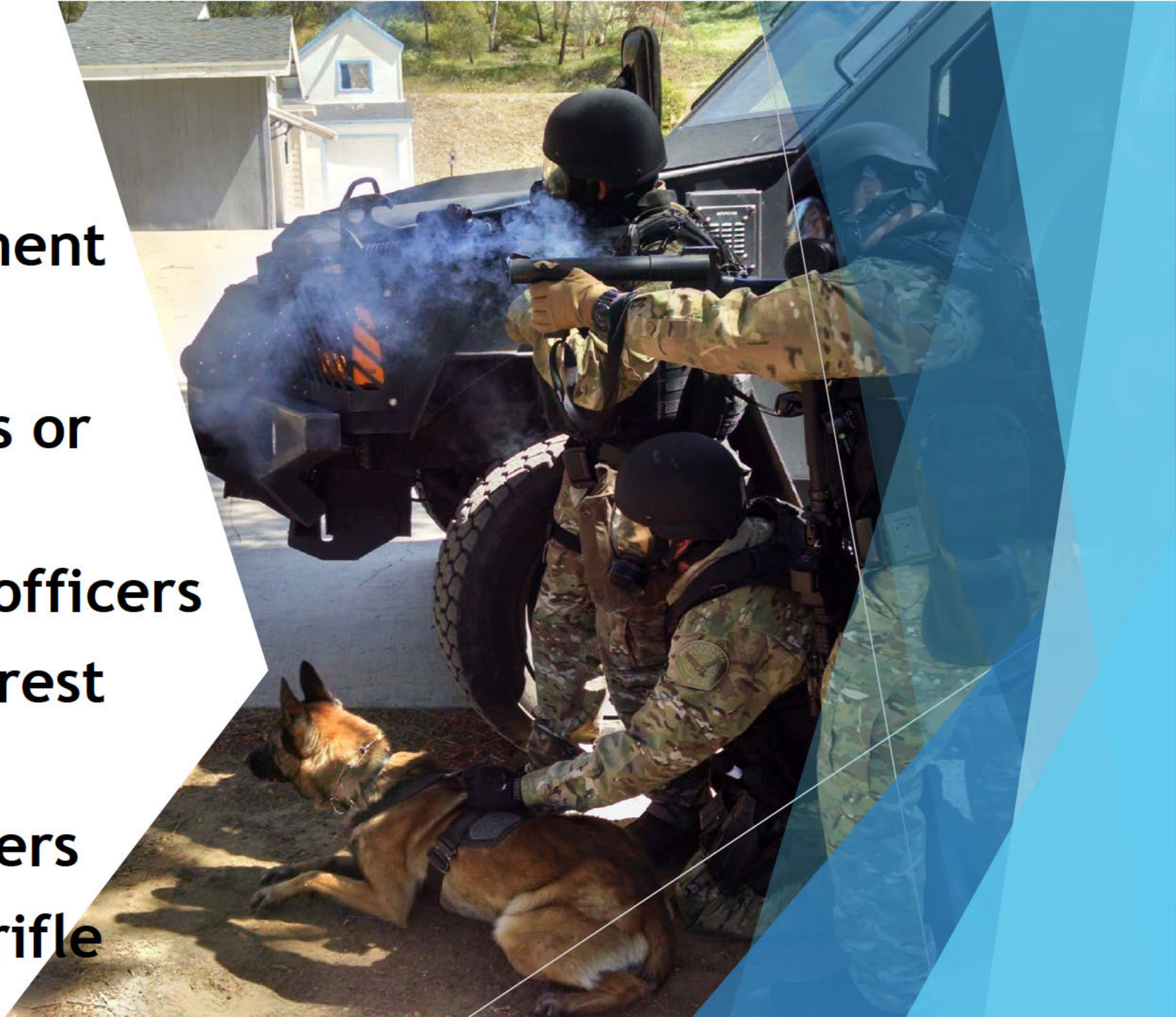
Elements of a CRT Contact Team



- ▶ **K-9 Unit**
- ▶ **Less Lethal (KEW)**
- ▶ **Lethal Cover**
- ▶ **Arrest Team**
- ▶ **Team Leader**

Additional Considerations

- Perimeter/Containment
- Ballistic shields
- Cover using vehicles or buildings
- Multiple less lethal officers
- Extra officers for arrest team
- Multiple lethal officers
- Lethal officer with rifle



When to use CRT



- Actively resisting subject
- Armed or believed to have access to deadly weapons
- Suicide by cop
- Barricaded suspect
- 5150V
- Calling a concealed suspect out to the team
- A CRT contact team is not used to search, but can be used after a suspect is located

Why use CRT?

- Slows things down
- Gives officers time and distance (reactionary gap)
- Reduces likelihood of officers using deadly force
- Gives team force options as situation changes
- De-escalation
- Goal is to show overwhelming force in order to gain compliance



Before CRT is used



- Team will be formed by the Sergeant on scene
- Team will be briefed
- Each officer must understand his or her role
- Team will act together under the direction of the incident commander
- During a coordinated effort a K9 handler may ask for an officer to utilize a less lethal force option e.g. bean bag, 40mm, pepper spray etc.
- **EVERY OFFICER IS ULTIMATELY RESPONSIBLE FOR THEIR OWN USE OF FORCE.**

Time to act

- Incident commander will give the order to act unless exigent circumstances arise
- Less lethal officer will impact the suspect with a Kinetic Energy Weapon to test for compliance
- Additional warnings will be given
- Additional impacts will be used at the same time the K9 is sent
- Team will hold its position after the K9 is sent

ASSAULT
ASSAULT
ASSAULT

When the K9 is on the bite

- ❖ K9 handler will attempt to call the suspect back to the team
- ❖ If the suspect cannot or will not go to the team, the team will move up with the handler
- ❖ Lethal cover officer will maintain lethal cover
- ❖ K9 handler will gain physical control of the K9

When the K9 is on the bite

- ❖ Arrest team will gain control of the suspects hands and handcuff the suspect
- ❖ K9 handler may remove the K9 from the bite before or after the suspect is handcuffed depending on the situation
- ❖ Do not be afraid to go hands on while the K9 is on the bite. The K9 will not come off the suspect and bite you.



SCENARIO

**5150 MALE WITH A BROOMSTICK
THREATENING SUICIDE BY COP**

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the left and right sides of the frame, creating a modern, dynamic border around the central text.

QUESTIONS?

CRT Practical Application Scenarios

1. Armed suspect will be compliant with team and will be taken into custody after being called back to the team.
2. Armed suspect will be semi-cooperative. Suspect will drop weapon between the suspect and the team. Suspect will walk away from the weapon if directed to do so. Suspect will not move toward weapon after moving away from the weapon.
3. Armed suspect will be uncooperative and will eventually be bitten by the PSD for a successful conclusion.



INTERNAL AFFAIRS UNIT
FILE COPY REQUEST FORM

DATE: 01/04/2025	REQUESTOR'S NAME: Sharon Smyth	
CURRENT ASSIGNMENT: [REDACTED]		RE: Alan Dyemartin
CASE NUMBER:	IA 2024-0529	
[REDACTED] Initials	I understand that Internal Affairs files are confidential pursuant to California Penal Code Section 832.7 and all applicable Department Policies and Procedures.	
[REDACTED] Initials	I understand that the San Diego Police Department and all named officers retain their rights to confidentiality.	
[REDACTED] Initials	I understand that the contents of this investigation and all related materials shall not be released to any unauthorized person without and order of the Court.	
REQUESTERS SIGNATURE: [REDACTED]		DATE: 2-11-2025
Copies were returned within 30 days ☐ Yes ☒ No If no, why: City Attorney's Office		

FOR INTERNAL USE		CHECK ALL THAT APPLY	
☐ Subject Officer	☐ Supervisor	[REDACTED]	
☐ HR	☐ Chief's Office	☐ POA	☐ MEA
☐ Discipline	☐ Appeal	☐ Supervisor Investigation	
☐ Electronic Copy Completed Investigation		☐ Electronic Copy of Entire Investigation	
Paper copies have been made on "Confidential Do Not Duplicate" paper ☐ Yes ☐ NO If no why?			
☐ BWC	☐ Arrest Reports	☐	
Paper Copy of Completed Investigation		Papers – Discipline Packet (2)	
☐ Electronic Copy	☐ CD	☐ Flash Drive	(K-9 training File, Dog Bite Reviews)

Internal Affairs Representative C. Shadoan 5996 Date: 01/04/24

Internal Affairs Lieutenant Date:



The City of San Diego
M E M O R A N D U M

RECEIVED
24 DEC 12 PM 12:06
INTERNAL AFFAIRS

DATE: December 5, 2024

TO: Robert Nelson, ID #7443, Police Officer II

FROM: Julie Epperson, Captain, Internal Affairs

SUBJECT: Internal Affairs Investigation # IA 2024-0529

This is to inform you that you have been identified as a subject officer in an Internal Affairs investigation. The investigation is being conducted as the result of a citizen's complaint. This investigation concerns the following allegations:

1. Force
2. Discrimination

Additional allegations may arise during the course of the investigation.

This investigation stems from allegations related to SDPD Event #E24100036129. The incident occurred on October 24, 2024, at 6461 Duluth Avenue. I hereby order and admonish you NOT to view any surveillance footage or Body Worn Camera footage other than your own prior to the interview. Detective Sergeant Eric McCoolle at the Internal Affairs Unit will contact you to schedule an interview.

As the subject officer, you will be allowed to have a representative present during your interview. Representatives must not be connected with this investigation.

You are hereby ordered not to discuss this investigation or the allegations with anyone other than the investigating supervisor or your legal representative. Your failure to comply with this order will be deemed insubordination and subject you to disciplinary action up to and including termination. This requirement is set forth in Section 9.4 (Obedience to Lawful Orders Policy) of the San Diego Police Department Policy Manual.

I order you to cooperate with the investigation and answer all questions directed to you during your interview fully and truthfully, as required by Department Policy 9.29 (Truthfulness Policy). Your failure to answer all questions fully and truthfully will subject you to disciplinary action up to and including termination. Any dishonesty or lack of

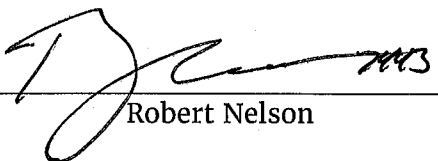
cooperation during the investigation will be reported to P.O.S.T. and may lead to your P.O.S.T. certificate being suspended or revoked.

I have received a copy of this memorandum and agree to comply with the orders.

I acknowledge that any allegation which meets SB2 criteria shall be reported to P.O.S.T.

I acknowledge that any allegation or sustained finding which meets SB1421 or SB16 criteria may be disclosed to the public.

I acknowledge that if I resign prior to the completion of the investigation, the investigation will continue until it is complete. Upon conclusion of the investigation and any applicable appeals process, if the case is determined to be responsive to a request made pursuant to SB 1421 or SB16, the information may be released with appropriate redactions.

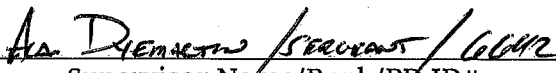


Robert Nelson

12.11.24

Date

This memorandum has been presented to me by:



Supervisor Name/Rank/PD ID#

12/11/2024

Date

Supervisor: Once the employee has signed the form, the original will be returned to the Internal Affairs Unit, MS-709 within 10 days.

JE/em



RECEIVED
24 DEC 11 PM 2:01
INTERNAL AFFAIRS

The City of San Diego
M E M O R A N D U M

DATE: December 5, 2024

TO: Meghan Bisesto, ID #7443, Lieutenant

FROM: Julie Epperson, Captain, Internal Affairs

SUBJECT: Internal Affairs Investigation # IA 2024-0529

This is to inform you that you have been identified as a subject officer in an Internal Affairs investigation. The investigation is being conducted as the result of a citizen's complaint. This investigation concerns the following allegations:

1. Discrimination
2. Failure to Intervene
3. De-escalation

Additional allegations may arise during the course of the investigation.

This investigation stems from allegations related to SDPD Event #E24100036129. The incident occurred on October 24, 2024, at 6461 Duluth Avenue. I hereby order and admonish you NOT to view any surveillance footage or Body Worn Camera footage other than your own prior to the interview. Detective Sergeant Eric McCoole at the Internal Affairs Unit will contact you to schedule an interview.

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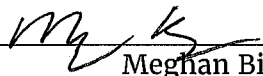
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Meghan Bisesto

12/10/24
Date

This memorandum has been presented to me by:

J. MORRIS / CAPT / 25450
Supervisor Name/Rank/PD ID#

12/10/2024
Date

Supervisor: Once the employee has signed the form, the original will be returned to the Internal Affairs Unit, MS-709 within 10 days.

JE/em



The City of San Diego
M E M O R A N D U M

RECEIVED
24 DEC 12 PM 12:06
INTERNAL AFFAIRS

DATE: December 5, 2024
TO: Alan Dyemartin, ID #6642, Sergeant
FROM: Julie Epperson, Captain, Internal Affairs
SUBJECT: Internal Affairs Investigation # IA 2024-0529

This is to inform you that you have been identified as a subject officer in an Internal Affairs investigation. The investigation is being conducted as the result of a citizen's complaint. This investigation concerns the following allegations:

1. Force
2. Discrimination
3. Failure to Intervene

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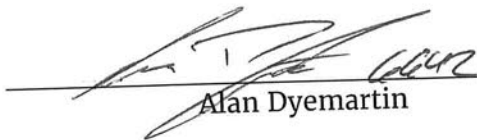
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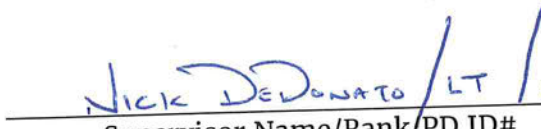
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Alan Dyemartin

12/11/2024
Date

This memorandum has been presented to me by:


Supervisor Name/Rank/PD ID#

12/11/24
Date

Supervisor: Once the employee has signed the form, the original will be returned to the Internal Affairs Unit, MS-709 within 10 days.

JE/em



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: February 14, 2025

TO: Adam Sharki, Captain, Training Division *AS*

FROM: Michael Rhoten, Sergeant, Training Division

SUBJECT: Use of Force Review and Opinion for Event #24100036129

On January 21, 2025, I reviewed the reports, Internal Affairs interviews, and Body Worn Camera (BWC) videos associated with the arrest of Marcus Evans (SDPD Event #24100036129).

BACKGROUND:

On October 24, 2024 at approximately 2318 hours, Southeastern Division officers responded to a radio call of a male pointing a firearm at a female at 6461 Duluth Ave. Officers met with the reporting party, [REDACTED] and victim, [REDACTED]. Officers determined Marcus Evans had pointed a firearm at [REDACTED]. The officers determined that Evans had pointed a firearm at [REDACTED] and chambered a round.

The officers concluded that there was probable cause to arrest Evans for violations 245(A)2 PC, Felony Assault with a Deadly Weapon (Firearm) and 243(e)(1) PC, Misdemeanor Domestic Battery.

A records check of Evans showed he had prior convictions for violent felony crimes including robbery and assault with a deadly weapon.

The officers planned to contact Evans. The officers assigned the roles of lethal cover, less lethal cover, negotiator, and incident commander. The officers placed a ballistic shield over the lead vehicle to add protection from possible gunfire. As the officers approached 6461 Duluth Avenue, they noticed a Black male wearing black shorts and no shirt run back into the home. They set up their contact team in the street in front of the residence. Once the team was set, they began call outs to the people inside the home. Several people came out of the home, complied with the officers' commands, and were detained.

Officer Robert Nelson wrote in his report:

On October 24, 2024, at approximately 2318 hours, I was in full police uniform and driving a marked patrol vehicle. I am assigned to the Canine Unit, and I had my Police Service Dog (PSD), Tito. (#C-1313) with me. I responded to a radio call for a male threatening a female with a firearm near 431 Detroit Place, San Diego.

Southeastern Division officers contacted the reporting parties and determined a male, positively identified as Marcus EVANS via previous booking photos, had pointed a firearm at two people in a threatening manner. The reporting party described EVANS' actions to include pointing a firearm and racking the slide, presumably to chamber a round. The reporting party and victims drove away from the location and met officers staging on Skyline Drive. Officers advised there was probable cause to arrest EVANS for two counts of assault with a firearm. The San Diego Police Air Support Unit helicopter (ABLE) assisted with watching EVANS' residence, identified as 6461 Duluth Avenue, while a contact team was created. A full perimeter was established, including officers and other canine teams along South 65th Street and inside of MLK Jr. Park. There was a serious concern for the safety of others and officers if EVANS was allowed to leave the residence armed. ABLE observed a male believed to be EVANS, shirtless and wearing dark basketball shorts, walking between a detached garage and main residence multiple times.

During the staging and planning phase, officers were able to identify EVANS from prior contacts. I viewed a previous booking photo of him. I was made aware that EVANS had multiple prior arrests, including [REDACTED]. [REDACTED] Officers were staged for nearly an hour, creating a plan to safely contact the residence and de-escalate any possible resistance. The plan included my vehicle in the front with a ballistic shield, my PSD, a beanbag shotgun Kinetic Energy Weapon (KEW) and lethal cover. The

plan was to conduct a contain and call out plan, ordering EVANS and all other residents out of the property.

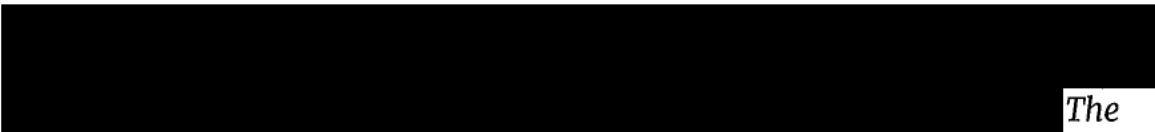
At approximately 0009 hours on the 25th, the contact team moved forward to the residence. ABLE observed EVANS walking from the garage to the front of the main residence. I was driving the lead vehicle, placing a ballistic shield on my windshield in the event EVANS attempted to shoot at my vehicle while approaching. I observed EVANS, still shirtless and wearing dark basketball shorts, walk into the front door. As I stopped my vehicle, EVANS slammed a security screen door closed.

The residence was on a hill with a concrete stairway below the front door that led to the street. There were multiple windows facing the street. The layout of the property provided EVANS and other occupants the high ground position of advantage in comparison to our contact team. Using my patrol vehicle as cover, the contact team attempted to call out EVANS from the residence. I deployed my PSD, Tito, on the driver side of my vehicle.

I observed movement from the north facing windows, including the moving of curtains and blinds. As I began verbal call outs, the movement continued. I identified myself as San Diego Police and gave multiple canine warnings. The canine warnings were to the effect of, "San Diego Police, Marcus Evans, exit the residence with nothing in your hands. If you do not exit or attempt to flee, a police dog will be sent, and you will be bitten." I gave multiple canine warnings, yelling loudly. I gave orders for all residents to exit but continued to give warnings directly to EVANS. Officers on the rear perimeter positions advised they could hear my warnings from their positions.

Officer Dyemartin wrote in his report:

A patrol officer arrived and took [REDACTED] full statements. The investigating officer determined enough probable cause existed to arrest Evans for two counts of assault with a deadly weapon. While officers were interviewing the victims, the police helicopter (ABLE) was watching Evans' house. While ABLE watched, they stated several times that they saw a Black male going to the main house from the garage, which is detached from the home. The officers interviewing the female victims informed me that Evans lives in the detached garage but that he has access to the entire main house. [REDACTED] described Evans as a light-skinned Black male, last seen wearing no shirt. Once officers identified Evans, I conducted a record check on Evans [REDACTED]

The victims further told officers there were multiple people inside of the house who both lived there and did not live there.

I know, based on my training and experience, that people who are members of criminal street gangs will often conceal weapons on their person, around their houses and cars, and on their property to easily retrieve them if needed for protection, to evade arrest, or to commit crimes. I further know that violent crimes, such as robbery, are often committed with the use of a dangerous or deadly weapon, including firearms. Based on my training and experience, I know houses that contain multiple people can be dangerous for responding officers because the occupants could, and often do, become upset and uncooperative. Family members and friends will often try to interfere with a police investigation or create a distraction to allow the wanted individual to escape.

We formed a critical response team (CRT) for the front and rear of the house. Each CRT was comprised of a canine team, lethal force options, less lethal munitions, an arrest team, and a supervisor. I was part of the main CRT approaching the house from the front side. Before moving in position, ABLE reported seeing a male with no shirt on walking around the house's property. ABLE saw the male walk several times from the main house to the detached garage. Each time the male would enter the building, ABLE would briefly lose a visual of him. At one point the male exited the garage, walked toward the center of the property, and stopped. This seemed like an ideal time to move the team forward in an attempt to apprehend him while he was outside to eliminate the risk of having him concealed inside a building with multiple other people.

We drove our patrol cars down Detroit Place and stopped them at the intersection of Detroit Place and Duluth Ave, in front of Evans' house. As we approached, I saw a male with no shirt and basketball shorts run from the driveway, up the stairs to the house's front door. The male frantically tried to get into the house. At first, he seemed unsuccessful, as though the door was stuck or locked. The male started hitting the door and pulling on it. I exited my patrol car and moved toward the lead patrol car for safety. As I did, the male was able to open the front door, and he entered the house. He closed the door behind him as he entered. Almost immediately, I saw the same male, who was later determined to be Evans, enter the room toward the front of the house to the west of the front door. Evans closed all the blinds in that room, and I lost sight of him.

I took up a position of safety, standing at the rear of the patrol car. Officer Nelson began doing verbal callouts and canine warnings toward the house. Officer Nelson specifically called Evans by name and told him he was under arrest.

USE OF FORCE INVESTIGATION:

Officers continued to make call outs to the home knowing there were several people still inside. Marcus Evans came out of the home. Officers gave Evans orders to raise his hands over his head and walk down the stairs toward them. Evans initially complied with the officers' orders and walked toward the bottom of the stairs. The officers ordered Evans to stop when he was at the mid-way point of the staircase. Evans continued to walk down the stairs. Officers told Evans that if he did not stop, he would be bit by a police dog. Evans stopped at the second to last step from the bottom of the stairs.

Evans kept his hands above his head and began to argue with the officers, slurring his words at times. He would point at the officers, bring his hands down and sway from side to side. Evans backed up with his hands above his head and placed his buttock on the top of the retaining wall. Evans leaned on the wall. Evans wrapped his arms around his stomach and continued to argue with the officers.

Patrol officers, K9 officers, and supervisors were discussing plans to take Evans into custody. They noted concerns over not being able to see Evans' back waistband and that there were still people in the residence that had an elevation/high ground advantage over them. They also expressed concerns over the possibility of Evans being able to access a deadly weapon in or around the vehicle in the driveway or behind the retaining wall.

Officer Nelson suggested that they shoot Evans with the beanbag shotgun as a "test for compliance" prior to him sending his police service dog to bite Evans. Officer Pouchie was made aware of the plan, and she took the role of the beanbag shotgun operator.

Evans followed the officers' orders to walk to them by stepping away from the retaining wall with his hands up. Evans walked to the entrance of the driveway. The officers told Evans they believed him to be armed with a

deadly weapon and to have committed a violent crime. Evans told them that he was not armed and turned around showing his back waistline.

Officers continued to order Evans back to their position. Evans continued to argue with the officers and ask questions. Evans began to walk back towards the retaining wall. Evans jumped up on the wall and sat at the top of one of the retaining wall edges. Officer Nelson yelled, "Let's get that test for compliance with the beanbag." Officer Pouchie shot Evans with the beanbag shotgun and hit him in the stomach. Evans fell off the retaining wall and laid on his right side, facing the officers with his hands open in front of his face with his palms out. Evans closed his eyes several times and cried out to the officers and to people inside the home. The officers told Evans to walk or crawl to them. Evans refused to walk or crawl to them.

Officer Nelson wrote in his report:

At approximately 0015 hours, EVANS exited the residence. EVANS was wearing black basketball style shorts, no shirt, and no shoes. EVANS matched the photo previously shown to me and I also confirmed with other officers on scene that the fourth male was in fact EVANS. I gave EVANS clear instructions to show me his hands and to walk down the stairs. EVANS initially followed my commands, walking to the bottom of the staircase.

Once at the bottom, EVANS became uncooperative. I order EVANS to turn around, facing away from the contact team. I had previously given the same commands to the other occupants. All prior occupants complied with those orders and were guided back to the contact team.

EVANS stood at the foot of the staircase and began yelling that he did not have to listen to my commands and that he was at his own residence. I attempted to deescalate by asking his name and giving him further details as to why we were at the residence. I told EVANS he was detained pending the investigation, stating we received a radio call of a felony offense including a firearm. EVANS was argumentative and uncooperative, stating he had done nothing wrong.

During the contact, EVANS' face had a glazed over appearance and he was slurring his speech. I believed EVANS could have been under the influence of alcohol or controlled substances. I know both have effects on the human body that can cause irrational and unpredictable behaviors.

I continued to give verbal commands to EVANS. I believed EVANS to be armed and dangerous. EVANS had not been patted down or searched for any weapons. EVANS

had been seen walking to and from the garage and it was unknown where the firearm was located. In addition, EVANS was near a retaining wall and parked vehicle that could easily conceal any weapons from the contact team. If EVANS was allowed to flee out of view or back into the house, I feared he would retrieve the firearm and fire upon our position.

While contacting EVANS, an older male began to exit the residence. EVANS began communicating with the male, referring to him as, "Unc." At the time, the contact team ordered the other male to remain in the residence as we continued to negotiate with EVANS. This however caused great concern to me, confirming there were still an unknown number of occupants still in the residence. While our attention was focused on EVANS, it was possible an accomplice or family member could fire upon us to free or prevent the arrest of EVANS. The rapidly evolving and dynamic situation caused more exigency to safely detain EVANS versus if he was confirmed the only occupant in the direct area.

After multiple attempts to de-escalate with verbal commands and the presence of our contact team, EVANS continued to actively resist arrest while being armed. At approximately 0020 hours, the contact team deployed a KEW beanbag round to gain compliance from EVANS.

EVANS fell to the ground following the beanbag deployment. My view became obstructed by the parked vehicle in the driveway. I moved my position with my PSD to the passenger side of the patrol car. EVANS refused to surrender or comply with commands. I could see his hands were empty as he held them near his head. I could not see his rear waist or anything past the parked vehicle and retaining wall. After gaining no compliance in my attempt to give him orders, other officers began giving warnings to EVANS. I maintained my position with my PSD.

Sgt. Dyemartin wrote in his report:

After several more callouts, Evans emerged from the residence's front door. Evans wore no shirt, and he wore baggy black basketball shorts. Evans originally complied with Officer Nelson's verbal commands and kept his hands up while he walked down the front stairs toward the sidewalk. Once he reached the bottom of the stairs and onto the sidewalk, Evans stopped complying with commands.

Evans kept his hands up but refused to continue walking toward the contact team. Evans became argumentative toward any commands given to him. He refused to turn around, show the back of his waistband, and comply with commands to continue walking toward the team to be taken into custody safely. Evans would lean against a wall that was approximately waist-high to him. From where I was

standing, I could tell there was room on the opposite side of the wall where a person could store a weapon. The earth on the opposite side of the wall was low enough to place an object, including a weapon, on it and it would be concealed from view by someone standing on the street, but it was high enough that someone could easily retrieve that object with minimal ease.

At this point, it was not known if Evans had a concealed firearm on him. His shorts were baggy enough that I could not tell if he had any objects in his pockets. At one point, Evan turned his body, but I could not clearly see the entirety of his waistband to ensure that he was not concealing a firearm. In my training and experience, I have encountered people who have hidden firearms and other deadly weapons in various places on their person, including squeezed between their butt cheeks, where it could still be easily retrieved and used in a quick amount of time.

Officer Nelson continued giving Evans verbal commands and canine warnings. Evans continued to ignore the commands and refused to comply. It was unsafe for officers to approach Evans because we did not know if he had a weapon concealed on him or nearby on the other side of the wall, and he was trying to bait us away from our position of safety to attack us. We also did not know who else or how many others were in the house then. It would be unsafe to leave our protected position and move forward because it would be easy for another person in the house to emerge from the front door or shoot at us from behind one of the many closed windows that faced where we were standing.

During the callouts, Evans would hold his hands up with his palms exposed, but he would slowly place his hands down toward his waistband or pockets. Each time he lowered his hands, he was given commands to put them back up. During this entire contact, Evans continuously told us that he was complying with our commands and following directions, although he had never actually followed the commands. He only stated he was. Evans would take a few steps back and forth and move his body from side to side, but he would not leave the same area where he originally stopped following commands.

After approximately 10 minutes of issuing Evans canine warnings, giving him verbal commands, and telling him he was under arrest, he was impacted with a beanbag shotgun round by Officer Pouchie #1910. Refer to her ARJIS-9 for further details.

Officer Pouchie wrote in her report:

While en route to the radio call, SDPD ABLE (Airborne Law Enforcement) was assisting officers and updated officers on scene that the individual [Evans] was outside the residence hitting the front door. EVANS was described as a black male

adult with no shirt and black basketball shorts. Officers were advised many individuals other than EVANS were inside the residence.

I arrived on scene and was assigned to be less-lethal coverage with the beanbag shotgun. The bean-bag shotgun was patrol ready, which was verified. A high risk pedestrian stop was initiated on Evans in front of 6461 Duluth Ave in San Diego. EVANS quickly retreated inside the residence and closed the front door as soon as officer arrived on scene. I parked my vehicle to the left of K-9's vehicle, grabbed the less-lethal beanbag shotgun and walked to the right side of the vehicle, positioned myself facing the front door of the residence, and pointed the bean bag shotgun in the direction of the front door.

The residence had an inclined driveway with a staircase that led to the front door.

Multiple individuals began to exit the residence and followed officers' commands. These individuals were safely moved away from the residence.

EVANS presented himself at the front door and initially followed officers' commands to place his hands over his head and walk down the stairs. When officers asked EVANS to keep his hands over his head, he refused and kept bringing his hands down from above his head. EVANS made movements towards his waist band. Officers commanded EVANS to face away from officers and walk backwards, but EVANS refused and sat down on the lower step of the residence, approximately 25 feet away from police. EVANS continued to move around and place his hands where I could not see them. EVANS continued to be uncooperative with officer commands and refused to show officers his complete waistband, so it was still unconfirmed if EVANS was armed with a weapon.

I moved my position to be on the left side of the vehicle, positioned myself to face EVANS and pointed my beanbag shotgun at his person. I aimed at EVANS'S lower right torso area and fired my beanbag as a compliance check after being directed to by a supervisor on-scene. The beanbag round hit EVANS in the lower right torso, as aimed and planned. EVANS dropped to the ground. EVANS continued to be uncompliant with officers' commands. EVANS used foul language and refused to crawl or walk back to officers.

Officers Nelson, Pouchie, and Sgt. Dyemartin and Acting Sgt. Sullivan BWC shows essentially the following:

00:15:00Z-00:16:00Z- Evans walks out of the front door. Evans places his hands up and walks down the stairs. Evans asks why the officers are there. Evans backs up to the retaining wall and sits down.

00:16:00Z-00:18:00Z- Officer Nelson tells Evans that he is being detained and orders Evans to turn around and walk back to the officers. Evans asks, "Why are you at my house?"

00:18:00Z-00:19:14Z- Evans stands up, off the wall, while saying, "I'll stand up." Officer Nelson tells Evans to walk back to the officers. Evans replies, "No! I'm not coming towards you." A person emerges from the front door. Evans yells to the person, "Unc, get you camera! Lawyer." Officers order the male, "Unc," to go back into the house and close the door. The male goes back inside and closes the door.

Officer Nelson asks the officers behind him, "We're saying it's 100% him?"

00:19:14Z-00:19:56Z- Officer Nelson tells officers behind him, "Hey, do a test for compliance with the beanbag." Evans continues to stand with his hands up near the driveway.

Officer Nelson tells Evans that he believes him to be armed with a gun and he can't see his waistline. Evans yells, "I am not a felon. I'm trying to figure out why you are at my house."

00:19:56Z-00:20:11Z- Evans walks a few steps towards the officers. Sgt. Dyemartin tells Evans to continue walking towards them. Evans stops and says, "I have no nothing."

00:20:11Z-00:20:17Z- Officer Nelson tells Evans to turn around and face away from him. Evans continues to say, "I have no nothing." Evans turns all the way around then faces the officers again.

00:20:17Z-00:20:21Z- Officer Nelson turns to face the officers and Sgt. Dyemartin behind him and says, "Hey let's impact for compliance." Sgt. Dyemartin responds, "Okay." Officer Pouchie chambers a round into the beanbag shotgun.

00:20:21Z-00:20:24Z- Evans tells the officers, "I am going to sit right here. You can come to me," as he walks backwards towards the retaining wall. Evans sits on the retaining wall with hands up. Officer Pouchie shoots Evans in the stomach with the beanbag shot gun.

Sgt. Dyemartin, Officers Nelson and Pouchie stated in their Internal Affairs interviews:

Sgt. Dyemartin and Officer Nelson stated in their IA interviews that they were concerned about the possibility of multiple subjects still inside the residence. They were also concerned that the house was in an elevated position relative to the officers and the suspect's firearm had not been located. These concerns were part of the decision not to move away from cover to take Evans into custody.

Sgt. Dyemartin and Officer Nelson stated that they believed that Evans could have had access to a hidden weapon somewhere around the vehicles in the driveway or behind the retaining wall because ABLE had reported seeing a subject moving around the residence prior to their arrival.

Officer Nelson was concerned that Evans could have a weapon in the back waistband of his shorts. Sgt. Dyemartin stated that he believed Evans could have a firearm in the pocket of his shorts or have a gun secreted in his buttocks. Officer Pouchie stated that she has been shown videos of people concealing firearms while wearing shorts.

Officer Nelson explained that a "test for compliance" was a de-escalation tactic utilizing the beanbag shotgun. Its intent was to cause pain with a single impact that would get Evans to surrender. Officer Nelson stated that a "test for compliance" is a trained tactic for K9 officers.

Sgt. Dyemartin explained that a "test for compliance" is an impact with a less lethal weapon system like the beanbag shotgun. It is to be used prior to using a different force option such as the K9. It is a test to see if officers can get cooperation from the subject through the pain of the impact and to tell the subject, "We are being serious."

Officer Pouchie did not know what was meant by "test for compliance." She stated that she has never been taught to perform a "test for compliance."

Sgt. J. Dafoe of the San Diego Police In-Service Training/Mass Threats Unit stated that he has taught less lethal munitions/weapon systems for the San Diego Regional Academy and the San Diego Police Department to in-service personnel for over a decade. He stated that a "test for compliance" is not taught or a used term in any setting or training for academy recruits or in-service police personnel. Sgt. Dafoe did say that Less Lethal munitions and weapons are used to gain compliance from a subject.

Sgt. Z. Pfannenstiel of the San Diego Police K9 Unit stated that he has taught/assisted with K9 tactics/training for SDPD for over a decade. He stated that a test for compliance is a tactic taught amongst the K9 Unit and to all in-service personnel during Crisis Response Team (CRT) training. He stated that the "test for compliance" is the minimum amount of force used on a subject.

Sgt. Pfannenstiel also stated that the "test for compliance" is synonymous with using a force option then evaluating and assessing the need for further force. He said that this "test for compliance" was to be used to stop a subject's behavior and the KEW could be used on someone who is displaying active resistance while armed with or in in close proximity to a deadly weapon.

Sgt. Dyemartin, Officer Nelson, and Officer Pouchie all stated that Evans' behavior would be considered active resistance per San Diego Police Department Policy and Procedure. They all stated that Evans' refusal to walk back to them, and his verbal statements of "Why are you here, no, I'm not going to go to you," were evidence of active resistance. Officer Nelson specifically stated that Evans' verbal signals were evidence of his active resistance.

Sgt. Dyemartin and Officer Nelson both stated that Evans was ordered to turn around so they could see his waistline. They both stated that they did not see Evans turn all the way around, showing his waistline to the officers. Officer Pouchie stated that she saw Evans turn to show his waistline but believed he did not turn completely around.

Sgt. Dyemartin and Officer Nelson stated that it was the plan to impact Evans with the beanbag shotgun to get him to comply with their commands to walk back to them.

Officer Pouchie stated that she impacted Evans because she was told to do so by A/Sgt. Sullivan.

USE OF FORCE OPINION:

Police Officers are taught in the San Diego Regional Public Safety Training Institute under the guidelines of California Police Officer Standards and Training (POST) and Advanced Officer Training to respond to resistance with objectively reasonable force based on the totality of the circumstances. Police officers are to use objectively reasonable force to gain and maintain control of situations.

This objective reasonableness precedent was set forth in *Graham v. Connor*, 490 U.S. 386 (1989). This case, which all use of force by a police officer is judged by, established that objectively reasonable force is incapable of a precise definition or mechanical application. Therefore, force used by officers must be judged under the totality of the circumstances through the perspective of a reasonable officer on the scene, at the time the force is used, and without 20/20 hindsight based on facts and circumstances confronting an officer without regard to the officer's intent or motivation. The "reasonable officer standard" evaluates whether another officer facing like, or similar circumstances would act in the same way or use similar judgment.

The court noted that determining the objective reasonableness for the use of force must be fact-specific, based on the totality of the circumstances confronting the officer at the time force is used. The determination of reasonableness must also allow that when a person resists an officer's attempts to control, they set off a chain of events that is chaotic, intense, uncertain, and rapidly evolving. This forces an officer to make split-second decisions about the amount of force that is necessary for a particular situation. A police officer's reactions and decisions are made based on what they perceive, the options available to them, and the time to act on those options. An officer is not expected to be superhuman and work beyond those factors.

Evans's behavior would be characterized as fluctuating between active resistance and passive resistance during these early moments in the event. Evans's active resistance is displayed when he walks down the stairs against the officers' commands to stop. It is further displayed when Evans yells at the officers "Why are you in front of me?" while gesturing with his hands and bringing his hands down towards his waistline. Evans' behavior changes

to passive resistance when he leans against the wall and tells the officers that he is not walking over to them. Evans complies with the officers' commands to turn around with his hands up over his head. Evans' behavior changes again to active resistance when he walks back to the retaining wall and then sits on top of it with his hands up.

Officers are taught during San Diego Regional Police Academy, a California Police Officer Standards and Training (POST) certified course and during Advanced Officer Training (a POST certified course) to respond to active resistance with reasonable force based on the totality of the circumstances.

Some reasonable force options for active resistance would be verbal commands, touch, control holds, takedowns, distractions techniques, chemical agents, and pressure point pain compliance.

Officers are also taught that if a subject is displaying active resistance and is believed to be armed or near a deadly weapon, then some other reasonable force options would include TASER, Kinetic Energy Weapons, K9, and impact weapons.

It is evident that the officers at the scene believed Evans had access to or believed to be armed with a deadly weapon. This is also seen in the tactics they employed during their approach to the residence, their debriefs of the subjects that came out, and their plans to take Evans into custody.

It is reasonable to believe that Evans could have access to a deadly weapon behind the retaining wall and around the vehicle parked in the driveway based on the nature of the radio call and the type of crime, which was an assault with a firearm against two people.

Penal Code 835A sets the standard that officers may use reasonable force to effect an arrest, prevent escape, overcome resistance, in defense of self or others.

The term "test for compliance," is not trained by the San Diego Police Department during Advanced Officer Training, The San Diego Regional Police Academy, or during POST Less Lethal Munitions Training.

POST training explains that less lethal munitions are designed and should be used to incapacitate, immobilize, or stun a subject. The intent is to effect an arrest, prevent escape, overcome resistance, in defense of self or others. Less Lethal Weapons and Munition Training during the Regional Academy, defensive tactics courses, arrest and control courses, and Crisis Response

Team (CRT) courses, explain less lethal munitions and weapons are used to stop a subject's physical actions or to get them to comply with reasonable specific orders.

Some reasonable specific orders would be but not limited to: "Get down on the ground," "Stop moving towards us," or "Stop reaching." Officers and recruits are also taught that they should expect certain reactions and behaviors when deploying specific force options. Some reasonably-expected reactions or behaviors from deployments of less lethal munitions include, but not limited to the subject stops moving, falls to the ground, runs away, becomes angry, or becomes passive.

Force is used to gain or maintain control of a person or situation. Officers are not taught to use force to express the seriousness of a situation to a subject.

Force and force options are used to achieve specific goals. An officer's verbal commands should reflect those specific goals.

Officers should continually assess the need for additional force or force options. Officers are taught that they are responsible for their own use of force and are not allowed to justify their use of force based on the commands of another person or officer.

It is my opinion that Officer Pouchie's discharge of the first round from the beanbag shotgun in response to Evans's active resistance while Officer Pouchie reasonably believed Evans was near a deadly weapon is consistent with what is taught in the San Diego Regional Police Academy and what is taught in Advanced Officer Training. Officer Pouchie's actions are consistent with what is outlined in the San Diego Police Use of Force Policy and Procedure.

It is my opinion that Officer Pouchie's inability to justify her impact of Evan's with the beanbag shotgun during this moment is indicative of a training issue. She did not know how to recognize subject behavior, interpret the level of resistance, and apply a reasonable force option in response.

USE OF FORCE INVESTIGATION:

After several minutes, Evans moved his body to a seated position, facing the officers with his hands above his head, palms facing out. Evans gave short replies to the officers' commands to walk or crawl back to them. Evans

stopped speaking with the officers but kept his hands in front of his body or above his head.

The supervisors discussed a plan to impact Evans with a beanbag and send the police dog to bite him, which would prevent Evans from having easy access to any potential weapons around him or fleeing. Officers were made aware of the plan and their roles.

Officer Pouchie was told to impact Evans with a beanbag when she was ready, and the beanbag impact would be used to distract Evans from the dog. Officer Pouchie fired the beanbag shotgun, striking Evans' left arm. The police dog was sent but did not bite Evans. Evans used his hands to push the dog away. The police dog was recalled and taken control of by Officer Nelson. Sgt. Dyemartin deployed his police service dog and began to give Evans commands to walk back to them. Sgt. Dyemartin told Officers Pouchie that he would send his dog to bite Evans after she impacted him with the beanbag shotgun. Officer Pouchie acknowledged the plan.

Evans refused to comply with Sgt. Dyemartin's verbal commands to walk or crawl to them. Officer Pouchie fired the beanbag shotgun at Evans, striking him in the right shin. The police dog was sent and bit Evans on the left arm. The officers' contact team moved up and took Evans into custody.

Officer Nelson wrote in his report:

At approximately 0028 hours, EVANS sat up and faced the team. He still refused to walk back to officers or comply with any commands. EVANS became more agitated began to posture towards standing back up. The initial effects of the first KEW round appeared to wear off and EVANS became more confrontational. He sat up with his back facing the retaining wall. A plan was established to utilize a second beanbag KEW round in conjunction with my PSD to apprehend EVANS. I deployed my PSD on his bite command for the following reasons:

SEVERITY OF THE CRIME:

There was probable cause to arrest EVANS for felony assault with a deadly weapon, firearm, against two people.

IMMEDIACY OF THE THREAT:

EVANS was believed to be armed or near a firearm. EVANS was wanted for a violent felony and refused to comply while outside of the residence. If allowed to flee or return to the residence, EVANS could fire upon officers, occupants of the residence, or

other citizens that were gathering in the neighborhood due to the large police presence. It was determined EVANS had a domestic relationship to one of the victims, causing further exigency to arrest EVANS to prevent further domestic violence against the victim.

ACTIVE RESISTANCE:

EVANS refused to follow verbal commands for ten minutes, remaining at the foot of the residence. EVANS refused to walk back to officers and away from any potential concealed weapons. EVANS had already been impacted with a KEW round and refused to surrender.

OFFICER'S STATEMENT CONTINUED:

Assisting officers deployed a second beanbag KEW round to distract EVANS while my PSD was sent on his bite command. This was done specifically to give the dog the opportunity to reach EVANS before a weapon could be pulled, possibly causing the injury or death of my PSD. EVANS was impacted at the same time I gave the bite command. EVANS had his hands in front of him, however remained defiant. As my PSD approached EVANS, he pushed his left forearm out to fend off my PSD. My PSD engaged EVANS on his left forearm. For reasons unknown, my PSD failed to remain engaged with EVANS.

Despite having been impacted by a second KEW round, and the brief engagement with my PSD, EVANS refused to surrender. Based on EVANS continued active resistance and defiance towards the contact team, I did not feel safe having the contact team move forward without the PSD actively engaged with EVANS. For these reasons, I recalled my PSD to my location and called for a second PSD.

Canine Sergeant Dyemartin deployed his PSD. I transitioned my role to lethal cover and as part of the arrest team to support Sgt. Dyemartin.

The second PSD was deployed to apprehend EVANS along with a third KEW beanbag round. Canine Sgt. Dyemartin's PSD successfully apprehended EVANS. See his report for further.

The contact team moved up, maintaining lethal cover on the house. I pointed my firearm at EVANS as we approached in the safest manner possible. Once we reached his position, I holstered my firearm and immediately grabbed EVANS' right arm. I pulled EVANS onto his stomach, pulling his right arm back and forcing his right shoulder down. I placed my knee briefly on his right shoulder to maintain control of his torso. As other officers held EVANS' torso, I relieved pressure from my knee off his shoulder. Assisting officers placed handcuffs on his right wrist.

Sgt. Dyemartin wrote in his report:

Evans fell to the ground on his right side. He started yelling but still refused to comply with commands to walk or crawl toward the CRT to be taken into custody. I took over giving Evans verbal commands for Officer Nelson. I continued to order him to crawl or walk toward us to surrender, and I gave him additional canine warnings. Evans remained in this position for several minutes until he finally sat upright on the bottom step. Although Evans continued to keep his hands with his palms facing us, he also continued to ignore all verbal commands given to him.

Due to where Evans was now sitting, Officer Nelson and I moved to the passenger side of the patrol car to gain a better visual of him. Since Officer Nelson was working his PSD, I took up the role as his lethal coverage. I pointed my firearm at Evans to protect myself and Officer Nelson in the event Evans retrieved a weapon and decided to engage us. I continued to give Evans more verbal commands and canine warnings. I also warned him that he would be shot again if he continued to not comply with our commands. This continued for several more minutes, and Evans still did not comply. We got to the point where Evans was no longer communicating with us. Originally, he would respond with a "No" or "What's your name" when we gave him commands. Evans stopped responding to our commands altogether. It was apparent Evans was not going to cooperate with us even after being shot with a beanbag shotgun round. I discussed with Lt Bisesto #5797 and A/Sgt Sullivan #6455 that using the PSD in conjunction with another beanbag shotgun round was the safest way to take Evans into custody. This combination of less lethal force would give the CRT the safest approach to take Evans into custody as it would limit his movements and keep him distracted after we left our position of safety.

After Evans was issued several more canine warnings by Officer Nelson, to which Evans did not comply, Officer Nelson sent his PSD to apprehend Evans, and he was impacted again by Officer Pouchie with a beanbag shotgun round. Refer to their ARJIS-95 for more details.

Officer Nelson's PSD was fended off by Evans, who pulled his arms away and swung his hand at it. The apprehension was unsuccessful, and Officer Nelson's PSD was recalled to our position. Evans remained in the same place, sitting on the steps of the house.

I retrieved PSD Seff from my patrol car and staged only a few feet from the CRT. I removed PSD Seff from my car and moved up to Officer Nelson's position on the passenger's side of the main patrol car we used as cover. With PSD Seff clearly visible to Evans, I issued him three additional canine warnings to surrender, or he would be bitten by a police dog. Evans continued to ignore the verbal commands and canine warnings. As Officer Pouchie impacted Evans with another beanbag shotgun round, I

released PSD Seff with his bite command. I released the PSD for the following reasons:

Severity of the crime:

Evans pointed a firearm at two females after they tried to intervene when he was hitting his ex-girlfriend and preventing her from leaving his house. The females stated Evans "racked the slide" and "cocked the hammer" while he was pointing the firearm at them. The females were in such fear of being shot that they left the friend who came to help with Evans while they fled for their own safety and called the police.

Immediacy of the Threat:

Evans was believed to be concealing a firearm or to have access to one that was placed near his location. There were several places near Evans where a firearm or other dangerous weapon could be concealed from view by the CRT. Evans was next to a parked car in the driveway and a retaining wall where weapons could have easily been concealed. Based on Evans' lack of compliance I believed he was trying to bait officers into leaving a position of safety and approaching him so he may ambush them.

Several other occupants were also known to be inside the house. At the time, it was unknown who those occupants were or what level of cooperation they would provide. The house is elevated from the street where the officers were located. This elevated position would give someone an advantage to easily ambush the CRT once they left their position of safety.

Evans is a known member of a criminal street gang, and he has a criminal history of violent crime. Violent criminals and street gang members will often attack officers in order to escape or to receive recognition and clout from other gang members.

Active Resistance:

Evans refused to follow verbal commands and ignored canine warnings for more than ten minutes, regardless of force already being used against him. During this contact, Evans would more often than not do the opposite of the commands issued to him by officers.

Statement Continued:

PSD Seff bit and held on to Evans' left forearm. Almost immediately, Evans laid his body flat on the ground, lying on his stomach with his arms out to the side. The CRT approached Evans, and I gained control of the PSD. Once I had control of the PSD and I could see officers had control of Evans' hands so he could not retrieve a weapon, I removed PSD from the bite. The total time on the bite was approximately 38 seconds.

Officer Pouchie wrote in her report:

In concurrence with K-9 release, I aimed my beanbag shotgun at EVANS'S left arm in his bicep area and fired another round. The beanbag hit EVANS in his left arm and the K-9 was sent. K-9 did not bite. The initial K-9 was removed, and a secondary K-9 was introduced.

EVANS continued to lay on the ground and refuse to show his hands. EVANS continued to curse at officers and refuse all officer commands.

Secondary K-9 was deployed. In concurrence with secondary K-9 deployment, I aimed my beanbag shotgun at EVANS'S right shin area and fired another round. The beanbag hit EVANS in his right shin and the secondary K-9 was sent. K-9-bit EVANS left arm.

Officers took EVANS into custody and EVANS was placed in the backseat of my patrol vehicle. I transported EVANS to UCSD East, where he was evaluated by medical professionals.

This concluded my involvement in the investigation. Please see Officer Burns #1948 for further details.

Officers Nelson, Pouchie, Sgt. Dyemartin, Officer Uch and Acting Sgt. Sullivan BWC shows essentially the following:

00:20:24z-00:26:58z- Evans falls to the ground. He lays on his right side facing the officers with his hands in front of his body, palms facing out. Evans begins to yell, "You shot me! Help me! Get an ambulance. I'm not resisting, I did nothing wrong." Officers tell Evans to crawl or get up and walk over to them. Officer Nelson tells Evans that they are concerned they have not seen the back of his waistband.

The officers tell Evans that he will be shot again or bit by a police dog if he does not comply. Evans replies, "That will be on you. Uncle please call a lawyer. I don't have nothing to do with it. I didn't do nothing wrong."

Evans sits up and faces the officers.

00:26:58z - 00:27:45z- Evans complains to the officers that they shot him. He crosses his arms then put his elbows on his knees with his hands up

several times. Evans calls out to his uncle. Officer Nelson tells Evans that he is going to get bit.

00:27:45Z - 00:28:05Z- Evans is sitting with his arm stretched out over his head and his hands open facing the officers. Evans says, "Hands are wide open, hey you guys got the..." Officer Pouchie shoots Evans with beanbag shot gun and Officer Nelson sends his PSD to apprehend Evans.

00:28:05Z-00:28:16Z- Evans appears to push Officer Nelson's PSD away with his hands. Officer Nelson recalls his PSD. The PSD returns. Officer Nelson calls out, "dog swap." Sgt. Dyemartin walks to his K9 patrol vehicle.

00:28:16Z-00:29:08Z- Sgt. Dyemartin brings his PSD to face Evans. He gives Evans commands to walk or crawl back to them or his dog will bite him. Evans replies, "Why are you going to bite me? Please stop! Why are you at my house?" Evans is sitting on his buttock with his arms bent a 90-degree angle, hands up and open, facing the officers. Sgt. Dyemartin asks Officer Pouchie, "Are you ready?"

00:29:08Z-00:30:25Z- Officer Pouchie shoots Evans with the beanbag shotgun. Sgt. Dyemartin sends his PSD to apprehend Evans and it bites Evans on the left arm. Officers move up right away and take custody of Evans and remove the PSD from his arm.

Sgt. Dyemartin, Officers Nelson and Pouchie stated in their Internal Affairs interviews:

Officer Nelson stated in his interview that Evans made verbal signals that showed his active resistance. He also stated that he believed Evans was going to run when he leaned to the left and tried to stand up. Officer Nelson stated that he did not remember seeing Evans' waistband when he turned and still believed no one had seen his waistband while he was on the ground. It was for these reasons that he believed using the PSD to apprehend Evans was the best option.

Sgt. Dyemartin stated in his interview that he believed Evans was showing active resistance because he was saying things like he wasn't going to come to officers and wanted to know their names. He also said that Evans showed active resistance when his hands were moving from side to side. Sgt.

Dyemartin believed that Evans was attempting to bait the officers into leaving cover so he or the occupants of the home could attack them. He believed that using any other force option would not be effective, therefore the PSD was the best option for apprehending Evans.

Officer Pouchie stated in her interview that she shot Evans with the beanbag shotgun because she was told to do so by a supervisor and that she believed it was what needed to be done prior to sending the dog. She stated that she did not know if that was how she was trained or if it is taught by the San Diego Police Department.

USE OF FORCE OPINION:

Evans' behavior during these moments of the event would be considered submissive or passive resistance while believed to be armed or in close proximity to a deadly weapon. Evans' submissive behavior is seen when he is lying on the ground with his hands in front of his face asking for help.

Evans' behavior was passive resistance when he sat up and talked to the officers, asked them questions, and yelled to the people in the home to call him an ambulance or lawyer. Evans did not verbally signal any intention to prevent officers from taking him into physical custody. Evans refused to comply with the officers' verbal orders. Evans complained about being shot (with the beanbag), asked the officers why they were there, and told the officers that he was at his home. These behaviors are considered passive resistance.

The officers and supervisors did not make any reference or show concern that Evans was moving his arms during these moments on BWC. This was evident because no one told Evans to put his hands up or to keep them up when he crossed his arms.

Evans then placed his arms above his head and his hands up, open, and facing the officers. Evans did this for approximately 47 seconds before Officer Pouchie impacted him with the second round from the beanbag shotgun and Officer Nelson sent his PSD to apprehend him.

Evans continued to show passive resistance by keeping his hands up and arms bent at a 90-degree angle for approximately 30 seconds while asking

Sgt. Dyemartin questions before Officer Pouchie shot him a third time with the beanbag shotgun and Sgt. Dyemartin sent his PSD to apprehend him.

It is my opinion that Officer Nelson lost focus on his task of being a cover officer. He did not properly evaluate Evans' behavior because he took on multiple changing roles as contact officer, cover officer, and incident commander during these moments of the event. This is evident when Evans turned around to show his waistline and Officer Nelson did not see it. Officer Nelson also did not respond to Evans' arms moving. Officer Nelson did not recognize Evans' resistance as passive when Evans' arms were up and Evans was not moving.

It is my opinion that Officer Pouchie believed that shooting Evans with the beanbag shotgun a second and third time was part of a known/taught tactic. She was acting under the orders/directions of supervisors and senior officers. It does not appear she recognized she was responsible for her own use of force, despite the orders from supervisors and senior officers. This was evident in both her report and Internal Affairs interview where she stated she shot Evans with the beanbags because she was told to do so.

It is my opinion that Sgt. Dyemartin misinterpreted Evans' unwillingness to go to the officers and asking questions as active resistance when it was passive resistance.

I believe that the second and third beanbag impacts and the PSD deployments were a result of a misinterpretation of Evans' passive resistance as active resistance. This was further complicated by officers justifying the use of the KEW as a "test for compliance" rather than a force option used to overcome resistance to effect an arrest.

The officers wanted Evans to walk back to them and away from the retaining wall and vehicles. The officers used less lethal weapons that are designed to stop, immobilize, or incapacitate a person, which is contrary to what the officers wanted to accomplish.

There is no evidence to support any maliciousness or negligence in the officers' actions.

It is my opinion that Officer Pouchie's second and third impacts with the beanbag shotgun were not within the SDPD DP 1.04: Use of Force and DP

1.36: Kinetic Energy Weapons. The second and third impacts were not in accordance with San Diego Regional Academy or Advanced Officer Training teachings.

It is my opinion that Officer Nelson's and Sgt. Dyemartin's deployments of their PSD to apprehend Evans were not within SDPD DP 1.04: Use of Force DP 6.16 Police Service Dog. The deployments of the PSD were not in accordance with San Diego Regional Academy or Advanced Officer Training teachings.

REFERENCES:

(P.O.S.T LD 20)

Active Resistance: Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Passive Resistance: Does not respond to verbal commands but also offers no physical form of resistance.

(P.O.S.T LD 20)

Response to Active Resistance:

- Control holds and techniques to control the subject and situation
- Use of personal weapons in self-defense and to gain advantage over the subject
- Use of devices to secure compliance and ultimately gain control of the situation

Response to Passive Resistance:

- Officer's strength to take physical control, including lifting/carrying
- Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject.

(SDPD Procedure 1.04 Use of Force)

Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Passive Resistance – behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to the officer or another person.

(SDPD Procedure 1.04 Use of Force)

Assaultive Behavior – behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.

(SDPD Procedure 1.04 Use of Force)

F. De-escalation – encompasses a variety of strategies and/or techniques designed to reduce the immediacy of a threat, minimize the need for force, and gain voluntary compliance from a subject. Refer to Department Procedure 1.55 De-escalation for established requirements and guidelines on the use of de-escalation techniques, crisis intervention tactics, and other alternatives to force.

G. Defending Force – the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered either by personal body weapons (e.g., hands, feet, knees, etc.) or impact weapons (e.g., PR-24, OPN, Baton, Flashlight). Due to the potential for serious injury, intentional strikes with an impact weapon are prohibited from being directed at the head, face or throat of the subject unless the subject's actions and behavior pose an imminent threat of death or serious bodily injury to the officer or others.

(SDPD Procedure 1.04 Use of Force)

III.

The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its officers to perform their duties

to the highest standards. Our officers perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. However, in the performance of their duties, officers may encounter situations where the use of force is reasonable to effect a detention or arrest, to overcome resistance, or to protect themselves or others.

V.

A. Force, as defined above, may be used to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall apply a level of force that is reasonable for the situation.

(SDPD Procedure 1.55 De-Escalation)

C. Officers may be called upon to detain or arrest a subject who is uncooperative, is actively resisting, may attempt to flee, poses a danger to others, or poses a danger to him or herself. When safe and reasonable to do so, based on the totality of circumstances, officers shall use de-escalation tactics consistent with Department training to attempt to persuade the subject to voluntarily comply or to reduce the need to use a higher level of force.

(P.O.S.T. Arrest and Control Lesson Plan 1)

(Reasonable Officer Standard, Graham V Connor, U.S. 386 (1989))

The Court noted that the following facts should also be considered, but not limited to, when gauging reasonableness:

- ☒ The severity of the crime
- ☒ The nature and extent of the threat posed by the subject
- ☒ The degree to which the subject resists arrest or detention
- ☒ Any attempts by the subject to evade arrest by flight

SDPD Procedure 1.38 (Kinetic Energy Weapon Systems):

IV.

G. Kinetic Energy Weapon (KEW) Systems - the KEW Systems consist of a device firing a special projectile designed to gain compliance, overcome resistance, or prevent serious injury or death to suspects,

officers and bystanders. The Department currently uses two KEW systems. Both the beanbag shotgun and 40MM single shot launching system shall be classified as "Kinetic Energy Weapon" for identification within Department Procedure 1.04, Use of Force.

VI. E. KEW Deployment Procedures

1. Officers may deploy a KEW on subjects demonstrating assaultive behavior or life-threatening behavior, as defined in Department Procedure 1.04, Use of Force. The KEW may also be used to control an actively resistive subject reasonably believed to possess or have immediate access to a deadly weapon, within the force guidelines of Department Procedure 1.04, Use of Force.
2. Officers shall always have immediate "deadly force" backup when deploying the KEW.
3. The contact officer shall inform assisting officers that the KEW is 10-97 at a scene and, whenever possible, notify Communications Division. Communications shall repeat this information to responding units and activate the "emergency tone" when appropriate.
4. If a subject fails to comply with commands, officers should verbally warn the subject of their intention to fire prior to discharging the KEW, unless a warning would not be feasible, due to safety concerns.
5. When feasible, prior to deploying each KEW round, officers will announce they are firing their KEW to prevent "contagious" or "sympathetic" fire. Officers should state, "Firing Beanbag" or "Firing Forty" when discharging either KEW.
6. Officers, generally, should not deploy a KEW at a subject when there is a danger of the subject falling from a significant height.
7. The KEW is intended to assist in gaining compliance from the subject. Multiple shots to the same body part should be avoided. If additional shots are required, they shall be directed to different parts of the body. The subject should be taken into custody as soon as possible after the discharge of the round(s).
8. KEW systems are limited use weapons. They shall not be used for any other purpose than those listed in section VI, E, 1.

(POST LD 33)

Impact Weapons:

Peace officer's legal authority for use

In law enforcement, impact weapons are to be used in an authorized and objectively reasonable manner.

Peace officers have the authority to use an impact weapon:

- in self-defense
- in defense of others
- to effect an arrest
- to prevent escape
- to overcome resistance
- in civil unrest situations

Primary Strike Points: Include muscle mass areas of the arms, legs and torso/midsection.

Motor Nerve Points (Strikes)

- Common Peroneal (Outer thigh approx. 4" above the knee)
 - Tibial (Top rear portion of calf muscle)
 - Radial (Forearm top outer muscle)
 - Median (Forearm inner muscle)
-
- Secondary Strike Points (i.e. joint strikes): May be targeted when the situation escalates, the primary strike points would not be effective, are proving to be ineffective or the Closest Weapon Closest Target (CWCT) concept provides better distance to prevent the suspect from gaining physical control of or striking the Law Enforcement Officer (LEO).
 - Particularly Vulnerable Areas: Should be avoided unless deadly force is justified. The particularly vulnerable areas include face, head, throat, neck, spine, heart, kidneys and groin.

PENAL Code 16770 (Less Lethal munitions):

As used in this part, "less lethal ammunition" means any ammunition that satisfies both of the following requirements:

(a) It is designed to be used in any less lethal weapon or any other kind of weapon (including, but not limited to, any firearm, pistol, revolver, shotgun, rifle, or spring, compressed air, or compressed gas weapon).

(b) When used in a less lethal weapon or other weapon, it is designed to immobilize, incapacitate, or stun a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort.

PENAL Code 16780 (Less lethal weapon):

As used in this part:

(a) "less lethal weapon" means any device that is designed to or that has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. It is not necessary that a weapon leave any lasting or permanent incapacitation, discomfort, pain, or other injury or disability in order to qualify as a less lethal weapon.

POST Less Lethal Training (National Training Concepts):

Less lethal extended range, kinetic energy impact munitions may be used from a distance. They are capable of creating physiological and/or psychological effects that may compel a subject to cease his or her actions. While intended to deescalate, it should also be recognized the depending upon the subject's mindset, these munitions may trigger a reverse effect increasing risk. They should be used in accordance with agency policy and training guidelines.

SDPD Procedure 6.16 (Police Service Dogs):

V. PROCEDURES

A.

The canine handler has responsibility for the PSD and its actions. The handler shall exercise control over his/her PSD at all times. Prior to deployment, the handler must consider:

1. The severity of the crime;
2. The immediacy of the threat; and,
3. If the subject is actively resisting arrest (Graham v. Connor).

- B. A police service dog may be deployed for any of the following circumstances, in accordance with Department Procedure 1.04, Use of Force:
1. For the protection and/or safety of the handler, other Department personnel or other persons.
 2. To locate, apprehend or control subjects reasonably believed to be assaultive, violent or dangerous.
 3. To apprehend fleeing criminal suspects when the canine handler reasonably believes probable cause exists to arrest the person for a felony.
 4. To locate and apprehend concealed felony suspects when it would be unsafe for officers to proceed into the area and conduct the search.
 5. To control an actively resistive subject reasonably believed to possess or have immediate access to a deadly weapon.
 6. To search for evidence, narcotics, explosives, or other contraband.

C. Guidelines for Use of the PSD in Field Situations (Also Canine Unit Operation Manual 2023 Section VIII 8.4).

1. During searches, the canine handler will function as the contact officer. Once at the scene, the handler should assume control of the search and direct cover units to support positions, as needed.
2. During field contacts with other officers, the canine handler should function as a cover unit. The handler and PSD should be used to prevent and/or control violent or aggressive acts directed at the handler, officers or other persons.
3. During contacts involving high-risk persons or vehicle stops, the canine handler and PSD should generally function as a cover unit. In the event the handler has assumed the contact officer position, the handler should relinquish this role to the first uniformed unit arriving at the scene. The canine handler will remain at the scene as a cover unit until the incident is under control.
4. The canine handler or canine supervisor shall make the final decision regarding the deployment of the PSD.

K9 Crisis Response Team training (2023 Power Point Presentation):

Time to Act:

Less lethal officer will impact the suspect with a Kinetic Energy Weapon to test for compliance.

Additional warnings will be given.

Additional impacts will be used at the same time the K9 is sent.

Team will hold its position after the K9 is sent.

K9 handler will attempt to call the suspect back to the team.

Michael Rhoten
Sergeant



**SWORN PERSONNEL ADMONISHMENT
(WITH LYBARGER/GARRITY WARNING)
SUBJECT**

This is a confidential sworn personnel investigation.

You may be subject to discipline as a result of this confidential sworn personnel investigation, should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time.

The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The City is not questioning you for the purpose of bringing or substantiating any criminal charge against you.

You are directed to answer all of the questions posed to you completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline, up to and including termination.

Therefore, any statement made by you during this confidential sworn personnel investigation, compelled by the threat of discipline, as well as any fruits of those statements, cannot be used against you in any criminal proceeding.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

M. Bisesto
Meghan Bisesto, Lieutenant, ID #5797

E. McCool #6755
Eric McCool, Detective Sergeant, ID #6755

1/21/25
Date

01/21/2025
Date

DATE: 10/27/24

TO: Scott Wahl, San Diego Police Department Chief of Police

FROM: [REDACTED]

REFERENCE: CITIZEN'S COMPLAINT OF EXCESSIVE USE OF FORCE AND MISCONDUCT IN REFERENCE TO THE ARREST OF MARCUS EVANS, ON 10/24/24 AT APPROXIMATELY 11:30 PM, AT 6400 DULUTH AVENUE IN THE CITY OF SAN DIEGO, CALIFORNIA.

In compliance with my duty to report misconduct brought to my attention, **San Diego Police Department (SDPD) Policy 9.33 DUTY TO REPORT MISCONDUCT POLICY**, [REDACTED] sent me a video from "619 News Media," which can be viewed on Instagram. The video showed a black male whom [REDACTED] referred to as Marcus Evans, being arrested by several San Diego Police Officers. I took the time to do more research and discovered a longer version of the arrest on "619 News Media," which can be viewed on YouTube:

[https://urldefense.com/v3/https://youtu.be/L2ERgHIR80k?si=0kCJfFSidBZRbaoQ;!!EMTEEnRoIMw1ugrwiJ6pziC6OUen503LTdzNeNfJbBRUVVtixXCB1hobOQPdKstOd4ey-WTesVjsq54Y6PJZ8x6bldrlAn9Lk\\$](https://urldefense.com/v3/https://youtu.be/L2ERgHIR80k?si=0kCJfFSidBZRbaoQ;!!EMTEEnRoIMw1ugrwiJ6pziC6OUen503LTdzNeNfJbBRUVVtixXCB1hobOQPdKstOd4ey-WTesVjsq54Y6PJZ8x6bldrlAn9Lk$)

[REDACTED] believes the SDPD officers who was involved in the arrest of Marcus Evans used excessive force. After watching the video, I agree with [REDACTED] conclusion the force used to arrest Marcus Evans was excessive.

It is printed on the video the San Diego Police Department responded to the area because someone displayed a firearm during an altercation. Several people were given orders by police to exist the house and then police directed them to hold up their hands. Several people came out the house and they all complied with the officer's orders.

I will refer to the next community member who came out the house as Marcus. Marcus exited the house and was ordered to raise his hands. Marcus raised his hands and then walked down the stairs as ordered by police. Marcus was wearing a black loosely fitted sports shorts. Marcus was not wearing a shirt, socks, or shoes. When Marcus reached the bottom of the stairs, he stopped but continued to hold his hands up. Marcus asked the officers why they were at his home. The officer speaking said because "A gun was involved." Marcus sat on a retaining wall and then crossed his arms in front of his body. At some point during the contact the police officer asked Marcus to turn around to check him for any visible weapons. Marcus complied with the order to turn around.



Department Procedure 1.10 - Citizen Complaints, Officer-Involved Shootings, and In-Custody Deaths; Receipt, Investigation, and Routing section V. B. 2. Page 5 of 23.: Any citizen complaint, regardless of category, may be lodged at any police facility, at any storefront, at the City Administration Building (Mayor's Office), at several community-based organizations, or with any member of the Department. Complaints will be accepted in writing (by letter, fax, or email), in person, or by telephone.

Clearly Marcus was not armed. Marcus told the officer he had not did anything wrong. Marcus sat on the wall but did not comply with the officer request for him to come towards them. Marcus sat on the retaining wall with his hands in front of his body.

San Diego Police Department Procedure 1.04 Use of Force: IV. Section L, page 3 of 13.

Passive Resistance - behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to the officer or another person.

Marcus's behavior was consistent with SDPD procedure definition of passive resistance. An officer using a beanbag, or a K-9 on a person who behavior is consistent with passive behavior, is in violation of **SDPD Use of Force procedure Page 13 Of 13.**

Someone might attempt to describe Marcus's behavior as active resistance. **SDPD Use of Force procedure describes Active Resistance as follows:**

Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Marcus was sitting on the wall when he was initially shot in the abdomen with a beanbag round. Marcus was shot a second time with a beanbag round while he sat on ground. Marcus was attacked by a police dog twice while sitting on the ground with his hands raised with no access to a weapon.



Therefore, SDPD procedure V.D. page 6 of 13. Is not applicable, which states as follows:

The use of canines, Tasers, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon.

It appears to me the officer who fired the second bean bag round possible intentionally aimed the round at Marcus's groin area. In violation of **SDPD procedure 1.38 – Kinetic Energy Weapon Systems, section V. E. which states as follows:**

The target area from all distances should be the lower girdle area of the subject. This would include the lower abdominal region (belly button area) and below. Generally, the head, neck, thorax, heart, groin, and spine area should not be targeted.

Department Procedure 1.10 - Citizen Complaints, Officer-Involved Shootings, and In-Custody Deaths; Receipt, Investigation, and Routing section V. B. 2. Page 5 of 23.: Any citizen complaint, regardless of category, may be lodged at any police facility, at any storefront, at the City Administration Building (Mayor's Office), at several community-based organizations, or with any member of the Department. Complaints will be accepted in writing (by letter, fax, or email), in person, or by telephone.

All the supervisors at that scene had a duty to intervene after Marcus was shot the first time with a beanbag in violation of Use of Force, per **SDPD Procedure 1.56 – Intervention Duties Section V. A. Page 2 of 2.**

Any officer who is present and observes another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that the other officers may have additional information regarding the threat posed by the subject, shall, when in a position to do so, intervene to prevent the use of unreasonable force.

It appears from reviewing the video that any supervisor at the scene is in violation of their duty to intervene.

These types of atrocious acts allowed to occur without accountability, can cause a city to be liable. Just like the La Mesa officer actions caused The City of La Mesa to pay \$10,000.000.00 to the woman hit in head by police beanbag during a protest. [LA MESA AGREES TO PAY \\$10 MILLION SETTLEMENT TO WOMAN HIT IN HEAD BY POLICE BEANBAG DURING PROTEST | East County Magazine](https://www.eastcountymagazine.com/la-mesa-agrees-to-pay-10-million-settlement-to-woman-hit-in-head-by-police-beanbag-during-protest/)

Cops Allow Police Dog to Bite Naked, Unarmed Man (SDPD)

[https://urldefense.com/v3/https://search.app/digmBiPbSsipPWdG8_!!EMTEEnRo!J0ZCcNUyw5eCYffvLdAColnjlttIMXlhg-AO4lBcdBsvDdZnQuNLUtB0nAgaEzjwvwpKjY-DomKihpCsdPWrrJjs_\\$](https://urldefense.com/v3/https://search.app/digmBiPbSsipPWdG8_!!EMTEEnRo!J0ZCcNUyw5eCYffvLdAColnjlttIMXlhg-AO4lBcdBsvDdZnQuNLUtB0nAgaEzjwvwpKjY-DomKihpCsdPWrrJjs_$)

City of San Diego settles this case for \$385,000.00.

Graphic Video Shows Police Dog Refusing to Release Handcuffed Man's Arm (SDPD)

[https://urldefense.com/v3/https://search.app/mTNNdn6TXAxBgRsS7_!!EMTEEnRo!PgiE1f0mAEjgxv7NDfT4TgQbGxmIkN48tkf3QeJvNUYKAKlvxxYMx061Lv1RUIJaC4jfM19TSXWSe_bymLSLAe9Y\\$](https://urldefense.com/v3/https://search.app/mTNNdn6TXAxBgRsS7_!!EMTEEnRo!PgiE1f0mAEjgxv7NDfT4TgQbGxmIkN48tkf3QeJvNUYKAKlvxxYMx061Lv1RUIJaC4jfM19TSXWSe_bymLSLAe9Y$)

San Diego Police Department procedure, 1.55 – De-Escalation Section III, G. page 2 of 5, states:

The process of incident management and de-escalation includes, but is not limited to, the following:

1. Utilizing pre-engagement techniques
2. Assessing the overall scene
3. Establishing effective lines of communication
4. Using appropriate levels of reasonable force, based on the totality of the circumstances
5. Intervening whenever force being used appears unreasonable
6. Rendering aid and evaluating the need for medical assistance
7. Reporting of all force used during the incident
8. Reviewing the incident to ensure adherence to department procedures.

When I spoke with you during the meeting we had on October 16, 2024, I told you if you could not get officers to act professional in a line-up, you will never be able to get them to be professional out in the field with community members. In reference to the behavior displayed by officers during the line-up video conference, which I reported to you via email on September 16, 2024. SDPD management failure

Department Procedure 1.10 - Citizen Complaints, Officer-Involved Shootings, and In-Custody Deaths; Receipt, Investigation, and Routing section V. B. 2. Page 5 of 23.: Any citizen complaint, regardless of category, may be lodged at any police facility, at any storefront, at the City Administration Building (Mayor's Office), at several community-based organizations, or with any member of the Department. Complaints will be accepted in writing (by letter, fax, or email), in person, or by telephone.

to maintain a non-hostile work environment internally correlates with the atrocious behavior of the officers and supervisors, during the arrest of Marcus.

Conclusion:

██████████ is concerned for the safety of the public. The San Diego Police Department supervision, training and checks and balance to prevent unreasonable and excessive use of force, failed. Due to the officer's flagrant disregard of law and SDPD policy and procedures, ██████████ is requesting, all officers involved in the arrest of Marcus be removed from working all assignments having access to the public immediately and until all "Formal" investigations of this matter has concluded.

██████████, Police Officer III



VIQ Solutions, Inc
East Thomas Road, Suite 2200 20
Phoenix, AZ 85012

CERTIFICATE OF ACCURACY

VIQ Solutions, Inc. certifies that the document produced from the audio file named **Officer_Bennett_Interview_ae8a1dfd-1d95-4cf0-a2ed-0bdaa25167bc.MP3** submitted by **San Diego Police Department - Internal Affairs** on January 15, 2025 is a true, accurate and faithful representation to the best of the transcribers training and ability and no intentional changes or redactions have been made.

DATED: January 15, 2025

A handwritten signature in black ink, appearing to read "S. Bennett", is written over a horizontal line.

VIQ Representative, SVP Client Experience

INTERVIEW WITH OFFICER ASHLEY BENNETT

Q=Sgt. Eric McCoole

A=Ofc. Ashley Bennett

A1=Atty. Dyland Griffith

Q: This is for IA Tracking Number 2024-0529, a subject officer interview. This is Sergeant Eric McCoole, ID Number 6755. Today's date is January 6, 2025, and I have a time of 0604 hours. We're located in the internal affairs interview room at the San Diego Police Department's Headquarters. In the room with me is, ma'am, can you please state your name, rank, and ID number?

A: Ashley Bennett, P01, ID Number 1910.

Q: Okay. I advise you of your right to representation when we set the interview. In the room is your representative?

A1: Dyland Griffith from Vanderpool Griffith LLP.

Q: Okay. Thank you. I'm going to read you a sworn personnel admonishment as a subject. Please feel free to follow along. This is a confidential sworn personnel investigation. You may be subject to discipline as a result of this confidential sworn personnel investigation should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time. The purpose of this confidential sworn personnel investigation is to obtain information to assist the city of San Diego in determining whether administrative disciplinary action is warranted against you. The city is not questioning you for the purpose of bringing or substantiating any criminal charge against you. You are directed to answer all the questions posed to you completely truthfully and to the best of your knowledge. You may consult with your representative before answering any question, but the representative may not answer the question for you. You may refuse - I'm sorry. If you refuse to answer a question, it will be considered insubordination, and you may be subject to discipline. If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn

personnel investigation will be considered insubordination and may lead to administrative discipline up to and including termination. Therefore, any statement made by you during this confidential sworn personnel investigation compelled by the threat of discipline, as well as any fruits of those statements, cannot be used against you in any criminal proceeding. The city of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline. Officer Bennett, do you fully understand the instructions?

A: Yes.

Q: Fully understand the instructions, please sign your name below. Thank you. I'll take that. Okay. How long have you been a San Diego police officer?

A: About a year-and-a-half.

Q: Okay. And what is your current assignment?

A: Southeastern Division. Patrol.

Q: What was your assignment for October 24, 2024?

A: Patrol.

Q: This is for the same division?

A: Yes.

Q: So on that date, October 24, at approximately 2023 hours, did you respond to the area of 6400 Duluth Avenue?

A: Yes.

Q: Why did you respond to that location?

A: Radio call.

Q: So what information did you have or did you learn as you responded to this call for service?

A: That it was a 245, a potential 245 suspect with DV related at that address.

92

93 Q: Okay. And just for layman, what is a 245? Trying to speak in too much...

94

95 A: Assault with a deadly weapon.

96

97 Q: Yeah.

98

99 A: With a firearm.

100

101 Q: As I explained before, we started on the record, a little bit is there is other
102 people other than police department employees that review these. So the least
103 amount of police jargon is the best way to go.

104

105 A: Okay.

106

107 Q: So let me just pose the question again and with as little jargon as possible,
108 what information did you have, or did you learn as you responded to the call
109 for service?

110

111 A: It was a violent call regarding a suspect that had pointed a gun at his girlfriend
112 or potential wife. But the details of the call was that it was assault with a
113 deadly weapon with a firearm.

114

115 Q: Okay.

116

117 A: With the mention of a firearm.

118

119 Q: Okay. So once you arrive on scene, did you learn any additional information
120 regarding this call for service, or was it relayed to you, or radio updates, or
121 anything of that nature?

122

123 A: Any new information?

124

125 Q: So the only - so I'm saying, was there information that you - that continued to
126 develop as, say, you're on scene or maybe as you're just arriving or as there's,
127 like, a plan of action?

128

129 A: Yeah. Once I got on scene that they confirmed that the witness had or the
130 suspect had pointed a firearm at the witness.

131

132 Q: Okay. Who's they?

133

134 A: The witness, the victim.

135

136 Q: You say they confirmed. Who's they that confirmed?

137

138 A: An officer on scene.

139

140 Q: Okay.

141

142 A: The person that was talking to the witness.

143

144 Q: Okay.

145

146 A: Or the victim.

147

148 Q: Okay - okay. So once you arrive on scene, where'd you go or did you go
149 straight to the house? Did you start somewhere else?

150

151 A: No. So there was...

152

153 Q: Walk me through that process.

154

155 A: So there was - everybody was meeting at a certain spot before we all drove up
156 to the house together.

157

158 Q: Okay.

159

160 A: So I met the sergeant, the K-9 and all of the other units that were going to go
161 up to the house all together, like, the contact team at that location, which was
162 a couple blocks away...

163

164 Q: Okay.

165

166 A: ...from the house. When I arrived on scene, I went to the sergeant who gave
167 me the assignment of being the less lethal bean bag. And K-9 was right there
168 and they said, here you go, bean bag is patrol ready. And then they were like,
169 okay. We're going to roll up to the house.

170

171 Q: Okay. So that kind of led to my next question. What were you - you were
172 tasked with bean bag or that's kind of a...

173

174 A: The less lethal.

175

176 Q: ...a little bit - yeah. It's extended range impact weapon?

177

178 A: Yes.

179

180 Q: Okay. Were you given any direction by anyone on when to fire this prior to
181 making contact or anything of that nature?

182
183 A: Prior to going up to the house?
184
185 Q: Yeah.
186
187 A: No.
188
189 Q: Okay. And then who gave you this role as having the extended range impact?
190 You said a sergeant. Do you remember who that was?
191
192 A: Sergeant Sullivan.
193
194 Q: Sullivan.
195
196 A: He was acting sergeant that night.
197
198 Q: Okay - okay. And from - as you're getting there and as these roles are being
199 delegated, who - was there anyone, because it's not on the incident, the CAD
200 incident.
201
202 A: Mm-hm.
203
204 Q: Well, the CAD jargon, computer aided dispatch incident. There's nothing - no
205 one designated as the incident commander.
206
207 A: Mm-hm.
208
209 Q: Do you know who the incident commander for this incident was?
210
211 A: No.
212
213 Q: Okay. From your observations and from, you know, where you were...
214
215 A: Mm-hm.
216
217 Q: ...position and what you witnessed, who was the incident commander for this?
218
219 A: I think that based on where I was at, it was Sergeant Sullivan.
220
221 Q: Okay.
222
223 A: He was the one who was running the scene and he was the one who was
224 tasking everybody...
225
226 Q: Mm-hm.

227

228 A: ...with their jobs and their roles.

229

230 Q: Okay. Prior to this radio call, prior to this incident, have you been trained by
231 the SDPD to use the extended range impact weapon?

232

233 A: Yes.

234

235 Q: So according to your training and to San Diego Police Department's use of
236 force policies, what level of resistance should a suspect be displaying in order
237 to shoot someone with that weapon system?

238

239 A: Active resistance with close proximity to a weapon or assaultive behavior.

240

241 Q: Are you aware of any exceptions to the provisions in these policies?

242

243 A: No.

244

245 Q: Okay. Before this incident - again, before this incident, have you actually ever
246 impacted a person with an extended range impact weapon?

247

248 A: No.

249

250 Q: Have you ever witnessed anyone being shot with this weapon system?

251

252 A: Yes.

253

254 Q: What happened to that person when they were shot with the projectile from
255 your memory?

256

257 A: They were taken into custody. I don't remember exactly. I mean they got
258 pepper sprayed also.

259

260 Q: Okay. So I'm asking when they were impacted with that projectile, what was
261 their reaction to it from your memory?

262

263 A: Oh, they went down to the ground.

264

265 Q: Okay. Did they sustain any injury from your memory?

266

267 A: The last one?

268

269 Q: Yeah. The one that you witnessed. You said that you've never done it, but
270 you've seen...

271

272 A: Yeah.
273
274 Q: ...someone get hit with that weapon system?
275
276 A: Not that I remember.
277
278 Q: Okay.
279
280 A: Not that I recall.
281
282 Q: All right. Let's go back to Duluth Avenue. Was there cause to arrest anyone
283 located at [REDACTED] Duluth Avenue?
284
285 A: Yes.
286
287 Q: Who was arrestable?
288
289 A: I think his name was Marcus Evans.
290
291 Q: Okay. For what criminal offenses or offense was Marcus Evans arrestable for?
292
293 A: Assault with a deadly weapon, firearm.
294
295 Q: And how did you learn this information?
296
297 A: From the dispatch or the other police officers that were confirming the crime.
298
299 Q: Okay. I already kind of asked you that question (unintelligible) that one.
300 Okay. So is it fair to say you were present as the occupants of [REDACTED]
301 Duluth are being called out by the officers?
302
303 A: Yes.
304
305 Q: Okay. As these call-outs are starting, what other resources were on scene?
306
307 A: We had K-9.
308
309 Q: Okay.
310
311 A: It was on scene. We had lethal options. So we had people with just their pistol
312 and then we had rifle. We had two different K-9s.
313
314 Q: Okay.
315
316 A: And then me as the bean bag.

317
318 Q: Okay. Did you witness Marcus Evans exit [REDACTED] Duluth Avenue?
319
320 A: Yes.
321
322 Q: Excuse me. Describe the clothing Marcus was wearing.
323
324 A: He was wearing black bottoms, like, shorts.
325
326 Q: Black shorts. Anything else?
327
328 A: No.
329
330 Q: Do you believe it was reasonable to believe that he was concealing a weapon
331 or had immediate access to a weapon?
332
333 A: Yes.
334
335 Q: Why?
336
337 A: Because I've seen some pretty small firearms that can be concealed in various
338 places.
339
340 Q: Okay. Where have you seen these things concealed? Like, what are you
341 describing?
342
343 A: Yeah. I mean, in the academy, we've seen photos, like, photographs of phone
344 guns or, like, really, really tiny guns that can be concealed easily in the
345 waistband or - I mean, I don't know.
346
347 Q: Okay. Was that the type of weapon that was described to?
348
349 A: I don't know.
350
351 Q: You're not sure. Okay. Where do you believe he was concealing a weapon?
352
353 A: Potentially in his waistband.
354
355 Q: In his waistband?
356
357 A: Or the...
358
359 Q: But he wasn't wearing a shirt.
360
361 A: No.

362
363 Q: Okay. But you thought he was concealing a weapon in his waistband?
364
365 A: Or lower in his waistband. I don't know.
366
367 Q: Okay - okay. So what kind of commands were given to Marcus as he
368 exited this residence from police officers?
369
370 A: To exit the residence with his hands up.
371
372 Q: Okay.
373
374 A: And to walk towards officers backwards.
375
376 Q: Who was giving him those commands?
377
378 A: I think it was K-9.
379
380 Q: One of the K-9 officers?
381
382 A: I think so.
383
384 Q: Did Marcus follow the commands?
385
386 A: Initially, he walked out of the house but he didn't put his hands up.
387
388 Q: Okay.
389
390 A: And so he kept dropping his hands down, and he was kind of reaching
391 around. He came down the stairs initially but then he was pretty much telling
392 us that he wasn't going to follow our commands.
393
394 Q: Okay.
395
396 A: When he got down to the bottom of the stairs.
397
398 Q: What in particular did he say that gave you that indication?
399
400 A: I don't remember, like, exactly what he was saying but I remember he was
401 saying, "I'm not going to do what you say."
402
403 Q: Okay.
404
405 A: My BWC was locked, so I wasn't able to...
406

407 Q: Okay. So as this is occurring, what was Marcus resistance level based on the
408 SDPD's use of force matrix?
409

410 A: Active resistance.
411

412 Q: As this is going on, were you present or did you overhear any sort of
413 contingency or tactical action plans to take Marcus into custody?
414

415 A: I know that they were talking about using less lethal and K-9, but I didn't hear
416 the conversation. I know that the sergeant and the lieutenant were having a
417 conversation about contingency, but I didn't hear exactly what their
418 contingency plan was.
419

420 Q: So it's fair to say this was never relayed to you if there was one? Did anyone
421 relay to you any sort of contingency plan or a tactic?
422

423 A: Prior to...
424

425 Q: Well, you're saying Marcus is coming down and he won't do - he won't follow
426 orders that he's instructed to follow.
427

428 A: Oh.
429

430 Q: Right?
431

432 A: Yeah.
433

434 Q: Okay. So...
435

436 A: So we...
437

438 Q: I'm asking, was there any sort of contingency plans if he didn't follow his - the
439 orders?
440

441 A: Yes. We were going to impact him if he made a - if he went back towards the
442 house because we weren't going to allow him back inside the house.
443

444 Q: Okay.
445

446 A: We were going to impact him and send the K-9 if he made movements back
447 towards the house.
448

449 Q: Okay. And who relayed this plan to you?
450

451 A: Me and K-9 came up with that.

452
453 Q: Okay. So you guys...
454
455 A: K-9 and I.
456
457 Q: ...consulted that?
458
459 A: Yes.
460
461 Q: Okay - okay. Did any of the officers on scene give Marcus an order to turn
462 around and show his waistline?
463
464 A: Yes.
465
466 Q: Okay. Did Marcus comply with that order?
467
468 A: I remember him turning but I don't remember him turning completely around,
469 like completely in a circle. Not that I recall.
470
471 Q: Okay. So according to your written report and BWC footage, you reported
472 that you initially shot Marcus with the extended range impact weapon. Is that
473 accurate?
474
475 A: Yes.
476
477 Q: Okay. Shot him for multiple times but this first time, I'm going to ask you...
478
479 A: Mm-hm.
480
481 Q: ...about initially, what was Marcus doing prior to or as he was shot this first
482 time with the bean bag?
483
484 A: I think he was sitting on the ledge.
485
486 Q: Okay. So I've...
487
488 A: That was over by the...
489
490 Q: From my memory, there's, like, a wall retaining wall.
491
492 A: Yeah.
493
494 Q: Is it that what you're describing?
495
496 A: Yes.

497

498 Q: Okay. So he's sitting on the retaining. Okay.

499

500 A: I think that was the first.

501

502 Q: So he was sitting there?

503

504 A: Well, I - I - yes.

505

506 Q: Okay. So what was his resistance level as defined from the SDPD's use of
507 force matrix at that point?

508

509 A: I mean, he was still telling us that he wasn't going to comply with police
510 commands, so active resistance.

511

512 Q: Okay. What were you trying to accomplish by shooting Marcus with the bean
513 bag at that point? Were you afraid he was going to attack you guys or
514 something like that? What were you trying to - by shooting him, what was the
515 goal?

516

517 A: I mean, I was following command. So I shot him initially, so the - Sergeant
518 Sullivan, told me, okay, we're going to do a compliance check.

519

520 Q: Okay.

521

522 A: So that's why the initial shot was done.

523

524 Q: A compliance. What is a compliance check?

525

526 A: I don't know.

527

528 Q: Okay. Have you ever been trained to conduct bean bag shots as a compliance
529 check?

530

531 A: No.

532

533 Q: No? Okay. So for this first shot to Marcus with the bean bag, do you believe
534 that to be an effective use of force?

535

536 A: Yes.

537

538 Q: So it had the desired effect you were looking for?

539

540 A: Yes.

541

542 Q: Okay. What was that effect you were looking for? My understanding is your -
543 he was given commands to come to you guys, right?
544

545 A: Mm-hm.
546

547 Q: And he wouldn't do that.
548

549 A: Mm-hm.
550

551 Q: And when you shot him, what did he do? He got shot with the bean bag the
552 first time, what did he do?
553

554 A: He went to the ground.
555

556 Q: He went to the ground. And from your memory, that's generally what happens
557 when people get hit with a bean bag, right?
558

559 A: Mm-hm.
560

561 Q: Okay. So were you trying to get him to the ground or were you trying to get
562 him back to you guys? Back to the...
563

564 A: I mean, eventually we were trying to get him back to us.
565

566 Q: So he...
567

568 A: But we...
569

570 Q: Okay. I'm sorry.
571

572 A: No. It's okay. Go ahead.
573

574 Q: Continue your answer - continue your answer. Okay. So what you wanted him
575 was to go to the ground then, when you guys first shot him during the
576 compliance check?
577

578 A: I mean, we were just trying to gain compliance.
579

580 Q: By getting him on the ground? Was he ever ordered to the ground?
581

582 A: No.
583

584 Q: Okay. Would you consider a test for compliance as a use of force?
585

586 A: Yes.

587

588 Q: So you also wrote in your report that you were ordered by a supervisor on
589 scene to shoot Marcus with a bean bag shotgun. Who gave you that order to
590 shoot him?

591

592 A: Sergeant Sullivan.

593

594 Q: Ultimately who's responsible for an officer's use of force, the officer using the
595 force or the supervisor?

596

597 A: The officer using the force.

598

599 Q: You started to describe it, well, just describe it in full, after that first time he
600 was shot with the bean bag, what did Marcus do? He was shot, what area was
601 impacted by the bean bag projectile?

602

603 A: His abdomen.

604

605 Q: Abdomen? Okay. And then what did he do?

606

607 A: He went to the ground.

608

609 Q: Okay. And did he do anything else, or did he just lay there, or did he say
610 anything? Do you remember?

611

612 A: He just was saying that he had been shot.

613

614 Q: Okay - okay. So after Marcus was shot the bean bag for the first time, did this
615 contingency plan that you guys were discussing or this tactical action plan, did
616 it change in any way? Because he just stayed on the ground, right?

617

618 A: Well, yes.

619

620 Q: Okay. So did it change in any way that you were aware of?

621

622 A: They - I know that they were talking about moving up to take him into
623 custody.

624

625 Q: Mm-hm.

626

627 A: But the firearm was still outstanding and there were still people inside the
628 house.

629

630 Q: Mm-hm.

631

632 A: So they still wanted him to come back to us so that we could be behind cover
633 and not go out of - you know, but - so the contingency plan was still to bring
634 him towards us. That was the plan.
635

636 Q: Okay. So are you saying - so did it change?
637

638 A: No. I don't think so.
639

640 Q: Okay - okay. And you say they, when you keep saying they, who are you
641 referring to? Like...
642

643 A: The supervisors and the team of - like, K-9 and supervisors.
644

645 Q: Okay. So Sullivan is who you're describing?
646

647 A: And the K-9 officers.
648

649 Q: Okay - okay. And then just to confirm, you shot Marcus with a bean bag for a
650 second time and the first police service dog was sent to bite Marcus. Is this
651 accurate?
652

653 A: Yes.
654

655 Q: Okay. What was Marcus doing prior to or as he was shot with the bean bag for
656 the second time and then the police dog was sent?
657

658 A: I think he was on the ground.
659

660 Q: He was on the ground. Okay. Where did this bean bag shot impact him?
661

662 A: I think in the shin.
663

664 Q: Was that where you were aiming for?
665

666 A: Yes.
667

668 Q: Okay. Now as you're - for the second shot and this first K-9 being sent, what
669 was he doing? Okay. You said he was on the ground. Sorry. I apologize. I
670 asked that question. So what was his resistance level at that point per the
671 SDPD use of force matrix?
672

673 A: I mean, he's still resisting coming back towards us. So actively resisting, not
674 following police commands.
675

676 Q: Okay. So when you fire this second shot, he's on the ground, you aim for his

677 shin. What were you trying to accomplish by shooting Marcus with the bean
678 bag shotgun at that point?
679

680 A: So K-9 had told me, in correspondence with K-9 being deployed, that we fire
681 bean bag. So that's what I was told by K-9. They said fire the bean bag,
682 and I'll send my K-9.
683

684 Q: Okay. This second bean bag shot, would you consider that an effective use of
685 force?
686

687 A: Yes.
688

689 Q: It had the effect you desired?
690

691 A: Yes.
692

693 Q: And what effect were you trying to have in firing the second shot?
694

695 A: I mean, the same, I guess, as the first shot. Trying - I mean, we're trying to get
696 him back towards us.
697

698 Q: Okay. What happened after the dog was sent to bite Marcus?
699

700 A: The dog didn't bite.
701

702 Q: Okay - okay. So after you shot with the bean bag for a second time and the
703 police dog doesn't bite, did the contingency or tactical action plan to
704 take Marcus in custody change at all?
705

706 A: They just said that they're going to get another dog and that we're going to do
707 pretty much the same thing with a different dog.
708

709 Q: Okay. Would you have considered that a change at all?
710

711 A: No.
712

713 Q: Okay. All right. And then just to confirm, you shot Marcus with a bean bag
714 for a third time and the second police service dog was sent to bite him. Is that
715 correct?
716

717 A: Yes.
718

719 Q: Okay. What was Marcus doing prior to as he was shot with the bean bag for
720 the second time, and the police service dog was sent to his location?
721

722 A: I think he was sitting.

723

724 Q: Sitting down?

725

726 A: Yeah.

727

728 Q: On the ground, on the retaining wall? Where was he at?

729

730 A: I think, on the retaining wall.

731

732 Q: Okay. What was Marcus' resistance level at that point per the SDPD use of
733 force procedures and the matrix as you fired that third shot?

734

735 A: I mean, he's still actively resisting.

736

737 Q: And what were you trying to accomplish by shooting him for the third time
738 with the bean bag shotgun?

739

740 A: I mean, the same thing, to take him into custody.

741

742 Q: Okay. Was shooting Marcus with a bean bag the third time an effective use of
743 force in your mind?

744

745 A: Yes.

746

747 Q: And had the effect you wanted? Okay. At any point during this, you said you
748 were concerned about Marcus having a firearm possibly concealed in his
749 waistband somewhere or in a - did you say pocket or not?

750

751 A: Yeah. Or a pocket. Yeah.

752

753 Q: Okay. Did you see him ever go into those pockets or reach for that area?

754

755 A: Well, he kept bringing his hands down and, like, when he was facing us...

756

757 Q: Mm-hm.

758

759 A: He would put his hands kind of behind his back in his rear waistband area and
760 move his hands, like keep dropping his hands down to his waistband.

761

762 Q: Is that when you fired the bean bag, when he would do that?

763

764 A: I don't remember.

765

766 Q: So when you saw him - so he was ordered to have his hands up, and you're

767 concerned about a weapon being concealed somewhere probably in his
768 waistband or pockets or behind.

769
770 A: Mm-hm.

771
772 Q: And he said he put his hands behind his waist.

773
774 A: Mm-hm.

775
776 Q: Did you hit him with a - did you shoot him with a bean bag at that point?

777
778 A: I don't remember.

779
780 Q: Okay. So during the three shots...

781
782 A: Mm-hm.

783
784 Q: ...that you fired, those three shots...

785
786 A: Mm-hm.

787
788 Q: Was he reaching for anything or reaching in his waistband area or pockets or
789 anything like that during those three shots?

790
791 A: I don't remember exactly.

792
793 Q: Okay - okay. So after the third shot and the second time the dog was sent, or a
794 different dog for a second dog deployment, did the police service dog
795 bite Marcus at that point?

796
797 A: Yes.

798
799 Q: Where on his body did he get bit?

800
801 A: His arm.

802
803 Q: Okay. And then your third bean bag shot, where on his body did that impact
804 him?

805
806 A: I think it was his arm.

807
808 Q: Okay. Was Marcus' race or ethnic heritage a factor in your decision to use
809 force on him?

810
811 A: No.

812
813 Q: Did you overhear any of the officers or supervisors on scene
814 reference Marcus' race or ethnic heritage as a reason for the use of force on
815 him?
816
817 A: No.
818
819 Q: Sir, do you have any points for clarification or follow-up questions at all?
820
821 A1: Well, when you mentioned the desired effect of using the bean bag, was part
822 of that to conduct a safe search?
823
824 A: Yeah.
825
826 A1: So that other officers on scene could conduct a safe search of him?
827
828 A: Yes.
829
830 A1: Did anyone ever conduct that search?
831
832 A: After he was taken into custody.
833
834 A1: Okay. So you needed to use the bean bags in order for officers to be able to
835 conduct a safe search in your opinion?
836
837 A: Yes.
838
839 A1: That's all I have.
840
841 Q: Okay. Officer Bennett, do you have anything to add that you believe could be
842 helpful for this complaint investigation at all?
843
844 A: No. Not that I think of.
845
846 Q: Okay. All right. In that case, I have a time, we'll call it 0631, and that'll
847 conclude our interview.
848
849
850 This transcript has been reviewed with the audio recording submitted and it is an accurate
851 transcription.
852 Signed _____



VIQ Solutions, Inc
East Thomas Road, Suite 2200 20
Phoenix, AZ 85012

CERTIFICATE OF ACCURACY

VIQ Solutions, Inc. certifies that the document produced from the audio file named **Officer_Flores_Interview_4c8bccc9-11f0-40cb-9340-238516dc6b00.MP3** submitted by **San Diego Police Department - Internal Affairs** on January 15, 2025 is a true, accurate and faithful representation to the best of the transcribers training and ability and no intentional changes or redactions have been made.

DATED: January 15, 2025

A handwritten signature in black ink, appearing to read "S. Flores", is written over a horizontal line.

VIQ Representative, SVP Client Experience

INTERVIEW WITH OFFICER JAVIER FLORES

Q=Sgt. Eric McCoole

A=Ofc. Javier Flores

A1=Det. Richard Page

Q: This is for IA Tracking Number 2024-0529. It's subject officer interview. This is Sergeant Eric McCoole, ID Number 6755. Toady's date is January 7, 2025 and the time is, we'll call it 0530. We're located in the Internal Affairs interview room at the San Diego Police Department's Headquarters. In the room with me is, sir, can you please state your name, rank, and ID number?

A: Javier Flores, ID Number 1041, PO2.

Q: Thank you. I advised you of your right to representation when we set the interview. In the room is your representative.

A1: Detective Richard Page, ID Number 6603, POA Rep.

Q: Okay. Thank you. Officer Flores, I'm going to read you a sworn subject admonishment. It's in front of you. Feel free to follow along if you'd like. This is a confidential sworn personnel investigation. You may be subject to discipline as a result of this confidential sworn personnel investigation should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time. The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The city is not questioning you for the purpose of bringing or substantiating any criminal charge against you. You are directed to answer all the questions posed to you completely truthfully to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline. If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this

administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline up to and including termination. Therefore any statement made by you during this confidential sworn personnel investigation compelled by the threat of discipline as well as any fruits of those statements cannot be used against you in any criminal proceeding. The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication and protecting witnesses from harassment, intimidation and retaliation. You are directed not to engage in any harassing, intimidating or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violations of these directives may result in discipline. Officer Flores, do you understand the instructions?

A: Yes.

Q: If you do, please sign your name below. Okay. I'll take that. Thanks. Okay. How long have you been a San Diego police officer?

A: 5 years

Q: And what is your current assignment?

A: Southeastern Patrol.

Q: Okay. What was your assignment for October 24, 2024?

A: Patrol.

Q: Okay. Same division?

A: Yes.

Q: So on that date at approximately 2330 hours, did you respond to the area of 6400 Duluth Ave?

A: Yes.

Q: And why did you respond to that location?

A: I responded because they requested additional officers for clearing the residence.

Q: Okay. Was there any more information that you knew about that was going on? What - why did this place need to be cleared? What was going on?

92 A: There was a 415 DV that occurred, and there was a weapon involved in that
93 call where the boyfriend pointed a firearm to the reporting party.
94

95 Q: Okay. And just for a lay person, what's a 415 DV?
96

97 A: A disturbance - domestic violence incident.
98

99 Q: Okay. And then just as we continue our interview, try not to use our jargon or
100 anything because...
101

102 A: Yes, sir.
103

104 Q: ...there are some people that review this that don't nearly or don't necessarily
105 know...
106

107 A: Okay.
108

109 Q: ...police officer lingo, if that makes sense. Right?
110

111 A: Yes, sir.
112

113 Q: Just if you could help me out with that. Okay. So once you eventually arrived
114 on scene did you learn any other additional information or have any more, I
115 guess, instructions given to you, anything of that nature?
116

117 A: When I arrived on scene, my instructions were to assist officers in clearing the
118 residence.
119

120 Q: Okay. And who gave you this task or role that you can recall?
121

122 A: One of the supervisor, I cannot recall his name.
123

124 Q: Okay. So this is a supervisor. Okay. Do you know anything about who was
125 arrestable at this location on Duluth, it was at [REDACTED] Duluth Ave. Do you know
126 anything about the suspect or anything like that?
127

128 A: When I arrived, the suspect was already in custody. I did not know...
129

130 Q: Okay.
131

132 A: ...his name.
133

134 Q: Okay. Did you know who the incident commander for this ordeal was?
135

136 A: Yes. It's the sergeant that also directed me to clear the residence. However, I

137 do not recall his name.

138

139 Q: Okay. Can you just describe them to the best of your abilities for me?

140

141 A: Tall, medium build, he was acting sergeant that night.

142

143 Q: Okay.

144

145 A: But again, I can't...

146

147 Q: Okay.

148

149 A: ...recall his name.

150

151 Q: So, is it fair to say you were not present when the occupants of the residence
152 exited...

153

154 A: I was not present.

155

156 Q: ...from Duluth? Okay. So, I'm going to go ahead and take out some of these
157 questions here. Did you witness anything to do with a (Marcus Evans) being
158 bitten by a police dog?

159

160 A: I did not witness that.

161

162 Q: Okay. So you said you assisted in clearing a house. Can you describe to me
163 what a clearing of the house is and what you did to clear this resident, [REDACTED]
164 Duluth?

165

166 A: Yes. Clearing of the house is - still hasn't been rendered safe. We don't know
167 if there's more occupants inside the residence. So my task was to go inside
168 with the other officers and just go room by room, directive clearing each room
169 and make sure there was nobody else inside.

170

171 Q: And what's the point of this search? Is this for evidence or just for safety? For
172 - what are we looking for in this search?

173

174 A: It's for officer safety.

175

176 Q: Okay. According to some BWC footage or body worn camera footage that
177 you recorded, after the suspect was in custody, you were eventually tasked
178 with accompanying an ([REDACTED]) inside [REDACTED] Duluth Avenue. Does
179 that sound accurate?

180

181 A: Yes, sir.

182
183 Q: Okay. Can you explain why you were needed to accompany ([REDACTED]) inside
184 of his own residence?
185
186 A: He needed to be [REDACTED].
187
188 Q: Okay.
189
190 A: So I was tasked to go inside with him and stand by with him pending further
191 investigation on the case.
192
193 Q: Do you know why someone needed to stand by with him? Was there anything
194 else going on that wasn't already determined?
195
196 A: From my understanding we're waiting for detectives to possibly respond to the
197 residents.
198
199 Q: Okay. And then how long - how much time had elapsed from the time that
200 you got there? You said you got there. Everyone had been out of the house. Is
201 that accurate?
202
203 A: Yes, sir.
204
205 Q: Okay. And then how much time had elapsed from the time you got there that
206 you went back in with ([REDACTED])? If you could just at least estimate for
207 me?
208
209 A: Less than - from when the call came out?
210
211 Q: No - no - no. From when you got there. You said when you got there,
212 everyone was there.
213
214 A: Okay.
215
216 Q: And then...
217
218 A: After the clearing of the residence, maybe possibly 30 minutes.
219
220 Q: That you were tasked with going back inside with ([REDACTED])?
221
222 A: Yes.
223
224 Q: Okay. So once inside, we'll call it the second time, if that sounds accurate?
225
226 A: Yes.

227
228 Q: Okay. Once inside the residence, the second time with () this time.
229 Did you conduct any searches at that time?
230
231 A: I conducted a weapons pat down and - of the couch where he was going to be
232 sitting. That he's ().
233
234 Q: Okay. And what was the purpose of that?
235
236 A: Just the nature of the call, there was a weapon involved. There was no
237 weapon at the time found yet, so there was still a possibility that it was inside
238 the residence. Just wanted to make sure where he was sitting, it was going to
239 be safe.
240
241 Q: And did you have - can you describe to me the legal authority to conduct that
242 search? Was it probable cause? Was it consent? Was it - describe to me...
243
244 A: It's...
245
246 Q: Yeah.
247
248 A: It's probable cause due to the fact that there was a suspect in custody
249 regarding a domestic violence incident where there was a gun involved.
250
251 Q: Did you ask () for his permission to search that area?
252
253 A: I did.
254
255 Q: And what - did he give you his permission?
256
257 A: Yes. He did.
258
259 Q: Okay. Well, how long were you on scene total, if you had to guess, when you
260 count from getting there to the time where it's all done?
261
262 A: 45 minutes approximately.
263
264 Q: About 45 minutes?
265
266 A: Yeah.
267
268 Q: Okay. So in that 45 minutes, did you witness or overhear any of the officers or
269 the incident commander reference (Marcus Evans) or any of the residents' race
270 as a part of the reason for the arrest or use of force. Anything like that?
271

272 A: No.

273

274 Q: Okay. My last question is, during the second, we'll call it second entry into the
275 residence on Duluth, did you - about how long were you in there if you can
276 remember?

277

278 A: Less than 5 minutes.

279

280 Q: Okay. All right. I don't have any further questions. Detective Page, do you
281 have any points of clarification?

282

283 A1: Yeah. Just quickly. The couch that you're going to have the gentleman sit on
284 so he could [REDACTED], had that couch been cleared up until this
285 point? Had anyone checked it for weapons?

286

287 A: No.

288

289 A1: Was this couch clean, was it neat, orderly, or were there a bunch of stuff on
290 the couch?

291

292 A: There was a lot of stuff on it, it was not neat.

293

294 A1: Okay. And in your training experience, can weapons or are weapons hidden in
295 couch cushions, underneath things on couches, things of that nature?

296

297 A: Yes.

298

299 A1: Okay. That's all.

300

301 Q: Okay. Officer Flores, do you have anything to add that you think could be
302 helpful for this complaint investigation?

303

304 A: I do not.

305

306 Q: Okay. I have a time of 0544, and we'll conclude our interview. All right. Let
307 me rephrase that time, 05, we'll call it 42.

308

309

310 This transcript has been reviewed with the audio recording submitted and it is an accurate
311 transcription.

312 Signed _____



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Phoenix, AZ 85012

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DATED: January 12, 2025

A handwritten signature in black ink, appearing to read "S. Nelson", is written over a horizontal line.

VIQ Representative, SVP Client Experience

INTERVIEW WITH OFFICER ROBERT NELSON

Q=Sgt. Eric McCoole

Q1=Sgt. Jesus Sanchez

A=Ofc. Robert Nelson

A1=Atty. Rico Dominguez

Q: This is for IA Tracking Number 2024-0529, a subject officer interview. It's Sergeant Eric McCoole, ID Number 6755. Today's date is January 8, 2025. And the time is 0506 hours. We are located in the Internal Affairs interview room at the San Diego Police Department's headquarters. In the room with me is - sir, can you please state your name, rank and ID number?

A: Robert Nelson, PO2, ID 7443.

Q: Thank you. I advise you of your right to representation when we set the interview. In the room is your representative...

A1: POA Attorney Rico Dominguez.

Q: Thank you. Also present with us is...

Q1: Detective Sergeant Sanchez, Internal Affairs, ID Number 5560.

Q: Thank you. Officer Nelson, I'm going to read you a sworn personnel admonishment. It's in front of you, so feel free to follow along if you'd like. This is a confidential sworn personnel investigation. You may be subject to discipline as a result of this confidential sworn personnel investigation should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time. The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The city is not questioning for the purpose of bringing your substantiating and criminal charge against you. You are directed to answer all the questions posed to you completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline. If information indicates

that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline up to and including termination. Therefore, any statement made by you during this confidential sworn personnel investigation compelled by the threat of discipline, as well as any truths of those statements cannot be used against you in any criminal proceeding. The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline. Officer Nelson, do you understand the instructions?

A: I do.

Q: If you fully understand the instructions, please sign your name below. Thank you. Let me take that. How long have you been a San Diego police officer?

A: About 9 years.

Q: Okay. And what is your current assignment?

A: PO2, K-9 Handler, Special Operations Unit.

Q: Can you describe to me the qualifications and training required in order to be a K-9 Handler for the San Diego Police Department?

A: Minimum standards to apply, and then went through the K-9 Academy which is about 10 to 12 weeks, including a field training phase.

Q: And what kind of topics and training guides did you go through during that academy?

A: Go through basic dog handling courses, obedience and teaching the dog different commands. And then we also review tactics that we use as part of the unit out in the field.

Q: Anything about the application of the K-9 as a use of force in that academy?

92 A: Yes.

93

94 Q: Okay. Such as what kind of - can you just walk me through that a little bit,
95 just - so we have an understanding of how you were trained as a K-9 handler?

96

97 A: We go through different training for the different scenarios that we would use
98 a dog building, clearing, critical response teams, de-escalation
99 tactics, searching open areas, vehicles.

100

101 Q: Okay. Can you describe to me some of the considerations that a K-9 handler
102 must consider before deploying their police service dog? And I'll just start
103 using PSD from this point forward.

104

105 A: We go through - we use Graham versus Connor, a three-prong test as outlined
106 in that case law, the severity of the crime, the immediacy of the threat, and is
107 the subject actively resisting. Longly, we have six reasons that we use to
108 deploy police dogs in the operations manual.

109

110 Q: Any other requirements set forth in SDPD's procedures or the K-9 unit
111 procedures required for a handler to use a police service dog to apprehend a
112 subject?

113

114 A: I'm sorry. Can you repeat that?

115

116 Q: Are there any other requirements set forth in our procedures?

117

118 A: As long as it meets the three-prong test, the six reasons for deployment within
119 our policy, so exactly resisting and -- I'm sorry. You (unintelligible) the
120 question a little bit.

121

122 Q: Okay. So...

123

124 A: What other reasons are you looking for?

125

126 Q: So there's several, I guess, instances that at least I'm aware of from our
127 procedures. And I just want to make sure that we have the baseline
128 understanding. There's - I can name a couple maybe to get the ball
129 rolling for you to...

130

131 A: No. The six reasons...

132

133 Q: Yeah.

134

135 A: ...is what you're asking?

136

137 Q: Yes.
138

139 A: Yeah. So the six reasons I'm referencing to use acronyms at CDF, the safety
140 of the officer, or other officers in the handler. You have to apprehend
141 dangerous or violent criminals, concealed felons, subjects are actively
142 resisting with immediate access or believe to be possessing a
143 weapon, detection of narcotics and fleeing felons.
144

145 Q: Okay. Thank you. Before this incident have you ever been trained or done
146 training with works with the - by SDPD that uses the extended-range impact
147 weapon? So like the beanbag shotgun, I'll call it that from here on out. So
148 have you either been trained to use that or been in training where that's
149 utilized?
150

151 A: I got my initial training in our post regional academy with the beanbag
152 shotgun and with a 40 millimeter KEW. And then I've been current with the
153 beanbag KEW. We stopped training at the 40 millimeter, so that's why we
154 don't have it.
155

156 Q: And just for, like, a layperson, what's a KEW?
157

158 A: Kinetic Energy Weapon is a new term that we use.
159

160 Q: Okay - okay. So according to your training, SDPD use of force policies, what
161 level of resistance should a suspect be displaying in order to shoot a suspect
162 with that weapon system, that KEW as you call it?
163

164 A: KEW falls under a greater controlling force for active resistance that person
165 believed to be armed, immediate access, possessed with a deadly weapon.
166

167 Q: You would consider that, like, the lowest threshold?
168

169 A: That's where it matches up on the matrix.
170

171 Q: Okay. Before this incident, have you ever impacted a person with that weapon
172 system?
173

174 A: I have.
175

176 Q: Okay. How many times have you shot someone with this weapon
177 system? Estimation?
178

179 A: How many different instances where I've used it?
180

181 Q: Mm-hm. It can be approximation. It's fine.

182

183 A: I think two.

184

185 Q: Two. A couple times? Okay. To the best of your memory, what happened
186 when that person was actually impacted with the projectile?

187

188 A: On one occasion, the person ultimately surrendered. So the compliance test
189 was effective. And then the second one, it prevented the person from
190 aggressing towards us. And then he retreated to a yard and we were able to
191 take him into custody using other means.

192

193 Q: Okay. So what - my question is from the best of your memory from that -
194 from those instance you're describing, what did this - what did the person
195 physically do when they were impacted?

196

197 A: Well, the first suspect fell to the ground...

198

199 Q: Okay.

200

201 A: ...and remained on the ground.

202

203 Q: Okay.

204

205 A: The second suspect just stopped walking...

206

207 Q: Okay.

208

209 A: ...and then retreated back into a yard.

210

211 Q: Okay. Perfect. Thank you. That was what I was looking for. All right. Let's
212 get into October 24, 2024. What was your assignment on that day?

213

214 A: Patrol general service K-9 handler.

215

216 Q: Okay. So on that day, I'm going to say approximately 2330 hours, did you
217 respond to the area of 6400 Duluth Avenue?

218

219 A: Yes.

220

221 Q: Why did you respond to that location?

222

223 A: It was a radio call for assault with a deadly weapon.

224

225 Q: Okay. Oh, do you know what the deadly weapon was?

226

227 A: Firearm.
228
229 Q: Okay. Did you know that at the time going there, or did you learn that as you
230 got there?
231
232 A: That was what was dispatched.
233
234 Q: Okay. Did you learn any more information as you're responding to the call?
235
236 A: As I'm responding to the call?
237
238 Q: Yeah.
239
240 A: My sergeant got there first.
241
242 Q: Okay.
243
244 A: And I just responded to his location as fast as I could.
245
246 Q: Okay. Once you arrived on scene, did you learn any more information or
247 gather any more intelligence regarding this call for service?
248
249 A: Before moving into the location?
250
251 Q: Yeah. I'm saying once you got on scene, it looks, like, from cameras and
252 everything, you guys staged initially, right? Why don't you walk me through
253 that process?
254
255 A: Yeah. We were staged on Skyline, so to the north of the location for close to
256 an hour.
257
258 Q: Okay.
259
260 A: During that time, the victims drove out to our location and made contact with
261 southeastern patrol. I remained up at the front of the stick and at - during that
262 time learned there was probable cause of arrest, the suspect for assault with a
263 firearm on multiple persons.
264
265 Q: Okay. And is that (Marcus Evans) is what the suspect?
266
267 A: Correct.
268
269 Q: Okay. Learn anything else about (Marcus Evans)?
270
271 A: I was able to view a prior booking photo of him along with - I was informed

272 he had criminal history including violent felonies.

273

274 Q: Okay. And then what criminal offenses was he arrestable for - for this
275 incident?

276

277 A: Assault with a deadly weapon firearm.

278

279 Q: Okay. All right. So once you guys go to the scene of the crime, I guess this is
280 basically [REDACTED] Duluth, where did you go? Describe to me that process.

281

282 A: So I was the lead car put a ballistic shield on my windshield, drove
283 down. (Abel) viewed what they believed to be Mr. (Evans) going to and from
284 a garage on the property. They called out that he was in the process of going
285 from the garage to the residence and told us to move in. So I drove in. At that
286 point I saw him basically go into the doorway to the main residence and slam
287 the door shut.

288

289 Q: Okay. So did you guys already have a plan in place on how you were going to
290 take the suspect into custody before you drove in, or - or was it just, "Hey, we
291 got to go quick?"

292

293 A: No. The...

294

295 Q: Can you walk me through that?

296

297 A: The plan that we had come up with was that we were going to set up our
298 patrol vehicles, my car lead with the ballistic shield for cover, and then we
299 were going to do a containment call out. So we were going to roll up to the
300 location, set up our Critical Response Team, our CRT team and use PA to call
301 the residents out including Mr. (Evans).

302

303 Q: Okay. And can you briefly describe to me what a Critical Response Team is?

304

305 A: It's a name that we've given to a contact team. Basically encompasses our de-
306 escalation tactics including less lethal. So myself as a K-9 handler, we have
307 kinetic energy weapon which was a beanbag shotgun, we had lethal coverage
308 in the form of a long rifle, and then we had multiple officers for our hands
309 team.

310

311 Q: Was there an incident commander designated for this, do you know?

312

313 A: I believe it was the southeastern Sergeant Sullivan.

314

315 Q: Okay. And to the best of your recollection, was he providing direction and
316 giving this kind of - this plan - his - for lack of a better term, sign off? Was he

317 - did he come up with the plan? Did you guys consult for the plan? How did
318 that come about?

319
320 A: At what point?

321
322 Q: Before you - or at, like, right before you guys go in there to go arrest him.

323
324 A: It just got conveyed to me that we were going to go up and do the contained
325 call-out. We've done it so many times that it didn't need to be conveyed from a
326 specific source.

327
328 Q: Okay - okay. So you described hearing or being informed by the helicopter
329 that. Did they say it was the suspect or just a person was running around the
330 property or from the garage or something like that? Do you remember?

331
332 A: Based on the clothing description, which was no shirt, basketball shorts, they -
333 that's what they described.

334
335 Q: Okay.

336
337 A: So they believed inherently that that was the suspect.

338
339 Q: And that's when - that's - as you're driving to the - or driving from the staging
340 location to the residence on Duluth?

341
342 A: He had made that movement a couple of times prior. And then they called out
343 that he's going from the garage to the residence. And that's when the decision
344 was we were going to move forward...

345
346 Q: Okay.

347
348 A: ...up to the residence.

349
350 Q: Okay. What was the ultimate mission given to the K-9 team for this incident?

351
352 A: My mission?

353
354 Q: Yeah.

355
356 A: My mission was just there as a deterrent. Hopefully that just the mere
357 presence of the PSD, the barking and the commands would gain compliance.

358
359 Q: Okay - okay. So you get to in front of [REDACTED] Duluth, were there, you know,
360 officer safety concerns at that time?

361

362 A: Yes.

363

364 Q: Can you describe what they were, please?

365

366 A: The actual residence itself, it's built up onto a hill. So the front door was
367 at elevated position. There was the separated, detached garage that was -
368 wasn't very visible from my location along with the parked car in the
369 driveway.

370

371 Q: Was there any types of barriers that was around the residence as well?

372

373 A: The walkway coming down from the residence, that was elevated. There was
374 a retaining wall that ran along to the west of the driveway.

375

376 Q: And were you able to see what was behind that retaining wall?

377

378 A: No.

379

380 Q: Okay. If you help me out, sir...

381

382 A: Yeah.

383

384 Q: ...just - I'll give you plenty of time at the end to do any sort of follow-up or
385 any sort of clarification. It just kind of throws me off a little bit.

386

387 A1: I'll - I'm going to - respectfully, I'll ask my questions when I feel necessary. I
388 felt like that question was important. But I'll defer to you...

389

390 Q: Okay. Sure. Yeah.

391

392 A1: ...if I can. Yeah.

393

394 Q: Thank you.

395

396 A1: Yeah.

397

398 Q: Is it there - I agree that there's a lot to go over in this.

399

400 A: Absolutely.

401

402 Q: But, okay - okay. I'm just concerned. Okay. So you said the plan was to start
403 with some PA announcements and things of that nature, right, to call people
404 out of the residence, I'm assuming. Is that accurate?

405

406 A: Correct.

407

408 Q: Okay. So walk me through what happened when that - once you start doing
409 these PA announcements or announcements into the residence.

410

411 A: So I deployed my PSD on lead. We didn't use the PA. I gave verbal
412 commands.

413

414 Q: Okay. And what kind of commands were those?

415

416 A: I identified myself San Diego police, called out to the residents inside of the
417 location, called out specifically to (Evans) and told him to come out, and
418 essentially told him to come out unarmed. If he were to come out armed or
419 flee, police dog would be used or he could be shot.

420

421 Q: Okay. Did any occupants exit the residence?

422

423 A: Yes.

424

425 Q: As occupants are exiting the residence for this particular - you described what
426 a CRT team is. For this particular CRT team, what resources did you guys
427 have?

428

429 A: On the driver side of my vehicle 'cause that was a vehicle we were working
430 off of.

431

432 Q: Mm-hm.

433

434 A: It was myself, my partner, my PSD. I had a lethal cover with a long rifle. On
435 the passenger side there was a beanbag kinetic energy weapon and then a
436 hands team behind the vehicle.

437

438 Q: Okay. So you said occupants at least start coming out one at a time. Is that
439 accurate?

440

441 A: Initially.

442

443 Q: Okay. So what happened when the first occupant exited?

444

445 A: So the first occupant came out, he was actually - he was a African-American
446 male with no shirt in basketball shorts. So he - but he complied, came
447 down, verified with the officers there that he wasn't the suspect, conducted a
448 hot stop. So directed him to keep his hands above his head.

449

450 Q: Okay. And then did more people start coming out?

451

452 A: Correct.
453
454 Q: Okay. And were they the suspect? The next person that came out, the second
455 person we'll say?
456
457 A: No.
458
459 Q: Okay. What about the third person that came out? Was that the suspect?
460
461 A: No.
462
463 Q: Okay. What about the fourth person that came out?
464
465 A: The fourth person was Mr. (Evans).
466
467 Q: Okay. And can you describe the clothing that (Marcus Evans) was wearing at
468 that time?
469
470 A: Basketball shorts, no shirt and no shoes.
471
472 Q: Okay. Did you believe it was reasonable that he was concealing a weapon or
473 had immediate access to weapon?
474
475 A: Yes.
476
477 Q: Why is that?
478
479 A: He hadn't been pat down. I don't know what was concealed inside his shorts.
480 Or my concern at that point then was the surrounding areas, the retaining wall,
481 what was behind the retaining wall, what was in the wheel well, the vehicle,
482 or anything else that was on that property where he was at.
483
484 Q: Could you see a weapon tucked in anywhere or any bulges or anything of that
485 nature from his shorts?
486
487 A: No.
488
489 Q: Okay. Were commands given to (Marcus) as he exited the residence?
490
491 A: Yes.
492
493 Q: Okay. What commands were you giving him at that time?
494
495 A: Just as this first three gave him commands to come down the stairway from
496 the front door.

497

498 Q: Did he comply with that command?

499

500 A: He did.

501

502 Q: Okay. And then?

503

504 A: To keep his hands above his head.

505

506 Q: Did he comply with that command?

507

508 A: Yes.

509

510 Q: Okay. And so he walks down the stair with his hands above his head. What
511 was the next commands given to him?

512

513 A: It was to turn around and face away from me.

514

515 Q: And who was providing these commands?

516

517 A: I was at that point.

518

519 Q: Okay. Did he comply with that command?

520

521 A: No.

522

523 Q: Okay. What did he do instead of turning around and facing away from you?

524

525 A: He began stating that he wasn't going to do that to the effect that he was at his
526 house and he didn't need to.

527

528 Q: Okay. Did he remain, I guess, at the bottom of the stairwell at this point?

529

530 A: Correct.

531

532 Q: Okay. Was his - did he keep his hands up, or what was he doing with his
533 hands at that point?

534

535 A: He would bring down to, like, chest level but generally they were visible.

536

537 Q: Okay. And you kind of described him saying that he - him saying something
538 to the effect of, "He's - why are you at my house?" Or something like that?
539 Or, "You're at my house," something of that nature, is that accurate?

540

541 A: Yes.

542

543 Q: Okay. Was he saying anything else?

544

545 A: He was stating that he wasn't going to come out to us. He wasn't going to...

546

547 Q: Did you call him to you?

548

549 A: Multiple times.

550

551 Q: Okay. Why did you want him to come to you?

552

553 A: I explained to him that he was detained. I explained that there was a felony
554 offense with a firearm. I believed he was armed and dangerous. And I gave
555 him additional warnings that force would be used against him if he didn't
556 comply.

557

558 Q: Okay. So when he's at the bottom of the stairs and he's not coming to you as
559 you requested or turning around as you requested, what's his resistance level
560 at that point?

561

562 A: It's active resistance.

563

564 Q: And why do you say that?

565

566 A: Because he's verbally giving me signals that he's not willing to comply along
567 with his actions.

568

569 Q: As this is occurring, did (Marcus) ever reach his hands towards the areas that
570 you suspected that he was hiding a weapon?

571

572 A: He walked over to the retaining wall and sat down on the retaining wall and
573 lowered his hands towards his chest.

574

575 Q: Okay. How many times did he do that?

576

577 A: He went over to the retaining wall one time, I think.

578

579 Q: Did he, like, pace back and forth or did he remain there? How did that go?

580

581 A: When he walked over and sat on the wall, that's when he was impacted with
582 the first kinetic energy weapon.

583

584 Q: Okay. Before that - being shot or impacted with that, did you assist or
585 overhear any changes in the contingency plans or tactical plans to
586 take (Marcus) into custody at this point?

587
588 A: I was separated from the planning. I was essentially the contact officer for that
589 entire part of the...
590
591 Q: Okay. So did they relay any sort of changes to you that you remember
592 since this - he wasn't following your commands to come to you, right? So was
593 there any sort of changes in any plans that you guys were going to be doing at
594 that point?
595
596 A: Not that I recall.
597
598 Q: Okay. You mentioned giving (Marcus) orders to turn around and face away
599 from you. How many times did you - do you think you ordered him to do
600 that?
601
602 A: I could - I don't - off the top of my head, I don't know the numbers, but I
603 talked to him for 10 minutes at least, just trying to get that stuff.
604
605 Q: More than once?
606
607 A: More than once.
608
609 Q: Okay. Did he ever turn around?
610
611 A: Not that I recall from, like, my personal memory.
612
613 Q: Okay. You watched your camera before this?
614
615 A: I did.
616
617 Q: Did you see him turn around in your camera?
618
619 A: I did.
620
621 Q: Okay. I guess - so let me ask you this. From your memory or from what you're
622 seeing when this is going on, do you remember seeing the rear of his
623 waistline? The back of his waistline?
624
625 A: Directly from my memory, no.
626
627 Q: Okay. From the camera, could you see the rear of his waistline, having
628 reviewed it before this interview?
629
630 A: Correct.
631

632 Q: Okay. Did it appear that he had something concealed in the rear of his
633 waistline at that time?
634

635 A: Not from my...
636

637 Q: From the - yeah, from the camera.
638

639 A: From my BWC that I reviewed, I could not see anything on that.
640

641 Q: Okay. It's my understanding, again, from the camera footage and kind of what
642 you're saying here, you gave (Marcus) to - commands to turn around and walk
643 back towards you. Is that accurate? That's - is that what you wanted him to
644 ultimately do?
645

646 A: Yes.
647

648 Q: And to take him into custody?
649

650 A: Correct.
651

652 Q: Okay - okay. So, again, according to your BWC footage, you stated
653 that (Marcus) should be impacted with a beanbag shotgun as a test for
654 compliance. Is that accurate?
655

656 A: I suggested we could use the KEW to test compliance.
657

658 Q: Okay. What is a test for compliance?
659

660 A: It's a form of de-escalation, a tactic that we could use. It's a single impact with
661 the intent that one single impact will actually gain compliance through the
662 pain of the impact...
663

664 Q: Okay.
665

666 A: ...and ultimately get him to surrender.
667

668 Q: Do - in your K-9 or any sort of advanced officer training, do you guys train
669 this test for compliance as a use of force?
670

671 A: We do.
672

673 Q: Okay. And is that with K-9, with your K-9 training? Is that accurate?
674

675 A: We do.
676

677 Q: When is that technique, this test for compliance generally - when is it
678 appropriate or how long do you let something go before you need to do a test
679 for compliance?
680

681 A: I - it depends on each situation.
682

683 Q: Okay. For this particular situation, why do you think that was the best course
684 of action? Or why were you suggesting that?
685

686 A: Because I had other concerns with what was happening inside the residence.
687

688 Q: Okay. What were those concerns?
689

690 A: Mr. (Evans) started calling out to other people inside and another male
691 actually opened the door. So now I have a residence at an elevated position,
692 unknown how many people are inside, the firearm still outstanding. It creates
693 an exigency or a heightened danger to the entire incident.
694

695 Q: Okay. So again, this is kind of according to your camera footage. About a
696 minute after you suggested a test for compliance, you said, "Hey, let's impact
697 for compliance." Who were you speaking to when you said that?
698

699 A: I said - okay. I don't recall saying let's impact.
700

701 Q: Yeah. Well, it's on the camera. But you said, "Hey, let's impact for
702 compliance." This is about a minute after you suggest it. And he does a turn
703 and he sits back down on the wall. And you say, "Hey, let's impact for
704 compliance."
705

706 A1: And if you don't recall that, can we see the video footage?
707

708 Q: We can. Yeah. We'll have to take a little pause, but...
709

710 A1: Yeah.
711

712 Q: ...um...
713

714 A1: Let's do that then.
715

716 Q: All right. So I got a time of 0532. We'll pause. Okay. We just took about a 3-
717 minute pause or so. We're back on the record for Case Number 2024 - let's see
718 what I got here, 0529. I have a time of 0534 hours. Okay. So we're going to
719 show a portion of the video as requested. So this isn't described for the record,
720 this is right after when (Marcus) turns around and then sits back on a
721 wall. Okay. If you can hear that.

722

723 ((RECORDING))

724

725 A: Keep your hands up. Hey, let's impact for compliance.

726

727 ((END RECORDING))

728

729 Q: So that's what I was referencing that.

730

731 A: Yeah.

732

733 Q: "Hey, let's impact for compliance," when I asked that question. So I'll repose
734 the question.

735

736 A: Okay.

737

738 Q: Where was this? Okay. So when you stated, "Hey, let's impact for
739 compliance," who were you speaking to precisely?

740

741 A: In general, the contact team.

742

743 Q: The contact? So is that the person firing the weapon system or...

744

745 A: Um...

746

747 Q: ...or, yeah. I'll let you answer.

748

749 A: I - I'm sorry. I didn't mean to cut you off.

750

751 Q: Yeah. No. That's okay. It's okay. Was it the person firing the weapon system?

752

753 A: The entire contact team.

754

755 Q: Okay. So that's like leadership and everything?

756

757 A: Correct.

758

759 Q: Okay - okay. So do you want to see the video that shows he was impacted or
760 is everybody under agreement he was impacted approximately 10 seconds
761 later?

762

763 A: Correct.

764

765 Q: Okay. I'm just going to shut this down for right now. Okay - okay. So
766 approximately 10 seconds later, (Marcus) was then shot with the projectile

767 from the beanbag shotgun. Was that what you were suggesting or wanted
768 when you stated, "Hey, let's impact for compliance?"

769
770 A: Yes.

771
772 Q: Okay. What did (Marcus) do after he was shot with the beanbag? What did he
773 do?

774
775 A: Fell down to the ground laying on his stomach with his head facing the
776 residence.

777
778 Q: Okay. I probably should have asked this question first, so I apologize for
779 that. But what was he doing - just prior to being impacted with this and/or as
780 the decision or as he's hit with this, what was he doing? What was his
781 resistance level?

782
783 A: Still active resistance and had walked over to the retaining wall and sat down
784 on the retaining wall and then lowered his arms towards the chest crossing
785 him.

786
787 Q: Okay. And where on his body did this projectile impact him?

788
789 A: I believe the first one was on his torso.

790
791 Q: Okay. Do you think (Marcus) being impacted with that beanbag at that point
792 was an effective use of force, an effective use of the test for compliance?

793
794 A: Yes.

795
796 Q: Okay. So it had the effect that you desired when making the suggestion?

797
798 A: Initially when he fell down to the ground and was in that essentially fetal
799 position, I believe that ultimately it would cause him to surrender.

800
801 Q: Okay. How would putting someone on the ground get him to come back to
802 you? Because you said the goal was to get him back to you. But in your
803 experience with this weapon system, people go to the ground or they retreat.
804 Don't you want them to come back to you?

805
806 A: Correct.

807
808 Q: Okay. But how is putting somebody on the ground with this weapon system
809 going to get them back to you?

810
811 A: The impact of the kinetic energy weapon and the inherent pain that it

812 causes, it's the intent that, okay, now we're testing for compliance that once
813 we've used that level of force on him, yes, he fell to the ground, but
814 ultimately, hopefully, that pain and that force that was used causes him to then
815 now stop actively resisting, to comply with commands, stand back up, and
816 walk back to the contact team.

817
818 A1: And real quick. Is someone able to also crawl to you after they've been hit
819 with a beanbag gun?

820
821 A: Yes.

822
823 A1: And were those commands given after he was hit with a beanbag gun by other
824 individuals? Was he told to crawl back?

825
826 A: Yes.

827
828 A1: Okay.

829
830 Q: Okay. So we're all in agreement. He went to the ground, kind of looks like
831 almost on his hands and knees or maybe, like, a fetal position of some sort. Is
832 that accurate?

833
834 A: Yes.

835
836 Q: Okay. What - do you know why the team didn't move up? Or did you have
837 concerns of the team moving up and taking (Marcus) into custody at that
838 point?

839
840 A: My concern was still what was around him, the wheel well of the vehicle, and
841 then concern with who was still in the residence and what was above with us
842 walking up onto the driveway.

843
844 Q: Okay. Did the urgency of this situation change due to his actions?

845
846 A: Due to his actions?

847
848 Q: Yeah.

849
850 A: Can you...

851
852 Q: So what you're saying, he's actively resistant. Basically, you said you try to
853 speak with him for about 10 minutes before this impact happened. Did the
854 urgency change in any way?

855
856 A: At what point?

857

858 Q: When he's impacted with this.

859

860 A: Well, the urgency changes once he's impacted because it states when we use
861 impact weapons, then we should use any means we can to try and get him into
862 custody sooner for that medical attention in no direct words. But that's it - how
863 it outlines. Like, once we use it, we need to get him to medical attention. So
864 that creates a level of urgency to get him into custody.

865

866 Q: Okay - okay. So once he's impacted, he's now on the ground and he's
867 eventually given commands to crawl to you. What happens? Does he crawl?
868 Does he get up and stand and come back to you?

869

870 A: No. He actually turns his body, goes back into a sitting position and you could
871 essentially see it on his face. The effect of it just went away, and he was back
872 to essentially where we started.

873

874 Q: Okay. So sitting up on the wall, is that what he's doing? When you say what
875 he started - it's my understanding he's kind of sitting on the ground, almost
876 like cross-legged. Does that sound accurate?

877

878 A: Yeah. Sitting on - I think it's like a step...

879

880 Q: Okay.

881

882 A: ...that's right there.

883

884 Q: Okay. From your perspective, or did this - did the contingency plans change
885 or did the tactics change in order to take (Marcus) into custody at this point?

886

887 A: My tactic changed that I had to move over to the passenger side to get a better
888 field of view of him because when he fell, I lost visual behind, like, the hedges
889 in the parked car that was there.

890

891 Q: Okay.

892

893 A: So I moved over and swapped sides.

894

895 Q: Okay. And was there any - again, was there any change to like, "Okay. Well
896 this test for compliance didn't work. We're going to do something else." Did
897 that happen?

898

899 A: At that point, I believe, I don't know what was discussed...

900

901 Q: Yeah.

902
903 A: ...behind me.
904
905 Q: That's okay. You don't have to speak to what other people...
906
907 A: Yeah. I mean...
908
909 Q: ...unless you overheard it. But...
910
911 A: No. I didn't overhear anything. I'm still giving commands. And then when I
912 moved to that pastor's side, other officers tried giving commands. Hopefully,
913 they got a different effect.
914
915 Q: Okay. So, (Marcus) - for another 6 minutes or so, according to the
916 camera, (Marcus) is on the ground, whether he's kind of laying down or sitting
917 up on the step, like you described, but 6 minutes into that, he was shot with a
918 beanbag for a second time. And the - this is the first time a PSD was sent to
919 him, does that sound correct to you?
920
921 A: Well, just before that, he actually made a movement like he was going
922 to stand up.
923
924 Q: Okay.
925
926 A: He, like, pushes his legs up.
927
928 Q: Okay.
929
930 A: And his butt comes up off the ground...
931
932 Q: Okay.
933
934 A: ...which to me was a sign that, okay. Is he going to stand up and flee or stand
935 up and go and retrieve a weapon?
936
937 Q: Okay.
938
939 A: So that created an urgency for me.
940
941 Q: Okay. So from what you saw, where did the beanbag projectile impact for
942 (Marcus) on that second shot?
943
944 A: Like that one was on his shin.
945
946 Q: Okay. And what was his resistance level at that point when - as he's - either

947 right before as he's being impacted?
948
949 A: Active resistance.
950
951 Q: And for a lack of a better term you sent the dog to go by (Marcus) at that -
952 right after him being impacted. Is that accurate?
953
954 A: Yeah. We - we deploy our PSDs to apprehend him.
955
956 Q: Okay. To apprehend him. Perfect. Thanks. Okay. How do they generally
957 apprehend people when they're sent?
958
959 A: We refer to like a line of sight 'cause we can see him and then the dog goes in
960 and bites and holds...
961
962 Q: Okay.
963
964 A: ...on the suspect.
965
966 Q: And did you - you intended to send the dog? He didn't like - the leash didn't
967 get out of your hand or anything like that at that point?
968
969 A: No.
970
971 Q: Okay. So yes, you intended to send the dog?
972
973 A: Yes, I intended to send the dog. No, I didn't just drop the leash.
974
975 Q: Gotcha. Okay. The PSD did not bite (Marcus) or apprehend him. Is that
976 accurate?
977
978 A: The - per our K-9 manual...
979
980 Q: Okay.
981
982 A: ...and everything, the dog put his mouth around his arm, but didn't bite and
983 hold.
984
985 Q: I see.
986
987 A: So...
988
989 Q: That was hard to tell from the camera, but okay.
990
991 A: From my understanding of our manual...

992

993 Q: Okay.

994

995 A: ...it's considered a bite...

996

997 Q: Okay.

998

999 A: ...as you write paper, but it was not a successful apprehension and that he did
1000 not bite and hold and control Mr. (Evans).

1001

1002 Q: Do you know why that didn't happen? Was there any - is there any
1003 explanation for that?

1004

1005 A1: And I'm going to - real quick, I'm just going to object the question. This calls
1006 for speculation as to the dog's mindset, but...

1007

1008 Q: Well, I'm not asking for the dog's mindset, I'm asking in the injury...

1009

1010 A1: You're asking why didn't the dog apprehend him?

1011

1012 Q: Well, I'm asking - okay. Well, I'm going to still pose the question...

1013

1014 A: That's fine.

1015

1016 Q: ...if it's struck later. Is there any reason that you know of why the dog didn't
1017 bite?

1018

1019 A: No.

1020

1021 Q: And a bite and hold that is 'cause you're describing a technical bite per paper,
1022 but so the answer's no. Okay. So what happened after your PSD was - didn't
1023 bite and hold (Marcus), what happened after that point?

1024

1025 A: I recalled my PSD to my position and called for a dog swap or another PSD to
1026 replace me.

1027

1028 Q: And whose PSD was that?

1029

1030 A: It ultimately was Sergeant Alan Dyemartin.

1031

1032 Q: Okay. When your PSD goes to apprehend (Marcus), did he attempt to attack
1033 the dog or retrieve or go to the area where you believed he was concealing
1034 weapons or anything like that?

1035

1036 A: He put his arm down and pushed, like, fending off towards the dog when the

1037 dog came in at random.

1038

1039 Q: Okay. So your PSD gets called back or comes back to you one way or the
1040 other. Do you know of any reasons why the team didn't move up and
1041 take (Marcus) into custody at that point?

1042

1043 A: For the same reasons why I deployed my dog the first time, it's still unsafe to
1044 move up to his position. He was still actively resisting. We still had the
1045 unknown of the retaining wall of the vehicle while he was in the house.

1046

1047 Q: Okay. Other than the dog swap - is that what it's called, dog swap?

1048

1049 A: It's that - that would be like a - like a slang term that we use, right?

1050

1051 Q: Okay. Fair enough. Jargon. Okay.

1052

1053 A: Jargon.

1054

1055 Q: Yeah. So other than the dog swap, basically getting a different PSD to
1056 apprehend (Marcus), did the tactics or the plan or the contingencies change in
1057 any manner that you're aware of?

1058

1059 A: No.

1060

1061 Q: Okay. So (Marcus) was then shot with a beanbag for the third time. The
1062 second PSD was sent. Is that correct?

1063

1064 A: Correct.

1065

1066 Q: Okay. And what was he doing just prior to or as he was shot with the beanbag
1067 for the third time and the PSD was sent to him?

1068

1069 A: I was still coming back up to the contact team when that initially went out.

1070

1071 Q: Okay. So you didn't actually witness...

1072

1073 A: The impact but I...

1074

1075 Q: Okay.

1076

1077 A: ...witnessed the dog bite.

1078

1079 Q: Okay. Did you see - so you didn't witness the impact at all?

1080

1081 A: I don't recall...

1082

1083 Q: On the third time?

1084

1085 A: ...where it impacted, but I'm still moving up...

1086

1087 Q: Yeah. Got it.

1088

1089 A: ...to be lethal cover.

1090

1091 Q: Okay. And had (Marcus)'s resistance level changed at all at this point? Did he
1092 become assaultive, or did he become passive? Anything like that, or is - are
1093 you still saying he's active resistance when you saw the dog on the bite?

1094

1095 A: No, it's still active resistance.

1096

1097 Q: Okay. And where did it bite him on his body?

1098

1099 A: Left forearm.

1100

1101 Q: Do you believe there were any other lesser controlling force options that could
1102 have been utilized to take (Marcus) into custody?

1103

1104 A: No.

1105

1106 Q: Why not?

1107

1108 A: I believe that the PSD was the most effective tool that we could have used for
1109 that situation. Based on the distance that we were at from him, based on the
1110 level of crime, the actions of him, it was the totality of circumstances. I
1111 believe we used the correct tools.

1112

1113 Q: Okay. Did you have any other role after (Marcus) was bit by the PSD on the
1114 second apprehension?

1115

1116 A: Yeah. I assisted with lethal coverage on Mr. (Evans)...

1117

1118 Q: Okay.

1119

1120 A: ...when the contact team moved up and then I transitioned to part of the arrest
1121 team and take him to custody at the time. He was placed in handcuffs.

1122

1123 Q: Okay. Were there any weapons located in Mr. (Evans)' vicinity or on his
1124 person?

1125

1126 A: On his person? No. Behind the retaining wall, there was various items. I

1127 believe there was like a tire iron, and some other unconventional weapons
1128 back.
1129
1130 Q: Were those visible from your guys' vantage point while giving (Marcus)
1131 commands during this ordeal?
1132
1133 A: No.
1134
1135 Q: Okay. Was (Marcus)' race or ethnic heritage a factor in your decision to use
1136 force on him?
1137
1138 A: No.
1139
1140 Q: Did you witness or overhear any of the officers or the incident commander
1141 reference (Marcus)' race or ethnic heritage as part of the reason for the use of
1142 force?
1143
1144 A: No.
1145
1146 Q: Sergeant Sanchez, do you have any follow-up questions?
1147
1148 Q1: Yeah. What injuries did (Marcus) sustain?
1149
1150 A: I'm not a doctor, but he had lacerations on his left forearm that were consistent
1151 with, like, a dog bite, and I believe he also had, like, a puncture on his
1152 chest from the dog.
1153
1154 Q1: Medics were called for him at the end of the incident?
1155
1156 A: They were actually staged during the incident.
1157
1158 Q1: I have nothing further.
1159
1160 Q: Mr. Dominguez, thank you for being patient. I appreciate it.
1161
1162 A1: Any time.
1163
1164 Q: Yeah.
1165
1166 A1: How long was de-escalation made with Mr. (Evans)? Would you estimate?
1167
1168 A: With the totality of all the force options, everything used, 45 minutes, close an
1169 hour.
1170
1171 A1: And have you ever heard in your training experience, are weapons be - able to

1172 be concealed without necessarily being on the - in the waistband of a person?

1173

1174 A: Yes.

1175

1176 A1: Just so we're clear, you do not carry a taser, correct?

1177

1178 A: Correct.

1179

1180 A1: And you're not up to date on the training on a taser?

1181

1182 A: That's correct.

1183

1184 A1: And why don't you carry a taser?

1185

1186 A: The PSD is the same level of force as a taser, and then we generally do not use
1187 tasers in the proximity of police service dogs, as electricity can have a serious
1188 negative effect on our dogs.

1189

1190 A1: And did you believe if a hands team went up to Mr. (Evans) with him standing
1191 near that retaining wall and wheel well, what did you believe would have
1192 happened or what risk were they posing at that point?

1193

1194 A: I believe that he would have either retrieved a weapon from either of those
1195 locations or turned into assaultive resistance and greater level of
1196 force would've been used or an officer would've got hurt.

1197

1198 A1: And you said that he was calling out to people in the house. Did you know
1199 who these people were?

1200

1201 A: No.

1202

1203 A1: Had you had pat down those people at that time?

1204

1205 A: No.

1206

1207 A1: And that until he was detained, Mr. (Evans), you had not patted him down,
1208 correct?

1209

1210 A: Correct.

1211

1212 A1: And then I'm going to make it real easy. So can you explain to me why
1213 Mr. (Evans) was displaying active resistance throughout the entire incident
1214 again?

1215

1216 A: I can't just say...

1217
1218 A1: Active resist - can you describe how Mr. (Evans) was displaying active
1219 resistance during the event?
1220
1221 A: Oh, the entire time he refused to surrender and told us so. He's making verbal
1222 statements that he wasn't willing to comply.
1223
1224 A1: And someone who is displaying active resistance to K-9 is a reasonable force
1225 option according to the matrix as written by SDPD, correct?
1226
1227 A: Yes.
1228
1229 A1: And then there's two instances in your K-9 manual when someone is - when
1230 you are able to deploy the K-9, can you describe - well, I'll just - one is to
1231 apprehend a subject recently believed to be violent or dangerous, can you tell
1232 me why you believed Mr. (Marcus) was violent or dangerous? Why you
1233 believed him to be violent or dangerous?
1234
1235 A: From the information from the radio call, the offense he was wanted for being
1236 solid deadly weapon with a firearm against multiple people with a domestic
1237 violence nexus, his prior history is - his status is a known gang member. And
1238 then during the contact, he appeared to be under the influence of either alcohol
1239 or controlled substances, which makes people pretty irrational. So based on all
1240 that in my experience, I believe he would end up being - he end up being - he
1241 was dangerous and resistive.
1242
1243 A1: And then the second is to control actively resistive subjects reasonably
1244 believed to possess or to have immediate access to a deadly weapon, can you
1245 explain to me - we already went through why he was actively resistive, but
1246 why you reasonably believed him to possess or have immediate access to a
1247 deadly weapon.
1248
1249 A: The firearm used in the crime hadn't been located. He hadn't been pat down.
1250 And then the proximity of different things that he could have
1251 been, they would've retrieved.
1252
1253 A1: And ultimately a weapon - weapons were found in his near vicinity, correct?
1254
1255 A: Correct.
1256
1257 A1: That's all I got.
1258
1259 Q: Okay. I'm just going to piggyback on a couple of those. You said de-
1260 escalation lasted for approximately 45 minutes to an hour. What were these
1261 de-escalation techniques that were utilized?

1262

1263 A: And I'm guesstimating on time frame...

1264

1265 Q: Okay.

1266

1267 A: ...for - but de-escalation is the verbal commands, the - just physical presence
1268 of my PSD and his barking to psychological deterrent. Ultimately, the
1269 application of force for the beanbag is a form of de-escalation and extended
1270 range. Set up my patrol vehicle at a greater distance, and it's also a physical
1271 barrier between us. And then ultimately using the PSD is a form of de-
1272 escalation.

1273

1274 Q: Okay. A question was posed asking that had you ever seen people conceal
1275 weapons in - on their person other than their waistband? And you answered
1276 yes. Where have you seen that? Or where - where have you seen weapons
1277 concealed other than their waistband?

1278

1279 A: Pockets, actually, like within their underwear, located weapons, like, in
1280 between the area, like in the groin area. And then not necessarily just his case,
1281 but you know, other locations that you'd be concealed, I've found weapons. So
1282 the waistband isn't the only place you can carry a firearm or a knife or so on
1283 and so forth.

1284

1285 Q: And a knife wasn't mentioned as possibly being used in this incident. Is that
1286 accurate?

1287

1288 A: It's accurate. And I'm using that as an example...

1289

1290 Q: Okay.

1291

1292 A: ...when I'm explaining weapons.

1293

1294 Q: Totally understand that. Your concern was that he was concealing a firearm. Is
1295 that accurate?

1296

1297 A: My main concern is the firearm.

1298

1299 Q: Okay. And your contention is that you thought maybe he was concealing a
1300 firearm in his underwear?

1301

1302 A: I didn't know if he had a firearm there or not. And I know it's a possibility that
1303 you could have a firearm in your underwear.

1304

1305 Q: Okay. Was a firearm ever located as it was - at the conclusion of this incident
1306 that you're aware of?

1307

1308 A: No.

1309

1310 Q: Okay. And then lastly the - behind the barrier, what are the retaining wall of
1311 this - you confirmed that weapons were located. It's my understanding -
1312 correct me if I'm wrong, it was a tire iron like something to take a spare tire -
1313 or tire off from a vehicle and some sort of crowbar. Is that accurate?

1314

1315 A: Correct.

1316

1317 Q: Okay. So tools that could be used as weapons, is that more of a...

1318

1319 A: Respectfully, I work Central Division. And if I was to say a crowbar or a tire
1320 iron, that's probably the most prolific weapons in, like, Central Division. It's
1321 an unconventional weapon, but...

1322

1323 Q: I would agree it's an unconventional weapon...

1324

1325 A: But it's definitely...

1326

1327 Q: ...but it's primarily tools. Is that accurate?

1328

1329 A: Primarily tools, but they are very capable of causing great bodily injury or
1330 harm.

1331

1332 Q: I would agree. Thank you. Anybody have any other questions?

1333

1334 Q1: No.

1335

1336 Q: Okay. Okay. In that case, I have a time of 0558 or 0558 hours. We
1337 will conclude our interview.

1338

1339

1340 This transcript has been reviewed with the audio recording submitted and it is an accurate
1341 transcription.

1342 Signed _____



VIQ Solutions, Inc
East Thomas Road, Suite 2200 20
Phoenix, AZ 85012

CERTIFICATE OF ACCURACY

VIQ Solutions, Inc. certifies that the document produced from the audio file named **Sergeant_Dyemartin_Interview_24ce6b42-4cb1-4b81-852b-3fc8d2cd7a93.MP3** submitted by **San Diego Police Department - Internal Affairs** on January 12, 2025 is a true, accurate and faithful representation to the best of the transcribers training and ability and no intentional changes or redactions have been made.

DATED: January 12, 2025

A handwritten signature in black ink, appearing to read "S. Dyemartin", is written over a horizontal line.

VIQ Representative, SVP Client Experience

INTERVIEW WITH SERGEANT ALAN DYEMARTIN

Q=Sgt. Eric McCoole

Q1=Sgt. Jesus Sanchez

A=Sgt. Alan Dyemartin

A1=Atty. Rico Dominguez

Q: This is for IA Tracking Number 2024-0529, a subject officer interview. This is Sergeant Eric McCoole, ID Number 6755. Today's date is January 8, 2025. I have a time of 0605 hours. We are located in the Internal Affairs Interview Room at the San Diego Police Department's headquarters. In the room with me is - sir, can you please state your name, rank and ID Number?

A: I'm Alan Dyemartin, Police Sergeant, ID Number 6642.

Q: Thank you. I advise you have your right to representation we set the interview. In the room with us is your representative.

A1: POA Attorney Rico Dominguez.

Q: Thank you. Also present with us is?

Q1: Internal Affairs Detective Sergeant Sanchez, ID Number 5560.

Q: Thank you. Okay. Sergeant Dyemartin, I'm going to read you the sworn personnel admonishment. Feel free to follow along if you'd like.

A: Thank you.

Q: This is a confidential sworn personnel investigation. You may be subject to discipline as a result of this confidential sworn personnel investigation should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time. The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The city is not questioning you for the purpose of bringing or substantiating any criminal charge against you. You are directed to answer all the questions posed to you completely, truthfully and to the best of your knowledge. You may consult with your representative before

47 answering any question but your representative may not answer the question
48 for you. If you refuse to answer a question, it will be considered
49 insubordination and you may be subject to discipline. If information indicates
50 that you may be or have been charged with a criminal offense, you have the
51 right to remain silent and the right to the presence and assist of counsel.
52 However, you do not have the right to refuse to answer any question during
53 this confidential sworn personnel investigation, including on self-
54 incrimination grounds. While you have the right to remain silent and not
55 incriminate yourself generally, your silence or refusal to answer during this
56 confidential sworn personnel investigation will be considered insubordination
57 and may lead to administrative discipline up to and including termination.
58 Therefore, any statement made by you during this confidential sworn
59 personnel investigation compelled by the threat of discipline, as well as any
60 fruits of those statements, cannot be used against you in any criminal
61 proceeding. The City of San Diego has a strong interest in protecting the
62 integrity of its confidential sworn personnel investigations, preserving
63 evidence, preventing fabrication and protecting witnesses from harassment,
64 intimidation and retaliation. You are directed not to engage in any harassing,
65 intimidating, or retaliatory conduct toward anyone. You also must not try to
66 interfere with the investigation in any way. Any violations of these directives
67 may result in discipline. Sergeant Dyemartin, do you understand the
68 instructions?

69
70 A: Yes.

71
72 Q: If you fully understand the instructions, please sign your name below. Thank
73 you, sir. How long have you been a San Diego police officer?

74
75 A: 16 years.

76
77 Q: Okay. And what is your current assignment?

78
79 A: I'm currently assigned as a Mountain Patrol Sergeant for the San Diego
80 Police Department's K-9 Unit.

81
82 Q: Can you describe to me the qualifications and training required in order to be
83 a K-9 Sergeant or K-9 Handler for San Diego Police Department?

84
85 A: I had to complete in a - a - a shoot, physical examination and a formal
86 interview. And then I was selected to attend the K-9 Academy, which was 13
87 weeks of training.

88
89 Q: What kind of training topics are there in this academy?

90
91 A: Partially it's on how to work or handle the police dog. It also works on tactics,

92 how to respond to critical incidents or large-scaled incidents.

93
94 Q: And is there any - is there other topics on - on the K-9 as a use of force and
95 going over that sort of information?

96
97 A: Yes. They - we go over the force matrix, the Department of Policies and
98 Procedures, how it applies to force and we use the K-9 Operations Manual to
99 give us written tests and periodic verbal tests throughout the academy to test
100 our knowledge and understanding of it. We're also given practical application
101 scenarios that we have to pass during the K-9 Academy. That requires the
102 understanding of all of those concepts, as well as the dog handling aspect.

103
104 Q: And can you tell me the considerations that a K-9 handler has to consider
105 before deploying their police service dog? Or I'm going to call it the PSD
106 from here on out.

107
108 A: Okay. The biggest considerations with deploying the dog, the concept
109 of should versus could we use the dog. There's many instances
110 where you could use the police dog but do we always - is there other
111 alternative methods we can use to resolve the conflict without the dog?
112 We also have to consider the basic concepts of force through the Supreme
113 Court's understanding of Graham versus Connor, the severity of the crime, the
114 immediacy of the threat, and if the subject is active resisting or not.

115
116 Q: Okay. Okay. Let's go to the October 24, 2024.

117
118 A: Okay.

119
120 Q: On that date, what was your assignment?

121
122 A: As it is now, I was a Sergeant for the San Diego Police Department K-9 Unit.

123
124 Q: Okay. And on that date approximately 2330 hours, did you respond to the area
125 of 6400 Duluth Avenue?

126
127 A: Yes.

128
129 Q: Okay. Why did you respond to that location?

130
131 A: Southeast Division had a radio call of domestic violence - I'm sorry. It didn't
132 come in as domestic violence. It came in as a person brandishing or
133 threatening another person with a firearm.

134
135 Q: Okay. And it's that pretty much all the information you had while you were
136 responding to the call?

137
138 A: Yeah. It was a - a hot call. I was actually, pretty nearby.
139
140 Q: Oh, okay.
141
142 A: So I got there relatively quickly.
143
144 Q: Okay. And as you got there - when you say there, were you right in front of
145 the residence or were you somewhere else or what?
146
147 A: I know. Because I was by myself in this incident-involved firearm, I
148 waited. I recall it like a block away on Skyline Drive...
149
150 Q: Okay.
151
152 A: ...to wait for additional resources to respond.
153
154 Q: Okay. And did you learn any additional information regarding this call for
155 service while on Skyline Drive?
156
157 A: Yeah. I learned there was a male who was armed with a firearm who had -
158 or threatened or pointed a branch to that two females who were there.
159
160 Q: Okay. Did you learn suspect information and information about the suspect?
161
162 A: We did through conducting our calls for service check through dispatch.
163
164 Q: And what'd you learn?
165
166 A: Learned that there was previous incidents of domestic violence at that same
167 address. And more than likely, or the individual who had the firearm was
168 identified through those previous incidents as Marcus Evans.
169
170 Q: Okay. Do you know anything about Marcus Evans?
171
172 A: Records checking of Marcus Evans showed he had a extensive criminal
173 history, violent crimes including robberies, other crimes of violence. He was
174 also a known street gang member for, I believe, the Skyline Pirate Street
175 Gang. I got to see a previous booking photo of him.
176
177 Q: Okay. So from all this information that you learned, this is all on Skyline
178 Drive, presumably?
179
180 A: Yes.
181

182 Q: Okay. Was there cause to arrest anyone located at [REDACTED] Duluth Avenue?
183
184 A: Once we...
185
186 Q: Just...
187
188 A: ...spoke to witnesses and everything?
189
190 Q: Yeah. After speaking with witnesses and learning all this history.
191
192 A: Yes.
193
194 Q: There was?
195
196 A: There was.
197
198 Q: Okay. Who was arrestable?
199
200 A: Marcus Evans.
201
202 Q: Okay. And for what criminal offenses?
203
204 A: The crimes at the time was determined assault with a deadly weapon with a
205 firearm.
206
207 Q: Okay.
208
209 A: For two counts.
210
211 Q: Okay. Okay. So you're a sergeant?
212
213 A: Yes.
214
215 Q: But you're part of the K-9 Unit?
216
217 A: Correct.
218
219 Q: Okay. Would you be considered an incident commander in something like
220 this?
221
222 A: No.
223
224 Q: Okay. Can you explain that dynamic, please?
225
226 A: The dynamic is generally the - the incident is under the responsibility of the

227 patrol sergeant for that service area of that division.

228

229 Q: Okay.

230

231 A: They would be deemed the incident's manner until they're relieved by
232 someone of higher rank, whether a field lieutenant or area - station service
233 area lieutenant or a captain that work on scene...

234

235 Q: I see.

236

237 A: ...someone of that nature.

238

239 Q: Fair enough. So was there a designated incident commander? As you guys are
240 learning all this information and learning you have a what seems to be a
241 serious offense to contend with?

242

243 A: Yes.

244

245 Q: Who was that?

246

247 A: Acting Sergeant John Sullivan.

248

249 Q: Okay. So when you're on Skyline Drive, was there a decision to go
250 arrest Marcus at some point for these offenses that you described?

251

252 A: Yes.

253

254 Q: Okay. And what was the plan to apprehend him?

255

256 A: The plan was to move some patrol vehicles up to in front of the residents on
257 the street. Use them as cover and a little bit of concealment and conduct a
258 contain and call out - set up perimeter on the house and call out the occupants
259 of the house to us.

260

261 Q: Okay. And who - walk me through how do you guys come up with this
262 plan? And is it just, hey, I'm incident commander. This is the plan. This is
263 what we do. Or is there consultation with you, with other folks? Walk me
264 through that process.

265

266 A: Yeah. Usually, it's a collaboration between anyone who's considered more or
267 less like an expert on there. It typically would be the supervisors myself and if
268 there's a SWAT sergeant there or definitely the incident commander patrol
269 sergeant would discuss these different tactics. Sometimes we'll include other
270 people, if there's a personnel from SWAT that might have a good idea
271 or anyone who really would add to the solution to this incident.

272
273 Q: And what resources did you guys have on scene to factor into this decision?
274
275 A: That day we had - we formed what we call a CRT, or like a Critical Response
276 Team. That division was particularly understaffed that night.
277
278 Q: Okay.
279
280 A: So we did the best we could with the officers we had. We had the
281 supervisor, we usually have the - another officer, a K-9
282 Handler Officer Nelson with a police dog. And we got less than lethal
283 munitions, a beanbag shotgun. And then we also had a SWAT officer who had
284 a rifle. We had ballistic shields. And then we had our vehicles. The police
285 helicopter all also overhead watching all this go down.
286
287 Q: Okay.
288
289 A: Or, like, kind of keeping an eye on the area before we moved in to do our
290 thing.
291
292 Q: So what was the mission given to the K-9 team from the incident commander?
293
294 A: We'd be part of that CRT element.
295
296 Q: And what - can you just - I know you said it's called Critical Response Team,
297 but what is a CRT? What is it designed for? And what is that?
298
299 A: CRT is usually comprised of less lethal, a lethal, a hands team or an arrest
300 team and some kind of supervisor or - or whoever's in charge of that little
301 element there. The goal of the Critical Response Team is to safely redu-
302 resolve critical incidents that may occur.
303
304 Q: Okay.
305
306 A: In this case, the - the plan was to contain the house, which we set a perimeter
307 on it, and then conduct call-outs verbally and using the PA system to try to get
308 the occupants to come out to us, so that we didn't have to go into the house.
309
310 Q: And so this was all developed while you were all still on Skyline Drive?
311
312 A: Yes.
313
314 Q: Okay. So obviously eventually you guys go to [REDACTED] Duluth. Is that accurate?
315
316 A: Yes, sir.

317

318 Q: Okay. Were there officer safety concerns at this point?

319

320 A: When we first rolled up the - the biggest concern we had was with the
321 helicopter watching the property. There was a person walking around the
322 property whose description matched what the victims and witnesses had told
323 us Marcus Evans was wearing and how he was acting. That person was seen
324 going between the detached garage and the front of the house multiple times
325 and then at one point the helicopter aired to us on the radio that he had an
326 object in his hands but the helicopter couldn't identify what that object
327 was. Knowing that they reported a firearm, of course, I was thinking he was
328 carrying around a firearm.

329

330 Q: Okay.

331

332 A: So that was my concern. He's mobile around the property, he's not just inside
333 of the house, he's moving around and, you know, I don't know if he's staging
334 the area or what he's doing. And then as we arrived to the house, I now got my
335 first real visual of it. And I noticed that it's, like, kind of an elevated property.
336 So the house is considerably higher than we are at street level, which, if
337 someone wanted to attack you from an elevated position they have the upper
338 hand immediately.

339

340 Q: Okay. So you - I don't know if you used the term containing call-out. But is
341 that kind of what you guys were doing. Is that accurate?

342

343 A: Yes.

344

345 Q: Okay. So you're present there on this CRT as the containing call-out is
346 happening for [REDACTED] Duluth?

347

348 A: Correct.

349

350 Q: Okay. Did residents end up exiting [REDACTED] Duluth?

351

352 A: Yes.

353

354 Q: Okay. How many? Let's start with the first resident that exited. Was that our
355 suspect - or the suspect Marcus Evans?

356

357 A: No. That was a juvenile. I don't remember his name. He told me he
358 was Marcus Evans's cousin.

359

360 Q: Okay. What about the second person that came out? Was that Marcus Evans?

361

362 A: No. That was the juvenile's brother, so I guess it would also be Marcus
363 Evans's cousin.
364

365 Q: The third person that came out of the house was that Marcus Evans?
366

367 A: Yes. I believe the third person was.
368

369 Q: Okay. So did you see as Marcus initially exited the residence?
370

371 A: I briefly glanced at seeing him exit the front door. But I was - because of the
372 lack of officers on scene, I was acting as the hands team and taking these first
373 two individuals into custody, making sure they didn't have any weapons on
374 them.
375

376 Q: Okay.
377

378 A: And then getting them to a place of safety so we could continue doing our job.
379 So I think I was still interacting or dealing with them kind of away from the
380 rest of the officers...
381

382 Q: Yeah.
383

384 A: ...behind a different parked car for the civilian safety. But I did see it coming
385 out, right? It wasn't my focus at the time so I had to deal with these other two
386 people.
387

388 Q: Okay. When did you start to focus on Marcus Evans? Where was he
389 located? What was he doing?
390

391 A: I believe he was still walking down the staircase leading from the front door
392 out to the street.
393

394 Q: Okay. And were any officers on scene giving him commands?
395

396 A: Yes.
397

398 Q: Okay. Who was giving him commands from your recollection?
399

400 A: I believe Officer Nelson was doing most of the commands at first.
401

402 Q: Okay. And what commands were given to him, that you can recall?
403

404 A: That - the general is ordering commands, you know, keep your hands where
405 we can see them. Keep walking towards us. Kind of trying to conduct a high-
406 risk pedestrian stop on him. He was also given K-9 warnings something to the

407 effect of that, you know, if you produce a weapon or you run, you'll be bit by
408 a police dog, so.
409

410 Q: Describe the clothing that Marcus was wearing as he was exiting the
411 residence.
412

413 A: He was wearing no shirt, and I think they were basketball shorts.
414

415 Q: Okay. And that's it?
416

417 A: I don't remember if he had shoes or not.
418

419 Q: Okay. And as you're noticing Marcus exit the residence, is he
420 following Officer Nelson's commands at this point?
421

422 A: Originally appeared as though he was. Yes.
423

424 Q: Okay.
425

426 A: He had his hands up. He was walking down the staircase. It wasn't until he got
427 about to the sidewalk which was still about, I'd say 20 feet from where we
428 would want him to come to us to be taken into custody safely for us that he
429 stopped following commands.
430

431 Q: Okay. And did you believe he was concealing a weapon or had immediate
432 access to a weapon at this point?
433

434 A: Yes.
435

436 Q: Why is that?
437

438 A: No one had conducted a pat on him. I had three individual citizens who
439 reported him being in possession of a firearm. I - it's happened in my career
440 when I was there working in Southeast as a patrol officer. That an individual
441 approached a group of officers in just his - like, for lack of a better term, tidy
442 whiteys, his underwear only, just underwear. And confessed to them he had a
443 firearm. Those officers located a firearm, clinched between that male's butt-
444 cheeks.
445

446 Q: Okay.
447

448 A: Completely concealed in just underwear. So I know that people get creative
449 when it comes to hiding weapons. Sometimes those weapons can be hidden
450 underneath their privates, in between their legs and butt cheeks. They didn't
451 really tell me what the brief interaction I have with them, like, described the

452 firearm too much in-depth to me. So I don't know if we're talking a small - a
453 little small gun that could still be concealed within a butt shorts pocket
454 without making too much of a - like, a visible showing from the exterior of the
455 body.
456

457 Q: Were you confident that the firearm described in this from the witnesses was a
458 pistol?
459

460 A: It was - my understanding was, it was at least a handgun. Just the way they
461 described him cocking the hammer or rocking the slide.
462

463 Q: Okay.
464

465 A: But - yeah. Not a rifle or anything but some type of handgun. I don't...
466

467 Q: Ultimately, where did you think he was concealing a weapon? If he - like,
468 was - was there anything bulgy or anything like that, that you're like, okay. I'm
469 concerned about him concealing a weapon at this location? Or hiding a
470 weapon somewhere?
471

472 A1: And I'm going to just object as asked an answer and he described the places
473 where he could've been hid the - where he could've been hiding a firearm,
474 so I'm objecting the question but...
475

476 Q: Okay. So you're thinking either in his underwear or his privates or butt
477 cheeks?
478

479 A: Or it could still be in his pockets.
480

481 Q: Okay. Did he ever - as he's coming down the stairs or even as he's hanging out
482 on the sidewalk as you described. Is he ever reaching for the area, those areas
483 you described?
484

485 A: Yeah. A few times he would drop his hands down towards his waistband or
486 towards his pockets and never actually, like, dug them in, but they were going
487 in that direction.
488

489 Q: Okay. It's my understanding that Marcus was ordered to face away from the
490 officers and walk backwards to them. Does that sound accurate to you?
491

492 A: Yes.
493

494 Q: Okay. Did he follow those commands?
495

496 A: No.

497
498 Q: What was he physically doing in lieu of following those commands?
499
500 A: He was verbally saying he was complying but he never did anything we asked
501 him to.
502
503 Q: Okay.
504
505 A: And at no point in any commands was he's given, did he actually follow. He
506 just said, "I'm following your commands." Or "I'm cooperative." But he never
507 did. He never turned away from us. He wouldn't do anything. He just stood
508 there with his hands up and occasionally kind of drop them towards his
509 waistband and back up, pacing around, sitting on the retaining wall.
510
511 Q: Okay. So what would you consider his resistance level per our SEP force
512 matrix at that point?
513
514 A: Active resistance.
515
516 Q: So now that Marcus was not following these commands and not - basically
517 doing what the other, the first couple people that came out. Did you assist or
518 overhear in any changes to contingency plans or tactical plans to
519 apprehend Marcus at that point?
520
521 A: Yeah.
522
523 Q: Can you describe that for me?
524
525 A: Seeing as he was not coming the rest of the way towards us, we discussed
526 different methods on how we could safely take him into custody without
527 leaving our position of safety.
528
529 Q: Okay. And what were those methods that you discussed, from your memory?
530
531 A: Use of, like, the kinetic energy weapons was one of them. The beanbag
532 shotgun. The other option was use of the police dog to effect an apprehension.
533
534 Q: Okay. And this is still at this point when we - when you're discussing these
535 plans, is this still acting Sergeant Sullivan, that's the Incident Commander, he
536 did not leave or anything of that nature that you're aware of?
537
538 A: I'm not sure. No, sir.
539
540 Q: Okay. So from your understanding - again, I know you're a resource but you're
541 also a supervisor. What was ultimately - what was the ultimate decision to

542 apprehend Marcus at that point when he's not coming back to you guys?
543
544 A: The decision was made to - for lack of a better term, they call it testing for
545 compliance.
546
547 Q: Mm-hm.
548
549 A: Where he's impacted with a projectile from the kinetic energy weapon, in this
550 case the beanbag shotgun.
551
552 Q: Okay. And what is a test for compliance? Can you describe that for me?
553
554 A: It's kind of - it's - let me see here. How do I word this correctly? It's impacting
555 them with less than lethal munitions prior to using a different force option,
556 such as the dog.
557
558 Q: Okay.
559
560 A: To see if we can get them, like, hey, look, we're being serious here. Kind of on
561 as lower levels that we can get with still being safe to see, hey, can we get
562 cooperation out of you. Look, we are being serious. We used a little bit of
563 force on you. Hopefully, that compels you to respond to us positively
564 and surrender peacefully.
565
566 Q: Okay. And a - the kinetic energy weapon or the beanbag shotgun, it had - have
567 you ever seen anyone impacted by this...
568
569 A: Yes.
570
571 Q: ...before?
572
573 A: Yes. I have.
574
575 Q: What do they generally do when they're impacted this?
576
577 A: Generally, they show signs of some kind of pain but then they comply.
578
579 Q: Okay. But what are they - what do they physically do? Do they run away? Do
580 they come to the officers? Do they go to the ground? What - In your
581 experience from what you witnessed.
582
583 A: It varies, depending on the person. I've seen people that get impacted with
584 beanbags that do nothing and I've seen others that fall to the ground in the
585 fetal position and still others that do run away. Yes.
586

587 Q: Okay. Okay. Did you witness when Officer Nelson at one point gives a
588 command to turn around and face away from him and Marcus actually fully
589 turns around?
590

591 A: No.

592
593 Q: You didn't see that?
594

595 A: I did not.

596
597 Q: Did you watch a body worn camera for you?
598

599 A: Yes.

600
601 Q: Okay. Was that on your camera, that you recall?
602

603 A: No.

604
605 Q: Okay.
606

607 A: My position as the supervisor is generally, I would call it behind the front
608 lines. There's usually officers up front and I'm kind of behind them
609 coordinating or helping them, you know, with their positioning and stuff like
610 that. So typically there's officers in front of me. I'm not the first one up all the
611 time.
612

613 Q: Did anyone communicate to you that they saw Marcus fully turn around?
614

615 A: No.

616
617 Q: According to BWC footage, it was Officer Nelson who stated that Marcus
618 should be impacted with the beanbag shotgun for a test for
619 compliance. Does that sound accurate to you?
620

621 A: It was his idea. Yes.

622
623 Q: Okay. And the goal was to get Marcus to come to you at the police cars?
624

625 A: Yes.

626
627 Q: How would impacting him with the beanbag shotgun accomplish that goal? If
628 generally, in your experience, you said a lot of times they fall to the ground...
629

630 A1: And...
631

632 Q: ...it's not a fact, or they run away?

633

634 A1: I would say that's a mischaracterization of what he said. He didn't say
635 generally they fall to the ground. He said...

636

637 Q: He said, generally they - he said...

638

639 A1: There's three options. Yeah.

640

641 Q: Well, so they either run away. From what - from your experience, they either
642 run away, they go to the ground or there's no effect.

643

644 A: Those are things I've seen happen to people. Yes.

645

646 Q: Okay. So have you ever seen someone impacted by a beanbag shotgun and
647 then they come to you?

648

649 A: Yes.

650

651 Q: You have?

652

653 A: Mm-hm. After one of those things happens, then generally people will comply
654 with us.

655

656 Q: Okay.

657

658 A: Or so...

659

660 Q: So that's your experience that they're impacted?

661

662 A: There's some kind of reaction from them.

663

664 Q: Okay.

665

666 A: Whether it's one of those things or whatever they choose to do. And once the
667 initial shock of the force being used on them...

668

669 Q: Mm-hm.

670

671 A: ...or the initial pain subsides, then they comply with us because they don't
672 want it to happen again.

673

674 Q: So you didn't have any concern with him? Have you - you didn't have
675 concerns that you want him to come to you but you're hitting kinetic energy
676 weapon that generally stops people, right?

677

678 A: I didn't have any (unintelligible).

679

680 Q: That's - okay. I'll withdraw that question.

681

682 Q1: Let me ask this to you real quick. If somebody is hit with a kinetic energy
683 weapon, are they - and they fall to the ground, are they still capable of
684 crawling to you?

685

686 A: Oh, yes.

687

688 Q1: And did you make that command to Mr. Evans...

689

690 A: Yes.

691

692 Q1: ...for him to crawl to you?

693

694 A: Yes. I did.

695

696 Q1: And did you reasonably believe that he could've crawled to you?

697

698 A: Yes.

699

700 Q1: He wasn't shot in the leg or anything like that?

701

702 A: No.

703

704 Q1: Okay.

705

706 Q: Okay. So there's a point that Officer Nelson states, "Hey. Let's impact for
707 compliance." Did you believe he was speaking to you or to someone else? Do
708 you know he was - who he was speaking to?

709

710 A1: Calls for speculation.

711

712 Q: Do - you believe he was speaking to you?

713

714 A: No. I don't know. I wasn't alone. I just...

715

716 Q: Did...

717

718 A: Talking to the team.

719

720 Q: Do you remember that?

721

722 A: I do remember that. Yeah.

723

724 Q: Okay.

725

726 A: I believe he was talking to the team would be my answer.

727

728 Q: Approximately 10 seconds later after that statement, Marcus is impacted with
729 the beanbag round. Was that your understanding of the test for compliance?

730

731 A: Yes.

732

733 Q: What did Marcus do after he was shot with the - or impacted with the beanbag
734 round?

735

736 A: He fell to the ground.

737

738 Q: Yeah. (Unintelligible). Okay. Just prior to - or as he's impacted with this
739 beanbag weapon. What was he doing?

740

741 A: He was moving his body towards the retaining wall.

742

743 Q: Okay. And you said, he was impacted in the - where was he
744 impacted again, with the beanbag round?

745

746 A: I believe he was impacted in, like, the lower portion of the right side of his
747 abdomen.

748

749 Q: Abdomen. Okay. Did you believe that him being impacted with this beanbag
750 was an effective use of force at that point? Did it have the desired effect that -
751 from your understanding?

752

753 A: Like immediately, you're saying? Or overall?

754

755 Q: How about - we'll start with immediately.

756

757 A: Immediately, it got him away from the retaining wall, so that was a good
758 desired effect.

759

760 Q: Okay.

761

762 A: Ultimately, no. It did not have the desired effect that we wanted.

763

764 Q: Okay.

765

766 A: Which was for him to surrender.

767
768 Q: Because he just goes to the ground and doesn't surrender is what - eventually
769 goes to the ground and won't surrender?
770
771 A: Correct.
772
773 Q: Any reason why you guys didn't go and just arrest him when he's on the
774 ground?
775
776 A: Because he still had an outstanding firearm.
777
778 Q: Okay - okay.
779
780 Q1: Was there any safety concerns with going to him, such as the elevated position
781 of the house or any of his surroundings?
782
783 A: Yeah. The concerns with - (unintelligible) the concerns with leaving the patrol
784 vehicle and exposing ourselves in this open space between him and the -
785 where we were at for position of safety, for me it was still had occupants
786 inside the residence. We didn't know who was inside there, whether it was
787 family members or his friends, people that could intend to hurt us so
788 that Marcus could flee or get away or just to hurt us. And then his, like,
789 surroundings, he had that retaining wall that he kept going near. The retaining
790 wall, from my vantage point, I couldn't see behind it. It was obvious that the
791 earth was not the same height as the retaining wall. There was a recessed
792 portion there, easy enough to conceal a firearm there if you wanted to. That
793 would be clearly not visible from my position. The other concern was there
794 was this vehicle parked in the driveway that he was in between the whole
795 time. In my experience I've seen people hide firearms in various parts of the
796 vehicle that are easily accessible from the exterior, like on top of the tire, in
797 the little - I'm not sure what you'd call the spot but the little gap between the
798 front windshield and the hood. These were all areas that he had immediate
799 access to that I could not see if there was a weapon there or not.
800 Q: Okay.
801
802 A: So this was our concern with leaving our position, have him come to us.
803
804 Q: Okay.
805
806 A: Plus his behavior. He continuously would try to get us to go to him instead of
807 listening to our commands to come to us. In my mind, that's someone trying to
808 bait you into something. Why do you want me to go to you when I'm telling
809 you and giving you lawful orders that you need to come to us for everyone's
810 safety.
811

812 Q: Okay. So once - so Marcus is impacted. He's now on the ground, the camera
813 footage, he's kind of yelling or saying he's been shot, you know, calling for his
814 uncle, whatever. Did the urgency of this change in any way? Is it now more
815 urgent, less urgent? Can you answer that question?
816

817 A: Yeah. From the time we chose to use force on him, it became a more urgent
818 matter. Now I have a person who is eventually, or even at this point, you
819 know, we talk to, in my custody. We used force on him, he's going to need
820 some type of medical attention. He need at least - at least needs to get
821 examined to make sure there's not some kind of - it's our responsibility to take
822 care of him at this point. We used force on him, right? We can't go into a 36-
823 hour standoff with him because I don't know what type of injuries he has.
824

825 Q: Okay. After he's impacted, he's on the ground. You're describing you're kind
826 of behind with the incident commander. Was there any change to the
827 contingency plans or tactical plans in order to apprehend Marcus?
828

829 A: We waited for, I don't know how long, a minute or so, to see if his behavior
830 would change if he would comply or not, he did not. So we just continued on
831 with the same plan of action.
832

833 Q: Okay. So approximately 6 minutes later Marcus is shot with a beanbag for a
834 second time. And this is the first time that a PSD was sent to apprehend him.
835 Is that correct to your memory?
836

837 A: I'm not sure it's about 6 minutes now, but yes.
838

839 Q: Okay.
840

841 A: That's correct.
842

843 Q: What was Marcus doing prior to or as he was shot with the beanbag for the
844 second time and the first PSD was sent to his location?
845

846 A: He had seemed to fully recover from the first impact. He no longer had that
847 behavior that he was in pain of any sorts.
848

849 Q: Okay. How was that indicative for you?
850

851 A: He sat back up. He was more engaging with us. And when I say engaging, I'm
852 not saying like a good open dialog where we're trying to - we're getting into a
853 resolution. He was again, telling us that he wasn't going to comply with us or
854 demanding to know our names or telling us to come to him, kind of behavior.
855

856 Q: Okay.

857

858 A: If...

859

860 Q: Go ahead.

861

862 A: No. I was going to say, that's why it appeared to me that...

863

864 Q: Okay.

865

866 A: ...his behavior changed.

867

868 Q: What was Marcus's resistance level at this point?

869

870 A: He was active resistance.

871

872 Q: What kind of commands were given to him at that point?

873

874 A: He was given - by me, I gave him options on how to surrender. Crawling was
875 one of them. Walk to me, crawl to me. I basically told him, "Do whatever you
876 need to do to come over here and just give up."

877

878 Q: Okay.

879

880 A: He was issued more K-9 warnings by me and by Officer Nelson. And he was
881 given a whole bunch of verbal commands of things he needed to do to comply
882 with.

883

884 Q: Okay. The second beanbag impact, where did that impact him on his body
885 from your memory?

886

887 A: I believe on his shin.

888

889 Q: Okay.

890

891 A: I don't remember which shin, maybe right.

892

893 Q: And did you witness the dog, for lack of a better term, run to apprehend him?

894

895 A: Yes.

896

897 Q: Okay. What happened when he was sent to apprehend him?

898

899 A: The dog went up to him, thought it was going to apprehend him. Marcus
900 Evans did some weird hand movements or something. Somehow he was able
901 to fend off the dog. I'm not sure exactly what he did that caused the dog not to

902 engage.
903
904 Q: Okay. I mean did he attempt to harm the dog or attack the dog?
905
906 A: No. I don't think to harm or attack the dog. Just when I say fending off, I mean
907 like some kind of deflection technique or moving his arm away, something to
908 that effect. I don't think he was trying to fight the dog.
909
910 Q: Did he make any further movements towards the places you believe he was
911 hiding weapons?
912
913 A: I do not remember.
914
915 Q: Okay.
916
917 A: I was kind of focused on the dog.
918
919 Q: Okay. So the dog comes back to the officers. Was there any consideration to
920 move up and take Marcus into custody at point?
921
922 A: No.
923
924 Q: Okay.
925
926 A: Nothing's changed.
927
928 Q: Do - do you - okay. So nothing's changed.
929
930 A: All the same factors still remain. We still believed him to be armed with a
931 firearm, or have immediate access to a firearm, and he's still actively resisting.
932 It'd still be unsafe for us to leave our position of safety due to those other
933 factors of the people in the house and, you know, the - we don't know if
934 there's weapons stashed nearby or something to that effect.
935
936 Q: Okay - okay. So then a few moments later, I mean, according to your camera
937 footage, you retrieve a PSD. I'm assuming this one assigned to you?
938
939 A: Yes.
940
941 Q: Okay. And bring it up to the patrol cars. Marcus is impacted with a beanbag
942 for a third time and your PSD is sent to apprehend Marcus. Does that sound
943 accurate?
944
945 A: Yes.
946

947 Q: Okay. What was Marcus doing as this beanbag and - or is fired to impact him
948 for - the third beanbag?
949

950 A: When the beanbag (unintelligible)?
951

952 Q: Yeah. What - where is he? Is he standing up? Is he running away? What's
953 going on?
954

955 A: I believe he's seated at this time. What he's actually doing when they shot
956 the beanbag, I don't know.
957

958 Q: Okay.
959

960 A: I was kind of focused between my dog and him.
961

962 Q: Okay. When you let the dog go to apprehend him, what was Marcus doing at
963 that point?
964

965 A: He was still actively resisting.
966

967 Q: How so?
968

969 A: I gave him a bunch of K-9 warnings. Again, I tried to impress on him that this
970 was a different dog and that this dog was definitely - would bite him if - you
971 know, not like the previous dog. I asked him if he was going to comply with
972 me, He said "No."
973

974 Q: Okay.
975

976 A: And his hands were moving around, he was - generally keeping them in the
977 same areas. It's hard to describe, he was kind of seated down with his - man, I
978 don't know. I wouldn't say his hands above his waist but in the position he was
979 sitting in, his hands were showing towards me. But he kept kind of moving
980 them from side to side or areas, how do I describe it? Like from left to right or
981 things like that. I couldn't tell if he's reaching towards the retaining wall or if
982 he's - what he's doing really.
983

984 Q: Mm-hm.
985

986 A: But he was moving around a little bit with his arms.
987

988 Q: Did this PSD, did it bite Marcus?
989

990 A: Yes.
991

992 Q: Okay. And where did it bite him on his body?

993

994 A: On his left forearm.

995

996 Q: Okay. And what was your role when - in physically taking Marcus into
997 custody? What - what is your - where did - what's your role in that?

998

999 A: So the K-9 is just kind of weird dynamic when...

1000

1001 Q: Yeah.

1002

1003 A: ...I'm a supervisor, but I'm assigned a dog, so.

1004

1005 Q: Yeah.

1006

1007 A: When I work my dog, I'm - kind of work more like a K-9 handler...

1008

1009 Q: Yeah.

1010

1011 A: ...like an officer, than I do the sergeant kind of role. So at this point, it's my
1012 dog, I'm the handler. We moved towards him. I stayed behind the officers that
1013 had lethal coverage. And when we got to him and I ensured lethal coverage on
1014 him, my responsibility is to gain control of my PSD and remove him from the
1015 person.

1016

1017 Q: Okay.

1018

1019 A: And that's what I do.

1020

1021 Q: Were there any other lesser controlling force options that could've been
1022 utilized to take Marcus into custody?

1023

1024 A: No.

1025

1026 Q: Why not?

1027

1028 A: Gassing elements, such as OC spray or pepper balls, were out of the question
1029 because of us being outdoors. Had we used a pepper ball gun, it would've
1030 been used in the same concept as the beanbag, or it would have just been an
1031 impact weapon. And as we can tell, the impact weapon wasn't being very
1032 effective. So we wouldn't continue on with the same type of thing. Really, no
1033 there's nothing I can think of other than just walking up to him, which was
1034 super unsafe for all the officers on scene.

1035

1036 Q: Okay. And what forms of de-escalation - what tactics of de-escalations were

1037 either utilized by officers on scene or by yourself?

1038

1039 A: There was - well first and foremost, our presence. We had a marked patrol car,
1040 uniformed officers there, lights. We used verbal commands. We
1041 gave him options. We used time. We had barriers in between us and him, or
1042 the patrol car. We used a lower level of force. I mean, it's the same level of
1043 force, but people think it's a different level of force but we used different force
1044 options to try to effect the arrest. We had ballistic shields. We had less
1045 lethal munitions there. We had a police helicopter. I think that's really about it.

1046

1047 Q: Was Marcus's race or ethnic heritage a factor in your decision to use force on
1048 him?

1049

1050 A: No.

1051

1052 Q: Did you witness or overhear any of the officers or the incident commander
1053 reference Marcus's race or ethnic heritage as a part of the reason for the use of
1054 force?

1055

1056 A: No.

1057

1058 Q: Sergeant Sanchez, do you have any follow-up questions?

1059

1060 Q1: No. I have not.

1061

1062 Q: Mr. Dominguez, do you have any points for clarification?

1063

1064 A1: Yeah. If Mr. Evans had complied after the first kinetic energy weapon and
1065 started crawling towards you guys, would you have sent the dog?

1066

1067 A: No.

1068

1069 A1: And do you - are you issued a taser in your position as a K-9 officer?

1070

1071 A: No.

1072

1073 A1: Or K-9 sergeant? And why is that? Why isn't a taser - why didn't you -
1074 you guys not carry a taser?

1075

1076 A: Because the way we train the dogs, involves the use of minor amounts of
1077 electricity through a collar, more like a stimulus. And in the past when tasers
1078 have been introduced with the dog, they basically would associate if they got
1079 shocked by the taser as a negative effect and they would stop whatever
1080 behavior was occurring during that shocking from the taser.

1081

1082 A1: And would you say that the dog - the presence of the dog - these dogs, the
1083 PSD's bark, would you consider that de-escalation as well?
1084

1085 A: Oh, yes. Absolutely. Definitely a psychological deterrent to get people to
1086 surrender.
1087

1088 A1: And what did you believe would've happened if the team had gone up to
1089 Mr. Evans with the retaining wall, the wheel well, and the people in the
1090 house?
1091

1092 A: Well, my - what I didn't want to happen - what I believe would've happened if
1093 he'd been armed was to either - it would've either resulted in Marcus Evans
1094 being shot by an officer or him shooting an officer.
1095

1096 A1: And ultimately, I know you said that you believed there could have been
1097 weapons found behind the retaining wall ultimately, was there weapons found
1098 behind the retaining wall?
1099

1100 A: Yes. When we later - when we moved up to conduct a safety sweep of the
1101 residence, directly behind that wall was a - one of those like crossed tire irons,
1102 or lug wrench, or whatever you want to call it, that people used to keep in
1103 their trunk a long time ago, and some type of crow or pry bar, metal one.
1104

1105 A1: And have you seen a crowbar or a tire iron be used as a deadly weapon?
1106

1107 A: Yes.
1108

1109 A1: Mr. Evans was referencing uncle or unc in his - in your interactions with him.
1110 Did you know who this was?
1111

1112 A: I did not know who it was. No.
1113

1114 A1: And had you been able to conduct a pat-down on that individual at that time?
1115

1116 A: No.
1117

1118 A1: Just to be clear, can you please again describe why Mr. Evans was displaying
1119 active resistance?
1120

1121 A: He was making movements, although being in a small area, he was pacing
1122 around, sitting down, moving his arms, whatever movements he was doing.
1123 But most importantly, whenever he was given verbal commands to do
1124 something, like come to us or anything to that effect, he would tell us he's not
1125 going to comply.
1126

1127 A1: Verbally signaling his intention to avoid arrest?
1128
1129 A: Correct.
1130
1131 A1: And in response to active resistance and the way the force matrix is written by
1132 the department, is a K-9 a reasonable force option against somebody who is
1133 actively resisting?
1134
1135 A: It's a reasonable force option for active resistance if you believe them to be in
1136 possession of or have immediate access to a deadly or dangerous weapon.
1137
1138 A1: And can you describe why you believed him to be in possession of a deadly
1139 weapon or dangerous instrument?
1140
1141 A: There was three citizens who told me he was in possession of a weapon. We
1142 had not connected a pat-down on him. I couldn't see what was underneath or
1143 concealed underneath his shorts. And he had access to those areas we
1144 discussed, like, behind the retaining wall and the vehicle parked in front of
1145 him in the driveway.
1146
1147 A1: And I understand that the K-9 manual also gives the option to use the K-9 in
1148 order to apprehend a subject reasonably believed to be violent or
1149 dangerous. Can you describe for me why you believed Mr. Evans to be violent
1150 or dangerous?
1151
1152 A: I believed him to be violent because one of the females, I guess, was some
1153 type of relationship with him and she had already reported he had used
1154 physical violence against her. The other two females claimed to me they
1155 witnessed this physical violence and he was dangerous to me because I had
1156 two females that said he pointed a firearm at them and now his firearm is
1157 outstanding.
1158
1159 A1: And does his extensive criminal history also go into the totality of the
1160 circumstances in your belief that he's violent or dangerous?
1161
1162 A: Yes.
1163
1164 A1: And his gang affiliations also would factor into the totality of the
1165 circumstances?
1166
1167 A: Yes. It does.
1168
1169 A1: Perfect. That's all I got.
1170
1171 Q: Okay. Thanks. Ultimately, was there a firearm recovered?

1172

1173 A: Not that I know of. No.

1174

1175 Q: Okay. And I don't have any other questions. Sergeant Dyemartin, do you have
1176 anything to add that you think would be helpful for the complaint
1177 investigation?

1178

1179 A: No.

1180

1181 Q: Okay. All right. In that case, I have a time of 0650 hours. And that'll conclude
1182 the interview.

1183

1184

1185 This transcript has been reviewed with the audio recording submitted and it is an accurate
1186 transcription.

1187 Signed _____



VIQ Solutions, Inc
East Thomas Road, Suite 2200 20
Phoenix, AZ 85012

CERTIFICATE OF ACCURACY

VIQ Solutions, Inc. certifies that the document produced from the audio file named **Officer_Sullivan_Interview_b50d0a46-9e5b-4c5c-81fa-da01e5a92411.MP3** submitted by **San Diego Police Department - Internal Affairs** on January 22, 2025 is a true, accurate and faithful representation to the best of the transcribers training and ability and no intentional changes or redactions have been made.

DATED: January 22, 2025

A handwritten signature in black ink, appearing to read "Sullivan", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

VIQ Representative, SVP Client Experience

INTERVIEW WITH OFFICER JOHN SULLIVAN

Q=Sgt. Eric McCoole

Q1=Sgt. Milo Sheilds

A=Ofc. John Sullivan

A1=Atty. Jim Cunningham

A1: My recorder is on.

Q: Also. This is for IA Tracking 2024-0529 a subject officer interview. This is Sergeant Eric McCoole, ID Number 6755. Today's date is January 14, 2025. And at the have a time of 10:50, 50 hours. We're located in the internal affairs interview room at the San Diego Police Department's headquarters. In the room with me is sir, can you please state your name rank and ID number?

A: John Sullivan, PO2, ID 6455.

Q: Thank you. I advise you of your right to representation when we set the interview. In the room with us is your representative.

A1: Attorney Jim Cunningham, C-U-N-N-I-N-G-H-A-M.

Q: Thank you. Also present with us is?

Q1: Sergeant Milo Sheilds, ID Number 7075.

Q: Okay. Officer Sullivan, I'm going to read you a sworn personnel admonishment as a subject. This is a confidential sworn personnel investigation. You may be subject to discipline as a result of this confidential sworn personnel investigation should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time. The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The City is not questioning for the purpose of bringing or substantiating any criminal charge against you. You are directed to answer all the questions posed to you completely, truthfully and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a

question, it will be considered insubordination and you may be subject to discipline. If the information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline up to and including termination. Therefore, any statement made by you during this confidential sworn personal investigation compelled by the threat of discipline, as well as any fruits of those statements cannot be used against you in any criminal proceeding. The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personal investigations, preserving evidence, preventing fabrication and protecting witnesses from harassment, intimidation and retaliation. You are directed not to engage in any harassing, intimidating or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline. Officer Sullivan, do you fully understand the instructions?

A: I do.

Q: Okay. And it looks like you already signed the admonishment form. Thank you.

A1: Sergeant.

Q: Yes, sir.

A1: As is my practice on every interview for the last 38 years, I want to make sure that anybody listens to this audio or reads the transcript in this matter understands that this is not a voluntary interview, that my client is being compelled, and as such, all the protections under the Government Codes Section, specifically the Peace Officer and Bill of Rights, apply to this interview. Thank you.

Q: So noted. Thanks. Okay. Officer Sullivan, how long have you been a San Diego police officer?

A: 17 years.

Q: Okay. And what is your current assignment?

A: Currently I'm a patrol officer assigned to Northwestern Division.

92

93 Q: Okay. And what was your assignment on October 24, 2024.

94

95 A: I was assigned to Southeastern Division and I was an acting sergeant.

96

97 Q: Okay.

98

99 A: Patrol.

100

101 Q: So on that date, 24th of October of 2024, at approximately 2330 hours, did
102 you respond to the area of 6400 Duluth Avenue?

103

104 A: Yes.

105

106 Q: Why did you respond to that location?

107

108 A: There was a radio call involving a domestic violence incident.

109

110 Q: Okay. So please describe to me what information you had or learned as you
111 responded to this call for service.

112

113 A: Essentially, there is a domestic violence incident that took place between a
114 known suspect and his girlfriend. And during the incident there was a firearm
115 used.

116

117 Q: Okay. Once arriving on scene, did you learn any additional information
118 regarding this call for service?

119

120 A: Yes. I met with officers who were speaking with the reporting
121 party and victim. There are three of them in total. I was briefed by the
122 officers had spoke to them and the officers had concluded based on their
123 preliminary interview with them that - in fact that assault of deadly weapon
124 occurred with the use of a loaded firearm.

125

126 Q: Okay. And just for the record, did this all occur at the residence on Duluth or
127 was this at some other location?

128

129 A: Immediately following the incident, the three females who were involved in
130 the incident, walked down the street around the corner. So there's a park
131 located about a block away around the corner, so.

132

133 Q: Okay. So you learned most of this information that you just described at this
134 park area, is that right?

135

136 A: Correct.

137

138 Q: Okay. So was there a cause to arrest anyone located at [REDACTED] Duluth?

139

140 A: Yes.

141

142 Q: And who was arrestable for that?

143

144 A: I forgot the gentleman's name but he - the suspect, who's the boyfriend of one
145 of the victims.

146

147 Q: Okay. And specifically what criminal offenses was he arrestable for?

148

149 A: Assault with a deadly weapon, being a firearm.

150

151 Q: Okay. So was there a decision made to go to the residence on Duluth and
152 effect that arrest?

153

154 A: Yes.

155

156 Q: Okay. Who made that decision?

157

158 A: I did.

159

160 Q: Okay. And was there an incident commander designated for this?

161

162 A: Yeah. That changed. But yes. Initially I was.

163

164 Q: Initially you were? Okay. And prior to actually going to the residents and to
165 affect this arrest, were there any contingency plans or tactic plans devised in
166 order to take the suspect into custody?

167

168 A: Yes.

169

170 Q: Can you describe those please?

171

172 A: Yes. Sergeant Dyemartin was on scene as well after he and I spoke about the
173 details of the call and the kind of...

174

175 Q: Okay.

176

177 A: ...dangerous nature of the call, a plan - we came up with a plan to pull patrol
178 vehicles up and place them in front of the residents to utilize this cover for
179 officers as well as use our - our lights from our police car to make sure that
180 they know we're the police and to do PA announcements to the house and to
181 have the suspect come out to us.

182
183 Q: Okay. And Sergeant Dyemartin, is he another patrol sergeant in this area?
184 How did he get involved in all this?
185
186 A: He's a K-9 sergeant.
187
188 Q: For the K-9 unit. Okay. What tactical or de-escalation resources did you
189 request for this incident?
190
191 A: We had - get our helicopter able there. We had multiple officers to include a
192 K-9 officer, a K-9 sergeant. I designated officers on scene to be less lethal to
193 include a bean bag shotgun as well as a taser.
194
195 Q: Okay. Okay. So I imagine you guys, at that point, decide to approach the
196 residence [REDACTED] Duluth Avenue, is that right?
197
198 A: Correct.
199
200 Q: Okay. And can you describe to me what's happening as you're approaching the
201 residence?
202
203 A: As we're approaching the residence - as we're approaching? I mean, we just
204 parked our cars.
205
206 Q: Okay. So nothing...
207
208 A: Just tactically.
209
210 Q: ...necessarily abnormal happened?
211
212 A: I don't recall.
213
214 Q: Not that you recall.
215
216 A: Yeah.
217
218 Q: Okay. Were there officer safety concerns at this point?
219
220 A: Yes.
221
222 Q: Can you please describe those?
223
224 A: First and foremost, the suspect using a gun in the matter, which I confirmed
225 with the victim group that it was functional and a real gun. There was the fact
226 that we were kind of in a lower position from the house. The house kind of

227 had a raised vantage point on us. I didn't know who was in the house initially.
228 I didn't know where this gun could be. And I didn't know the mental state of
229 the suspect initially or the sobriety of the suspect. Yeah. Just all of the
230 unknown was kind of taken into consideration when we approached and
231 attempted to apprehend the suspect.

232
233 Q: Would this be a call that maybe would warrant some sort of SWAT response
234 in your imagine - in your mind.

235
236 A: Not at this point.

237
238 Q: Okay. Why not?

239
240 A: I just don't - given the circumstances and constantly reassessing the situation,
241 again that's a fluid thing, given the details upon approach, it was - it's my
242 judgment and my opinion that this was something with the use of K-9 and a
243 good pre-plan, having the helicopter, having a rear perimeter, having a field
244 lieutenant there, that this is just something that we could initiate.

245
246 Q: Okay.

247
248 A: And - but it's always in the back of my mind if something were to change that
249 the SWAT was always - you know, that's always an option.

250
251 Q: And just for the record, SWAT's are Special Weapons And Tactics, right?

252
253 A: That is correct.

254
255 Q: Yeah. Okay. I generally ask to not use acronyms or jargon and I messed up, so
256 I...

257
258 A: Got you.

259
260 Q: ...wanted to correct that. You mentioned a gun involved in all this. What style
261 of gun were you expecting the suspect to have? A pistol, rifle? Can you go
262 into that, at least from the knowledge that you guys had?

263
264 A: Per the victim group, it would have been a semi-auto handgun.

265
266 Q: Okay. So, some sort of handgun. Okay. And were you present when occupants
267 were called out from [REDACTED] Duluth Avenue?

268
269 A: Yes.

270
271 Q: Okay. Were you present when (Marcus Evans) exited [REDACTED] Duluth Avenue?

272

273 A: Yes.

274

275 A1: That's the name of the suspect.

276

277 Q: Yes, sir.

278

279 A1: Thank you.

280

281 Q: Mm-hm. Can you describe the clothing that (Marcus) was wearing?

282

283 A: Yes. (Marcus) was not wearing a shirt and he was wearing some oversized
284 baggy shorts.

285

286 Q: Did you believe it was reasonable to believe he was concealing a weapon or
287 had immediate access to a weapon?

288

289 A: Yes.

290

291 Q: Why is that?

292

293 A: Based on his baggy clothing, based on the environment, there's a retaining
294 wall which concealed - I couldn't see on the other side of it. There is a vehicle
295 in the driveway very close to him, which is also in play. And yeah, his baggy
296 clothing and just the fact that I was confident that he was in fact armed with a
297 handgun that the victims described in detail.

298

299 Q: So where specifically did you suspect he was concealing a weapon?

300

301 A: I didn't - at this point, I couldn't see anything, right?

302

303 Q: Mm-hm.

304

305 A: But the fact that he had really large shorts on, easily could have been inside of
306 his shorts, inside of his underwear. And again, I was not confident that he
307 wasn't armed, if that makes sense.

308

309 Q: Okay. So have you ever ran into someone concealing a handgun in their
310 underwear?

311

312 A: Yes.

313

314 Q: You have? How many times do you think that's happened?

315

316 A: I don't recall.

317

318 Q: Okay. This may be kind of apparent but I'll ask it for the record. Did you see
319 him in possession of some - any sort of deadly weapon as he came out of the
320 residence?

321

322 A: No.

323

324 Q: Okay. Did he ever reach for the area that you believed he had access to a
325 weapon?

326

327 A: Yes.

328

329 Q: When was that?

330

331 A: Specifically it was in the retaining wall. I wasn't confident with that area
332 behind the retaining wall which is located kind of in the front yard area of his
333 house.

334

335 Q: How many times did he - did he do that?

336

337 A: I don't recall.

338

339 Q: Was this early on as he comes out or later in as he - as this is unfolding?

340

341 A: It was earlier on in the contact between us and (Marcus).

342

343 Q: Okay. So as (Marcus) is exiting the residence, what kind of commands were
344 given to him?

345

346 A: There were multiple verbal commands to keep his hands up in the air, to
347 essentially surrender, to walk back toward us and comply and be taken into
348 custody. Multiple K-9 specific commands were given to include being
349 impacted with a beanbag. You know, I recall one officer just telling him what
350 he's under arrest for.

351

352 Q: Okay. Who was giving these commands?

353

354 A: Initially, it was the K-9 officer, Bobby, and forgive me, I forgot his last name.
355 But he was the only K-9 officer there, so the K-9 officer was in charge of
356 giving most commands.

357

358 Q: And why was (Marcus) ordered back to you guys?

359

360 A: For safety purposes.

361

362 Q: Okay. How was that more - can you explain to me how that's more safe in a
363 situation like this?
364

365 A: Sure. We were utilizing our patrol vehicle as cover. There's a gun in play
366 because it's going to play I wanted my officers behind a piece of cover. And
367 just in case if it turned into some sort of shooting I wanted my officers to have
368 that, that safety net of having the car there. The second officers leave cover
369 they expose themselves and that for me becomes an escalation point and so I
370 felt much more comfortable in the interest of safety to the suspect and my
371 officers to have him come back to us in our police car.
372

373 Q: Okay. So ultimately for safety, is that fair to say?
374

375 A: Correct.
376

377 Q: Okay. Did he follow the commands that he was given?
378

379 A: No.
380

381 Q: What was he doing that was indicative that he wasn't following commands?
382

383 A: He verbally objected to what we were telling him to do. At one point, he
384 moved kind of a little bit further away from us, sat on that retaining wall. A lot
385 of verbal just objections saying he's not going to do what we're telling him to
386 do. Asking a lot of questions, telling us to leave. There's a lot of animation
387 from his hands. He has his hands up, has his hands down. But simply, it
388 appeared to me that he understood what we were telling him.
389

390 Q: Okay.
391

392 A: But he made the decision to not comply with those commands.
393

394 Q: And it seems like you're going into it a little bit, but what was he saying
395 anything? What was he saying, if you remember?
396

397 A: I remember him telling us to leave...
398

399 Q: Okay.
400

401 A: ...to leave his house. He was asking - you know, he was initially saying that he
402 wasn't involved in something. I think those are the best specifics. I was set
403 back a little bit.
404

405 Q: That's fine.
406

407 A: So I think that's the best I might recall right now.

408

409 Q: So as this is going on, what's - per our SDPD force matrix, what's his
410 resistance level?

411

412 A: He's actively resisting. Which I believe he has access to a weapon.

413

414 Q: Okay. So did these contingency plans or tactical plans change at this point?

415

416 A: Yes. I was constantly assessing, there was a contingency that I made that, so
417 when he - we were initially contacting him, there was an elderly male that
418 came to the door, which I had previously spoken to the victim group, that I
419 knew there was an elderly male who is a - specifically a dialysis patient.

420

421 Q: Mm-hm.

422

423 A: I didn't know how physical ambulatory he was or what his physical
424 capabilities were. So I conversed with Sergeant Dyemartin to not allow him to
425 go back into the house.

426

427 Q: Okay.

428

429 A: Because of the gun and a potential hostage situation and other unknowns. And
430 that was one.

431

432 Q: Okay. So you mentioned Dyemartin. You consulted with him. Did you consult
433 with anyone else about this?

434

435 A: I don't recall.

436

437 Q: Okay. And let's see. Just before - I'm going to just kind of - before this
438 incident, have you ever actually impacted anyone with the extended-range
439 impact weapon or the bean bag shotgun?

440

441 A: I have not personally, no.

442

443 Q: Okay. Have you ever witnessed anyone being shot with that?

444

445 A: Yes.

446

447 Q: Okay. From your memory, what happened to the person when they were shot
448 with that projectile?

449

450 A1: In this instance or just in his past?

451

452 Q: Just from what he remembers witnessing from when - in his experience.

453

454 A: It appeared to be painful.

455

456 Q: Painful. So what did the person actually do with, that you remember?

457

458 A: I don't want to generalize 'cause I've seen multiple.

459

460 Q: Okay. Tell me what you remember.

461

462 A: It depends on target acquisition, depends on just the person.

463

464 Q: Okay.

465

466 A: It is a form of pain compliance.

467

468 Q: Mm-hm.

469

470 A: Usually they yell.

471

472 Q: Okay.

473

474 A: They sometimes cry.

475

476 Q: Mmm.

477

478 A: They will sometimes go to the ground. But they usually display some sort of
479 pain, I mean some sort of discomfort.

480

481 Q: Okay. So according to our training and our use of force policies, what level of
482 resistance should a suspect be displaying in order to shoot them with that
483 weapon system?

484

485 A: In this specific instance as active resistance with belief that the person is
486 armed or has access to a deadly weapon...

487

488 Q: Okay.

489

490 A: Even more specifically with the application of K-9.

491

492 Q: Did you witness or overhear Officer Nelson give (Marcus) an order to turn
493 around and face away from him?

494

495 A: I cannot specifically say I do.

496

497 Q: Okay. Did you ever see (Marcus) turn around at any point? Show his
498 backside?
499

500 A: I can't recall.
501

502 Q: Okay. So according to some BWC footage, Officer Nelson stated
503 that (Marcus) should be shot with the bean bag shotgun as a test for
504 compliance. You remember this?
505

506 A: I do.
507

508 Q: Okay. And can you tell me what is a test for compliance?
509

510 A: A test for compliance is a tactic that we are taught specifically in CRT
511 training, critical response training (unintelligible).
512

513 Q: Yeah.
514

515 A: It is specific to use with K-9. Understanding that starting from a lower level of
516 force, we kind of working our way up as need be. A test for compliance to
517 impact an actively resistant suspect with the hopes that that person after being
518 impacted that one time would then comply and then that would mitigate the
519 use of further force being used.
520

521 Q: Okay. So in this instance, in this situation on Duluth, why would shooting him
522 on a test for compliance be the best course of action?
523

524 A: Because that gives the - after the refusal of the verbal commands.
525

526 Q: Okay.
527

528 A: And I view compliance is on a spectrum. And the suspect can become more
529 compliant and then less compliant as the situation unfolds, which is I'm
530 currently constantly assessing this. You know, given that there is time and
531 there's a lot of movements from the wall to the driveway to the wall to the
532 driveway, profanity being used, the compliance in this was getting more
533 toward the less compliant, as far as that spectrum goes. With the test for
534 compliance, the thought is - like, my thought is, that once the suspect received
535 one impact from a bean bag, that would then let the suspect know that there's
536 more force to follow if they decide not to give up.
537

538 Q: Okay.
539

540 A: And obviously my hope is that, that's all it takes and they're to give up after
541 that.

542
543 Q: And you would agree this test for compliance is an application of force on the
544 suspect, correct?
545
546 A: Yes.
547
548 Q: Again according to some BWC footage, approximately a minute after Officer
549 Nelson suggests this test for compliance with the beanbag, he says, "Hey, let's
550 impact for compliance." Did you believe he was speaking to you?
551
552 A: I don't think he's speaking directly to me.
553
554 Q: Okay.
555
556 A: I know his attention was on the suspect and I think that was just more for
557 information to get out.
558
559 Q: Okay.
560
561 A: I know Sergeant Dyemartin mainly oversaw especially earlier on with that
562 initial test for compliance, he was coordinating that aspect. And I know
563 Sergeant Dyemartin and Bobby, they both being K-9 and a supervisor, they
564 were kind of conversing and consulting about what the next move should be.
565
566 Q: Okay. Did you overhear this conversation or planning?
567
568 A: I do - I mean I recall that suggestion was given.
569
570 Q: Yeah.
571
572 A: I was present. But given that Sergeant Dyemartin is there, we're utilizing a K-
573 9. It's kind of more his realm and specialty and expertise, so that was
574 more him than me.
575
576 Q: Okay. So, approximately 10 seconds after he makes that statement the, "Hey,
577 let's test for compliance." (Marcus) was shot with a bean bag projectile. Was
578 that the test for compliance in your mind?
579
580 A: Yes.
581
582 Q: Okay. What happened to Marcus after he was impacted with the beanbag?
583
584 A: He went to the ground.
585
586 Q: Okay. From your memory, what was (Marcus) doing either just prior to or as

587 he was shot with the bean bag projectile?

588

589 A: Just before. Maybe ask something a little more specifically I can answer but I
590 don't recall the general...

591

592 Q: How about this, when he says, hey, let's - when Officer Nelson says, "Hey,
593 let's impact for compliance." From your memory, what was (Marcus) doing?

594

595 A: I don't remember anything. He was continuing to be not complying and
596 talking in objection to what we were telling him to do. But I don't remember
597 specifically what the moments before that happened what his behavior was.

598

599 Q: Okay. Where on his body did the bean bag round impact him?

600

601 A: In the abdomen I believe.

602

603 Q: Okay. Did you believe impacting (Marcus) with the beanbag and him going to
604 the ground, that was an effective use of that force at that time?

605

606 A: Yes.

607

608 Q: If the goal was to get (Marcus) to come to you guys, how would putting him
609 on the ground make getting him back to you more easy, I guess or safer, how
610 about that?

611

612 Woman: Wait, I am fine.

613

614 A: Can you ask that one more time, sorry?

615

616 Q: Yes. I apologize for that.

617

618 Woman: Sorry.

619

620 Q: If the goal was to get (Marcus) to come to you, because that's the safest
621 option, right?

622

623 A: Right.

624

625 Q: For the officers there. How would - and you've stated that there's - you've seen
626 bean bag round impacts make the person go to the ground. How would putting
627 him on the ground with a beanbag impact weapon. The outcome of that goal,
628 getting him back there. How is that the best course of action. Try to help me -
629 walk me through that?

630

631 A: I understand. By impacting him with that single beanbag round, yes. It

632 hurts. Yes. It will yield different effects of pain, however we give that person
633 an opportunity to kind of recover.
634

635 Q: Okay.

636
637 A: And we reassess also.

638
639 Q: Okay.

640
641 A: I'm looking at where that bean bag round impacted him and I'm being
642 reasonable, he's a younger guy, he seems relatively physically fit. Based on
643 that, we gave him chance and I gave him some instructions to crawl to us.
644

645 Q: Okay.

646
647 A: So my belief is, yes. We impacted him with that test for compliance but I also
648 believe that he would be physically capable to follow our commands at that
649 point.
650

651 Q: Okay. But - so just to confirm. Impacting him with the bean bag round that
652 first time. Do you believe that would have got him to come back to you guys?
653

654 A: Not immediately following the impact...

655
656 Q: Okay.

657
658 A: ...but given some time for him to recover, yes, I do.
659

660 Q: Okay. Can you explain to me why - so he goes on the ground and he's on the
661 ground for several minutes. Why wasn't there any sort of ideas of going to just
662 go arrest him at that point?
663

664 A: So, we did think - I personally thought about that for a second.

665
666 Q: Okay.

667
668 A: But given there's a few things that, why that would not have been the best
669 approach tactically.
670

671 Q: Okay.

672
673 A: A few things. There's still a gun in play, somewhere. We don't know
674 where and I'm not confident that he doesn't have a gun on him. Two, there is
675 still the front door and there's unknown people inside that house and exposing
676 my officers to open windows, there's at least one more person in

677 there causing officer safety concern. Three, if we move up physically on him,
678 again, he's being - he's a young fit man, if he turns and runs to that house it
679 causes a big - another issue. Also, the typography of that layout, it's up a hill.
680 There's cement stairs, there's a car, there's a retaining wall. I'm pretty
681 confident that if officer's would have went to go hands on, somebody would
682 have been injured.

683
684 Q: Okay.

685
686 A: Whether someone hit their head, whether the suspect gets hurt, it was tight
687 quarters there and I really felt uncomfortable with moving up on him given
688 the totality of the circumstances.

689
690 Q: Okay. When he's impacted for that first time, I mean, he's on the ground and
691 from the camera footage, he's in - saying he's been shot and he's in pain. Did
692 the situation or the urgency change due to that in your mind?

693
694 A: No.

695
696 Q: Okay. After he shot for this first time and he goes to the ground, did your
697 contingency plans or tactical plans change in any way to take him into
698 custody?

699
700 A: I know that we were reassessing after that test for compliance. And I kind of
701 want to go back - and sorry you asked a question...

702
703 Q: Sure.

704
705 A: ...about did my concerns change. Being a supervisor, a supervisor, now that
706 we use force, I do want to get him medical treatment following that force. So
707 it's always concern of mine. I ended up staging medics just in case as well
708 because ultimately the well-being of that person is kind of our responsibility.
709 So it did change things a little bit as far as my reassessment of the situation.

710
711 Q: Okay. So was there any discussion of changing your plans to take (Marcus)
712 into custody at this point? Whether it was with you and the K-9 unit or...

713
714 A: Yeah.

715
716 Q: ...you and - I know a field attendant does show up at some point.

717
718 A: Correct.

719
720 Q: When was that?

721

722 A: I don't remember it specifically. But I do know that Lieutenant (Becesto) was
723 there. I don't want to say I know. I believe she was there before that test for
724 compliance was initiated.

725
726 Q: Okay.

727
728 A: And she was involved in the conversations and stuff so.

729
730 Q: Okay. How was she? Do you remember how she was involved in that
731 decision-making?

732
733 A: She was fine. She was fine with our plans.

734
735 Q: Okay.

736
737 A: Yeah. There's no objection.

738
739 Q: So just to be clear.

740
741 A: Okay.

742
743 Q: After he's impacted and he's on the ground. After some reassessing, the plan to
744 take him to custody didn't change. Is that accurate to say?

745
746 A: I'm not sure what you mean. Sorry. I don't know...

747
748 Q: Okay. How were you planning to take (Marcus) into custody now that he's on
749 the ground?

750
751 A: So at this point, to have him crawl to us, to have him walk to us. To have...

752
753 Q: Okay.

754
755 A: To hopefully gain that compliance and him to give up at that point.

756
757 Q: So he was given - you mentioned he - you gave him orders to crawl to
758 you. Did he abide by those orders?

759
760 A: No.

761
762 Q: Okay. Were there any other commands or orders given to him at that point?

763
764 A1: By the sergeant or by anybody?

765
766 Q: That you overheard or by you. Thank you.

767
768 A: There were multiple commands to have him walk back, just to come to us. I
769 said crawl to us because, I mean, understanding that he was impacted and I'm
770 sure that's painful.
771
772 Q: Mm-hm.
773
774 A: And then he did have time to recover and recuperate. He went from the - you
775 know, kind of a laying position to a sitting position. But I mean, yeah. There
776 are a lot of commands given. I don't remember specifically by who and what
777 was said but the gist of it is to come back to us.
778
779 Q: Okay. Okay. So approximately 6 minutes after he was first impacted, 6
780 minutes later, (Marcus) is shot with the bean bag for a second time. And the
781 first police service dog or PSD was sent. Does that sound accurate to your
782 memory?
783
784 A: That sounds accurate.
785
786 Q: Okay. I'll ask this question and to the best - this is to the best of your memory.
787 What was (Marcus) doing prior to or as he was shot with the bean bag for the
788 second time and the PSD was sent?
789
790 A: I don't recall specifically. I was positioned kind of in the back. Again,
791 Sergeant Dyemartin, he was kind of quarterbacking all the plans regarding the
792 dog, the use of the PSD. I do - I did overhear that the decision was made to
793 utilize the dog and in conjunction with the bean bag shotgun. I can't
794 confidently say what the suspect...
795
796 Q: Okay.
797
798 A: ...was doing right before that happened.
799
800 Q: Okay. So you said the plan - was this plan ran through you as the incident
801 commander?
802
803 A: Well, I'm not the incident commander at this point.
804
805 Q: Okay. So you've been relieved by this point?
806
807 A: Yeah. There's been a field attendant there for a little bit.
808
809 Q: Okay.
810
811 A: So I'm no longer the IC at this point.

812

813 Q: So it's accurate to say you believe the lieutenant is now the incident
814 commander by this point?

815

816 A: Correct.

817

818 Q: Did you - and you're saying you overheard K-9 discuss this with - is it with
819 the incident commander or who are we talking that you said they made this
820 whole plan to utilize the PSD?

821

822 A: There were Bobby Nelson...

823

824 Q: Okay.

825

826 A: The canine Officer Nelson. Sergeant Alan Dyemartin. I know there was
827 discussion amongst them two. I believe in the presence of the field lieutenant.
828 Again, I don't remember exactly the positions of everybody...

829

830 Q: Sure.

831

832 A: ...to utilize a dog in effecting the arrest. But at this point I'm - kind of my role
833 is communicating with patrol to make sure all the officers are on board and
834 the communication is clear and all the expectations are in line to know what's
835 going to happen. So that's kind of where I'm at with that.

836

837 Q: Okay. You said you can't remember specifically what he was doing before he
838 was impacted with the bean bag round and the PSD was sent by him. But do
839 you remember generally what he was doing?

840

841 A: He was talking. I think - you know, I don't remember exactly what he said. I
842 remember he was in a seated position.

843

844 Q: Okay.

845

846 A: With his legs in front of him. I don't recall exactly. Unfortunately. I don't
847 remember.

848

849 Q: Did you witness the bean bag projectile impact (Marcus)'s body on that one?

850

851 A: Yes.

852

853 Q: Do you remember where it impacted him on his body?

854

855 A: I don't remember where that one specifically hit. I remember seeing him after
856 the fact and seeing the injury from the impact but I don't exactly know where -

857 which one hit him where. So I can't say.

858

859 Q: Okay. Did the PSD actually bite (Marcus) on this on - on the first time?

860

861 A: The first time? The dog ultimately failed.

862

863 Q: Okay.

864

865 A: I don't know if the dog actually bit him or not. He may have.

866

867 Q: Okay. Did you witness (Marcus) attempt to harm or harm the PSD?

868

869 A: I do not. No. I did not.

870

871 Q: No. You did not see that?

872

873 A: I did not see that.

874

875 Q: Okay. Okay. And then from camera footage, the PSD basically didn't engage
876 and it's brought back to the team. At that point, was there any reason why the
877 team or that you know of, was there any reason why the team didn't go up to
878 take (Marcus) in custody at that point.

879

880 A: No.

881

882 A1: The question was, do you know why they didn't take him into custody at that
883 time?

884

885 A: Oh, at this time, with the failure of the dog, the situation's kind of the same.
886 He's still there, he's still not complying, the gun's still in play, still don't feel
887 confident he's not armed. So nothing's really changed at that point other than
888 the failure of the dog.

889

890 Q: Do you recall there being ballistic shields or anything like that for this
891 incident?

892

893 A: On scene?

894

895 Q: Yes. As one of your resources.

896

897 A: I recall somebody asking about a ballistic shield but I don't recall anyone
898 actually having one out. I know that's a limited resource. So not many officers
899 carry the ballistic shield so.

900

901 Q: Did you request a ballistic shield to come to this? Do you remember doing

902 that?
903
904 A: I don't think I did. I don't remember?
905
906 Q: Okay. Do you recall overhearing anyone request that resource?
907
908 A: I do.
909
910 Q: Okay.
911
912 A: I do recall ballistic shield being mentioned.
913
914 Q: Okay. Was that ultimately ever brought, that you remember?
915
916 A: You know, I kind of lost track...
917
918 Q: Okay.
919
920 A: ...of that specific detail. And again, I'm not - there's just not many in the field.
921 I think specifically SWAT officers that some certain cars have it.
922
923 Q: Yeah.
924
925 A: But - so yeah, I don't remember what happened there.
926
927 Q: Okay. You mentioned that after the dog didn't bite him, that the situation was
928 kind of the same, right?
929
930 A: Yeah. I didn't say the dog didn't bite him.
931
932 Q: Okay.
933
934 A: I don't recall if there's a bite but failed.
935
936 Q: How about didn't engage? Failed?
937
938 A: Yeah. Okay.
939
940 Q: Yeah. Whether you assisted or you overheard, did the tactical plan change to
941 take (Marcus) into custody?
942
943 A: So just prior - not just prior but prior before the deployment of that first K-9, I
944 know there was a conversation between Officer Nelson and Sergeant
945 Dyemartin that they would swap dogs out and utilize Sergeant Dyemartin's
946 dog if that dog didn't work. So that plan was already in place. And so at which

947 point the first dog failed, Sergeant Dyemartin brought his dog up and then we
948 reassessed and they re-engaged with that dog.
949

950 Q: Okay. And then he was shot with a bean bag round? I'll say (Marcus) was shot
951 with a bean bag around for the third time and a second PSD was sent. Does
952 that sound accurate to you pretty much?
953

954 A: Yes.
955

956 Q: Who sent the second PSD?
957

958 A: Sergeant Dyemartin.
959

960 Q: Okay. And to your memory, what was (Marcus) doing prior to or as the bean
961 bag is fired at him and the dog is sent to bite him?
962

963 A: I don't recall (Marcus) doing anything differently or exhibiting any type of
964 behavior differently than the first. I believe he still ceded yelling. I don't recall
965 exactly what he was yelling. But yeah. I don't recall anything necessarily
966 jumping off the chart as different than before.
967

968 Q: Was he at this point, from your memory, was he reaching for, attempting to
969 access the areas that you believe he was concealing a deadly weapon?
970

971 A: So at this point, best I recall...
972

973 Q: Yeah.
974

975 A: ...I was set back.
976

977 Q: Okay.
978

979 A: So I didn't have that front row seat to what was going on. I was obstructed by
980 other officers and the car door. So I can't say.
981

982 Q: Okay. Did you see where the bean bag projectile impacted (Marcus) on the
983 third one?
984

985 A: I did not.
986

987 Q: Okay. Did you see the PSD bite (Marcus)?
988

989 A: I did.
990

991 Q: Okay. Where did he bite (Marcus) on his body?

992

993 A: Yeah. I can't say. I don't know where he bit him.

994

995 Q: Okay.

996

997 A: I know the dog engaged and then I took a different role when that dog
998 engaged so.

999

1000 Q: Okay. And ultimately, that's what the dog biting him was what was able to
1001 have him be taken into police custody?

1002

1003 A: Correct.

1004

1005 Q: Okay. Can you tell me what other tactical plans and considerations were
1006 discussed to take (Marcus) into custody?

1007

1008 A1: Besides what he's already told you?

1009

1010 Q: Sure.

1011

1012 A: You mind narrowing that question down? Can you give me a little bit...

1013

1014 Q: How about this. Were there other options you could have used to do this other
1015 than impacting him and biting?

1016

1017 A: Yeah. There were other options.

1018

1019 Q: Which ones do you think would have been effective?

1020

1021 A1: More effective than - I'm sorry?

1022

1023 Q: How about - let me rephrase the question, I apologize.

1024

1025 A1: Thank you.

1026

1027 Q: Which lesser controlling options do you believe could have been worth it or
1028 could have been as effective or more effective?

1029

1030 A1: if you believe there are, sir.

1031

1032 A: Yeah. Let's say, I believe given the totality of the circumstances, our best
1033 option was with the use of the police service dog.

1034

1035 Q: Okay. Just for the totality of everything?

1036

1037 A: Yeah.
1038
1039 Q: Was (Marcus)'s race or ethnic heritage a factor in any of the decisions you
1040 made on this...
1041
1042 A: No.
1043
1044 Q: ...incident? No. Did you witness or overhear any of the officers
1045 reference (Marcus)'s race or ethnic heritage as a part of the reason for their
1046 decisions in this incident?
1047
1048 A: No.
1049
1050 Q: Sergeant Sheilds, do you have any clarifying questions?
1051
1052 Q1: No.
1053
1054 Q: Mr. Cunningham, do you have any clarifying questions or points for
1055 clarification at all?
1056
1057 A1: We take a quick break?
1058
1059 Q: Yeah.
1060
1061 A1: Thank you.
1062
1063 Q: I have a time of - we'll call it 11:23. And we'll pause.
1064
1065 A1: Okay. My recorder is on.
1066
1067 Q: Okay. We're back on the record for our IA tracking 2024-0529, subject officer
1068 interview for Officer John Sullivan. We took an approximately, I don't
1069 know, 7-minute break. The time is 1138 hours. The last question posed was
1070 just for Mr. Cunningham, if you had any points for clarification or any
1071 questions, clarifying questions, sir, do you have any?
1072
1073 A1: None at this time.
1074
1075 Q: Okay. And then finally I have one last question for Officer Sullivan, do you
1076 have anything that you'd like to add that you think could be helpful for the
1077 complaint investigation?
1078
1079 A: No.
1080
1081 Q: Okay. In that case that'll conclude the interview. I have a time of the same

1082 1138 hours and that'll conclude it.

1083

1084

1085 This transcript has been reviewed with the audio recording submitted and it is an accurate
1086 transcription.

1087 Signed _____



VIQ Solutions, Inc
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Phoenix, AZ 85012

CERTIFICATE OF ACCURACY

VIQ Solutions, Inc. certifies that the document produced from the audio file named **Lieutenant_Bisesto_Interview_484a9a0f-a818-4d77-a22a-90c5c8a5e86b.MP3** submitted by **San Diego Police Department - Internal Affairs** on January 27, 2025 is a true, accurate and faithful representation to the best of the transcribers training and ability and no intentional changes or redactions have been made.

DATED: January 27, 2025

A handwritten signature in black ink, appearing to read "S. Bisesto", is written over a horizontal line.

VIQ Representative, SVP Client Experience

INTERVIEW WITH LIEUTENANT MEGHAN BISESTO

Q=Sgt. Eric McCoolle

Q1=Sgt. Milo Shields

A=Lt. Meghan Bisesto

A1=Atty. Jim Cunningham

Q: This is for IA Tracking Number 2024-0529, a subject officer interview. This is Sergeant Eric McCoolle, ID number 6755. Today's date is January 21, 2025. I have a time of 1305 hours. We're located in the Internal Affairs interview room at the San Diego Police Department's headquarters. In the room with me is, ma'am, can you please state your name, rank and ID number?

A: Meghan Bisesto, Lieutenant, ID 5797.

Q: Thank you. I advise you of your right to representation. We start the interview. In the room with us is your representative.

A1: Attorney Jim Cunningham, C-U-N-N-I-N-G-H-A-M.

Q: Thank you. And also present with us is?

Q1: Sergeant Milo Shields, ID Number 7075.

Q: Lieutenant Bisesto, I'm going to read you a sworn personnel admonishment as a subject officer. It's in front of you so feel free to follow along if you'd like. This is a confidential sworn personnel investigation. You may be subject to discipline as a result of this confidential sworn personnel investigation should the findings indicate that such action is warranted. Therefore, you have the - therefore, you have the right to have a representative present at this time. The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The city is not questioning you for the purpose of bringing or substantiating any criminal charge against you. You are directed to answer all the questions posed to you completely, truthfully and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline. If the information indicates that you may be or have been charged

47 with a criminal offense, you have the right to remain silent and the right to the
48 presence and assistance of counsel. However, you do not have the right to
49 refuse to answer any question during this confidential sworn personnel
50 investigation including on self-incrimination grounds. While you have the
51 right to remain silent and not incriminate yourself generally, your silence or
52 refusal to answer during this administrative confidential sworn personnel
53 investigation will be considered insubordination and may lead to
54 administrative discipline up to and including termination. Therefore, any
55 statement made by you during this confidential sworn personal investigation
56 compelled by the threat of discipline, as well as any fruits of those
57 statements cannot be used against you in any criminal proceeding. The City of
58 San Diego has a strong interest in protecting the integrity of its confidential
59 sworn personal investigations preserving evidence, the refabrication and
60 protecting witnesses from harassment, intimidation and retaliation. You are
61 directed not to engage in any harassing, intimidating or retaliatory conduct
62 toward anyone. You also must not try to interfere with the investigation in any
63 way. Any violation of these directives may result in discipline. Lieutenant
64 Bisesto, do you understand the instructions?
65

66 A: Yes.

67
68 Q: If you fully understand the instruction, can you please sign your name below?
69

70 Q1: And while the lieutenant is signing that, as - I mean, my practice, I would put
71 on the record that this is not a voluntary interview. This is a compelled
72 interview and as such all the protections of the Peace Officer Bill of Rights as
73 enumerated in the Penal Code section apply to this interview. Thank you.
74

75 Q: Okay.

76
77 Q1: Government Code section. I'm sorry.
78

79 Q: It's all right. Lieutenant, so how long have you been a San Diego police sworn
80 officer?
81

82 A: 23 years.
83

84 Q: And what is your current assignment?
85

86 A: I am the Lieutenant of the Staffing Unit.
87

88 Q: And what was your assignment on October 24, 2024?
89

90 A: The lieutenant of the staffing unit, but I was filling in as the field lieutenant
91 for the southern branch.

92

93 Q: Okay. Southern Branch Field Lieutenant. So on that date, October 24, 2024 at
94 approximately 2330 hours, did you respond to the area of 6400 Duluth
95 Avenue?

96

97 A: I did. I don't know what time it was because I didn't respond to the scene right
98 away.

99

100 Q: Okay.

101

102 A: I think it was more around midnight when I responded.

103

104 Q: Okay.

105

106 A: I don't know the exact time.

107

108 Q1: Your best estimate?

109

110 A: Yeah. My best estimate.

111

112 Q: That's fine. Ultimately, why did you respond to that location?

113

114 A: It was an evolving critical incident of a wanted felony suspect for assault
115 with a deadly weapon. I was listening to the radio call and just listening to it
116 develop. And it was very busy that night and so there were a lot of things that
117 I was listening to. So I was waiting to see how it was going to progress. And
118 then when they started to call out people from the residence and it sounded
119 like it was evolving and there were more people than they originally thought,
120 then I started to drive to the residence.

121

122 Q: Okay. How long approximately did it take you to get there from when you
123 started driving? If you had to estimate.

124

125 A: Well, I was positioned at the central garage, so probably 5 minutes.

126

127 Q: Okay. What information do you remember having or learning as you
128 responded to this call?

129

130 A: I remember that it was the ex-girlfriend of the suspect or her friend. One of
131 them called the police and said that the suspect pointed a gun at both of them,
132 cocked the hammer and pointed a gun at both of them.

133

134 Q: Okay.

135

136 A: And then she fled the residence and they were meeting with an officer down

137 the street.

138

139 Q: Okay. Can you describe to me what you remember unfolding as you arrived
140 on scene?

141

142 A: Well, when I was listening to it, the sergeants were setting up a perimeter.
143 They requested Abel, they requested K-9. I know that they had a beanbag
144 officer on scene. They were running records checks of the suspect. I do
145 remember that they said that he was a documented Skyline Piru gang member.
146 He had priors for [REDACTED].
147 They got a booking photo of him so that they would know who they were
148 looking for. I believe that the reporting party stated that there were other
149 people in the house including a child and including an elderly man on dialysis
150 that was fairly immobile. And so they were setting up all of their resources
151 when I was listening to it.

152

153 Q: Okay. So this is all prior to you arriving, right?

154

155 A: Prior to me arriving and I guess also when I was driving...

156

157 Q: Okay.

158

159 A: ...to it.

160

161 Q: Okay. So as you arrived, did you stage somewhere with anyone or did you go
162 straight to the residence when you arrived on scene?

163

164 A: I passed by the officer with, what I assume was the victim and her friend, and
165 he just pointed. He said they're down there to the right. There was no parking
166 for me on Duluth with that little cul-de-sac, so I parked at the - I don't know
167 the cross street, but I parked at the cross street of Duluth and whatever it was
168 there, because the car - the street was blocked with all the patrol cars.

169

170 Q: Okay. And so I imagine you have to walk...

171

172 A: I did.

173

174 Q: ...the remainder of the distance?

175

176 A: Yeah. I did.

177

178 Q: Okay. So once you get to a position where you can see what's going on and
179 what you described a critical incident, what was going on?

180

181 A: So I saw approximately three to four, what I presumed, were family members

182 or whoever - maybe not family members of the suspect, but whoever had been
183 called out of the house. And they were standing by with an officer a little bit
184 away from where the patrol cars were. I saw at least two patrol cars that were
185 in front of the house, staggered. And I saw officers on both sides of the car. I
186 saw K-9 officer with his dog out. I found the sergeant who appeared to be
187 most in control of the scene, who I later found out was Sergeant
188 Sullivan. And I saw an officer with a beanbag, a shotgun out and then
189 there were - there was an officer with his gun out for lethal coverage and then
190 again the K-9 officer, and Abel was up.

191
192 Q: Okay. To your understanding, was there cause to arrest anyone located inside
193 [REDACTED] Duluth Avenue?
194

195 A: Yes. Someone either was on the MPS or someone said it on the radio, I don't
196 recall exactly, but that he was arrestable for 245 with a gun times two for both
197 his ex-girlfriend and her friend that was present with her during the crime.
198 And then when I contacted Sergeant Sullivan, he said that he was also under
199 arrest for 245 times two.
200

201 Q: Okay. And just for a lay person, what's a 245?
202

203 A: Assault with a deadly weapon.
204

205 Q: Okay. So when you got there, you mentioned a Sergeant Sullivan. Was there
206 actual incident commander designated for this incident at that point? Do you
207 know?
208

209 Q1: This is when she arrived?
210

211 Q: Mm-hm.
212

213 A: I don't know that anyone said that they were, but he was acting as the incident
214 commander.
215

216 Q: Okay. So...
217

218 A: With his actions.
219

220 Q: You...
221

222 A: He was acting.
223

224 Q: Okay. So from what you observed, he was probably the incident commander?
225

226 A: Yes. I think it was kind of fluid between him and the K-9 sergeant. They were

227 working together.

228

229 Q: Okay.

230

231 A: They were communicating well with each other and working together.

232

233 Q: Okay.

234

235 A: I think when I first arrived...

236

237 Q: Sure.

238

239 A: ...it was Sergeant Sullivan.

240

241 Q: Okay. And once you arrived, did you take on that role as the Incident
242 Commander?

243

244 A: No.

245

246 Q: No? Okay. Was there any reason why not?

247

248 A: He was doing a good job. It was rapidly evolving. There wasn't really time for
249 me to take him away and have a full debrief of everything that was happening
250 because he was directing everyone and the suspect was there and probably 25
251 feet away and not complying. So I walked up to him, I asked him what he
252 needed. He gave me a brief debrief of what happened. And he was - and it's -
253 you can probably see it in the BWCs, he's talking to me and he's engaging
254 other officers. And I didn't feel the need to step in because he was doing a
255 good job and he had far more information than I had because they had been
256 there for at least a half an hour, if not more.

257

258 Q: Okay. So what was actually going on with the suspect Marcus Evans at that
259 point?

260

261 A: When I arrived on scene, he had just walked down the stairs.

262

263 Q: Okay.

264

265 A: And the officers were giving him commands, telling him he was under arrest,
266 giving him commands to walk towards them so that they could take him into
267 custody, asking him to turn around, just giving him commands and he was
268 refusing.

269

270 Q: Okay. So you've described Sergeant Sullivan is - and the K-9 Sergeant to that
271 matter as having some control of this situation.

272

273 A: Yes.

274

275 Q: Did you feel you were needed at this location anymore?

276

277 A: I felt that I was needed as a resource to help them if they needed to. I think it's
278 the field attendant's responsibility to just act as a resource and bounce ideas
279 off of. But they were - you know, if something more critical had come out at
280 that time, then I would have felt comfortable leaving.

281

282 Q: Okay. So you describe kind of left off describing Marcus Evans as at the
283 bottom of the stairs, right?

284

285 A: Yes.

286

287 Q: Uncooperative to commands, is that right?

288

289 A: Correct.

290

291 Q: Okay. At that point, were there any contingency plan or tactical plans devised
292 in order to take the suspect into custody?

293

294 A: Yes. Sergeant Sullivan told me that if he made any motions to go back into the
295 house where there were more people still in the house, that he was going to be
296 impacted by the beanbag and the K-9 was going to be sent. Same as if he tried
297 to run away, that they were going to impact him with the beanbag and send
298 the dog.

299

300 Q: Okay.

301

302 A: And that they believe that he was still armed and he - they didn't want to
303 create a hostage scenario by letting him go back in the house.

304

305 Q: Okay. I know you already mentioned some, but were there any other tactical
306 or de-escalation resources on scene that you noticed for this incident?

307

308 A: Well, I noticed when I was listening to the call that they were setting up all of
309 their resources before they approached the house. So they had a perimeter,
310 they had Abel, they had K-9, beanbag. The officers have tasers on
311 them. Sergeant Sullivan set up his arrest team as best he could with the
312 personnel that he had there. I did ask him - well, when I asked him what he
313 needed, he said, "I need more officers."

314

315 Q: Okay.

316

317 A: So I told those officers that they could roll code the ones that were coming to
318 get there because we needed extra hands. But so - and then they also used the
319 vehicles as barriers once they approached as a - for cover for them because
320 they believe that he was armed and using just the time and distance of staying
321 behind the vehicles while they were communicating with the suspect that I
322 estimate was 25 feet away or so.
323

324 Q: Okay. Other than additional patrol officers, did you request any other
325 resources?
326

327 A: No.
328

329 Q: Okay. Did you see ballistic shields...
330

331 A: No.
332

333 Q: ...at this location? Did you request any ballistic shields?
334

335 A: At one point I asked Sergeant (DiMartin) if he wanted a shield and he said he
336 was going to use his dog. We were just at that point.
337

338 Q: Okay. You mentioned a firearm. Were there any other officer safety concerns
339 other than the firearm?
340

341 A: The house was elevated above us, which was a tactical disadvantage and there
342 were still people in the house that I saw looking out the windows. At one
343 point, someone from the house tried to exit the residence and officers gave
344 him commands to stay inside the residence because that would have created a
345 tactical nightmare to try to get him to walk past the suspect. I'm sorry. What
346 was the question again? I'm sorry.
347

348 Q: I was curious of what officer safety or tactical concerns there were.
349

350 A: So the fact that the house was elevated above us, there was a car parked about
351 4 feet away from the suspect where a gun or a weapon could have been
352 hidden. There was a mailbox a couple feet away from him where a gun could
353 have been hidden or a weapon. And then behind the retaining wall that was
354 next to him, there was kind of a lip between the retaining wall and the dirt
355 where a weapon could have been hidden. And in fact when we were done
356 taking him into custody, there was a pry bar and a crowbar down on the dirt
357 behind the retaining wall.
358

359 Q: Okay. Did you have a clear view of Marcus Evans as he's - you said he's at the
360 bottom of the stairs? Did you have a clear view of him?
361

362 A: I did.
363
364 Q: Okay. Can you describe to me the clothing he was wearing?
365
366 A: He was wearing athletic style shorts with underwear underneath. And so one
367 of the - going back to the last question, I think, he could have - even though he
368 didn't have a shirt on.
369
370 Q1: The question was, what was he wearing? That's all.
371
372 A: Okay.
373
374 Q1: What was he wearing? What was your recollection when you saw him?
375
376 Q: Anything else other than you said athletic shorts?
377
378 A: An underwear underneath.
379
380 Q: An underwear? Okay.
381
382 Q1: Thank you.
383
384 Q: Did you believe it was reasonable that he may be concealing a weapon or had
385 immediate access to a weapon?
386
387 A: Yes.
388
389 Q: Why is that?
390
391 A: Because - actually when I was new, I found a small gun in someone's
392 underwear who had athletic shorts on. And the gun was tied with the
393 drawstring of the athletic shorts to the trigger guard of the gun inside his
394 underwear under his shorts. So I have found a gun on someone with athletic
395 shorts on, and I think it's reasonable that someone could hide a gun in their
396 underwear or in the pocket of shorts.
397
398 Q: Okay. From the time you saw Marcus out there at the bottom of the stairwell,
399 did he ever reach for the area that you believed he had access to the weapon?
400
401 A: Not when he was standing up. When he was crouched over at one point, his
402 hands went to his groin, not underneath his clothes, but to his groin on several
403 occasions.
404
405 Q: From your recollection, what commands were given to Marcus as he's exiting
406 the residence or staying there near the bottom of the stairwell there?

407
408 A: From the best of my recollection, he was saying things such as, "I didn't do
409 anything. I don't know why you're here. Come to...
410
411 Q: May I interrupt you for one moment...
412
413 A: Sure.
414
415 Q: ...please? My question was, what commands were given...
416
417 A: I'm sorry.
418
419 Q: ...to Marcus by police officers?
420
421 A: They told him that he was under arrest.
422
423 Q: Okay.
424
425 A: They ordered him to come to them. They wanted him to come to their
426 car. They - I think it was a lot of repetition of come to us, walk to us. You're
427 under arrest. That's the best that I can recall.
428
429 Q: Okay. And do you know why Marcus was ordered to come to the officers?
430
431 A: I know why I would have ordered him to come to me.
432
433 Q: Okay.
434
435 A: I don't - we didn't have - I don't think we had a conversation of why they
436 wanted him to come, but I know why...
437
438 Q: Would you consider that the best practice?
439
440 A: Yes.
441
442 Q: Okay. So ordering - you consider that the officers ordering Marcus to the
443 police was the best practice at this point?
444
445 A: Yes.
446
447 Q: Okay. And why is that?
448
449 A: Because we're controlling his actions and if he - it also shows that he's
450 complying with us and he's not resisting us. We can control if he were to
451 reach for a weapon or reach when we're trying to have him come to us. We do

452 have our resources there with taser, beanbag, K-9 to deploy if he starts to
453 become assaultive or actively resisting. It - so it allows us those opportunities
454 and it just allows us to control the situation and remain under our cover and
455 the barrier of the car.

456
457 Q: Okay. Who - if you remember, who was giving the commands to Marcus
458 initially as he's there at the bottom of the stairwell?

459
460 A: I know that at some point the K-9 officers were giving him commands. I don't
461 remember if a bunch of different officers - I'm not familiar with those officers
462 because I don't work that area. But...

463
464 Q: Hmm.

465
466 A: So I know the K-9 officers were giving him commands, but not...

467
468 Q: Okay.

469
470 A: ...I don't know which ones.

471
472 Q: From your recollection and from what you're observing, was Marcus
473 following the commands...

474
475 A: No.

476
477 Q: ...given to him? Not at all?

478
479 A: No.

480
481 Q: Okay. So what was he physically doing that was indicative of him not
482 following the commands?

483
484 A: Well, they were ordering him to come to them.

485
486 Q: Okay.

487
488 A: And he refused. They - at one point he walked to the retaining wall.

489
490 Q: Okay.

491
492 A: And I believe they told him not to walk to the wall and he continued to walk
493 to the wall. I know they were ordering him to turn around so that they could
494 see his waistband. I think he did at one point but they - it took a long time for
495 him to comply with that command.

496

497 Q: Okay. When he turned around, did you see the rear waistband on Marcus?
498
499 A: I didn't see him turn around.
500
501 Q: You never saw him turn around?
502
503 A: I never saw him turn around.
504
505 Q: Okay. During, we'll call it for lack of a better term, a standoff.
506
507 A: Yeah.
508
509 Q: Was Marcus saying anything?
510
511 A: Yes.
512
513 Q: What was he saying?
514
515 A: He was saying - again, to the best of my knowledge.
516
517 Q: Yeah.
518
519 A: It's 3 months ago.
520
521 Q: Yeah.
522
523 A: And I don't have a BWC, so for...
524
525 Q: True.
526
527 A: To the best of my recollection, he was saying, "I don't know what's going on
528 here. I didn't do it. You come to me." He said, "Fuck you." He said something
529 to the effect of, "I'm not fucking going." Something about getting off his
530 property or I'm on my property. At some point he was calling for family
531 members to help him. I remember he - I think he believed he had been shot by
532 a rubber bullet after he was impacted by the beanbag.
533
534 Q: Okay.
535
536 A: Because he was saying stuff like, "You shot me - you shot me."
537
538 Q: Okay. We can get there. Well, I'm going to ask you about that part. So
539 ultimately, again I'll use the term standoff because I don't have a better
540 description of it, before any force is used, what is his resistance level at this
541 point per our STP policy enforcement regs?

542
543 A: At which point?
544
545 Q: When he's there at the bottom of the steps. He's being ordered to come back to
546 you guys.
547
548 A: Actively resisting.
549
550 Q: And then how do you say that?
551
552 A: He was refusing to walk to the officers. I believe that a refusal to walk to them
553 is the same as a refusal of walking away. And the obscenities, him verbally
554 signaling his intention to resist us, is actively resisting. Him walking back to
555 the retaining wall is actively resisting the commands for him to - the
556 commands that you are under arrest and you need to walk to us.
557
558 Q: In your experience, is this when you believe there's a high likelihood force
559 was going to be used on Marcus at...
560
561 A: Yes.
562
563 Q: ...this point? Okay. Did you at any point believe now maybe this is the time I
564 should become the incident commander here?
565
566 A: They were doing a great job. There was nothing that they were doing that
567 made me believe that I had to state, I am the incident commander here. It just
568 didn't naturally evolve like that. Now, if I had told Sergeant Sullivan to do
569 something or to do something different, I'm sure he would have. But for me to
570 stand there and say, I am the incident commander, I mean, I don't know that
571 that's a normal thing that field lieutenants do. Again this is - I had been a
572 lieutenant for a week and a half or 2 weeks or something like that. I don't - in
573 my experience, and field lieutenants do not, like, outright say, I am the
574 incident commander, unless it's a - you know, a code 11 or a code 12
575 or something, some lengthy event that is going on for, you know, hours.
576
577 Q: So you believed him to be concealing a weapon on his person.
578
579 A: Yes.
580
581 Q: He was resistant to commands and we had the tactical issues with the house
582 that you described, the elevation. Was there any thoughts of calling out
583 additional resources, such as the SWAT team at that point?
584
585 A: No. Not at that point.
586

587 Q: Right.
588

589 A: If he had gone back in the house, then with the other people in the house and
590 believing to be armed with a gun, then yes. I would have called out SWAT.
591 But at that point, with him out on the street and us containing him in that cul-
592 de-sac with the resources we had, I mean, that's a typical critical incident that
593 happens all the time.
594

595 Q: Okay - okay. So again, this is before any force is used against him. As Marcus
596 became resistant to these commands, did any contingency plans or plans to
597 take Marcus into custody change at this point before force is used?
598

599 A: That's when there was the discussion of deploying the beanbag and sending
600 the dog if he didn't comply after the beanbag.
601

602 Q: Okay. So there was essentially a plan made to impact him with the beanbag, is
603 that fair to say?
604

605 A: Yes.
606

607 Q: Okay. How was the planning done? Was that with you and the other
608 supervisors, or you with the K-9 unit? Can you walk me through that?
609

610 A: Well...
611

612 Q: Was it - were you involved at all?
613

614 A: The first impact with the beanbag happened fairly quickly upon my arrival.
615 And so after Sergeant Sullivan briefed me on what I said earlier that if he tries
616 to go back in the house or tries to run away, we're going to impact him and
617 then send the dog if need be.
618

619 Q: Mm-hm.
620

621 A: So there was that planning. And I said, "Okay. That seems reasonable." And
622 then around that same time, I got a call from Lieutenant Kellington. He was
623 the Northern Branch field lieutenant. And so I took a few steps back because I
624 needed to talk to him because he - there was a Code 12 or Code 11 or Code 12
625 - a SWAT call out in the northern branch that he had to attend to. And so he
626 called and asked me that I needed to take care of the rest of the city.
627

628 Q1: Lieutenant, the first question was, for the first beanbag deployment, were you
629 involved in the planning of that?
630

631 A: No.

632
633 Q: Okay. So did you overhear any of the planning for the first beanbag impact?
634
635 A: Other than him telling me, "If he does this, we're going to beanbag him."
636
637 Q: Okay. Fair enough. I'm going to skip this last line of questioning here.
638 According to some BWC footage - and I know you didn't have access to
639 footage since you didn't read any, but I'm just going to let you know what we
640 saw. Officer Nelson, he's one of the K-9 handlers.
641
642 A: Okay.
643
644 Q: He states aloud that Marcus should be impacted with a beanbag shotgun as a
645 test for compliance. Do you remember overhearing this?
646
647 A: No.
648
649 Q: Okay. Do you know what a test for compliance is? Have you ever heard that
650 term?
651
652 A: No.
653
654 Q: Never been trained on the test for compliance that you're aware of in 23 years?
655
656 A: That phrase? No. I know that we beanbag for compliance.
657
658 Q: Okay. But never heard the phrase test for compliance in...
659
660 A: No.
661
662 Q: ...your experience? Okay. Approximately a minute after
663 Officer Nelson stated, "Hey, let's impact for compliance." He then says, "Let's
664 impact for compliance." Did you overhear him say that?
665
666 A: Is this for the first one?
667
668 Q: Yes.
669
670 A: No.
671
672 Q: No? Okay. Did you actually see Marcus impacted with the beanbag projectile?
673
674 A: No.
675
676 Q: The first time?

677
678 A: No. And if you see me on BWC, I actually flinch because I...
679
680 Q: I know.
681
682 A: Okay.
683
684 Q: Yeah. Okay. So, I guess, after you get off the phone, what's your next memory
685 then?
686
687 A: The beanbag - the first beanbag.
688
689 Q: So - okay. So you're on the phone when that actually happened?
690
691 A: I'm on the phone, I'm putting, I believe - I'm putting the phone away. And I -
692 the sound of it startled me.
693
694 Q: The shot?
695
696 A: The sound of the beanbag.
697
698 Q: The shot? The beanbag shot?
699
700 A: Yes.
701
702 Q: Okay. How far away were you from the team?
703
704 A: Oh, I think I was just at the back of the car, not - maybe 5 feet.
705
706 Q: Okay. Did you see where the impact hit or the beanbag projectile impacted
707 Marcus?
708
709 A: No.
710
711 Q: Okay. So you did not see at all the first beanbag impact?
712
713 A: I saw the direct aftermath.
714
715 Q: Okay.
716
717 A: Because I heard it and I looked and...
718
719 Q: What's...
720
721 A: ...I saw him...

722
723 Q: I'm sorry to interrupt you. What's the next thing you noticed after hearing the
724 sound of it?
725
726 A: Him crouching down.
727
728 Q: You saw Marcus on the ground?
729
730 A: Yes.
731
732 Q: Okay. So ultimately you never overheard any reason as to why he was
733 impacted with the beanbag at that point?
734
735 A: No.
736
737 Q: Okay - okay. So Marcus is down, from your memories, in a fetal position or
738 down on all fours, something like that?
739
740 A: Yeah. I like to...
741
742 Q: Describe what you remember of Marcus. How he is after he's impacted that
743 first time.
744
745 A: Like, crouched on all fours.
746
747 Q: Okay. Still in the same general area of the bottom of the stairs?
748
749 A: Well, he had moved from the bottom of the stairs, maybe a couple steps
750 towards the officers, towards the car, still, like, in the driveway. But then
751 when I saw him crouched, he was more towards the retaining wall.
752
753 Q: Okay. At that point, was there any discussion or planning to move up and take
754 Marcus into custody at that point?
755
756 A: At that point, there was discussion on giving him more commands to come to
757 the officers. And so that was the next step, is just continuing to give him more
758 commands to come to them. So now he's been impacted by a beanbag, trying
759 to gain compliance in order for him to surrender, allowing him time to
760 surrender to us.
761
762 Q: Okay. How much time did you think was a reasonable amount of time for him
763 to surrender to the officers?
764
765 A: I mean, I don't have a - like, are you looking for a number of minutes?
766

767 Q: I'll withdraw the question. That's fine. As Marcus is down on all fours, as you
768 describe, has the situation or urgency changed due to his actions that you
769 know of?
770

771 A: Well, I saw where the beanbag, the, like, residual of the beanbag, I saw where
772 it impacted him.
773

774 Q: Mm-hm.
775

776 A: Which was lower torso. And I could tell that, like, he wasn't - he didn't have
777 an open wound or anything, so it was just allowing him time to recognize
778 what had happened and that we're not going away and that he needed to
779 comply. So urgency and I heard the family members, he's yelling that he had
780 been shot and I was worried that the family members were going to start
781 intervening a little bit being upset that it may be thinking that he had been
782 actually shot. And I was worried that people in the house were going to start
783 coming out of the house which was going to be very challenging for us. So it
784 became a little more urgent in that respect and then also he was acting
785 unreasonable. So I was worried that that's when he was going to escalate into
786 actually grabbing a weapon whether it was on his person under the car behind
787 the retaining wall.
788

789 Q: When you say he was acting unreasonable, what specifically was he doing?
790

791 A: Not complying. All of his family members came out of the house and
792 complied with us. It's unreasonable for him to not comply with all these
793 officers pointing guns at him, telling him he's under arrest. His family
794 members understood. They came out. They complied. Nothing happened to
795 them. Nothing bad happened to them. It was - it's unreasonable for him to not
796 comply with us.
797

798 Q: Okay. So Marcus is down on all fours as we've described. Were there any
799 more commands given to him that you remember?
800

801 A: Just to continue to come to us because we didn't want to come to him.
802

803 Q: Okay. Did the contingency plans or the tactical plans to take him to custody
804 after he'd been impacted and he's now not complying still, did they change it
805 all to your knowledge or did you assist in that?
806

807 A: It was just a discussion that they were going to impact one more time with the
808 - they were going to impact with the beanbag and send the dog.
809

810 Q: Okay. When he's down on all fours could you see the back of his waistband at
811 that point?

812
813 Q1: If you recall.
814
815 A: I don't recall. He turned and was sitting, like, facing us with his knees up.
816
817 Q: Okay. So approximately 6 minutes after he was initially impacted with the
818 beanbag shotgun, he was shot for a second time with that weapon system and
819 the first police service dog was sent. Does that sound about correct to your
820 memory? About 5 or 6 minutes later?
821
822 A: 5 or 6 minutes from what?
823
824 Q: From the first impact.
825
826 Q1: I'm sorry. What was the question?
827
828 Q: That approximately 5 or 6 minutes later he was shot for a second time and the
829 first police service dog was sent to him. Does that sound correct to your
830 memory?
831
832 A: That seems a little long. But...
833
834 Q: Okay.
835
836 A: ...that could be - it seems a little long to me, but it's hard to estimate...
837
838 Q: Sure.
839
840 A: ...when it's all happening.
841
842 Q: It's fine. So you thought it was actually a shorter amount of time, just from
843 your memory?
844
845 A: Yeah.
846
847 Q: Okay.
848
849 A: It's - that's a hard question. That's a hard question for me to answer.
850
851 Q1: You're just giving him your best estimate, right?
852
853 Q: Yeah.
854
855 Q1: That's fine. You don't have to guess.
856

857 Q: I'm not looking for guess.
858
859 A: Okay. I really don't know.
860
861 Q: Okay.
862
863 A: That just seems a little long...
864
865 Q: Okay.
866
867 A: ...to me.
868
869 Q: Were you able to see Marcus just prior to or as this beanbag is fired this time?
870
871 A: Was I able to see it impact him?
872
873 Q: Yeah.
874
875 A: Yes.
876
877 Q: Okay. Were you able to see it right before it impacted or right before the
878 officers yelling, firing beanbag? Were you able to see Marcus at that point?
879
880 A: Yes.
881
882 Q: Okay. What was Marcus's resistance level at that point?
883
884 A: He was verbally signaling that he was going to - that he was resisting.
885
886 Q: Okay.
887
888 A: Yelling, "Fuck you", or...
889
890 Q1: His level of resistance?
891
892 A: Active resistant.
893
894 Q: Okay.
895
896 A: Actively resistant.
897
898 Q: Okay. And how was he positioned?
899
900 A: He was sitting with his knees up facing us.
901

902 Q: Okay. And what commands were given prior to that he was not - that he was
903 resistant to from your recollection?
904

905 A: I don't remember a specific command. I know the K-9 was yelling at him. I
906 don't remember the specific commands.
907

908 Q: Okay. Did you see where the beanbag projectile impacted Marcus on his body
909 on that one?
910

911 A: Yes.
912

913 Q: Where did it impact him?
914

915 A: To the best of my recollection, the right shin.
916

917 Q: Okay. And just to confirm, this is the one where the dog did not actually
918 apprehend him. Is that to the best of your...
919

920 A: Correct. I think it was the right shin.
921

922 Q: Yeah. Okay.
923

924 A: That's what I remember.
925

926 Q: Okay. Did you see that the police dog actually - were you watching as the
927 police dog actually went to engage Marcus? Did you see that?
928

929 A: Yes.
930

931 Q: Okay. Did Marcus attempt to harm or attack the police dog?
932

933 A: I believe he, like, kicked and put his hands up, like this. Like...
934

935 Q: So you're describing, like, a pushing motion?
936

937 A: Like a kicking and a pushing with his hand to try to defend the dog...
938

939 Q: Would...
940

941 A: ...off of him.
942

943 Q: Would you consider that him trying to assault the dog or attack the dog or
944 were you thinking he was defending himself from the dog or bracing from the
945 dog?
946

947 Q1: If you know.
948
949 A: I wouldn't know what...
950
951 Q: What did you interpret it as?
952
953 A: I don't think I interpreted it as anything. I was more focused on the fact that
954 the dog didn't engage him.
955
956 Q: Okay. So then the dog is either called back or pulled back on a leash to the
957 team, was there any discussions or thoughts of moving up at that point to take
958 Marcus into custody?
959
960 A: No. Sergeant (DiMartin) said he was going to do a dog swap.
961
962 Q: Okay.
963
964 A: And he - during the dog swap, I believe that either he or the other K-9 officer
965 was giving commands that he was going to be bit again.
966
967 Q: Okay. What was his - what did Marcus - how was - what was Marcus' reaction
968 to those commands? Did he...
969
970 A: He...
971
972 Q: ...surrender?
973
974 A: ...was yelling again. He was yelling, I think, for family members about the
975 dog, something about the dog. Again, he's - it was almost an inadvertent de-
976 escalation of using a dog and the dog, that's not what we wanted, right? We
977 don't want the dog to fail, but it was kind of an inadvertent de-escalation
978 because he's seeing what's going to happen to him if he does not comply. So
979 now I think that urgency is becoming more because why is he not complying?
980 He's been struck twice now with a beanbag. He knows that we're going to
981 send the dog because we did send the dog. And he's still failing to comply
982 with us which is telling me that he's prompting us to come to him and
983 why? That's not a reasonable response. So I think it heightens everyone's
984 senses that he kept trying to get us to come to him.
985
986 Q: Okay. So ultimately did the plan to take Marcus in custody after the fail, when
987 the dog failed to engage, did it change or was it amended in any way other
988 than swapping out the dogs?
989
990 A: No.
991

992 Q: Any reason why for that?

993

994 A: Because we felt like it was a good plan as long as the dog engaged.

995

996 Q: Okay. Were you able to see Marcus - as the third beanbag shot was fired and
997 the second PSD was sent to him, did you - were you able to see Marcus at that
998 point?
999

1000 A: Yes.

1001

1002 Q: Okay. Where - how was he positioned? What was he doing at that point?

1003

1004 A: I - he was still positioned on the ground. I think he was kind of still seated on
1005 the ground rocking back and forth, yelling for his family members.
1006

1007 Q: Okay. And do you remember where the beanbag projectile struck Marcus?

1008

1009 A: I believe in his lower torso area.

1010

1011 Q: Okay. And what was his resistance level right before that force was applied
1012 from your memory?
1013

1014 A: Active resisting - active resistance.

1015

1016 Q: And did you see the PSD bite Marcus?

1017

1018 A: Yes.

1019

1020 Q: Okay. Do you remember where on his body it bit him?

1021

1022 A: The left forearm.

1023

1024 Q: Okay. Were there any lesser controlling force options that were discussed or
1025 could have been utilized to take Marcus into custody from your perspective?
1026

1027 Q1: Than the force we were talking about?

1028

1029 Q: Yes, sir.

1030

1031 A: I'm sorry. Could you say it again?

1032

1033 Q: Were there any other lesser controlling force options that could have been
1034 utilized to take Marcus into custody other than the extended range impact
1035 weapon and police dog apprehension?
1036

1037 A: With the totality of circumstances, of everything that had occurred and that
1038 was occurring, I believe that that was the safest way to take him into custody.
1039

1040 Q: Okay. What happened after he was bit by the PSD?
1041

1042 A: The officers moved up, took him into custody, checked him over, it appeared
1043 as though he just had the one dog bite on the arm as an injury. He was placed
1044 in a patrol vehicle and then we called the remaining people out of the house.
1045

1046 Q: Okay. Was Marcus's race or ethnic heritage a factor in your - or in any of the
1047 decisions made on this incident?
1048

1049 A: No.
1050

1051 Q: Did you witness or overhear any of the officers reference Marcus's race or
1052 ethnic heritage as a reason for any decisions used on this incident?
1053

1054 A: No.
1055

1056 Q: Sergeant Sheilds, do you have any follow-up questions?
1057

1058 Q1: No.
1059

1060 Q: Mr. Cunningham, do you have any clarification or follow-up questions?
1061

1062 A1: Can we take a quick break?
1063

1064 Q: Sure.
1065

1066 A1: Thank you.
1067

1068 Q: Okay. We're back on the record after a short, probably like, 3 minute little
1069 break. The last question posed was to Mr Cunningham and sir I asked you if
1070 you had any questions or points of clarification?
1071

1072 A1: Not necessarily questions. I would just ask the lieutenant to further kind of
1073 explain her role at this particular scene. I think she needs to clarify a few
1074 things, please.
1075

1076 A: So my role was to be there as a resource for the officers and the sergeant. I felt
1077 as though when I spoke with the sergeant and I observed what was going on
1078 that they had control over the officers, over the scene, over their plan. They
1079 communicated some contingencies of what was going to happen. I felt
1080 comfortable with that. When he asked for more officers, I got him more
1081 officers. At one point when they were - when the sergeants were

1082 communicating, I was there, I was observing, if - they were doing a great
1083 job. These are seasoned police officers. And if I felt like anything that they
1084 told me or did was violating policy, violating procedure, then I would have
1085 stepped in. I did not feel the need to step in and change anything that they
1086 were doing. And I think you asked me before, "Why did you stay?" Well,
1087 because it's a critical incident evolving and if something were to happen that I
1088 observed was a violation of policy or procedure, then I am there to step in and
1089 rectify that. I didn't feel the need to do that. I felt comfortable with everything
1090 that was going on, and I was part of the conversation of everything that was
1091 going on. And at one point - we didn't discuss this but - and it could be on a
1092 BWC, at one point when they did make the plan to use the beanbag and
1093 deploy the dog, they were conversing back and forth. The beanbag officer was
1094 up with her beanbag shotgun because she still was directing the beanbag at the
1095 suspect. I wanted to make sure that she knew what the plan was. And so I
1096 went over, touched her on the shoulder, "Do you understand what you're
1097 supposed to do?" And she said, "Yes." So I was there actively participating in
1098 it. I don't know that I articulated that very well before, I just did not feel the
1099 need to get on the radio and say, "I am the incident commander." Because I
1100 felt like they were doing a good job.

1101
1102 Q: Okay. Thank you. Anything else?

1103
1104 A1: No. That'll do it. Thank you.

1105
1106 Q: And, Lieutenant Bisesto, is there anything else you'd like to add that you think
1107 could be helpful for the complaint investigation?

1108
1109 A: No.

1110
1111 Q: Okay. All right. In that case, we have a time of, we'll call it 1357 hours and
1112 that'll conclude the interview.

1113
1114
1115 This transcript has been reviewed with the audio recording submitted and it is an accurate
1116 transcription.

1117 Signed _____



**SWORN PERSONNEL ADMONISHMENT
(WITH LYBARGER/GARRITY WARNING)
SUBJECT**

This is a confidential sworn personnel investigation.

You may be subject to discipline as a result of this confidential sworn personnel investigation, should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time.

The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The City is not questioning you for the purpose of bringing or substantiating any criminal charge against you.

You are directed to answer all of the questions posed to you completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

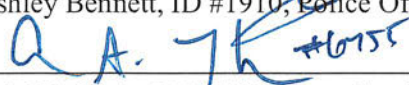
If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline, up to and including termination.

Therefore, any statement made by you during this confidential sworn personnel investigation, compelled by the threat of discipline, as well as any fruits of those statements, cannot be used against you in any criminal proceeding.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.


Ashley Bennett, ID #1910, Police Officer I


Eric McCoole, ID #6755, Detective Sergeant

1/6/2025
Date

01/06/2025
Date



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If you fully understand these instructions, please sign your name below.

J. FLORES #1041

Javier Flores, Police Officer II, ID #1041

E.A. TH #6755

Eric McCoole, Detective Sergeant, ID #6755

1/7/25

Date

01/07/2025

Date



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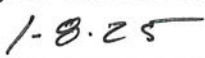
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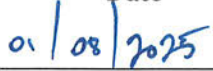
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If you fully understand these instructions, please sign your name below.


Robert Nelson, Police Officer II, ID #7443


Date


Eric McCool, Detective Sergeant, ID #6755


Date



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(WITH LYBARGER/GARRITY WARNING)
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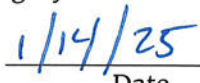
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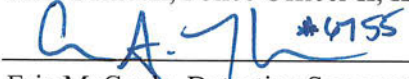
If you fully understand these instructions, please sign your name below.

 #6455

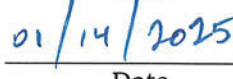
John Sullivan, Police Officer II, ID #6455

 1/14/25

Date

 #6755

Eric McCoole, Detective Sergeant, ID #6755

 01/14/2025

Date

Employee Performance Plan

EMPLOYEE NAME _____

CLASSIFICATION **POLICE LIEUTENANT** _____

WORKING TITLE _____

DEPARTMENT **POLICE** DIVISION/SECTION ***** _____

PERFORMANCE PLAN

SUPERVISOR: _____ DATE: _____

REVIEWED BY: _____ DATE: _____

EMPLOYEE _____ DATE: _____

This Plan has been discussed with me.

☐ Employee Performance Plan Attached

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Employee Performance Plan

*

EMPLOYEE

LIEUTENANT

CLASSIFICATION

FUNCTION:

GENERAL JOB PERFORMANCE

STANDARDS

Conforms with policies, procedures and work rules as specified in Department Rules and Regulations, Department Instructions, City Personnel Manual and Civil Service Rules.

Conforms with Department Equal Employment Opportunity policies.

Conforms with unit requirements regarding punctuality, attendance and use of leave.

Willingly accepts and performs assigned tasks with minimum supervision.

Willingly accepts and performs special assignments while maintaining normal workload responsibilities.

Uses time, equipment, materials and other resources efficiently and economically.

Develops necessary skills to perform up to stated job standards, including maintaining sufficient firearms proficiency to pass the annual Department Firearms Proficiency Shoot.

Alerts supervisor when assigned work cannot be completed on schedule or problems develop that cannot be routinely handled. Recommends alternate actions where appropriate.

Maintains confidentiality of information.

Maintains fitness and professional appearance in accordance with Department policy, unless otherwise required by assignment.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

*

EMPLOYEE

LIEUTENANT

CLASSIFICATION

FUNCTION:

COMMUNICATION SKILLS

STANDARDS

Transmits relevant information appropriately throughout the chain of command in a timely manner.

Verbally communicates in a clear, well-organized manner by:

- giving direction/instructions which are clear and specific;
- demonstrating active listening skills;
- creating an open listening and/or learning environment;
- displaying an ability to effectively facilitate group discussions.

Demonstrates an ability to thoroughly express complex written work that is:

- legible;
- clear and understandable;
- concise, accurate, and complete;
- in the prescribed format;
- free from spelling, punctuation and grammatical errors;
- timely, meeting established due dates;
- well-researched.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

*

EMPLOYEE

LIEUTENANT

CLASSIFICATION

FUNCTION:

INTERPERSONAL SKILLS

STANDARDS

Displays tact, courtesy and good judgment when dealing with:

- citizens;
- co-workers;
- supervisors;
- subordinates.

Is open and available to suggestions, comments, criticism and questions from co-workers, peers, supervisors, and, if appropriate, subordinates.

Maintains effective, cooperative relationships with personnel at all levels by:

- communicating, informing and convincing without antagonizing;
- willingly helping others;
- being sensitive and aware of how actions may affect others;
- listening to and attempting to understand the viewpoints of others;
- making constructive efforts to resolve problems in working relationships.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

*

EMPLOYEE

LIEUTENANT

CLASSIFICATION

FUNCTION:

SUPERVISION AND LEADERSHIP SKILLS

STANDARDS

Establishes and clearly communicates expectations and job standards to subordinates as evidenced by verbal and written communications.

Sets a good example for subordinates by displaying the same high level of conduct and performance expected of them.

Prepares employee evaluations that are:

- objective, identifying specific job-related behaviors;
- thorough and comprehensive;
- timely.

Recognizes and rewards outstanding work performance, demonstrating an adequate knowledge of reward systems available.

Takes disciplinary action in conformance with Department policy as demonstrated by:

- preparing adequate documentation in the proper format;
- performing appropriate counseling;
- using corrective action to deal with performance problems or unintentional acts.

Enhances employee career potential by:

- providing direction and making assignments designed to develop employees' job and leadership skills and transforming weaknesses into strengths;
- determining training needs and implementing appropriate individual or group training;
- recommending qualified employees for specific assignments;
- providing career counseling when appropriate;
- delegating responsibility to those employees with demonstrated desire and/or ability and making use of employees' unique backgrounds and abilities.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

*

EMPLOYEE

LIEUTENANT

CLASSIFICATION

FUNCTION:

SUPERVISION AND LEADERSHIP SKILLS

STANDARDS

Demonstrates the ability to manage incidents by:

- being available and responding appropriately;
- establishing control and communication;
- using sound tactics;
- demonstrating an ability to gather intelligence, plan and organize;
- appropriately using available resources;
- attaining results through the direction of subordinates;
- directing incidents through to logical conclusions.

Recognizes, develops and utilizes all available resources, including information systems, community resources, department personnel and other agencies.

Exhibits the ability to make timely, appropriate decisions as demonstrated by:

- soliciting input from appropriate personnel or units/divisions;
- possessing knowledge of City and/or Department policies and procedures;
- considering Department/division goals.

Displays the ability to maintain operational readiness by:

- determining staffing and equipment needs;
- directing and supervising the activities of assigned personnel;
- delegating work as necessary;
- assessing critical incidents and determining the need for police action;
- coordinating responses to special activities and/or major events and assuming command as needed.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

*

EMPLOYEE

LIEUTENANT

CLASSIFICATION

FUNCTION:

MANAGEMENT SKILLS

STANDARDS

Understands and uses the following administrative processes effectively and efficiently:

- fund audits;
- fiscal reports;
- inspections;
- job interviews and performance appraisals;
- staff scheduling.

Demonstrates knowledge of, adheres to and ensures compliance with current laws, City regulations and Department policies and procedures, including training bulletins, Department orders and work rules.

Ensures the effectiveness and efficiency of division/unit operations by:

- establishing goals and objectives, communicating them clearly to subordinates and performing adequate follow-up to ensure compliance;
- practicing participative management and other effective management techniques;
- initiating and developing strategies to accomplish goals.

Oversees problem solving efforts by ensuring:

- proper problem identification;
- thorough and accurate analysis;
- viable responses;
- honest assessments;
- sustained solutions.

Uses problem solving methods and techniques to address organizational and community concerns.

Demonstrates an ability to utilize the strategic management process by:

- developing strategies that focus on fiscal year priorities;
- soliciting input from subordinates and the community;
- developing specific, relevant, measurable tasks to address strategies.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

EMPLOYEE NAME _____

CLASSIFICATION **POLICE SERGEANT**

WORKING TITLE _____

DEPARTMENT **POLICE** DIVISION/SECTION _____

PERFORMANCE PLAN

SUPERVISOR: _____ DATE: _____

REVIEWED BY: _____ DATE: _____

EMPLOYEE _____ DATE: _____

This Plan has been discussed with me.

☐ Employee Performance Plan Attached

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Employee Performance Plan

EMPLOYEE

SERGEANT
CLASSIFICATION

FUNCTION:

GENERAL JOB PERFORMANCE

STANDARDS

Conforms with policies, procedures and work rules as specified in Department Rules and Regulations, Department Instructions, City Personnel Manual and Civil Service Rules.

Conforms with Department Equal Employment Opportunity policies.

Conforms with unit requirements regarding punctuality, attendance and use of leave.

Willingly accepts and performs assigned tasks with minimum supervision.

Willingly accepts and performs special assignments while maintaining normal workload responsibilities.

Uses time, equipment, materials and other resources efficiently and economically.

Develops necessary skills to perform up to stated job standards, including maintaining sufficient firearms proficiency to pass the annual Department Firearms Proficiency Shoot.

Alerts supervisor when assigned work cannot be completed on schedule or problems develop that cannot be routinely handled. Recommends alternate actions where appropriate.

Maintains confidentiality of information.

Maintains fitness and professional appearance in accordance with Department policy, unless otherwise required by assignment.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

EMPLOYEE

SERGEANT
CLASSIFICATION

FUNCTION:

COMMUNICATION SKILLS

STANDARDS

Transmits relevant information appropriately throughout the chain of command in a timely manner.

Verbally communicates in a clear, well-organized manner by:

- giving direction/instructions that are clear and specific;
- demonstrating active listening skills;
- creating an open listening and/or learning environment;
- displaying an ability to effectively facilitate group discussions.

Demonstrates an ability to thoroughly express complex written work that is:

- legible;
- clear and understandable;
- concise, accurate, and complete;
- in the prescribed format;
- free from spelling, punctuation and grammatical errors;
- timely, meeting established due dates;
- well-researched.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

EMPLOYEE

SERGEANT
CLASSIFICATION

FUNCTION:

INTERPERSONAL SKILLS

STANDARDS

Displays tact, courtesy and good judgment when dealing with:

- citizens;
- co-workers;
- supervisors;
- subordinates.

Is open and available to suggestions, comments, criticism and questions from co-workers, peers, supervisors, and, if appropriate, subordinates.

Maintains effective, cooperative relationships with personnel at all levels by:

- communicating, informing and convincing without antagonizing;
- willingly helping others;
- being sensitive and aware of how actions may affect others;
- listening to and attempting to understand the viewpoints of others;
- making constructive efforts to resolve problems in working relationships.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

EMPLOYEE

SERGEANT
CLASSIFICATION

FUNCTION:

SUPERVISION AND LEADERSHIP SKILLS

STANDARDS

Establishes and clearly communicates expectations and job standards to subordinates as evidenced by verbal and written communications.

Sets a good example for subordinates by displaying the same high level of conduct and performance expected of them.

Prepares employee evaluations that are:

- objective, identifying specific job-related behaviors;
- thorough and comprehensive;
- timely.

Recognizes and rewards outstanding work performance, demonstrating an adequate knowledge of reward systems available.

Takes disciplinary action in conformance with Department policy as demonstrated by:

- preparing adequate documentation in the proper format;
- performing appropriate counseling;
- using corrective action to deal with performance problems or unintentional acts.

Enhances employee career potential by:

- providing direction and making assignments designed to develop employees' job and leadership skills and transforming weaknesses into strengths;
- determining training needs and implementing appropriate training;
- recommending qualified employees for specific assignments;
- providing career counseling when appropriate;
- delegating responsibility to those employees with demonstrated desire and/or ability and making use of employees' unique backgrounds and abilities.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan

EMPLOYEE

SERGEANT
CLASSIFICATION

FUNCTION:

SUPERVISION AND LEADERSHIP SKILLS

STANDARDS

Demonstrates the ability to manage incidents by:

- being available and responding appropriately;
- establishing command, control and communication;
- using sound tactics;
- demonstrating an ability to gather intelligence, plan and organize;
- appropriately using available resources;
- attaining results through the direction of subordinates;
- directing incidents through to logical conclusions.

Recognizes, develops and utilizes all available resources, including information systems, community resources, department personnel and other agencies.

Exhibits the ability to make timely, appropriate decisions as demonstrated by:

- soliciting input from appropriate personnel or units/divisions;
- possessing knowledge of City and/or Department policies and procedures;
- considering Department/division goals.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE

Employee Performance Plan_____
EMPLOYEE_____
SERGEANT
CLASSIFICATION

FUNCTION:

MANAGEMENT SKILLS_____
STANDARDS

Understands and uses the following administrative processes effectively and efficiently:

- route slips;
- contingency plans;
- inspections;
- job interviews and performance appraisals;
- staff scheduling.

Demonstrates knowledge of, adheres to and ensures compliance with current laws, City regulations, and Department policies and procedures, including training bulletins, Department orders and work rules.

Ensures the effectiveness and efficiency of division/unit operations by:

- establishing goals and objectives, communicating them clearly to subordinates and performing adequate follow-up to ensure compliance;
- practicing participative management and other effective management techniques;
- initiating and developing strategies to accomplish goals.

Supervises problem solving efforts by ensuring:

- proper problem identification;
- thorough and accurate analysis;
- viable responses;
- honest assessments;
- sustained solutions.

Uses problem solving methods and techniques to address organizational and community concerns.

Demonstrates an ability to utilize the strategic management process by:

- developing a plan to meet future needs and facilitate change;
- soliciting input from subordinates and the community;
- developing specific, relevant, measurable tasks to address strategies.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE_____
DATE

CITY OF SAN DIEGO EMPLOYEE PERFORMANCE REVIEW PROGRAM

Employee Performance Plan

*

EMPLOYEE

*

CLASSIFICATION

FUNCTION:

CANINE UNIT SERGEANT

STANDARDS

Maintains the hygiene and cleanliness of kennel, vehicle and related canine equipment in compliance with the Canine Unit Operations Manual.

Grooms and cleans the assigned dog as needed.

Demonstrates knowledge of health-related problems of the assigned animal and addresses issues when noted or pointed out.

Demonstrates an ability to handle, control and deploy the dog in a safe manner within policy.

Participates in all aspects of training and exhibits an understanding of training techniques.

This function and these standards have been discussed with me.

EMPLOYEE SIGNATURE

DATE



**SWORN PERSONNEL ADMONISHMENT
WITNESS**

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

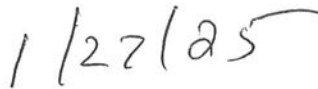
If you fully understand these instructions, please sign your name below.



Joshua Dafoe, Sergeant, ID #5158



Eric McCoole, Detective Sergeant, ID #6755



Date



Date



**SWORN PERSONNEL ADMONISHMENT
(WITH LYBARGER/GARRITY WARNING)
SUBJECT**

This is a confidential sworn personnel investigation.

You may be subject to discipline as a result of this confidential sworn personnel investigation, should the findings indicate that such action is warranted. Therefore, you have the right to have a representative present at this time.

The purpose of this confidential sworn personnel investigation is to obtain information to assist the City of San Diego in determining whether administrative disciplinary action is warranted against you. The City is not questioning you for the purpose of bringing or substantiating any criminal charge against you.

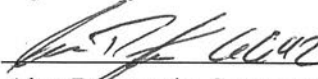
You are directed to answer all of the questions posed to you completely, truthfully, and to the best of your knowledge. You may consult with your representative before answering any question, but your representative may not answer the question for you. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

If information indicates that you may be or have been charged with a criminal offense, you have the right to remain silent and the right to the presence and assistance of counsel. However, you do not have the right to refuse to answer any question during this confidential sworn personnel investigation, including on self-incrimination grounds. While you have the right to remain silent and not incriminate yourself generally, your silence or refusal to answer during this administrative confidential sworn personnel investigation will be considered insubordination and may lead to administrative discipline, up to and including termination.

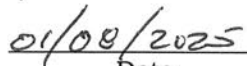
Therefore, any statement made by you during this confidential sworn personnel investigation, compelled by the threat of discipline, as well as any fruits of those statements, cannot be used against you in any criminal proceeding.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

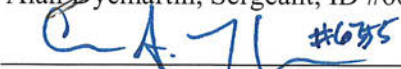
If you fully understand these instructions, please sign your name below.



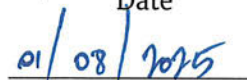
Alan Dyemartin, Sergeant, ID #6642



Date



Eric McCool, Detective Sergeant, ID #6755



Date



**SWORN PERSONNEL ADMONISHMENT
WITNESS**

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

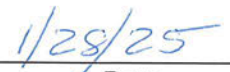
You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.



Zachary Pfannenstiel, Sergeant, ID #6506



Date



Eric McCoole, Detective Sergeant, ID #6755



Date



SWORN PERSONNEL ADMONISHMENT WITNESS

This is a confidential sworn personnel investigation. You are considered a witness.

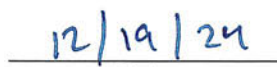
It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

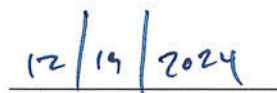
The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

 #7711
Tyler Christman, Police Officer II, ID #7711

 12/19/24
Date

 #6755
Eric McCoole, Detective Sergeant, ID #6755

 12/19/2024
Date



**SWORN PERSONNEL ADMONISHMENT
WITNESS**

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

Isai Castillo, Police Officer II, ID #7875

12-19-24

Date

Eric McCoole, Detective Sergeant, ID #6755

12/15/2024

Date



**SWORN PERSONNEL ADMONISHMENT
WITNESS**

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

 _____ Shayan Esambolchi, Police Officer II, ID #7875 1087 S.E.	<u>12/19/2024</u> _____ Date
 _____ Eric McCoole, Detective Sergeant, ID #6755	<u>12/19/2024</u> _____ Date



**SWORN PERSONNEL ADMONISHMENT
WITNESS**

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

You are directed to answer all questions completely, truthfully, and to the best of your knowledge. If you refuse to answer a question, it will be considered insubordination and you may be subject to discipline.

The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.

 # 7280

Techeakboth Uch, Police Officer II, ID #7875

12/19/2024

Date

 #6755

Eric McCoole, Detective Sergeant, ID #6755

12/19/2024

Date



**SWORN PERSONNEL ADMONISHMENT
WITNESS**

This is a confidential sworn personnel investigation. You are considered a witness.

It is not anticipated that you will be subject to any discipline as a result of this confidential sworn personnel investigation. However, if during your interview, information comes to light indicating that you may be subject to discipline, we will stop the interview, let you know that you may be subject to discipline, and you will have the right to representation at that time.

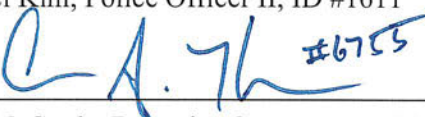
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The City of San Diego has a strong interest in protecting the integrity of its confidential sworn personnel investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

If you fully understand these instructions, please sign your name below.



Daniel Kim, Police Officer II, ID #1611



Eric McCoole, Detective Sergeant, ID #6755



Date



Date

HALL OF JUSTICE
330 West Broadway
San Diego, CA 92101
(619) 531-4040
SanDiegoDA.com



RECEIVED

RACHEL SOLOV
ASSISTANT DISTRICT ATTORNEY

OFFICE OF THE SAN DIEGO COUNTY
DISTRICT ATTORNEY
SUMMER STEPHAN
District Attorney
INTERNAL AFFAIRS
26 FEB 24 AM 2:15

February 12, 2026

Chief Scott Wahl
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Use of Force upon Mr. Marcus Evans by San Diego Police Officers Ashley Bennett, Robert Nelson, and Sergeant Alan Dyemartin on October 24, 2024; San Diego Police Department Case No. 24043762; DA Special Operations Case No. 25-113UF

Dear Chief Wahl:

We have reviewed the reports and other materials provided by the San Diego Police Department concerning the use of force upon Marcus Evans in relation to his arrest by San Diego Police officers on October 24, 2024. These materials were submitted to the District Attorney's Office on September 15, 2025.

Summary

On October 24, 2024, a 911 call was placed by a woman stating a man had pulled a gun on her. San Diego Police Department (SDPD) officers responded to the location and made contact with the caller and two other women, who are referred to herein as Civilian Witness One (CW1), Civilian Witness Two (CW2), and Civilian Witness Three (CW3). CW1 told police that earlier while she was on a video call with CW3 she saw Marcus Evans hit CW3 with a metal object. After CW1 saw this, CW1 and CW2 drove to CW3's location to help her. CW1 and CW2 tried to get CW3 to leave and Evans responded by racking and pointing a gun at CW1 and CW2. An altercation between the parties ensued, during which Evans pushed CW3 and pushed CW1 to the ground. The three women left in a vehicle. Responding officers met them and were able to identify Evans as the suspect.

Multiple officers responded to Evans' residence to arrest him. A perimeter was established and a team moved to the front of the residence loudly identifying themselves as police and ordered Evans to come out. Subsequent warnings were given that if Evans resisted, a canine would be used and Evans would be bitten. Three individuals exited before Evans. When Evans exited, he was directed to show his hands and walk to the officers.

Evans followed commands at first but would not comply when ordered to turn away from officers. Additional commands were given but Evans did not comply with officers' instructions

to walk backward toward them. Officers deployed a less-lethal beanbag round at Evans to gain compliance. Evans was struck and fell to the ground. When Evans sat up, he would not comply with further commands to come toward the officers. A second beanbag round was deployed in conjunction with the release of a canine. The second beanbag struck Evans, however the canine did not engage. Evans continued to refuse to surrender and a second canine was brought to the front of the scene.

After Evans refused to comply with additional commands to come to the officers, the second canine was released in a coordinated firing of another beanbag round. The canine bit Evans and officers moved in and took Evans into custody. After Evans' arrest, three more individuals exited the residence. SDPD conducted a cursory visual search of the interior of the residence and garage and did not observe the firearm described by the reporting party. Evans was transported from the scene by police to the hospital for medical treatment.

911 Call

On October 24, 2024, at 11:16 p.m., CW2 called 911 and asked the emergency dispatcher to send police to her location because a male subject "pulled a gun on her" during a domestic violence incident. On the recorded call, CW2 is heard telling the dispatcher she was picking up her friend when the gun was "pulled" by her friend's boyfriend. CW2 states that the male was presently at the rear of her vehicle. An argument can be heard in the background of the recording, wherein CW2 yells out, "Get up off my car" and "Get your hands off my sister and my friend!" At one point, the dispatcher asks CW2 if she saw the actual gun and CW2 answers in the affirmative and elaborates that the male subject "cocked it." CW2 then becomes unresponsive. Voices can be heard shouting and arguing in the background. CW2 does not return to the line, but the call remains open.

A short time later, CW1's voice is heard on the line with the dispatcher. CW1 reports the male subject ran back into his house. CW1 confirms that the male threatened to shoot them with a gun and he "put his hands" on her and her friend. She states they need police to come. CW1 adds that during a video call with her friend, she saw her friend get struck and almost stabbed with a pole by her friend's boyfriend. Toward the end of the call, CW1 and CW2 can be heard yelling at their friend to get in their car. The call ends with dispatchers requesting CW1 and CW2 to drive out to a nearby cross street and away from the male subject's location to meet with responding officers.

Civilian Statements

San Diego Police officers obtained statements from three individuals who reported having been witnesses or victims to recent felony conduct perpetrated by Evans. The statements of these witnesses provided the officers with evidence in support of a probable cause arrest pursuant to Penal Code section 836(a)(3). Per Penal Code section 836(a)(3), an officer may make an arrest without warrant if they have probable cause to believe the person to be arrested has committed a felony, whether or not a felony, in fact has been committed.

Statement of Civilian Witness One (CW1)

CW1 was on Facetime with her friend, CW3, who was having a verbal argument with Evans. During the yelling, CW1 saw Evans hit and try to stab at CW3 with a long metal object. CW2

drove over and picked up CW1 so that they could go over to help CW3. When they drove up to residence on Duluth Avenue, the garage was closed but CW3 opened the garage to come out. While the garage was open, CW1 heard Evans "rack" a gun from inside the garage. CW1 could not actually see a gun because of the distance. CW2, however, did see Evans point the gun at them. CW3 then came out of the garage but Evans held CW3 back by her shirt. Evans eventually let CW3 go and brought stuff out with CW3 to put in the car. Evans started arguing with CW3 and CW1 and they got into a physical altercation with Evans pushing CW3. Evans then came up aggressively and pushed CW1 into CW2's vehicle and onto the ground while they were fighting.

Investigators followed up with CW1 the following day, at which point, CW1 was no longer cooperative and did not wish to participate in the investigation.

Statement of Civilian Witness Two (CW2)

CW2 and CW1 went over together to the Duluth address to help because CW1 had seen CW3 being struck by Evans while on the phone. At the house, Evans wasn't letting CW3 leave and he was saying he was going to "kill himself" or "stab himself." CW2 got out of her car and said, "C'mon friend let's go," to CW3. At that point, Evans pulled out a chrome-colored gun and "cocked" it. Evans pointed the gun at CW2 and CW1 but didn't say anything. CW1, CW2, and CW3 got away from Evans and left in their car. Evans followed them and fought with CW1 and CW3. This spilled out onto CW2's vehicle. CW2 got out of her vehicle and told Evans to "get the fuck off of my sister," and Evans replied, "What're you gonna do," and squared up on CW2. CW2 called the police.

When investigators followed up with CW2 the following day, she was no longer cooperative and did not wish to participate in the investigation.

Statement of Civilian Witness Three (CW3)

CW3 said Evans was her boyfriend and they had gotten into a fight. The fight was not physical, and she blamed herself for it. Evans later got into an altercation with CW1 and CW2, so she tried to push Evans off CW1. CW1 got knocked to the ground. CW3 heard a gun "cock" but denied seeing a gun or Evans pointing a gun during the incident. CW3 did not want to press charges against Evans.

Investigators attempted to follow-up with CW3 the following day but could not reach her by phone. A message was left but CW3 never called back.

Officers' Reports

During the incident, multiple SDPD officers were present. However, three officers were involved in directly applying force against Evans. Bennett fired the beanbag rounds, Nelson deployed the first canine, and Dyemartin deployed the second canine. The reports of these officers are summarized below.

Officer Ashley Bennett

Bennett responded to the call of a suspect wanted for assault with a firearm at a residence on Duluth Avenue. Bennett arrived at the location and was assigned to provide less-lethal coverage with a beanbag shotgun. Bennett positioned herself facing the front door of the residence. The residence has an inclined driveway with a staircase that leads to the front door.

Multiple individuals began to exit in response to officers' commands. These individuals were safely moved away from the residence. Evans then came out. He initially followed officers' commands to place his hands over his head and walk down the stairs. However, Evans failed to keep his hands over his head as ordered; he kept bringing his hands down and making movements toward his waistband. Evans was ordered to face away from officers and walk backwards. Evans refused and sat down on a step on the staircase. He was approximately 25 feet from the officers. Evans continued to be uncooperative by moving about and placing his hands where Bennett could not see them. Evans also refused to show his complete waistband. Because of that, officers could not confirm whether he was armed. Bennett fired her beanbag shotgun as a compliance check after being directed to do so by an on-scene supervisor. The beanbag round hit Evans in the lower right torso, causing him to drop to the ground. Evans continued to resist by cursing at officers while not complying with the officers' commands to crawl to them or walk backward to them.

Bennett fired another beanbag round. The firing of this round was timed with the release of a canine. The round hit Evans' arm as the canine was sent toward him. The canine did not bite Evans and was recalled. Police brought in a second canine. Evans continued to lie on the ground and refused to comply with officer commands, including commands to show his hands. The second canine was deployed in conjunction with Bennett firing a third beanbag round at Evans. The beanbag hit Evans in the shin as the second canine engaged and bit Evans on the arm. Officers then moved in and took Evans into custody. Evans was later placed in the backseat of Bennett's patrol vehicle. He was transported to UCSD for medical treatment.

Officer Robert Nelson

Nelson, with his canine Tito, responded to the call of a suspect threatening a female with a firearm. Officers contacted the reporting parties and learned Evans, identified through prior booking photos, had "racked" and pointed a firearm at two people in a threatening manner. Officers were advised there was probable cause to arrest Evans for the assault with a firearm. During the staging and planning phase, officers were also made aware that Evans had multiple prior arrests. [REDACTED]

An SDPD ABLE (Airborne Law Enforcement) helicopter assisted with surveillance of the residence while a contact team was formed. An officer in the ABLE helicopter observed Evans shirtless and wearing shorts walking multiple times between a detached garage and the main residence. Officers spent nearly an hour planning how to make contact and de-escalate any possible resistance. The plan was to conduct a "contain and call out," meaning Evans and all other residents would be ordered outside. Officers established a full perimeter of the residence. At 12:09 a.m., the contact team moved toward the residence. The officer in the ABLE helicopter communicated that they observed Evans walking from the garage to the front of the main residence. Nelson, who was in the lead vehicle of the contact team nearing the residence, observed Evans walk into the front door and slam the security screen door closed. Nelson noted that the residence was on a hill and had multiple windows facing the street. This could provide the occupants an advantageous position against the officers. Nelson observed movement from the windows, including movement of the curtains and blinds.

Nelson used his vehicle as cover and began calling out to the occupants of the residence. He identified himself as police and gave multiple canine warnings. Nelson gave orders for all residents to exit and also gave warnings directly to Evans. A male, not Evans, exited. He was cooperative and was detained without incident. Two more people, neither of whom were Evans, exited. They, too, were compliant and were detained without incident.

At 12:15 a.m., Evans exited the front door. He was shirtless, barefoot, and wearing black shorts. Nelson directed Evans to show his hands and come down the stairs. Evans initially followed the commands and walked to the bottom of the staircase. Once at the bottom, Evans became uncooperative. Evans was ordered to turn around and face away. This same command had been given to the other emerging occupants and all complied. Evans, however, began yelling that he did not have to listen and that he was at his own residence. Nelson attempted to de-escalate by giving further details as to why the police were there. Nelson told Evans they were detaining him pending the investigation and that they received a call regarding a firearm. Evans was argumentative and uncooperative, continuing to say he had done nothing wrong while refusing to comply with the directions given to him.

Nelson observed that Evans' face appeared glazed and his speech was slurred. Nelson recognized these as indicators that Evans could be under the influence. Nelson was aware alcohol and/or controlled substances can lead to irrational and unpredictable behaviors. Further, Nelson believed Evans to be armed and dangerous as he had yet to be searched for weapons. Evans had been walking to and from the garage and now was standing next to a retaining wall near the bottom of the stairs. The retaining wall and a nearby parked vehicle could conceal weapons from the view of the contact team. Nelson was concerned that if Evans fled out of view or back into the house, Evans could retrieve a firearm to fire upon the officers.

While officers were talking to Evans, an older male began to exit the residence. Evans referred to the male as "Unc." The contact team ordered the older male to remain inside. However, this concerned Nelson as there appeared to be an unknown number of occupants still inside the residence. While officers' attention was focused on Evans, Nelson was concerned that others could shoot at officers or prevent Evans' arrest.

Due to the exigency of the rapidly evolving and dynamic situation and after multiple failed attempts to de-escalate, an officer on the contact team deployed a less-lethal beanbag round to gain Evans' compliance. Evans fell to the ground after being struck. He continued to refuse to comply with commands or surrender. Other officers began giving warnings to Evans while Nelson maintained his position with his canine.

At around 12:28 a.m., Evans sat up and faced officers. His back was toward the retaining wall, and he still refused to walk backward to the officers or comply with any other command. The initial effects of the first beanbag round appeared to wear off; Evans became more agitated and confrontational. Officers established a plan to utilize a second beanbag round in conjunction with a canine to apprehend Evans. Nelson deployed his canine with the bite command for multiple reasons. His concerns included the severity of the reported crime, the immediate potential threat of Evans' being armed, and the risk that Evans might flee or return inside and fire upon officers.

In addition, Nelson determined Evans was actively resisting by refusing to follow commands over the preceding ten minutes.

A second beanbag round was fired at Evans to distract him while Nelson's canine was sent in on his bite command. Evans placed his hands in front of himself and was able to fend off Nelson's canine. The canine failed to engage and was recalled. Evans still refused to surrender, despite having been impacted by a second beanbag round. Nelson felt it would be unsafe to send in the contact team without first having Evans engaged by a canine. A second canine was brought in for re-engagement.

Canine Sergeant Dyemartin prepared his canine and Nelson transitioned to lethal cover for when Dyemartin's canine would be released. Dyemartin's canine was sent in as a third beanbag round was fired. The canine successfully bit Evans, and the contact team moved up to go hands-on with Evans. Nelson used a bite removal device to induce the canine to let go of Evans' arm. Officers handcuffed Evans and patted him down. No weapons were located on his person.

After Evans was secured, Nelson assisted with additional call outs to the remaining occupants. Three more residents exited. All complied with commands and were safely detained without incident. Nelson cleared the rest of the residence and the detached garage.

Sergeant Alan Dyemartin

Dyemartin, along with his canine Seff, responded to a call of a male pointing a firearm at a female. Dyemartin made contact with the 911 caller and two other witnesses on Skyline Drive. Dyemartin spoke to the three women (CW1, CW2, and CW3) and learned Evans had pointed a gun at CW1 and CW2. CW2 said Evans "cocked the hammer" while pointing the gun. Probable cause was established to arrest Evans for two counts of assault with a deadly weapon.

The victims informed officers that Evans lived at a residence on Duluth Avenue in a detached garage but also had access to the main house. They gave the address and CW1 and CW2 provided a description of Evans, whose identification was confirmed through past booking photos. During a records check, Dyemartin learned Evans was a known [REDACTED]. Dyemartin also became aware that Evans had a criminal history [REDACTED]. The victims also told the officers there were multiple people inside of the house on Duluth Avenue. As a result of his training and experience, Dyemartin knew gang members often conceal weapons on their person and around their property for easy retrieval. He also recognized the dangerousness faced by responding officers when engaging with houses occupied by multiple people if occupants became upset and uncooperative. Dyemartin felt family members and friends could try to interfere with a police investigation or create a distraction to allow the wanted individual to escape.

As part of the operational plan to arrest Evans, Dyemartin and the rest of the main Critical Response Team (CRT) were to approach the residence from the front. Before CRT moved in, ABLE personnel reported that Evans had moved several times between the main house and the detached garage. At one point, Evans exited the garage, walked toward the center of the property, and stopped. The CRT saw their opportunity to apprehend Evans and they moved in.

Apprehending him outside would eliminate the risk of having him inside a building with multiple other people. As Dyemartin approached, Evans, who was wearing basketball shorts and was shirtless, ran frantically from the driveway up the stairs to the front door. Evans entered the house and closed the door behind him. Almost immediately, Dyemartin saw Evans through the residence's windows closing all the blinds in the room at the front of the house.

Dyemartin took a position at the rear of a patrol car. Nelson began calling out and giving canine warnings to the house. Nelson specifically called Evans by name and told him he was under arrest. After 30 seconds of callouts, the front door opened and a male emerged. The male complied with commands and was taken into custody to be patted down and identified. Once the male was cleared and determined not to be Evans, Dyemartin returned to his CRT to assist with another male now exiting the house. The first male who exited said the second male was his brother and was not Evans. Dyemartin took the second male into custody, cleared him, and brought him over to the first male who had exited. Both men confirmed Evans was inside the main house wearing dark shorts and no shirt.

Nelson continued callouts and a female exited next. She was taken into custody without incident. After several more callouts, Evans finally emerged from the front door. Evans was wearing baggy black basketball shorts and was shirtless. Evans initially complied with Nelson's verbal commands and managed to keep his hands up while he walked down the front stairs. Once he reached the bottom of the stairs, Evans stopped complying with commands.

Evans kept his hands up but refused to continue walking toward the contact team. Evans argued with officers and refused to turn around, show the back of his waistband, and comply with commands to continue walking toward the team to be taken into custody. Evans would lean against a wall that was approximately waist-high and appeared from Dyemartin's vantage point to have room on the opposite side for a person to store a weapon. The height of the wall made the other side not immediately visible but was low enough that someone could easily retrieve an object hidden there.

While Evans did turn his body to officers at one point, the entirety of his waistband could not be observed for weapons. Not knowing if Evans had a concealed weapon, Nelson continued giving Evans verbal commands and canine warnings. Evans continued to ignore the commands and refused to comply. It was unsafe for officers to approach while Evans possibly had a concealed weapon or access to nearby weapons. Also, officers did not know how many other people were in the house and it would be unsafe for officers to leave their protected positions to move forward.

As the officers were calling out to Evans, Evans would hold his hands up but then slowly lower his hands toward his waistband or pockets. Each time Evans lowered his hands, officers ordered him to put them back up. Evans declared he was following directions. However, Evans never fully followed the commands and was only stating that he was. Evans would go back and forth, move his body from side to side, but he would never actually leave the area where he first stopped following commands.

After 10 minutes of officers giving verbal commands, canine warnings, and telling Evans he was under arrest, Evans was shot with a beanbag round by Bennett. Evans fell on his right side and started yelling but still refused to comply with commands to walk or crawl towards the CRT. Dyemartin took over giving Evans verbal commands from Nelson. Dyemartin continued to order Evans to crawl or walk toward the officers to surrender. Evans remained lying down for several minutes until he sat up on the bottom step. He held his hands up but ignored all other commands.

Dyemartin continued to give Evans commands and canine warnings. Dyemartin also warned Evans he would be shot again if he did not comply. This continued for several more minutes, and Evans still did not comply. At the point when Evans was no longer verbally responding to officers, it was apparent to Dyemartin that Evans was not going to cooperate. Dyemartin discussed the situation with a lieutenant and sergeant. It was decided that using a canine in conjunction with another beanbag round was the safest way to take Evans into custody. This would give the CRT the safest approach to Evans as it would limit his movements and keep him distracted after the officers left their position of safety to approach.

Nelson gave Evans several more canine warnings before sending his canine in while Bennett fired another beanbag round. Nelson's canine was fended off by Evans, who pulled his arms away and swung his hand at it. The apprehension was unsuccessful, and Nelson's canine was recalled. Evans remained in place, sitting on the steps of the house.

Dyemartin then retrieved his own canine and moved up to Nelson's position on the side of the main patrol car. Dyemartin issued additional canine warnings to Evans for his surrender, letting him know he would be bitten. Evans continued to ignore the commands and canine warnings. Bennett fired another beanbag round and Dyemartin released his canine with the bite command. Dyemartin identified several reasons he believed that using his canine was appropriate under the circumstances. First, there had been a report of Evans having pointed and racked a firearm at the reporting parties. Second, Evans may have had a concealed firearm or immediate access to one. Third, there was a need to quickly apprehend Evans because there were still several occupants inside the house and their level of hostility was unknown. Fourth, Evans' had a background as a known member of a criminal street gang and a history of violent crime. Finally, Evans refused to follow commands and continued refusing despite the application of escalating force against him.

Dyemartin's canine bit and held onto Evans' left forearm. The CRT then approached. Dyemartin gained control over his canine as other officers secured Evans. Dyemartin estimated the total time of the bite to be approximately 38 seconds. Dyemartin returned his canine to his vehicle and assisted as the other occupants exited the house. A total of seven occupants exited the house. All but Evans complied with officers' orders and were removed without the use of force.

When Dyemartin later walked up the front stairs to the house, he saw a crowbar and a large metal tire iron in the front yard. They were in close proximity and accessible to where Evans had been standing and sitting during the stand-off. The objects had not been visible to Dyemartin earlier when he was with the CRT near patrol car cover.

Video Evidence

During the incident, several responding officers were equipped with Body Worn Cameras (BWC) which were activated during the events. While all footage was reviewed, only footage from the officers directly involved in the direct application of force against Evans is described below. The footage from the other officers was either duplicative or did not capture events as clearly as the footage of the officers directly involved.

Body Worn Camera Footage from Officer Bennett

Bennett's BWC footage begins at 12:06 a.m. and shows Bennett arriving at the staging location at Skyline Drive. Dyemartin designates Bennett as the operator of a less-lethal beanbag launcher and Bennett retrieves one from Nelson's vehicle parked in front of the Duluth Avenue residence. At 2:10 a.m., Bennett and other officers are positioned behind a police vehicle for cover in front of the house on Duluth. Nelson begins giving commands to Evans to come out and surrender. He also gives multiple canine warnings. Bennett notes movement at the windows and doors. After three individuals come out of the residence, Evans exits the front door at 12:15 a.m. Bennett repositions herself to the open driver-side door of the patrol vehicle. The view from Bennett's BWC is obstructed by the door, and Evans cannot be seen. Nelson continues giving warnings to Evans and tells him he is under arrest. Nelson asks Evans to turn around and walk backwards to the officers. Evans can be heard arguing back to Nelson.

Nelson instructs Bennett to fire a beanbag round for compliance. Bennett fires a beanbag round at 12:20 a.m. BWC does not capture the shot due to Bennett's positioning. Nelson continues to order Evans to comply and come to the officers. Bennett repositions herself to the passenger door where her BWC remains obstructed due to her position. Bennett discusses with another officer the option of shooting a beanbag round at Evans' leg if another shot is necessary. Bennett, Nelson, and other officers discuss tactical options in response to Evans' lack of compliance. They decide to deploy a canine at the same time that Bennett will fire a beanbag round. Dyemartin can be heard giving Evans warnings while ordering him to come toward the officers. Dyemartin offers to give Evans medical assistance if he complies and comes to the officers. Dyemartin further attempts to reason with Evans, telling him they haven't seen his waistband and are concerned he is armed. Evans does not comply and continues to argue back.

At 12:28 a.m., Bennett fires another beanbag round as a canine is released. Due to Bennett's position behind the patrol vehicle door, Evans cannot be seen on the BWC. After the canine returns to the officers, Nelson advises to swap dogs. Dyemartin moves into position next to Bennett and resumes giving multiple commands to Evans, warning that a dog would be sent if he did not comply. Evans does not comply.

Dyemartin instructs Bennett to fire again just prior to the deployment of the canine. Additional verbal warnings are given to Evans to give up. Bennett fires another beanbag round at 12:29 a.m. as the canine is released. Seconds later, a reaction team of multiple officers moves toward Evans. Again, Evans is not visible on the BWC footage due to Bennett's positioning. Evans becomes visible on Bennett's BWC footage at 12:31 a.m. handcuffed on the ground. At 12:32 a.m., Bennett assists two officers in lifting Evans into the back of her patrol vehicle. Evans screams for help and curses at officers while in the back seat. Bennett is then directed to transport Evans directly to the hospital. Before departing, Bennett opens the rear door to buckle

Evans in with a seatbelt. Bennett and another officer seat Evans upright and secure him with the seatbelt. Bennett then drives Evans to the hospital. At 1:13 a.m., they arrive. Bennet and another officer then unbuckle and assist Evans in getting out of the vehicle and into a wheelchair to go into the hospital.

Body Worn Camera Footage from Officer Nelson

Nelson's BWC recording begins at 11:25 p.m. as he is arriving at the staging location. Officers are seen speaking with the reporting parties. Nelson, Dyemartin, and other officers determine that during a domestic violence incident, an assault with a deadly weapon occurred at the address on Duluth Avenue. The officers discuss the location and how to tactically set up around it.

Nelson prepares to move to the scene. He places a ballistic shield on the front windshield of his patrol vehicle, then retrieves a ballistic helmet and places it on his front dashboard, and configures a less-lethal shotgun into a patrol-ready status. Nelson spends a total of 42 minutes at the staging area before moving to the scene.

At 12:09 a.m., Nelson drives to the Duluth Avenue residence. When he arrives in front of the residence, he tells an officer there that he saw Evans go inside the residence and slam the door. Officers take note of movement they observe in the front windows of the home. Nelson loudly announces he is with the San Diego Police Department and calls for Evans to exit the residence with his hands up and nothing in them. Nelson further announces that if Evans does not exit or attempts to flee, a canine would be sent and he would be bitten.

A male, not Evans, exits the residence at 12:12 a.m. and obeys Nelson's commands to keep his hands above his head and walk backward to the officers. Nelson continues to give orders for the remaining occupants to exit. Two additional people, a male and a female, exit the residence. Both comply with all instructions to keep their hands above their heads and walk backwards toward the officers.

At 12:15 a.m., Evans exits the front door wearing athletic shorts, no shirt, and no shoes. Nelson instructs Evans to show his hands and walk down the stairs. Evans walks down the stairs with his hands up. Nelson explains that officers are conducting an active investigation related to a firearm. Evans is ordered to turn around and walk backwards. At 12:16 a.m., Evans puts his hands down and sits back against the waist-high retaining wall at the front of the residence and remains there. Nelson advises Evans there was a report of a felony crime involving a firearm and that police have lawful reason to be at the location. Nelson tells Evans he is being detained.

Evans continues to lean against the wall as Nelson gives multiple commands to turn around and walk backwards. Evans repeatedly says "no" and responds that he is not going to comply. When Nelson asks for his name, Evans asks for Nelson's name in return. Nelson identifies himself and tells Evans he knows who Evans is. Evans denies being Evans and claims he has nothing to do with the situation and asks why officers are in front of his residence. Evans proclaims he has done nothing wrong. Nelson advises Evans that if he flees, he would be shot. Nelson continues giving commands and Evans continues to refuse to comply. This back and forth continues until Evans stands up at 12:17 a.m. with his hands up. Evans stays at the bottom of the stairs and continues to refuse to walk toward Nelson.

Nelson continues giving orders and Evans refuses compliance. Nelson consults with other officers about using less-lethal beanbag rounds. Evans is again instructed to turn and face away, but Evans remains facing Nelson. Nelson states he believes Evans is armed and tells him to keep his hands up, noting that he cannot see Evans' waistband. Evans takes a few short steps toward Nelson, then steps back, turns in a full circle, and continues facing Nelson. Evans lowers his hands to his waist before raising them again and says, "I'll sit right here."

At 12:20 a.m., Bennett shoots Evans with a beanbag round and Evans falls to the ground. Nelson then orders Evans to show his hands. Evans asks why he has been shot, and Nelson informs him it was because he did not comply with commands. Evans lies on his side on the driveway, yelling that officers had shot him. Evans is given commands to crawl or walk towards officers and warned that if he did not comply, he would be shot or bitten by the dog. Evans continues to lie on the driveway and refuses to move. Nelson tells other officers he isn't able to see Evans' rear waistband.

Dyemartin advises Evans that medical attention is available if he complies. Evans calls out for his uncle to contact his lawyer while continuing to refuse to comply with the commands. Evans continues to argue that he has done nothing wrong. Evans shouts expletives and repeatedly says, "Y'all are going down." Evans says he is bleeding and demands an ambulance. Dyemartin informs Evans there is an ambulance on scene that can provide aid once Evans complies.

Nelson, Bennett, and Dyemartin discuss utilizing a canine. Nelson again warns Evans to walk toward them with nothing in his hands or a dog would be sent. Evans states he wants nothing to do with them and positions himself to stand up. Bennett announces she is firing a beanbag, then fires another beanbag round at 12:28 a.m. Nelson sends in his canine and Evans repeatedly yells, "Stop!" The canine approaches Evans but does not engage and instead returns to Nelson. Another canine is brought in to replace the first.

Dyemartin gives Evans additional commands. Evans sits on the driveway with his hands up and back against the retaining wall. He continues to refuse to comply. Bennett then fires another beanbag round at 12:29 a.m. and the second canine is deployed. It bites Evans' left forearm and maintains a hold as Evans screams. Nelson and other officers immediately move in. Nelson takes control of Evans' right arm to handcuff it and Dyemartin is able to get his canine to release approximately 40 seconds into the bite. Nelson then handcuffs Evans' left wrist. Evans screams as he is being placed under arrest. Officers lift Evans to a standing position and escort him to a police vehicle.

Nelson then uses his patrol vehicle's PA system to ask if any additional residents are inside. Three additional people then exit the home without incident. Nelson, Dyemartin, and other officers then clear the residence and the detached garage.

Body Worn Camera Footage from Sergeant Dyemartin

Dyemartin's BWC recording initiates at timestamp 11:22 p.m. Dyemartin drives to and arrives at the location where he locates and briefly speaks with the reporting parties. Dyemartin is informed by CW1 and CW2 that Evans pointed a gun at them and that he had "cocked the hammer" while pointing the firearm. Other officers arrive and continue taking statements from

the reporting parties while Dyemartin confirms the location of the residence where Evans is located. Dyemartin spends the next 40 minutes in the staging area conferring with other officers regarding the situation. Dyemartin's BWC recording ends.

Dyemartin restarts his BWC at 12:09 a.m. He and other officers move from the staging area to the front of the house on Duluth Avenue. Dyemartin takes a position behind Nelson's vehicle and begins broadcasting updates. Nelson makes announcements to exit the home. Dyemartin contacts and speaks with the first three residents who exit the residence. All three are compliant and follow instructions.

Evans exits at 12:15 a.m. while Dyemartin is still speaking with the people that exited minutes earlier. Dyemartin moves into position behind Nelson and Bennett on the driver's side of Nelson's patrol vehicle. Dyemartin coordinates contingency plans with the other officers in the event Evans attempts to retreat inside. Dyemartin confirms Evans' identity through a photograph. At 12:18 a.m., another resident starts coming out of the front door, and Dyemartin yells for that person to go back inside. Meanwhile, Evans is at the bottom of the steps leading to the front door. Nelson is heard giving commands to Evans which Evans refuses to follow. Evans is heard arguing with Nelson. Nelson instructs Bennett to fire a beanbag round as a test for compliance. Bennett fires a round at 12:20 a.m. and Evans falls to the driveway after being struck. Dyemartin takes over giving commands to Evans at 12:21 a.m. Evans is lying on the driveway as Dyemartin instructs him to either walk or crawl toward the officers. Dyemartin warns Evans that if he does not comply, he will be shot again with a beanbag round and a canine would be deployed to bite him.

In response to the repeated commands given by Dyemartin, Evans remains in the same physical position and shouts back, refusing to comply. Dyemartin continues ordering Evans to approach with his hands up, advises Evans he is under arrest, and tells Evans he is believed to be armed. Dyemartin tells Evans medical attention is available when he surrenders. Nelson and Dyemartin repeatedly warn Evans that if he does not comply, he would be shot again and bitten by the canine. Evans remains noncompliant.

Dyemartin tells Bennett to be prepare to shoot when the canine is released. Evans then sits up with his hands up. He rocks his body forward multiple times, appearing as though he is going to stand, but he remains seated. Bennett fires the beanbag round as Nelson releases his canine. Nelson's canine returns without engaging and Dyemartin then retrieves his own canine from his vehicle. Dyemartin moves into a position beside Bennett and gives Evans multiple commands, again warning that the dog would be sent in if he did not comply. Dyemartin coordinates with Bennett to fire another beanbag round at the same moment when he will deploy his dog. At 12:29 a.m., Dyemartin releases his canine as Bennett shoots another round. The canine bites and holds onto Evans' left arm. Dyemartin and his team immediately move to engage Evans. As Dyemartin gains control of his canine, the other officers handcuff and secure Evans. The canine holds its bite on Evans' arm for approximately 40 seconds.

Dyemartin returns his canine to his vehicle and then returns to the front of the residence. Two officers sit Evans upright. Dyemartin instructs the officers to place Evans in a patrol vehicle and transport him to the hospital.

Three additional people are seen exiting the residence in compliance with officers' commands. Dyemartin, Nelson, and other officers clear the residence and the detached garage. After clearing the residence, Dyemartin observes a crowbar and a tire iron in the front yard behind the retaining wall near where Evans had been during the incident.

ABLE Helicopter Video Footage

Video of the incident was captured by San Diego Police Department's ABLE helicopter. Although ABLE captured events at the scene from above, the video does not significantly add to video footage already seen on BWC and described above.

Legal Standard of Criminal Liability

Penal Code section 835a sets forth the standard to evaluate a peace officer's use of physical force, specifying when a law enforcement officer may use objectively reasonable force and when a law enforcement officer may use deadly force.

Penal Code section 835a(b) states that "any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance."

Penal Code section 835a(a)(2) states that "[i]n determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer."

"Deadly force" is defined in section 835(e)(1) as "any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to the discharge of a firearm. Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force and the circumstances upon which an officer may use such force. Penal Code section 835a(c)(1)(A) justifies the use of deadly force by a peace officer only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary... "[t]o defend against an imminent threat of death or serious bodily injury to the officer or to another person."

Penal Code section 835a(e)(2) elaborates this point by describing the threat of imminent death or serious bodily injury to be one where "based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed."

Further, Penal Code section 835a(a)(4) states "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force." Under Penal Code section 835a(e)(3), the

totality of the circumstances is “all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.”

Additionally, Penal Code section 835a(d) states that “a peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section ‘retreat’ does not mean tactical repositioning or other de-escalation tactics.”

When an officer uses force that exceeds the bounds permitted by law, such actions could become criminal. The excessive use of force by an officer is criminalized pursuant to Penal Code section 149. Penal Code section 149, a “wobbler,” states that “every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable...”

“Without lawful necessity,” for purposes of the statute governing a police officer assaulting or beating a person, means more force than was necessary under the circumstances. *People v. Perry* (2019) 248 Cal.Rptr.3d 522, 537.

Conclusion

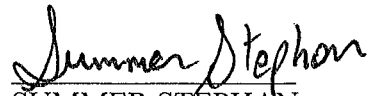
The force applied by Officers Bennett and Nelson and Sergeant Dyemartin must be examined within the context of the totality of the circumstances known to or perceived by them at the time of the incident. Here, SDPD received a 911 call from a woman reporting Evans had pointed a gun at her. Officers contacted the reporting party and learned that Evans had pointed a gun at CW1 and CW2 and had engaged in domestic violence against CW3. A records check of Evans revealed possible gang ties and a criminal history of [REDACTED]. Officers then responded to the residence on Duluth Avenue to make a lawful probable cause arrest of Evans.

The circumstances of the arrest were complicated when Evans refused to exit the residence. As noted by both Nelson and Dyemartin, officers on scene were placed at a tactical disadvantage by having to execute Evans’ arrest at a house that overlooked the officers’ position. Unidentified individuals were seen moving about inside and the officers did not know who they were or how they might engage with police. If the officers moved out of a position of cover to engage Evans, they risked the possibility of a dangerous confrontation with the unknown occupants or Evans himself. The officers determined that the safest option for all was to have Evans come to them.

Law enforcement officers outside of the residence made numerous attempts to gain compliance from Evans through repeated verbal commands and a visual show of force. After their sustained efforts were fruitless, the officers made the decision to use physical force to secure Evans’ arrest. When compliance tactics were unsuccessful, the officers increased the level of force in response to Evans’ continued noncompliance. When analyzing the tactics applied by the officers, the law requires consideration of the totality of circumstances and requires an acknowledgement that officers are often forced to make quick judgments about using force.

Based on a full review of the totality of the circumstances, these officers do not bear state criminal liability for their actions. A copy of this letter, along with all materials submitted for our review, will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

cc: Deputy Chief Shawn Takeuchi, San Diego Police Department

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San Diego Police Department Investigator's Report

Date of Incident: October 24, 2024
Time of Incident: 2330 hours
Location of Incident: 6461 Duluth Avenue
Subject: Citizen's Complaint Investigation I.A. #2024-0529

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR CITY ATTORNEY.

COMPLAINANTS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

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SUBJECT OFFICERS: **BENNETT (POUCHIE), Ashley N., Police Officer I, ID #1910**

Date of Hire: 03-02-2023

S.D.P.D., Southeastern Division – Patrol

(619) 527-3500 (W)

W/F, Age: 29

BIESTO, Meghan R., Lieutenant, ID #5797

Date of Hire: 02-02-2001

S.D.P.D., Special Events & Emergency Planning – Administration

(619) 685-1329 (W)

W/F, Age: 46

DYEMARTIN, Alan R., Sergeant, ID #6642

Date of Hire: 10-17-2008

S.D.P.D., Special Operations Branch – Canine

(858) 495-7900 (W)

W/M, Age: 42

FLORES, Javier G., Police Officer II, ID #1041

Date of Hire: 12-05-2019

S.D.P.D., Southeastern Division – Patrol

(619) 527-3500 (W)

H/M, Age: 36

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

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NELSON, Robert W., Police Officer II, ID #7443

Date of Hire: 08-20-2015

S.D.P.D., Special Operations Branch – Canine

(858) 495-7900 (W)

W/M, Age: 34

SULLIVAN, John B., Police Officer II, ID #6455

Date of Hire: 08-12-2024

S.D.P.D., Northwestern Division – Patrol

(858) 529-7000 (W)

W/M, Age: 39

WITNESS OFFICERS:

CASTILLO, Isai, Police Officer II, ID #7875

Date of Hire: 08-30-2018

S.D.P.D., Southeastern Division – Patrol

(619) 527-9500 (W)

H/M, Age: 31

CHRISTMAN, Tyler W., Police Officer II, ID #7711

Date of Hire: 08-24-2017

S.D.P.D., Southeastern Division – Patrol

(619) 527-9500 (W)

W/M, Age: 32

ESAMBOLCHI, Shayan S., Police Officer II, ID #1087

Date of Hire: 12-05-2019

S.D.P.D., Southeastern Division – Patrol

(619) 527-9500 (W)

W/M, Age: 27

KIM, Daniel J., Police Officer II, ID #1611

Date of Hire: 04-22-2021

S.D.P.D., Southeastern Division – Patrol

(619) 527-9500 (W)

A/M, Age: 30

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

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UCH, Techeakboth., Police Officer II, ID #7280

Date of Hire: 08-15-2014

S.D.P.D., Southeastern Division – Patrol

(619) 527-9500 (W)

A/M, Age: 38

DAFOE, Joshua T., Sergeant, ID #5158

Date of Hire: 09-19-1994

S.D.P.D., Training Division – In-Service Training

(619) 446-1012 (W)

A/M, Age: 54

PFANNENSTEIL, Zachary T., Sergeant, ID #5158

Date of Hire: 01-08-2008

S.D.P.D., Special Operations Branch – Canine Training

(619) 446-1012 (W)

W/M, Age: 37

OTHERS CONTACTED: RHOTEN, Michael A., Sergeant, ID #6224

Date of Hire: 04-21-2006

S.D.P.D., Training Division – Academy

(619) 388-7956 (W)

H/M, Age: 47

Reporting Officer: Eric McCooles, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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SUMMARY:

On October 24, 2024, at approximately 2330 hours, SDPD Southeastern Division patrol units and SDPD Canine units were dispatched to a call for service in the area of the 6400 block of Duluth Avenue. The call for service reported a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for assault with a deadly weapon and domestic violence battery.

The officers went to Evans' address, located at [REDACTED] Duluth Avenue. They set up on the street, in front of the residence. The officers then began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes of negotiating with Marcus, Officer Ashley Bennett shot him with an Extended Range Impact Weapon (the beanbag shotgun). Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to apprehend Marcus. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to apprehend Marcus. This time, the Police Service Dog bit Marcus' left arm. Marcus was taken into custody and placed under arrest.

Marcus was taken to a hospital and remained at the hospital in lieu of being booked into jail.

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ALLEGATIONS:

1. FORCE

[REDACTED] alleged an SDPD officer shot Marcus Evans with a beanbag shotgun.

2. FORCE

[REDACTED] alleged an SDPD officer shot Marcus Evans twice more with a beanbag shotgun and an SDPD canine was deployed twice to bite Marcus Evans.

3. DISCRIMINATION

[REDACTED] alleged SDPD officers used force on Marcus Evans because of his race/ethnic heritage.

4. SEARCH

[REDACTED] alleged an SDPD officer searched his residence.

5. TRUTHFULNESS

[REDACTED] alleged SDPD officers authored false reports documenting this incident.

6. PERFORMANCE OF DUTY

[REDACTED] alleged that the supervisors assigned to this incident failed in their duty to properly manage the critical incident.

7. PROCEDURE

[REDACTED] alleged officers at the scene failed to intervene in force which was clearly beyond necessary.

8. PROCEDURE

[REDACTED] alleged SDPD failed to employ de-escalation tactics.

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INVESTIGATION:

On October 28, 2024, at approximately 0916 hours, Internal Affairs Lieutenant Tristian Schmottlach #5682 forwarded me an email originally sent by [REDACTED]. Lieutenant Schmottlach instructed me to review the email for allegations of possible misconduct or a complaint. In reviewing the email, I noticed that it had been sent by [REDACTED] to the Chief of Police and to several of the Department's executives on October 27, 2024. The body of the email from [REDACTED] did not have any information. However, attached to the email was a written document.

I reviewed the written document and made the following observations (see document in the IA case file title "*Marcus Evans*" for full details):

- The document was dated October 27, 2024.
- The document was addressed to the Chief of Police, from [REDACTED]
- [REDACTED] wrote that [REDACTED] provided him with information about Marcus Evans (referred to hereafter as Marcus) being arrested by SDPD officers which was posted to social media by publisher, "619 News Media."
- [REDACTED] wrote that he discovered a video of SDPD's interaction with and arrest of Marcus. [REDACTED] provided the following hyperlink to the video from youtube: [https://urldefense.com/v3/https://youtu.be/L2ERgHIR80k?si=0kCJfFSidBZRbaoQ;!!EMTEEnRo!Mw1ugrwiJ6pzIC6OUen503LTdzNeNfJbBRUVVtIxXCB1hobOQPdKstOd4ey-WTesVjsq54Y6PJZ8x6bldrLAn9Lk\\$](https://urldefense.com/v3/https://youtu.be/L2ERgHIR80k?si=0kCJfFSidBZRbaoQ;!!EMTEEnRo!Mw1ugrwiJ6pzIC6OUen503LTdzNeNfJbBRUVVtIxXCB1hobOQPdKstOd4ey-WTesVjsq54Y6PJZ8x6bldrLAn9Lk$)
- [REDACTED] then wrote that after watching the video he and [REDACTED] agree that "*the force used to arrest Marcus Evans was excessive.*"
- On the next several pages of the document, [REDACTED] wrote his own analysis of the incident, cited past use of force lawsuits in the region, and cited a past conversation he allegedly had with the Chief of Police.
- [REDACTED] concluded by writing that his belief was SDPD failed to prevent the unreasonable force on Marcus and that [REDACTED] is requesting all officers involved be immediately removed from assignments with access to the public.

On the same date, I watched the YouTube.com video referenced by [REDACTED]. I made the following relevant observations (see digital video file titled "*K9 Video YouTube*" in the IA case file for full details):

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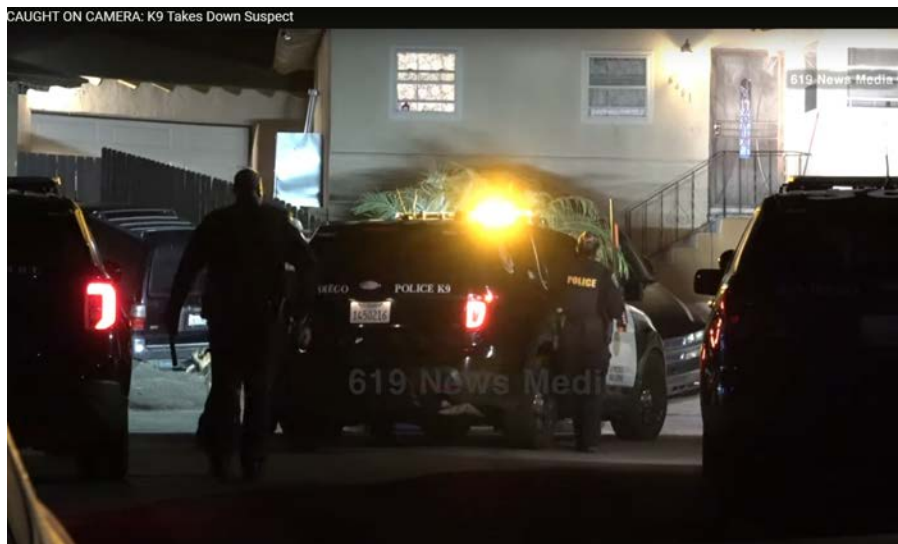
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- The video is 18 minutes and 53 seconds. The title of the video is “*CAUGHT ON CAMERA: K9 Takes Down Suspect.*” The video was posted on a YouTube channel called “619 News Media.” Note: The video does not display the entirety of SDPD’s response to this incident.
- The first few moments of the video showed several marked SDPD vehicles slowly driving. The vehicles came to a stop in front of tan colored residence. Officers exited the vehicles and gathered equipment from the vehicles. Specifically, an officer can be seen holding onto the leash of a Police Service Dog (referred to hereafter as PSD) as the PSD was removed from the vehicle. Additionally, an officer can be seen holding a shotgun that had an orange-colored buttstock and pump action (see Figure #1 for perspective).



(Figure #1)

- At the 0:37 mark, the video cut seemingly forward in time and panned towards a front facing window of the residence. A spotlight illuminated this window and a human’s hand could be seen closing the window. Moments later the picture zoomed out showing several officers near a police vehicle positioned in front of the residence.
- At the 1:00 mark, the video cut again. The camera operator moved to the right of the officers. Someone (seemingly an officer) could be heard yelling, “*Marcus Evans*” and “*[REDACTED] Duluth, the house is surrounded.*” The officer ordered residents to exit the house with nothing in their hands or else they may be shot or bit by the PSD.
- At the 1:27 mark, a male wearing only white shorts exited the front door. He kept his hands up and seemingly followed the officers’ directions (the noise of a helicopter made it difficult to hear

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the officers' commands). This male eventually walked down a flight of approximately 10 stair steps from the residence to the sidewalk. He turned around and walked backwards towards the officers. The video cut and showed him being handcuffed behind the police vehicles.

- At the 2:08 mark, the video cut once again and showed another male exiting the front door of the same residence. The male was wearing a light-colored shirt and blue jeans. The male had his hands up as he exited the front door and walked down the stairs. Once this male reached the sidewalk, a third male exited the front door. He was wearing a blue colored jacket and blue jeans. The video cut without showing the two males taken into custody.
- At the 3:26 mark, the video cut a wider angle shot of the residence. A fourth person exited the residence (see Figure #2 for perspective).



(Figure #2)

- The person exiting the residence was a male wearing only black colored shorts (this was later determined to be Marcus Evans). As he exited the front door of the residence, he placed his hands up and began walking down the stairs toward the sidewalk. The officers could be heard telling Marcus to stop. Marcus stopped on the driveway of the residence at the bottom of the staircase. Marcus continued to keep his hands above his head.
- At the 3:42 mark, an officer can be heard asking, "*Is your name Marcus?*" Marcus responded, "*No, why are you guys at my house?*" The officer could be heard telling him that he will explain it to him as long as he followed directions. Marcus then stated, "*I'm not Marcus, why are you guys in front of my house?*" The officer responded, "*Because there is a firearm involved.*" Marcus asked, "*What firearm?*" Marcus and the officer continued speaking to each other, but I was unable to hear the conversation due to the helicopter noise and the barking PSD. As this occurred,

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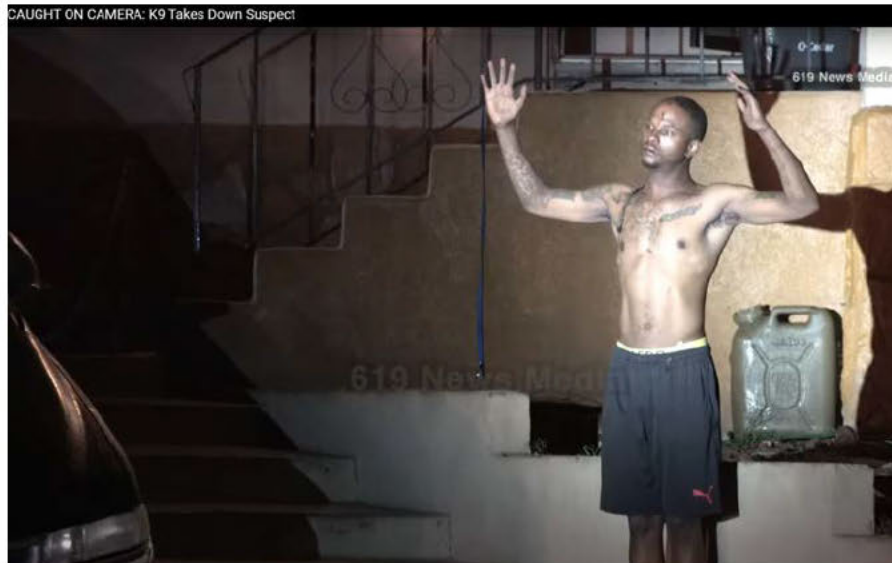
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Marcus remained at the bottom step of the staircase and mainly kept his hands above his head. Marcus could be seen with a bleeding wound to near the center of his forehead (see Figure #3 and Figure #4).



(Figure #3)



(Figure #4)

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- At the 4:10 mark, Marcus sat on a retaining wall in front of the residence. He initially crossed his arms near the front of his waistline (see Figure #5). The officer was still shouting at Marcus (I was unable to hear what is being said) and Marcus remained seated on the wall seemingly refuting the officers' statements.



(Figure #5)

- At the 4:20 mark, Marcus gestured toward the residence and stated, *"Hey unc! Call my lawyer!"* The officer is then heard telling Marcus to walk toward him. Marcus answered, *"No."* The officer asked Marcus for his name. Marcus responded by asking the officer for his name. The officer responded, *"Officer Nelson."* Marcus then asked, *"Officer Nelson, why are in front of my house?"* Officer Nelson answered, *"Because we had a radio call involving a firearm..."* I was unable to hear the rest of Officer Nelson's statement due to the sounds of helicopter and the barking PSD. Marcus eventually responded by stating, *"That has nothing to do with me"* and *"I haven't done nothing wrong."* This back and forth between Marcus and Officer Nelson occurred for approximately a minute.
- At the 5:29 mark, Officer Nelson shouted, *"Marcus, if you try to run you will be bitten and shot."* Marcus shouted, *"Shot for what? You gonna shoot me for what? I have nothing! What you gonna shoot me for?"* Officer Nelson made another statement that I could not hear but Marcus responded by saying, *"No. I don't even know why you're at my house for. That has nothing to do with me."*

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- At the 6:05 mark, Officer Nelson told Marcus to stand up. Marcus complied with the command. Marcus placed his hands above his head (see Figure #6). Marcus told Officer Nelson that he would not come towards the officers. Marcus began shouting about having cameras and witnesses.



(Figure #6)

- At the 6:25 mark, Officer Nelson shouted at Marcus, “*Marcus, I need you to walk back toward me!*” Marcus immediately shouted, “*No!*” Marcus then stated, “*Why are you tell’n me to walk backwards toward you?*” Another male could be seen at exiting the front door of the residence (see Figure #7 for perspective). Approximately 10 seconds later, the male at the front door went back into the residence and closed the front door.



(Figure #7)

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- At the 7:02 mark, Officer Nelson stated, *"Marcus! You need to comply with my commands or force will be used against you!"* Marcus took a step toward the officers and asked, *"You are gonna send the dog against me?"* Officer Nelson responded, *"Yes."* Marcus asked, *"For what?"* Officer Nelson answered, *"Because you are under arrest."* Marcus again asked, *"For what?"* Marcus placed his arms down to his side. Officer Nelson answered, *"Assault with a firearm."* Marcus placed his hands back above his head and repeated multiple times, *"What are you talking about?"*
- At the 7:42 mark, Officer Nelson stated, *"Marcus, all I need you to do is turn around and face away from me."* Marcus responded by shouting, *"I am not a felon!"* The video then cut once again.
- At the 7:53 mark, Officer Nelson could be heard shouting, *"Marcus, I can't see your waistband, I don't know if you have a gun."* Marcus took a couple of steps towards the officers. Marcus' hands remained above his head. Officer Nelson could be heard telling Marcus to turn around. Marcus began to turn in a circle (see Figure #8 for perspective) while he stated, *"I have no nothing on me."* Marcus completed a full turnaround while keeping his hands above his head. After turning around in a circle, Marcus faced the officers standing near the bottom step.



(Figure #8)

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- At the 8:21 mark, Marcus stated, *"I'll sit right here,"* as he sat on the retaining wall once again (see Figure #9). Officer Nelson could immediately be heard saying, *"You're gonna be shot!"*



(Figure #9)

- At the 8:25 mark, Marcus asked, *"Why are you gonna shoot me?"* A voice was heard shouting, *"Firing beanbag!"* A moment later, a loud pop was heard, and Marcus was hit in the middle portion of his abdomen with a beanbag projectile (see Figure #10 for perspective at the moment Marcus was impacted with the beanbag projectile).



(Figure #10)

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- Immediately after being impacted with the beanbag projectile, Marcus fell to the ground. Marcus curled up into a position similar to the fetal position. Marcus was located on the first two steps on the staircase. Marcus moaned in pain, continually asking why he had been shot (see Figure #11 for perspective).



(Figure #11)

- At the 9:20 mark, a different officer was heard telling Marcus to crawl towards the officers or he would be shot again. Marcus responded by telling the officer, *"You shot me already. It's okay, shoot me again."* Marcus remained in the same position, while stating that he could not move.
- Marcus remained in the same position for several minutes. The officers gave Marcus commands, but he seemingly ignored them.
- At the 11:03 mark, an officer was heard telling Marcus, *"You're going to be bit by a police dog."* Marcus responded, *"That's on you guys. I'm not doing nothing wrong."* For the next several moments, the officers gave Marcus commands to surrender. Marcus continually told the officers he wanted nothing to do with them and that he did nothing wrong.
- At the 12:05 mark, the video cut once again. The perspective of the video seemed zoomed farther out. Marcus could be heard saying, *"Fuck you, I'm bout to sue you bitch ass niggas. Y'all shot me for nothing. Fuck that, I'm not resisting, I have nothing, I'm not resisting."* Marcus shouted several times, *"Y'all go'n down!"* Marcus also began shouting, *"This is wrong! This is abuse!"*

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- At the 13:10 mark, Officer Nelson could be heard telling Marcus something, but I could not hear it. Marcus asked for someone to call an ambulance. Officer Nelson then told Marcus that if he did not listen to him a police dog would be sent. Marcus responded, *"Fuck you! You shot me! Fuck you! Send the police dog, that's on you, not me. My hands are up!"* For the next several moments, Marcus called out for his uncle.
- 14:18 mark, Marcus sat up on the second step of the staircase (see Figure #12). A few moments later, he placed his hands in front of his legs. Marcus told the officers to leave him alone several times.



(Figure #12)

- At the 14:50 mark, Officer Nelson told Marcus to place his hands up and walk toward the officers or he would be bitten by a police dog. Marcus told Officer Nelson that he wanted nothing to do with as him put his hands up. Officer Nelson gave more commands to Marcus that I could not hear.

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- At the 15:19 mark, a voice was heard saying “*firing beanbag*” and a loud noise was heard (see Figure #13 for perspective as the beanbag shotgun was fired). Marcus was impacted in his right shin with the beanbag projectile and immediately yelled in pain. In the next moment, a PSD ran towards Marcus and collided with him (see Figure #14). It did not appear that the PSD bit Marcus.



(Figure #13)



(Figure #14)

- The PSD did not engage Marcus and it ran back towards the officer. Marcus was yelling “*Stop! Please!*” Marcus remained seated on the second step of the stairwell with his hands raised.

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- At the 16:16 mark, an officer is heard asking Marcus, “Are you going to give up?” Marcus responded by stating, “Can I ask you guys why you’re at my house?”
- At the 16:25 mark, another officer shouted, “Firing beanbag!” Immediately, another beanbag projectile impacted Marcus, this time in the left side of his abdomen (see Figure #15 for perspective at the moment Marcus was impacted with the beanbag projectile).



(Figure #15)

- The moment after the beanbag projectile impacted Marcus, a different PSD ran directly at Marcus. The PSD collided with Marcus, biting and holding Marcus' arm (see Figure #16). Marcus screamed in pain, and he initially went to his back.



(Figure #16)

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- At the 16:33 mark, uniformed SDPD officers made their way on foot to Marcus' location. Marcus continued to yell in pain. The PSD held the bite on Marcus's left arm. Two of the officers took control of Marcus arms, one officer pointed a rifle at Marcus, and another officer took control of the PSD. As soon as the officers had control of Marcus' arms, the officer with a rifle turned toward the residence. It took approximately 20 seconds to handcuff Marcus and take the PSD off Marcus' arm. Marcus continued to yell in pain repeatedly shouting, "Uncle! Help!"
- At the 17:42 mark, two SDPD officers lifted Marcus upright. The officers carried Marcus to the area of the patrol vehicles.
- At the 17:57 mark, the video cut and showed officers holding Marcus to the ground as he screamed for approximately 15 seconds.
- The video then cut to a shot showing the front of the residence again. Several SDPD officers were positioned behind patrol vehicles calling to the residence using a public address speaker. The video cut once more, immediately showing three people exiting the residence with their hands up.

After viewing the video footage, I searched SDPD's Computer Aided Dispatch (referred to hereafter as CAD) system and found SDPD Event #E24100036129 as the call for service regarding the video footage. I reviewed CAD information and notations for this event number. I made the following relevant observations (see digital files titled "Call For Service E24100036129" "I_NetViewer _ Event Chronology" and "I_NetViewer _ Event Information" on the IA case file for full details):

- SDPD Event #E24100036129 was assigned as, "THREATENING W/WEAPON - HOT CALL." SDPD case #24043762 had been assigned to the call for service.
- The location of the incident was listed as [REDACTED] Duluth Avenue.
- The call for service was dispatched on October 24, 2024, at 23:18 hours.
- [REDACTED] called SDPD and reported that she saw a gun and that the suspect "cocked" the gun. The suspect was described as a Black male adult, wearing no shirt, and black shorts. [REDACTED] reported that she went to the location to check on an [REDACTED] who had been beat up by her boyfriend.
- SDPD Unit 2930S3 reported he had contacted the victim and she was uncooperative. SDPD Unit 2914N3 reported the same information.
- SDPD Unit 2930S3 later reported the victim was receiving a phone call from a "Marcus" and that the call for service on Duluth Avenue is possibly related to a domestic violence issue.

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- SDPD Unit 442J3 reported that the reporting party ([REDACTED]) and the domestic violence victim ([REDACTED]) are sisters. 442J3 was still speaking with the parties.
- SDPD Unit 437J3 reported that at the current time, no weapon had been seen and officers are still establishing if a criminal offense occurred.
- The next entry documented SDPD Unit 438J3 reporting that per a witness, the suspect pointed a firearm at the victim and cocked it.
- SDPD Unit 2918N3 reported the suspect having criminal history for domestic violence, vandalism, robbery, assault with a deadly weapon, and narcotics. The address of the suspect was confirmed to be [REDACTED].
- The SDPD helicopter then reported a male wearing no shirt exiting the residence on Duluth Avenue and entering a detached garage on the property. The helicopter then reported the same male exiting the garage, re-entering the main house.
- SDPD Unit 445S3 reported the suspect was arrestable for assault with a deadly weapon (firearm).
- SDPD Unit 435S3 reported a plan was in place and units were going to move to the residence on Duluth Avenue.
- The SDPD helicopter reported the same male outside of the residence moving toward the garage. The male then moved to the front of the residence and went back inside.
- SDPD Unit 2914N3 reported that he saw the male go inside the residence and shut the door.
- SDPD Unit 2930S3 reported he saw the male go inside the residence and will begin calling residents out.
- Units then reported multiple subjects exiting the residence being compliant.
- The SDPD helicopter reported a male with no shirt exiting the residence with his hands up.
- SDPD Unit 2930S3 report seeing nothing in the male's hands.
- SDPD Unit 435S3 reported that officers were talking to the suspect. He reported the suspect will not be allowed to re-enter the house and if he attempts to, he will be impacted with beanbag and the K-9 will be sent.

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- SDPD Unit 435S3 reported the suspect was not being compliant and not following commands.
- The SDPD helicopter reported that beanbag had been deployed.
- SDPD Unit 435S3 request paramedics stage for the incident.
- SDPD Unit 435S3 reported the suspect laying down in front of the stairs refusing to walk to the officers. Units have not seen his waistband and are unable to verify that he is not armed.
- At 00:30 hours, the SDPD helicopter reported a second K-9 deployed and “on bite.” The contact team moving up and arresting the suspect.
- At 00:43 hours, Unit 446Q transported a subject to UCSD Medical Center.

I briefed the Internal Affairs command staff on the information to this point, and I was assigned this complaint for administrative investigation. Internal Affairs case number I.A. #2024-0529 was designated for this investigation.

On October 29, 2024, I searched SDPD's written reports database for SDPD case #24043762. I found 11 written reports related to this case number. I reviewed the reports and made the following relevant observations (see the officers' reports in the IA case file for full details):

Title in IA case file: “*Crime Report by Officer Burns*”

- The report was prepared by Officer Samantha Burns #1948.
- The victims were listed as [REDACTED]
- The offenses were listed as, “245 (A)(2) - PC - ADW:ASSAULT WITH FIREARM ON PERS (F)” and “243 (E)(1) - PC - BATTERY:SPOUSE/EX SPOUSE/DATE/ETC (M).”
- The suspect was listed as Marcus Glenn Evans.
- Officer Burns wrote that when she arrived at the scene of radio call, [REDACTED] was uncooperative.
- However, Officer Burns interviewed [REDACTED] [REDACTED] told Officer Burns that she found out Marcus had assaulted [REDACTED]. Therefore, she and [REDACTED] went to the residence on Duluth to see if [REDACTED] needed help. When they arrived, [REDACTED] attempted to leave but Marcus grabbed her. Marcus eventually let [REDACTED] go but Marcus started fighting

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the women at their car, causing [REDACTED] to fall. [REDACTED] saw Marcus with a handgun and she heard him rack the action of the gun. [REDACTED] grabbed [REDACTED] and called the police.

- Officer Burns noted that Officer Johnson #1644 interviewed [REDACTED]
- Officer Burns wrote, "Based on the statements made by [REDACTED] and [REDACTED] officers determined Evans was in violation of 245(a)(2) PC - Assault with a Firearm on Person, and 243(e)(1) PC - Battery on Spouse/Ex-Spouse."
- Officer Burns briefly described the events that unfolded to arrest Marcus, but it was with very little details. She cited reports written by Sergeant Dyemartin #6642, Officer Nelson #7443, Officer Pouchie #1910, Officer Kim #1611, and Officer Castillo #7875, for details on the arrest of Marcus.
- Officer Burns photographed the victims and wrote that Marcus was taken to UCSD Medical Center.

Title in IA case file: "Arjis 9 Officer Johnson"

- The report was prepared by Officer Errol Johnson #1644.
- Officer Johnson wrote that he arrived at the location near Skyline Drive and interviewed [REDACTED]
- [REDACTED] told Officer Johnson that her sister [REDACTED] wanted her to assist her in helping [REDACTED] because she was in a fight with her boyfriend. They eventually drove to the address on Duluth Avenue and parked in the middle of the street attempting to convince [REDACTED] to leave. Marcus came out of the garage pointed a handgun at [REDACTED] and [REDACTED]. Once [REDACTED] said she was going to call the police, Marcus went inside the house.
- Officer Johnson wrote, "Based on [REDACTED] statement, MARCUS EVANS [was] in violation of 245(a)(2) PC - Assault with a deadly weapon with a firearm and 243(e)(1) PC - Domestic battery."

Title in IA case file: "Arjis 9 Officer Uch"

- The report was prepared by Officer Techiekboth Uch #7280.

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- Officer Uch wrote that he responded to the radio call on Duluth Avenue and he was tasked with retrieving his patrol rifle for the arrest of Marcus.
- According to Officer Uch, officers moved to the residence and conducted callouts in front of the residence. Once Marcus exited the residence, *"A high-risk pedestrian stop was initiated because the violent nature of the radio call and it was undetermined if EVANS still had the firearm hidden in his shorts."*
- Officer Uch described his role as *"lethal coverage."*
- Officer Uch described Marcus as not complying with commands from officers. Officer Uch further wrote, *"EVANS did not comply with officers' commands to peacefully surrender and was impacted with a bean bag shotgun and bitten by a police service dog. While less lethal tactics were deployed on EVANS, I maintained my lethal coverage on EVANS with my rifle until he was taken into custody and placed into handcuffs."*

Title in IA case file: **"Arjis 9 Officer Esambolchi"**

- The report was prepared by Officer Shayan Esambolchi #1087.
- Officer Esambolchi wrote that he responded to the radio call on Duluth Avenue and learned that Marcus Evans had committed an assault with a firearm.
- When Officer Esambolchi arrived at the location in front of the residence, officers were contacting Marcus. Marcus was not wearing a shirt and only shorts, while standing at the bottom of a staircase.
- Officer Esambolchi wrote, *"A contact team was in place which included a less lethal beanbag, K9, and a lethal element. My role during this was to be the hands element of the contact team and assist officers in taking Evans into custody. Officers gave Evans several verbal commands, however; Evans was non-compliant with officer's commands. Evans was ultimately impacted by a less lethal beanbag shotgun."*
- Officer Esambolchi also wrote, *"Based on Evans being the suspect of an assault with deadly weapon (firearm), I believed him to be armed and dangerous. I unholstered my handgun and pointed it at Evans. Evans was still being non-compliant with officers' commands. Evans was impacted by a less lethal beanbag shotgun round for a second time. The police service dog was also sent to apprehend Evans."*

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Title in IA case file: "**Arjis 9 Officer Castillo**"

- The report was prepared by Officer Isai Castillo #7875.
- Officer Castillo wrote that he responded to the radio call on Duluth Avenue and *"I learned through my police radio that the suspect had assaulted two people with a firearm. The suspect was named Marcus and was wearing basketball shorts with no shirt."*
- Officer Castillo also wrote, *"I approached the residence where officers were contacting a male by the front stairs who matched the suspect description. My role during this time was to assist officers on scene by taking the suspect into custody."*
- Additionally, Officer Castillo wrote, *"When next to the police car, I heard one of the K9 officer[s] call out to Marcus ordering him to crawl towards us. Marcus was informed he would be provided with medical attention and help. At this point I was standing directly behind the K9 officers next to the front passenger seat. Marcus was given a warning that if he didn't comply, he would be impacted again (by a bean bag), and bit by a police dog. Marcus was also informed he was under arrest. About 6 minutes later from when we positioned ourselves next to the front passenger seat, and after giving Marcus multiple opportunities to surrender, a bean bag munition was deployed and the police service dog was sent to apprehend Marcus. We then moved towards Marcus to take him into custody."*

Title in IA case file: "**Arjis 9 Officer Kim**"

- The report was prepared by Officer Daniel Kim #1611.
- Officer Kim wrote that he responded a radio call reporting a male had pointed a handgun at a female.
- When Officer Kim arrived at the location, Officer Kim, *"saw multiple officers contacting Evans at the front of his residence at [REDACTED] Duluth Avenue. I was directed by A/Sgt Sullivan #6455 to assist officers in taking Evans into custody. I was part of a hands team. During this time, Evans was uncooperative, and he refused to follow simple directions."*
- Officer Kim also documented, *"Evans was impacted by a bean bag shotgun; he ultimately got on the ground. Officers moved to the passenger side of the vehicle to have a better view of Evans. I took out my department-issued handgun and I had my handgun low ready during this time. The canine officer deployed his partner canine, and officers and I moved up to Evans to take him into custody."*

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Title in IA case file: "**Arjis 9 Officer Bennett (Pouchie)**"

- The report was prepared by Officer Ashley Pouchie #1910 (now known as Ashley Bennett).
- Officer Bennett wrote that she responded to the radio call on Duluth Avenue. She described the suspect of the radio call as Marcus Evans and that he was wanted for assault with a firearm. Officer Bennett wrote that Marcus was described as wearing, *"no shirt and black basketball shorts."*
- Officer Bennett documented that when she arrived on scene, she was assigned to be less-lethal coverage with the *"beanbag shotgun."*
- Officer Bennett wrote that as she arrived at [REDACTED] Duluth Avenue, *"A high risk pedestrian stop was initiated on Evans in front of [REDACTED] Duluth Ave in San Diego. EVANS quickly retreated inside the residence and closed the front door as soon as officer[s] arrived on scene. I parked my vehicle to the left of K-9's vehicle, grabbed the less-lethal beanbag shotgun and walked to the right side of the vehicle, positioned myself facing the front door of the residence, and pointed the bean bag shotgun in the direction of the front door."*
- Officer Bennett described [REDACTED] Duluth Avenue as having an inclined driveway and staircase that lead to the front door of the residence.
- Officer Bennett described Marcus as cooperative when he initially exited the residence and walked down the stairs. However, she then wrote, *"When officers asked EVANS to keep his hands over his head, he refused and kept bringing his hands down from above his head. EVANS made movements towards his waist band. Officers commanded EVANS to face away from officers and walk backwards, but EVANS refused and sat down on the lower step of the residence, approximately 25 feet away from police."* According to Officer Bennett's report, Marcus refused to show his complete waistband.
- Officer Bennett pointed the beanbag shotgun at Marcus. Officer Bennett wrote, *"I aimed at EVANS'S lower right torso area and fired my beanbag as a compliance check after being directed to by a supervisor on-scene. The beanbag round hit EVANS in the lower right torso, as aimed and planned. EVANS dropped to the ground."*
- Officer Bennett wrote that Marcus continued to be uncooperative with commands, used foul language, and refused to crawl or walk back to the officers.
- Regarding the second firing of the beanbag shotgun, Officer Bennett wrote, *"In concurrence with K-9 release, I aimed my beanbag shotgun at EVANS'S left arm in his bicep area and fired another*

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round. The beanbag hit EVANS in his left arm and the K-9 was sent. K-9 did not bite. The initial K-9 was removed, and a secondary K-9 was introduced."

- Regarding the third firing of the beanbag shotgun, Officer Bennett wrote, *"In concurrence with secondary K-9 deployment, I aimed my beanbag shotgun at EVANS'S right shin area and fired another round. The beanbag hit EVANS in his right shin and the secondary K-9 was sent. K-9-bit EVANS left arm."*

Title in IA case file: **"Arjis 9 Officer Nelson"**

- The report was prepared by Officer Robert Nelson #7443.
- Officer Nelson wrote in his report that he is assigned to the SDPD Canine Unit and he responded to the radio call with his PSD (Tito). Officer Nelson described the call for service as a *"Male threatening a female with a firearm."* Officer Nelson documented that Southeastern Division officers had contacted the reporting party and determined that the suspect was identified as Marcus Evans. Probable cause existed to arrest Marcus for two counts of assault with a firearm.
- Officer Nelson wrote, *"The San Diego Police Air Support Unit helicopter (ABLE) assisted with watching EVANS' residence, identified as [REDACTED], while a contact team was created. A full perimeter was established, including officers and other canine teams along South 65th Street and inside of MLK Jr. Park. There was a serious concern for the safety of others and officers if EVANS was allowed to leave the residence armed. ABLE observed a male believed to be EVANS, shirtless and wearing dark basketball shorts, walking between a detached garage and main residence multiple times."*
- According to the report, prior to contacting Marcus, Officer Nelson viewed a previous jail booking photo of Marcus and he also discovered that Marcus had previous arrests for offenses including [REDACTED]
- Officer Nelson wrote that pre-planning prior to contacting Marcus took place. Officer Nelson wrote, *"Officers were staged for nearly an hour, creating a plan to safely contact the residence and de-escalate any possible resistance. The plan included my vehicle in the front with a ballistic shield, my PSD, a beanbag shotgun Kinetic Energy Weapon (KEW) and lethal cover. The plan was to conduct a contain and call out plan, ordering EVANS and all other residents out of the property."*
- As Officer Nelson approached the residence he described, *"I was driving the lead vehicle, placing a ballistic shield on my windshield in the event EVANS attempted to shoot at my vehicle while*

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approaching. I observed EVANS, still shirtless and wearing dark basketball shorts, walk into the front door. As I stopped my vehicle, EVANS slammed a security screen door closed."

- Officer Nelson described the residence at [REDACTED] Duluth Avenue as being positioned on a higher ground than the street level. Officer Nelson wrote, *"Using my patrol vehicle as cover, the contact team attempted to call out EVANS from the residence. I deployed my PSD, Tito, on the driver side of my vehicle."*
- Officer Nelson also described noticing movement coming from the inside to the residence. Officer Nelson then began performing callouts to the residence and giving *"canine warnings."* Officer Nelson wrote, *"The canine warnings were to the effect of, 'San Diego Police, Marcus Evans, exit the residence with nothing in your hands. If you do not exit or attempt to flee, a police dog will be sent, and you will be bitten.' I gave multiple canine warnings, yelling loudly. I gave orders for all residents to exit but continued to give warnings directly to EVANS."*
- Officer Nelson documented three people exiting the residence without incident before Marcus exited the residence. Describing Marcus as he exited the residence, Officer Nelson wrote, *"EVANS was wearing black basketball style shorts, no shirt, and no shoes. EVANS matched the photo previously shown to me and I also confirmed with other officers on scene that the fourth male was in fact EVANS. I gave EVANS clear instructions to show me his hands and to walk down the stairs. EVANS initially followed my commands, walking to the bottom of the staircase."*
- Officer Nelson wrote that once Marcus was at the bottom of the staircase, he gave Marcus commands to turn around and face away from the contact team. However, Marcus did not comply with the commands.
- Regarding Marcus' actions, Officer Nelson wrote, *"EVANS stood at the foot of the staircase and began yelling that he did not have to listen to my commands and that he was at his own residence. I attempted to deescalate by asking his name and giving him further details as to why we were at the residence. I told EVANS he was detained pending the investigation, stating we received a radio call of a felony offense including a firearm. EVANS was argumentative and uncooperative, stating he had done nothing wrong."* Officer Nelson described Marcus as displaying symptoms of intoxication and that he believed Marcus was possibly intoxicated.
- Officer Nelson also wrote, *"I believed EVANS to be armed and dangerous. EVANS had not been patted down or searched for any weapons. EVANS had been seen walking to and from the garage and it was unknown where the firearm was located. In addition, EVANS was near a retaining wall and parked vehicle that could easily conceal any weapons from the contact team. If EVANS was allowed to flee out of view or back into the house, I feared he would retrieve the firearm and fire upon our position."*

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- Officer Nelson described seeing another man inside the residence as Marcus was in front of the residence. Marcus called this man “Unc.” Officer Nelson wrote, *“This however caused great concern to me, confirming there were still an unknown number of occupants still in the residence. While our attention was focused on EVANS, it was possible an accomplice or family member could fire upon us to free or prevent the arrest of EVANS. The rapidly evolving and dynamic situation caused more exigency to safely detain EVANS versus if he was confirmed the only occupant in the direct area.”*
- Regarding the first time Marcus was impacted with the beanbag shotgun, Officer Nelson wrote, *“After multiple attempts to de-escalate with verbal commands and the presence of our contact team, EVANS continued to actively resist arrest while being armed. At approximately 0020 hours, the contact team deployed a KEW [Kinetic Energy Weapon] beanbag round to gain compliance from EVANS.”*
- Officer Nelson documented Marcus falling to the grounds after being impacted and ultimately refusing to surrender to the officers. Officer Nelson described Marcus as eventually sitting up and facing the officers.
- Officer Nelson described Marcus as “agitated” and “confrontational.” Officer Nelson wrote, *“A plan was established to utilize a second beanbag KEW round in conjunction with my PSD to apprehend EVANS. I deployed my PSD on his bite command for the following reasons:*

SEVERITY OF THE CRIME: There was probable cause to arrest EVANS for felony assault with a deadly weapon, firearm, against two people.

IMMEDIACY OF THE THREAT: EVANS was believed to be armed or near a firearm. EVANS was wanted for a violent felony and refused to comply while outside of the residence. If allowed to flee or return to the residence, EVANS could fire upon officers, occupants of the residence, or other citizens that were gathering in the neighborhood due to the large police presence. It was determined EVANS had a domestic relationship to one of the victims, causing further exigency to arrest EVANS to prevent further domestic violence against the victim.

ACTIVE RESISTANCE: EVANS refused to follow verbal commands for ten minutes, remaining at the foot of the residence. EVANS refused to walk back to officers and away from any potential concealed weapons. EVANS had already been impacted with a KEW round and refused to surrender.”

- Officer Nelson described his PSD's apprehension of Marcus by writing, *“Assisting officers deployed a second beanbag KEW round to distract EVANS while my PSD was sent on his bite*

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command. This was done specifically to give the dog the opportunity to reach EVANS before a weapon could be pulled, possibly causing the injury or death of my PSD. EVANS was impacted at the same time I gave the bite command. EVANS had his hands in front of him, however remained defiant. As my PSD approached EVANS, he pushed his left forearm out to fend off my PSD. My PSD engaged EVANS on his left forearm. For reasons unknown, my PSD failed to remain engaged with EVANS."

- Officer Nelson recalled his PSD back to his location.
- Officer Nelson wrote, *"Canine Sergeant Dyemartin deployed his PSD. I transitioned my role to lethal cover and as part of the arrest team to support Sgt. Dyemartin. The second PSD was deployed to apprehend EVANS along with a third KEW beanbag round. Canine Sgt. Dyemartin's PSD successfully apprehended EVANS. See his report for further."*

Title in IA case file: **"Arjis 9 Sergeant Dyemartin"**

- The report was prepared by Sergeant Alan Dyemartin #6642.
- Sergeant Dyemartin wrote that he was assigned to the SDPD Canine Unit and that he responded to [REDACTED] Duluth Avenue regarding a radio call of a male pointing a firearm at a female. Sergeant Dyemartin arrived in the area, he parked and staged on Skyline Drive. Sergeant Dyemartin initially spoke with the reporting party of the radio call. Sergeant Dyemartin was informed by [REDACTED] [REDACTED] that Marcus Evans had pointed a firearm at her and [REDACTED] According to Sergeant Dyemartin, probable cause existed to arrest Marcus for two counts of assault with a deadly weapon.
- Sergeant Dyemartin documented that the SDPD helicopter reported Marcus moving from a detached garage to the main residence on multiple occasions prior to officers moving up toward the residence. While still staged, Sergeant Dyemartin discovered Marcus was, [REDACTED] [REDACTED] I also discovered Evans has an extensive criminal history that [REDACTED]
- Sergeant Dyemartin also wrote, *"I know, based on my training and experience, that people who are members of criminal street gangs will often conceal weapons on their person, around their houses and cars, and on their property to easily retrieve them if needed for protection, to evade arrest, or to commit crimes. I further know that violent crimes, such as robbery, are often committed with the use of a dangerous or deadly weapon, including firearms. Based on my training and experience, I know houses that contain multiple people can be dangerous for*

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responding officers because the occupants could, and often do, become upset and uncooperative. Family members and friends will often try to interfere with a police investigation or create a distraction to allow the wanted individual to escape.”

- Sergeant Dyemartin described officers forming a Critical Response Team (referred to hereafter as CRT) comprising of a canine, less lethal options, an arrest team, and a supervisor. As Sergeant Dyemartin and the CRT approached the residence, *“I saw a male with no shirt and basketball shorts run from the driveway, up the stairs to the house's front door. The male frantically tried to get into the house. At first, he seemed unsuccessful, as though the door was stuck or locked. The male started hitting the door and pulling on it. I exited my patrol car and moved toward the lead patrol car for safety. As I did, the male was able to open the front door, and he entered the house. He closed the door behind him as he entered. Almost immediately, I saw the same male, who was later determined to be Evans, enter the room toward the front of the house to the west of the front door. Evans closed all the blinds in that room, and I lost sight of him.”*
- Initially, as Officer Nelson conducted callouts of the residence, Sergeant Dyemartin assisted by detaining the cooperative residents who exited.
- Once Marcus exited the residence and walked down the staircase, Sergeant Dyemartin initially described Marcus as compliant. However, Officer Dyemartin wrote, *“Evans kept his hands up but refused to continue walking toward the contact team. Evans became argumentative toward any commands given to him. He refused to turn around, show the back of his waistband, and comply with commands to continue walking toward the team to be taken into custody safely. Evans would lean against a wall that was approximately waist-high to him. From where I was standing, I could tell there was room on the opposite side of the wall where a person could store a weapon. The earth on the opposite side of the wall was low enough to place an object, including a weapon, on it and it would be concealed from view by someone standing on the street, but it was high enough that someone could easily retrieve that object with minimal ease.”*
- Sergeant Dyemartin described Marcus' shorts as “baggy” and wrote that he was unable to *“clearly see the entirety of his waistband to ensure that he was not concealing a firearm. In my training and experience, I have encountered people who have hidden firearms and other deadly weapons in various places on their person, including squeezed between their butt cheeks, where it could still be easily retrieved and used in a quick amount of time.”*
- According to the report, Officer Nelson continued giving verbal commands to Marcus, but Marcus ignored the commands.
- Sergeant Dyemartin wrote, *“It was unsafe for officers to approach Evans because we did not know if he had a weapon concealed on him or nearby on the other side of the wall, and he was trying to*

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bait us away from our position of safety to attack us. We also did not know who else or how many others were in the house then. It would be unsafe to leave our protected position and move forward because it would be easy for another person in the house to emerge from the front door or shoot at us from behind one of the many closed windows that faced where we were standing."

- According to Sergeant Dyemartin's report, Marcus was given verbal commands and canine warnings for approximately 10 minutes before he was initially shot with the beanbag shotgun. Marcus then went to the ground and continued to ignore commands.
- Sergeant Dyemartin wrote, *"It was apparent Evans was not going to cooperate with us even after being shot with a beanbag shotgun round. I discussed with Lt Bisesto #5797 and A/Sgt Sullivan #6455 that using the PSD in conjunction with another beanbag shotgun round was the safest way to take Evans into custody. This combination of less lethal force would give the CRT the safest approach to take Evans into custody as it would limit his movements and keep him distracted after we left our position of safety."* Sergeant Dyemartin recapped that the first canine apprehension attempt was unsuccessful, and Marcus remained, *"sitting on the steps of the house."*
- Regarding the release of his canine to apprehend Marcus, Sergeant Dyemartin wrote:

"Severity of the crime:

Evans pointed a firearm at two females after they tried to intervene when he was hitting his ex-girlfriend and preventing her from leaving his house. The females stated Evans 'racked the slide' and 'cocked the hammer' while he was pointing the firearm at them. The females were in such fear of being shot that they left the friend who came to help with Evans while they fled for their own safety and called the police.

Immediacy of the Threat:

Evans was believed to be concealing a firearm or to have access to one that was placed near his location. There were several places near Evans where a firearm or other dangerous weapon could be concealed from view by the CRT. Evans was next to a parked car in the driveway and a retaining wall where weapons could have easily been concealed. Based on Evans' lack of compliance I believed he was trying to bait officers into leaving a position of safety and approaching him so he may ambush them.

Several other occupants were also known to be inside the house. At the time, it was unknown who those occupants were or what level of cooperation they would provide. The house is elevated from the street where the officers were located. This elevated position would give someone an advantage to easily ambush the CRT once they left their position of safety.

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Evans is a known member of a criminal street gang, and he has a criminal history of violent crime. Violent criminals and street gang members will often attack officers in order to escape or to receive recognition and clout from other gang members.

Active Resistance:

Evans refused to follow verbal commands and ignored canine warnings for more than ten minutes, regardless of force already being used against him. During this contact, Evans would more often than not do the opposite of the commands issued to him by officers."

- Concluding his use of force on Marcus, Sergeant Dyemartine wrote, "PSD Seff bit and held on to Evans' left forearm. Almost immediately, Evans laid his body flat on the ground, lying on his stomach with his arms out to the side. The CRT approached Evans, and I gained control of the PSD. Once I had control of the PSD and I could see officers had control of Evans' hands so he could not retrieve a weapon, I removed PSD from the bite. The total time on the bite was approximately 38 seconds."
- While inspecting the area near where Marcus was taken into custody, Sergeant Dyemartin discovered, "a crowbar and a large metal tire iron in the front yard. Both objects were in close proximity to where Evans was standing and sitting during the contact. Both objects were completely concealed from my view when I was standing with the CRT near the patrol car but were easily accessible from the area Evans was standing in."

On the same date at approximately 1400 hours, I placed a phone call to [REDACTED] I asked [REDACTED] if he wanted to provide a statement as a complainant in this investigation. [REDACTED] confirmed to me he would be willing to do so, and we agreed for him to provide an in-person statement in the Internal Affairs office on October 30, 2024, at 0700 hours.

On October 30, 2024, at 0656 hours, Detective Sergeant Milo Shields #7075 and I interviewed [REDACTED] in the Internal Affairs interview room (see **Complainant Interview** section below for details).

On the same date, the San Diego Police Commission on Police Practices (referred to hereafter as CPP) forwarded emails they received from [REDACTED] [REDACTED] and [REDACTED] to SDPD Internal Affairs. In [REDACTED] email, she believed the force used against Marcus was excessive (see digital copy of the email chain in the IA case file). [REDACTED] email seemed to be another copy of [REDACTED] initial complaint (see digital copy of the email chain in the IA case file). [REDACTED] email seemed to show her desire to lodge a complaint but she did not make any allegations of misconduct (see digital copy of the email chain in the IA case file).

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On the same date, I searched the Department's body worn camera (referred to hereafter as BWC) database. I located 20 BWC videos and 59 digital photographs related to SDPD Event #E24100036129. I downloaded the BWC videos and photographs, later digitally attaching them to the IA case file.

Over the next couple of days, I watched the BWC videos. Most of the videos mirrored the events depicted in the video posted to youtube.com, in which I previously described. For the purpose of this investigation and to show the perspective of the SDPD officers using force in this case, I made the following relevant observations:

Title in the IA case file: "417HC, [REDACTED] Duluth_Ave, Uoff_beanbag_Transport Pouchie 1"

- The BWC footage was recorded by Officer Bennett. The video footage started with a time and date stamp of "2024-10-25" at "00:06:01." The footage has a total recording time of 1 hour, 13 minutes and 47 seconds. The first two minutes of the footage was in the buffering mode which contains no audio to the video footage.
- The perspective of video footage recorded by Officer Bennett did not portray Marcus' actions (see video in the IA case file for perspective). The way Officer Bennett was positioned while pointed and firing the beanbag shotgun at Marcus, did not provide noteworthy video footage.

Title in the IA case file: "[REDACTED] DULUTH K9 APPREHENSION Nelson 1"

- The BWC footage was recorded by Officer Nelson. The video footage started with a time and date stamp of "2024-10-24" at "23:25:14." The footage has a total recording time of 1 hour, 23 minutes and 36 seconds. The first two minutes of the footage was in the buffering mode which contains no audio to the video footage.
- During the buffering mode footage, Officer Nelson was driving a patrol vehicle.
- At the 2:00 mark, Officer Nelson activated his BWC into the Event mode. Officer Nelson was still driving his patrol vehicle.
- At the 2:17 mark, Officer Nelson's patrol vehicle came to a stop and a few moments later he exited the patrol vehicle. Officer Nelson attended to his PSD for a few moments.
- At the 2:56 mark, loud yelling could be heard coming from an unknown individual. Officer Nelson began walking toward a park area (I recognized this park as Martin Luther King Jr Community Park, located on the 6400 block of Skyline Drive).
- At the 3:05 mark, two women who were yelling loudly could be seen in the park. They appeared to be speaking to a uniformed SDPD officer. Officer Nelson began broadcasting information on

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the two-way police radio. Officer Nelson eventually broadcasted, *"If there is any DV, it looks like the female they're pulling out is very uncooperative."*

- For the next couple of minutes, Officer Nelson remained near the SDPD patrol vehicles and attended to his PSD.
- At the 05:21 mark, Officer Nelson retrieved a ballistic shield from the trunk of his patrol vehicle. Officer Nelson eventually placed the ballistic shield on the driver's side windshield of his patrol vehicle.
- For the next couple of minutes, Officer Nelson remained near his patrol vehicle while speaking with Sergeant Dyemartin about setting up a perimeter on Duluth Avenue.
- At the 8:31 mark, Sergeant Dyemartin stated, *"I think that house is a problem. I remember from working here that house is always been an issue. It's like a legit Skyline house."* Sergeant Dyemartin and Officer Nelson continue speaking. *"To me, he points the firearm at her, its 245. You don't need her cooperation for a felony crime, right? You have a witness that watched the 245 occur, we're still good. We don't need her cooperation."* Officer Nelson then stated, *"So, call it a 245."* Sergeant Dyemartin then broadcasted into his radio, but it was difficult to hear what he broadcasted.
- For the next several minutes, Officer Nelson remained near his patrol vehicle. Nothing of note occurred.
- At the 34:14 mark, Sergeant Dyemartin can be heard speaking about the contact team, *"So, we need someone to be lethal, the dog, less lethal, me and Sullivan can help with hands."*
- At the 36:44 mark, Officer Nelson informed officers on scene that he had a beanbag shotgun in his vehicle for a less lethal option.
- For the next several minutes, Officer Nelson remained near his patrol vehicle. Nothing of note occurred.
- At 43:05 mark, Officer Bennett (Pouchie) arrived on scene. Officer Nelson told her the beanbag shotgun was in the trunk of his patrol vehicle. Officer Bennet asked Officer Nelson, *"Do you want me to be beanbag?"* Officer Nelson answered, *"Yes, so once we pull up, I'll pop the trunk and you can grab it."* Officer Nelson then walked back to his patrol vehicle.
- At the 43:30 mark, Officer Nelson began driving his patrol vehicle at a slow rate of speed.

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- At the 44:13 mark, Officer Nelson stopped his vehicle and quickly exited. The residence of [REDACTED] Duluth Avenue could be seen as Officer Nelson exited the vehicle. The patrol vehicle was parked facing the residence approximately 20 feet from the driveway.
- At the 44:24 mark, Officer Nelson removed his PSD from the back of the patrol vehicle. Officer Nelson could be heard telling someone, *"He went inside, I saw him."* After removing the PSD from his vehicle, Officer Nelson took a position behind the open driver's door of his patrol vehicle.
- Several officers on scene reported seeing movement through the windows of the residence.
- At the 46:12 mark, Officer Nelson shouted, *"Marcus! This is the San Diego Police Department! Marcus Evans! You need to come out of the front door with nothing in your hands! If you fail to do so, a police dog will be sent inside and the dog will bite you!"* Officer Nelson called out to Marcus several more times giving similar warnings.
- At the 47:02 mark, until 51:02 mark, three uninvolved individuals exited the residence. They were detained without incident.
- At the 51:05 mark, Officer Nelson shouted, *"Stop right there!"* Marcus could be seen exiting the front door of the residence with his hands up (see Figure #17 for perspective). Marcus continued walking down the stairs from the residence to the driveway.



(Figure #17)

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- At the 50:12 mark, Officer Nelson and the PSD moved closer to his patrol vehicle. Officer Nelson called out to Marcus, *"Is your name Marcus?"* Marcus responded, *"No."* Marcus then asked why the police were in front of his house. Officer Nelson stated, *"We'll explain it to you. I just need you to listen to my directions, okay. You won't be hurt."*
- At the 50:25 mark, Marcus stated, *"I'm not Marcus. Why are you guys in front of my house?"* Marcus was standing on the second to last step, with his hands above his head. Officer Nelson answered, *"Because there's a firearm involved."*
- At the 50:34 mark, Officer Nelson positioned himself behind the opened driver's door of his patrol vehicle. He ordered Marcus to face away from the officers and walk backwards to the officers. Marcus seemed to protest but I could not hear what he stated to Officer Nelson.
- At the 50:44 mark, Officer Nelson ordered Marcus to again turn around and walk backwards toward the officers. Simultaneously, Marcus sat onto the short retaining wall in front of the residence and placed his hands in his lap (see Figure #18). Officer Nelson continued to explain to Marcus that he was detained in the investigation, but Marcus protested his involvement.



(Figure #18)

- At the 51:05 mark, Officer Nelson told Marcus to walk back toward him. Marcus responded, *"No!"* Officer Nelson asked Marcus for his name. Marcus responded by asking Officer Nelson for his name. Officer Nelson told Marcus his name. Marcus continued to question Officer Nelson about the presence of the police.

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- At the 51:33 mark, Officer Nelson shifted his upper body toward the contact team of officers and asked, *"Where's that beanbag at?"* Officer Nelson requested that Officer Bennett be positioned near him. Marcus continually claimed he did not know anyone named Marcus.
- At the 51:51 mark, Sergeant Dyemartin could be heard asking, *"Hey, if he goes back into the house, impact and dog, right?"* Officer Nelson answered, *"Yes."* Officer Nelson then told Marcus that if he tried to run away the officers would send the PSD.
- At the 52:40 mark, Officer Nelson told Marcus to, *"stand up."* Marcus stood up, placed his arms up, with his hands above his head, and stood at the bottom of the stairway. Marcus stated, *"I'm not coming towards you."*
- At the 53:01 mark, Officer Nelson told Marcus to walk backwards toward him. Marcus responded, *"No."* Officer Nelson then told Marcus, *"I'm tell'n you Marcus, you're under arrest."* Marcus yelled towards the residence, I was unable to understand what he said.
- At the 53:33 mark, Officer Nelson told Marcus, *"You need to comply with my commands or force will be used against you."* Marcus asked, *"You're gonna release the dog against me?"* Officer Nelson answered, *"Yes, I will."* Marcus asked why Officer Nelson would release the PSD, Officer Nelson answered, *"Because you're under arrest"* and *"assault with a firearm."*
- At the 54:00 mark, Officer Nelson stated, *"Hey, let's do a test for compliance with the beanbag."*
- At the 54:37 mark, Officer Nelson told Marcus, *"Marcus, I can't see your waistband. I don't know if you have a gun."* Marcus responded, *"I have no nothing on me."* Officer Nelson told Marcus to turnaround and face away from him. Marcus turned around in a full circle, eventually facing Officer Nelson again.

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- At the 55:02 mark, Marcus stepped back and placed his hands up as ordered by Officer Nelson. Officer Nelson turned to his right and stated, *"Hey, let's impact for compliance."* Marcus still had his hands up, as he walked toward the retaining wall (see Figure #19 for perspective). The sound of the beanbag shotgun's pump action was heard directly afterward Officer Nelson made this statement. Officer Nelson then shouted at Marcus, *"You're gonna be shot!"*



(Figure #19)

- At the 55:07 mark, Officer Bennett is heard shouting *"Firing beanbag!"* The sound of the beanbag shotgun discharging immediately occurred.
- At the 55:08 mark, Marcus is heard yelling in pain. I was unable to see Marcus for a few moments as Officer Nelson had to control the PSD.
- At the 55:19 mark, Marcus could be seen on the ground at the foot of the steps in front of the residence.
- At the 55:31 mark, Officer Nelson and his PSD moved to the passenger's side of the patrol vehicle. Marcus remained in the same position.
- At the 56:01 mark, Sergeant Dyemartin began calling out to Marcus. He told Marcus to crawl to the officers' location. Marcus continued to shout in pain, complaining he had been shot. Sergeant Dyemartin ordered Marcus to do this several times over the next several minutes.

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- At the 56:41 mark, Officer Nelson states, *"I still haven't seen his back waistband this whole time."* Marcus remained on front of the stairs laying on the ground, similar to being in the fetal position (see Figure #20 for perspective).



(Figure #20)

- At the 1:01:27 mark, Officer Nelson spoke to Officer Bennett. Officer Nelson stated, *"If this dog does not engage, I will recall the dog and we'll swap him."*
- At the 1:01:38 mark, Marcus sat up on to the first step of the stairway. Officer Nelson told Marcus he believed him to be armed and dangerous. Marcus responded by telling Officer Nelson to leave and *"get the fuck away from my property."*
- 01:02:06 mark, Officer Nelson shouted to Marcus, *"Marcus! San Diego Police Department, you need to walk back towards me with nothing in your hands! If you fail to do so, you're gonna get bit by a police dog!"* As Officer Nelson made this statement, Marcus was seated on the step, facing the officers, and he hand his hands up near his head. Marcus basically stated he wanted nothing to do with the police.

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- 01:02:48 mark, Officer Bennett shouted, “*Firing Beanbag!*” Marcus was in the same position as described moments before (see Figure #21). Officer Bennett then fired the beanbag shotgun in Marcus’ direction. Officer Nelson immediately gave a command to his PSD and the PSD began running toward Marcus. The PSD could be seen making physical contact with Marcus but not biting him. The PSD ran back to Officer Nelson.



(Figure #21)

- At the 01:03:00 mark, Officer Nelson shouted, “*Dog swap!*” Marcus could be heard asking why he was being shot. Officer Nelson stayed in place for approximately 20 seconds eventually taking the PSD back to his patrol vehicle. Officer Nelson immediately made his way back to the contact team. Sergeant Dyemartin had his PSD out telling Marcus to surrender. Marcus remained in the same position as seen previously with his hands up.
- At the 01:03:54 mark, Officer Bennett shouted, “*Firing Beanbag!*” Officer Bennett then fired the beanbag shotgun in Marcus’ direction. Marcus’ arms went into his torso indicative of being impacted by the beanbag projectile. Sergeant Dyemartin’s PSD almost immediately ran toward Marcus. Within two seconds the PSD bit Marcus’ left arm.
- At the 01:03:59 mark, the contact team moved to Marcus’ location. Officer Nelson eventually took control of Marcus’ right arm while Sergeant Dyemartin began controlling the PSD. Once the PSD was removed from Marcus’ arm, he was placed in handcuffs.

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- At the 01:05:24 mark, Officer Nelson and the contact team moved back to their original location behind the police vehicles. The officers eventually ordered the remaining occupants out of the residence. They complied with the commands and no further incident took place.
- At the 01:14:58 mark, Officer Nelson and a team of officers moved to the residence. They eventually entered the residence conducting a security sweep. Nothing of note occurred.
- At the 01:22:42 mark, Officer Nelson and a team of officers went to a detached garage. They conducted a security sweep of the garage. Nothing of note occurred.

Title in the IA case file: "██████████ *Duluth_Ave Dyemartin 1*"

- The BWC footage was recorded by Sergeant Dyemartin. The video footage started with a time and date stamp of "2024-10-24" at "23:22:37." The footage has a total recording time of 16 minutes and 1 second. The first two minutes of the footage was in the buffering mode which contains no audio to the video footage.
- During the buffering mode footage Sergeant Dyemartin was driving his patrol vehicle.
- At the 2:00, Sergeant Dyemartin activated his BWC into the event mode. He remained in his patrol vehicle for several moments speaking on the police radio.
- At the 3:01 mark, Sergeant Dyemartin exited his patrol vehicle. Sergeant Dyemartin was parked on Skyline Drive.
- At the 3:45 mark, a vehicle occupied by multiple women drove up to Sergeant Dyemartin. The women began telling Sergeant Dyemartin they were involved in the incident on Duluth Avenue. The driver of the vehicle moved her vehicle out of traffic while Sergeant Dyemartin attempted to determine the location of the incident.
- The next several minutes of this video mirrored Officer Nelson's BWC footage.
- At the 14:36 mark, Sergeant Dyemartin spoke with the women who initially contacted him as he arrived on scene. Sergeant Dyemartin encouraged one of the women to tell him what happened between her and Marcus. Sergeant Dyemartin walked away from the area.
- At the 15:54 mark, Sergeant Dyemartin walked up to Acting Sergeant Sullivan. Before they began talking, he turned off his BWC.

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Title in the IA case file: "██████████ **Duluth_Ave Dyemartin 2**"

- The BWC footage was recorded by Sergeant Dyemartin. The video footage started with a time and date stamp of "2024-10-25" at "00:06:08." The footage has a total recording time of 42 minutes. The first two minutes of the footage was in the buffering mode which contains no audio to the video footage *Note: The events shown in this video footage have been previously described in this investigation when I reviewed Officer Nelson's BWC and the youtube.com video. In this description, I will primarily be noting the planning of actions prior to and as officers used force.* The buffering mode footage showed Sergeant Dyemartin near patrol vehicles and seemingly speaking with Acting Sergeant Sullivan.
- At the 2:00 mark, Sergeant Dyemartin entered his patrol vehicle (another officer seemed to be in the passenger's seat of his vehicle). Approximately one minute later, Sergeant Dyemartin drove forward.
- At the 3:25 mark, Sergeant Dyemartin exited his patrol vehicle, eventually taking a position behind Officer Nelson (see Figure #22 for perspective).



(Figure #22)

- The next several minutes reflected Officer Nelson's BWC camera footage.
- At the 9:45 mark, Marcus can be seen standing in front of the residence from Sergeant Dyemartin's perspective. The next several minutes reflected Officer Nelson's BWC camera footage.

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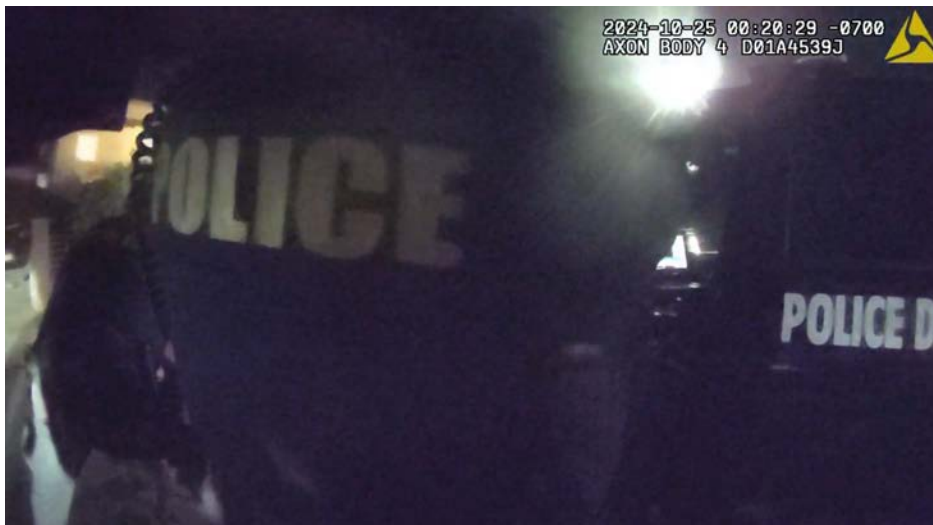
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- At the 11:24 mark, Lieutenant Bisesto was seen standing next to Sergeant Dyemartin's righthand side. Lieutenant Bisesto seemed to ask Sergeant Dyemartin if there were enough officers at the location. Sergeant Dyemartin told her they needed four more officers. Sergeant Dyemartin told Lieutenant Bisesto, "He's our S-1 [Marcus], he doesn't appear to have a firearm right now but there is an elderly person on [REDACTED] inside the house. So, we're not going to let him back in. If he tries to run, beanbag and dog." Lieutenant Bisesto replied, "Got ya." The footage continued to show events already described in Officer Nelson's BWC camera footage.
- At the 13:08 mark, Officer Nelson looked at Sergeant Dyemartin and stated that a "test for compliance" should be done with the beanbag shotgun. A few moments later, Sergeant Dyemartin asked Officer Bennett, "Are you good? You're chambered up and everything, right?" Officer Bennett answered, "Yes."
- At the 14:11 mark, Officer Nelson again looked in Sergeant Dyemartin's direction and stated, "Hey let's impact for compliance." Sergeant Dyemartin stated, "Okay." Officer Bennett fired the beanbag shotgun. Sergeant Dyemartin then touched Officer Bennett on the shoulder (see Figure #23) while asking, "You got another one ready? There you go just wait." A moment later, Officer Nelson and Sergeant Dyemartin moved to the passenger's side of the patrol vehicle.



(Figure #23)

- At the 15:08 mark, Sergeant Dyemartin began ordering Marcus to crawl or stand up and walk towards the officers. Marcus did not follow the commands. This occurred for several minutes.
- At the 19:10 mark, Sergeant Dyemartin, Acting Sergeant Sullivan, and Lieutenant Bisesto were discussing the situation. Acting Sullivan stated that he had not seen Marcus' full waistband area.

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Sergeant Dyemartin states, *"He can get bit at this point. He can get the dog sent on him for sure."* Acting Sergeant Sullivan agreed with Sergeant Dyemartin. Sergeant Dyemartin also stated, *"Its up to how long you want to do this with him. I don't think we're going to get any different reaction out of him. I just think he's going to just keep doing this."*

- At the 20:05 mark, Sergeant Dyemartin retrieved a dog leash from his vehicle and gave it to Officer Nelson.
- At the 20:48 mark, Lieutenant Bisesto stated, *"Can we make sure the hands know what we are doing before he sends him,"* while pointing at Officer Nelson. Sergeant Dyemartin speaks to another officer and told him that they will move up once the PSD bites Marcus. Acting Sergeant Sullivan asked Sergeant Dyemartin, *"Are we going to impact him?"* Sergeant Dyemartin responded, *"Yeah, impact him then send."* Sergeant Dyemartin told Officer Bennett that she needs to shoot Marcus with the beanbag shotgun before they send the PSD.
- At the 21:55 mark, Officer Bennett fired the beanbag shotgun and Officer Nelson's PSD was sent to apprehend Marcus.
- Approximately ten seconds later, the PSD came back to Officer Nelson. Sergeant Dyemartin immediately went to his patrol vehicle and retrieved his PSD.
- At the 22:59 mark, Sergeant Dyemartin stated to Officer Bennett, *"Go ahead."* She then fired the beanbag shotgun and Sergeant Dyemartin released the PSD to apprehend Marcus.
- The next several minutes of the footage was covered in previous video footage reviews.
- At the 41:40 mark, Sergeant Dyemartin and Lieutenant Bisesto were inspecting the grassy area behind the residence's front retaining wall. Lieutenant Bisesto stated, *"I mean, you could consider those weapons. That's where he was, you know right where he was sitting."* Sergeant Dyemartin replied, *"Yeah, crowbars and stuff."*

On November 6, 2024, I obtained digital video footage of the incident from SDPD's Air Support Unit. I then reviewed the footage. The footage showed the same events as seen in the officers' BWC footage and the youtube.com video (only from the perspective of the aircraft). I attached the digital video footage into the IA case file.

On the same date, [REDACTED] submitted an additional complaint (via a SDPD/CPP complaint form) along with [REDACTED] (the complaint was form was digitally added to the IA case file). [REDACTED] and [REDACTED] reiterated the allegation the force used on Marcus was not within SDPD's use of force procedures. Additionally, they alleged the officers failed to de-escalate the situation, officers on scene failed to intervene in excessive force, that officers on scene were discourteous to [REDACTED] (Marcus' [REDACTED])

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and a second search of the Evans' residence occurred violating the 4th Amendment. The complaints regarding courtesy and the secondary search were somewhat vague in nature (I later contacted [REDACTED] and clarified the allegations).

On the same date, I went through the officers' BWC videos once again attempting to identify a possible courtesy issue and secondary search of the Evans' residence as described in the additional complaint. I did not find any conduct related to the courtesy issue. However, I found a BWC video recorded by Officer Javier Flores #1041. While watching Officer Flores' BWC video I made the following observations:

Title in the IA case file: "245 Flores 2"

- The BWC footage was recorded by Officer Flores. The video footage started with a time and date stamp of "2024-10-25" at "00:55:27." The footage has a total recording time of 6 minutes and 6 seconds. The first two minutes of the footage was in the buffering mode which contains no audio to the video. The buffering mode footage showed Officer Flores standing in the driveway of the Evan's residence. At one point, an officer spoke with Officer Flores for a few moments and walks away.
- At the 2:00 mark, Officer Flores activated his BWC into the Event mode. [REDACTED] walked toward Officer Flores and the two men eventually walked into the residence together.
- At the 3:05 mark, [REDACTED] and Officer Flores entered the living room and [REDACTED] pointed towards his [REDACTED] machine near a couch (see Figure #24 for perspective)



(Figure #24)

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- At the 3:21 mark, Officer Flores asked [REDACTED] *"Let me just check over there, right there, okay?"* Officer Flores pointed towards the seating area of the couch while making this statement. [REDACTED] answered, *"Go ahead."*
- At the 3:30 mark, Officer Flores moved around the pillows, blankets, and other miscellaneous items located on and near the couch. Within about 20 seconds, Officer Flores had [REDACTED] use the [REDACTED] machine. [REDACTED] eventually sat on the couch, near the area Officer Flores searched.
- For the next couple of minutes, Officer Flores and [REDACTED] engaged in small talk, nothing of relevance occurred.
- At the 05:31 mark, Acting Sergeant Sullivan entered the room and told Officer Flores that there was no longer a need for him to be inside the residence. Officer Flores began walking out of the residence. Acting Sergeant Sullivan addressed [REDACTED] and stated, *"We're out of here, sir. I'm sorry about everything, I really am. I'm glad you're okay though. We're gonna get out of your hair, okay?"* [REDACTED] responded, *"Alright."*

On November 7, 2024, I was informed by the Internal Affairs Unit's commanding officer, Captain Julie Epperson #5111 that the Federal Bureau of Investigation and the United States Attorney's Office had received a complaint about this incident and that they would be criminally investigating the incident for civil rights violations. At this time, I tolled the investigation per California Government Code section 3304(d)(2)(a)- *The allegation of misconduct is also the subject of a criminal investigation.*

On November 25, 2024, at 1343 hours, I placed a phone call to [REDACTED] answered the call, and I interviewed her over the phone (see **Complainant Interview** section of this investigation for details).

On November 26, 2024, at 0857 hours, I placed a phone call to [REDACTED] answered the call, and I interviewed her over the phone (see **Complainant Interview** section of this investigation for details).

On the same date, at 0947 hours, I placed a phone call to [REDACTED] answered the call, and I interviewed her over the phone (see **Complainant Interview** section of this investigation for details).

On the same date, at approximately 1015 hours, I placed a call to [REDACTED] No one answered the call. I left a voicemail message for [REDACTED] requesting she return my call.

On the same date, at 1033 hours, I sent [REDACTED] an email informing her I was investigating her complaint for SDPD's Internal Affairs Unit. I requested she contact me for an interview. As of the completion of this investigation [REDACTED] has not returned my attempts at contact.

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On December 4, 2024, at approximately 1005 hours, Detective Sergeant Milo Shields #7075 and I went to [REDACTED]. While at the residence, Detective Sergeant Shields and I spoke with [REDACTED] (see **Complainant Interview** section of this investigation for details). [REDACTED] complaint consisted of the force used on Marcus and the secondary search of his residence.

On December 5, 2024, I sent Lieutenant Bisesto, Sergeant Dyemartin, Acting Sergeant Sullivan, Officer Bennett, Officer Nelson, Officer Flores, and their Commanding Officers notification memorandums, informing them they were subjects of a citizen's complaint investigation.

On December 6, 2024, Captain Epperson notified me the United States Attorney's Office informed her that after their investigation, they had declined to criminally prosecute any SDPD officers for civil rights violations related to this incident. I concluded the tolling period per the California Government Code (the tolling period consisted of 29 days).

On December 12, 2024, I sent emails to all subject officers, scheduling them for their interviews for this investigation. Lieutenant Bisesto immediately responded to the email, ultimately requesting to reschedule her interview for January 21, 2025.

On December 19, 2024, at 2049 hours, Detective Sergeant Shields and I interviewed Officer Tyler Christman #7711 in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On the same date, at 2115 hours, Detective Sergeant Shields and I interviewed Officer Castillo in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On the same date, at 2135 hours, Detective Sergeant Shields and I interviewed Officer Esambolchi in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On the same date, at 2155 hours, Detective Sergeant Shields and I interviewed Officer Uch in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On January 6, 2025, at 0517 hours, I interviewed Officer Kim in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On the same date, at 0604 hours, I interviewed Officer Bennett in the Internal Affairs interview room (see **Subject Officer Interview** section of the investigation for details).

On January 7, 2025, at 0530 hours, I interviewed Officer Flores in the Internal Affairs interview room (see **Subject Officer Interview** section of the investigation for details).

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On January 8, 2025, at 0506 hours, Detective Sergeant Jesus Sanchez #5560 and I interviewed Officer Nelson in the Internal Affairs interview room (see **Subject Officer Interview** section of the investigation for details).

On the same date, at 0605 hours, Detective Sergeant Sanchez and I interviewed Sergeant Dyemartin in the Internal Affairs interview room (see **Subject Officer Interview** section of the investigation for details).

On January 14, 2025, at 1050 hours, Detective Sergeant Shields and I interviewed Acting Sergeant Sullivan in the Internal Affairs interview room (see **Subject Officer Interview** section of the investigation for details).

On January 21, 2025, at 1305 hours, Detective Sergeant Milo Shields #7075 and I interviewed Lieutenant Bisesto in the Internal Affairs interview room (see **Subject Officer Interview** section of the investigation for details).

On the same date, I contacted Sergeant Michael Rhoten #6224 who is assigned to SDPD's Training Division. I provided Sergeant Rhoten with the BWC footage of the use of force, the officers' written reports, and digital recordings of the Internal Affairs interviews. I requested that Sergeant Rhoten review the material and provide an opinion on the use of force in this case.

On January 23, 2025, SDPD's Canine Unit provided the Internal Affairs Unit with a Microsoft PowerPoint presentation. The digital file was titled "*CRT Powerpoint 2022.*" I reviewed the slides in the presentation and made the following observations (see the IA case file for full details of this PowerPoint presentation):

- The first slide seemed to be a course title page (see Figure #25)



(Figure #25)

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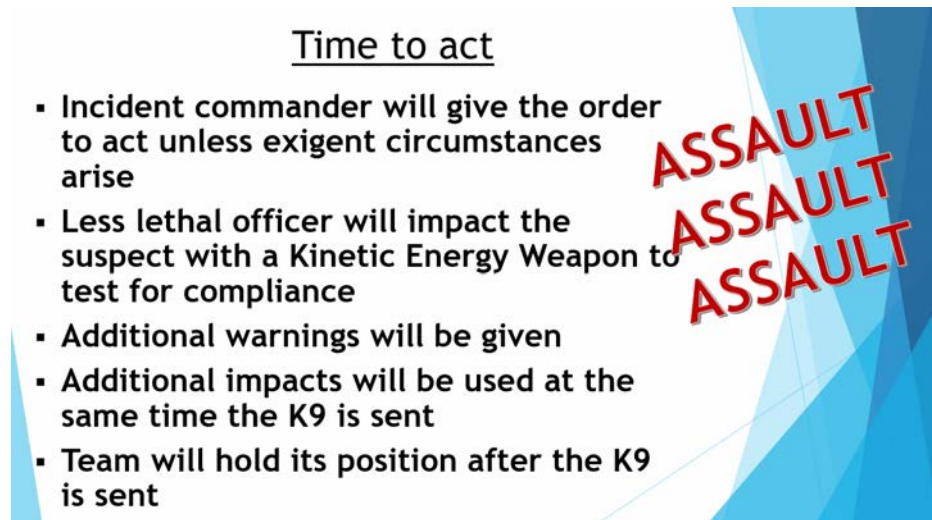
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- The fifth slide gave examples of situations when a Crisis Response Team should be used. One example was, *“Armed or believed to have access to a deadly weapon.”*
- The eighth slide mentioned a *“test for compliance”* (see Figure 26).



(Figure #26)

On January 27, 2025, at 0653 hours, I interviewed Sergeant Dafoe in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On January 28, 2025, at 1400 hours, I interviewed Sergeant Pfannensteil in the Internal Affairs interview room (see **Witness Officer Interview** section of the investigation for details).

On March 3, 2025, Sergeant Rhoten contacted me and provided me with a written opinion regarding the officers' use of force. I digitally attached his written opinion into the IA case file. I reviewed Sergeant Rhoten's written opinion and made the following observations:

- Sergeant Rhoten analyzed Officer Bennett's (referred to as Officer *Pouchie* in his written opinion) first impact of Marcus with the beanbag shotgun.
- Sergeant Rhoten described Marcus' initial behavior as *“fluctuating between Active Resistance and Passive Resistance.”* Sergeant Rhoten also wrote, *“I believe it is reasonable to believe that Evans could have access to a deadly weapon behind the retaining wall and around the vehicle parked in the driveway.”*
- Sergeant Rhoten wrote regarding the first beanbag shot, *“It is my opinion that Officer Pouchie's discharge of the first round from the beanbag shotgun in response to Evans's active resistance*

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behavior while Officer Pouchie reasonably believed Evans was near a deadly weapon is consistent with what is taught in the San Diego Regional Police Academy and what is taught in Advanced Officer Training. Officer Pouchie's actions are consistent with what is outlined in the San Diego Police Use of Force Policy and Procedure.” (Page 15).

- Sergeant Rhoten then analyzed the second and third occurrences of Officer Bennett impacting Marcus with the beanbag shotgun. Sergeant Rhoten wrote, *“It is my opinion that Officer Pouchie believed that shooting Evans with the beanbag shotgun a second and third time was part of a known/taught tactic. She was acting under the order/directions of supervisors and senior officers. It does not appear she recognized she was responsible for her own use of force, despite the orders from supervisors and senior officers. This was evident in both her report and Internal Affairs interview where she stated she shot Evans with the beanbag because she was told to do so.”*
- Sergeant Rhoten described Marcus' behavior during second and third beanbag shot (the first and second PSD deployments) as *“Passive Resistance.”* Sergeant Rhoten also wrote, *“Evans did not verbally signal any intention to prevent officers from taking him into physical custody. Evans refused to comply with the officers' verbal orders. Evans complained about being shot (with the beanbag), asked the officers why they were, and told the officers that he was at his home. These behaviors are considered passive resistance.”*
- Sergeant Rhoten concluded about the second and third beanbag shotgun shots, *“It is my opinion that Officer Pouchie's second and third impacts with the beanbag shotgun were not within the SDPD DP 1.04: Use of Force and DP 1.36: Kinetic Energy Weapons. The second and third impacts were not in accordance with the San Diego Regional Academy or Advanced Officer Training teachings.”* (Page 23-24).
- Sergeant Rhoten also addressed Officer Nelson's and Sergeant Dyemartin's deployments of the PSD to apprehend Marcus.
- Addressing both PSD deployments to apprehend Marcus, Sergeant Rhoten wrote, *“It is my opinion that Officer Nelson's and Sgt. Dyemartin's deployments of their PSD to apprehend Evans were not within the SDPD DP 1.04: Use of Force DP: [and]6.16 Police Service Dog. The deployments of the PSD were not in accordance with San Diego Regional Academy or Advanced Officer Training teachings.”* (Page 24).

On March 26, 2025, I was informed by the Internal Affairs Unit command staff that a lawsuit had been filed alleging SDPD had engaged in civil rights violations of Marcus related to this incident. I was ordered to toll this investigation per California Government Code section 3304(d)(2)(F).

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Complainant Interview: [REDACTED]

On October 30, 2024, at 0656 hours, Detective Sergeant Milo Shields #7075 and I interviewed [REDACTED] in the Internal Affairs interview room. I audio recorded this interview. The recording is 14 minutes and 3 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "[REDACTED] Interview").

[REDACTED] confirmed that he sent an email to the Chief of Police and authored the attached document to the email. [REDACTED] confirmed that his allegations of misconduct from the SDPD officers in the incident on Duluth Avenue were the use of a PSD and the use of the extended range impact weapon.

I asked [REDACTED] if he had any other allegations of misconduct related to this incident. [REDACTED] went on to say that when he saw the YouTube video, it was clear to him that Marcus Evans was unarmed, and he did not have access to a weapon. [REDACTED] stated that he was concerned about how there were supervisors at the incident and none of them intervened to prevent the incident from escalating.

[REDACTED] recognized that he did not have all the information regarding the incident but from the information that he knew, the use of force was outside the bounds of SDPD policies. [REDACTED] stated, "I'm just looking at that timeframe. It doesn't matter what he did, it doesn't matter if he hurt somebody, he murdered somebody, all that stuff don't matter. Looking at the video, clearly you could see that he was unarmed."

[REDACTED] also stated, "I believe he was shot because he was African American." I informed [REDACTED] that this belief was not in the document he authored. [REDACTED] agreed that this allegation was not in the document he authored. [REDACTED] justified this allegation by stating that this type of excessive force is not used "indiscriminately," and this use of force was, "punitive." [REDACTED] also referenced an instance when an SDPD Sergeant stated that dogs only like to bite "dark meat." [REDACTED] stated that there is a "climate in the Department that allows that type of behavior."

[REDACTED] confirmed that the information he wrote in his narrative to the Chief of Police was all the information he possessed regarding his complaint.

I concluded the interview at 0710 hours.

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Complainant Interview: [REDACTED]

On November 25, 2024, at 1343 hours, I interviewed [REDACTED] over the phone. I audio recorded this interview with [REDACTED] consent. The recording is 17 minutes and 22 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "[REDACTED] Interview").

[REDACTED] confirmed that her complaint was a third-party complaint and that she saw the incident from a YouTube video. [REDACTED] also confirmed that her complaint was regarding the use of force on Marcus Evans, specifically SDPD's utilization of an extended range impact weapon and the use of a PSD.

[REDACTED] informed me that she does not have any contact information for witnesses of the incident that she believed would be willing to speak with me regarding the use of force incident.

[REDACTED] also stated that she wanted to complain regarding the Department's de-escalation procedures. [REDACTED] alleged that during this incident, no de-escalation took place and all of the officers on scene failed in their duty to intervene in an obviously unreasonable use of force. [REDACTED] went on to allege that the officers were untruthful in their reports because she believes that SDPD officers regularly write reports that do not match the events that occurred on their body worn cameras.

[REDACTED] later accused SDPD of having a history of racism and believed that PSDs are "*so easily released on black people.*" She cited an SDPD Sergeant who stated police dogs like dark meat. [REDACTED] stated, "*The use of force on Marcus Evans was based on biases that Sergeant Allan Dyemartin is known to have. Why do I say that, because he has a disciplinary record that shows that.*"

[REDACTED] wanted this incident investigated criminally and for criminal charges to be brought against all officers in the incident who used force.

I concluded the interview at 1401 hours.

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Complainant Interview: [REDACTED]

On November 26, 2024, at 0857 hours, I interviewed [REDACTED] over the phone. I audio recorded this interview with [REDACTED] consent. The recording is 17 minutes and 24 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "[REDACTED] Interview").

[REDACTED] confirmed she sent an email regarding the use of force incident on Duluth Avenue and that she wanted to make a complaint. [REDACTED] stated that her complaint was she believed the SDPD's de-escalation policies were not followed during this incident. [REDACTED] went on to say that she felt someone should have intervened to stop the use of force because the force used was clearly out of policy. [REDACTED] also stated that she feels that whoever was in charge of the incident needs to be reprimanded because it was wholly mismanaged.

[REDACTED] believed Marcus Evans' race was a factor in the decision to use the police service dog and she believed this by referencing the time when an SDPD officer stated police dogs like dark meat. [REDACTED] stated that SDPD has a systemic racism problem. According to [REDACTED] Marcus Evans was known to Southeastern Division officers; therefore, they acted out of policy due to his race. [REDACTED] stated, "They knew they were going to a Black man's house. They didn't know what was going to occur but they were quick to pull the trigger when there should have been a deep breath and a conversation, and de-escalation. Like I've said, it was all too quick."

[REDACTED] confirmed that she was alleging that the use of the extended range impact weapon and the police service dog was excessive.

[REDACTED] confirmed she did not personally witness the incident and saw the incident from a video. She also confirmed she is not aware of any witnesses to the incident.

I concluded the interview at 0914 hours.

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Complainant Interview: [REDACTED]

On November 26, 2024, at 0947 hours, I interviewed [REDACTED] over the phone. I audio recorded this interview with [REDACTED] consent. The recording is 13 minutes and 28 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "[REDACTED] Interview").

[REDACTED] stated that that she watched a video on YouTube regarding the police response to 6461 Duluth Avenue. [REDACTED] believed that the police violated the rights of Marcus Evans and his family. [REDACTED] clarified by stating that she believes excessive force was used against Marcus when he was shot with an extended range impact weapon and bitten by a police service dog.

I asked [REDACTED] to clarify how she believed the family's rights were violated. [REDACTED] mentioned that the Evans' household was searched by the police on two occasions. She called the first search, the "safety sweep" and she believed this search to be permissible. However, she believed that the second search was unlawful. I probed [REDACTED] as to the details and circumstances regarding this second search. [REDACTED] could not provide information regarding the second search and told me she learned about it after speaking with Marcus' uncle, [REDACTED]. [REDACTED] stated that [REDACTED] would have the details of this second search and that she would attempt to place him in touch with me.

[REDACTED] also alleged that this use of force incident had to do with discriminatory practices by SDPD towards people of color. [REDACTED] cited statistical data to back this claim. [REDACTED] went on to allege that the officers on scene that witnessed the use of force had a duty to intervene and stop the force as this was clearly outside the bounds of a reasonable use of force.

[REDACTED] also believed that an officer or sergeant on scene was discourteous to the Evans family and that they ignored them when they were attempting to inform the police about [REDACTED] need for [REDACTED] treatments. According to [REDACTED] it took the Evans' neighbor (who was a different race) to intervene to inform the police of [REDACTED] medical needs. [REDACTED] believed [REDACTED] would have more information regarding this allegation.

I concluded the interview at 0914 hours.

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Complainant Interview: [REDACTED]

On December 4, 2024, at approximately 1005 hours, Detective Sergeant Milo Shields #7075 and I went to 6461 Duluth Avenue. While at the residence, Detective Sergeant Shields and I spoke with [REDACTED]. This conversation was not audio recorded. The following is a summary of the conversation between [REDACTED] Detective Sergeant Shields, and me.

[REDACTED] identified himself as Marcus' uncle and stated that Marcus had been living in the garage of his residence for the last several months. However, since the incident with the police dog, he had Marcus find a new place to live. [REDACTED] made it clear that he had little patience for nonsense at his home due to his health problems. [REDACTED] reiterated that he had recently been struggling with health problems, and he needs to use a [REDACTED] machine several times a day as part of his health care plan.

[REDACTED] informed us that he is a retired code compliance officer for the City of San Diego and on several occasions, he worked in conjunction with the Police Department. [REDACTED] went on to say that he respects the police and understands that the police have a difficult job to do. However, [REDACTED] believed that for the most part, the police have a habit of racially profiling Black people in the community.

I asked [REDACTED] to describe what he remembered from the evening of October 24, 2024. [REDACTED] stated that he remembered Marcus and his girlfriend having been in an argument. [REDACTED] was not entirely sure what the issue was between them, but he described Marcus' girlfriend as always causing problems with him and his family.

At some point, [REDACTED] noticed that the police were outside and calling for everyone to exit the residence. Marcus had recently come inside the house and [REDACTED] told everyone it would be best to follow the instructions of the police.

According to [REDACTED] when Marcus exited the residence, he would not go all the way to the officers and kept calling for him to help him or call a lawyer. He wasn't out there very long but the officers shot him and sent a police dog to bite him. [REDACTED] believed that the police were unjustified in shooting Marcus and ordering the dog to bite him. [REDACTED] basically described the use of force as uncalled for and excessive.

I asked [REDACTED] if he had any complaints regarding a supervisor on scene (as described by [REDACTED]). [REDACTED] informed me that after Marcus had been bitten by the dog, he came out of the residence as ordered but he needed to go back inside as soon as possible for his [REDACTED] treatment. He stated that he was trying to get the attention of a sergeant (he described this person as white and bald) but the sergeant was basically ignoring him. It took the intervention of his neighbor to get ahold of someone who could let him back inside the residence to return to his treatment. I explained to [REDACTED] that due to the nature of the radio call, there were still several tactical obstacles for the officers to contend with and that was

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likely the reason he was unable to immediately return inside the residence. [REDACTED] seemed to understand my explanation and then told me he did not have a complaint regarding discourtesy.

I then asked [REDACTED] if he had any complaints regarding a search of his residence (as described by [REDACTED] [REDACTED] stated that as an officer escorted him into his residence so he could use his [REDACTED] machine, that the officer searched his living room without his consent. I told [REDACTED] that I had watched BWC footage of this portion of the incident and I described what I saw which was ultimately him giving the officer consent to search the couch area. [REDACTED] stated that he did not remember giving anyone consent to search the area.

I asked [REDACTED] to confirm any complaints that he had regarding the incident. [REDACTED] stated that he believed Marcus should not have been bitten by the police dog and that the officer unlawfully searched his living area.

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Witness Officer Interview: Police Officer II Tyler Christman #7711

On December 19, 2024, at 2049 hours, Detective Sergeant Milo Shields #7075 and I interviewed Officer Christman in the Internal Affairs interview room. I read Officer Christman the Administrative Admonishment for Sworn Personnel as a Witness Officer. Officer Christman indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Officer Christman did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 20 minutes and 5 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled ***"Officer Christman Interview"***).

Officer Christman stated he has been an SDPD officer for approximately 7 years. He is currently assigned to patrol for Southeastern Division. On October 24, 2024, he was assigned to patrol duties at Southeastern Division when he responded to [REDACTED] Duluth Avenue. According to Officer Christman, the call for service was regarding an assault with a firearm at the location. Officer Christman remembered that the call for service also had a nexus to domestic violence.

Once Officer Christman arrived on scene, he learned that a contact team had already went to the residence to contact the suspect. Officer Christman decided to assist with the contact team and took a position behind them. At this point, two individuals had already exited the residence. Officer Christman assisted with taking these two individuals out of handcuffs. Officer Christman stood with the two men.

Officer Christman identified Acting Sergeant John Sullivan as the incident commander for the incident on Duluth Avenue. Officer Christman believed him to be the incident commander because he was giving other officers directions, providing situational updates, and seemed to be running the contact team. Officer Christman identified the Canine Unit, several patrol officers, a beanbag shotgun, a long rifle, and air support as the resources on scene to contact the suspect.

Officer Christman confirmed that he was present as Marcus Evans exited the [REDACTED] Duluth Avenue. Officer Christman described Evans wearing only shorts. Officer Christman believed it was possible that Evans was concealing a weapon because he could not see his backside and the nature of the call for service involving a firearm. Officer Christman confirmed that he did not see anything in Evans' possession that could have been used as a weapon. Officer Christman stated that he never saw Evans turn around and show the backside of his waistline.

I asked Officer Christman what commands he heard that were given to Marcus. Officer Christman answered that he did not remember any of the specific commands, but he thought they were telling Marcus to walk backwards towards the officers. Officer Christman remembered Marcus yelling or

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rambling but ultimately not cooperating with the officers' commands. However, Officer Christman clarified that he was primarily focused on the two individuals who had already exited the residence. Officer Christman stated that he did not overhear or participate in any of the planning to take Marcus into custody when he became uncooperative.

According to Officer Christman, he did not witness the first beanbag shotgun impact Marcus. Officer Christman denied hearing anyone give an order to fire the beanbag shotgun. I asked Officer Christman if he saw Marcus' actions after he was impacted with the beanbag projectile. Officer Christman told me he could not see Marcus at that point.

Officer Christman stated that he saw Marcus shot with the beanbag shotgun when it impacted his shin, but he did not see the PSD sent to Marcus. He did not remember Marcus' actions or behavior as he was impacted with the projectile.

I asked Officer Christman if he witnessed the PSD bite Marcus. Officer Christman confirmed he witnessed the PSD bite Marcus on his left arm. Officer Christman stated he believed Marcus was either sitting down or on his knees when the PSD bit him.

Officer Christman again confirmed that he never overheard or was aware of the plan to take Marcus into custody.

Officer Christman went on to say that he assisted in taking Marcus to a police vehicle after the PSD bit him.

I asked Officer Christman, *"Did you witness or overhear any of the officers or the incident commander reference Marcus' race or ethnic heritage as part of the reason for the use of force?"* Officer Christman answered, "No."

I concluded the interview at 2114 hours.

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Witness Officer Interview: Police Officer II Isai Castillo #7875

On December 19, 2024, at 2115 hours, Detective Sergeant Milo Shields #7075 and I interviewed Officer Castillo in the Internal Affairs interview room. I read Officer Castillo the Administrative Admonishment for Sworn Personnel as a Witness Officer. Officer Castillo indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Officer Castillo did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 18 minutes and 52 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Castillo Interview**").

Officer Castillo stated he has been an SDPD officer for approximately 5 years. He is currently assigned to patrol for Southeastern Division. On October 24, 2024, he was assigned to patrol duties at Southeastern Division when he responded to [REDACTED] Duluth Avenue. According to Officer Castillo, he responded to the location because the Field Lieutenant had requested additional officers to assist at the location. Officer Castillo described the incident as a domestic violence incident involving a firearm. Officer Castillo knew as he responded to the location that the suspect was a man named "Marcus" who was wearing no shirt and basketball shorts. Officer Castillo was under the impression that there was cause to arrest Marcus for assault with a firearm.

Once Officer Castillo arrived on scene, he met with the contact team on Duluth Avenue and "Sergeant Sullivan" assigned him to assist the contact team. Officer Castillo also noticed a male matching Marcus' description on the sidewalk in front of the residence on Duluth Avenue. Officer Castillo overheard commands being given to Marcus.

Officer Castillo identified Acting Sergeant John Sullivan or the Field Lieutenant as the incident commander for the incident on Duluth Avenue. Officer Castillo believed Acting Sergeant Sullivan to be the incident commander because he was giving other officers directions. However, Officer Castillo recognized the Field Lieutenant as having the highest rank at the location. Officer Castillo identified the Canine Unit, several patrol officers, a beanbag shotgun, as resources on scene to contact the Marcus. Officer Castillo did not recall any ballistic shields being present on this call.

Officer Castillo confirmed that Marcus was already outside of [REDACTED] Duluth Avenue when he arrived at the location. Officer Castillo described Marcus as wearing only shorts. Officer Castillo believed it was possible that Evans was concealing a weapon due to the nature of the call for service involving a firearm. Officer Castillo thought Marcus was concealing a "smaller weapon" in his pocket or behind a retaining wall. Officer Castillo confirmed that he did not see anything in Evans' possession that could have been used as a weapon.

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I asked Officer Castillo what commands he heard that were given to Marcus. Officer Castillo answered that he remembered a canine officer telling Marcus to crawl to them and that he was under arrest. Officer Castillo remembered Marcus yelling and not complying with commands.

Officer Castillo did not recall overhearing any sort of plans or tactics discussed to take Marcus into custody. Officer Castillo confirmed he remembered an officer order Marcus to turn around and show his waistline. However, Officer Castillo did not remember if Marcus complied with this order.

According to Officer Castillo, he witnessed the first beanbag shotgun round impact Marcus. Initially, Officer Castillo remembered Marcus being impacted twice with the beanbag shotgun but he later clarified this. Officer Castillo described Marcus just before he was impacted as standing near a retaining wall, eventually sitting on the wall. I asked Officer Castillo if Marcus had reached for anything in his pockets or behind the retaining wall. Officer Castillo confirmed that Marcus did not reach for any of these locations. Officer Castillo remembered hearing a canine officer tell Officer Pouchie (Bennett) to fire the beanbag shotgun. Officer Castillo did not know why Marcus was impacted with the beanbag projectile at that point.

Officer Castillo stated that after the beanbag round impacted Marcus, Marcus went to the ground. Officers began giving Marcus more orders to surrender. Officer Castillo could not remember what specific orders were given to Marcus at that point.

I asked Officer Castillo if after Marcus was hit with the beanbag, did the plan to take him into custody change. Officer Castillo told me that he did not recall, and nothing stood out to him regarding this question.

I asked Officer Castillo what Marcus was doing just before as he was impacted with a beanbag for the second time and the first PSD was sent to apprehend him. Officer Castillo stated that he remembered Marcus standing up and yelling. Officer Castillo then corrected himself and described Marcus as sitting down. According to Officer Castillo, the beanbag projectile impacted him in the shin. Officer Castillo confirmed that the PSD was immediately then sent to apprehend Marcus but that the PSD did not engage Marcus. I asked Officer Castillo to describe Marcus' resistance level as this use of force was applied. Officer Castillo answered, *"I think it would be active resistance, even though he wasn't running or anything, but he was clearly signaling that he didn't want to be taken into custody. And we had knowledge that there was a firearm somewhere."*

Officer Castillo described Marcus as staying in the same location, but he was unsure if Marcus was seated or standing. Officer Castillo remembered Marcus yelling for his family. Officer Castillo was relatively sure that a third beanbag projectile impacted Marcus but did not remember where on his body. Officer Castillo described Marcus as *"doing the same thing"* as he was when previous beanbag shot was fired at him. I asked Officer Castillo if he witnessed the PSD bite Marcus. Officer Castillo confirmed he

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witnessed the PSD bite Marcus. Officer Castillo stated he believed Marcus was either sitting down or on his knees when the PSD bit him. I asked Officer Castillo to describe Marcus' resistance level as this use of force was applied. Officer Castillo answered, *"Right before the dog bit him, it was the same behavior."*

I asked Officer Castillo, *"Did you witness or overhear any of the officers or the incident commander reference Marcus' race or ethnic heritage as part of the reason for this use of force?"* Officer Castillo answered, "No."

I concluded the interview at 2133 hours.

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Witness Officer Interview: Police Officer II Shayan Esambolchi #1087

On December 19, 2024, at 2135 hours, Detective Sergeant Milo Shields #7075 and I interviewed Officer Esambolchi in the Internal Affairs interview room. I read Officer Esambolchi the Administrative Admonishment for Sworn Personnel as a Witness Officer. Officer Esambolchi indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Officer Esambolchi did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 17 minutes and 32 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled **"Officer Esambolchi Interview"**).

Officer Esambolchi stated he has been an SDPD officer for approximately 4 years. He is currently assigned to patrol for Southeastern Division. On October 24, 2024, he was assigned to patrol duties at Southeastern Division when he responded to [REDACTED] Duluth Avenue. According to Officer Esambolchi, the call for service was a "hot call" with a threatening weapon. Officer Esambolchi learned via information broadcasted on the police radio that an assault with a firearm had occurred. The suspect was listed as Marcus Evans, and he was wearing only shorts.

Once Officer Esambolchi arrived on scene, he went to the contact team which was already positioned in front of the residence. Officer Esambolchi decided to assist with the contact team and took a position behind them. As Officer Esambolchi arrived at the location, he could hear officers giving verbal commands to Marcus.

Officer Esambolchi was tasked with being part of the "hands team" but he could not remember who tasked him with this role. He believed it may have been Lieutenant Bisesto or an Acting Sergeant (Officer Esambolchi could not remember his name). Officer Esambolchi believed him to be the incident commander because he was giving other officers directions and seemed to be running the contact team. Officer Esambolchi identified the Canine Unit, several patrol officers, a beanbag shotgun, and lethal options as the resources on scene. Officer Esambolchi did not remember seeing any ballistic shields as part of the available resources.

Officer Esambolchi stated that when he arrived, Marcus had already exited [REDACTED] Duluth Avenue. Officer Esambolchi described Evans as not wearing a shirt and only shorts. Officer Esambolchi believed it was possible that Evans was concealing a weapon based on the information that a firearm had been used in the crime. Officer Esambolchi believed a firearm could have been concealed in his pocket.

I asked Officer Esambolchi what commands he heard that were given to Marcus. Officer Esambolchi stated that Marcus was ordered by canine officers to walk backwards towards them and that he was under

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arrest. Officer Esambolchi remembered Marcus not cooperating with the officers' commands and possibly pacing back and forth. Officer Esambolchi described Marcus as telling the officers he wanted his lawyer, swearing at the officers, and telling his uncle to come out of the house. Officer Esambolchi stated that he did not overhear or participate in any of the planning to take Marcus into custody when he became uncooperative.

Officer Esambolchi witnessed the first time Marcus being impacted with a beanbag projectile. Officer Esambolchi described Marcus as *"non-compliant"* just before being impacted. However, Officer Esambolchi was unable to elaborate further on this description of Marcus' actions. I asked Officer Esambolchi to describe Marcus' resistance level as this use of force was applied. Officer Esambolchi answered, *"Actively resisting."* Officer Esambolchi went on to say, *"Based on him not following commands and the words saying to us. I don't remember the exact words he was saying. I just remember that the words, I interpreted that as him not wanting to. I interpreted like he didn't want us to take him into custody. And if we did, there might be an altercation."*

Officer Esambolchi did not remember overhearing anyone give an order to fire the beanbag shotgun. Officer Esambolchi did not know why the decision was made to fire the beanbag shotgun.

Officer Esambolchi confirmed that after Marcus was impacted with the beanbag projectile, he went to the ground. Marcus began yelling to his family that he had been shot. Officer Esambolchi stated that he never overheard or was aware of a plan to take Marcus into custody, at that point.

Officer Esambolchi confirmed that he witnessed the second time that Marcus was impacted by the beanbag projectile and when the first PSD was sent. Officer Esambolchi stated that Marcus was on the ground when this occurred. Officer Esambolchi described Marcus as refusing commands from officers telling him to crawl to the officers. Officer Esambolchi did not remember where Marcus' hands were located. Officer Esambolchi maintained that Marcus was still displaying active resistance because Marcus was making statements to the officers similar to, *"you're all going down."* Officer Esambolchi confirmed that the PSD did not bite Marcus and came back to the handler. Marcus remained on the ground.

Officer Esambolchi stated that he never overheard or was aware of a change in the plan to take Marcus into custody, at this point.

Officer Esambolchi confirmed that he witnessed the third time that Marcus was impacted by the beanbag projectile and when the second PSD was sent. Officer Esambolchi stated that Marcus was still on the ground when this occurred and that his resistance level had not changed. Officer Esambolchi confirmed that the PSD bit Marcus but he could not remember where on Marcus' body the PSD bit him.

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Officer Esambolchi stated that he had no memory of Marcus reaching for a place on his body that a weapon may have been concealed when he was impacted by the beanbag projectiles or the PSD was sent to apprehend him.

After Marcus was bit by the PSD, he was told to move up and provide lethal coverage on the house.

I asked Officer Esambolchi, *"Did you witness or overhear any of the officers or the incident commander reference Marcus' race or ethnic heritage as part of the reason for the use of force?"* Officer Esambolchi answered, *"No."*

I concluded the interview at 2152 hours.

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Witness Officer Interview: Police Officer II Techeakboth Uch #7280

On December 19, 2024, at 2155 hours, Detective Sergeant Milo Shields #7075 and I interviewed Officer Uch in the Internal Affairs interview room. I read Officer Uch the Administrative Admonishment for Sworn Personnel as a Witness Officer. Officer Uch indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Officer Uch did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 15 minutes and 40 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Uch Interview**").

Officer Uch stated he has been an SDPD officer for approximately 9 years. He is currently assigned to patrol for Southeastern Division. On October 24, 2024, he was assigned to patrol duties at Southeastern Division when he responded to [REDACTED] Duluth Avenue. According to Officer Uch, the call for service was reporting a subject who had brandished a firearm. Officer Uch later found out that responding officers had verified a criminal offense had occurred and identified a suspect. The suspect was arrestable for assault with a firearm.

Once Officer Uch arrived on scene, officers initially staged away from the residence, and he was tasked with deploying his rifle. He and a team of officers decided on a plan to conduct call outs of the residence. Officer Uch identified Acting Sergeant Sullivan as the incident commander.

Officer Uch stated that he was present and witnessed as the occupants of [REDACTED] Duluth Avenue began exiting. Officer Uch identified several resources on scene, such as the Canine Unit, several patrol officers, a beanbag shotgun, and lethal options. Officer Uch did not recall seeing any ballistic shields as part of the available resources. Officer Uch identified the possibility of a firearm and the contact team being at a lower elevation than the residence as potential officer safety and tactical concerns.

Officer Uch confirmed that he was present and that he witnessed Marcus Evans exit the residence on Duluth Avenue. Officer Uch recalled Marcus as not wearing a shirt and only shorts. Officer Uch did not see a weapon in Marcus' possession as he exited the residence. However, Officer Uch believed it was possible that Marcus was concealing a weapon because Marcus had not been fully searched. Officer Uch believed a firearm could have been concealed inside or underneath Marcus' shorts.

I asked Officer Uch what commands he heard given to Marcus. Officer Uch stated that Marcus was ordered by canine officers to walk towards them and surrender. Officer Uch remembered Marcus not cooperating with the officers' commands, while remaining near the front steps of the residence. Officer Uch described Marcus as telling the officers he was innocent. Officer Uch stated that he did not overhear

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or participate in any of the planning to take Marcus into custody when he became uncooperative because he was focused on lethal coverage for the team.

I asked Officer Uch if he overheard an officer on scene command Marcus to turn around and show the back of his waistline. Officer Uch answered, "*I believe so.*" However, Officer Uch did not recall Marcus ever turning around. Officer Uch described Marcus as, "*standing facing us.*"

Officer Uch witnessed the first time Marcus was impacted with a beanbag projectile. Officer Uch described Marcus as "*just standing there*" and not listening to commands to walk to the officers, just before being impacted. I asked Officer Uch to describe Marcus' resistance level as this use of force was applied. Officer Uch answered, "*I mean, it would be passive resistance because you know, we were not close enough to be active resistance.*" Officer Uch confirmed that the goal was to bring Marcus to the officers.

I asked Officer Uch if he overheard anyone give an order to fire the beanbag shotgun. Officer Uch answered, "*I heard an order to check compliance with the beanbag. I'm just not sure who gave the order.*" Officer Uch stated that his understanding was that Marcus was impacted with the beanbag projectile as a "*compliance check.*"

Officer Uch confirmed that after Marcus was impacted with the beanbag projectile, he went to the ground and started screaming. Officer Uch stated that he overheard the plan to take Marcus into custody would be to have the PSD bite Marcus so the team could move up and arrest him.

Officer Uch confirmed that he witnessed the second time that Marcus was impacted by the beanbag projectile and when the first PSD was sent. Officer Uch stated that Marcus was lying on the ground and screaming when this occurred. Officer Uch believed Marcus' resistance level at that point was passive resistance. Officer Uch confirmed the first PSD did not apprehend Marcus.

Officer Uch stated that after the first PSD did not apprehend Marcus, that the plan did not change but that a different PSD was brought over to apprehend Marcus.

Officer Uch confirmed that he witnessed the third time that Marcus was impacted by the beanbag projectile and when the second PSD was sent. Officer Uch stated that Marcus was still on the ground when this occurred and that his resistance level may have been active resistance because Marcus tried to fight the PSD off. I asked Officer Uch how Marcus tried fight the PSD. Officer Uch clarified that Marcus only attempted to avoid being bitten but didn't assault the PSD. Officer Uch confirmed that the PSD bit Marcus in the arm.

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Officer Uch stated that he had no memory of Marcus reaching for a place on his body that a weapon may have been concealed when he was impacted by the beanbag projectiles or when the PSD was sent to apprehend him.

After Marcus was bit by the PSD, he was told to move up and Marcus was taken into custody. Officer Uch confirmed that during the process of taking Marcus into custody, he provided lethal coverage on Marcus eventually providing coverage for the residence.

I asked Officer Uch, *"Did you witness or overhear any of the officers or the incident commander reference Marcus' race or ethnic heritage as part of the reason for the use of force?"* Officer Uch answered, "No."

I concluded the interview at 2211 hours.

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Witness Officer Interview: Police Officer II Daniel Kim #1611

On January 6, 2025, at 0517 hours, I interviewed Officer Kim in the Internal Affairs interview room. I read Officer Kim the Administrative Admonishment for Sworn Personnel as a Witness Officer. Officer Kim indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Officer Kim did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 17 minutes and 23 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Kim Interview**").

Officer Kim stated he has been an SDPD officer for approximately 3 years. He is currently assigned to patrol for Southeastern Division. On October 24, 2024, he was assigned to patrol duties at Southeastern Division when he responded to [REDACTED] Duluth Avenue. According to Officer Kim, the call for service reported a male subject who had pointed a firearm at a female.

Once Officer Kim arrived on scene, officers had already begun a pedestrian hot stop. Officer Kim did not know who the incident commander was but from what he observed, Acting Sergeant Sullivan appeared to be filling the role.

Officer Kim identified several resources on scene, such as the Canine Unit, a beanbag shotgun, and lethal options. Officer Kim did not recall seeing any ballistic shields as part of the available resources.

Officer Kim confirmed that he was present and that he witnessed the events as Marcus Evans exited the residence on Duluth Avenue. Officer Kim recalled Marcus as not wearing a shirt and only shorts. Officer Kim believed it was possible that Marcus was concealing a weapon due to the information regarding the firearm in the radio call. Officer Kim believed a firearm could have been concealed inside Marcus' pocket.

Officer Kim remembered that there was an officer giving Marcus commands as Marcus was in front of the residence, but he did not remember what the commands were or who was giving the commands. Officer Kim remembered Marcus not cooperating with the officers' commands. I asked Officer Kim how Marcus was being uncooperative if he did not remember what commands were given to him. Officer Kim stated that all he could remember was that Marcus was yelling at the officers, but he could not remember what Marcus was saying.

Officer Kim stated that he overheard the planning to take Marcus into custody when he became uncooperative. Officer Kim stated that Acting Sergeant Sullivan directed him to be part of the "*hands*

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team.” Officer Kim clarified that the “hands teams” is a group of officers responsible for handcuffing a suspect. Officer Kim did not recall any more details of the plan to arrest Marcus.

I asked Officer Kim if he overheard an officer on scene command Marcus to turn around and show the back of his waistline. Officer Kim answered, “I don’t recall.”

Officer Kim confirmed that he witnessed the first time Marcus was impacted with a beanbag projectile. Officer Kim did not remember Marcus’ actions prior to or as Marcus was impacted.

I asked Officer Kim if he overheard anyone give an order to fire the beanbag shotgun. Officer Kim stated he did not remember anyone ordering an officer to impact Marcus with the beanbag and he did not know why Marcus was impacted, at that point.

Officer Kim confirmed that after Marcus was impacted with the beanbag projectile, he went to the ground. Officer Kim stated that he was unaware of any additional plans to take Marcus into custody.

Officer Kim confirmed that he witnessed the second time that Marcus was impacted by the beanbag projectile and when the first PSD was sent. Officer Kim stated that Marcus was on the ground and yelling at the officers. I asked Officer Kim what Marcus’ resistance level was at that point. Officer Kim stated that he could not recall the actual details of Marcus’ behavior, so he was unsure of Marcus’ resistance level.

Officer Kim confirmed that the first PSD did not apprehend or bite Marcus. Officer Kim stated that after the first PSD did not apprehend Marcus, that to his knowledge, the plan did not change.

Officer Kim confirmed that he witnessed the third time that Marcus was impacted by the beanbag projectile and when the second PSD was sent. Officer Kim stated that Marcus was still on the ground when this occurred and continued to yell at officers on scene. I asked Officer Kim what Marcus’ resistance level was at that point. Officer Kim stated that he could not recall the actual details of Marcus’ behavior, so he was unsure of Marcus’ resistance level. Officer Kim confirmed that the PSD bit Marcus this time. After Marcus was bit by the PSD, he was told to move up and Marcus was taken into custody. According to Officer Kim, he was responsible for handcuffing Marcus.

I asked Officer Kim, “Did you witness or overhear any of the officers or the incident commander reference Marcus’ race or ethnic heritage as part of the reason for the use of force?” Officer Kim answered, “No.”

I concluded the interview at 0534 hours.

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Witness Officer Interview: Sergeant Joshua Dafoe #5158

On January 27, 2025, at 0653 hours, I interviewed Sergeant Dafoe in the Internal Affairs interview room. I read Sergeant Dafoe the Administrative Admonishment for Sworn Personnel as a Witness Officer. Sergeant Dafoe indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Sergeant Dafoe did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 5 minutes and 23 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled ***"Sergeant Dafoe Interview"***).

Sergeant Dafoe stated he has been an SDPD officer for a total of 30 years and he is a supervisor in the Department's Training Unit. Sergeant Dafoe confirmed that part of the responsibilities in his position is to conduct training in the use of the beanbag shotgun for the Crisis Response Team. I asked Sergeant Dafoe how long he has been a trainer for this subject matter. Sergeant Dafoe answered, *"At least 15 years."*

Sergeant Dafoe recapped his credentials and qualifications as a subject matter expert in the use of the less lethal force options, including the beanbag shotgun (refer to the audio recording for details). Sergeant Dafoe confirmed that his full professional résumé is available for review if needed.

Sergeant Dafoe described a beanbag shotgun as a standard Remington 870 shotgun. The only difference from the standard shotgun is that the buttstock and forehand of the weapon is painted orange. However, the projectile fired from the weapon is the *"CTS 2581 super-sock."* Sergeant Dafoe described this projectile as a small bag of *"lead shot."* According to Sergeant Dafoe, the beanbag shotgun is considered a less than lethal force option resource because it is designed to gain compliance in lieu of causing a deadly outcome.

Sergeant Dafoe confirmed that officers are trained to utilize a beanbag shotgun in situations when a suspect is displaying life threatening behavior, assaultive behavior, or if the suspect is displaying active resistance and believed to have immediate access to a weapon.

I asked Sergeant Dafoe if officers are trained to shoot a suspect with a beanbag shotgun as a *"test for compliance?"* Sergeant Dafoe answered, *"No, I've never taught that."* I asked Sergeant Dafoe if he had ever heard of this phrase in relation to the beanbag shotgun. Sergeant Dafoe answered, *"I've heard that term, I think. The times that I heard it used would be possibly, had a suspect been shot, armed with a weapon, in close proximity, and they were going to be hit with an extended range impact weapon to see if they were faking it. That would be the only time that I could see that happening. Other than that, I do not teach that, nor have I heard it taught in my in-service training."*

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I concluded the interview at 0658 hours.

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Witness Officer Interview: Sergeant Zachary Pfannensteil #6505

On January 28, 2025, at 1400 hours, I interviewed Sergeant Pfannensteil in the Internal Affairs interview room. I read Sergeant Pfannensteil the Administrative Admonishment for Sworn Personnel as a Witness Officer. Sergeant Pfannensteil indicated he understood the admonishment and had nothing preventing him from answering my questions for the administrative investigation fully and truthfully. Sergeant Pfannensteil did not have any questions and signed the admonishment form.

I audio recorded this interview. The recording is 24 minutes and 44 seconds. The following is a summary of the interview. All efforts were made to be accurate (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "***Sergeant Pfannensteil Interview***").

Sergeant Pfannensteil stated he has been an SDPD officer for over 17 years and he is a supervisor in the Department's Canine Unit. Sergeant Pfannensteil confirmed that part of the responsibilities in the Canine Unit is to conduct training for the unit.

Sergeant Pfannensteil recapped his credentials and qualifications to serve as the training Sergeant for the Canine Unit (refer the audio recording for full details). Sergeant Pfannensteil stated he had been the head trainer for the Canine Unit for five years, has been the Canine Unit's Training Sergeant for the past four years, and 11 years in total as a Canine Unit handler.

I asked Sergeant Pfannensteil to explain how often training is conducted for the Canine Unit. Sergeant Pfannensteil confirmed that once an SDPD officer is selected for assignment to the Canine Unit, the officer is instructed with training topics before being issued a PSD. This portion lasts for 40 hours. Once issued a PSD, the officer will complete a 320 hour course which include over 20 training scenarios that must be passed before a field assignment. Before a field assignment, the officer will be partnered with an experienced Canine Unit officer (and their PSD) for four weeks. Once all these initial training requirements have been completed, the officer and the PSD are assigned to a Canine squad. Once assigned to a squad, the Canine officer and the PSD are required to complete continuous training for a minimum of 16 hours a month or four hours a week. This continuous training will always cover topics such as PSD obedience, tactics, and searches. This training applies to all SDPD Canine Unit PSD handlers no matter of rank.

I showed Sergeant Pfannensteil a printed version of Crisis Response Team "K-9 Unit" training slideshow which had been provided to the Internal Affairs Unit. Sergeant Pfannensteil confirmed he was aware of and had seen this training presentation. Sergeant Pfannensteil was unaware of whom had created the presentation, describing it as "*before my time.*" However, Sergeant Pfannensteil confirmed that the information in the presentation is continually updated. Sergeant Pfannensteil did not know the last time the presentation had been updated prior to October of 2024. I asked Sergeant Pfannensteil about when this presentation is shown to SDPD officers. Sergeant Pfannensteil stated that it is shown in the SDPD

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Canine Academy. Additionally, the Canine Unit will present at Crisis Response Team training and show that slideshow presentation. According to Sergeant Pfannensteil, the slideshow presentation had been vetted with SDPD's In-Service Training Unit. Initially Sergeant Pfannensteil did not remember who from the In-Service Training Unit had approved it for presentation (later on January 28, 2025, Sergeant Pfannensteil sent me an email message informing me that Sergeant Michael Belz #4983 had been his point of contact with the Training Unit to approve the slideshow presentation. I have attached this email into the IA case file).

I showed Sergeant Pfannensteil the eighth slide in the presentation. I asked Sergeant Pfannensteil about impacting a suspect with a Kinetic Energy Weapon as a *"test for compliance."* Sergeant Pfannensteil confirmed a beanbag shotgun is a Kinetic Energy Weapon. I asked Sergeant Pfannensteil, *"What is a test for compliance, precisely?"* Sergeant Pfannensteil responded, *"So, a test for compliance, evaluating the need for force. Assessing the need for further force. You're utilizing the minimum amount of force necessary. Evaluating if it worked or did not work and then assessing from there the force continuum or stopping all together. Maybe he surrendered, maybe he's running at you with something, whatever it might be. That term, test for compliance, is that we're going to utilize a force option and see if it worked."*

I asked Sergeant Pfannensteil, *"Is a test for compliance different that using force to apprehend a suspect, or stop some sort of assaultive behavior?"* Sergeant Pfannensteil answered, *"It's all the same, it's semantics."* According to Sergeant Pfannensteil, SDPD officers throughout the agency and with various levels of experience know and use the term, *"test for compliance."* Sergeant Pfannensteil confirmed that the test for compliance is a use of force but added that it's designed to gauge the suspect's reaction to the force.

I asked Sergeant Pfannensteil why the Kinetic Energy Weapon is on the presentation as a resource used for the test for compliance. Sergeant Pfannensteil stressed that the beanbag shotgun gives the officers time and distance to react to the suspect's actions, *"in a rapid, fluid, dynamic incident."* Sergeant Pfannensteil described the test for compliance as a *"minimum use of force."*

I asked Sergeant Pfannensteil if the training addressed the way officers are to proceed if the suspect appears to be injured or falls to the ground after the test for compliance with a beanbag shotgun. Sergeant Pfannensteil stated that supervisors and officers are trained to plan for contingencies. Sergeant Pfannensteil gave an example of a contingency plan about a suspect on the ground. He stated they could approach the suspect using a moving car as a mobile shield. Ultimately, he believed that it depends on the situation. Sergeant Pfannensteil stated that the training does not address the officers' actions if they're concerned about a possible ambush by the suspect. The totality of the circumstances must be considered in this situation.

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I asked Sergeant Pfannensteil if the officers are trained to shoot the suspect as a test for compliance with a beanbag shotgun if the suspect is refusing to walk to the officers. Sergeant Pfannensteil responded, *"If they feel that the subject is actively resisting, and they have immediate access to a deadly weapon and presents a threat."* Sergeant Pfannensteil added, *"They can impact an actively resisting suspect who they truly believe has a weapon."*

According to Sergeant Pfannensteil, since the incident on Duluth Avenue, the Canine Unit has taken *"test for compliance"* out of their training. This decision was made by Sergeant Pfannensteil, and he confirmed that it is not abnormal to change training and tactics after reviewing their use in certain situations.

I concluded the interview at 1425 hours.

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Subject Officer Interview: Police Officer I Ashley Bennett #1910

On January 6, 2025, at 0604 hours, I interviewed Officer Ashley Bennett #1910 in the Internal Affairs interview room. Attorney Dylan Griffith was present in the interview as Officer Bennett's employee representative.

I read Officer Bennett the Administrative Admonishment for Sworn Personnel as a Subject Officer. Officer Bennett indicated she understood the admonishment, had nothing preventing her from answering my questions fully and truthfully, and she did not have any questions. Officer Bennett signed the admonishment form.

I audio recorded this interview. The recording is 27 minutes and 20 seconds. The following is a transcription of the interview performed by VIQ Solutions, Inc. (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Bennett Interview**").

Note: Any words contained in brackets were added to for clarification due to an error in transcription by VIQ solutions.

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INTERVIEW WITH OFFICER ASHLEY BENNETT

8 Q=Sgt. Eric McCoole

9 A=Ofc. Ashley Bennett

10 A1=Atty. Dyland Griffith

11
12

13 Q: This is for IA Tracking Number 2024-0529, a subject officer interview. This
14 is Sergeant Eric McCoole, ID Number 6755. Today's date is January 6, 2025,
15 and I have a time of 0604 hours. We're located in the internal affairs interview
16 room at the San Diego Police Department's Headquarters. In the room with
17 me is, ma'am, can you please state your name, rank, and ID number?

18

19 A: Ashley Bennett, P01, ID Number 1910.

20

21 Q: Okay. I advise you of your right to representation when we set the interview.

22 In the room is your representative?

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24 A1: Dyland Griffith from Vanderpool Griffith LLP.

25

26 Q: Okay. Thank you. I'm going to read you a sworn personnel admonishment as a
27 subject. Please feel free to follow along This is a confidential sworn personal
28 investigation. You may be subject to discipline as a result of this confidential
29 sworn personnel investigation should the findings indicate that such action is
30 warranted. Therefore, you have the right to have a representative present at
31 this time. The purpose of this confidential sworn personnel investigation is to
32 obtain information to assist the city of San Diego in determining whether
33 administrative disciplinary action is warranted against you. The city is not
34 questioning you for the purpose of bringing or substantiating any criminal
35 charge against you. You are directed to answer all the questions posed to you
36 completely truthfully and to the best of your knowledge. You may consult
37 with your representative before answering any question, but the representative
38 may not answer the question for you. You may refuse - I'm sorry. If you
39 refuse to answer a question, it will be considered insubordination, and you
40 may be subject to discipline. If information indicates that you may be or have
41 been charged with a criminal offense, you have the right to remain silent and
42 the right to the presence and assistance of counsel. However, you do not have
43 the right to refuse to answer any question during this confidential sworn
44 personnel investigation, including on self-incrimination grounds. While you
45 have the right to remain silent and not incriminate yourself generally, your
46 silence or refusal to answer during this administrative confidential sworn
47 personnel investigation will be considered insubordination and may lead to
48 administrative discipline up to and including termination. Therefore, any
49 statement made by you during this confidential sworn personnel investigation
50 compelled by the threat of discipline, as well as any fruits of those statements,
51 cannot be used against you in any criminal proceeding. The city of San Diego
52 has a strong interest in protecting the integrity of its confidential sworn
53 personnel investigations, preserving evidence, preventing fabrication, and
54 protecting witnesses from harassment, intimidation, and retaliation. You are
55 directed not to engage in any harassing, intimidating, or retaliatory conduct
56 toward anyone. You also must not try to interfere with the investigation in any
57 way. Any violation of these directives may result in discipline. Officer
58 Bennett, do you fully understand the instructions?

59

60 A: Yes.

61

62 Q: Fully understand the instructions, please sign your name below. Thank

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63 you. I'll take that. Okay. How long have you been a San Diego police officer?

64

65 A: About a year-and-a-half.

66

67 Q: Okay. And what is your current assignment?

68

69 A: Southeastern Division. Patrol.

70

71 Q: What was your assignment for October 24, 2024?

72

73 A: Patrol.

74

75 Q: This is for the same division?

76

77 A: Yes.

78

79 Q: So on that date, October 24, at approximately 2023 hours, did you respond to

80 the area of 6400 Duluth Avenue?

81

82 A: Yes.

83

84 Q: Why did you respond to that location?

85

86 A: Radio call.

87

88 Q: So what information did you have or did you learn as you responded to this

89 call for service?

90

91 A: That it was a 245, a potential 245 suspect with DV related at that address.

92

93 Q: Okay. And just for layman, what is a 245? Trying to speak in too much...

94

95 A: Assault with a deadly weapon.

96

97 Q: Yeah.

98

99 A: With a firearm.

100

101 Q: As I explained before, we started on the record, a little bit is there is other

102 people other than police department employees that review these. So the least

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103 amount of police jargon is the best way to go.

104

105 A: Okay.

106

107 Q: So let me just pose the question again and with as little jargon as possible,

108 what information did you have, or did you learn as you responded to the call

109 for service?

110

111 A: It was a violent call regarding a suspect that had pointed a gun at his girlfriend

112 or potential wife. But the details of the call was that it was assault with a

113 deadly weapon with a firearm.

114

115 Q: Okay.

116

117 A: With the mention of a firearm.

118

119 Q: Okay. So once you arrive on scene, did you learn any additional information

120 regarding this call for service, or was it relayed to you, or radio updates, or

121 anything of that nature?

122

123 A: Any new information?

124

125 Q: So the only - so I'm saying, was there information that you - that continued to

126 develop as, say, you're on scene or maybe as you're just arriving or as there's,

127 like, a plan of action?

128

129 A: Yeah. Once I got on scene that they confirmed that the witness had or the

130 suspect had pointed a firearm at the witness.

131

132 Q: Okay. Who's they?

133

134 A: The witness, the victim.

135

136 Q: You say they confirmed. Who's they that confirmed?

137

138 A: An officer on scene.

139

140 Q: Okay.

141

142 A: The person that was talking to the witness.

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143

144 Q: Okay.

145

146 A: Or the victim.

147

148 Q: Okay - okay. So once you arrive on scene, where'd you go or did you go

149 straight to the house? Did you start somewhere else?

150

151 A: No. So there was...

152

153 Q: Walk me through that process.

154

155 A: So there was - everybody was meeting at a certain spot before we all drove up

156 to the house together.

157

158 Q: Okay.

159

160 A: So I met the sergeant, the K-9 and all of the other units that were going to go

161 up to the house all together, like, the contact team at that location, which was

162 a couple blocks away...

163

164 Q: Okay.

165

166 A: ...from the house. When I arrived on scene, I went to the sergeant who gave

167 me the assignment of being the less lethal bean bag. And K-9 was right there

168 and they said, here you go, bean bag is patrol ready. And then they were like,

169 okay. We're going to roll up to the house.

170

171 Q: Okay. So that kind of led to my next question. What were you - you were

172 tasked with bean bag or that's kind of a...

173

174 A: The less lethal.

175

176 Q: ...a little bit - yeah. It's extended range impact weapon?

177

178 A: Yes.

179

180 Q: Okay. Were you given any direction by anyone on when to fire this prior to

181 making contact or anything of that nature?

182

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183 A: Prior to going up to the house?

184

185 Q: Yeah.

186

187 A: No.

188

189 Q: Okay. And then who gave you this role as having the extended range impact?

190 You said a sergeant. Do you remember who that was?

191

192 A: Sergeant Sullivan.

193

194 Q: Sullivan.

195

196 A: He was acting sergeant that night.

197

198 Q: Okay - okay. And from - as you're getting there and as these roles are being

199 delegated, who - was there anyone, because it's not on the incident, the CAD

200 incident.

201

202 A: Mm-hm.

203

204 Q: Well, the CAD jargon, computer aided dispatch incident. There's nothing - no

205 one designated as the incident commander.

206

207 A: Mm-hm.

208

209 Q: Do you know who the incident commander for this incident was?

210

211 A: No.

212

213 Q: Okay. From your observations and from, you know, where you were...

214

215 A: Mm-hm.

216

217 Q: ...position and what you witnessed, who was the incident commander for this?

218

219 A: I think that based on where I was at, it was Sergeant Sullivan.

220

221 Q: Okay.

222

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223 A: He was the one who was running the scene and he was the one who was
224 tasking everybody...

225

226 Q: Mm-hm.

227

228 A: ...with their jobs and their roles.

229

230 Q: Okay. Prior to this radio call, prior to this incident, have you been trained by
231 the SDPD to use the extended range impact weapon?

232

233 A: Yes.

234

235 Q: So according to your training and to San Diego Police Department's use of
236 force policies, what level of resistance should a suspect be displaying in order
237 to shoot someone with that weapon system?

238

239 A: Active resistance with close proximity to a weapon or assaultive behavior.

240

241 Q: Are you aware of any exceptions to the provisions in these policies?

242

243 A: No.

244

245 Q: Okay. Before this incident - again, before this incident, have you actually ever
246 impacted a person with an extended range impact weapon?

247

248 A: No.

249

250 Q: Have you ever witnessed anyone being shot with this weapon system?

251

252 A: Yes.

253

254 Q: What happened to that person when they were shot with the projectile from
255 your memory?

256

257 A: They were taken into custody. I don't remember exactly. I mean they got
258 pepper sprayed also.

259

260 Q: Okay. So I'm asking when they were impacted with that projectile, what was
261 their reaction to it from your memory?

262

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263 A: Oh, they went down to the ground.

264

265 Q: Okay. Did they sustain any injury from your memory?

266

267 A: The last one?

268

269 Q: Yeah. The one that you witnessed. You said that you've never done it, but

270 you've seen...

271

272 A: Yeah.

273

274 Q: ...someone get hit with that weapon system?

275

276 A: Not that I remember.

277

278 Q: Okay.

279

280 A: Not that I recall.

281

282 Q: All right. Let's go back to Duluth Avenue. Was there cause to arrest anyone

283 located at [REDACTED] Duluth Avenue?

284

285 A: Yes.

286

287 Q: Who was arrestable?

288

289 A: I think his name was Marcus Evans.

290

291 Q: Okay. For what criminal offenses or offense was Marcus Evans arrestable for?

292

293 A: Assault with a deadly weapon, firearm.

294

295 Q: And how did you learn this information?

296

297 A: From the dispatch or the other police officers that were confirming the crime.

298

299 Q: Okay. I already kind of asked you that question (unintelligible) that one.

300 Okay. So is it fair to say you were present as the occupants of [REDACTED]

301 Duluth are being called out by the officers?

302

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303 A: Yes.

304

305 Q: Okay. As these call-outs are starting, what other resources were on scene?

306

307 A: We had K-9.

308

309 Q: Okay.

310

311 A: It was on scene. We had lethal options. So we had people with just their pistol

312 and then we had rifle. We had two different K-9s.

313

314 Q: Okay.

315

316 A: And then me as the bean bag.

317

318 Q: Okay. Did you witness Marcus Evans exit [REDACTED] Duluth Avenue?

319

320 A: Yes.

321

322 Q: Excuse me. Describe the clothing Marcus was wearing.

323

324 A: He was wearing black bottoms, like, shorts.

325

326 Q: Black shorts. Anything else?

327

328 A: No.

329

330 Q: Do you believe it was reasonable to believe that he was concealing a weapon

331 or had immediate access to a weapon?

332

333 A: Yes.

334

335 Q: Why?

336

337 A: Because I've seen some pretty small firearms that can be concealed in various

338 places.

339

340 Q: Okay. Where have you seen these things concealed? Like, what are you

341 describing?

342

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343 A: Yeah. I mean, in the academy, we've seen photos, like, photographs of phone
344 guns or, like, really, really tiny guns that can be concealed easily in the
345 waistband or - I mean, I don't know.

346

347 Q: Okay. Was that the type of weapon that was described to?

348

349 A: I don't know.

350

351 Q: You're not sure. Okay. Where do you believe he was concealing a weapon?

352

353 A: Potentially in his waistband.

354

355 Q: In his waistband?

356

357 A: Or the...

358

359 Q: But he wasn't wearing a shirt.

360

361 A: No.

362

363 Q: Okay. But you thought he was concealing a weapon in his waistband?

364

365 A: Or lower in his waistband. I don't know.

366

367 Q: Okay - okay. So what kind of commands were given to Marcus as he
368 exited this residence from police officers?

369

370 A: To exit the residence with his hands up.

371

372 Q: Okay.

373

374 A: And to walk towards officers backwards.

375

376 Q: Who was giving him those commands?

377

378 A: I think it was K-9.

379

380 Q: One of the K-9 officers?

381

382 A: I think so.

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383

384 Q: Did Marcus follow the commands?

385

386 A: Initially, he walked out of the house but he didn't put his hands up.

387

388 Q: Okay.

389

390 A: And so he kept dropping his hands down, and he was kind of reaching
391 around. He came down the stairs initially but then he was pretty much telling
392 us that he wasn't going to follow our commands.

393

394 Q: Okay.

395

396 A: When he got down to the bottom of the stairs.

397

398 Q: What in particular did he say that gave you that indication?

399

400 A: I don't remember, like, exactly what he was saying but I remember he was
401 saying, "I'm not going to do what you say."

402

403 Q: Okay.

404

405 A: My BWC was locked, so I wasn't able to...

406

407 Q: Okay. So as this is occurring, what was Marcus' resistance level based on the
408 SDPD's use of force matrix?

409

410 A: Active resistance.

411

412 Q: As this is going on, were you present or did you overhear any sort of
413 contingency or tactical action plans to take Marcus into custody?

414

415 A: I know that they were talking about using less lethal and K-9, but I didn't hear
416 the conversation. I know that the sergeant and the lieutenant were having a
417 conversation about contingency, but I didn't hear exactly what their
418 contingency plan was.

419

420 Q: So it's fair to say this was never relayed to you if there was one? Did anyone
421 relay to you any sort of contingency plan or a tactic?

422

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423 A: Prior to...

424

425 Q: Well, you're saying Marcus is coming down and he won't do - he won't follow
426 orders that he's instructed to follow.

427

428 A: Oh.

429

430 Q: Right?

431

432 A: Yeah.

433

434 Q: Okay. So...

435

436 A: So we...

437

438 Q: I'm asking, was there any sort of contingency plans if he didn't follow his - the
439 orders?

440

441 A: Yes. We were going to impact him if he made a - if he went back towards the
442 house because we weren't going to allow him back inside the house.

443

444 Q: Okay.

445

446 A: We were going to impact him and send the K-9 if he made movements back
447 towards the house.

448

449 Q: Okay. And who relayed this plan to you?

450

451 A: Me and K-9 came up with that.

452

453 Q: Okay. So you guys...

454

455 A: K-9 and I.

456

457 Q: ...consulted that?

458

459 A: Yes.

460

461 Q: Okay - okay. Did any of the officers on scene give Marcus an order to turn
462 around and show his waistline?

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463

464 A: Yes.

465

466 Q: Okay. Did Marcus comply with that order?

467

468 A: I remember him turning but I don't remember him turning completely around,

469 like completely in a circle. Not that I recall.

470

471 Q: Okay. So according to your written report and BWC footage, you reported

472 that you initially shot Marcus with the extended range impact weapon. Is that

473 accurate?

474

475 A: Yes.

476

477 Q: Okay. Shot him for multiple times but this first time, I'm going to ask you...

478

479 A: Mm-hm.

480

481 Q: ...about initially, what was Marcus doing prior to or as he was shot this first

482 time with the bean bag?

483

484 A: I think he was sitting on the ledge.

485

486 Q: Okay. So I've...

487

488 A: That was over by the...

489

490 Q: From my memory, there's, like, a wall retaining wall.

491

492 A: Yeah.

493

494 Q: Is it that what you're describing?

495

496 A: Yes.

497

498 Q: Okay. So he's sitting on the retaining. Okay.

499

500 A: I think that was the first.

501

502 Q: So he was sitting there?

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503

504 A: Well, I - I - yes.

505

506 Q: Okay. So what was his resistance level as defined from the SDPD's use of
507 force matrix at that point?

508

509 A: I mean, he was still telling us that he wasn't going to comply with police
510 commands, so active resistance.

511

512 Q: Okay. What were you trying to accomplish by shooting Marcus with the bean
513 bag at that point? Were you afraid he was going to attack you guys or
514 something like that? What were you trying to - by shooting him, what was the
515 goal?

516

517 A: I mean, I was following command[s]. So I shot him initially, so the - Sergeant
518 Sullivan, told me, okay, we're going to do a compliance check.

519

520 Q: Okay.

521

522 A: So that's why the initial shot was done.

523

524 Q: A compliance. What is a compliance check?

525

526 A: I don't know.

527

528 Q: Okay. Have you ever been trained to conduct bean bag shots as a compliance
529 check?

530

531 A: No.

532

533 Q: No? Okay. So for this first shot to Marcus with the bean bag, do you believe
534 that to be an effective use of force?

535

536 A: Yes.

537

538 Q: So it had the desired effect you were looking for?

539

540 A: Yes.

541

542 Q: Okay. What was that effect you were looking for? My understanding is your -

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543 he was given commands to come to you guys, right?

544

545 A: Mm-hm.

546

547 Q: And he wouldn't do that.

548

549 A: Mm-hm.

550

551 Q: And when you shot him, what did he do? He got shot with the bean bag the

552 first time, what did he do?

553

554 A: He went to the ground.

555

556 Q: He went to the ground. And from your memory, that's generally what happens

557 when people get hit with a bean bag, right?

558

559 A: Mm-hm.

560

561 Q: Okay. So were you trying to get him to the ground or were you trying to get

562 him back to you guys? Back to the...

563

564 A: I mean, eventually we were trying to get him back to us.

565

566 Q: So he...

567

568 A: But we...

569

570 Q: Okay. I'm sorry.

571

572 A: No. It's okay. Go ahead.

573

574 Q: Continue your answer - continue your answer. Okay. So what you wanted him

575 was to go to the ground then, when you guys first shot him during the

576 compliance check?

577

578 A: I mean, we were just trying to gain compliance.

579

580 Q: By getting him on the ground? Was he ever ordered to the ground?

581

582 A: No.

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583

584 Q: Okay. Would you consider a test for compliance as a use of force?

585

586 A: Yes.

587

588 Q: So you also wrote in your report that you were ordered by a supervisor on

589 scene to shoot Marcus with a bean bag shotgun. Who gave you that order to

590 shoot him?

591

592 A: Sergeant Sullivan.

593

594 Q: Ultimately who's responsible for an officer's use of force, the officer using the

595 force or the supervisor?

596

597 A: The officer using the force.

598

599 Q: You started to describe it, well, just describe it in full, after that first time he

600 was shot with the bean bag, what did Marcus do? He was shot, what area was

601 impacted by the bean bag projectile?

602

603 A: His abdomen.

604

605 Q: Abdomen? Okay. And then what did he do?

606

607 A: He went to the ground.

608

609 Q: Okay. And did he do anything else, or did he just lay there, or did he say

610 anything? Do you remember?

611

612 A: He just was saying that he had been shot.

613

614 Q: Okay - okay. So after Marcus was shot the bean bag for the first time, did this

615 contingency plan that you guys were discussing or this tactical action plan, did

616 it change in any way? Because he just stayed on the ground, right?

617

618 A: Well, yes.

619

620 Q: Okay. So did it change in any way that you were aware of?

621

622 A: They - I know that they were talking about moving up to take him into

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623 custody.

624

625 Q: Mm-hm.

626

627 A: But the firearm was still outstanding and there were still people inside the
628 house.

629

630 Q: Mm-hm.

631

632 A: So they still wanted him to come back to us so that we could be behind cover
633 and not go out of - you know, but - so the contingency plan was still to bring
634 him towards us. That was the plan.

635

636 Q: Okay. So are you saying - so did it change?

637

638 A: No. I don't think so.

639

640 Q: Okay - okay. And you say they, when you keep saying they, who are you
641 referring to? Like...

642

643 A: The supervisors and the team of - like, K-9 and supervisors.

644

645 Q: Okay. So Sullivan is who you're describing?

646

647 A: And the K-9 officers.

648

649 Q: Okay - okay. And then just to confirm, you shot Marcus with a bean bag for a
650 second time and the first police service dog was sent to bite Marcus. Is this
651 accurate?

652

653 A: Yes.

654

655 Q: Okay. What was Marcus doing prior to or as he was shot with the bean bag for
656 the second time and then the police dog was sent?

657

658 A: I think he was on the ground.

659

660 Q: He was on the ground. Okay. Where did this bean bag shot impact him?

661

662 A: I think in the shin.

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663

664 Q: Was that where you were aiming for?

665

666 A: Yes.

667

668 Q: Okay. Now as you're - for the second shot and this first K-9 being sent, what

669 was he doing? Okay. You said he was on the ground. Sorry. I apologize. I

670 asked that question. So what was his resistance level at that point per the

671 SDPD use of force matrix?

672

673 A: I mean, he's still resisting coming back towards us. So actively resisting, not

674 following police commands.

675

676 Q: Okay. So when you fire this second shot, he's on the ground, you aim for his

677 shin. What were you trying to accomplish by shooting Marcus with the bean

678 bag shotgun at that point?

679

680 A: So K-9 had told me, in correspondence with K-9 being deployed, that we fire

681 bean bag. So that's what I was told by K-9. They said fire the bean bag,

682 and I'll send my K-9.

683

684 Q: Okay. This second bean bag shot, would you consider that an effective use of

685 force?

686

687 A: Yes.

688

689 Q: It had the effect you desired?

690

691 A: Yes.

692

693 Q: And what effect were you trying to have in firing the second shot?

694

695 A: I mean, the same, I guess, as the first shot. Trying - I mean, we're trying to get

696 him back towards us.

697

698 Q: Okay. What happened after the dog was sent to bite Marcus?

699

700 A: The dog didn't bite.

701

702 Q: Okay - okay. So after you shot with the bean bag for a second time and the

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703 police dog doesn't bite, did the contingency or tactical action plan to

704 take Marcus in custody change at all?

705

706 A: They just said that they're going to get another dog and that we're going to do

707 pretty much the same thing with a different dog.

708

709 Q: Okay. Would you have considered that a change at all?

710

711 A: No.

712

713 Q: Okay. All right. And then just to confirm, you shot Marcus with a bean bag

714 for a third time and the second police service dog was sent to bite him. Is that

715 correct?

716

717 A: Yes.

718

719 Q: Okay. What was Marcus doing prior to as he was shot with the bean bag for

720 the second time, and the police service dog was sent to his location?

721

722 A: I think he was sitting.

723

724 Q: Sitting down?

725

726 A: Yeah.

727

728 Q: On the ground, on the retaining wall? Where was he at?

729

730 A: I think, on the retaining wall.

731

732 Q: Okay. What was Marcus' resistance level at that point per the SDPD use of

733 force procedures and the matrix as you fired that third shot?

734

735 A: I mean, he's still actively resisting.

736

737 Q: And what were you trying to accomplish by shooting him for the third time

738 with the bean bag shotgun?

739

740 A: I mean, the same thing, to take him into custody.

741

742 Q: Okay. Was shooting Marcus with a bean bag the third time an effective use of

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743 force in your mind?

744

745 A: Yes.

746

747 Q: And had the effect you wanted? Okay. At any point during this, you said you

748 were concerned about Marcus having a firearm possibly concealed in his

749 waistband somewhere or in a - did you say pocket or not?

750

751 A: Yeah. Or a pocket. Yeah.

752

753 Q: Okay. Did you see him ever go into those pockets or reach for that area?

754

755 A: Well, he kept bringing his hands down and, like, when he was facing us...

756

757 Q: Mm-hm.

758

759 A: He would put his hands kind of behind his back in his rear waistband area and

760 move his hands, like keep dropping his hands down to his waistband.

761

762 Q: Is that when you fired the bean bag, when he would do that?

763

764 A: I don't remember.

765

766 Q: So when you saw him - so he was ordered to have his hands up, and you're

767 concerned about a weapon being concealed somewhere probably in his

768 waistband or pockets or behind.

769

770 A: Mm-hm.

771

772 Q: And he said he put his hands behind his waist.

773

774 A: Mm-hm.

775

776 Q: Did you hit him with a - did you shoot him with a bean bag at that point?

777

778 A: I don't remember.

779

780 Q: Okay. So during the three shots...

781

782 A: Mm-hm.

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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783

784 Q: ...that you fired, those three shots...

785

786 A: Mm-hm.

787

788 Q: Was he reaching for anything or reaching in his waistband area or pockets or

789 anything like that during those three shots?

790

791 A: I don't remember exactly.

792

793 Q: Okay - okay. So after the third shot and the second time the dog was sent, or a

794 different dog for a second dog deployment, did the police service dog

795 bite Marcus at that point?

796

797 A: Yes.

798

799 Q: Where on his body did he get bit?

800

801 A: His arm.

802

803 Q: Okay. And then your third bean bag shot, where on his body did that impact

804 him?

805

806 A: I think it was his arm.

807

808 Q: Okay. Was Marcus' race or ethnic heritage a factor in your decision to use

809 force on him?

810

811 A: No.

812

813 Q: Did you overhear any of the officers or supervisors on scene

814 reference Marcus' race or ethnic heritage as a reason for the use of force on

815 him?

816

817 A: No.

818

819 Q: Sir, do you have any points for clarification or follow-up questions at all?

820

821 A1: Well, when you mentioned the desired effect of using the bean bag, was part

822 of that to conduct a safe search?

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823

824 A: Yeah.

825

826 A1: So that other officers on scene could conduct a safe search of him?

827

828 A: Yes.

829

830 A1: Did anyone ever conduct that search?

831

832 A: After he was taken into custody.

833

834 A1: Okay. So you needed to use the bean bags in order for officers to be able to

835 conduct a safe search in your opinion?

836

837 A: Yes.

838

839 A1: That's all I have.

840

841 Q: Okay. Officer Bennett, do you have anything to add that you believe could be

842 helpful for this complaint investigation at all?

843

844 A: No. Not that I think of.

845

846 Q: Okay. All right. In that case, I have a time, we'll call it 0631, and that'll

847 conclude our interview.

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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Subject Officer Interview: Police Officer II Javier Flores #1041

On January 7, 2025, at 0530 hours, I interviewed Officer Flores in the Internal Affairs interview room. Detective Richard Page #6603 was present in the interview as Officer Flores' employee representative.

I read Officer Flores the Administrative Admonishment for Sworn Personnel as a Subject Officer. Officer Flores indicated he understood the admonishment, had nothing preventing him from answering my questions fully and truthfully, and he did not have any questions. Officer Flores signed the admonishment form.

I audio recorded this interview. The recording is 11 minutes and 17 seconds. The following is a transcription of the interview performed by VIQ Solutions, Inc. (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Flores Interview**").

Note: Any words contained in brackets were added to for clarification due to an error in transcription by VIQ solutions.

2
3
4
5
6

7INTERVIEW WITH OFFICER JAVIER FLORES

8 Q=Sgt. Eric McCoole

9 A=Ofc. Javier Flores

10 A1=Det. Richard Page

11
12

13 Q: This is for IA Tracking Number 2024-0529. It's subject officer interview. This
14 is Sergeant Eric McCoole, ID Number 6755. Today's date is January 7, 2025
15 and the time is, we'll call it 0530. We're located in the Internal Affairs
16 interview room at the San Diego Police Department's Headquarters. In the
17 room with me is, sir, can you please state your name, rank, and ID number?

18
19 A: Javier Flores, ID Number 1041, PO2.

20
21 Q: Thank you. I advised you of your right to representation when we set the
22 interview. In the room is your representative.

23
24 A1: Detective Richard Page, ID Number 6603, POA Rep.

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

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25

26 Q: Okay. Thank you. Officer Flores, I'm going to read you a sworn
27 subject admonishment. It's in front of you. Feel free to follow along if you'd
28 like. This is a confidential sworn personnel investigation. You may be subject
29 to discipline as a result of this confidential sworn personnel investigation
30 should the findings indicate that such action is warranted. Therefore, you have
31 the right to have a representative present at this time. The purpose of this
32 confidential sworn personnel investigation is to obtain information to assist
33 the City of San Diego in determining whether administrative disciplinary
34 action is warranted against you. The city is not questioning you for the
35 purpose of bringing or substantiating any criminal charge against you. You are
36 directed to answer all the questions posed to you completely truthfully to the
37 best of your knowledge. You may consult with your representative before
38 answering any question, but your representative may not answer the question
39 for you. If you refuse to answer a question, it will be considered
40 insubordination and you may be subject to discipline. If information indicates
41 that you may be or have been charged with a criminal offense, you have the
42 right to remain silent and the right to the presence and assistance of counsel.
43 However, you do not have the right to refuse to answer any question during
44 this confidential sworn personnel investigation, including on self-
45 incrimination grounds. While you have the right to remain silent and not
46 incriminate yourself generally, your silence or refusal to answer during this
47 administrative confidential sworn personnel investigation will be considered
48 insubordination and may lead to administrative discipline up to and including
49 termination. Therefore any statement made by you during this confidential
50 sworn personnel investigation compelled by the threat of discipline as well as
51 any fruits of those statements cannot be used against you in any criminal
52 proceeding. The City of San Diego has a strong interest in protecting the
53 integrity of its confidential sworn personnel investigations, preserving
54 evidence, preventing fabrication and protecting witnesses from harassment,
55 intimidation and retaliation. You are directed not to engage in any harassing,
56 intimidating or retaliatory conduct toward anyone. You also must not try to
57 interfere with the investigation in any way. Any violations of these directives
58 may result in discipline. Officer Flores, do you understand the instructions?

59

60 A: Yes.

61

62 Q: If you do, please sign your name below. Okay. I'll take that. Thanks. Okay.

63 How long have you been a San Diego police officer?

64

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65 A: 5 years

66

67 Q: And what is your current assignment?

68

69 A: Southeastern Patrol.

70

71 Q: Okay. What was your assignment for October 24, 2024?

72

73 A: Patrol.

74

75 Q: Okay. Same division?

76

77 A: Yes.

78

79 Q: So on that date at approximately 2330 hours, did you respond to the area of
80 6400 Duluth Ave?

81

82 A: Yes.

83

84 Q: And why did you respond to that location?

85

86 A: I responded because they requested additional officers for clearing the
87 residence.

88

89 Q: Okay. Was there any more information that you knew about that was going
90 on? What - why did this place need to be cleared? What was going on?

91

92 A: There was a 415 DV that occurred, and there was a weapon involved in that
93 call where the boyfriend pointed a firearm to the reporting party.

94

95 Q: Okay. And just for a lay person, what's a 415 DV?

96

97 A: A disturbance - domestic violence incident.

98

99 Q: Okay. And then just as we continue our interview, try not to use our jargon or
100 anything because...

101

102 A: Yes, sir.

103

104 Q: ...there are some people that review this that don't nearly or don't necessarily

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105 know...

106

107 A: Okay.

108

109 Q: ...police officer lingo, if that makes sense. Right?

110

111 A: Yes, sir.

112

113 Q: Just if you could help me out with that. Okay. So once you eventually arrived

114 on scene did you learn any other additional information or have any more, I

115 guess, instructions given to you, anything of that nature?

116

117 A: When I arrived on scene, my instructions were to assist officers in clearing the

118 residence.

119

120 Q: Okay. And who gave you this task or role that you can recall?

121

122 A: One of the supervisor, I cannot recall his name.

123

124 Q: Okay. So this is a supervisor. Okay. Do you know anything about who was

125 arrestable at this location on Duluth, it was at [REDACTED] Duluth Ave. Do you know

126 anything about the suspect or anything like that?

127

128 A: When I arrived, the suspect was already in custody. I did not know...

129

130 Q: Okay.

131

132 A: ...his name.

133

134 Q: Okay. Did you know who the incident commander for this ordeal was?

135

136 A: Yes. It's the sergeant that also directed me to clear the residence. However, I

137 do not recall his name.

138

139 Q: Okay. Can you just describe them to the best of your abilities for me?

140

141 A: Tall, medium build, he was acting sergeant that night.

142

143 Q: Okay.

144

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145 A: But again, I can't...

146

147 Q: Okay.

148

149 A: ...recall his name.

150

151 Q: So, is it fair to say you were not present when the occupants of the residence
152 exited...

153

154 A: I was not present.

155

156 Q: ...from Duluth? Okay. So, I'm going to go ahead and take out some of these
157 questions here. Did you witness anything to do with a (Marcus Evans) being
158 bitten by a police dog?

159

160 A: I did not witness that.

161

162 Q: Okay. So you said you assisted in clearing a house. Can you describe to me
163 what a clearing of the house is and what you did to clear this resident, [REDACTED]
164 Duluth?

165

166 A: Yes. Clearing of the house is - still hasn't been rendered safe. We don't know
167 if there's more occupants inside the residence. So my task was to go inside
168 with the other officers and just go room by room, directive clearing each room
169 and make sure there was nobody else inside.

170

171 Q: And what's the point of this search? Is this for evidence or just for safety? For
172 - what are we looking for in this search?

173

174 A: It's for officer safety.

175

176 Q: Okay. According to some BWC footage or body worn camera footage that
177 you recorded, after the suspect was in custody, you were eventually tasked
178 with accompanying an ([REDACTED]) inside ([REDACTED]) Duluth Avenue. Does
179 that sound accurate?

180

181 A: Yes, sir.

182

183 Q: Okay. Can you explain why you were needed to accompany ([REDACTED]) inside
184 of his own residence?

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185

186 A: He needed to be attached to his [REDACTED] machine.

187

188 Q: Okay.

189

190 A: So I was tasked to go inside with him and stand by with him pending further

191 investigation on the case.

192

193 Q: Do you know why someone needed to stand by with him? Was there anything

194 else going on that wasn't already determined?

195

196 A: From my understanding we're waiting for detectives to possibly respond to the

197 residents [residence].

198

199 Q: Okay. And then how long - how much time had elapsed from the time that

200 you got there? You said you got there. Everyone had been out of the house. Is

201 that accurate?

202

203 A: Yes, sir.

204

205 Q: Okay. And then how much time had [had] elapsed from the time you got there that

206 you went back in with ([REDACTED]) If you could just at least estimate for

207 me?

208

209 A: Less than - from when the call came out?

210

211 Q: No - no - no. From when you got there. You said when you got there,

212 everyone was there.

213

214 A: Okay.

215

216 Q: And then...

217

218 A: After the clearing of the residence, maybe possibly 30 minutes.

219

220 Q: That you were tasked with going back inside with ([REDACTED])

221

222 A: Yes.

223

224 Q: Okay. So once inside, we'll call it the second time, if that sounds accurate?

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225

226 A: Yes.

227

228 Q: Okay. Once inside the residence, the second time with ([REDACTED]) this time.

229 Did you conduct any searches at that time?

230

231 A: I conducted a weapons pat down and - of the couch where he was going to be

232 sitting. That he's connected to his [REDACTED]

233

234 Q: Okay. And what was the purpose of that?

235

236 A: Just the nature of the call, there was a weapon involved. There was no

237 weapon at the time found yet, so there was still a possibility that it was inside

238 the residence. Just wanted to make sure where he was sitting, it was going to

239 be safe.

240

241 Q: And did you have - can you describe to me the legal authority to conduct that

242 search? Was it probable cause? Was it consent? Was it - describe to me...

243

244 A: It's...

245

246 Q: Yeah.

247

248 A: It's probable cause due to the fact that there was a suspect in custody

249 regarding a domestic violence incident where there was a gun involved.

250

251 Q: Did you ask ([REDACTED]) for his permission to search that area?

252

253 A: I did.

254

255 Q: And what - did he give you his permission?

256

257 A: Yes. He did.

258

259 Q: Okay. Well, how long were you on scene total, if you had to guess, when you

260 count from getting there to the time where it's all done?

261

262 A: 45 minutes approximately.

263

264 Q: About 45 minutes?

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265

266 A: Yeah.

267

268 Q: Okay. So in that 45 minutes, did you witness or overhear any of the officers or
269 the incident commander reference (Marcus Evans) or any of the residents' race
270 as a part of the reason for the arrest or use of force. Anything like that?

271

272 A: No.

273

274 Q: Okay. My last question is, during the second, we'll call it second entry into the
275 residence on Duluth, did you - about how long were you in there if you can
276 remember?

277

278 A: Less than 5 minutes.

279

280 Q: Okay. All right. I don't have any further questions. Detective Page, do you
281 have any points of clarification?

282

283 A1: Yeah. Just quickly. The couch that you're going to have the gentleman sit on
284 so he could hook up to [REDACTED] had that couch been cleared up until this
285 point? Had anyone checked it for weapons?

286

287 A: No.

288

289 A1: Was this couch clean, was it neat, orderly, or were there a bunch of stuff on
290 the couch?

291

292 A: There was a lot of stuff on it, it was not neat.

293

294 A1: Okay. And in your training experience, can weapons or are weapons hidden in
295 couch cushions, underneath things on couches, things of that nature?

296

297 A: Yes.

298

299 A1: Okay. That's all.

300

301 Q: Okay. Officer Flores, do you have anything to add that you think could be
302 helpful for this complaint investigation?

303

304 A: I do not.

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305

306 Q: Okay. I have a time of 0544, and we'll conclude our interview. All right. Let

307 me rephrase that time, 05, we'll call it 42.

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Subject Officer Interview: Police Officer II Robert Nelson #7443

On January 8, 2025, at 0506 hours, Detective Sergeant Jesus Sanchez #5560 and I interviewed Officer Nelson in the Internal Affairs interview room. POA Attorney Rico Dominguez was present in the interview as Officer Nelson's employee representative.

I read Officer Nelson the Administrative Admonishment for Sworn Personnel as a Subject Officer. Officer Nelson indicated he understood the admonishment, had nothing preventing him from answering my questions fully and truthfully, and he did not have any questions. Officer Nelson signed the admonishment form.

I audio recorded this interview. The recording is 50 minutes and 13 seconds. The following is a transcription of the interview performed by VIQ Solutions, Inc. (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Nelson Interview**").

Note: Any words contained in brackets were added to for clarification due to an error in transcription by VIQ solutions.

2
3
4
5
6

7INTERVIEW WITH OFFICER ROBERT NELSON

8 Q=Sgt. Eric McCoole

9 Q1=Sgt. Jesus Sanchez

10 A=Ofc. Robert Nelson

11 A1=Atty. Rico Dominguez

12
13

14 Q: This is for IA Tracking Number 2024-0529, a subject officer
15 interview. It's Sergeant Eric McCoole, ID Number 6755. Today's date is
16 January 8, 2025. And the time is 0506 hours. We are located in
17 the Internal Affairs interview room at the San Diego Police Department's
18 headquarters. In the room with me is - sir, can you please state your name,
19 rank and ID number?

20

21 A: Robert Nelson, PO2, ID 7443.

22

23 Q: Thank you. I advise you of your right to representation when we set the

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

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24 interview. In the room is your representative...

25

26 A1: POA Attorney Rico Dominguez.

27

28 Q: Thank you. Also present with us is...

29

30 Q1: Detective Sergeant Sanchez, Internal Affairs, ID Number 5560.

31

32 Q: Thank you. Officer Nelson, I'm going to read you a sworn personnel

33 admonishment. It's in front of you, so feel free to follow along if you'd like.

34 This is a confidential sworn personnel investigation. You may be subject to

35 discipline as a result of this confidential sworn personnel investigation should

36 the findings indicate that such action is warranted. Therefore, you have the

37 right to have a representative present at this time. The purpose of this

38 confidential sworn personnel investigation is to obtain information to assist

39 the City of San Diego in determining whether administrative disciplinary

40 action is warranted against you. The city is not questioning for the purpose of

41 bringing your substantiating and criminal charge against you. You are directed

42 to answer all the questions posed to you completely, truthfully, and to the best

43 of your knowledge. You may consult with your representative before

44 answering any question, but your representative may not answer the question

45 for you. If you refuse to answer a question, it will be considered

46 insubordination and you may be subject to discipline. If information indicates

47 that you may be or have been charged with a criminal offense, you have the

48 right to remain silent and the right to the presence and assistance of counsel.

49 However, you do not have the right to refuse to answer any question during

50 this confidential sworn personnel investigation, including on self-

51 incrimination grounds. While you have the right to remain silent and not

52 incriminate yourself generally, your silence or refusal to answer during this

53 administrative confidential sworn personnel investigation will be considered

54 insubordination and may lead to administrative discipline up to and including

55 termination. Therefore, any statement made by you during this confidential

56 sworn personnel investigation compelled by the threat of discipline, as well as

57 any truths of those statements cannot be used against you in any criminal

58 proceeding. The City of San Diego has a strong interest in protecting the

59 integrity of its confidential sworn personnel investigations, preserving

60 evidence, preventing fabrication, and protecting witnesses from harassment,

61 intimidation, and retaliation. You are directed not to engage in any harassing,

62 intimidating, or retaliatory conduct toward anyone. You also must not try to

63 interfere with the investigation in any way. Any violation of these directives

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

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64 may result in discipline. Officer Nelson, do you understand the instructions?

65

66 A: I do.

67

68 Q: If you fully understand the instructions, please sign your name below. Thank

69 you. Let me take that. How long have you been a San Diego police officer?

70

71 A: About 9 years.

72

73 Q: Okay. And what is your current assignment?

74

75 A: PO2, K-9 Handler, Special Operations Unit.

76

77 Q: Can you describe to me the qualifications and training required in order to be

78 a K-9 Handler for the San Diego Police Department?

79

80 A: Minimum standards to apply, and then went through the K-9 Academy which

81 is about 10 to 12 weeks, including a field training phase.

82

83 Q: And what kind of topics and training guides did you go through during that

84 academy?

85

86 A: Go through basic dog handling courses, obedience and teaching the dog

87 different commands. And then we also review tactics that we use as part of the

88 unit out in the field.

89

90 Q: Anything about the application of the K-9 as a use of force in that academy?

91

92 A: Yes.

93

94 Q: Okay. Such as what kind of - can you just walk me through that a little bit,

95 just - so we have an understanding of how you were trained as a K-9 handler?

96

97 A: We go through different training for the different scenarios that we would use

98 a dog building clearing, critical response teams, de-escalation

99 tactics, searching open areas, vehicles.

100

101 Q: Okay. Can you describe to me some of the considerations that a K-9 handler

102 must consider before deploying their police service dog? And I'll just start

103 using PSD from this point forward.

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104

105 A: We go through - we use Graham versus Connor, a three-prong test as outlined
106 in that case law, the severity of the crime, the immediacy of the threat, and is
107 the subject actively resisting. Longly [Lastly], we have six reasons that we use to
108 deploy police dogs in the operations manual.

109

110 Q: Any other requirements set forth in SDPD's procedures or the K-9 unit
111 procedures required for a handler to use a police service dog to apprehend a
112 subject?

113

114 A: I'm sorry. Can you repeat that?

115

116 Q: Are there any other requirements set forth in our procedures?

117

118 A: As long as it meets the three-prong test, the six reasons for deployment within
119 our policy, so exactly [actively] resisting and -- I'm sorry. You (unintelligible) the
120 question a little bit.

121

122 Q: Okay. So...

123

124 A: What other reasons are you looking for?

125

126 Q: So there's several, I guess, instances that at least I'm aware of from our
127 procedures. And I just want to make sure that we have the baseline
128 understanding. There's - I can name a couple maybe to get the ball
129 rolling for you to...

130

131 A: No. The six reasons...

132

133 Q: Yeah.

134

135 A: ...is what you're asking?

136

137 Q: Yes.

138

139 A: Yeah. So the six reasons I'm referencing to use acronyms at CDF, the safety
140 of the officer, or other officers in the handler. You have to apprehend
141 dangerous or violent criminals, concealed felons, subjects are actively
142 resisting with immediate access or believe to be possessing a
143 weapon, detection of narcotics and fleeing felons.

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145 Q: Okay. Thank you. Before this incident have you ever been trained or done
146 training with works with the - by SDPD that uses the extended-range impact
147 weapon? So like the beanbag shotgun, I'll call it that from here on out. So
148 have you either been trained to use that or been in training where that's
149 utilized?

150

151 A: I got my initial training in our post regional academy with the beanbag
152 shotgun and with a 40 millimeter KEW. And then I've been current with the
153 beanbag KEW. We stopped training at the 40 millimeter, so that's why we
154 don't have it.

155

156 Q: And just for, like, a layperson, what's a KEW?

157

158 A: Kinetic Energy Weapon is a new term that we use.

159

160 Q: Okay - okay. So according to your training, SDPD use of force policies, what
161 level of resistance should a suspect be displaying in order to shoot a suspect
162 with that weapon system, that KEW as you call it?

163

164 A: KEW falls under a greater controlling force for active resistance that person
165 believed to be armed, immediate access, possessed with a deadly weapon.

166

167 Q: You would consider that, like, the lowest threshold?

168

169 A: That's where it matches up on the matrix.

170

171 Q: Okay. Before this incident, have you ever impacted a person with that weapon
172 system?

173

174 A: I have.

175

176 Q: Okay. How many times have you shot someone with this weapon
177 system? Estimation?

178

179 A: How many different instances where I've used it?

180

181 Q: Mm-hm. It can be approximation. It's fine.

182

183 A: I think two.

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184

185 Q: Two. A couple times? Okay. To the best of your memory, what happened

186 when that person was actually impacted with the projectile?

187

188 A: On one occasion, the person ultimately surrendered. So the compliance test

189 was effective. And then the second one, it prevented the person from

190 aggressing towards us. And then he retreated to a yard and we were able to

191 take him into custody using other means.

192

193 Q: Okay. So what - my question is from the best of your memory from that -

194 from those instance you're describing, what did this - what did the person

195 physically do when they were impacted?

196

197 A: Well, the first suspect fell to the ground...

198

199 Q: Okay.

200

201 A: ...and remained on the ground.

202

203 Q: Okay.

204

205 A: The second suspect just stopped walking...

206

207 Q: Okay.

208

209 A: ...and then retreated back into a yard.

210

211 Q: Okay. Perfect. Thank you. That was what I was looking for. All right. Let's

212 get into October 24, 2024. What was your assignment on that day?

213

214 A: Patrol general service K-9 handler.

215

216 Q: Okay. So on that day, I'm going to say approximately 2330 hours, did you

217 respond to the area of 6400 Duluth Avenue?

218

219 A: Yes.

220

221 Q: Why did you respond to that location?

222

223 A: It was a radio call for assault with a deadly weapon.

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224

225 Q: Okay. Oh, do you know what the deadly weapon was?

226

227 A: Firearm.

228

229 Q: Okay. Did you know that at the time going there, or did you learn that as you

230 got there?

231

232 A: That was what was dispatched.

233

234 Q: Okay. Did you learn any more information as you're responding to the call?

235

236 A: As I'm responding to the call?

237

238 Q: Yeah.

239

240 A: My sergeant got there first.

241

242 Q: Okay.

243

244 A: And I just responded to his location as fast as I could.

245

246 Q: Okay. Once you arrived on scene, did you learn any more information or

247 gather any more intelligence regarding this call for service?

248

249 A: Before moving into the location?

250

251 Q: Yeah. I'm saying once you got on scene, it looks, like, from cameras and

252 everything, you guys staged initially, right? Why don't you walk me through

253 that process?

254

255 A: Yeah. We were staged on Skyline, so to the north of the location for close to

256 an hour.

257

258 Q: Okay.

259

260 A: During that time, the victims drove out to our location and made contact with

261 southeastern patrol. I remained up at the front of the stick and at - during that

262 time learned there was probable cause of arrest, the suspect for assault with a

263 firearm on multiple persons.

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264

265 Q: Okay. And is that (Marcus Evans) is what the suspect?

266

267 A: Correct.

268

269 Q: Okay. Learn anything else about (Marcus Evans)?

270

271 A: I was able to view a prior booking photo of him along with - I was informed

272 he had criminal history including [REDACTED].

273

274 Q: Okay. And then what criminal offenses was he arrestable for - for this

275 incident?

276

277 A: Assault with a deadly weapon firearm.

278

279 Q: Okay. All right. So once you guys go to the scene of the crime, I guess this is

280 basically [REDACTED] Duluth, where did you go? Describe to me that process.

281

282 A: So I was the lead car put a ballistic shield on my windshield, drove

283 down. (Abel) viewed what they believed to be Mr. (Evans) going to and from

284 a garage on the property. They called out that he was in the process of going

285 from the garage to the residence and told us to move in. So I drove in. At that

286 point I saw him basically go into the doorway to the main residence and slam

287 the door shut.

288

289 Q: Okay. So did you guys already have a plan in place on how you were going to

290 take the suspect into custody before you drove in, or - or was it just, "Hey, we

291 got to go quick?"

292

293 A: No. The...

294

295 Q: Can you walk me through that?

296

297 A: The plan that we had come up with was that we were going to set up our

298 patrol vehicles, my car lead with the ballistic shield for cover, and then we

299 were going to do a containment call out. So we were going to roll up to the

300 location, set up our Critical Response Team, our CRT team and use PA to call

301 the residents out including Mr. (Evans).

302

303 Q: Okay. And can you briefly describe to me what a Critical Response Team is?

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305 A: It's a name that we've given to a contact team. Basically encompasses our de-
306 escalation tactics including less lethal. So myself as a K-9 handler, we have
307 kinetic energy weapon which was a beanbag shotgun, we had lethal coverage
308 in the form of a long rifle, and then we had multiple officers for our hands
309 team.

310

311 Q: Was there an incident commander designated for this, do you know?

312

313 A: I believe it was the southeastern Sergeant Sullivan.

314

315 Q: Okay. And to the best of your recollection, was he providing direction and
316 giving this kind of - this plan - his - for lack of a better term, sign off? Was he
317 - did he come up with the plan? Did you guys consult for the plan? How did
318 that come about?

319

320 A: At what point?

321

322 Q: Before you - or at, like, right before you guys go in there to go arrest him.

323

324 A: It just got conveyed to me that we were going to go up and do the contained
325 call-out. We've done it so many times that it didn't need to be conveyed from a
326 specific source.

327

328 Q: Okay - okay. So you described hearing or being informed by the helicopter
329 that. Did they say it was the suspect or just a person was running around the
330 property or from the garage or something like that? Do you remember?

331

332 A: Based on the clothing description, which was no shirt, basketball shorts, they -
333 that's what they described.

334

335 Q: Okay.

336

337 A: So they believed inherently that that was the suspect.

338

339 Q: And that's when - that's - as you're driving to the - or driving from the staging
340 location to the residence on Duluth?

341

342 A: He had made that movement a couple of times prior. And then they called out
343 that he's going from the garage to the residence. And that's when the decision

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344 was we were going to move forward...

345

346 Q: Okay.

347

348 A: ...up to the residence.

349

350 Q: Okay. What was the ultimate mission given to the K-9 team for this incident?

351

352 A: My mission?

353

354 Q: Yeah.

355

356 A: My mission was just there as a deterrent. Hopefully that just the mere
357 presence of the PSD, the barking and the commands would gain compliance.

358

359 Q: Okay - okay. So you get to in front of [REDACTED] Duluth, were there, you know,
360 officer safety concerns at that time?

361

362 A: Yes.

363

364 Q: Can you describe what they were, please?

365

366 A: The actual residence itself, it's built up onto a hill. So the front door was
367 at elevated position. There was the separated, detached garage that was -
368 wasn't very visible from my location along with the parked car in the
369 driveway.

370

371 Q: Was there any types of barriers that was around the residence as well?

372

373 A: The walkway coming down from the residence, that was elevated. There was
374 a retaining wall that ran along to the west of the driveway.

375

376 Q: And were you able to see what was behind that retaining wall?

377

378 A: No.

379

380 Q: Okay. If you help me out, sir...

381

382 A: Yeah.

383

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384 Q: ...just - I'll give you plenty of time at the end to do any sort of follow-up or
385 any sort of clarification. It just kind of throws me off a little bit.

386

387 A1: I'll - I'm going to - respectfully, I'll ask my questions when I feel necessary. I
388 felt like that question was important. But I'll defer to you...

389

390 Q: Okay. Sure. Yeah.

391

392 A1: ...if I can. Yeah.

393

394 Q: Thank you.

395

396 A1: Yeah.

397

398 Q: Is it there - I agree that there's a lot to go over in this.

399

400 A: Absolutely.

401

402 Q: But, okay - okay. I'm just concerned. Okay. So you said the plan was to start
403 with some PA announcements and things of that nature, right, to call people
404 out of the residence, I'm assuming. Is that accurate?

405

406 A: Correct.

407

408 Q: Okay. So walk me through what happened when that - once you start doing
409 these PA announcements or announcements into the residence.

410

411 A: So I deployed my PSD on lead. We didn't use the PA. I gave verbal
412 commands.

413

414 Q: Okay. And what kind of commands were those?

415

416 A: I identified myself San Diego police, called out to the residents inside of the
417 location, called out specifically to (Evans) and told him to come out, and
418 essentially told him to come out unarmed. If he were to come out armed or
419 flee, police dog would be used or he could be shot.

420

421 Q: Okay. Did any occupants exit the residence?

422

423 A: Yes.

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424

425 Q: As occupants are exiting the residence for this particular - you described what
426 a CRT team is. For this particular CRT team, what resources did you guys
427 have?

428

429 A: On the driver side of my vehicle 'cause that was a vehicle we were working
430 off of.

431

432 Q: Mm-hm.

433

434 A: It was myself, my partner, my PSD. I had a lethal cover with a long rifle. On
435 the passenger side there was a beanbag kinetic energy weapon and then a
436 hands team behind the vehicle.

437

438 Q: Okay. So you said occupants at least start coming out one at a time. Is that
439 accurate?

440

441 A: Initially.

442

443 Q: Okay. So what happened when the first occupant exited?

444

445 A: So the first occupant came out, he was actually - he was a African-American
446 male with no shirt in basketball shorts. So he - but he complied, came
447 down, verified with the officers there that he wasn't the suspect, conducted a
448 hot stop. So directed him to keep his hands above his head.

449

450 Q: Okay. And then did more people start coming out?

451

452 A: Correct.

453

454 Q: Okay. And were they the suspect? The next person that came out, the second
455 person we'll say?

456

457 A: No.

458

459 Q: Okay. What about the third person that came out? Was that the suspect?

460

461 A: No.

462

463 Q: Okay. What about the fourth person that came out?

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464

465 A: The fourth person was Mr. (Evans).

466

467 Q: Okay. And can you describe the clothing that (Marcus Evans) was wearing at
468 that time?

469

470 A: Basketball shorts, no shirt and no shoes.

471

472 Q: Okay. Did you believe it was reasonable that he was concealing a weapon or
473 had immediate access to weapon?

474

475 A: Yes.

476

477 Q: Why is that?

478

479 A: He hadn't been pat down. I don't know what was concealed inside his shorts.

480 Or my concern at that point then was the surrounding areas, the retaining wall,

481 what was behind the retaining wall, what was in the wheel well, the vehicle,

482 or anything else that was on that property where he was at.

483

484 Q: Could you see a weapon tucked in anywhere or any bulges or anything of that
485 nature from his shorts?

486

487 A: No.

488

489 Q: Okay. Were commands given to (Marcus) as he exited the residence?

490

491 A: Yes.

492

493 Q: Okay. What commands were you giving him at that time?

494

495 A: Just as this first three gave him commands to come down the stairway from

496 the front door.

497

498 Q: Did he comply with that command?

499

500 A: He did.

501

502 Q: Okay. And then?

503

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504 A: To keep his hands above his head.

505

506 Q: Did he comply with that command?

507

508 A: Yes.

509

510 Q: Okay. And so he walks down the stair with his hands above his head. What

511 was the next commands given to him?

512

513 A: It was to turn around and face away from me.

514

515 Q: And who was providing these commands?

516

517 A: I was at that point.

518

519 Q: Okay. Did he comply with that command?

520

521 A: No.

522

523 Q: Okay. What did he do instead of turning around and facing away from you?

524

525 A: He began stating that he wasn't going to do that to the effect that he was at his

526 house and he didn't need to.

527

528 Q: Okay. Did he remain, I guess, at the bottom of the stairwell at this point?

529

530 A: Correct.

531

532 Q: Okay. Was his - did he keep his hands up, or what was he doing with his

533 hands at that point?

534

535 A: He would bring down to, like, chest level but generally they were visible.

536

537 Q: Okay. And you kind of described him saying that he - him saying something

538 to the effect of, "He's - why are you at my house?" Or something like that?

539 Or, "You're at my house," something of that nature, is that accurate?

540

541 A: Yes.

542

543 Q: Okay. Was he saying anything else?

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544

545 A: He was stating that he wasn't going to come out to us. He wasn't going to...

546

547 Q: Did you call him to you?

548

549 A: Multiple times.

550

551 Q: Okay. Why did you want him to come to you?

552

553 A: I explained to him that he was detained. I explained that there was a felony

554 offense with a firearm. I believed he was armed and dangerous. And I gave

555 him additional warnings that force would be used against him if he didn't

556 comply.

557

558 Q: Okay. So when he's at the bottom of the stairs and he's not coming to you as

559 you requested or turning around as you requested, what's his resistance level

560 at that point?

561

562 A: It's active resistance.

563

564 Q: And why do you say that?

565

566 A: Because he's verbally giving me signals that he's not willing to comply along

567 with his actions.

568

569 Q: As this is occurring, did (Marcus) ever reach his hands towards the areas that

570 you suspected that he was hiding a weapon?

571

572 A: He walked over to the retaining wall and sat down on the retaining wall and

573 lowered his hands towards his chest.

574

575 Q: Okay. How many times did he do that?

576

577 A: He went over to the retaining wall one time, I think.

578

579 Q: Did he, like, pace back and forth or did he remain there? How did that go?

580

581 A: When he walked over and sat on the wall, that's when he was impacted with

582 the first kinetic energy weapon.

583

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584 Q: Okay. Before that - being shot or impacted with that, did you assist or

585 overhear any changes in the contingency plans or tactical plans to

586 take (Marcus) into custody at this point?

587

588 A: I was separated from the planning. I was essentially the contact officer for that

589 entire part of the...

590

591 Q: Okay. So did they relay any sort of changes to you that you remember

592 since this - he wasn't following your commands to come to you, right? So was

593 there any sort of changes in any plans that you guys were going to be doing at

594 that point?

595

596 A: Not that I recall.

597

598 Q: Okay. You mentioned giving (Marcus) orders to turn around and face away

599 from you. How many times did you - do you think you ordered him to do

600 that?

601

602 A: I could - I don't - off the top of my head, I don't know the numbers, but I

603 talked to him for 10 minutes at least, just trying to get that stuff.

604

605 Q: More than once?

606

607 A: More than once.

608

609 Q: Okay. Did he ever turn around?

610

611 A: Not that I recall from, like, my personal memory.

612

613 Q: Okay. You watched your camera before this?

614

615 A: I did.

616

617 Q: Did you see him turn around in your camera?

618

619 A: I did.

620

621 Q: Okay. I guess - so let me ask you this. From your memory or from what you're

622 seeing when this is going on, do you remember seeing the rear of his

623 waistline? The back of his waistline?

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624

625 A: Directly from my memory, no.

626

627 Q: Okay. From the camera, could you see the rear of his waistline, having
628 reviewed it before this interview?

629

630 A: Correct.

631

632 Q: Okay. Did it appear that he had something concealed in the rear of his
633 waistline at that time?

634

635 A: Not from my...

636

637 Q: From the - yeah, from the camera.

638

639 A: From my BWC that I reviewed, I could not see anything on that.

640

641 Q: Okay. It's my understanding, again, from the camera footage and kind of what
642 you're saying here, you gave (Marcus) to - commands to turn around and walk
643 back towards you. Is that accurate? That's - is that what you wanted him to
644 ultimately do?

645

646 A: Yes.

647

648 Q: And to take him into custody?

649

650 A: Correct.

651

652 Q: Okay - okay. So, again, according to your BWC footage, you stated
653 that (Marcus) should be impacted with a beanbag shotgun as a test for
654 compliance. Is that accurate?

655

656 A: I suggested we could use the KEW to test compliance.

657

658 Q: Okay. What is a test for compliance?

659

660 A: It's a form of de-escalation, a tactic that we could use. It's a single impact with
661 the intent that one single impact will actually gain compliance through the
662 pain of the impact...

663

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664 Q: Okay.

665

666 A: ...and ultimately get him to surrender.

667

668 Q: Do - in your K-9 or any sort of advanced officer training, do you guys train

669 this test for compliance as a use of force?

670

671 A: We do.

672

673 Q: Okay. And is that with K-9, with your K-9 training? Is that accurate?

674

675 A: We do.

676

677 Q: When is that technique, this test for compliance generally - when is it

678 appropriate or how long do you let something go before you need to do a test

679 for compliance?

680

681 A: I - it depends on each situation.

682

683 Q: Okay. For this particular situation, why do you think that was the best course

684 of action? Or why were you suggesting that?

685

686 A: Because I had other concerns with what was happening inside the residence.

687

688 Q: Okay. What were those concerns?

689

690 A: Mr. (Evans) started calling out to other people inside and another male

691 actually opened the door. So now I have a residence at an elevated position,

692 unknown how many people are inside, the firearm still outstanding. It creates

693 an exigency or a heightened danger to the entire incident.

694

695 Q: Okay. So again, this is kind of according to your camera footage. About a

696 minute after you suggested a test for compliance, you said, "Hey, let's impact

697 for compliance." Who were you speaking to when you said that?

698

699 A: I said - okay. I don't recall saying let's impact.

700

701 Q: Yeah. Well, it's on the camera. But you said, "Hey, let's impact for

702 compliance." This is about a minute after you suggest it. And he does a turn

703 and he sits back down on the wall. And you say, "Hey, let's impact for

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704 compliance."

705

706 A1: And if you don't recall that, can we see the video footage?

707

708 Q: We can. Yeah. We'll have to take a little pause, but...

709

710 A1: Yeah.

711

712 Q: ...um...

713

714 A1: Let's do that then.

715

716 Q: All right. So I got a time of 0532. We'll pause. Okay. We just took about a 3-

717 minute pause or so. We're back on the record for Case Number 2024 - let's see

718 what I got here, 0529. I have a time of 0534 hours. Okay. So we're going to

719 show a portion of the video as requested. So this isn't described for the record,

720 this is right after when (Marcus) turns around and then sits back on a

721 wall. Okay. If you can hear that.

722

723 ((RECORDING))

724

725 A: Keep your hands up. Hey, let's impact for compliance.

726

727 ((END RECORDING))

728

729 Q: So that's what I was referencing that.

730

731 A: Yeah.

732

733 Q: "Hey, let's impact for compliance," when I asked that question. So I'll repose

734 the question.

735

736 A: Okay.

737

738 Q: Where was this? Okay. So when you stated, "Hey, let's impact for

739 compliance," who were you speaking to precisely?

740

741 A: In general, the contact team.

742

743 Q: The contact? So is that the person firing the weapon system or...

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744

745 A: Um...

746

747 Q: ...or, yeah. I'll let you answer.

748

749 A: I - I'm sorry. I didn't mean to cut you off.

750

751 Q: Yeah. No. That's okay. It's okay. Was it the person firing the weapon system?

752

753 A: The entire contact team.

754

755 Q: Okay. So that's like leadership and everything?

756

757 A: Correct.

758

759 Q: Okay - okay. So do you want to see the video that shows he was impacted or

760 is everybody under agreement he was impacted approximately 10 seconds

761 later?

762

763 A: Correct.

764

765 Q: Okay. I'm just going to shut this down for right now. Okay - okay. So

766 approximately 10 seconds later, (Marcus) was then shot with the projectile

767 from the beanbag shotgun. Was that what you were suggesting or wanted

768 when you stated, "Hey, let's impact for compliance?"

769

770 A: Yes.

771

772 Q: Okay. What did (Marcus) do after he was shot with the beanbag? What did he

773 do?

774

775 A: Fell down to the ground laying on his stomach with his head facing the

776 residence.

777

778 Q: Okay. I probably should have asked this question first, so I apologize for

779 that. But what was he doing - just prior to being impacted with this and/or as

780 the decision or as he's hit with this, what was he doing? What was his

781 resistance level?

782

783 A: Still active resistance and had walked over to the retaining wall and sat down

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784 on the retaining wall and then lowered his arms towards the chest crossing
785 him.

786

787 Q: Okay. And where on his body did this projectile impact him?

788

789 A: I believe the first one was on his torso.

790

791 Q: Okay. Do you think (Marcus) being impacted with that beanbag at that point

792 was an effective use of force, an effective use of the test for compliance?

793

794 A: Yes.

795

796 Q: Okay. So it had the effect that you desired when making the suggestion?

797

798 A: Initially when he fell down to the ground and was in that essentially fetal

799 position, I believe that ultimately it would cause him to surrender.

800

801 Q: Okay. How would putting someone on the ground get him to come back to

802 you? Because you said the goal was to get him back to you. But in your

803 experience with this weapon system, people go to the ground or they retreat.

804 Don't you want them to come back to you?

805

806 A: Correct.

807

808 Q: Okay. But how is putting somebody on the ground with this weapon system

809 going to get them back to you?

810

811 A: The impact of the kinetic energy weapon and the inherent pain that it

812 causes, it's the intent that, okay, now we're testing for compliance that once

813 we've used that level of force on him, yes, he fell to the ground, but

814 ultimately, hopefully, that pain and that force that was used causes him to then

815 now stop actively resisting, to comply with commands, stand back up, and

816 walk back to the contact team.

817

818 A1: And real quick. Is someone able to also crawl to you after they've been hit

819 with a beanbag gun?

820

821 A: Yes.

822

823 A1: And were those commands given after he was hit with a beanbag gun by other

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824 individuals? Was he told to crawl back?

825

826 A: Yes.

827

828 A1: Okay.

829

830 Q: Okay. So we're all in agreement. He went to the ground, kind of looks like

831 almost on his hands and knees or maybe, like, a fetal position of some sort. Is

832 that accurate?

833

834 A: Yes.

835

836 Q: Okay. What - do you know why the team didn't move up? Or did you have

837 concerns of the team moving up and taking (Marcus) into custody at that

838 point?

839

840 A: My concern was still what was around him, the wheel well of the vehicle, and

841 then concern with who was still in the residence and what was above with us

842 walking up onto the driveway.

843

844 Q: Okay. Did the urgency of this situation change due to his actions?

845

846 A: Due to his actions?

847

848 Q: Yeah.

849

850 A: Can you...

851

852 Q: So what you're saying, he's actively resistant. Basically, you said you try to

853 speak with him for about 10 minutes before this impact happened. Did the

854 urgency change in any way?

855

856 A: At what point?

857

858 Q: When he's impacted with this.

859

860 A: Well, the urgency changes once he's impacted because it states when we use

861 impact weapons, then we should use any means we can to try and get him into

862 custody sooner for that medical attention in no direct words. But that's it - how

863 it outlines. Like, once we use it, we need to get him to medical attention. So

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864 that creates a level of urgency to get him into custody.

865

866 Q: Okay - okay. So once he's impacted, he's now on the ground and he's

867 eventually given commands to crawl to you. What happens? Does he crawl?

868 Does he get up and stand and come back to you?

869

870 A: No. He actually turns his body, goes back into a sitting position and you could

871 essentially see it on his face. The effect of it just went away, and he was back

872 to essentially where we started.

873

874 Q: Okay. So sitting up on the wall, is that what he's doing? When you say what

875 he started - it's my understanding he's kind of sitting on the ground, almost

876 like cross-legged. Does that sound accurate?

877

878 A: Yeah. Sitting on - I think it's like a step...

879

880 Q: Okay.

881

882 A: ...that's right there.

883

884 Q: Okay. From your perspective, or did this - did the contingency plans change

885 or did the tactics change in order to take (Marcus) into custody at this point?

886

887 A: My tactic changed that I had to move over to the passenger side to get a better

888 field of view of him because when he fell, I lost visual behind, like, the hedges

889 in the parked car that was there.

890

891 Q: Okay.

892

893 A: So I moved over and swapped sides.

894

895 Q: Okay. And was there any - again, was there any change to like, "Okay. Well

896 this test for compliance didn't work. We're going to do something else." Did

897 that happen?

898

899 A: At that point, I believe, I don't know what was discussed...

900

901 Q: Yeah.

902

903 A: ...behind me.

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904

905 Q: That's okay. You don't have to speak to what other people...

906

907 A: Yeah. I mean...

908

909 Q: ...unless you overheard it. But...

910

911 A: No. I didn't overhear anything. I'm still giving commands. And then when I

912 moved to that pastor's [passenger's] side, other officers tried giving commands. Hopefully,

913 they got a different effect.

914

915 Q: Okay. So, (Marcus) - for another 6 minutes or so, according to the

916 camera, (Marcus) is on the ground, whether he's kind of laying down or sitting

917 up on the step, like you described, but 6 minutes into that, he was shot with a

918 beanbag for a second time. And the - this is the first time a PSD was sent to

919 him, does that sound correct to you?

920

921 A: Well, just before that, he actually made a movement like he was going

922 to stand up.

923

924 Q: Okay.

925

926 A: He, like, pushes his legs up.

927

928 Q: Okay.

929

930 A: And his butt comes up off the ground...

931

932 Q: Okay.

933

934 A: ...which to me was a sign that, okay. Is he going to stand up and flee or stand

935 up and go and retrieve a weapon?

936

937 Q: Okay.

938

939 A: So that created an urgency for me.

940

941 Q: Okay. So from what you saw, where did the beanbag projectile impact for

942 (Marcus) on that second shot?

943

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944 A: Like that one was on his shin.

945

946 Q: Okay. And what was his resistance level at that point when - as he's - either
947 right before as he's being impacted?

948

949 A: Active resistance.

950

951 Q: And for a lack of a better term you sent the dog to go by (Marcus) at that -
952 right after him being impacted. Is that accurate?

953

954 A: Yeah. We - we deploy our PSDs to apprehend him.

955

956 Q: Okay. To apprehend him. Perfect. Thanks. Okay. How do they generally
957 apprehend people when they're sent?

958

959 A: We refer to like a line of sight 'cause we can see him and then the dog goes in
960 and bites and holds...

961

962 Q: Okay.

963

964 A: ...on the suspect.

965

966 Q: And did you - you intended to send the dog? He didn't like - the leash didn't
967 get out of your hand or anything like that at that point?

968

969 A: No.

970

971 Q: Okay. So yes, you intended to send the dog?

972

973 A: Yes, I intended to send the dog. No, I didn't just drop the leash.

974

975 Q: Gotcha. Okay. The PSD did not bite (Marcus) or apprehend him. Is that
976 accurate?

977

978 A: The - per our K-9 manual...

979

980 Q: Okay.

981

982 A: ...and everything, the dog put his mouth around his arm, but didn't bite and
983 hold.

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984

985 Q: I see.

986

987 A: So...

988

989 Q: That was hard to tell from the camera, but okay.

990

991 A: From my understanding of our manual...

992

993 Q: Okay.

994

995 A: ...it's considered a bite...

996

997 Q: Okay.

998

999 A: ...as you write paper, but it was not a successful apprehension and that he did
1000 not bite and hold and control Mr. (Evans).

1001

1002 Q: Do you know why that didn't happen? Was there any - is there any
1003 explanation for that?

1004

1005 A1: And I'm going to - real quick, I'm just going to object the question. This calls
1006 for speculation as to the dog's mindset, but...

1007

1008 Q: Well, I'm not asking for the dog's mindset, I'm asking in the injury...

1009

1010 A1: You're asking why didn't the dog apprehend him?

1011

1012 Q: Well, I'm asking - okay. Well, I'm going to still pose the question...

1013

1014 A: That's fine.

1015

1016 Q: ...if it's struck later. Is there any reason that you know of why the dog didn't
1017 bite?

1018

1019 A: No.

1020

1021 Q: And a bite and hold that is 'cause you're describing a technical bite per paper,
1022 but so the answer's no. Okay. So what happened after your PSD was - didn't
1023 bite and hold (Marcus), what happened after that point?

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1024

1025 A: I recalled my PSD to my position and called for a dog swap or another PSD to

1026 replace me.

1027

1028 Q: And whose PSD was that?

1029

1030 A: It ultimately was Sergeant Alan Dyemartin.

1031

1032 Q: Okay. When your PSD goes to apprehend (Marcus), did he attempt to attack

1033 the dog or retrieve or go to the area where you believed he was concealing

1034 weapons or anything like that?

1035

1036 A: He put his arm down and pushed, like, fending off towards the dog when the

1037 dog came in at random.

1038

1039 Q: Okay. So your PSD gets called back or comes back to you one way or the

1040 other. Do you know of any reasons why the team didn't move up and

1041 take (Marcus) into custody at that point?

1042

1043 A: For the same reasons why I deployed my dog the first time, it's still unsafe to

1044 move up to his position. He was still actively resisting. We still had the

1045 unknown of the retaining wall of the vehicle while he was in the house.

1046

1047 Q: Okay. Other than the dog swap - is that what it's called, dog swap?

1048

1049 A: It's that - that would be like a - like a slang term that we use, right?

1050

1051 Q: Okay. Fair enough. Jargon. Okay.

1052

1053 A: Jargon.

1054

1055 Q: Yeah. So other than the dog swap, basically getting a different PSD to

1056 apprehend (Marcus), did the tactics or the plan or the contingencies change in

1057 any manner that you're aware of?

1058

1059 A: No.

1060

1061 Q: Okay. So (Marcus) was then shot with a beanbag for the third time. The

1062 second PSD was sent. Is that correct?

1063

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1064 A: Correct.

1065

1066 Q: Okay. And what was he doing just prior to or as he was shot with the beanbag
1067 for the third time and the PSD was sent to him?

1068

1069 A: I was still coming back up to the contact team when that initially went out.

1070

1071 Q: Okay. So you didn't actually witness...

1072

1073 A: The impact but I...

1074

1075 Q: Okay.

1076

1077 A: ...witnessed the dog bite.

1078

1079 Q: Okay. Did you see - so you didn't witness the impact at all?

1080

1081 A: I don't recall...

1082

1083 Q: On the third time?

1084

1085 A: ...where it impacted, but I'm still moving up...

1086

1087 Q: Yeah. Got it.

1088

1089 A: ...to be lethal cover.

1090

1091 Q: Okay. And had (Marcus)'s resistance level changed at all at this point? Did he

1092 become assaultive, or did he become passive? Anything like that, or is - are

1093 you still saying he's active resistance when you saw the dog on the bite?

1094

1095 A: No, it's still active resistance.

1096

1097 Q: Okay. And where did it bite him on his body?

1098

1099 A: Left forearm.

1100

1101 Q: Do you believe there were any other lesser controlling force options that could

1102 have been utilized to take (Marcus) into custody?

1103

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1104 A: No.

1105

1106 Q: Why not?

1107

1108 A: I believe that the PSD was the most effective tool that we could have used for

1109 that situation. Based on the distance that we were at from him, based on the

1110 level of crime, the actions of him, it was the totality of circumstances. I

1111 believe we used the correct tools.

1112

1113 Q: Okay. Did you have any other role after (Marcus) was bit by the PSD on the

1114 second apprehension?

1115

1116 A: Yeah. I assisted with lethal coverage on Mr. (Evans)...

1117

1118 Q: Okay.

1119

1120 A: ...when the contact team moved up and then I transitioned to part of the arrest

1121 team and take him to custody at the time. He was placed in handcuffs.

1122

1123 Q: Okay. Were there any weapons located in Mr. (Evans)' vicinity or on his

1124 person?

1125

1126 A: On his person? No. Behind the retaining wall, there was various items. I

1127 believe there was like a tire iron, and some other unconventional weapons

1128 back.

1129

1130 Q: Were those visible from your guys' vantage point while giving (Marcus)

1131 commands during this ordeal?

1132

1133 A: No.

1134

1135 Q: Okay. Was (Marcus)' race or ethnic heritage a factor in your decision to use

1136 force on him?

1137

1138 A: No.

1139

1140 Q: Did you witness or overhear any of the officers or the incident commander

1141 reference (Marcus)' race or ethnic heritage as part of the reason for the use of

1142 force?

1143

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1144 A: No.

1145

1146 Q: Sergeant Sanchez, do you have any follow-up questions?

1147

1148 Q1: Yeah. What injuries did (Marcus) sustain?

1149

1150 A: I'm not a doctor, but he had lacerations on his left forearm that were consistent

1151 with, like, a dog bite, and I believe he also had, like, a puncture on his

1152 chest from the dog.

1153

1154 Q1: Medics were called for him at the end of the incident?

1155

1156 A: They were actually staged during the incident.

1157

1158 Q1: I have nothing further.

1159

1160 Q: Mr. Dominguez, thank you for being patient. I appreciate it.

1161

1162 A1: Any time.

1163

1164 Q: Yeah.

1165

1166 A1: How long was de-escalation made with Mr. (Evans)? Would you estimate?

1167

1168 A: With the totality of all the force options, everything used, 45 minutes, close an

1169 hour.

1170

1171 A1: And have you ever heard in your training experience, are weapons be - able to

1172 be concealed without necessarily being on the - in the waistband of a person?

1173

1174 A: Yes.

1175

1176 A1: Just so we're clear, you do not carry a taser, correct?

1177

1178 A: Correct.

1179

1180 A1: And you're not up to date on the training on a taser?

1181

1182 A: That's correct.

1183

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1184 A1: And why don't you carry a taser?

1185

1186 A: The PSD is the same level of force as a taser, and then we generally do not use
1187 tasers in the proximity of police service dogs, as electricity can have a serious
1188 negative effect on our dogs.

1189

1190 A1: And did you believe if a hands team went up to Mr. (Evans) with him standing
1191 near that retaining wall and wheel well, what did you believe would have
1192 happened or what risk were they posing at that point?

1193

1194 A: I believe that he would have either retrieved a weapon from either of those
1195 locations or turned into assaultive resistance and greater level of
1196 force would've been used or an officer would've got hurt.

1197

1198 A1: And you said that he was calling out to people in the house. Did you know
1199 who these people were?

1200

1201 A: No.

1202

1203 A1: Had you had pat down those people at that time?

1204

1205 A: No.

1206

1207 A1: And that until he was detained, Mr. (Evans), you had not patted him down,
1208 correct?

1209

1210 A: Correct.

1211

1212 A1: And then I'm going to make it real easy. So can you explain to me why
1213 Mr. (Evans) was displaying active resistance throughout the entire incident
1214 again?

1215

1216 A: I can't just say...

1217

1218 A1: Active resist - can you describe how Mr. (Evans) was displaying active
1219 resistance during the event?

1220

1221 A: Oh, the entire time he refused to surrender and told us so. He's making verbal
1222 statements that he wasn't willing to comply.

1223

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1224 A1: And someone who is displaying active resistance to K-9 is a reasonable force
1225 option according to the matrix as written by SDPD, correct?

1226

1227 A: Yes.

1228

1229 A1: And then there's two instances in your K-9 manual when someone is - when
1230 you are able to deploy the K-9, can you describe - well, I'll just - one is to
1231 apprehend a subject recently believed to be violent or dangerous, can you tell
1232 me why you believed Mr. (Marcus) was violent or dangerous? Why you
1233 believed him to be violent or dangerous?

1234

1235 A: From the information from the radio call, the offense he was wanted for being
1236 solid deadly weapon with a firearm against multiple people with a domestic
1237 violence nexus, his prior history is - his status is a known gang member. And
1238 then during the contact, he appeared to be under the influence of either alcohol
1239 or controlled substances, which makes people pretty irrational. So based on all
1240 that in my experience, I believe he would end up being - he end up being - he
1241 was dangerous and resistive.

1242

1243 A1: And then the second is to control actively resistive subjects reasonably
1244 believed to possess or to have immediate access to a deadly weapon, can you
1245 explain to me - we already went through why he was actively resistive, but
1246 why you reasonably believed him to possess or have immediate access to a
1247 deadly weapon.

1248

1249 A: The firearm used in the crime hadn't been located. He hadn't been pat down.
1250 And then the proximity of different things that he could have
1251 been, they would've retrieved.

1252

1253 A1: And ultimately a weapon - weapons were found in his near vicinity, correct?

1254

1255 A: Correct.

1256

1257 A1: That's all I got.

1258

1259 Q: Okay. I'm just going to piggyback on a couple of those. You said de-
1260 escalation lasted for approximately 45 minutes to an hour. What were these
1261 de-escalation techniques that were utilized?

1262

1263 A: And I'm guesstimating on time frame...

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1264

1265 Q: Okay.

1266

1267 A: ...for - but de-escalation is the verbal commands, the - just physical presence

1268 of my PSD and his barking to psychological deterrent. Ultimately, the

1269 application of force for the beanbag is a form of de-escalation and extended

1270 range. Set up my patrol vehicle at a greater distance, and it's also a physical

1271 barrier between us. And then ultimately using the PSD is a form of de-

1272 escalation.

1273

1274 Q: Okay. A question was posed asking that had you ever seen people conceal

1275 weapons in - on their person other than their waistband? And you answered

1276 yes. Where have you seen that? Or where - where have you seen weapons

1277 concealed other than their waistband?

1278

1279 A: Pockets, actually, like within their underwear, located weapons, like, in

1280 between the area, like in the groin area. And then not necessarily just his case,

1281 but you know, other locations that you'd be concealed, I've found weapons. So

1282 the waistband isn't the only place you can carry a firearm or a knife or so on

1283 and so forth.

1284

1285 Q: And a knife wasn't mentioned as possibly being used in this incident. Is that

1286 accurate?

1287

1288 A: It's accurate. And I'm using that as an example...

1289

1290 Q: Okay.

1291

1292 A: ...when I'm explaining weapons.

1293

1294 Q: Totally understand that. Your concern was that he was concealing a firearm. Is

1295 that accurate?

1296

1297 A: My main concern is the firearm.

1298

1299 Q: Okay. And your contention is that you thought maybe he was concealing a

1300 firearm in his underwear?

1301

1302 A: I didn't know if he had a firearm there or not. And I know it's a possibility that

1303 you could have a firearm in your underwear.

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1304

1305 Q: Okay. Was a firearm ever located as it was - at the conclusion of this incident

1306 that you're aware of?

1307

1308 A: No.

1309

1310 Q: Okay. And then lastly the - behind the barrier, what are the retaining wall of

1311 this - you confirmed that weapons were located. It's my understanding -

1312 correct me if I'm wrong, it was a tire iron like something to take a spare tire -

1313 or tire off from a vehicle and some sort of crowbar. Is that accurate?

1314

1315 A: Correct.

1316

1317 Q: Okay. So tools that could be used as weapons, is that more of a...

1318

1319 A: Respectfully, I work Central Division. And if I was to say a crowbar or a tire

1320 iron, that's probably the most prolific weapons in, like, Central Division. It's

1321 an unconventional weapon, but...

1322

1323 Q: I would agree it's an unconventional weapon...

1324

1325 A: But it's definitely...

1326

1327 Q: ...but it's primarily tools. Is that accurate?

1328

1329 A: Primarily tools, but they are very capable of causing great bodily injury or

1330 harm.

1331

1332 Q: I would agree. Thank you. Anybody have any other questions?

1333

1334 Q1: No.

1335

1336 Q: Okay. Okay. In that case, I have a time of 0558 or 0558 hours. We

1337 will conclude our interview.

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Subject Officer Interview: Sergeant Alan Dyemartin #6642

On January 8, 2025, at 0605 hours, Detective Sergeant Jesus Sanchez #5560 and I interviewed Sergeant Dyemartin in the Internal Affairs interview room. POA Attorney Rico Dominguez was present in the interview as Sergeant Dyemartin's employee representative.

I read Officer Dyemartin the Administrative Admonishment for Sworn Personnel as a Subject Officer. Sergeant Dyemartin indicated he understood the admonishment, had nothing preventing him from answering my questions fully and truthfully, and he did not have any questions. Sergeant Dyemartin signed the admonishment form.

I audio recorded this interview. The recording is 44 minutes and 47 seconds. The following is a transcription of the interview performed by VIQ Solutions, Inc. (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Sergeant Dyemartin Interview**").

Note: Any words contained in brackets were added to for clarification due to an error in transcription by VIQ solutions.

2

3

4

5

6

7INTERVIEW WITH SERGEANT ALAN DYEMARTIN

8 Q=Sgt. Eric McCoole

9 Q1=Sgt. Jesus Sanchez

10 A=Sgt. Alan Dyemartin

11 A1=Atty. Rico Dominguez

12

13

14 Q: This is for IA Tracking Number 2024-0529, a subject officer interview. This

15 is Sergeant Eric McCoole, ID Number 6755. Today's date is January 8, 2025.

16 I have a time of 0605 hours. We are located in the Internal

17 Affairs Interview Room at the San Diego Police Department's headquarters. In

18 the room with me is - sir, can you please state your name, rank and

19 ID Number?

20

21 A: I'm Alan Dyemartin, Police Sergeant, ID Number 6642.

22

23 Q: Thank you. I advise you have your right to representation we set the

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24 interview. In the room with us is your representative.

25

26 A1: POA Attorney Rico Dominguez.

27

28 Q: Thank you. Also present with us is?

29

30 Q1: Internal Affairs Detective Sergeant Sanchez, ID Number 5560.

31

32 Q: Thank you. Okay. Sergeant Dyemartin, I'm going to read you the sworn

33 personnel admonishment. Feel free to follow along if you'd like.

34

35 A: Thank you.

36

37 Q: This is a confidential sworn personnel investigation. You may be subject to
38 discipline as a result of this confidential sworn personnel investigation should
39 the findings indicate that such action is warranted. Therefore, you have the
40 right to have a representative present at this time. The purpose of this
41 confidential sworn personnel investigation is to obtain information to assist
42 the City of San Diego in determining whether administrative disciplinary
43 action is warranted against you. The city is not questioning you for the
44 purpose of bringing or substantiating any criminal charge against you. You are
45 directed to answer all the questions posed to you completely, truthfully and to
46 the best of your knowledge. You may consult with your representative before
47 answering any question but your representative may not answer the question
48 for you. If you refuse to answer a question, it will be considered
49 insubordination and you may be subject to discipline. If information indicates
50 that you may be or have been charged with a criminal offense, you have the
51 right to remain silent and the right to the presence and assist of counsel.
52 However, you do not have the right to refuse to answer any question during
53 this confidential sworn personnel investigation, including on self-
54 incrimination grounds. While you have the right to remain silent and not
55 incriminate yourself generally, your silence or refusal to answer during this
56 confidential sworn personnel investigation will be considered insubordination
57 and may lead to administrative discipline up to and including termination.
58 Therefore, any statement made by you during this confidential sworn
59 personnel investigation compelled by the threat of discipline, as well as any
60 fruits of those statements, cannot be used against you in any criminal
61 proceeding. The City of San Diego has a strong interest in protecting the
62 integrity of its confidential sworn personnel investigations, preserving
63 evidence, preventing fabrication and protecting witnesses from harassment,

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64 intimidation and retaliation. You are directed not to engage in any harassing,
65 intimidating, or retaliatory conduct toward anyone. You also must not try to
66 interfere with the investigation in any way. Any violations of these directives
67 may result in discipline. Sergeant Dyemartin, do you understand the
68 instructions?

69

70 A: Yes.

71

72 Q: If you fully understand the instructions, please sign your name below. Thank
73 you, sir. How long have you been a San Diego police officer?

74

75 A: 16 years.

76

77 Q: Okay. And what is your current assignment?

78

79 A: I'm currently assigned as a Mountain [mounted] Patrol Sergeant for the San Diego
80 Police Department's K-9 Unit.

81

82 Q: Can you describe to me the qualifications and training required in order to be
83 a K-9 Sergeant or K-9 Handler for San Diego Police Department?

84

85 A: I had to complete in a - a - a shoot, physical examination and a formal
86 interview. And then I was selected to attend the K-9 Academy, which was 13
87 weeks of training.

88

89 Q: What kind of training topics are there in this academy?

90

91 A: Partially it's on how to work or handle the police dog. It also works on tactics,
92 how to respond to critical incidents or large-scaled incidents.

93

94 Q: And is there any - is there other topics on - on the K-9 as a use of force and
95 going over that sort of information?

96

97 A: Yes. They - we go over the force matrix, the Department of Policies and
98 Procedures, how it applies to force and we use the K-9 Operations Manual to
99 give us written tests and periodic verbal tests throughout the academy to test
100 our knowledge and understanding of it. We're also given practical application
101 scenarios that we have to pass during the K-9 Academy. That requires the
102 understanding of all of those concepts, as well as the dog handling aspect.

103

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104 Q: And can you tell me the considerations that a K-9 handler has to consider
105 before deploying their police service dog? Or I'm going to call it the PSD
106 from here on out.

107

108 A: Okay. The biggest considerations with deploying the dog, the concept
109 of should versus could we use the dog. There's many instances
110 where you could use the police dog but do we always - is there other
111 alternative methods we can use to resolve the conflict without the dog?
112 We also have to consider the basic concepts of force through the Supreme
113 Court's understanding of Graham versus Connor, the severity of the crime, the
114 immediacy of the threat, and if the subject is active resisting or not.

115

116 Q: Okay. Okay. Let's go to the October 24, 2024.

117

118 A: Okay.

119

120 Q: On that date, what was your assignment?

121

122 A: As it is now, I was a Sergeant for the San Diego Police Department K-9 Unit.

123

124 Q: Okay. And on that date approximately 2330 hours, did you respond to the area
125 of 6400 Duluth Avenue?

126

127 A: Yes.

128

129 Q: Okay. Why did you respond to that location?

130

131 A: Southeast Division had a radio call of domestic violence - I'm sorry. It didn't
132 come in as domestic violence. It came in as a person brandishing or
133 threatening another person with a firearm.

134

135 Q: Okay. And it's that pretty much all the information you had while you were
136 responding to the call?

137

138 A: Yeah. It was a - a hot call. I was actually, pretty nearby.

139

140 Q: Oh, okay.

141

142 A: So I got there relatively quickly.

143

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144 Q: Okay. And as you got there - when you say there, were you right in front of
145 the residence or were you somewhere else or what?

146

147 A: I know. Because I was by myself in this incident-involved firearm, I
148 waited. I recall it like a block away on Skyline Drive...

149

150 Q: Okay.

151

152 A: ...to wait for additional resources to respond.

153

154 Q: Okay. And did you learn any additional information regarding this call for
155 service while on Skyline Drive?

156

157 A: Yeah. I learned there was a male who was armed with a firearm who had -
158 or threatened or pointed a branch [brandished] to that two females who were there.

159

160 Q: Okay. Did you learn suspect information and information about the suspect?

161

162 A: We did through conducting our calls for service check through dispatch.

163

164 Q: And what'd you learn?

165

166 A: Learned that there was previous incidents of domestic violence at that same
167 address. And more than likely, or the individual who had the firearm was
168 identified through those previous incidents as Marcus Evans.

169

170 Q: Okay. Do you know anything about Marcus Evans?

171

172 A: Records checking of Marcus Evans showed he had a extensive [REDACTED]

[REDACTED] He was

174 also a known street gang member for, I believe, the Skyline Pirate [Piru] Street
175 Gang. I got to see a previous booking photo of him.

176

177 Q: Okay. So from all this information that you learned, this is all on Skyline
178 Drive, presumably?

179

180 A: Yes.

181

182 Q: Okay. Was there cause to arrest anyone located at 6461 Duluth Avenue?

183

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184 A: Once we...

185

186 Q: Just...

187

188 A: ...spoke to witnesses and everything?

189

190 Q: Yeah. After speaking with witnesses and learning all this history.

191

192 A: Yes.

193

194 Q: There was?

195

196 A: There was.

197

198 Q: Okay. Who was arrestable?

199

200 A: Marcus Evans.

201

202 Q: Okay. And for what criminal offenses?

203

204 A: The crimes at the time was determined assault with a deadly weapon with a

205 firearm.

206

207 Q: Okay.

208

209 A: For two counts.

210

211 Q: Okay. Okay. So you're a sergeant?

212

213 A: Yes.

214

215 Q: But you're part of the K-9 Unit?

216

217 A: Correct.

218

219 Q: Okay. Would you be considered an incident commander in something like

220 this?

221

222 A: No.

223

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224 Q: Okay. Can you explain that dynamic, please?

225

226 A: The dynamic is generally the - the incident is under the responsibility of the
227 patrol sergeant for that service area of that division.

228

229 Q: Okay.

230

231 A: They would be deemed the incident's manner [commander] until they're relieved by
232 someone of higher rank, whether a field lieutenant or area - station service
233 area lieutenant or a captain that work on scene...

234

235 Q: I see.

236

237 A: ...someone of that nature.

238

239 Q: Fair enough. So was there a designated incident commander? As you guys are
240 learning all this information and learning you have a what seems to be a
241 serious offense to contend with?

242

243 A: Yes.

244

245 Q: Who was that?

246

247 A: Acting Sergeant John Sullivan.

248

249 Q: Okay. So when you're on Skyline Drive, was there a decision to go
250 arrest Marcus at some point for these offenses that you described?

251

252 A: Yes.

253

254 Q: Okay. And what was the plan to apprehend him?

255

256 A: The plan was to move some patrol vehicles up to in front of the residents [residence] on
257 the street. Use them as cover and a little bit of concealment and conduct a
258 contain and call out - set up perimeter on the house and call out the occupants
259 of the house to us.

260

261 Q: Okay. And who - walk me through how do you guys come up with this
262 plan? And is it just, hey, I'm incident commander. This is the plan. This is
263 what we do. Or is there consultation with you, with other folks? Walk me

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264 through that process.

265

266 A: Yeah. Usually, it's a collaboration between anyone who's considered more or
267 less like an expert on there. It typically would be the supervisors myself and if
268 there's a SWAT sergeant there or definitely the incident commander patrol
269 sergeant would discuss these different tactics. Sometimes we'll include other
270 people, if there's a personnel from SWAT that might have a good idea
271 or anyone who really would add to the solution to this incident.

272

273 Q: And what resources did you guys have on scene to factor into this decision?

274

275 A: That day we had - we formed what we call a CRT, or like a Critical Response
276 Team. That division was particularly understaffed that night.

277

278 Q: Okay.

279

280 A: So we did the best we could with the officers we had. We had the
281 supervisor, we usually have the - another officer, a K-9
282 Handler Officer Nelson with a police dog. And we got less than lethal
283 munitions, a beanbag shotgun. And then we also had a SWAT officer who had
284 a rifle. We had ballistic shields. And then we had our vehicles. The police
285 helicopter all also overhead watching all this go down.

286

287 Q: Okay.

288

289 A: Or, like, kind of keeping an eye on the area before we moved in to do our
290 thing.

291

292 Q: So what was the mission given to the K-9 team from the incident commander?

293

294 A: We'd be part of that CRT element.

295

296 Q: And what - can you just - I know you said it's called Critical Response Team,
297 but what is a CRT? What is it designed for? And what is that?

298

299 A: CRT is usually comprised of less lethal, a lethal, a hands team or an arrest
300 team and some kind of supervisor or - or whoever's in charge of that little
301 element there. The goal of the Critical Response Team is to safely redu-
302 resolve critical incidents that may occur.

303

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304 Q: Okay.

305

306 A: In this case, the - the plan was to contain the house, which we set a perimeter
307 on it, and then conduct call-outs verbally and using the PA system to try to get
308 the occupants to come out to us, so that we didn't have to go into the house.

309

310 Q: And so this was all developed while you were all still on Skyline Drive?

311

312 A: Yes.

313

314 Q: Okay. So obviously eventually you guys go to [REDACTED] Duluth. Is that accurate?

315

316 A: Yes, sir.

317

318 Q: Okay. Were there officer safety concerns at this point?

319

320 A: When we first rolled up the - the biggest concern we had was with the
321 helicopter watching the property. There was a person walking around the
322 property whose description matched what the victims and witnesses had told
323 us Marcus Evans was wearing and how he was acting. That person was seen
324 going between the detached garage and the front of the house multiple times
325 and then at one point the helicopter aired to us on the radio that he had an
326 object in his hands but the helicopter couldn't identify what that object
327 was. Knowing that they reported a firearm, of course, I was thinking he was
328 carrying around a firearm.

329

330 Q: Okay.

331

332 A: So that was my concern. He's mobile around the property, he's not just inside
333 of the house, he's moving around and, you know, I don't know if he's staging
334 the area or what he's doing. And then as we arrived to the house, I now got my
335 first real visual of it. And I noticed that it's, like, kind of an elevated property.
336 So the house is considerably higher than we are at street level, which, if
337 someone wanted to attack you from an elevated position they have the upper
338 hand immediately.

339

340 Q: Okay. So you - I don't know if you used the term containing call-out. But is
341 that kind of what you guys were doing. Is that accurate?

342

343 A: Yes.

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344

345 Q: Okay. So you're present there on this CRT as the containing call-out is

346 happening for [REDACTED] Duluth?

347

348 A: Correct.

349

350 Q: Okay. Did residents end up exiting [REDACTED] Duluth?

351

352 A: Yes.

353

354 Q: Okay. How many? Let's start with the first resident that exited. Was that our

355 suspect - or the suspect Marcus Evans?

356

357 A: No. That was a juvenile. I don't remember his name. He told me he

358 was Marcus Evans's cousin.

359

360 Q: Okay. What about the second person that came out? Was that Marcus Evans?

361

362 A: No. That was the juvenile's brother, so I guess it would also be Marcus

363 Evans's cousin.

364

365 Q: The third person that came out of the house was that Marcus Evans?

366

367 A: Yes. I believe the third person was.

368

369 Q: Okay. So did you see as Marcus initially exited the residence?

370

371 A: I briefly glanced at seeing him exit the front door. But I was - because of the

372 lack of officers on scene, I was acting as the hands team and taking these first

373 two individuals into custody, making sure they didn't have any weapons on

374 them.

375

376 Q: Okay.

377

378 A: And then getting them to a place of safety so we could continue doing our job.

379 So I think I was still interacting or dealing with them kind of away from the

380 rest of the officers...

381

382 Q: Yeah.

383

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384 A: ...behind a different parked car for the civilian safety. But I did see it coming
385 out, right? It wasn't my focus at the time so I had to deal with these other two
386 people.

387

388 Q: Okay. When did you start to focus on Marcus Evans? Where was he
389 located? What was he doing?

390

391 A: I believe he was still walking down the staircase leading from the front door
392 out to the street.

393

394 Q: Okay. And were any officers on scene giving him commands?

395

396 A: Yes.

397

398 Q: Okay. Who was giving him commands from your recollection?

399

400 A: I believe Officer Nelson was doing most of the commands at first.

401

402 Q: Okay. And what commands were given to him, that you can recall?

403

404 A: That - the general is ordering commands, you know, keep your hands where
405 we can see them. Keep walking towards us. Kind of trying to conduct a high-
406 risk pedestrian stop on him. He was also given K-9 warnings something to the
407 effect of that, you know, if you produce a weapon or you run, you'll be bit by
408 a police dog, so.

409

410 Q: Describe the clothing that Marcus was wearing as he was exiting the
411 residence.

412

413 A: He was wearing no shirt, and I think they were basketball shorts.

414

415 Q: Okay. And that's it?

416

417 A: I don't remember if he had shoes or not.

418

419 Q: Okay. And as you're noticing Marcus exit the residence, is he
420 following Officer Nelson's commands at this point?

421

422 A: Originally appeared as though he was. Yes.

423

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424 Q: Okay.

425

426 A: He had his hands up. He was walking down the staircase. It wasn't until he got
427 about to the sidewalk which was still about, I'd say 20 feet from where we
428 would want him to come to us to be taken into custody safely for us that he
429 stopped following commands.

430

431 Q: Okay. And did you believe he was concealing a weapon or had immediate
432 access to a weapon at this point?

433

434 A: Yes.

435

436 Q: Why is that?

437

438 A: No one had conducted a pat on him. I had three individual citizens who
439 reported him being in possession of a firearm. I - it's happened in my career
440 when I was there working in Southeast as a patrol officer. That an individual
441 approached a group of officers in just his - like, for lack of a better term, tidy [tighty]
442 whiteys, his underwear only, just underwear. And confessed to them he had a
443 firearm. Those officers located a firearm, clinched between that male's butt-
444 cheeks.

445

446 Q: Okay.

447

448 A: Completely concealed in just underwear. So I know that people get creative
449 when it comes to hiding weapons. Sometimes those weapons can be hidden
450 underneath their privates, in between their legs and butt cheeks. They didn't
451 really tell me what the brief interaction I have with them, like, described the
452 firearm too much in-depth to me. So I don't know if we're talking a small - a
453 little small gun that could still be concealed within a butt shorts pocket
454 without making too much of a - like, a visible showing from the exterior of the
455 body.

456

457 Q: Were you confident that the firearm described in this from the witnesses was a
458 pistol?

459

460 A: It was - my understanding was, it was at least a handgun. Just the way they
461 described him cocking the hammer or rocking the slide.

462

463 Q: Okay.

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464

465 A: But - yeah. Not a rifle or anything but some type of handgun. I don't...

466

467 Q: Ultimately, where did you think he was concealing a weapon? If he - like,
468 was - was there anything bulgy or anything like that, that you're like, okay. I'm
469 concerned about him concealing a weapon at this location? Or hiding a
470 weapon somewhere?

471

472 A1: And I'm going to just object as asked an [and] answer and he described the places
473 where he could've been hid the - where he could've been hiding a firearm,
474 so I'm objecting the question but...

475

476 Q: Okay. So you're thinking either in his underwear or his privates or butt
477 cheeks?

478

479 A: Or it could still be in his pockets.

480

481 Q: Okay. Did he ever - as he's coming down the stairs or even as he's hanging out
482 on the sidewalk as you described. Is he ever reaching for the area, those areas
483 you described?

484

485 A: Yeah. A few times he would drop his hands down towards his waistband or
486 towards his pockets and never actually, like, dug them in, but they were going
487 in that direction.

488

489 Q: Okay. It's my understanding that Marcus was ordered to face away from the
490 officers and walk backwards to them. Does that sound accurate to you?

491

492 A: Yes.

493

494 Q: Okay. Did he follow those commands?

495

496 A: No.

497

498 Q: What was he physically doing in lieu of following those commands?

499

500 A: He was verbally saying he was complying but he never did anything we asked
501 him to.

502

503 Q: Okay.

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504

505 A: And at no point in any commands was he's given, did he actually follow. He
506 just said, "I'm following your commands." Or "I'm cooperative." But he never
507 did. He never turned away from us. He wouldn't do anything. He just stood
508 there with his hands up and occasionally kind of drop them towards his
509 waistband and back up, pacing around, sitting on the retaining wall.

510

511 Q: Okay. So what would you consider his resistance level per our SEP [SDPD] force
512 matrix at that point?

513

514 A: Active resistance.

515

516 Q: So now that Marcus was not following these commands and not - basically
517 doing what the other, the first couple people that came out. Did you assist or
518 overhear in any changes to contingency plans or tactical plans to
519 apprehend Marcus at that point?

520

521 A: Yeah.

522

523 Q: Can you describe that for me?

524

525 A: Seeing as he was not coming the rest of the way towards us, we discussed
526 different methods on how we could safely take him into custody without
527 leaving our position of safety.

528

529 Q: Okay. And what were those methods that you discussed, from your memory?

530

531 A: Use of, like, the kinetic energy weapons was one of them. The beanbag
532 shotgun. The other option was use of the police dog to effect an apprehension.

533

534 Q: Okay. And this is still at this point when we - when you're discussing these
535 plans, is this still acting Sergeant Sullivan, that's the Incident Commander, he
536 did not leave or anything of that nature that you're aware of?

537

538 A: I'm not sure. No, sir.

539

540 Q: Okay. So from your understanding - again, I know you're a resource but you're
541 also a supervisor. What was ultimately - what was the ultimate decision to
542 apprehend Marcus at that point when he's not coming back to you guys?

543

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544 A: The decision was made to - for lack of a better term, they call it testing for
545 compliance.

546

547 Q: Mm-hm.

548

549 A: Where he's impacted with a projectile from the kinetic energy weapon, in this
550 case the beanbag shotgun.

551

552 Q: Okay. And what is a test for compliance? Can you describe that for me?

553

554 A: It's kind of - it's - let me see here. How do I word this correctly? It's impacting
555 them with less than lethal munitions prior to using a different force option,
556 such as the dog.

557

558 Q: Okay.

559

560 A: To see if we can get them, like, hey, look, we're being serious here. Kind of on
561 as lower levels that we can get with still being safe to see, hey, can we get
562 cooperation out of you. Look, we are being serious. We used a little bit of
563 force on you. Hopefully, that compels you to respond to us positively
564 and surrender peacefully.

565

566 Q: Okay. And a - the kinetic energy weapon or the beanbag shotgun, it had - have
567 you ever seen anyone impacted by this...

568

569 A: Yes.

570

571 Q: ...before?

572

573 A: Yes. I have.

574

575 Q: What do they generally do when they're impacted this?

576

577 A: Generally, they show signs of some kind of pain but then they comply.

578

579 Q: Okay. But what are they - what do they physically do? Do they run away? Do
580 they come to the officers? Do they go to the ground? What - In your
581 experience from what you witnessed.

582

583 A: It varies, depending on the person. I've seen people that get impacted with

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584 beanbags that do nothing and I've seen others that fall to the ground in the
585 fetal position and still others that do run away. Yes.

586

587 Q: Okay. Okay. Did you witness when Officer Nelson at one point gives a
588 command to turn around and face away from him and Marcus actually fully
589 turns around?

590

591 A: No.

592

593 Q: You didn't see that?

594

595 A: I did not.

596

597 Q: Did you watch a body worn camera for you?

598

599 A: Yes.

600

601 Q: Okay. Was that on your camera, that you recall?

602

603 A: No.

604

605 Q: Okay.

606

607 A: My position as the supervisor is generally, I would call it behind the front
608 lines. There's usually officers up front and I'm kind of behind them
609 coordinating or helping them, you know, with their positioning and stuff like
610 that. So typically there's officers in front of me. I'm not the first one up all the
611 time.

612

613 Q: Did anyone communicate to you that they saw Marcus fully turn around?

614

615 A: No.

616

617 Q: According to BWC footage, it was Officer Nelson who stated that Marcus
618 should be impacted with the beanbag shotgun for a test for
619 compliance. Does that sound accurate to you?

620

621 A: It was his idea. Yes.

622

623 Q: Okay. And the goal was to get Marcus to come to you at the police cars?

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624

625 A: Yes.

626

627 Q: How would impacting him with the beanbag shotgun accomplish that goal? If
628 generally, in your experience, you said a lot of times they fall to the ground...

629

630 A1: And...

631

632 Q: ...it's not a fact, or they run away?

633

634 A1: I would say that's a mischaracterization of what he said. He didn't say
635 generally they fall to the ground. He said...

636

637 Q: He said, generally they - he said...

638

639 A1: There's three options. Yeah.

640

641 Q: Well, so they either run away. From what - from your experience, they either
642 run away, they go to the ground or there's no effect.

643

644 A: Those are things I've seen happen to people. Yes.

645

646 Q: Okay. So have you ever seen someone impacted by a beanbag shotgun and
647 then they come to you?

648

649 A: Yes.

650

651 Q: You have?

652

653 A: Mm-hm. After one of those things happens, then generally people will comply
654 with us.

655

656 Q: Okay.

657

658 A: Or so...

659

660 Q: So that's your experience that they're impacted?

661

662 A: There's some kind of reaction from them.

663

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664 Q: Okay.

665

666 A: Whether it's one of those things or whatever they choose to do. And once the
667 initial shock of the force being used on them...

668

669 Q: Mm-hm.

670

671 A: ...or the initial pain subsides, then they comply with us because they don't
672 want it to happen again.

673

674 Q: So you didn't have any concern with him? Have you - you didn't have
675 concerns that you want him to come to you but you're hitting kinetic energy
676 weapon that generally stops people, right?

677

678 A: I didn't have any (unintelligible).

679

680 Q: That's - okay. I'll withdraw that question.

681

682 Q1: Let me ask this to you real quick. If somebody is hit with a kinetic energy
683 weapon, are they - and they fall to the ground, are they still capable of
684 crawling to you?

685

686 A: Oh, yes.

687

688 Q1: And did you make that command to Mr. Evans...

689

690 A: Yes.

691

692 Q1: ...for him to crawl to you?

693

694 A: Yes. I did.

695

696 Q1: And did you reasonably believe that he could've crawled to you?

697

698 A: Yes.

699

700 Q1: He wasn't shot in the leg or anything like that?

701

702 A: No.

703

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704 Q1: Okay.

705

706 Q: Okay. So there's a point that Officer Nelson states, "Hey. Let's impact for
707 compliance." Did you believe he was speaking to you or to someone else? Do
708 you know he was - who he was speaking to?

709

710 A1: Calls for speculation.

711

712 Q: Do - you believe he was speaking to you?

713

714 A: No. I don't know. I wasn't alone. I just...

715

716 Q: Did...

717

718 A: Talking to the team.

719

720 Q: Do you remember that?

721

722 A: I do remember that. Yeah.

723

724 Q: Okay.

725

726 A: I believe he was talking to the team would be my answer.

727

728 Q: Approximately 10 seconds later after that statement, Marcus is impacted with
729 the beanbag round. Was that your understanding of the test for compliance?

730

731 A: Yes.

732

733 Q: What did Marcus do after he was shot with the - or impacted with the beanbag
734 round?

735

736 A: He fell to the ground.

737

738 Q: Yeah. (Unintelligible). Okay. Just prior to - or as he's impacted with this
739 beanbag weapon. What was he doing?

740

741 A: He was moving his body towards the retaining wall.

742

743 Q: Okay. And you said, he was impacted in the - where was he

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744 impacted again, with the beanbag round?

745

746 A: I believe he was impacted in, like, the lower portion of the right side of his
747 abdomen.

748

749 Q: Abdomen. Okay. Did you believe that him being impacted with this beanbag
750 was an effective use of force at that point? Did it have the desired effect that -
751 from your understanding?

752

753 A: Like immediately, you're saying? Or overall?

754

755 Q: How about - we'll start with immediately.

756

757 A: Immediately, it got him away from the retaining wall, so that was a good
758 desired effect.

759

760 Q: Okay.

761

762 A: Ultimately, no. It did not have the desired effect that we wanted.

763

764 Q: Okay.

765

766 A: Which was for him to surrender.

767

768 Q: Because he just goes to the ground and doesn't surrender is what - eventually
769 goes to the ground and won't surrender?

770

771 A: Correct.

772

773 Q: Any reason why you guys didn't go and just arrest him when he's on the
774 ground?

775

776 A: Because he still had an outstanding firearm.

777

778 Q: Okay - okay.

779

780 Q1: Was there any safety concerns with going to him, such as the elevated position
781 of the house or any of his surroundings?

782

783 A: Yeah. The concerns with - (unintelligible) the concerns with leaving the patrol

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784 vehicle and exposing ourselves in this open space between him and the -
785 where we were at for position of safety, for me it was still had occupants
786 inside the residence. We didn't know who was inside there, whether it was
787 family members or his friends, people that could intend to hurt us so
788 that Marcus could flee or get away or just to hurt us. And then his, like,
789 surroundings, he had that retaining wall that he kept going near. The retaining
790 wall, from my vantage point, I couldn't see behind it. It was obvious that the
791 earth was not the same height as the retaining wall. There was a recessed
792 portion there, easy enough to conceal a firearm there if you wanted to. That
793 would be clearly not visible from my position. The other concern was there
794 was this vehicle parked in the driveway that he was in between the whole
795 time. In my experience I've seen people hide firearms in various parts of the
796 vehicle that are easily accessible from the exterior, like on top of the tire, in
797 the little - I'm not sure what you'd call the spot but the little gap between the
798 front windshield and the hood. These were all areas that he had immediate
799 access to that I could not see if there was a weapon there or not.

800 Q: Okay.

801

802 A: So this was our concern with leaving our position, have him come to us.

803

804 Q: Okay.

805

806 A: Plus his behavior. He continuously would try to get us to go to him instead of
807 listening to our commands to come to us. In my mind, that's someone trying to
808 bait you into something. Why do you want me to go to you when I'm telling
809 you and giving you lawful orders that you need to come to us for everyone's
810 safety.

811

812 Q: Okay. So once - so Marcus is impacted. He's now on the ground, the camera
813 footage, he's kind of yelling or saying he's been shot, you know, calling for his
814 uncle, whatever. Did the urgency of this change in any way? Is it now more
815 urgent, less urgent? Can you answer that question?

816

817 A: Yeah. From the time we chose to use force on him, it became a more urgent
818 matter. Now I have a person who is eventually, or even at this point, you
819 know, we talk to, in my custody. We used force on him, he's going to need
820 some type of medical attention. He need at least - at least needs to get
821 examined to make sure there's not some kind of - it's our responsibility to take
822 care of him at this point. We used force on him, right? We can't go into a 36-
823 hour standoff with him because I don't know what type of injuries he has.

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824

825 Q: Okay. After he's impacted, he's on the ground. You're describing you're kind
826 of behind with the incident commander. Was there any change to the
827 contingency plans or tactical plans in order to apprehend Marcus?

828

829 A: We waited for, I don't know how long, a minute or so, to see if his behavior
830 would change if he would comply or not, he did not. So we just continued on
831 with the same plan of action.

832

833 Q: Okay. So approximately 6 minutes later Marcus is shot with a beanbag for a
834 second time. And this is the first time that a PSD was sent to apprehend him.
835 Is that correct to your memory?

836

837 A: I'm not sure it's about 6 minutes now, but yes.

838

839 Q: Okay.

840

841 A: That's correct.

842

843 Q: What was Marcus doing prior to or as he was shot with the beanbag for the
844 second time and the first PSD was sent to his location?

845

846 A: He had seemed to fully recover from the first impact. He no longer had that
847 behavior that he was in pain of any sorts.

848

849 Q: Okay. How was that indicative for you?

850

851 A: He sat back up. He was more engaging with us. And when I say engaging, I'm
852 not saying like a good open dialog where we're trying to - we're getting into a
853 resolution. He was again, telling us that he wasn't going to comply with us or
854 demanding to know our names or telling us to come to him, kind of behavior.

855

856 Q: Okay.

857

858 A: If...

859

860 Q: Go ahead.

861

862 A: No. I was going to say, that's why it appeared to me that...

863

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864 Q: Okay.

865

866 A: ...his behavior changed.

867

868 Q: What was Marcus's resistance level at this point?

869

870 A: He was active resistance.

871

872 Q: What kind of commands were given to him at that point?

873

874 A: He was given - by me, I gave him options on how to surrender. Crawling was

875 one of them. Walk to me, crawl to me. I basically told him, "Do whatever you

876 need to do to come over here and just give up."

877

878 Q: Okay.

879

880 A: He was issued more K-9 warnings by me and by Officer Nelson. And he was

881 given a whole bunch of verbal commands of things he needed to do to comply

882 with.

883

884 Q: Okay. The second beanbag impact, where did that impact him on his body

885 from your memory?

886

887 A: I believe on his shin.

888

889 Q: Okay.

890

891 A: I don't remember which shin, maybe right.

892

893 Q: And did you witness the dog, for lack of a better term, run to apprehend him?

894

895 A: Yes.

896

897 Q: Okay. What happened when he was sent to apprehend him?

898

899 A: The dog went up to him, thought it was going to apprehend him. Marcus

900 Evans did some weird hand movements or something. Somehow he was able

901 to fend off the dog. I'm not sure exactly what he did that caused the dog not to

902 engage.

903

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904 Q: Okay. I mean did he attempt to harm the dog or attack the dog?

905

906 A: No. I don't think to harm or attack the dog. Just when I say fending off, I mean

907 like some kind of deflection technique or moving his arm away, something to

908 that effect. I don't think he was trying to fight the dog.

909

910 Q: Did he make any further movements towards the places you believe he was

911 hiding weapons?

912

913 A: I do not remember.

914

915 Q: Okay.

916

917 A: I was kind of focused on the dog.

918

919 Q: Okay. So the dog comes back to the officers. Was there any consideration to

920 move up and take Marcus into custody at point?

921

922 A: No.

923

924 Q: Okay.

925

926 A: Nothing's changed.

927

928 Q: Do - do you - okay. So nothing's changed.

929

930 A: All the same factors still remain. We still believed him to be armed with a

931 firearm, or have immediate access to a firearm, and he's still actively resisting.

932 It'd still be unsafe for us to leave our position of safety due to those other

933 factors of the people in the house and, you know, the - we don't know if

934 there's weapons stashed nearby or something to that effect.

935

936 Q: Okay - okay. So then a few moments later, I mean, according to your camera

937 footage, you retrieve a PSD. I'm assuming this one assigned to you?

938

939 A: Yes.

940

941 Q: Okay. And bring it up to the patrol cars. Marcus is impacted with a beanbag

942 for a third time and your PSD is sent to apprehend Marcus. Does that sound

943 accurate?

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944

945 A: Yes.

946

947 Q: Okay. What was Marcus doing as this beanbag and - or is fired to impact him

948 for - the third beanbag?

949

950 A: When the beanbag (unintelligible)?

951

952 Q: Yeah. What - where is he? Is he standing up? Is he running away? What's

953 going on?

954

955 A: I believe he's seated at this time. What he's actually doing when they shot

956 the beanbag, I don't know.

957

958 Q: Okay.

959

960 A: I was kind of focused between my dog and him.

961

962 Q: Okay. When you let the dog go to apprehend him, what was Marcus doing at

963 that point?

964

965 A: He was still actively resisting.

966

967 Q: How so?

968

969 A: I gave him a bunch of K-9 warnings. Again, I tried to impress on him that this

970 was a different dog and that this dog was definitely - would bite him if - you

971 know, not like the previous dog. I asked him if he was going to comply with

972 me, He said "No."

973

974 Q: Okay.

975

976 A: And his hands were moving around, he was - generally keeping them in the

977 same areas. It's hard to describe, he was kind of seated down with his - man, I

978 don't know. I wouldn't say his hands above his waist but in the position he was

979 sitting in, his hands were showing towards me. But he kept kind of moving

980 them from side to side or areas, how do I describe it? Like from left to right or

981 things like that. I couldn't tell if he's reaching towards the retaining wall or if

982 he's - what he's doing really.

983

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984 Q: Mm-hm.

985

986 A: But he was moving around a little bit with his arms.

987

988 Q: Did this PSD, did it bite Marcus?

989

990 A: Yes.

991

992 Q: Okay. And where did it bite him on his body?

993

994 A: On his left forearm.

995

996 Q: Okay. And what was your role when - in physically taking Marcus into

997 custody? What - what is your - where did - what's your role in that?

998

999 A: So the K-9 is just kind of weird dynamic when...

1000

1001 Q: Yeah.

1002

1003 A: ...I'm a supervisor, but I'm assigned a dog, so.

1004

1005 Q: Yeah.

1006

1007 A: When I work my dog, I'm - kind of work more like a K-9 handler...

1008

1009 Q: Yeah.

1010

1011 A: ...like an officer, than I do the sergeant kind of role. So at this point, it's my

1012 dog, I'm the handler. We moved towards him. I stayed behind the officers that

1013 had lethal coverage. And when we got to him and I ensured lethal coverage on

1014 him, my responsibility is to gain control of my PSD and remove him from the

1015 person.

1016

1017 Q: Okay.

1018

1019 A: And that's what I do.

1020

1021 Q: Were there any other lesser controlling force options that could've been

1022 utilized to take Marcus into custody?

1023

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1024 A: No.

1025

1026 Q: Why not?

1027

1028 A: Gassing elements, such as OC spray or pepper balls, were out of the question

1029 because of us being outdoors. Had we used a pepper ball gun, it would've

1030 been used in the same concept as the beanbag, or it would have just been an

1031 impact weapon. And as we can tell, the impact weapon wasn't being very

1032 effective. So we wouldn't continue on with the same type of thing. Really, no

1033 there's nothing I can think of other than just walking up to him, which was

1034 super unsafe for all the officers on scene.

1035

1036 Q: Okay. And what forms of de-escalation - what tactics of de-escalations were

1037 either utilized by officers on scene or by yourself?

1038

1039 A: There was - well first and foremost, our presence. We had a marked patrol car,

1040 uniformed officers there, lights. We used verbal commands. We

1041 gave him options. We used time. We had barriers in between us and him, or

1042 the patrol car. We used a lower level of force. I mean, it's the same level of

1043 force, but people think it's a different level of force but we used different force

1044 options to try to effect the arrest. We had ballistic shields. We had less

1045 lethal munitions there. We had a police helicopter. I think that's really about it.

1046

1047 Q: Was Marcus's race or ethnic heritage a factor in your decision to use force on

1048 him?

1049

1050 A: No.

1051

1052 Q: Did you witness or overhear any of the officers or the incident commander

1053 reference Marcus's race or ethnic heritage as a part of the reason for the use of

1054 force?

1055

1056 A: No.

1057

1058 Q: Sergeant Sanchez, do you have any follow-up questions?

1059

1060 Q1: No. I have not.

1061

1062 Q: Mr. Dominguez, do you have any points for clarification?

1063

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1064 A1: Yeah. If Mr. Evans had complied after the first kinetic energy weapon and
1065 started crawling towards you guys, would you have sent the dog?

1066

1067 A: No.

1068

1069 A1: And do you - are you issued a taser in your position as a K-9 officer?

1070

1071 A: No.

1072

1073 A1: Or K-9 sergeant? And why is that? Why isn't a taser - why didn't you -

1074 you guys not carry a taser?

1075

1076 A: Because the way we train the dogs, involves the use of minor amounts of
1077 electricity through a collar, more like a stimulus. And in the past when tasers
1078 have been introduced with the dog, they basically would associate if they got
1079 shocked by the taser as a negative effect and they would stop whatever
1080 behavior was occurring during that shocking from the taser.

1081

1082 A1: And would you say that the dog - the presence of the dog - these dogs, the
1083 PSD's bark, would you consider that de-escalation as well?

1084

1085 A: Oh, yes. Absolutely. Definitely a psychological deterrent to get people to
1086 surrender.

1087

1088 A1: And what did you believe would've happened if the team had gone up to
1089 Mr. Evans with the retaining wall, the wheel well, and the people in the
1090 house?

1091

1092 A: Well, my - what I didn't want to happen - what I believe would've happened if
1093 he'd been armed was to either - it would've either resulted in Marcus Evans
1094 being shot by an officer or him shooting an officer.

1095

1096 A1: And ultimately, I know you said that you believed there could have been
1097 weapons found behind the retaining wall ultimately, was there weapons found
1098 behind the retaining wall?

1099

1100 A: Yes. When we later - when we moved up to conduct a safety sweep of the
1101 residence, directly behind that wall was a - one of those like crossed tire irons,
1102 or lug wrench, or whatever you want to call it, that people used to keep in
1103 their trunk a long time ago, and some type of crow or pry bar, metal one.

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1104

1105 A1: And have you seen a crowbar or a tire iron be used as a deadly weapon?

1106

1107 A: Yes.

1108

1109 A1: Mr. Evans was referencing uncle or unc in his - in your interactions with him.

1110 Did you know who this was?

1111

1112 A: I did not know who it was. No.

1113

1114 A1: And had you been able to conduct a pat-down on that individual at that time?

1115

1116 A: No.

1117

1118 A1: Just to be clear, can you please again describe why Mr. Evans was displaying

1119 active resistance?

1120

1121 A: He was making movements, although being in a small area, he was pacing

1122 around, sitting down, moving his arms, whatever movements he was doing.

1123 But most importantly, whenever he was given verbal commands to do

1124 something, like come to us or anything to that effect, he would tell us he's not

1125 going to comply.

1126

1127 A1: Verbally signaling his intention to avoid arrest?

1128

1129 A: Correct.

1130

1131 A1: And in response to active resistance and the way the force matrix is written by

1132 the department, is a K-9 a reasonable force option against somebody who is

1133 actively resisting?

1134

1135 A: It's a reasonable force option for active resistance if you believe them to be in

1136 possession of or have immediate access to a deadly or dangerous weapon.

1137

1138 A1: And can you describe why you believed him to be in possession of a deadly

1139 weapon or dangerous instrument?

1140

1141 A: There was three citizens who told me he was in possession of a weapon. We

1142 had not connected [conducted] a pat-down on him. I couldn't see what was underneath or

1143 concealed underneath his shorts. And he had access to those areas we

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1144 discussed, like, behind the retaining wall and the vehicle parked in front of
1145 him in the driveway.

1146

1147 A1: And I understand that the K-9 manual also gives the option to use the K-9 in
1148 order to apprehend a subject reasonably believed to be violent or
1149 dangerous. Can you describe for me why you believed Mr. Evans to be violent
1150 or dangerous?

1151

1152 A: I believed him to be violent because one of the females, I guess, was some
1153 type of relationship with him and she had already reported he had used
1154 physical violence against her. The other two females claimed to me they
1155 witnessed this physical violence and he was dangerous to me because I had
1156 two females that said he pointed a firearm at them and now his firearm is
1157 outstanding.

1158

1159 A1: And does his extensive criminal history also go into the totality of the
1160 circumstances in your belief that he's violent or dangerous?

1161

1162 A: Yes.

1163

1164 A1: And his gang affiliations also would factor into the totality of the
1165 circumstances?

1166

1167 A: Yes. It does.

1168

1169 A1: Perfect. That's all I got.

1170

1171 Q: Okay. Thanks. Ultimately, was there a firearm recovered?

1172

1173 A: Not that I know of. No.

1174

1175 Q: Okay. And I don't have any other questions. Sergeant Dyemartin, do you have
1176 anything to add that you think would be helpful for the complaint
1177 investigation?

1178

1179 A: No.

1180

1181 Q: Okay. All right. In that case, I have a time of 0650 hours. And that'll conclude
1182 the interview.

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Subject Officer Interview: Police Officer II John Sullivan #6455

On January 14, 2025, at 1050 hours, Detective Sergeant Milo Shields #7075 and I interviewed Officer Sullivan in the Internal Affairs interview room. Attorney Jim Cunningham was present in the interview as Officer Nelson's employee representative.

I read Officer Sullivan the Administrative Admonishment for Sworn Personnel as a Subject Officer. Officer Sullivan indicated he understood the admonishment, had nothing preventing him from answering my questions fully and truthfully, and he did not have any questions. Officer Sullivan signed the admonishment form.

I audio recorded this interview. The recording is 38 minutes and 31 seconds. The following is a transcription of the interview performed by VIQ Solutions, Inc. (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Officer Sullivan Interview**").

Note: Any words contained in brackets were added to for clarification due to an error in transcription by VIQ solutions.

2
3
4
5
6

7INTERVIEW WITH OFFICER JOHN SULLIVAN

8 Q=Sgt. Eric McCoole

9 Q1=Sgt. Milo Sheilds

10 A=Ofc. John Sullivan

11 A1=Atty. Jim Cunningham

12
13

14 A1: My recorder is on.

15

16 Q: Also. This is for IA Tracking 2024-0529 a subject officer interview. This is

17 Sergeant Eric McCoole, ID Number 6755. Today's date is January

18 14, 2025. And at the have a time of 10:50, 50 hours. We're located

19 in the internal affairs interview room at the San Diego Police Department's

20 headquarters. In the room with me is sir, can you please state your name rank
21 and ID number?

22

23 A: John Sullivan, PO2, ID 6455.

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24

25 Q: Thank you. I advise you of your right to representation when we set the

26 interview. In the room with us is your representative.

27

28 A1: Attorney Jim Cunningham, C-U-N-N-I-N-G-H-A-M.

29

30 Q: Thank you. Also present with us is?

31

32 Q1: Sergeant Milo Sheilds, ID Number 7075.

33

34 Q: Okay. Officer Sullivan, I'm going to read you a sworn personnel

35 admonishment as a subject. This is a confidential sworn personnel

36 investigation. You may be subject to discipline as a result of this confidential

37 sworn personnel investigation should the findings indicate that such action is

38 warranted. Therefore, you have the right to have a representative present at

39 this time. The purpose of this confidential sworn personnel investigation is to

40 obtain information to assist the City of San Diego in determining whether

41 administrative disciplinary action is warranted against you. The City is not

42 questioning for the purpose of bringing or substantiating any criminal charge

43 against you. You are directed to answer all the questions posed to you

44 completely, truthfully and to the best of your knowledge. You may consult

45 with your representative before answering any question, but your

46 representative may not answer the question for you. If you refuse to answer a

47 question, it will be considered insubordination and you may be subject to

48 discipline. If the information indicates that you may be or have been charged

49 with a criminal offense, you have the right to remain silent and the right to the

50 presence and assistance of counsel. However, you do not have the right to

51 refuse to answer any question during this confidential sworn personnel

52 investigation, including on self-incrimination grounds. While you have the

53 right to remain silent and not incriminate yourself generally, your silence or

54 refusal to answer during this administrative confidential sworn personnel

55 investigation will be considered insubordination and may lead to

56 administrative discipline up to and including termination. Therefore, any

57 statement made by you during this confidential sworn personal investigation

58 compelled by the threat of discipline, as well as any fruits of those

59 statements cannot be used against you in any criminal proceeding. The City of

60 San Diego has a strong interest in protecting the integrity of its confidential

61 sworn personal investigations, preserving evidence, preventing fabrication and

62 protecting witnesses from harassment, intimidation and retaliation. You are

63 directed not to engage in any harassing, intimidating or retaliatory conduct

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64 toward anyone. You also must not try to interfere with the investigation in any

65 way. Any violation of these directives may result in discipline. Officer

66 Sullivan, do you fully understand the instructions?

67

68 A: I do.

69

70 Q: Okay. And it looks like you already signed the admonishment form. Thank

71 you.

72

73 A1: Sergeant.

74

75 Q: Yes, sir.

76

77 A1: As is my practice on every interview for the last 38 years, I want to make sure

78 that anybody listens to this audio or reads the transcript in this matter

79 understands that this is not a voluntary interview, that my client is being

80 compelled, and as such, all the protections under

81 the Government Codes Section, specifically the Peace Office and Bill of

82 Rights, apply to this interview. Thank you.

83

84 Q: So noted. Thanks. Okay. Officer Sullivan, how long have you been a San

85 Diego police officer?

86

87 A: 17 years.

88

89 Q: Okay. And what is your current assignment?

90

91 A: Currently I'm a patrol officer assigned to Northwestern Division.

92

93 Q: Okay. And what was your assignment on October 24, 2024.

94

95 A: I was assigned to Southeastern Division and I was an acting sergeant.

96

97 Q: Okay.

98

99 A: Patrol.

100

101 Q: So on that date, 24th of October of 2024, at approximately 2330 hours, did

102 you respond to the area of 6400 Duluth Avenue?

103

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104 A: Yes.

105

106 Q: Why did you respond to that location?

107

108 A: There was a radio call involving a domestic violence incident.

109

110 Q: Okay. So please describe to me what information you had or learned as you
111 responded to this call for service.

112

113 A: Essentially, there is a domestic violence incident that took place between a
114 known suspect and his girlfriend. And during the incident there was a firearm
115 used.

116

117 Q: Okay. Once arriving on scene, did you learn any additional information
118 regarding this call for service?

119

120 A: Yes. I met with officers who were speaking with the reporting
121 party and victim. There are three of them in total. I was briefed by the
122 officers had spoke to them and the officers had concluded based on their
123 preliminary interview with them that - in fact that assault of deadly weapon
124 occurred with the use of a loaded firearm.

125

126 Q: Okay. And just for the record, did this all occur at the residence on Duluth or
127 was this at some other location?

128

129 A: Immediately following the incident, the three females who were involved in
130 the incident, walked down the street around the corner. So there's a park
131 located about a block away around the corner, so.

132

133 Q: Okay. So you learned most of this information that you just described at this
134 park area, is that right?

135

136 A: Correct.

137

138 Q: Okay. So was there a cause to arrest anyone located at [REDACTED] Duluth?

139

140 A: Yes.

141

142 Q: And who was arrestable for that?

143

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144 A: I forgot the gentleman's name but he - the suspect, who's the boyfriend of one
145 of the victims.

146

147 Q: Okay. And specifically what criminal offenses was he arrestable for?

148

149 A: Assault with a deadly weapon, being a firearm.

150

151 Q: Okay. So was there a decision made to go to the residence on Duluth and

152 effect that arrest?

153

154 A: Yes.

155

156 Q: Okay. Who made that decision?

157

158 A: I did.

159

160 Q: Okay. And was there an incident commander designated for this?

161

162 A: Yeah. That changed. But yes. Initially I was.

163

164 Q: Initially you were? Okay. And prior to actually going to the residents[residence] and to

165 affect this arrest, were there any contingency plans or tactic plans devised in

166 order to take the suspect into custody?

167

168 A: Yes.

169

170 Q: Can you describe those please?

171

172 A: Yes. Sergeant Dyemartin was on scene as well after he and I spoke about the

173 details of the call and the kind of...

174

175 Q: Okay.

176

177 A: ...dangerous nature of the call, a plan - we came up with a plan to pull patrol

178 vehicles up and place them in front of the residents [residence] to utilize this cover for

179 officers as well as use our - our lights from our police car to make sure that

180 they know we're the police and to do PA announcements to the house and to

181 have the suspect come out to us.

182

183 Q: Okay. And Sergeant Dyemartin, is he another patrol sergeant in this area?

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184 How did he get involved in all this?

185

186 A: He's a K-9 sergeant.

187

188 Q: For the K-9 unit. Okay. What tactical or de-escalation resources did you

189 request for this incident?

190

191 A: We had - get our helicopter able there. We had multiple officers to include a

192 K-9 officer, a K-9 sergeant. I designated officers on scene to be less lethal to

193 include a bean bag shotgun as well as a taser.

194

195 Q: Okay. Okay. So I imagine you guys, at that point, decide to approach the

196 residence [REDACTED] Duluth Avenue, is that right?

197

198 A: Correct.

199

200 Q: Okay. And can you describe to me what's happening as you're approaching the

201 residence?

202

203 A: As we're approaching the residence - as we're approaching? I mean, we just

204 parked our cars.

205

206 Q: Okay. So nothing...

207

208 A: Just tactically.

209

210 Q: ...necessarily abnormal happened?

211

212 A: I don't recall.

213

214 Q: Not that you recall.

215

216 A: Yeah.

217

218 Q: Okay. Were there officer safety concerns at this point?

219

220 A: Yes.

221

222 Q: Can you please describe those?

223

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224 A: First and foremost, the suspect using a gun in the matter, which I confirmed
225 with the victim group that it was functional and a real gun. There was the fact
226 that we were kind of in a lower position from the house. The house kind of
227 had a raised vantage point on us. I didn't know who was in the house initially.
228 I didn't know where this gun could be. And I didn't know the mental state of
229 the suspect initially or the sobriety of the suspect. Yeah. Just all of the
230 unknown was kind of taken into consideration when we approached and
231 attempted to apprehend the suspect.

232

233 Q: Would this be a call that maybe would warrant some sort of SWAT response
234 in your imagine - in your mind.

235

236 A: Not at this point.

237

238 Q: Okay. Why not?

239

240 A: I just don't - given the circumstances and constantly reassessing the situation,
241 again that's a fluid thing, given the details upon approach, it was - it's my
242 judgment and my opinion that this was something with the use of K-9 and a
243 good pre-plan, having the helicopter, having a rear perimeter, having a field
244 lieutenant there, that this is just something that we could initiate.

245

246 Q: Okay.

247

248 A: And - but it's always in the back of my mind if something were to change that
249 the SWAT was always - you know, that's always an option.

250

251 Q: And just for the record, SWAT's are Special Weapons And Tactics, right?

252

253 A: That is correct.

254

255 Q: Yeah. Okay. I generally ask to not use acronyms or jargon and I messed up, so

256 I...

257

258 A: Got you.

259

260 Q: ...wanted to correct that. You mentioned a gun involved in all this. What style
261 of gun were you expecting the suspect to have? A pistol, rifle? Can you go
262 into that, at least from the knowledge that you guys had?

263

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264 A: Per the victim group, it would have been a semi-auto handgun.

265

266 Q: Okay. So, some sort of handgun. Okay. And were you present when occupants
267 were called out from [REDACTED] Duluth Avenue?

268

269 A: Yes.

270

271 Q: Okay. Were you present when (Marcus Evans) exited [REDACTED] Duluth Avenue?

272

273 A: Yes.

274

275 A1: That's the name of the suspect.

276

277 Q: Yes, sir.

278

279 A1: Thank you.

280

281 Q: Mm-hm. Can you describe the clothing that (Marcus) was wearing?

282

283 A: Yes. (Marcus) was not wearing a shirt and he was wearing some oversized
284 baggy shorts.

285

286 Q: Did you believe it was reasonable to believe he was concealing a weapon or
287 had immediate access to a weapon?

288

289 A: Yes.

290

291 Q: Why is that?

292

293 A: Based on his baggy clothing, based on the environment, there's a retaining
294 wall which concealed - I couldn't see on the other side of it. There is a vehicle
295 in the driveway very close to him, which is also in play. And yeah, his baggy
296 clothing and just the fact that I was confident that he was in fact armed with a
297 handgun that the victims described in detail.

298

299 Q: So where specifically did you suspect he was concealing a weapon?

300

301 A: I didn't - at this point, I couldn't see anything, right?

302

303 Q: Mm-hm.

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304

305 A: But the fact that he had really large shorts on, easily could have been inside of
306 his shorts, inside of his underwear. And again, I was not confident that he
307 wasn't armed, if that makes sense.

308

309 Q: Okay. So have you ever ran into someone concealing a handgun in their
310 underwear?

311

312 A: Yes.

313

314 Q: You have? How many times do you think that's happened?

315

316 A: I don't recall.

317

318 Q: Okay. This may be kind of apparent but I'll ask it for the record. Did you see
319 him in possession of some - any sort of deadly weapon as he came out of the
320 residence?

321

322 A: No.

323

324 Q: Okay. Did he ever reach for the area that you believed he had access to a
325 weapon?

326

327 A: Yes.

328

329 Q: When was that?

330

331 A: Specifically it was in the retaining wall. I wasn't confident with that area
332 behind the retaining wall which is located kind of in the front yard area of his
333 house.

334

335 Q: How many times did he - did he do that?

336

337 A: I don't recall.

338

339 Q: Was this early on as he comes out or later in as he - as this is unfolding?

340

341 A: It was earlier on in the contact between us and (Marcus).

342

343 Q: Okay. So as (Marcus) is exiting the residence, what kind of commands were

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344 given to him?

345

346 A: There were multiple verbal commands to keep his hands up in the air, to
347 essentially surrender, to walk back toward us and comply and be taken into
348 custody. Multiple K-9 specific commands were given to include being
349 impacted with a beanbag. You know, I recall one officer just telling him what
350 he's under arrest for.

351

352 Q: Okay. Who was giving these commands?

353

354 A: Initially, it was the K-9 officer, Bobby, and forgive me, I forgot his last name.
355 But he was the only K-9 officer there, so the K-9 officer was in charge of
356 giving most commands.

357

358 Q: And why was (Marcus) ordered back to you guys?

359

360 A: For safety purposes.

361

362 Q: Okay. How was that more - can you explain to me how that's more safe in a
363 situation like this?

364

365 A: Sure. We were utilizing our patrol vehicle as cover. There's a gun in play
366 because it's going to play I wanted my officers behind a piece of cover. And
367 just in case if it turned into some sort of shooting I wanted my officers to have
368 that, that safety net of having the car there. The second officers leave cover
369 they expose themselves and that for me becomes an escalation point and so I
370 felt much more comfortable in the interest of safety to the suspect and my
371 officers to have him come back to us in our police car.

372

373 Q: Okay. So ultimately for safety, is that fair to say?

374

375 A: Correct.

376

377 Q: Okay. Did he follow the commands that he was given?

378

379 A: No.

380

381 Q: What was he doing that was indicative that he wasn't following commands?

382

383 A: He verbally objected to what we were telling him to do. At one point, he

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384 moved kind of a little bit further away from us, sat on that retaining wall. A lot
385 of verbal just objections saying he's not going to do what we're telling him to
386 do. Asking a lot of questions, telling us to leave. There's a lot of animation
387 from his hands. He has his hands up, has his hands down. But simply, it
388 appeared to me that he understood what we were telling him.

389

390 Q: Okay.

391

392 A: But he made the decision to not comply with those commands.

393

394 Q: And it seems like you're going into it a little bit, but what was he saying
395 anything? What was he saying, if you remember?

396

397 A: I remember him telling us to leave...

398

399 Q: Okay.

400

401 A: ...to leave his house. He was asking - you know, he was initially saying that he
402 wasn't involved in something. I think those are the best specifics. I was set
403 back a little bit.

404

405 Q: That's fine.

406

407 A: So I think that's the best I might recall right now.

408

409 Q: So as this is going on, what's - per our SDPD force matrix, what's his
410 resistance level?

411

412 A: He's actively resisting. Which I believe he has access to a weapon.

413

414 Q: Okay. So did these contingency plans or tactical plans change at this point?

415

416 A: Yes. I was constantly assessing, there was a contingency that I made that, so
417 when he - we were initially contacting him, there was an elderly male that
418 came to the door, which I had previously spoken to the victim group, that I
419 knew there was an elderly male who is a - specifically a [REDACTED] patient.

420

421 Q: Mm-hm.

422

423 A: I didn't know how physical ambulatory he was or what his physical

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424 capabilities were. So I conversed with Sergeant Dyemartin to not allow him to
425 go back into the house.

426

427 Q: Okay.

428

429 A: Because of the gun and a potential hostage situation and other unknowns. And
430 that was one.

431

432 Q: Okay. So you mentioned Dyemartin. You consulted with him. Did you consult
433 with anyone else about this?

434

435 A: I don't recall.

436

437 Q: Okay. And let's see. Just before - I'm going to just kind of - before this
438 incident, have you ever actually impacted anyone with the extended-range
439 impact weapon or the bean bag shotgun?

440

441 A: I have not personally, no.

442

443 Q: Okay. Have you ever witnessed anyone being shot with that?

444

445 A: Yes.

446

447 Q: Okay. From your memory, what happened to the person when they were shot
448 with that projectile?

449

450 A1: In this instance or just in his past?

451

452 Q: Just from what he remembers witnessing from when - in his experience.

453

454 A: It appeared to be painful.

455

456 Q: Painful. So what did the person actually do with, that you remember?

457

458 A: I don't want to generalize 'cause I've seen multiple.

459

460 Q: Okay. Tell me what you remember.

461

462 A: It depends on target acquisition, depends on just the person.

463

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464 Q: Okay.

465

466 A: It is a form of pain compliance.

467

468 Q: Mm-hm.

469

470 A: Usually they yell.

471

472 Q: Okay.

473

474 A: They sometimes cry.

475

476 Q: Mmm.

477

478 A: They will sometimes go to the ground. But they usually display some sort of

479 pain, I mean some sort of discomfort.

480

481 Q: Okay. So according to our training and our use of force policies, what level of

482 resistance should a suspect be displaying in order to shoot them with that

483 weapon system?

484

485 A: In this specific instance as active resistance with belief that the person is

486 armed or has access to a deadly weapon...

487

488 Q: Okay.

489

490 A: Even more specifically with the application of K-9.

491

492 Q: Did you witness or overhear Officer Nelson give (Marcus) an order to turn

493 around and face away from him?

494

495 A: I cannot specifically say I do.

496

497 Q: Okay. Did you ever see (Marcus) turn around at any point? Show his

498 backside?

499

500 A: I can't recall.

501

502 Q: Okay. So according to some BWC footage, Officer Nelson stated

503 that (Marcus) should be shot with the bean bag shotgun as a test for

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504 compliance. You remember this?

505

506 A: I do.

507

508 Q: Okay. And can you tell me what is a test for compliance?

509

510 A: A test for compliance is a tactic that we are taught specifically in CRT

511 training, critical response training (unintelligible).

512

513 Q: Yeah.

514

515 A: It is specific to use with K-9. Understanding that starting from a lower level of

516 force, we kind of working our way up as need be. A test for compliance to

517 impact an actively resistant suspect with the hopes that that person after being

518 impacted that one time would then comply and then that would mitigate the

519 use of further force being used.

520

521 Q: Okay. So in this instance, in this situation on Duluth, why would shooting him

522 on a test for compliance be the best course of action?

523

524 A: Because that gives the - after the refusal of the verbal commands.

525

526 Q: Okay.

527

528 A: And I view compliance is on a spectrum. And the suspect can become more

529 compliant and then less compliant as the situation unfolds, which is I'm

530 currently constantly assessing this. You know, given that there is time and

531 there's a lot of movements from the wall to the driveway to the wall to the

532 driveway, profanity being used, the compliance in this was getting more

533 toward the less compliant, as far as that spectrum goes. With the test for

534 compliance, the thought is - like, my thought is, that once the suspect received

535 one impact from a bean bag, that would then let the suspect know that there's

536 more force to follow if they decide not to give up.

537

538 Q: Okay.

539

540 A: And obviously my hope is that, that's all it takes and they're to give up after

541 that.

542

543 Q: And you would agree this test for compliance is an application of force on the

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544 suspect, correct?

545

546 A: Yes.

547

548 Q: Again according to some BWC footage, approximately a minute after Officer

549 Nelson suggests this test for compliance with the beanbag, he says, "Hey, let's

550 impact for compliance." Did you believe he was speaking to you?

551

552 A: I don't think he's speaking directly to me.

553

554 Q: Okay.

555

556 A: I know his attention was on the suspect and I think that was just more for

557 information to get out.

558

559 Q: Okay.

560

561 A: I know Sergeant Dyemartin mainly oversaw especially earlier on with that

562 initial test for compliance, he was coordinating that aspect. And I know

563 Sergeant Dyemartin and Bobby, they both being K-9 and a supervisor, they

564 were kind of conversing and consulting about what the next move should be.

565

566 Q: Okay. Did you overhear this conversation or planning?

567

568 A: I do - I mean I recall that suggestion was given.

569

570 Q: Yeah.

571

572 A: I was present. But given that Sergeant Dyemartin is there, we're utilizing a K-

573 9. It's kind of more his realm and specialty and expertise, so that was

574 more him than me.

575

576 Q: Okay. So, approximately 10 seconds after he makes that statement the, "Hey,

577 let's test for compliance." (Marcus) was shot with a bean bag projectile. Was

578 that the test for compliance in your mind?

579

580 A: Yes.

581

582 Q: Okay. What happened to Marcus after he was impacted with the beanbag?

583

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584 A: He went to the ground.

585

586 Q: Okay. From your memory, what was (Marcus) doing either just prior to or as
587 he was shot with the bean bag projectile?

588

589 A: Just before. Maybe ask something a little more specifically I can answer but I
590 don't recall the general...

591

592 Q: How about this, when he says, hey, let's - when Officer Nelson says, "Hey,
593 let's impact for compliance." From your memory, what was (Marcus) doing?

594

595 A: I don't remember anything. He was continuing to be not complying and
596 talking in objection to what we were telling him to do. But I don't remember
597 specifically what the moments before that happened what his behavior was.

598

599 Q: Okay. Where on his body did the bean bag round impact him?

600

601 A: In the abdomen I believe.

602

603 Q: Okay. Did you believe impacting (Marcus) with the beanbag and him going to
604 the ground, that was an effective use of that force at that time?

605

606 A: Yes.

607

608 Q: If the goal was to get (Marcus) to come to you guys, how would putting him
609 on the ground make getting him back to you more easy, I guess or safer, how
610 about that?

611

612 Woman: Wait, I am fine.

613

614 A: Can you ask that one more time, sorry?

615

616 Q: Yes. I apologize for that.

617

618 Woman: Sorry.

619

620 Q: If the goal was to get (Marcus) to come to you, because that's the safest
621 option, right?

622

623 A: Right.

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624

625 Q: For the officers there. How would - and you've stated that there's - you've seen
626 bean bag round impacts make the person go to the ground. How would putting
627 him on the ground with a beanbag impact weapon. The outcome of that goal,
628 getting him back there. How is that the best course of action. Try to help me -
629 walk me through that?

630

631 A: I understand. By impacting him with that single beanbag round, yes. It
632 hurts. Yes. It will yield different effects of pain, however we give that person
633 an opportunity to kind of recover.

634

635 Q: Okay.

636

637 A: And we reassess also.

638

639 Q: Okay.

640

641 A: I'm looking at where that bean bag round impacted him and I'm being
642 reasonable, he's a younger guy, he seems relatively physically fit. Based on
643 that, we gave him chance and I gave him some instructions to crawl to us.

644

645 Q: Okay.

646

647 A: So my belief is, yes. We impacted him with that test for compliance but I also
648 believe that he would be physically capable to follow our commands at that
649 point.

650

651 Q: Okay. But - so just to confirm. Impacting him with the bean bag round that
652 first time. Do you believe that would have got him to come back to you guys?

653

654 A: Not immediately following the impact...

655

656 Q: Okay.

657

658 A: ...but given some time for him to recover, yes, I do.

659

660 Q: Okay. Can you explain to me why - so he goes on the ground and he's on the
661 ground for several minutes. Why wasn't there any sort of ideas of going to just
662 go arrest him at that point?

663

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664 A: So, we did think - I personally thought about that for a second.

665

666 Q: Okay.

667

668 A: But given there's a few things that, why that would not have been the best

669 approach tactically.

670

671 Q: Okay.

672

673 A: A few things. There's still a gun in play, somewhere. We don't know

674 where and I'm not confident that he doesn't have a gun on him. Two, there is

675 still the front door and there's unknown people inside that house and exposing

676 my officers to open windows, there's at least one more person in

677 there causing officer safety concern. Three, if we move up physically on him,

678 again, he's being - he's a young fit man, if he turns and runs to that house it

679 causes a big - another issue. Also, the typography of that layout, it's up a hill.

680 There's cement stairs, there's a car, there's a retaining wall. I'm pretty

681 confident that if officer's would have went to go hands on, somebody would

682 have been injured.

683

684 Q: Okay.

685

686 A: Whether someone hit their head, whether the suspect gets hurt, it was tight

687 quarters there and I really felt uncomfortable with moving up on him given

688 the totality of the circumstances.

689

690 Q: Okay. When he's impacted for that first time, I mean, he's on the ground and

691 from the camera footage, he's in - saying he's been shot and he's in pain. Did

692 the situation or the urgency change due to that in your mind?

693

694 A: No.

695

696 Q: Okay. After he shot for this first time and he goes to the ground, did your

697 contingency plans or tactical plans change in any way to take him into

698 custody?

699

700 A: I know that we were reassessing after that test for compliance. And I kind of

701 want to go back - and sorry you asked a question...

702

703 Q: Sure.

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704

705 A: ...about did my concerns change. Being a supervisor, a supervisor, now that
706 we use force, I do want to get him medical treatment following that force. So
707 it's always concern of mine. I ended up staging medics just in case as well
708 because ultimately the well-being of that person is kind of our responsibility.
709 So it did change things a little bit as far as my reassessment of the situation.

710

711 Q: Okay. So was there any discussion of changing your plans to take (Marcus)
712 into custody at this point? Whether it was with you and the K-9 unit or...

713

714 A: Yeah.

715

716 Q: ...you and - I know a field attendant [lieutenant] does show up at some point.

717

718 A: Correct.

719

720 Q: When was that?

721

722 A: I don't remember it specifically. But I do know that Lieutenant (Becesto) was
723 there. I don't want to say I know. I believe she was there before that test for
724 compliance was initiated.

725

726 Q: Okay.

727

728 A: And she was involved in the conversations and stuff so.

729

730 Q: Okay. How was she? Do you remember how she was involved in that
731 decision-making?

732

733 A: She was fine. She was fine with our plans.

734

735 Q: Okay.

736

737 A: Yeah. There's no objection.

738

739 Q: So just to be clear.

740

741 A: Okay.

742

743 Q: After he's impacted and he's on the ground. After some reassessing, the plan to

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744 take him to custody didn't change. Is that accurate to say?

745

746 A: I'm not sure what you mean. Sorry. I don't know...

747

748 Q: Okay. How were you planning to take (Marcus) into custody now that he's on
749 the ground?

750

751 A: So at this point, to have him crawl to us, to have him walk to us. To have...

752

753 Q: Okay.

754

755 A: To hopefully gain that compliance and him to give up at that point.

756

757 Q: So he was given - you mentioned he - you gave him orders to crawl to
758 you. Did he abide by those orders?

759

760 A: No.

761

762 Q: Okay. Were there any other commands or orders given to him at that point?

763

764 A1: By the sergeant or by anybody?

765

766 Q: That you overheard or by you. Thank you.

767

768 A: There were multiple commands to have him walk back, just to come to us. I

769 said crawl to us because, I mean, understanding that he was impacted and I'm

770 sure that's painful.

771

772 Q: Mm-hm.

773

774 A: And then he did have time to recover and recuperate. He went from the - you

775 know, kind of a laying position to a sitting position. But I mean, yeah. There

776 are a lot of commands given. I don't remember specifically by who and what

777 was said but the gist of it is to come back to us.

778

779 Q: Okay. Okay. So approximately 6 minutes after he was first impacted, 6

780 minutes later, (Marcus) is shot with the bean bag for a second time. And the

781 first police service dog or PSD was sent. Does that sound accurate to your

782 memory?

783

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784 A: That sounds accurate.

785

786 Q: Okay. I'll ask this question and to the best - this is to the best of your memory.

787 What was (Marcus) doing prior to or as he was shot with the bean bag for the

788 second time and the PSD was sent?

789

790 A: I don't recall specifically. I was positioned kind of in the back. Again,

791 Sergeant Dyemartin, he was kind of quarterbacking all the plans regarding the

792 dog, the use of the PSD. I do - I did overhear that the decision was made to

793 utilize the dog and in conjunction with the bean bag shotgun. I can't

794 confidently say what the suspect...

795

796 Q: Okay.

797

798 A: ...was doing right before that happened.

799

800 Q: Okay. So you said the plan - was this plan ran through you as the incident

801 commander?

802

803 A: Well, I'm not the incident commander at this point.

804

805 Q: Okay. So you've been relieved by this point?

806

807 A: Yeah. There's been a field attendant [lieutenant] there for a little bit.

808

809 Q: Okay.

810

811 A: So I'm no longer the IC at this point.

812

813 Q: So it's accurate to say you believe the lieutenant is now the incident

814 commander by this point?

815

816 A: Correct.

817

818 Q: Did you - and you're saying you overheard K-9 discuss this with - is it with

819 the incident commander or who are we talking that you said they made this

820 whole plan to utilize the PSD?

821

822 A: There were Bobby Nelson...

823

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824 Q: Okay.

825

826 A: The canine Officer Nelson. Sergeant Alan Dyemartin. I know there was
827 discussion amongst them two. I believe in the presence of the field lieutenant.
828 Again, I don't remember exactly the positions of everybody...

829

830 Q: Sure.

831

832 A: ...to utilize a dog in effecting the arrest. But at this point I'm - kind of my role
833 is communicating with patrol to make sure all the officers are on board and
834 the communication is clear and all the expectations are in line to know what's
835 going to happen. So that's kind of where I'm at with that.

836

837 Q: Okay. You said you can't remember specifically what he was doing before he
838 was impacted with the bean bag round and the PSD was sent by him. But do
839 you remember generally what he was doing?

840

841 A: He was talking. I think - you know, I don't remember exactly what he said. I
842 remember he was in a seated position.

843

844 Q: Okay.

845

846 A: With his legs in front of him. I don't recall exactly. Unfortunately, I don't
847 remember.

848

849 Q: Did you witness the bean bag projectile impact (Marcus)'s body on that one?

850

851 A: Yes.

852

853 Q: Do you remember where it impacted him on his body?

854

855 A: I don't remember where that one specifically hit. I remember seeing him after
856 the fact and seeing the injury from the impact but I don't exactly know where -
857 which one hit him where. So I can't say.

858

859 Q: Okay. Did the PSD actually bite (Marcus) on this on - on the first time?

860

861 A: The first time? The dog ultimately failed.

862

863 Q: Okay.

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864

865 A: I don't know if the dog actually bit him or not. He may have.

866

867 Q: Okay. Did you witness (Marcus) attempt to harm or harm the PSD?

868

869 A: I do not. No. I did not.

870

871 Q: No. You did not see that?

872

873 A: I did not see that.

874

875 Q: Okay. Okay. And then from camera footage, the PSD basically didn't engage

876 and it's brought back to the team. At that point, was there any reason why the

877 team or that you know of, was there any reason why the team didn't go up to

878 take (Marcus) in custody at that point.

879

880 A: No.

881

882 A1: The question was, do you know why they didn't take him into custody at that

883 time?

884

885 A: Oh, at this time, with the failure of the dog, the situation's kind of the same.

886 He's still there, he's still not complying, the gun's still in play, still don't feel

887 confident he's not armed. So nothing's really changed at that point other than

888 the failure of the dog.

889

890 Q: Do you recall there being ballistic shields or anything like that for this

891 incident?

892

893 A: On scene?

894

895 Q: Yes. As one of your resources.

896

897 A: I recall somebody asking about a ballistic shield but I don't recall anyone

898 actually having one out. I know that's a limited resource. So not many officers

899 carry the ballistic shield so.

900

901 Q: Did you request a ballistic shield to come to this? Do you remember doing

902 that?

903

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904 A: I don't think I did. I don't remember?

905

906 Q: Okay. Do you recall overhearing anyone request that resource?

907

908 A: I do.

909

910 Q: Okay.

911

912 A: I do recall ballistic shield being mentioned.

913

914 Q: Okay. Was that ultimately ever brought, that you remember?

915

916 A: You know, I kind of lost track...

917

918 Q: Okay.

919

920 A: ...of that specific detail. And again, I'm not - there's just not many in the field.

921 I think specifically SWAT officers that some certain cars have it.

922

923 Q: Yeah.

924

925 A: But - so yeah, I don't remember what happened there.

926

927 Q: Okay. You mentioned that after the dog didn't bite him, that the situation was

928 kind of the same, right?

929

930 A: Yeah. I didn't say the dog didn't bite him.

931

932 Q: Okay.

933

934 A: I don't recall if there's a bite but failed.

935

936 Q: How about didn't engage? Failed?

937

938 A: Yeah. Okay.

939

940 Q: Yeah. Whether you assisted or you overheard, did the tactical plan change to

941 take (Marcus) into custody?

942

943 A: So just prior - not just prior but prior before the deployment of that first K-9, I

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944 know there was a conversation between Officer Nelson and Sergeant
945 Dyemartin that they would swap dogs out and utilize Sergeant Dyemartin's
946 dog if that dog didn't work. So that plan was already in place. And so at which
947 point the first dog failed, Sergeant Dyemartin brought his dog up and then we
948 reassessed and they re-engaged with that dog.

949

950 Q: Okay. And then he was shot with a bean bag round? I'll say (Marcus) was shot
951 with a bean bag around for the third time and a second PSD was sent. Does
952 that sound accurate to you pretty much?

953

954 A: Yes.

955

956 Q: Who sent the second PSD?

957

958 A: Sergeant Dyemartin.

959

960 Q: Okay. And to your memory, what was (Marcus) doing prior to or as the bean
961 bag is fired at him and the dog is sent to bite him?

962

963 A: I don't recall (Marcus) doing anything differently or exhibiting any type of
964 behavior differently than the first. I believe he still ceded yelling. I don't recall
965 exactly what he was yelling. But yeah. I don't recall anything necessarily
966 jumping off the chart as different than before.

967

968 Q: Was he at this point, from your memory, was he reaching for, attempting to
969 access the areas that you believe he was concealing a deadly weapon?

970

971 A: So at this point, best I recall...

972

973 Q: Yeah.

974

975 A: ...I was set back.

976

977 Q: Okay.

978

979 A: So I didn't have that front row seat to what was going on. I was obstructed by
980 other officers and the car door. So I can't say.

981

982 Q: Okay. Did you see where the bean bag projectile impacted (Marcus) on the
983 third one?

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984

985 A: I did not.

986

987 Q: Okay. Did you see the PSD bite (Marcus)?

988

989 A: I did.

990

991 Q: Okay. Where did he bite (Marcus) on his body?

992

993 A: Yeah. I can't say. I don't know where he bit him.

994

995 Q: Okay.

996

997 A: I know the dog engaged and then I took a different role when that dog

998 engaged so.

999

1000 Q: Okay. And ultimately, that's what the dog biting him was what was able to

1001 have him be taken into police custody?

1002

1003 A: Correct.

1004

1005 Q: Okay. Can you tell me what other tactical plans and considerations were

1006 discussed to take (Marcus) into custody?

1007

1008 A1: Besides what he's already told you?

1009

1010 Q: Sure.

1011

1012 A: You mind narrowing that question down? Can you give me a little bit...

1013

1014 Q: How about this. Were there other options you could have used to do this other

1015 than impacting him and biting?

1016

1017 A: Yeah. There were other options.

1018

1019 Q: Which ones do you think would have been effective?

1020

1021 A1: More effective than - I'm sorry?

1022

1023 Q: How about - let me rephrase the question, I apologize.

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1024

1025 A1: Thank you.

1026

1027 Q: Which lesser controlling options do you believe could have been worth it or
1028 could have been as effective or more effective?

1029

1030 A1: if you believe there are, sir.

1031

1032 A: Yeah. Let's say, I believe given the totality of the circumstances, our best
1033 option was with the use of the police service dog.

1034

1035 Q: Okay. Just for the totality of everything?

1036

1037 A: Yeah.

1038

1039 Q: Was (Marcus)'s race or ethnic heritage a factor in any of the decisions you
1040 made on this...

1041

1042 A: No.

1043

1044 Q: ...incident? No. Did you witness or overhear any of the officers
1045 reference (Marcus)'s race or ethnic heritage as a part of the reason for their
1046 decisions in this incident?

1047

1048 A: No.

1049

1050 Q: Sergeant Shields, do you have any clarifying questions?

1051

1052 Q1: No.

1053

1054 Q: Mr. Cunningham, do you have any clarifying questions or points for
1055 clarification at all?

1056

1057 A1: We take a quick break?

1058

1059 Q: Yeah.

1060

1061 A1: Thank you.

1062

1063 Q: I have a time of - we'll call it 11:23. And we'll pause.

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1064

1065 A1: Okay. My recorder is on.

1066

1067 Q: Okay. We're back on the record for our IA tracking 2024-0529, subject officer

1068 interview for Officer John Sullivan. We took an approximately, I don't

1069 know, 7-minute break. The time is 1138 hours. The last question posed was

1070 just for Mr. Cunningham, if you had any points for clarification or any

1071 questions, clarifying questions, sir, do you have any?

1072

1073 A1: None at this time.

1074

1075 Q: Okay. And then finally I have one last question for Officer Sullivan, do you

1076 have anything that you'd like to add that you think could be helpful for the

1077 complaint investigation?

1078

1079 A: No.

1080

1081 Q: Okay. In that case that'll conclude the interview. I have a time of the same

1082 1138 hours and that'll conclude it.

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Subject Officer Interview: Lieutenant Meghan Bisesto #5795

On January 21, 2025, at 1305 hours, Detective Sergeant Milo Shields #7075 and I interviewed Lieutenant Bisesto in the Internal Affairs interview room. Attorney Jim Cunningham was present in the interview as Lieutenant Bisesto's employee representative.

I read Lieutenant Bisesto the Administrative Admonishment for Sworn Personnel as a Subject Officer. Lieutenant Bisesto indicated she understood the admonishment, had nothing preventing her from answering my questions fully and truthfully, and she did not have any questions. Lieutenant Bisesto signed the admonishment form.

I audio recorded this interview. The recording is 46 minutes and 39 seconds. The following is a transcription of the interview performed by VIQ Solutions, Inc. (for exact and complete details of the interview, refer to the audio recording in the IA case file titled "**Lieutenant Bisesto Interview**").

Note: Any words contained in brackets were added to for clarification due to an error in transcription by VIQ solutions.

2
3
4
5
6
7

INTERVIEW WITH LIEUTENANT MEGHAN BISESTO

8 Q=Sgt. Eric McCoole

9 Q1=Sgt. Milo Shields

10 A=Lt. Meghan Bisesto

11 A1=Atty. Jim Cunningham

12
13

14 Q: This is for IA Tracking Number 2024-0529, a subject officer interview. This

15 is Sergeant Eric McCoole, ID number 6755. Today's date is January 21, 2025.

16 I have a time of 1305 hours. We're located in the Internal Affairs interview

17 room at the San Diego Police Department's headquarters. In the room with me

18 is, ma'am, can you please state your name, rank and ID number?

19

20 A: Meghan Bisesto, Lieutenant, ID 5797.

21

22 Q: Thank you. I advise you of your right to representation. We start the

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23 interview. In the room with us is your representative.

24

25 A1: Attorney Jim Cunningham, C-U-N-N-I-N-G-H-A-M.

26

27 Q: Thank you. And also present with us is?

28

29 Q1: Sergeant Milo Shields, ID Number 7075.

30

31 Q: Lieutenant Bisesto, I'm going to read you a sworn personnel admonishment as

32 a subject officer. It's in front of you so feel free to follow along if you'd like.

33 This is a confidential sworn personnel investigation. You may be subject to

34 discipline as a result of this confidential sworn personnel investigation should

35 the findings indicate that such action is warranted. Therefore, you have the -

36 therefore, you have the right to have a representative present at this time. The

37 purpose of this confidential sworn personnel investigation is to obtain

38 information to assist the City of San Diego in determining

39 whether administrative disciplinary action is warranted against you. The city

40 is not questioning you for the purpose of bringing or substantiating any

41 criminal charge against you. You are directed to answer all the questions

42 posed to you completely, truthfully and to the best of your knowledge. You

43 may consult with your representative before answering any question, but your

44 representative may not answer the question for you. If you refuse to answer a

45 question, it will be considered insubordination and you may be subject to

46 discipline. If the information indicates that you may be or have been charged

47 with a criminal offense, you have the right to remain silent and the right to the

48 presence and assistance of counsel. However, you do not have the right to

49 refuse to answer any question during this confidential sworn personnel

50 investigation including on self-incrimination grounds. While you have the

51 right to remain silent and not incriminate yourself generally, your silence or

52 refusal to answer during this administrative confidential sworn personnel

53 investigation will be considered insubordination and may lead to

54 administrative discipline up to and including termination. Therefore, any

55 statement made by you during this confidential sworn personal investigation

56 compelled by the threat of discipline, as well as any fruits of those

57 statements cannot be used against you in any criminal proceeding. The City of

58 San Diego has a strong interest in protecting the integrity of its confidential

59 sworn personal investigations preserving evidence, the refabrication and

60 protecting witnesses from harassment, intimidation and retaliation. You are

61 directed not to engage in any harassing, intimidating or retaliatory conduct

62 toward anyone. You also must not try to interfere with the investigation in any

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63 way. Any violation of these directives may result in discipline. Lieutenant

64 Bisesto, do you understand the instructions?

65

66 A: Yes.

67

68 Q: If you fully understand the instruction, can you please sign your name below?

69

70 Q1: And while the lieutenant is signing that, as - I mean, my practice, I would put

71 on the record that this is not a voluntary interview. This is a compelled

72 interview and as such all the protections of the Peace Officer Bill of Rights as

73 enumerated in the Penal Code section apply to this interview. Thank you.

74

75 Q: Okay.

76

77 Q1: Government Code section. I'm sorry.

78

79 Q: It's all right. Lieutenant, so how long have you been a San Diego police sworn

80 officer?

81

82 A: 23 years.

83

84 Q: And what is your current assignment?

85

86 A: I am the Lieutenant of the Staffing Unit.

87

88 Q: And what was your assignment on October 24, 2024?

89

90 A: The lieutenant of the staffing unit, but I was filling in as the field lieutenant

91 for the southern branch.

92

93 Q: Okay. Southern Branch Field Lieutenant. So on that date, October 24, 2024 at

94 approximately 2330 hours, did you respond to the area of 6400 Duluth

95 Avenue?

96

97 A: I did. I don't know what time it was because I didn't respond to the scene right

98 away.

99

100 Q: Okay.

101

102 A: I think it was more around midnight when I responded.

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103

104 Q: Okay.

105

106 A: I don't know the exact time.

107

108 Q1: Your best estimate?

109

110 A: Yeah. My best estimate.

111

112 Q: That's fine. Ultimately, why did you respond to that location?

113

114 A: It was an evolving critical incident of a wanted felony suspect for assault
115 with a deadly weapon. I was listening to the radio call and just listening to it
116 develop. And it was very busy that night and so there were a lot of things that
117 I was listening to. So I was waiting to see how it was going to progress. And
118 then when they started to call out people from the residence and it sounded
119 like it was evolving and there were more people than they originally thought,
120 then I started to drive to the residence.

121

122 Q: Okay. How long approximately did it take you to get there from when you
123 started driving? If you had to estimate.

124

125 A: Well, I was positioned at the central garage, so probably 5 minutes.

126

127 Q: Okay. What information do you remember having or learning as you
128 responded to this call?

129

130 A: I remember that it was the ex-girlfriend of the suspect or her friend. One of
131 them called the police and said that the suspect pointed a gun at both of them,
132 cocked the hammer and pointed a gun at both of them.

133

134 Q: Okay.

135

136 A: And then she fled the residence and they were meeting with an officer down
137 the street.

138

139 Q: Okay. Can you describe to me what you remember unfolding as you arrived
140 on scene?

141

142 A: Well, when I was listening to it, the sergeants were setting up a perimeter.

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143 They requested Abel, they requested K-9. I know that they had a beanbag
144 officer on scene. They were running records checks of the suspect. I do
145 remember that they said that he was a documented [REDACTED].
146 He had priors for [REDACTED].
147 They got a booking photo of him so that they would know who they were
148 looking for. I believe that the reporting party stated that there were other
149 people in the house including a child and including an elderly man on [REDACTED]
150 that was fairly immobile. And so they were setting up all of their resources
151 when I was listening to it.

152

153 Q: Okay. So this is all prior to you arriving, right?

154

155 A: Prior to me arriving and I guess also when I was driving...

156

157 Q: Okay.

158

159 A: ...to it.

160

161 Q: Okay. So as you arrived, did you stage somewhere with anyone or did you go
162 straight to the residence when you arrived on scene?

163

164 A: I passed by the officer with, what I assume was the victim and her friend, and
165 he just pointed. He said they're down there to the right. There was no parking
166 for me on Duluth with that little cul-de-sac, so I parked at the - I don't know
167 the cross street, but I parked at the cross street of Duluth and whatever it was
168 there, because the car - the street was blocked with all the patrol cars.

169

170 Q: Okay. And so I imagine you have to walk...

171

172 A: I did.

173

174 Q: ...the remainder of the distance?

175

176 A: Yeah. I did.

177

178 Q: Okay. So once you get to a position where you can see what's going on and
179 what you described a critical incident, what was going on?

180

181 A: So I saw approximately three to four, what I presumed, were family members
182 or whoever - maybe not family members of the suspect, but whoever had been

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183 called out of the house. And they were standing by with an officer a little bit
184 away from where the patrol cars were. I saw at least two patrol cars that were
185 in front of the house, staggered. And I saw officers on both sides of the car. I
186 saw K-9 officer with his dog out. I found the sergeant who appeared to be
187 most in control of the scene, who I later found out was Sergeant
188 Sullivan. And I saw an officer with a beanbag, a shotgun out and then
189 there were - there was an officer with his gun out for lethal coverage and then
190 again the K-9 officer, and Abel was up.

191

192 Q: Okay. To your understanding, was there cause to arrest anyone located inside
193 [REDACTED] Duluth Avenue?

194

195 A: Yes. Someone either was on the MPS or someone said it on the radio, I don't
196 recall exactly, but that he was arrestable for 245 with a gun times two for both
197 his ex-girlfriend and her friend that was present with her during the crime.
198 And then when I contacted Sergeant Sullivan, he said that he was also under
199 arrest for 245 times two.

200

201 Q: Okay. And just for a lay person, what's a 245?

202

203 A: Assault with a deadly weapon.

204

205 Q: Okay. So when you got there, you mentioned a Sergeant Sullivan. Was there
206 actual incident commander designated for this incident at that point? Do you
207 know?

208

209 Q1: This is when she arrived?

210

211 Q: Mm-hm.

212

213 A: I don't know that anyone said that they were, but he was acting as the incident
214 commander.

215

216 Q: Okay. So...

217

218 A: With his actions.

219

220 Q: You...

221

222 A: He was acting.

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223

224 Q: Okay. So from what you observed, he was probably the incident commander?

225

226 A: Yes. I think it was kind of fluid between him and the K-9 sergeant. They were
227 working together.

228

229 Q: Okay.

230

231 A: They were communicating well with each other and working together.

232

233 Q: Okay.

234

235 A: I think when I first arrived...

236

237 Q: Sure.

238

239 A: ...it was Sergeant Sullivan.

240

241 Q: Okay. And once you arrived, did you take on that role as the Incident

242 Commander?

243

244 A: No.

245

246 Q: No? Okay. Was there any reason why not?

247

248 A: He was doing a good job. It was rapidly evolving. There wasn't really time for
249 me to take him away and have a full debrief of everything that was happening
250 because he was directing everyone and the suspect was there and probably 25
251 feet away and not complying. So I walked up to him, I asked him what he
252 needed. He gave me a brief debrief of what happened. And he was - and it's -
253 you can probably see it in the BWCs, he's talking to me and he's engaging
254 other officers. And I didn't feel the need to step in because he was doing a
255 good job and he had far more information than I had because they had been
256 there for at least a half an hour, if not more.

257

258 Q: Okay. So what was actually going on with the suspect Marcus Evans at that
259 point?

260

261 A: When I arrived on scene, he had just walked down the stairs.

262

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263 Q: Okay.

264

265 A: And the officers were giving him commands, telling him he was under arrest,
266 giving him commands to walk towards them so that they could take him into
267 custody, asking him to turn around, just giving him commands and he was
268 refusing.

269

270 Q: Okay. So you've described Sergeant Sullivan is - and the K-9 Sergeant to that
271 matter as having some control of this situation.

272

273 A: Yes.

274

275 Q: Did you feel you were needed at this location anymore?

276

277 A: I felt that I was needed as a resource to help them if they needed to. I think it's
278 the field attendant's [lieutenant's] responsibility to just act as a resource and bounce ideas
279 off of. But they were - you know, if something more critical had come out at
280 that time, then I would have felt comfortable leaving.

281

282 Q: Okay. So you describe kind of left off describing Marcus Evans as at the
283 bottom of the stairs, right?

284

285 A: Yes.

286

287 Q: Uncooperative to commands, is that right?

288

289 A: Correct.

290

291 Q: Okay. At that point, were there any contingency plan or tactical plans devised
292 in order to take the suspect into custody?

293

294 A: Yes. Sergeant Sullivan told me that if he made any motions to go back into the
295 house where there were more people still in the house, that he was going to be
296 impacted by the beanbag and the K-9 was going to be sent. Same as if he tried
297 to run away, that they were going to impact him with the beanbag and send
298 the dog.

299

300 Q: Okay.

301

302 A: And that they believe that he was still armed and he - they didn't want to

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303 create a hostage scenario by letting him go back in the house.

304

305 Q: Okay. I know you already mentioned some, but were there any other tactical

306 or de-escalation resources on scene that you noticed for this incident?

307

308 A: Well, I noticed when I was listening to the call that they were setting up all of

309 their resources before they approached the house. So they had a perimeter,

310 they had Abel, they had K-9, beanbag. The officers have tasers on

311 them. Sergeant Sullivan set up his arrest team as best he could with the

312 personnel that he had there. I did ask him - well, when I asked him what he

313 needed, he said, "I need more officers."

314

315 Q: Okay.

316

317 A: So I told those officers that they could roll code the ones that were coming to

318 get there because we needed extra hands. But so - and then they also used the

319 vehicles as barriers once they approached as a - for cover for them because

320 they believe that he was armed and using just the time and distance of staying

321 behind the vehicles while they were communicating with the suspect that I

322 estimate was 25 feet away or so.

323

324 Q: Okay. Other than additional patrol officers, did you request any other

325 resources?

326

327 A: No.

328

329 Q: Okay. Did you see ballistic shields...

330

331 A: No.

332

333 Q: ...at this location? Did you request any ballistic shields?

334

335 A: At one point I asked Sergeant (DiMartin) [Dyemartin] if he wanted a shield and he said he

336 was going to use his dog. We were just at that point.

337

338 Q: Okay. You mentioned a firearm. Were there any other officer safety concerns

339 other than the firearm?

340

341 A: The house was elevated above us, which was a tactical disadvantage and there

342 were still people in the house that I saw looking out the windows. At one

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343 point, someone from the house tried to exit the residence and officers gave
344 him commands to stay inside the residence because that would have created a
345 tactical nightmare to try to get him to walk past the suspect. I'm sorry. What
346 was the question again? I'm sorry.

347

348 Q: I was curious of what officer safety or tactical concerns there were.

349

350 A: So the fact that the house was elevated above us, there was a car parked about
351 4 feet away from the suspect where a gun or a weapon could have been
352 hidden. There was a mailbox a couple feet away from him where a gun could
353 have been hidden or a weapon. And then behind the retaining wall that was
354 next to him, there was kind of a lip between the retaining wall and the dirt
355 where a weapon could have been hidden. And in fact when we were done
356 taking him into custody, there was a pry bar and a crowbar down on the dirt
357 behind the retaining wall.

358

359 Q: Okay. Did you have a clear view of Marcus Evans as he's - you said he's at the
360 bottom of the stairs? Did you have a clear view of him?

361

362 A: I did.

363

364 Q: Okay. Can you describe to me the clothing he was wearing?

365

366 A: He was wearing athletic style shorts with underwear underneath. And so one
367 of the - going back to the last question, I think, he could have - even though he
368 didn't have a shirt on.

369

370 Q1: The question was, what was he wearing? That's all.

371

372 A: Okay.

373

374 Q1: What was he wearing? What was your recollection when you saw him?

375

376 Q: Anything else other than you said athletic shorts?

377

378 A: An underwear underneath.

379

380 Q: An underwear? Okay.

381

382 Q1: Thank you.

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383

384 Q: Did you believe it was reasonable that he may be concealing a weapon or had

385 immediate access to a weapon?

386

387 A: Yes.

388

389 Q: Why is that?

390

391 A: Because - actually when I was new, I found a small gun in someone's

392 underwear who had athletic shorts on. And the gun was tied with the

393 drawstring of the athletic shorts to the trigger guard of the gun inside his

394 underwear under his shorts. So I have found a gun on someone with athletic

395 shorts on, and I think it's reasonable that someone could hide a gun in their

396 underwear or in the pocket of shorts.

397

398 Q: Okay. From the time you saw Marcus out there at the bottom of the stairwell,

399 did he ever reach for the area that you believed he had access to the weapon?

400

401 A: Not when he was standing up. When he was crouched over at one point, his

402 hands went to his groin, not underneath his clothes, but to his groin on several

403 occasions.

404

405 Q: From your recollection, what commands were given to Marcus as he's exiting

406 the residence or staying there near the bottom of the stairwell there?

407

408 A: From the best of my recollection, he was saying things such as, "I didn't do

409 anything. I don't know why you're here. Come to...

410

411 Q: May I interrupt you for one moment...

412

413 A: Sure.

414

415 Q: ...please? My question was, what commands were given...

416

417 A: I'm sorry.

418

419 Q: ...to Marcus by police officers?

420

421 A: They told him that he was under arrest.

422

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423 Q: Okay.

424

425 A: They ordered him to come to them. They wanted him to come to their
426 car. They - I think it was a lot of repetition of come to us, walk to us. You're
427 under arrest. That's the best that I can recall.

428

429 Q: Okay. And do you know why Marcus was ordered to come to the officers?

430

431 A: I know why I would have ordered him to come to me.

432

433 Q: Okay.

434

435 A: I don't - we didn't have - I don't think we had a conversation of why they
436 wanted him to come, but I know why...

437

438 Q: Would you consider that the best practice?

439

440 A: Yes.

441

442 Q: Okay. So ordering - you consider that the officers ordering Marcus to the
443 police was the best practice at this point?

444

445 A: Yes.

446

447 Q: Okay. And why is that?

448

449 A: Because we're controlling his actions and if he - it also shows that he's
450 complying with us and he's not resisting us. We can control if he were to
451 reach for a weapon or reach when we're trying to have him come to us. We do
452 have our resources there with taser, beanbag, K-9 to deploy if he starts to
453 become assaultive or actively resisting. It - so it allows us those opportunities
454 and it just allows us to control the situation and remain under our cover and
455 the barrier of the car.

456

457 Q: Okay. Who - if you remember, who was giving the commands to Marcus
458 initially as he's there at the bottom of the stairwell?

459

460 A: I know that at some point the K-9 officers were giving him commands. I don't
461 remember if a bunch of different officers - I'm not familiar with those officers
462 because I don't work that area. But...

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463

464 Q: Hmm.

465

466 A: So I know the K-9 officers were giving him commands, but not...

467

468 Q: Okay.

469

470 A: ...I don't know which ones.

471

472 Q: From your recollection and from what you're observing, was Marcus
473 following the commands...

474

475 A: No.

476

477 Q: ...given to him? Not at all?

478

479 A: No.

480

481 Q: Okay. So what was he physically doing that was indicative of him not
482 following the commands?

483

484 A: Well, they were ordering him to come to them.

485

486 Q: Okay.

487

488 A: And he refused. They - at one point he walked to the retaining wall.

489

490 Q: Okay.

491

492 A: And I believe they told him not to walk to the wall and he continued to walk
493 to the wall. I know they were ordering him to turn around so that they could
494 see his waistband. I think he did at one point but they - it took a long time for
495 him to comply with that command.

496

497 Q: Okay. When he turned around, did you see the rear waistband on Marcus?

498

499 A: I didn't see him turn around.

500

501 Q: You never saw him turn around?

502

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503 A: I never saw him turn around.

504

505 Q: Okay. During, we'll call it for lack of a better term, a standoff.

506

507 A: Yeah.

508

509 Q: Was Marcus saying anything?

510

511 A: Yes.

512

513 Q: What was he saying?

514

515 A: He was saying - again, to the best of my knowledge.

516

517 Q: Yeah.

518

519 A: It's 3 months ago.

520

521 Q: Yeah.

522

523 A: And I don't have a BWC, so for...

524

525 Q: True.

526

527 A: To the best of my recollection, he was saying, "I don't know what's going on

528 here. I didn't do it. You come to me." He said, "Fuck you." He said something

529 to the effect of, "I'm not fucking going." Something about getting off his

530 property or I'm on my property. At some point he was calling for family

531 members to help him. I remember he - I think he believed he had been shot by

532 a rubber bullet after he was impacted by the beanbag.

533

534 Q: Okay.

535

536 A: Because he was saying stuff like, "You shot me - you shot me."

537

538 Q: Okay. We can get there. Well, I'm going to ask you about that part. So

539 ultimately, again I'll use the term standoff because I don't have a better

540 description of it, before any force is used, what is his resistance level at this

541 point per our STP [SDPD] policy enforcement regs?

542

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543 A: At which point?

544

545 Q: When he's there at the bottom of the steps. He's being ordered to come back to
546 you guys.

547

548 A: Actively resisting.

549

550 Q: And then how do you say that?

551

552 A: He was refusing to walk to the officers. I believe that a refusal to walk to them
553 is the same as a refusal of walking away. And the obscenities, him verbally
554 signaling his intention to resist us, is actively resisting. Him walking back to
555 the retaining wall is actively resisting the commands for him to - the
556 commands that you are under arrest and you need to walk to us.

557

558 Q: In your experience, is this when you believe there's a high likelihood force
559 was going to be used on Marcus at...

560

561 A: Yes.

562

563 Q: ...this point? Okay. Did you at any point believe now maybe this is the time I
564 should become the incident commander here?

565

566 A: They were doing a great job. There was nothing that they were doing that
567 made me believe that I had to state, I am the incident commander here. It just
568 didn't naturally evolve like that. Now, if I had told Sergeant Sullivan to do
569 something or to do something different, I'm sure he would have. But for me to
570 stand there and say, I am the incident commander, I mean, I don't know that
571 that's a normal thing that field lieutenants do. Again this is - I had been a
572 lieutenant for a week and a half or 2 weeks or something like that. I don't - in
573 my experience, and field lieutenants do not, like, outright say, I am the
574 incident commander, unless it's a - you know, a code 11 or a code 12
575 or something, some lengthy event that is going on for, you know, hours.

576

577 Q: So you believed him to be concealing a weapon on his person.

578

579 A: Yes.

580

581 Q: He was resistant to commands and we had the tactical issues with the house
582 that you described, the elevation. Was there any thoughts of calling out

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583 additional resources, such as the SWAT team at that point?

584

585 A: No. Not at that point.

586

587 Q: Right.

588

589 A: If he had gone back in the house, then with the other people in the house and

590 believing to be armed with a gun, then yes. I would have called out SWAT.

591 But at that point, with him out on the street and us containing him in that cul-

592 de-sac with the resources we had, I mean, that's a typical critical incident that

593 happens all the time.

594

595 Q: Okay - okay. So again, this is before any force is used against him. As Marcus

596 became resistant to these commands, did any contingency plans or plans to

597 take Marcus into custody change at this point before force is used?

598

599 A: That's when there was the discussion of deploying the beanbag and sending

600 the dog if he didn't comply after the beanbag.

601

602 Q: Okay. So there was essentially a plan made to impact him with the beanbag, is

603 that fair to say?

604

605 A: Yes.

606

607 Q: Okay. How was the planning done? Was that with you and the other

608 supervisors, or you with the K-9 unit? Can you walk me through that?

609

610 A: Well...

611

612 Q: Was it - were you involved at all?

613

614 A: The first impact with the beanbag happened fairly quickly upon my arrival.

615 And so after Sergeant Sullivan briefed me on what I said earlier that if he tries

616 to go back in the house or tries to run away, we're going to impact him and

617 then send the dog if need be.

618

619 Q: Mm-hm.

620

621 A: So there was that planning. And I said, "Okay. That seems reasonable." And

622 then around that same time, I got a call from Lieutenant Kellington. He was

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623 the Northern Branch field lieutenant. And so I took a few steps back because I
624 needed to talk to him because he - there was a Code 12 or Code 11 or Code 12
625 - a SWAT call out in the northern branch that he had to attend to. And so he
626 called and asked me that I needed to take care of the rest of the city.

627

628 Q1: Lieutenant, the first question was, for the first beanbag deployment, were you
629 involved in the planning of that?

630

631 A: No.

632

633 Q: Okay. So did you overhear any of the planning for the first beanbag impact?

634

635 A: Other than him telling me, "If he does this, we're going to beanbag him."

636

637 Q: Okay. Fair enough. I'm going to skip this last line of questioning here.

638 According to some BWC footage - and I know you didn't have access to

639 footage since you didn't read any, but I'm just going to let you know what we

640 saw. Officer Nelson, he's one of the K-9 handlers.

641

642 A: Okay.

643

644 Q: He states aloud that Marcus should be impacted with a beanbag shotgun as a
645 test for compliance. Do you remember overhearing this?

646

647 A: No.

648

649 Q: Okay. Do you know what a test for compliance is? Have you ever heard that
650 term?

651

652 A: No.

653

654 Q: Never been trained on the test for compliance that you're aware of in 23 years?

655

656 A: That phrase? No. I know that we beanbag for compliance.

657

658 Q: Okay. But never heard the phrase test for compliance in...

659

660 A: No.

661

662 Q: ...your experience? Okay. Approximately a minute after

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663 Officer Nelson stated, "Hey, let's impact for compliance." He then says, "Let's

664 impact for compliance." Did you overhear him say that?

665

666 A: Is this for the first one?

667

668 Q: Yes.

669

670 A: No.

671

672 Q: No? Okay. Did you actually see Marcus impacted with the beanbag projectile?

673

674 A: No.

675

676 Q: The first time?

677

678 A: No. And if you see me on BWC, I actually flinch because I...

679

680 Q: I know.

681

682 A: Okay.

683

684 Q: Yeah. Okay. So, I guess, after you get off the phone, what's your next memory

685 then?

686

687 A: The beanbag - the first beanbag.

688

689 Q: So - okay. So you're on the phone when that actually happened?

690

691 A: I'm on the phone, I'm putting, I believe - I'm putting the phone away. And I -

692 the sound of it startled me.

693

694 Q: The shot?

695

696 A: The sound of the beanbag.

697

698 Q: The shot? The beanbag shot?

699

700 A: Yes.

701

702 Q: Okay. How far away were you from the team?

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703

704 A: Oh, I think I was just at the back of the car, not - maybe 5 feet.

705

706 Q: Okay. Did you see where the impact hit or the beanbag projectile impacted

707 Marcus?

708

709 A: No.

710

711 Q: Okay. So you did not see at all the first beanbag impact?

712

713 A: I saw the direct aftermath.

714

715 Q: Okay.

716

717 A: Because I heard it and I looked and...

718

719 Q: What's...

720

721 A: ...I saw him...

722

723 Q: I'm sorry to interrupt you. What's the next thing you noticed after hearing the

724 sound of it?

725

726 A: Him crouching down.

727

728 Q: You saw Marcus on the ground?

729

730 A: Yes.

731

732 Q: Okay. So ultimately you never overheard any reason as to why he was

733 impacted with the beanbag at that point?

734

735 A: No.

736

737 Q: Okay - okay. So Marcus is down, from your memories, in a fetal position or

738 down on all fours, something like that?

739

740 A: Yeah. I like to...

741

742 Q: Describe what you remember of Marcus. How he is after he's impacted that

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743 first time.

744

745 A: Like, crouched on all fours.

746

747 Q: Okay. Still in the same general area of the bottom of the stairs?

748

749 A: Well, he had moved from the bottom of the stairs, maybe a couple steps

750 towards the officers, towards the car, still, like, in the driveway. But then

751 when I saw him crouched, he was more towards the retaining wall.

752

753 Q: Okay. At that point, was there any discussion or planning to move up and take

754 Marcus into custody at that point?

755

756 A: At that point, there was discussion on giving him more commands to come to

757 the officers. And so that was the next step, is just continuing to give him more

758 commands to come to them. So now he's been impacted by a beanbag, trying

759 to gain compliance in order for him to surrender, allowing him time to

760 surrender to us.

761

762 Q: Okay. How much time did you think was a reasonable amount of time for him

763 to surrender to the officers?

764

765 A: I mean, I don't have a - like, are you looking for a number of minutes?

766

767 Q: I'll withdraw the question. That's fine. As Marcus is down on all fours, as you

768 describe, has the situation or urgency changed due to his actions that you

769 know of?

770

771 A: Well, I saw where the beanbag, the, like, residual of the beanbag, I saw where

772 it impacted him.

773

774 Q: Mm-hm.

775

776 A: Which was lower torso. And I could tell that, like, he wasn't - he didn't have

777 an open wound or anything, so it was just allowing him time to recognize

778 what had happened and that we're not going away and that he needed to

779 comply. So urgency and I heard the family members, he's yelling that he had

780 been shot and I was worried that the family members were going to start

781 intervening a little bit being upset that it may be thinking that he had been

782 actually shot. And I was worried that people in the house were going to start

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783 coming out of the house which was going to be very challenging for us. So it
784 became a little more urgent in that respect and then also he was acting
785 unreasonable. So I was worried that that's when he was going to escalate into
786 actually grabbing a weapon whether it was on his person under the car behind
787 the retaining wall.

788

789 Q: When you say he was acting unreasonable, what specifically was he doing?
790

791 A: Not complying. All of his family members came out of the house and
792 complied with us. It's unreasonable for him to not comply with all these
793 officers pointing guns at him, telling him he's under arrest. His family
794 members understood. They came out. They complied. Nothing happened to
795 them. Nothing bad happened to them. It was - it's unreasonable for him to not
796 comply with us.

797

798 Q: Okay. So Marcus is down on all fours as we've described. Were there any
799 more commands given to him that you remember?

800

801 A: Just to continue to come to us because we didn't want to come to him.

802

803 Q: Okay. Did the contingency plans or the tactical plans to take him to custody
804 after he'd been impacted and he's now not complying still, did they change it
805 all to your knowledge or did you assist in that?

806

807 A: It was just a discussion that they were going to impact one more time with the
808 - they were going to impact with the beanbag and send the dog.

809

810 Q: Okay. When he's down on all fours could you see the back of his waistband at
811 that point?

812

813 Q1: If you recall.

814

815 A: I don't recall. He turned and was sitting, like, facing us with his knees up.

816

817 Q: Okay. So approximately 6 minutes after he was initially impacted with the
818 beanbag shotgun, he was shot for a second time with that weapon system and
819 the first police service dog was sent. Does that sound about correct to your
820 memory? About 5 or 6 minutes later?

821

822 A: 5 or 6 minutes from what?

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823

824 Q: From the first impact.

825

826 Q1: I'm sorry. What was the question?

827

828 Q: That approximately 5 or 6 minutes later he was shot for a second time and the

829 first police service dog was sent to him. Does that sound correct to your

830 memory?

831

832 A: That seems a little long. But...

833

834 Q: Okay.

835

836 A: ...that could be - it seems a little long to me, but it's hard to estimate...

837

838 Q: Sure.

839

840 A: ...when it's all happening.

841

842 Q: It's fine. So you thought it was actually a shorter amount of time, just from

843 your memory?

844

845 A: Yeah.

846

847 Q: Okay.

848

849 A: It's - that's a hard question. That's a hard question for me to answer.

850

851 Q1: You're just giving him your best estimate, right?

852

853 Q: Yeah.

854

855 Q1: That's fine. You don't have to guess.

856

857 Q: I'm not looking for guess.

858

859 A: Okay. I really don't know.

860

861 Q: Okay.

862

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863 A: That just seems a little long...

864

865 Q: Okay.

866

867 A: ...to me.

868

869 Q: Were you able to see Marcus just prior to or as this beanbag is fired this time?

870

871 A: Was I able to see it impact him?

872

873 Q: Yeah.

874

875 A: Yes.

876

877 Q: Okay. Were you able to see it right before it impacted or right before the

878 officers yelling, firing beanbag? Were you able to see Marcus at that point?

879

880 A: Yes.

881

882 Q: Okay. What was Marcus's resistance level at that point?

883

884 A: He was verbally signaling that he was going to - that he was resisting.

885

886 Q: Okay.

887

888 A: Yelling, "Fuck you", or...

889

890 Q1: His level of resistance?

891

892 A: Active resistant.

893

894 Q: Okay.

895

896 A: Actively resistant.

897

898 Q: Okay. And how was he positioned?

899

900 A: He was sitting with his knees up facing us.

901

902 Q: Okay. And what commands were given prior to that he was not - that he was

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903 resistant to from your recollection?

904

905 A: I don't remember a specific command. I know the K-9 was yelling at him. I

906 don't remember the specific commands.

907

908 Q: Okay. Did you see where the beanbag projectile impacted Marcus on his body

909 on that one?

910

911 A: Yes.

912

913 Q: Where did it impact him?

914

915 A: To the best of my recollection, the right shin.

916

917 Q: Okay. And just to confirm, this is the one where the dog did not actually

918 apprehend him. Is that to the best of your...

919

920 A: Correct. I think it was the right shin.

921

922 Q: Yeah. Okay.

923

924 A: That's what I remember.

925

926 Q: Okay. Did you see that the police dog actually - were you watching as the

927 police dog actually went to engage Marcus? Did you see that?

928

929 A: Yes.

930

931 Q: Okay. Did Marcus attempt to harm or attack the police dog?

932

933 A: I believe he, like, kicked and put his hands up, like this. Like...

934

935 Q: So you're describing, like, a pushing motion?

936

937 A: Like a kicking and a pushing with his hand to try to defend the dog...

938

939 Q: Would...

940

941 A: ...off of him.

942

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943 Q: Would you consider that him trying to assault the dog or attack the dog or
944 were you thinking he was defending himself from the dog or bracing from the
945 dog?

946

947 Q1: If you know.

948

949 A: I wouldn't know what...

950

951 Q: What did you interpret it as?

952

953 A: I don't think I interpreted it as anything. I was more focused on the fact that
954 the dog didn't engage him.

955

956 Q: Okay. So then the dog is either called back or pulled back on a leash to the
957 team, was there any discussions or thoughts of moving up at that point to take
958 Marcus into custody?

959

960 A: No. Sergeant (DiMartin) [Dyemartin] said he was going to do a dog swap.

961

962 Q: Okay.

963

964 A: And he - during the dog swap, I believe that either he or the other K-9 officer
965 was giving commands that he was going to be bit again.

966

967 Q: Okay. What was his - what did Marcus - how was - what was Marcus' reaction
968 to those commands? Did he...

969

970 A: He...

971

972 Q: ...surrender?

973

974 A: ...was yelling again. He was yelling, I think, for family members about the
975 dog, something about the dog. Again, he's - it was almost an inadvertent de-
976 escalation of using a dog and the dog, that's not what we wanted, right? We
977 don't want the dog to fail, but it was kind of an inadvertent de-escalation
978 because he's seeing what's going to happen to him if he does not comply. So
979 now I think that urgency is becoming more because why is he not complying?
980 He's been struck twice now with a beanbag. He knows that we're going to
981 send the dog because we did send the dog. And he's still failing to comply
982 with us which is telling me that he's prompting us to come to him and

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983 why? That's not a reasonable response. So I think it heightens everyone's

984 senses that he kept trying to get us to come to him.

985

986 Q: Okay. So ultimately did the plan to take Marcus in custody after the fail, when

987 the dog failed to engage, did it change or was it amended in any way other

988 than swapping out the dogs?

989

990 A: No.

991

992 Q: Any reason why for that?

993

994 A: Because we felt like it was a good plan as long as the dog engaged.

995

996 Q: Okay. Were you able to see Marcus - as the third beanbag shot was fired and

997 the second PSD was sent to him, did you - were you able to see Marcus at that

998 point?

999

1000 A: Yes.

1001

1002 Q: Okay. Where - how was he positioned? What was he doing at that point?

1003

1004 A: I - he was still positioned on the ground. I think he was kind of still seated on

1005 the ground rocking back and forth, yelling for his family members.

1006

1007 Q: Okay. And do you remember where the beanbag projectile struck Marcus?

1008

1009 A: I believe in his lower torso area.

1010

1011 Q: Okay. And what was his resistance level right before that force was applied

1012 from your memory?

1013

1014 A: Active resisting - active resistance.

1015

1016 Q: And did you see the PSD bite Marcus?

1017

1018 A: Yes.

1019

1020 Q: Okay. Do you remember where on his body it bit him?

1021

1022 A: The left forearm.

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1023

1024 Q: Okay. Were there any lesser controlling force options that were discussed or

1025 could have been utilized to take Marcus into custody from your perspective?

1026

1027 Q1: Than the force we were talking about?

1028

1029 Q: Yes, sir.

1030

1031 A: I'm sorry. Could you say it again?

1032

1033 Q: Were there any other lesser controlling force options that could have been

1034 utilized to take Marcus into custody other than the extended range impact

1035 weapon and police dog apprehension?

1036

1037 A: With the totality of circumstances, of everything that had occurred and that

1038 was occurring, I believe that that was the safest way to take him into custody.

1039

1040 Q: Okay. What happened after he was bit by the PSD?

1041

1042 A: The officers moved up, took him into custody, checked him over, it appeared

1043 as though he just had the one dog bite on the arm as an injury. He was placed

1044 in a patrol vehicle and then we called the remaining people out of the house.

1045

1046 Q: Okay. Was Marcus's race or ethnic heritage a factor in your - or in any of the

1047 decisions made on this incident?

1048

1049 A: No.

1050

1051 Q: Did you witness or overhear any of the officers reference Marcus's race or

1052 ethnic heritage as a reason for any decisions used on this incident?

1053

1054 A: No.

1055

1056 Q: Sergeant Shields, do you have any follow-up questions?

1057

1058 Q1: No.

1059

1060 Q: Mr. Cunningham, do you have any clarification or follow-up questions?

1061

1062 A1: Can we take a quick break?

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1063

1064 Q: Sure.

1065

1066 A1: Thank you.

1067

1068 Q: Okay. We're back on the record after a short, probably like, 3 minute little

1069 break. The last question posed was to Mr Cunningham and sir I asked you if

1070 you had any questions or points of clarification?

1071

1072 A1: Not necessarily questions. I would just ask the lieutenant to further kind of

1073 explain her role at this particular scene. I think she needs to clarify a few

1074 things, please.

1075

1076 A: So my role was to be there as a resource for the officers and the sergeant. I felt

1077 as though when I spoke with the sergeant and I observed what was going on

1078 that they had control over the officers, over the scene, over their plan. They

1079 communicated some contingencies of what was going to happen. I felt

1080 comfortable with that. When he asked for more officers, I got him more

1081 officers. At one point when they were - when the sergeants were

1082 communicating, I was there, I was observing, if - they were doing a great

1083 job. These are seasoned police officers. And if I felt like anything that they

1084 told me or did was violating policy, violating procedure, then I would have

1085 stepped in. I did not feel the need to step in and change anything that they

1086 were doing. And I think you asked me before, "Why did you stay?" Well,

1087 because it's a critical incident evolving and if something were to happen that I

1088 observed was a violation of policy or procedure, then I am there to step in and

1089 rectify that. I didn't feel the need to do that. I felt comfortable with everything

1090 that was going on, and I was part of the conversation of everything that was

1091 going on. And at one point - we didn't discuss this but - and it could be on a

1092 BWC, at one point when they did make the plan to use the beanbag and

1093 deploy the dog, they were conversing back and forth. The beanbag officer was

1094 up with her beanbag shotgun because she still was directing the beanbag at the

1095 suspect. I wanted to make sure that she knew what the plan was. And so I

1096 went over, touched her on the shoulder, "Do you understand what you're

1097 supposed to do?" And she said, "Yes." So I was there actively participating in

1098 it. I don't know that I articulated that very well before, I just did not feel the

1099 need to get on the radio and say, "I am the incident commander." Because I

1100 felt like they were doing a good job.

1101

1102 Q: Okay. Thank you. Anything else?

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1103

1104 A1: No. That'll do it. Thank you.

1105

1106 Q: And, Lieutenant Bisesto, is there anything else you'd like to add that you think
1107 could be helpful for the complaint investigation?

1108

1109 A: No.

1110

1111 Q: Okay. All right. In that case, we have a time of, we'll call it 1357 hours and
1112 that'll conclude the interview.

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CONCLUSIONS:

1. FORCE – EXONERATED

[REDACTED] and [REDACTED] alleged an SDPD officer shot Marcus Evans with a beanbag shotgun.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for felony assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at 6461 Duluth Avenue and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes of negotiating with Marcus, Officer Ashley Bennett shot him with a beanbag shotgun. Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department procedure section 1.04, V, B (July 8, 2020) states:

Force, as defined above, may be used to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall apply a level of force that is reasonable for the situation.

San Diego Police Department procedure section 1.04, V, G (July 8, 2020) states:

An officer's decision to use force is based upon the totality of the circumstances and various factors that pertain to officers and/or subjects. These factors include, but are not limited to, the following:

1. Age;
2. Availability of other options;

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3. Ground fighting
4. Confined spaces
5. Distance between subject(s) and officer(s)
6. Whether the subject is under the influence of alcohol or drugs;
7. Whether the subject has a physical, mental, developmental, or intellectual disability;
8. Prior contacts with the subject or awareness of any propensity for violence;
9. Whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the officer(s);
10. Environmental factors such as location/terrain/lighting conditions;
11. Number of subjects/officers;
12. Nature of offense;
13. Opportunity/Time, provided by subject, to allow for de-escalation;
14. Proximity to weapons;
15. Size;
16. Skill;
17. Strength/endurance;
18. Language barriers;
19. Training and experience of the officer;
20. Whether the subject is armed or perceived to be armed;
21. Crowd control situations; and

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22. Any other exigent circumstances.

San Diego Police Department procedure section 1.04, V, F (July 8, 2020) states:

The use of force by an officer can be viewed as a matrix of force options that can be used in response to a subject's actions and behavior. It is the totality of the circumstances that an officer considers when using force. The matrix is a guide designed to assist officers in understanding how force can fluctuate and can assist officers in documenting the subsequent force used. The force matrix illustrates the relationship between a subject's actions and the officer's response.

San Diego Police Department procedure section 1.04, SDPD Use of Force Matrix:

Active Resistance Behavior ———→ Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.) Canine, Taser, **Extended Range Impact (ERI)** and Impact Weapons may be used as defined in section V.D. of this procedure Impact Weapons –Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence).

San Diego Police Department procedure section 1.04, V, D (July 8, 2020) states:

The use of canines, Tasers, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon.

San Diego Police Department procedure section 1.04, IV, A (July 8, 2020) states:

Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

San Diego Police Department procedure section 1.38, IV, G (May 24, 2022) states:

Kinetic Energy Weapon (KEW) Systems - the KEW Systems consist of a device firing a special projectile designed to gain compliance, overcome resistance, or prevent serious injury or death to suspects, officers and bystanders. The Department currently uses two KEW systems. Both the beanbag shotgun and 40MM single shot launching system shall be classified as "Kinetic Energy Weapon" for identification within Department Procedure 1.04, Use of Force.

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San Diego Police Department procedure section 1.38, IV, C (May 24, 2022) states:

Beanbag shotgun - this KEW is a standard Remington Model 870, 12-gauge shotgun that has been modified with an orange stock and fore-end.

San Diego Police Department procedure section 1.38, IV, E, 1 (May24, 2022) states:

Officers may deploy a KEW on subjects demonstrating assaultive behavior or life-threatening behavior, as defined in Department Procedure 1.04, Use of Force. The KEW may also be used to control an actively resistive subject reasonably believed to possess or have immediate access to a deadly weapon, within the force guidelines of Department Procedure 1.04, Use of Force.

San Diego Police Department procedure section 1.38, IV, E, 7-8 (May 24, 2022) states:

The KEW is intended to assist in gaining compliance from the subject. Multiple shots to the same body part should be avoided. If additional shots are required, they shall be directed to different parts of the body. The subject should be taken into custody as soon as possible after the discharge of the round(s).

KEW systems are limited use weapons. They shall not be used for any other purpose than those listed in section VI, E, 1.

Video footage from officer BWCs and the video posted onto YouTube.com displayed the events leading up to and during this particular use of force incident. These videos showed that once Marcus exited the residence located at [REDACTED] Duluth Avenue, he came down the staircase with his hands raised above his head. Marcus appeared to be wearing only black shorts and he did not appear to possess anything suggesting he was armed. Marcus was ordered by Officer Nelson on several occasions to face away from the officers and walk backward to the officers. Marcus did not follow these commands and became argumentative with Officer Nelson. The officers were mostly lined up behind patrol vehicles, approximately ten yards from Marcus. Marcus generally remained at the bottom of the steps and near a retaining wall which was about as high as his waist. Approximately five minutes later, Officer Nelson told Marcus to turn around and face way from the officers, once more. Marcus turned completely around, again facing the officers. Marcus then walked to the retaining wall and sat down on top of the wall. Officer Nelson was heard saying, "Hey, let's impact for compliance." Moments later, Officer Bennett fired the beanbag shotgun. The projectile struck Marcus in the abdomen, and he went to the ground. Marcus remained on the ground for several minutes.

In Officer Bennett's written report, she wrote, "When officers asked EVANS to keep his hands over his head, he refused and kept bringing his hands down from above his head. EVANS made movements

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towards his waist band. Officers commanded EVANS to face away from officers and walk backwards, but EVANS refused and sat down on the lower step of the residence, approximately 25 feet away from police.” Officer Bennett also wrote, “I aimed at EVANS’S lower right torso area and fired my beanbag as a compliance check after being directed to by a supervisor on-scene. The beanbag round hit EVANS in the lower right torso, as aimed and planned. EVANS dropped to the ground.”

In Officer Nelson’s written report, he described Marcus’ significant criminal history and that he believed Marcus to be armed and dangerous during this incident. Once Marcus was at the bottom of the stairs, he stopped following Officer Nelson’s commands. Officer Nelson wrote, “EVANS stood at the foot of the staircase and began yelling that he did not have to listen to my commands and that he was at his own residence. I attempted to deescalate by asking his name and giving him further details as to why we were at the residence. I told EVANS he was detained pending the investigation, stating we received a radio call of a felony offense including a firearm. EVANS was argumentative and uncooperative, stating he had done nothing wrong.” Officer Nelson described Marcus as displaying symptoms of intoxication and that he believed Marcus was possibly intoxicated. Additionally, Officer Nelson wrote, “EVANS was near a retaining wall and parked vehicle that could easily conceal any weapons from the contact team. If EVANS was allowed to flee out of view or back into the house, I feared he would retrieve the firearm and fire upon our position.” Regarding the initial use of the beanbag shotgun, Officer Nelson wrote, “After multiple attempts to de-escalate with verbal commands and the presence of our contact team, EVANS continued to actively resist arrest while being armed. At approximately 0020 hours, the contact team deployed a KEW [Kinetic Energy Weapon] beanbag round to gain compliance from EVANS.”

In Sergeant Dyemartin’s written report, he documented discovering that Marcus was a gang member, that he had a significant criminal history, and he was the suspect of an offense involving a firearm. Additionally, Sergeant Dyemartin wrote, “I know, based on my training and experience, that people who are members of criminal street gangs will often conceal weapons on their person, around their houses and cars, and on their property to easily retrieve them if needed for protection, to evade arrest, or to commit crimes.” Sergeant Dyemartin wrote that once Marcus exited the residence and walked down the staircase, Marcus was initially compliant. However, Officer Dyemartin wrote, “Evans kept his hands up but refused to continue walking toward the contact team. Evans became argumentative toward any commands given to him. He refused to turn around, show the back of his waistband, and comply with commands to continue walking toward the team to be taken into custody safely. Evans would lean against a wall that was approximately waist-high to him. From where I was standing, I could tell there was room on the opposite side of the wall where a person could store a weapon.” According to Sergeant Dyemartin’s report, Marcus was given verbal commands and canine warnings for approximately 10 minutes before he was initially shot with the beanbag shotgun.

In the statements provided by the witness officers, they all described hearing Canine Unit officers ordering Marcus to surrender and walk to the officers. However, they described Marcus as uncooperative with commands and refusing to surrender. All the witness officers felt it was reasonable to believe that

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Marcus was possessing or had immediate access to a concealed weapon due to the circumstances of the call for service. Officer Castillo and Officer Uch remembered hearing someone, possibly a member of the Canine Unit give Officer Bennett an order to fire the beanbag shotgun the first time Marcus was impacted with the beanbag. Officer Castillo and Officer Esambolchi described Marcus' resistance level as active resistance. Officer Esambolchi stated, *"Based on him [Marcus] not following commands and the words he was saying to us. I don't remember the exact words he was saying. I just remember that the words, I interpreted that as him not wanting to. I interpreted like he didn't want us to take him into custody. And if we did, there might be an altercation."* However, Officer Uch describe Marcus' resistance level as passive resistance. I asked Officer Uch to describe Marcus' resistance level as this use of force was applied. Officer Uch answered, *"I mean, it would be passive resistance because you know, we were not close enough to be active resistance."* Officer Uch confirmed that the goal was to bring Marcus to the officers.

In Officer Bennett's statement, she confirmed that she responded to a call for service on Duluth Avenue. The call for service ended up being an assault with a firearm and the suspect was identified as Marcus Evans. Officer Bennett confirmed that when Marcus exited the residence, he was wearing only shorts but she thought he was concealing a weapon *"lower"* in his waistband. According to Officer Bennett, Marcus was initially cooperative but once at the bottom of the stairs, *"He kept dropping his hands down, and he was kind of reaching around. He came down the stairs initially but then he was pretty much telling us that he wasn't going to follow our commands."* Officer Bennett described this as active resistance.

Officer Bennett stated that before she shot Marcus with the beanbag shotgun, *"I remember him turning but I don't remember him turning completely around, like completely in a circle. Not that I recall."* She then described Marcus as, *"sitting on the ledge."* I asked Officer Bennett why she shot Marcus. She responded, *"I mean, I was following [a] command. So I shot him initially, so the - Sergeant Sullivan, told me, okay, we're going to do a compliance check."* I asked Officer Bennett *"What is a compliance check?"* Officer Bennett answered, *"I don't know."* I asked Officer Bennett, *"Ultimately who's responsible for an officer's use of force, the officer using the force or the supervisor?"* Officer Bennett answered, *"The officer using the force."*

In Officer Nelson's interview, he confirmed that he responded to the call for service on Duluth Avenue in the role of a Canine Unit handler. Additionally, he confirmed that probable cause existed to arrest Marcus for an assault with a firearm. After the officers approached Marcus' residence, they noticed the residence was on an elevated position from the street and there was a small retaining wall in the front. Eventually, multiple residents exited without incident. Once Marcus exited the residence, he was wearing only *"basketball shorts."*

I asked Officer Nelson, *"Did you believe it was reasonable that he was concealing a weapon or had immediate access to weapon?"* Officer Nelson answered, *"He hadn't been pat down. I don't know what was concealed inside his shorts. Or my concern at that point then was the surrounding areas, the*

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retaining wall, what was behind the retaining wall, what was in the wheel well, the vehicle, or anything else that was on that property where he was at." Officer Nelson confirmed that Marcus was initially cooperative with commands, but once he came to the bottom of the stairs, he continually refused commands to turn around and face away from the officers. Officer Nelson confirmed that he was primarily giving Marcus the commands to surrender. Officer Nelson described Marcus as argumentative. This occurred for several minutes. Officer Nelson described Marcus' behavior as active resistance, *"Because he's verbally giving me signals that he's not willing to comply along with his actions."*

Officer Nelson stated that during the use of force incident, he did not remember seeing Marcus completely turn around before he was shot with the beanbag shotgun. However, he remembered Marcus moving to the retaining wall and sitting on the wall.

According to Officer Nelson, he *"suggested we could use the KEW to test compliance."* I asked Officer Nelson, *"What is a test for compliance?"* Officer Nelson answered, *"It's a form of de-escalation, a tactic that we could use. It's a single impact with the intent that one single impact will actually gain compliance through the pain of the impact and ultimately get him to surrender."* I asked Officer Nelson who he was speaking to when he *"suggested"* the test for compliance impact. Officer Nelson responded, *"The entire contact team."*

I asked Officer Nelson to describe Marcus' actions just prior to being impacted with the beanbag shotgun. Officer Nelson answered, *"Still active resistance and had walked over to the retaining wall and sat down on the retaining wall and then lowered his arms towards the chest crossing him."*

In Sergeant Dyemartin's interview, he confirmed that on October 24, 2024, he was a sergeant assigned to the Canine Unit and he responded to the call for service on Duluth Avenue. Once arriving at the location, he spoke with the reporting party and found out that Marcus Evans had pointed a firearm at two women. Additionally, he found that Marcus had an *"extensive criminal history,"* and that Marcus was a known gang member. According to Sergeant Dyemartin, once they decided to attempt to contact Marcus, they formed a contact team which included a beanbag shotgun.

Sergeant Dyemartin witnessed Marcus exit the residence. Marcus was wearing only *"basketball shorts."* Sergeant Dyemartin described Marcus as, *"He had his hands up. He was walking down the staircase. It wasn't until he got about to the sidewalk which was still about, I'd say 20 feet from where we would want him to come to us to be taken into custody safely for us that he stopped following commands."* Sergeant Dyemartin stated that he believed Marcus may have been concealing a weapon somewhere in his shorts. Sergeant Dyemartin also stated, *"At no point in any commands was he's given, did he actually follow. He just said, 'I'm following your commands.' Or 'I'm cooperative.' But he never did. He never turned away from us. He wouldn't do anything. He just stood there with his hands up and occasionally kind of drop them towards his waistband and back up, pacing around, sitting on the retaining wall."* Sergeant

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Dyemartin described Marcus moving towards the retaining wall in front of the residence moments before he was shot with the beanbag shotgun by Officer Bennett.

Sergeant Joshua Dafoe is an SDPD instructor on the use of a beanbag shotgun. According to Sergeant Dafoe, the beanbag shotgun is considered a less lethal force option resource because it is designed to gain compliance in lieu of causing a deadly outcome. Sergeant Dafoe confirmed that officers are trained to utilize a beanbag shotgun in situations when a suspect is displaying life threatening behavior, assaultive behavior, or when the suspect is displaying active resistance and believed to have immediate access to a weapon.

Sergeant Michael Rhoten is an SDPD use of force instructor and is considered a subject matter expert. He analyzed the force used by SDPD officers during this incident. Sergeant Rhoten described Marcus' initial behavior as *"fluctuating between Active Resistance and Passive Resistance."* Sergeant Rhoten opined, *"It is my opinion that Officer Pouchie's discharge of the first round from the beanbag shotgun in response to Evans's active resistance behavior while Officer Pouchie reasonably believed Evans was near a deadly weapon is consistent with what is taught in the San Deigo Regional Police Academy and what is taught in Advanced Officer Training. Officer Pouchie's actions are consistent with what is outlined in the San Diego Police Use of Force Policy and Procedure."*

Ultimately, the video evidence and the officers' statements in the investigation establishes that the officers set up in front of Marcus' residence in order to arrest him for a criminal offense involving domestic violence and a firearm. Once Marcus exited the residence, he was initially compliant. However, once Marcus reached the bottom of the staircase, he disregarded commands to walk to the officers on several occasions. Marcus loitered at the bottom of the staircase and in the driveway of the residence refusing commands, but he generally kept his hands raised above his head. Additionally, Marcus was only wearing shorts and it did not appear he was in possession of a deadly weapon. At one point, Officer Nelson told Marcus he was under arrest. Officer Nelson also commanded Evans to face away from the officers and walk backwards towards the officers. However, Marcus turned in a complete circle and walked away from the officers, eventually sitting on the top of the short retaining wall. Moments later, Officer Bennett fired the beanbag shotgun at Marcus. The less lethal projectile impacted Marcus in the abdomen and he fell to the ground.

The video evidence indicates that the grassy area behind the retaining wall was not visible to the officers on scene. Additionally, Marcus' alleged felony criminal offense involved a firearm. Also, just moments before Officer Bennett impacted Marcus, he was ordered to walk back to the officers, yet he walked to the retaining wall. Marcus displayed active resistance at that point. Once Marcus was seated on top of this wall, his hands were in close proximity to an area where it is reasonable to believe a deadly weapon could have been concealed. SDPD's use of force subject matter expert believed Marcus's behavior *"fluctuated"* between active resistance and passive resistance. After he examined the circumstances surrounding Officer Bennett's initial beanbag shot, he concluded that Officer Bennett's first beanbag shot was,

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“consistent with what is taught in the San Diego Regional Police Academy and what is taught in Advanced Officer Training. Officer Pouchie’s actions are consistent with what is outlined in the San Diego Police Use of Force Policy and Procedure.”

In conclusion, the first time Officer Ashley Bennett shot Marcus Evans with the beanbag shotgun, she fired in response to his active resistance when Marcus moved to a location where it was reasonable to believe that he had access to a concealed deadly weapon. Officer Bennett’s use of this force option conformed to her training and the Department’s use of force procedures.

This allegation is **EXONERATED**.

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2. FORCE – SUSTAINED

[REDACTED] and [REDACTED] alleged an SDPD officer shot Marcus Evans twice more with a beanbag shotgun and an SDPD canine was deployed twice to bite Marcus Evans.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for felony assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at 6461 Duluth Avenue and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes of negotiating with Marcus, Officer Ashley Bennett shot him with a beanbag shotgun. Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to Marcus for an apprehension. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department procedure section 6.16, V, A, 1-3 (November 14, 2017) states:

The canine handler has responsibility for the PSD and its actions. The handler shall exercise control over his/her PSD at all times. Prior to deployment, the handler must consider:

1. The severity of the crime;
2. The immediacy of the threat; and,
3. If the subject is actively resisting arrest (Graham v. Connor).

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San Diego Police Department procedure section 6.16, V, B, 1-6 (November 14, 2017) states:

A police service dog may be deployed for any of the following circumstances, in accordance with Department Procedure 1.04, Use of Force:

1. For the protection and/or safety of the handler, other Department personnel or other persons.
2. To locate, apprehend or control subjects reasonably believed to be assaultive, violent or dangerous.
3. To apprehend fleeing criminal suspects when the canine handler reasonably believes probable cause exists to arrest the person for a felony.
4. To locate and apprehend concealed felony suspects when it would be unsafe for officers to proceed into the area and conduct the search.
5. To control an actively resistive subject reasonably believed to possess or have immediate access to a deadly weapon.
6. To search for evidence, narcotics, explosives, or other contraband.

San Diego Police Department procedure section 1.04, V, B (July 8, 2020) states:

Force, as defined above, may be used to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall apply a level of force that is reasonable for the situation.

San Diego Police Department procedure section 1.04, V, G (July 8, 2020) states:

An officer's decision to use force is based upon the totality of the circumstances and various factors that pertain to officers and/or subjects. These factors include, but are not limited to, the following:

1. Age;
2. Availability of other options;

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3. Ground fighting
4. Confined spaces
5. Distance between subject(s) and officer(s)
6. Whether the subject is under the influence of alcohol or drugs;
7. Whether the subject has a physical, mental, developmental, or intellectual disability;
8. Prior contacts with the subject or awareness of any propensity for violence;
9. Whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the officer(s);
10. Environmental factors such as location/terrain/lighting conditions;
11. Number of subjects/officers;
12. Nature of offense;
13. Opportunity/Time, provided by subject, to allow for de-escalation;
14. Proximity to weapons;
15. Size;
16. Skill;
17. Strength/endurance;
18. Language barriers;
19. Training and experience of the officer;
20. Whether the subject is armed or perceived to be armed;
21. Crowd control situations; and
22. Any other exigent circumstances.

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San Diego Police Department procedure section 1.04, V, F (July 8, 2020) states:

The use of force by an officer can be viewed as a matrix of force options that can be used in response to a subject's actions and behavior. It is the totality of the circumstances that an officer considers when using force. The matrix is a guide designed to assist officers in understanding how force can fluctuate and can assist officers in documenting the subsequent force used. The force matrix illustrates the relationship between a subject's actions and the officer's response.

San Diego Police Department procedure section 1.04, SDPD Use of Force Matrix:

Active Resistance Behavior —→ Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.) Canine, Taser, **Extended Range Impact (ERI)** and Impact Weapons may be used as defined in section V.D. of this procedure Impact Weapons –Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence).

San Diego Police Department procedure section 1.04, V, D (July 8, 2020) states:

The use of canines, Tasers, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon.

San Diego Police Department procedure section 1.04, IV, A (July 8, 2020) states:

Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

San Diego Police Department procedure section 1.04, SDPD Use of Force Matrix:

Passive Resistance Behavior —→ Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength Touch Verbal Control (Orders, explanations, requests, officer's presence)

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San Diego Police Department procedure section 1.04, IV, L (July 8, 2020) states:

Passive Resistance - behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to the officer or another person.

San Diego Police Department procedure section 1.38, IV, G (May 24, 2022) states:

Kinetic Energy Weapon (KEW) Systems - the KEW Systems consist of a device firing a special projectile designed to gain compliance, overcome resistance, or prevent serious injury or death to suspects, officers and bystanders. The Department currently uses two KEW systems. Both the beanbag shotgun and 40MM single shot launching system shall be classified as "Kinetic Energy Weapon" for identification within Department Procedure 1.04, Use of Force.

San Diego Police Department procedure section 1.38, IV, C (May 24, 2022) states:

Beanbag shotgun - this KEW is a standard Remington Model 870, 12-gauge shotgun that has been modified with an orange stock and fore-end.

San Diego Police Department procedure section 1.38, IV, E, 1 (May 24, 2022) states:

Officers may deploy a KEW on subjects demonstrating assaultive behavior or life-threatening behavior, as defined in Department Procedure 1.04, Use of Force. The KEW may also be used to control an actively resistive subject reasonably believed to possess or have immediate access to a deadly weapon, within the force guidelines of Department Procedure 1.04, Use of Force.

San Diego Police Department procedure section 1.38, IV, E, 7-8 (May 24, 2022) states:

The KEW is intended to assist in gaining compliance from the subject. Multiple shots to the same body part should be avoided. If additional shots are required, they shall be directed to different parts of the body. The subject should be taken into custody as soon as possible after the discharge of the round(s).

KEW systems are limited use weapons. They shall not be used for any other purpose than those listed in section VI, E, 1.

Video footage from officer BWCs and the video posted onto YouTube.com displayed the events after Marcus was shot for the first time with the beanbag shotgun. After the first beanbag impact, Marcus went to the ground. Marcus remained on the ground, basically in the fetal position for slightly over six minutes. During this time, Officer Nelson and Sergeant Dyemartin ordered Marcus to come back to the officers. Marcus mostly ignored the commands, eventually sitting on the second step leading up to the

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elevated residence. Officer Nelson told Marcus several times that if he failed to follow commands, a police dog would be sent to bite him. Marcus was seated on the step, facing the officers, and he had his hands up near his head. Marcus basically stated he wanted nothing to do with the police. Moments later, Officer Bennett fired the beanbag shotgun in Marcus' direction, impacting his leg. Officer Nelson immediately gave a command to his Police Service Dog (PSD) and the PSD began running toward Marcus. The PSD could be seen making physical contact with Marcus but not biting or apprehending him. The PSD ran back to Officer Nelson.

At this point, Officer Nelson put his PSD back into his vehicle and Sergeant Dyemartin deployed his PSD. Sergeant Dyemartin again warned Marcus that if he did not surrender, a police dog would be sent. Marcus' behavior and actions did not change as he remained seated on the step, with his hands in plain view. Officer Bennett fired the beanbag shotgun, striking Marcus in the leg and Sergeant Dyemartin sent his PSD. The PSD ran to Marcus and bit his left arm. The officers moved up and took Marcus into custody.

In the witness officer interviews, their description of Marcus' actions before the second and third beanbag shots, and canine apprehensions was generally consistent with the video footage. Yet, they reasoned that Marcus was displaying active resistance because he made statements indicating he might resist arrest. However, Officer Uch stated that Marcus was displaying passive resistance while sitting on the step. All witness officers interviewed believed it was reasonable to believe Marcus was either concealing a deadly weapon or had immediate access to a deadly weapon.

In the subject officer interviews, they all stated it was reasonable to believe Marcus was either concealing a deadly weapon on his person or that he had immediate access to a deadly weapon.

In Officer Bennett's interview, regarding the second time she shot Marcus with the beanbag shotgun, she described Marcus as, *"on the ground."* She believed Marcus was displaying active resistance because he was not following commands. I asked Officer Bennett, *"So when you fire this second shot, he's on the ground, you aim for his shin. What were you trying to accomplish by shooting Marcus with the beanbag shotgun at that point?"* Officer Bennett answered, *"So K-9 had told me, in correspondence with K-9 being deployed, that we fire bean bag. So that's what I was told by K-9. They said fire the bean bag, and I'll send my K-9."* Officer Bennett confirmed that the canine was sent to apprehend Marcus but that the PSD did not engage.

Regarding Officer Bennett's third time shooting Marcus with the beanbag shotgun, she believed Marcus was still displaying active resistance but did not offer further observation. According to Officer Bennett, she remembered Marcus sitting on the retaining wall (possibly confusing her first and third shots because BWC video showed Marcus seated on the ground for her third beanbag shot). At which point, the PSD was sent to Marcus, biting Marcus on the arm.

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In Officer Bennett's written report, she wrote, *"In concurrence with K-9 release, I aimed my beanbag shotgun at EVANS'S left arm in his bicep area and fired another round. The beanbag hit EVANS in his left arm and the K-9 was sent. K-9 did not bite. The initial K-9 was removed, and a secondary K-9 was introduced."*

Regarding the third firing of the beanbag shotgun, Officer Bennett wrote, *"In concurrence with secondary K-9 deployment, I aimed my beanbag shotgun at EVANS'S right shin area and fired another round. The beanbag hit EVANS in his right shin and the secondary K-9 was sent. K-9-bit EVANS left arm."*

In Officer Nelson's interview, he initially described the substantial amount of training required to be a Canine Unit handler. Ultimately, he stated that canines are used to apprehend violent and dangerous felony suspects who are actively resisting.

Regarding his use of the PSD, Officer Nelson stated that Marcus would not follow commands to come back to the officers. After he was shot the first time with the beanbag shotgun, Marcus eventually moved to a seated position on a front step of the residence. Officer Nelson continued to give Marcus commands. Officer Nelson believed Marcus seemed to have started standing up, slightly. Officer Nelson stated, *"Well, just before that, he actually made a movement like he was going to stand up. He, like, pushes his legs up. And his butt comes up off the ground which to me was a sign that, okay. Is he going to stand up and flee or stand up and go and retrieve a weapon."* When asked why he deployed his PSD to apprehend Marcus, Officer Nelson stated, *"I deployed my dog the first time, it's still unsafe to move up to his position. He was still actively resisting. We still had the unknown of the retaining wall of the vehicle while he was in the house."* Officer Nelson confirmed his PSD did not apprehend Marcus although the PSD may have slightly bit him.

I asked Officer Nelson about Sergeant Dyemartin's PSD deployment and if anything had changed regarding Marcus' behavior. Officer Nelson stated, *"No, it's still active resistance."* Regarding the utilization of a PSD to apprehend Marcus, Officer Nelson stated, *"I believe that the PSD was the most effective tool that we could have used for that situation. Based on the distance that we were at from him, based on the level of crime, the actions of him, it was the totality of circumstances. I believe we used the correct tools."*

In Officer Nelson's written report, he wrote, *"A plan was established to utilize a second beanbag KEW round in conjunction with my PSD to apprehend EVANS. I deployed my PSD on his bite command for the following reasons:*

SEVERITY OF THE CRIME: There was probable cause to arrest EVANS for felony assault with a deadly weapon, firearm, against two people.

IMMEDIACY OF THE THREAT: EVANS was believed to be armed or near a firearm. EVANS was wanted for a violent felony and refused to comply while outside of the residence. If allowed to

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flee or return to the residence, EVANS could fire upon officers, occupants of the residence, or other citizens that were gathering in the neighborhood due to the large police presence. It was determined EVANS had a domestic relationship to one of the victims, causing further exigency to arrest EVANS to prevent further domestic violence against the victim.

ACTIVE RESISTANCE: EVANS refused to follow verbal commands for ten minutes, remaining at the foot of the residence. EVANS refused to walk back to officers and away from any potential concealed weapons. EVANS had already been impacted with a KEW round and refused to surrender."

Regarding the second beanbag shot and his PSD deployment, Officer Nelson wrote, "Assisting officers deployed a second beanbag KEW round to distract EVANS while my PSD was sent on his bite command. This was done specifically to give the dog the opportunity to reach EVANS before a weapon could be pulled, possibly causing the injury or death of my PSD. EVANS was impacted at the same time I gave the bite command. EVANS had his hands in front of him, however remained defiant. As my PSD approached EVANS, he pushed his left forearm out to fend off my PSD. My PSD engaged EVANS on his left forearm. For reasons unknown, my PSD failed to remain engaged with EVANS."

In Sergeant Dyemartin's interview, he also initially described the training and qualifications required to become a member of the Canine Unit. Additionally, he confirmed that as he arrived at the call for service at [REDACTED] Duluth Avenue, he learned Marcus had allegedly pointed a firearm at two women. Additionally, he discovered, "Records checking of Marcus Evans showed he had a extensive criminal history, violent crimes including robberies, other crimes of violence. He was also a known street gang member for, I believe, the Skyline Pirate [Piru] Street Gang. I got to see a previous booking photo of him."

Sergeant Dyemartin went on to describe believing it was possible Marcus was concealing a weapon somewhere in his shorts or on the property. According to Sergeant Dyemartin, Marcus would not follow commands even after he had been shot the first time with the beanbag shotgun. Sergeant Dyemartin stated, "He sat back up. He was more engaging with us. And when I say engaging, I'm not saying like a good open dialog where we're trying to - we're getting into a resolution. He was again, telling us that he wasn't going to comply with us or demanding to know our names or telling us to come to him, kind of behavior." Sergeant Dyemartin believed this to be active resistance. Sergeant Dyemartin confirmed that Marcus was then shot with the beanbag shot gun and the first PSD was sent to apprehend Marcus but the dog failed.

I asked Sergeant Dyemartin, "So the dog comes back to the officers. Was there any consideration to move up and take Marcus into custody at point?" Sergeant Dyemartin answered, "No. Nothing's changed." Prior the third beanbag shot and the second PSD deployment, I asked Sergeant Dyemartin, "What was Marcus doing as this beanbag and - or is fired to impact him for - the third beanbag?" Sergeant Dyemartin answered, "I believe he's seated at this time. What he's actually doing when they shot

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the beanbag, I don't know. I was kind of focused between my dog and him.” I then asked Sergeant Dyemartin, “When you let the dog go to apprehend him, what was Marcus doing at that point?” Sergeant Dyemartin answered, “He was still actively resisting. I gave him a bunch of K-9 warnings. Again, I tried to impress on him that this was a different dog and that this dog was definitely - would bite him if – you know, not like the previous dog. I asked him if he was going to comply with me, He said ‘No.’ And his hands were moving around, he was - generally keeping them in the same areas. It's hard to describe, he was kind of seated down with his - man, I don't know. I wouldn't say his hands above his waist but in the position he was sitting in, his hands were showing towards me. But he kept kind of moving them from side to side or areas, how do I describe it? Like from left to right or things like that. I couldn't tell if he's reaching towards the retaining wall or if he's - what he's doing really.” Sergeant Dyemartin confirmed that his PSD bit Marcus and he was taken into custody.

In Sergeant Dyemartin's written report, he wrote, “It was apparent Evans was not going to cooperate with us even after being shot with a beanbag shotgun round. I discussed with Lt Bisesto #5797 and A/Sgt Sullivan #6455 that using the PSD in conjunction with another beanbag shotgun round was the safest way to take Evans into custody. This combination of less lethal force would give the CRT the safest approach to take Evans into custody as it would limit his movements and keep him distracted after we left our position of safety.”

Regarding the release of his canine to apprehend Marcus, Sergeant Dyemartin wrote:

“Severity of the crime:

Evans pointed a firearm at two females after they tried to intervene when he was hitting his ex-girlfriend and preventing her from leaving his house. The females stated Evans ‘racked the slide’ and ‘cocked the hammer’ while he was pointing the firearm at them. The females were in such fear of being shot that they left the friend who came to help with Evans while they fled for their own safety and called the police.

Immediacy of the Threat:

Evans was believed to be concealing a firearm or to have access to one that was placed near his location. There were several places near Evans where a firearm or other dangerous weapon could be concealed from view by the CRT. Evans was next to a parked car in the driveway and a retaining wall where weapons could have easily been concealed. Based on Evans' lack of compliance I believed he was trying to bait officers into leaving a position of safety and approaching him so he may ambush them.

Several other occupants were also known to be inside the house. At the time, it was unknown who those occupants were or what level of cooperation they would provide. The house is elevated from

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the street where the officers were located. This elevated position would give someone an advantage to easily ambush the CRT once they left their position of safety.

Evans is a known member of a criminal street gang, and he has a criminal history of violent crime. Violent criminals and street gang members will often attack officers in order to escape or to receive recognition and clout from other gang members.

Active Resistance:

Evans refused to follow verbal commands and ignored canine warnings for more than ten minutes, regardless of force already being used against him. During this contact, Evans would more often than not do the opposite of the commands issued to him by officers."

Concluding his use of force on Marcus, Sergeant Dyemartine wrote, "PSD Seff bit and held on to Evans' left forearm. Almost immediately, Evans laid his body flat on the ground, lying on his stomach with his arms out to the side. The CRT approached Evans, and I gained control of the PSD. Once I had control of the PSD and I could see officers had control of Evans' hands so he could not retrieve a weapon, I removed PSD from the bite. The total time on the bite was approximately 38 seconds."

According to Lieutenant Bisesto, just before Marcus was shot for the second time with the beanbag, "He was sitting with his knees up facing us" and "He was verbally signaling that he was going to - that he was resisting. Yelling, 'Fuck you.'" The PSD was sent to apprehend Marcus but it did not engage.

Regarding the third beanbag shot and the second canine deployment, Lieutenant Bisesto described Marcus as, "he was still positioned on the ground. I think he was kind of still seated on the ground rocking back and forth, yelling for his family members."

Sergeant Michael Rhoten is an SDPD use of force instructor and is considered a subject matter expert. Sergeant Rhoten analyzed the second and third occurrences of Officer Bennett impacting Marcus with the beanbag shotgun. Sergeant Rhoten wrote, "It is my opinion that Officer Pouchie believed that shooting Evans with the beanbag shotgun a second and third time was part of a known/taught tactic. She was acting under the order/directions of supervisors and senior officers. It does not appear she recognized she was responsible for her own use of force, despite the orders from supervisors and senior officers. This was evident in both her report and Internal Affairs interview where she stated she shot Evans with the beanbag because she was told to do so."

Sergeant Rhoten also analyzed Officer Nelson's and Sergeant Dyemartin's deployments of the PSD to apprehend Marcus. Addressing both PSD deployments to apprehend Marcus, Sergeant Rhoten wrote, "It is my opinion that Officer Nelson's and Sgt. Dyemartin's deployments of their PSD to apprehend Evans were not within the SDPD DP 1.04: Use of Force DP: [and]6.16 Police Service Dog. The deployments of

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the PSD were not in accordance with San Diego Regional Academy or Advanced Officer Training teachings."

Considering the video evidence and the officers' statements, it was evident that Marcus was not complying with the officers' commands during this incident. However, the way Marcus was clothed does not make it reasonable to believe he was concealing a weapon on his person. After the first time Marcus was impacted by the beanbag shotgun (as discussed in the first allegation), Marcus went to the ground and remained in that position for over six minutes, eventually sitting up. During these six minutes, there is no evidence to suggest he attempted to access a weapon or that he signaled any intent that he would violently resist arrest. After the six minutes, and once he sat back up, Marcus was ordered back to the officers. However, he disregarded the commands and remained seated on the step. While seated, Marcus did not make threats to physically resist arrest and he made no furtive movements indicative of attempting to access a concealed weapon. At this point, Marcus displayed passive resistance. This is confirmed by the use of force expert opinion.

Also, it was at this point that Officer Bennett fired the second beanbag round striking Marcus and Officer Nelson deployed his PSD to apprehend Marcus. The PSD failed to apprehend Marcus. However, the use of these resources and force options did not conform to guidelines outlined in the Department's Procedures. At a minimum, the threshold required for the use of a PSD and beanbag shotgun is that a subject was displaying active resistance and there is a reasonable belief that the subject has access to a weapon.

After Officer Nelson's PSD failed to apprehend Marcus, Sergeant Dyemartin retrieved his PSD. Marcus' behavior did not change. Marcus told Sergeant Dyemartin he was not going to cooperate, he remained seated on the step, and he kept his hands in a position indicative that he was not going to attack the officers or the public. Again, Marcus displayed passive resistance. This is also confirmed by the use of force expert opinion.

It was at this point, Officer Bennett fired a third beanbag round striking Marcus, and Sergeant Dyemartin deployed his PSD to apprehend Marcus. This time, the PSD bit Marcus' left arm and he was eventually taken into custody. However, the use of these resources and force options did not conform to guidelines outlined in the Department's Procedures. At a minimum, the threshold required for the use of a PSD and a beanbag shotgun is that a subject was displaying active resistance and there is a reasonable belief that the subject has access to a weapon.

In conclusion, [REDACTED] and [REDACTED] alleged an SDPD officer shot Marcus Evans twice more with a beanbag shotgun and an SDPD canine was deployed twice to bite Marcus Evans. The evidence, statements, and use of force expert opinion demonstrate that when Officer Bennett, Officer Nelson, and Sergeant Dyemartin utilized

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these force options, they did not conform to Department Procedures and were not in accordance with training performed at the San Diego Regional Academy or Advanced Officer Training teachings.

This allegation is **SUSTAINED**.

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3. DISCRIMINATION – NOT SUSTAINED

[REDACTED] and [REDACTED] alleged SDPD officers used force used on Marcus Evans because of his race/ethnic heritage.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at 6461 Duluth Avenue and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes of negotiating with Marcus, Officer Ashley Bennett shot him with a beanbag shotgun. Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to Marcus for an apprehension. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department Policy Manual section 9.31 (revised February 19, 2020) states:

The Department does not tolerate bias based policing and requires all members to adhere to courtesy expectations described in Department Policy 9.20. Bias-based policing occurs when law enforcement inappropriately considers factors such as race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics in deciding with whom and how to intervene in an enforcement capacity.

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The Department's commitment to non-bias-based policing includes providing all members with ongoing training related to biases, including implicit, overt, and bias by proxy, and all members are expected to understand their negative impacts on policing.

Non bias-based policing requires officers conducting investigative detentions, traffic stops, arrests, searches, and seizures to comply with standards of reasonable suspicion and probable cause in accordance with United States and California constitutional standards and Department procedures. Officers shall clearly document the specific facts and circumstances they relied upon in performing these actions.

This documentation shall, in part, be completed by officers as required by the Racial and Identity Profiling Act of 2015, which requires data collection related to stops, as well as explanatory narratives for the stop and any subsequent searches. Inspections, as detailed by Department policies, procedures, and training bulletins, shall be conducted by supervisors to review stop data collection compliance. The review of digital evidence from body-worn cameras will be guided by Department Procedure 1.49. If deficiencies are found, supervisors shall take appropriate action. The Department will conduct regular internal reviews of stop data collected, and work collaboratively with external experts to identify trends, unexplained disparities, and to develop changes to Department operations as necessary to maintain equity in policing.

Members shall not base any enforcement action, in whole or in part, on race, color, ethnicity, religion, national origin, age, disability, gender (to include gender identity and gender expression), lifestyle, sexual orientation, or similar personal characteristics, while conducting any law enforcement activity, including stops and detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group. Members seeking one or more specific persons who have been identified or described in part by their race, color, ethnicity, religion, national origin, age, disability, gender identity, gender expression, or sexual orientation may rely, in part, on the specified identifier or description only in combination with other appropriate identifying factors and may not give the specified identifier or description undue weight.

Every effort shall be made by all members to prevent and report instances of discrimination or bias by fellow members using established Department complaint procedures. Those who engage in, ignore, or condone discrimination or bias shall be subject to discipline in accordance with all applicable statutes, regulations, and Department procedures. Members reporting instances of discrimination shall not be retaliated against.

This policy shall be readily available online, and upon request at all Front Counters.

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In [REDACTED] interview, he stated *"I believe he [Marcus] was shot because he was African American."* [REDACTED] justified this allegation by stating that this type of excessive force is not used *"indiscriminately,"* and the use of force seemed, *"punitive."* [REDACTED] also referenced an instance when an SDPD Sergeant stated that dogs only like to bite *"dark meat."* [REDACTED] used this instance as a *"climate in the Department that allows that type of behavior."*

In [REDACTED] interview, she accused SDPD of having a history of racism and believed that PSDs are *"so easily released on black people"* as she cited an SDPD Sergeant who stated police dogs like dark meat. [REDACTED] stated, *"The use of force on Marcus Evans was based on biases that Sergeant Allan Dyemartin is known to have. Why do I say that, because he has a disciplinary record that shows that."*

In [REDACTED] interview, she stated that she believed Marcus Evans' race was a factor in the decision to use the police service dog and she believed this by referencing the time when an SDPD officer stated police dogs like dark meat. [REDACTED] stated that SDPD has a systemic racism problem. According to [REDACTED] Marcus Evans was known to Southeastern Division officers, therefore they acted out of policy due to his race. [REDACTED] stated, *"They knew they were going to a Black man's house. They didn't know what was going to occur but they were quick to pull the trigger when there should have been a deep breath and a conversation, and de-escalation. Like I've said, it was all too quick."*

In [REDACTED] interview, she also alleged that this use of force incident had to do with discriminatory practices by SDPD towards people of color. [REDACTED] cited statistical data to back her claim.

In the witness officers' interviews, I asked all of them if they witnessed or overheard any references to Marcus' race or ethnic heritage as a reason for the use of force. All the witness officers answered, *"No."*

I asked Officer Bennett in her interview, *"Was Marcus' race or ethnic heritage a factor in your decision to use force on him?"* I also asked Officer Bennett, *"Did you overhear any of the officers or supervisors on scene reference Marcus' race or ethnic heritage as a reason for the use of force on him?"* Officer Bennett answered, *"No"* to both questions.

I asked Officer Nelson in his interview, *"Was Marcus' race or ethnic heritage a factor in your decision to use force on him?"* Officer Nelson answered, *"No."* I also asked Officer Nelson, *"Did you witness or overhear any of the officers or the incident commander reference Marcus' race or ethnic heritage as part of the reason for the use of force?"* Officer Nelson answered, *"No."*

I asked Sergeant Dyemartin in his interview, *"Was Marcus's race or ethnic heritage a factor in your decision to use force on him?"* Sergeant Dyemartin answered, *"No."* I also asked Sergeant Dyemartin, *"Did you witness or overhear any of the officers or the incident commander reference Marcus's race or ethnic heritage as a part of the reason for the use of force?"* Sergeant Dyemartin answered, *"No."*

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I asked Acting Sergeant Sullivan, *"Was Marcus's race or ethnic heritage a factor in any of the decisions you made on this incident?"* Acting Sergeant Sullivan answered, "No." I also asked Acting Sergeant Sullivan, *"Did you witness or overhear any of the officers reference Marcus' race or ethnic heritage as a part of the reason for their decisions in this incident?"* Acting Sergeant Sullivan answered, "No."

I asked Lieutenant Bisesto, *"Was Marcus's race or ethnic heritage a factor in your or in any of the decisions made on this incident?"* Lieutenant Bisesto answered, "No." I also asked Lieutenant Bisesto, *"Did you witness or overhear any of the officers reference Marcus's race or ethnic heritage as a reason for any decisions used on this incident?"* Lieutenant Bisesto answered, "No."

Video footage (BWC and YouTube.com) of the incident showed before the officers contacted Marcus, as the officers contacted Marcus, and after Marcus was taken into custody. At no point in the video footage did any officers on scene, particularly the officers using force (or the supervisors) speak of Marcus' race as the rationale for their decision-making purposes.

What is clear from the officers' written reports and the video footage, is that Marcus was not targeted for enforcement due to his race/ethnic heritage. Marcus was named as the perpetrator by the victims of the domestic violence battery and felony assault. The officers had the legal authority to arrest him for those criminal offenses.

In conclusion, the complainants have alleged that the use of force on Marcus occurred at least in part due to his race or ethnic heritage. As proof of this allegation, they have cited an instance of an SDPD officer (who was not involved in this incident) stating that PSDs like to bite *"dark meat,"* historical data (without context) of perceived disparities in the application of force, and the fact that Marcus is Black and the officers were not. There is no direct evidence or statements discovered in the investigation which support this allegation. All SDPD officers questioned about the incident verified that Marcus' race was not discussed nor considered during the decision making process. Absent any further evidence, I am unable to prove or disprove the allegation that Marcus' race/ethnic heritage was inappropriately factored in the decision to use force.

This allegation is **NOT SUSTAINED**.

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4. SEARCH – EXONERATED

██████████ and ██████████ alleged Officer Javier Flores #1041 searched his residence.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at ██████████ Duluth Avenue and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes negotiating with Marcus, Officer Ashley Bennett shot him with a beanbag shotgun. Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to Marcus for an apprehension. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

After Marcus was taken into custody, officers conducted a protective sweep of the residence. Subsequent to the safety sweep, Officer Flores escorted ██████████ inside the residence so ██████████ could resume his ██████████ treatments. Officer Flores searched the sitting area of ██████████ living room.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

United States Constitution, Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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San Diego Police Department Procedure section 4.01, IV, 5, a-b states:

Consensual Searches

a. Absent a search warrant, officers may conduct a search of a person or a person's property under limited circumstances. This includes incidents when a subject gives their consent for a search.

b. Consent may be express or implied.

(1) Express Consent: When a person responds in the affirmative to an officer's request for permission to search, specifically any word(s) that reasonably indicates the person is agreeing to the specific request. Express consent may be verbal or written.

(2) Implied Consent: When a person's actions or responses effectively communicate permission to search; for example an individual handing an officer his or her car keys after the officer requests to search the vehicle. A failure to object to a search or a request to search does not constitute implied consent.

(3) Consensual searches shall be conducted within the following legal parameters. Failure to adhere to these parameters may cause negative impacts in criminal or civil cases:

(a) Express or implied consent is given by the subject;

(b) Consent is freely and voluntarily given by the subject;

(c) The search shall not exceed the scope of consent given by the subject;

(d) The search is not unduly intensive or intrusive;

(i.) For example, consent to search does not authorize officers to destroy or damage the property or location during the search.

(e) The search is not unreasonable in its duration.

(4) When verbal consent is obtained, the entire interaction shall be captured on BWC.

In [REDACTED] interview, she mentioned that the Evans' household was searched by the police on two occasions. She called the first search, the "safety sweep" and she believed this search to be permissible. However, she believed that the second search was unlawful. I probed [REDACTED] as to the details and

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circumstances regarding this second search. [REDACTED] could not provide information regarding the second search and told me she learned about it after speaking with Marcus' uncle, [REDACTED]. [REDACTED] stated that [REDACTED] would have the details of this second search and that she would attempt to place him in touch with me.

In [REDACTED] interview, I asked him if he had any complaints regarding a search of his residence (as described by [REDACTED]). [REDACTED] stated that an officer escorted him into his residence so he could use his [REDACTED] machine. The officer searched his living room without his consent. [REDACTED] stated that he did not remember giving anyone consent to search the area.

BWC footage recorded by Officer Javier Flores showed [REDACTED] and Officer Flores enter his residence several minutes after Marcus had been taken into custody. Once they entered the living room area of the residence (which contained the [REDACTED] machine) Officer Flores asked [REDACTED] *"Let me just check over there, right there, okay?"* Officer Flores pointed towards the seating area of the couch while making this statement. [REDACTED] answered, *"Go ahead."* Officer Flores moved around the pillows, blankets, and other miscellaneous items located on and near the couch. Officer Flores search of that area last approximately 20 seconds.

In Officer Flores interview, he confirmed that he searched the couch area of [REDACTED] residence. I asked Officer Flores why he conducted the search. Officer Flores answered, *"Just the nature of the call, there was a weapon involved. There was no weapon at the time found yet, so there was still a possibility that it was inside the residence. Just wanted to make sure where he was sitting, it was going to be safe."* I asked Officer Flores if he asked for [REDACTED] consent to search that area. Officer Flores answered, *"I did."* I asked Officer Flores if [REDACTED] gave him permission for this search. Officer Flores responded, *"He Did."*

In conclusion, [REDACTED] and [REDACTED] alleged that an SDPD officer searched his residence. The video evidence established that this search in fact, occurred and was conducted by Officer Flores. The video footage and Officer Flores' statement demonstrate that this search was for a legitimate purpose, limited in scope, a limited intrusion, and consented to by [REDACTED]. Officer Flores' search was conducted within the parameters of the Department's procedure. Additionally, [REDACTED] waived his Fourth Amendment rights of the United States Constitution, consenting to this search.

This allegation is **EXONERATED**.

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5. TRUTHFULNESS – NOT SUSTAINED

██████████ alleged SDPD officers authored false reports documenting this incident.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for felony assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at ██████████ and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes negotiating with Marcus, Officer Ashley Bennett shot him with a beanbag shotgun. Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to Marcus for an apprehension. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department Policy Manual section 9.29 states in part:

Members shall be truthful in all matters relating to their duties.

San Diego Police Department Procedure section 6.04, III, B, 4, (dated August 21, 2024) states:

Making a false report, knowing the report to be false, is also cause for disciplinary action.

In ██████████ interview, she stated that she believes the officers were untruthful in their written reports. Her reasoning for this allegation was that she believes SDPD officers regularly write reports that do not match the events that occurred on their BWCs.

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In Officer Bennett's written report, she wrote that Marcus was uncooperative with commands and refused to show his entire waistband. However, the video of the incident on YouTube showed Marcus turn completely around displaying his entire waistline. Yet, Officer Bennett's BWC footage does not depict Marcus' actions due to the way she was positioned.

In Officer Bennett's interview, I asked her if she remembered seeing Marcus show officers the back of his waistline. Officer Bennett answered, *"I remember him turning but I don't remember him turning completely around, like completely in a circle."* In the way Officer Bennett was positioned during this incident, I was unable to determine if she saw any, a portion, or the entirety of Marcus' actions.

When comparing these written reports to the officers' BWC footage, there was no information which would indicate that the reports were dishonestly authored or that the information presented in the reports was fabricated.

In conclusion, [REDACTED] alleged that the SDPD officers in this incident authored untruthful reports. Her rationale for this allegation was that she believed SDPD officers commonly author reports with fabricated or false information. However, the evidence in this investigation is inconclusive to determine if Officer Bennett or any other officer presented untruthful information in their written reports.

This allegation is **NOT SUSTAINED**.

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6. PERFORMANCE OF DUTY – SUSTAINED

██████████ alleged that Lieutenant Meghan Bisesto, Sergeant Allan Dyemartin, and Acting Sergeant John Sullivan failed in their duty to properly manage the critical incident.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol units and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at ██████████ and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, and a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes of negotiating with Marcus, Officer Ashley Bennett shot him with an Extended Range Impact Weapon (the beanbag shotgun). Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to Marcus for an apprehension. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department Policy Manual section 9.15 (Revised January 26, 2004) states:

Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by, but is not limited to, a lack of knowledge of the application of laws required to be enforced, an unwillingness or inability to perform assigned tasks, or the failure to conform to work standards established for the member's rank, grade or position.

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Officers shall not fail to take appropriate action on the occasion of a crime disorder or other condition deserving police attention or be absent without leave or be unnecessarily absent from their assigned area during a tour of duty.

The following will be considered prima facie evidence of unsatisfactory performance for all members: repeated poor performance evaluations or a written record of repeated infractions of the Department's policies, procedures, directives or orders.

The City of San Diego Employee Performance Plan states:

Classification: Police Lieutenant

FUNCTION: SUPERVISION AND LEADERSHIP SKILLS

Demonstrates the ability to manage incidents by:

- being available and responding appropriately;
- establishing control and communication;
- using sound tactics;
- demonstrating an ability to gather intelligence, plan and organize;
- appropriately using available resources;
- attaining results through the direction of subordinates;
- directing incidents through to logical conclusions.

The City of San Diego Employee Performance Plan states:

Classification: Police Sergeant

FUNCTION: SUPERVISION AND LEADERSHIP SKILLS

Demonstrates the ability to manage incidents by:

- being available and responding appropriately;
- establishing command, control and communication;
- using sound tactics;
- demonstrating an ability to gather intelligence, plan and organize;
- appropriately using available resources;
- attaining results through the direction of subordinates;
- directing incidents through to logical conclusions.

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The City of San Diego Employee Performance Plan states:

FUNCTION: CANINE UNIT SERGEANT STANDARDS

Maintains the hygiene and cleanliness of kennel, vehicle and related canine equipment in compliance with the Canine Unit Operations Manual.

Grooms and cleans the assigned dog as needed.

Demonstrates knowledge of health-related problems of the assigned animal and addresses issues when noted or pointed out.

Demonstrates an ability to handle, control and deploy the dog in a safe manner within policy. Participates in all aspects of training and exhibits an understanding of training techniques.

In reviewing the BWC footage, the officers' reports, and their interviews, the supervisory element for SDPD's response and actions in this incident can be identified as Lieutenant Meghan Bisesto (the field lieutenant), Sergeant Alan Dyemartin (a Canine Unit supervisor), and Acting Sergeant John Sullivan (the patrol area supervisor). Acting Sergeant Sullivan was responsible for Officer Bennett and the patrol response to the incident. Sergeant Dyemartin was responsible for Officer Nelson, and the Canine Unit's tactics and decisions for the incident. Finally, Lieutenant Bisesto is responsible for all SDPD personnel at this scene, as the highest-ranking member, with ultimate authority for decision making.

As discussed in a previous allegation, the shooting of Marcus Evan with a beanbag shotgun (on the second and third occurrence), the first attempted Canine apprehension, and the second Canine apprehension (resulting in a dog bite) were found not to conform to Department Procedures and were not in accordance with training performed at the San Diego Regional Academy or Advanced Officer Training.

In Officer Nelson's BWC footage (the 8:31 mark) showing the officers preparation for their approach to [REDACTED] Duluth Avenue, Sergeant Dyemartin and Officer Nelson are discussing, planning, and implementing the vast majority of the tactical response to this call for service. Additionally, they were influential in the decisions that were ultimately made. For example, when determining if there is a criminal violation to be enforced, Sergeant Dyemartin stated, *"To me, he points the firearm at her, its 245. You don't need her cooperation for a felony crime, right? You have a witness that watched the 245 occur, we're still good. We don't need her cooperation."* Officer Nelson then stated, *"So, call it a 245."* Later, Sergeant Dyemartin seemingly made the decision to utilize a Critical Response Team to approach the residence. Sergeant Dyemartin can be heard speaking about the contact team, *"So, we need someone to be lethal, the dog, less lethal, me and Sullivan can help with hands."*

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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In reviewing Sergeant Dyemartin's BWC footage (19:10 mark) of the minutes leading up to the aforementioned use of force, Sergeant Dyemartin continually provided input to Lieutenant Bisesto and Acting Sergeant Sullivan. Sergeant Dyemartin states, *"He can get bit at this point. He can get the dog sent on him for sure."* Acting Sergeant Sullivan agreed with Sergeant Dyemartin. Sergeant Dyemartin also stated, *"It's up to how long you want to do this with him. I don't think we're going to get any different reaction out of him. I just think he's going to just keep doing this."* Approximately one minute later, Acting Sergeant Sullivan asked Sergeant Dyemartin, *"Are we going to impact him?"* Sergeant Dyemartin responded, *"Yeah, impact him then send."* Sergeant Dyemartin told Officer Bennett that she needed to shoot Marcus with the beanbag shotgun before they sent the PSD (on the first occurrence).

In the vast majority of the witness officer interviews, Officer Bennett's interview, and Officer Nelson's interview, they identified Acting Sergeant Sullivan as the incident commander. Although at least one of the witness officers believed the Field Lieutenant (Lieutenant Bisesto) to be the incident commander.

In Sergeant Dyemartin's interview, he confirmed he is a sergeant assigned to the Canine Unit. I asked him if as a sergeant, would he have been considered the incident commander. Sergeant Dyemartin stated he was not the incident commander and explained, *"the incident is under the responsibility of the patrol sergeant for that service area of that division. They would be deemed the incident's manner [commander] until they're relieved by someone of higher rank, whether a field lieutenant or area - station service area lieutenant or a captain that work on scene, someone of that nature."* Sergeant Dyemartin identified Acting Sergeant Sullivan as the incident commander. I asked Sergeant Dyemartin to explain how the personnel came up with tactical plans in this incident. Sergeant Dyemartin answered, *"Usually, it's a collaboration between anyone who's considered more or less like an expert on there. It typically would be the supervisors, myself, and if there's a SWAT sergeant there or definitely the incident commander patrol sergeant would discuss these different tactics. Sometimes we'll include other people, if there's a personnel from SWAT that might have a good idea or anyone who really would add to the solution to this incident."*

In Acting Sergeant Sullivan's interview, he identified himself as the incident commander stating, *"Initially I was."* However, later in the interview, Acting Sergeant Sullivan stated he was no longer the incident commander when the decision was made to utilize a canine to apprehend Marcus. Acting Sergeant Sullivan stated, *"Sergeant Dyemartin he was kind of quarterbacking all the plans regarding the dog, the use of the PSD. I do - I did overhear that the decision was made to utilize the dog and in conjunction with the bean bag shotgun. I can't confidently say what the suspect was doing right before that happened."* Acting Sergeant Sullivan confirmed that at this point, he believed Lieutenant Bisesto was the incident commander. Acting Sergeant Sullivan also stated, *"I believe in the presence of the field lieutenant. Again, I don't remember exactly the positions of everybody to utilize a dog in effecting the arrest. But at this point I'm - kind of my role is communicating with patrol to make sure all the officers are on board and the communication is clear and all the expectations are in line to know what's going to happen. So that's kind of where I'm at with that."*

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In Lieutenant Bisesto's interview, she confirmed that she was on duty as the "Southern Branch Field Lieutenant" on October 24, 2024, and that she responded to [REDACTED] Duluth Avenue. Lieutenant Bisesto described responding to the location because, *"It was an evolving critical incident of a wanted felony suspect for assault with a deadly weapon. I was listening to the radio call and just listening to it develop."* According to Lieutenant Bisesto, once she arrived on scene, she noticed, *"approximately three to four, what I presumed, were family members or whoever - maybe not family members of the suspect, but whoever had been called out of the house. And they were standing by with an officer a little bit away from where the patrol cars were. I saw at least two patrol cars that were in front of the house, staggered. And I saw officers on both sides of the car. I saw [a] K-9 officer with his dog out. I found the sergeant who appeared to be most in control of the scene, who I later found out was Sergeant Sullivan."* Lieutenant Bisesto also stated, *"I think it was kind of fluid between him [Sullivan] and the K-9 sergeant [Dyemartin]. They were working together."*

I then asked Lieutenant Bisesto why she did not assume the role of the incident commander. She answered, *"He [Sullivan] was doing a good job. It was rapidly evolving. There wasn't really time for me to take him away and have a full debrief of everything that was happening because he was directing everyone and the suspect was there and probably 25 feet away and not complying. So I walked up to him, I asked him what he needed. He gave me a brief debrief of what happened. And he was - and it's - you can probably see it in the BWCs, he's talking to me and he's engaging other officers. And I didn't feel the need to step in because he was doing a good job and he had far more information than I had because they had been there for at least a half an hour, if not more."* Lieutenant Bisesto confirmed that when she arrived to the location, Marcus had just exited the residence. I asked Lieutenant Bisesto, *"Did you feel you were needed at this location anymore?"* She stated, *"I felt that I was needed as a resource to help them if they needed to. I think it's the field attendant's [Lieutenant's] responsibility to just act as a resource and bounce ideas off of. But they were - you know, if something more critical had come out at that time, then I would have felt comfortable leaving."*

Later in her interview, Lieutenant Bisesto confirmed that when Marcus began to disregard commands, she felt there was a high likelihood that force was going to be used to arrest him. I asked her, *"Did you at any point believe now maybe this is the time I should become the incident commander here?"* Lieutenant Bisesto answered, *"They were doing a great job. There was nothing that they were doing that made me believe that I had to state, I am the incident commander here. It just didn't naturally evolve like that. Now, if I had told Sergeant Sullivan to do something or to do something different, I'm sure he would have. But for me to stand there and say, I am the incident commander, I mean, I don't know that that's a normal thing that field lieutenants do. Again this is - I had been a lieutenant for a week and a half or 2 weeks or something like that. I don't - in my experience, and field lieutenants do not, like, outright say, I am the incident commander, unless it's a - you know, a code 11 or a code 12 [SWAT call] or something, some lengthy event that is going on for, you know, hours."*

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Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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I asked Lieutenant Bisesto if there had been a plan to take Marcus into custody after the first beanbag shot failed to apprehend him. Lieutenant Bisesto answered, *"It was just a discussion that they were going to impact one more time with the - they were going to impact with the beanbag and send the dog."* According to Lieutenant Bisesto, before the beanbag shots and the PSDs were sent to apprehend him, Marcus was seated on the ground, yelling *"fuck you."* She described this as *"active resistance."*

Finally, at the end of the interview, Lieutenant Bisesto stated, *"So my role was to be there as a resource for the officers and the sergeant. I felt as though when I spoke with the sergeant and I observed what was going on that they had control over the officers, over the scene, over their plan. They communicated some contingencies of what was going to happen. I felt comfortable with that. When he asked for more officers, I got him more officers. At one point when they were - when the sergeants were communicating, I was there, I was observing, if - they were doing a great job. These are seasoned police officers. And if I felt like anything that they told me or did was violating policy, violating procedure, then I would have stepped in. I did not feel the need to step in and change anything that they were doing. And I think you asked me before, 'Why did you stay?' Well, because it's a critical incident evolving and if something were to happen that I observed was a violation of policy or procedure, then I am there to step in and rectify that. I didn't feel the need to do that. I felt comfortable with everything that was going on, and I was part of the conversation of everything that was going on. And at one point - we didn't discuss this but - and it could be on a BWC, at one point when they did make the plan to use the beanbag and deploy the dog, they were conversing back and forth. The beanbag officer was up with her beanbag shotgun because she still was directing the beanbag at the suspect. I wanted to make sure that she knew what the plan was. And so I went over, touched her on the shoulder, 'Do you understand what you're supposed to do?' And she said, 'Yes.' So I was there actively participating in it. I don't know that I articulated that very well before, I just did not feel the need to get on the radio and say, 'I am the incident commander.' Because I felt like they were doing a good job."*

The San Diego Police Department is a paramilitary organization with a rank and organizational structure that include a chain of command. Acting Sergeant Sullivan was the patrol area's supervisor, while Lieutenant Bisesto and Sergeant Dyemartin were the two highest ranking SDPD officials present at this incident where the prohibited use of force on Marcus Evans occurred. While Sergeant Dyemartin recognized that tactics planning and decisions can be a collaborative effort, ultimately ranking Department officials have the authority to implement a plan of action or exercise other options.

It's clear from the BWC footage that Sergeant Dyemartin determined that apprehending Marcus with a PSD was appropriate for this situation. As a Canine Unit supervisor, he is required to be able to recognize a situation that does not warrant a PSD apprehension. In this respect, Sergeant Dyemartin failed in his supervisory role for the Canine Unit. Additionally, Lieutenant Bisesto and Acting Sergeant Sullivan had a supervisory responsibility to their personnel and a leadership responsibility to the public to be knowledgeable of SDPD policies related to force options used during critical incidents. Lieutenant Bisesto and Acting Sergeant Sullivan failed in these responsibilities. The evidence and the statements in

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this investigation demonstrate that Lieutenant Bisesto, Sergeant Dyemartin, and Acting Sergeant Sullivan failed in the performance of their responsibilities and duties.

This allegation is **SUSTAINED**.

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Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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7. PROCEDURE – UNFOUNDED

██████████ ██████████ and ██████████ alleged officers at the scene failed to intervene in force which was clearly beyond necessary.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrest Marcus Evans for assault with a deadly weapon and domestic violence battery.

SDPD officers then went to Evans' address, located at ██████████ Duluth Avenue and set up in front of the residence. Once in front the residence, officers began calling the residents out, and multiple residents exited without incident. When Marcus Evans exited the residence, a standoff ensued as Marcus would not follow commands to come to the officers.

After approximately five minutes of negotiating with Marcus, Officer Ashley Bennett shot him with a beanbag shotgun. Marcus went to the ground and remained in that position for several minutes, disregarding commands from officers.

Officer Bennett shot Marcus once again with the beanbag shotgun and Officer Robert Nelson sent a Police Service Dog to Marcus for an apprehension. The Police Service Dog did not engage Marcus and failed to apprehend him.

Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department Procedure section 1.56, V, A (dated June 25, 2020) states:

Any officer who is present and observes another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that the other officers may have additional information regarding the threat posed by the subject, shall, when in a position to do so, intervene to prevent the use of unreasonable force.

In reviewing the evidence, statements, and circumstances in this investigation, it has been established in a previous allegation that certain levels of force used on Marcus Evans were determined to be unauthorized

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per SDPD's policy, procedural guidelines, and training. Yet, the Department's procedure requiring intervention in an unnecessary use of force requires that the application of the force be "clearly" beyond that which is necessary "as determined by an objectively reasonable officer." In the context of an intervention into an officer's use of force, "clearly" would be defined as having zero doubt or uncertainty that force being applied requires intervention. In order to determine if the officers at the scene of this incident failed in their procedural intervention duties, it must be established that the officers on scene unmistakably knew that the application of the force was *clearly* beyond necessary for the situation. In this scene, there were several factors which would not lead a reasonable officer to believe they had a duty to intervene.

First, it was an evolving scene involving an outstanding firearm, where the levels of resistance displayed by the suspect were fluctuating between passive and active resistance. To that point, the first shot from the beanbag shotgun was determined to be within policy as the suspect was displaying active resistance. However, the second and third beanbag shotgun shots, and both canine deployments were deemed as not within policy, because the suspect's behavior had changed to passive resistance. Second, there were three supervisors on scene who believed, albeit erroneously, that the suspect was displaying active resistance when it was actually passive resistance. The officers on scene were trusting the decisions of their supervisors. These factors demonstrate that although the use of force on Marcus Evans was not allowable per the Department's guidelines, it was not overtly evident to the officers on scene at the moment it occurred that it was *clearly* beyond necessary.

In conclusion, [REDACTED] and [REDACTED] alleged that the officers at the scene of this incident failed in their intervention duties, as required by the Department's procedure. Although a use of force incident may be found to be improper after an extensive investigation into the circumstances, the Department's procedure requires intervention into a use of force when the force is "clearly" beyond necessary. Ultimately, there is no evidence to support that the officers on scene failed to abide by this procedural requirement.

This allegation is **UNFOUNDED**.

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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8. PROCEDURE – UNFOUNDED

██████████ and ██████████ alleged SDPD officers failed to employ de-escalation tactics.

On October 24, 2024, at approximately 2330 hours, Southeastern Division patrol and SDPD Canine units were dispatched to the area of the 6400 block of Duluth Avenue regarding a call for service reporting a male brandishing a firearm. Once the officers arrived on scene, they contacted the reporting party and eventually determined that probable cause existed to arrested Marcus Evans for assault with a deadly weapon and domestic violence battery.

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Moments later, Officer Bennett shot Marcus for a third time with the beanbag shotgun and Sergeant Alan Dyemartin sent his Police Service Dog to Marcus for an apprehension. This time, the Police Service Dog bit Marcus' left arm and Marcus was taken into custody.

Marcus was eventually taken to a hospital and remained at the hospital in lieu of being booked into jail.

San Diego Police Department Procedure section 1.55, V, A-F (dated June 25, 2020) states:

PROCEDURES/REQUIRED ACTIONS

A. When given the time and opportunity, before approaching a subject, officers shall use all available information known at the time of the incident to help assess the situation. This assessment may include, but is not limited to the following:

1. Obtaining relevant information regarding the incident.

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2. Conducting a threat/risk assessment of the incident.
 3. Considering other available resources and techniques including specialized units, PERT clinicians, and negotiators to resolve the incident.
- B. When given the time and opportunity during an encounter, officers shall create distance by seeking cover and selecting positions that place physical barriers between the officer and the subject, creating a buffer zone. The creation of the buffer zone helps to reduce situational intensity by decreasing perceived pressure while continuing to control the operational space. Officers can move to a position that is tactically advantageous or allows greater distance in order to de-escalate a situation or deploy a greater variety of force options, including lesser force or no force at all.
- C. Officer(s) shall try to establish an effective line of communication with the subject. Some factors affecting communication may include:
1. The subject's age.
 2. Possible medical or physical conditions.
 3. Level of intoxication due to drugs or alcohol.
 4. Any known or perceived disabilities, including mental illness.
 5. Potential language barriers.
- D. When time and circumstances reasonably permit, officers shall take into consideration that a subject with a diminished capacity may not have the ability to understand or communicate effectively.
- E. Officers shall present lawful orders, request cooperation, and provide clear, concise direction to achieve voluntary compliance.
- F. Officers shall attempt to establish trust, in order to gain compliance with subjects and cooperatively de-escalate situational conflict.

According to interviews with both witness and subject officers, SDPD personnel did not rush to the residence on Duluth Avenue, opting to stage two blocks to the north of the location, while conducting interviews with the reporting parties of the call for service. Also, they made a tactical plan for approaching the residence on Duluth Avenue. During this approximately 45-minute window before

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attempting to contact Marcus Evans, several resources were obtained and responded to [REDACTED] Duluth Avenue. These resources included a ballistic shield, a less-lethal KEW, SDPD's Canine Unit resources, and a helicopter from SDPD's Air Support Unit. Once approaching the residence, the officers used patrol vehicles as a barrier parking approximately 30 feet away from the residence. Once the officers confronted Marcus Evans in front of the residence, Officer Nelson gave clear and concise commands which Marcus often disregarded. Additionally, Officer Nelson used verbal de-escalation skills when he attempted to create a rapport and establish trust with Marcus when he failed to follow commands.

In conclusion, [REDACTED] and [REDACTED] alleged SDPD officers failed to employ de-escalation tactics during this incident. Although it was determined in a previous allegation that officers used unauthorized force options on Marcus Evans, the Department's de-escalation procedures and requirements are not a failsafe in ensuring that when force is used by officers the force is properly utilized. As demonstrated in the officers' statements and corroborated by the video evidence in this investigation, they in fact utilized de-escalation tactics and fulfilled requirements as outlined in the Department's procedure.

This allegation is **UNFOUNDED**.

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

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DOCUMENTATION:

The results of this investigation are based on the following items:

1. Emails from [REDACTED] [REDACTED] [REDACTED] and [REDACTED]
2. Complainant Interviews (4 digital recordings).
3. SDPD BWC Video Footage (20 BWC videos).
4. SDPD Officers' Written Reports:
 - Arjis-9 authored by Officer Arreguin.
 - Arjis-9 authored by Officer Bennett (Pouchie).
 - Arjis-9 authored by Officer Castillo.
 - Arjis-9 authored by Officer Esambolchi.
 - Arjis-9 authored by Officer Johnson.
 - Arjis-9 authored by Officer Kim.
 - Arjis-9 authored by Officer Nelson.
 - Arjis-9 authored by Officer Rabonza.
 - Arjis-9 authored by Officer Uch.
 - Arjis-9 authored by Sergeant Dyemartin.
 - Crime Report authored by Officer Burns.
5. Computer Aided Dispatch Logs for SDPD Event #E24100036129.
6. Subject and Witness Officer Interviews (13 digital recordings).
7. SDPD Air Support Unit Video Footage.
8. 59 Digital Photographs.
9. CRT Powerpoint Presentation (2022).
10. Video Footage Downloaded from youtube.com (one digital video).
11. Use of Force Opinion Memorandum (Authored by Sergeant Michael Rhoten).
12. Email from the United States Department of Justice.

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13. City of San Diego Performance Plan (Lieutenant).

14. City of San Diego Performance Plan (Sergeant).

15. City of San Diego Performance Plan (Canine Unit Sergeant).

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LT.	<u>Y. Quintos</u>
ID #	<u>5635</u>
DATE:	<u>02/24/26</u>

Reporting Officer: Eric McCoole, Detective Sergeant ID: 6755 Division Internal Affairs

Approved by: Yesenia Quintos #5635, Lieutenant Date of Report: 04/21/2025

June 24, 2026

IA Case 2024-0529



Dear 

This letter is to inform you that an investigation into your complaint was conducted by Detective Sergeant McCoolle, of the Internal Affairs Unit, 619-531-2801

After reviewing your complaint and examining the available evidence, the investigator concluded that there was misconduct by members of the San Diego Police Department.

A copy of your complaint filed on October 28, 2024, and the subsequent investigation documentation will be retained in the Department's complaint index for a minimum of five years pursuant to section 832.5 of the California Penal Code.

We appreciate your concern in bringing this matter to our attention.

Sincerely,

A blue ink signature of Jonathan Dungan, consisting of a stylized 'J' and 'D' followed by a horizontal line.

Jonathan Dungan, Lieutenant
Internal Affairs Unit
San Diego Police Department

June 24, 2026

IA Case 2024-0529



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Sincerely,

A blue ink handwritten signature, appearing to read 'Jonathan Dungan', with a long horizontal flourish extending to the right.

Jonathan Dungan, Lieutenant
Internal Affairs Unit
San Diego Police Department

June 24, 2026

IA Case 2024-0529



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Sincerely,

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Jonathan Dungan, Lieutenant
Internal Affairs Unit
San Diego Police Department

June 24, 2026

IA Case 2024-0529



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Internal Affairs Unit
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June 24, 2026

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Jonathan Dungan, Lieutenant
Internal Affairs Unit
San Diego Police Department

June 24, 2026

IA Case 2024-0529



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Sincerely,

A blue ink handwritten signature, appearing to read 'JD', with a long horizontal flourish extending to the right.

Jonathan Dungan, Lieutenant
Internal Affairs Unit
San Diego Police Department



The City Of San Diego

MEMORANDUM

RECEIVED
26 JUN -9 AM 10:45
INTERNAL AFFAIRS

DATE: May 14, 2026

TO: Arturo Swadener, Captain, Southeastern Division

FROM: Shawn Takeuchi, Deputy Chief
Judson Campbell, Captain, Internal Affairs

SUBJECT: Completed Complaint Investigation

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR THE CITY ATTORNEY.

COMPLAINT INDEX FILE NUMBER: 2024-0529

SUBJECT OFFICER: BENNETT, Ashley, N., Police Officer II, #1910

COMPLAINANT:

DATE OF COMPLAINT: October 28, 2024

NATURE OF COMPLAINT:

1. Force	2. Force	3. Discrimination	5. Conduct
8. Procedure			

DISPOSITION:

1. Exonerated	2. Sustained	3. Not Sustained	5. Not Sustained
8. Unfounded			

Discipline or Notice of Adverse Action must be served by: September 08, 2026

The confidential, administrative personnel investigation of the above complaint has been completed and is attached for your review. The contents of the investigation are the property of the San Diego Police Department and all related materials shall not be released to any unauthorized person. Commanding Officers will review the investigation with the subject employee and return the signed package to Internal Affairs within 30 days.

If the employee does not agree with the disposition/findings of this investigation, they may file a written rebuttal within 30 days from the date the actual order of discipline is served. The rebuttal will be filed with the investigation in Internal Affairs, see D.P. 1.10, IX, E.

- ☒ Mark the box if the subject employee retained the attached investigation.
- ☒ Mark the box if the subject employee retained the electronic case file.
- ☒ Mark the box if the Captain retained the electronic case file.

I have read the Internal Affairs investigation reference the above complaint.

Employee [Signature] #1910 Date 6/3/26

Commanding Officer [Signature] #5753



The City Of San Diego

MEMORANDUM

RECEIVED

26 JUN 18 AM 10:23

INTERNAL AFFAIRS

DATE: May 14, 2026

TO: Arturo Swadener, Captain, Southeastern Division

FROM: Shawn Takeuchi, Deputy Chief
Judson Campbell, Captain, Internal Affairs

SUBJECT: Completed Complaint Investigation

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR THE CITY ATTORNEY.

COMPLAINT INDEX FILE NUMBER: 2024-0529

SUBJECT OFFICER: FLORES, Javier, N., Police Officer II, #1041

COMPLAINANT: [REDACTED]

DATE OF COMPLAINT: October 28, 2024

NATURE OF COMPLAINT: 4. Search

DISPOSITION: 4. Exonerated

The confidential, administrative personnel investigation of the above complaint has been completed and is attached for your review. The contents of the investigation are the property of the San Diego Police Department and all related materials shall not be released to any unauthorized person. Commanding Officers will review the investigation with the subject employee and return the signed package to Internal Affairs within 30 days.

If the employee does not agree with the disposition/findings of this investigation, they may file a written rebuttal within 30 days from the date the actual order of discipline is served. The rebuttal will be filed with the investigation in Internal Affairs, see D.P. 1.10, IX, E.

☒ Mark the box if the subject employee retained the attached investigation.

I have read the Internal Affairs investigation reference the above complaint.

Employee J. FLORES #1041 Date 6/18/26

Commanding Officer [Signature] #5753



The City Of San Diego

RECEIVED

26 JUN 17 PM 1:00

MEMORANDUM INTERNAL AFFAIRS

DATE: May 14, 2026
TO: Ryan Hallahan, Commander, Special Operations Branch
FROM: Shawn Takeuchi, Deputy Chief
Judson Campbell, Captain, Internal Affairs
SUBJECT: Completed Complaint Investigation

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR THE CITY ATTORNEY.

COMPLAINT INDEX FILE NUMBER: 2024-0529

SUBJECT OFFICER: NELSON, Robert, W., Police Officer II, ID #7443

COMPLAINANT:

DATE OF COMPLAINT: October 28, 2024

NATURE OF COMPLAINT: 2. Force 3. Discrimination 7. Procedure

DISPOSITION: 2. Sustained 3. Not Sustained 7. Unfounded

Discipline or Notice of Adverse Action must be served by: September 08, 2026

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- ☒ Mark the box if the subject employee retained the attached investigation.
☒ Mark the box if the subject employee retained the electronic case file.
☒ Mark the box if the Captain retained the electronic case file.

I have read the Internal Affairs investigation reference the above complaint.

Employee Ry Takeuchi Date 5.29.26

Commanding Officer Ry Hallahan #5726



The City Of San Diego

MEMORANDUM

RECEIVED
26 JUN 15 AM 6:06
INTERNAL AFFAIRS

DATE: May 18, 2026
TO: Christopher Tivanian, Lieutenant, Northwestern Division
FROM: Shawn Takeuchi, Deputy Chief
Judson Campbell, Captain, Internal Affairs
SUBJECT: Completed Complaint Investigation

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR THE CITY ATTORNEY.

COMPLAINT INDEX FILE NUMBER: 2024-0529

SUBJECT OFFICER: SULLIVAN, John, B., Police Officer II, #6455

COMPLAINANT:

DATE OF COMPLAINT: October 28, 2024

NATURE OF COMPLAINT: 3. Discrimination 6. Procedure 8. Procedure

DISPOSITION: 3. Not Sustained 6. Sustained 8. Unfounded

Discipline or Notice of Adverse Action must be served by: September 08, 2026

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- ☒ Mark the box if the subject employee retained the attached investigation.
- ☒ Mark the box if the subject employee retained the electronic case file.
- ☒ Mark the box if the Captain retained the electronic case file.

I have read the Internal Affairs investigation reference the above complaint.

Employee

Date

6/4/26

Commanding
Officer

#5877



The City Of San Diego

MEMORANDUM

RECEIVED

26 JUN 17 PM 1:00

INTERNAL AFFAIRS

DATE: May 14, 2026

TO: Ryan Hallahan, Commander, Special Operation Branch

FROM: Shawn Takeuchi, Deputy Chief
Judson Campbell, Captain, Internal Affairs

SUBJECT: Completed Complaint Investigation

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR THE CITY ATTORNEY.

COMPLAINT INDEX FILE NUMBER: 2024-0529

SUBJECT OFFICER: DYEMARTIN, Alan, R., K9 Sergeant, ID #6642

COMPLAINANT:

DATE OF COMPLAINT: October 28, 2024

NATURE OF COMPLAINT: 2. Force 3. Discrimination 6. Procedure 8. Procedure

DISPOSITION: 2. Sustained 3. Not Sustained 6. Sustained 8. Unfounded

Discipline or Notice of Adverse Action must be served by: September 08, 2026

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- ☒ Mark the box if the subject employee retained the attached investigation.
- ☒ Mark the box if the subject employee retained the electronic case file.
- ☒ Mark the box if the Captain retained the electronic case file.

I have read the Internal Affairs investigation reference the above complaint.

Employee [Signature] Date 05/29/2026 Commanding Officer [Signature] #5726