



LONDON BREED
MAYOR

CITY AND COUNTY OF SAN FRANCISCO
Department of Police Accountability
ONE SOUTH VAN NESS AVENUE, FLOOR EIGHT
SAN FRANCISCO, CA 94103



PAUL DAVID HENDERSON
EXECUTIVE DIRECTOR

Public Records Release

The Department of Police Accountability (“DPA”) is producing records in response to a public records request made under California Penal Code § 832.7.

The responsive records in this production include documents related to SF DPA Case No. 0045-19. The case files are available to view or download on <https://sfdpa.nextrequest.com/requests/22-9> in a folder labeled “0045-19.”

As a preliminary matter, some of the above referenced file contains allegations of misconduct that are not subject to disclosure. Penal Code § 832.7 requires that peace officer personnel files be confidential except for eight categories: (1) officer involved shootings, (2) uses of force that cause great bodily harm, (3) sustained findings of sexual assault, (4) sustained findings of dishonesty, (5) sustained findings of unreasonable or excessive force, (6) sustained findings of failure to intervene against clearly unreasonable or excessive force, (7) sustained findings of biased policing, or (8) sustained findings of unlawful arrests and searches. If a file therefore qualifies for disclosure under one of those eight categories but also contains additional, unrelated misconduct, the unrelated conduct remains confidential pursuant to Penal Code § 832.7 and is redacted.

Redactions have been made to these records pursuant to the following exemptions:

Redaction Code	Description
1 PII	Personally Identifiable Information. California Penal Code § 832.7(b)(5)(A), Government Code 6254.3 §§ (a), (b)(1). Personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers. Personal employee information such as social security numbers, birth dates, personal email addresses, and confidential law enforcement identification numbers.
2 ID	Identity of Complainants and Witnesses. California Penal Code § 832.7(b)(5)(B), SF Admin. Code §§ 67.24(d)(1), (3) – To preserve the anonymity of complainants, witnesses, and confidential sources.
3 CI	Confidential Information. California Penal Code § 832.7(b)(5)(C). To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.
4 SD	Significant Danger. California Penal Code § 832.7(b)(5)(D) – Disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.
5 POBRA	Public Safety Officers Procedural Bill of Rights Act. California Penal Code § 832.7(a) - Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by any state or local agency

		pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.
6	PIND	Public Interest in Non-Disclosure. California Penal Code § 832.7(b)(6) – Information, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.
7	CSD	Confidential State Database. California Penal Code §§ 11105, 11145, 13100 et seq. CORI data (personal identifiable criminal history) and CLETS data (California Law Enforcement Telecommunications Systems).
8	LEI	Law Enforcement Information and Police Investigatory Files. SF Admin Code Chapter § 67.24(d). Confidential law enforcement information, including investigative techniques, procedures, and information whose disclosure would endanger law enforcement personnel.
9	CCP129	California Code of Civil Procedure § 129. Photographs of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy.
10	PP	Personal Privacy. California Government Code § 6250, 6254(c). Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
11	WI5328	California Welfare & Institutions Code § 5328. Confidential mental health records.
12	J	Juvenile Records. California Welfare & Institutions Code § 827, California Government Code § 6254(k). Juvenile records.
13	P	Attorney Privilege. California Government Code §§ 254(k), 6254.25, 6276.04, Evidence Code § 954. Attorney-client privilege.
14	E1040	Official Information Privilege. California Evidence Code § 1040 (a) - Information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

Please note that this is the first of multiple releases for this case. Redacted video files will be released on a rolling basis and will be available for free download from the DPA portal at <https://sfdpa.nextrequest.com/requests/22-9> in a folder labeled “0045-19.”

Prepared by: Susan Gray, Staff Attorney



DPA

San Francisco Department of Police Accountability

SUSTAINED CASE REPORT

**DPA CASE 00042720
(Legacy 0045-19)**

COMPLAINANT

ID

Officer Brett Hernandez #307

Gov't Code §3304 Deadline: **January 23, 2020.**

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San Francisco Department of Police Accountability

Paul David Henderson
Executive Director

TO: William Scott, Chief of Police
FROM: Paul David Henderson, Executive Director
DATE: November 25, 2019
SUBJECT: Report of DPA Investigation for Case No. 00042707 (Legacy 0045-19)

COMPLAINANT: [REDACTED] ID [REDACTED]
NAMED MEMBERS: Officer Brett Hernandez #307
POBRA [REDACTED]

DATE & TIME OF INCIDENT: January 24, 2019, at 1047 hours
LOCATION OF INCIDENT: 6th Ave and Irving Street
DATE OF COMPLAINT: January 24, 2019

SUMMARY OF CASE

DPA’s investigation determined that Officer Brett Hernandez¹ violated the Fourth Amendment (and thus DGO 5.16) by unlawfully attempting to pat search complainant [REDACTED] ID [REDACTED] while detaining him to discuss a parking violation. [REDACTED] POBRA [REDACTED] POBRA [REDACTED]

[REDACTED] POBRA [REDACTED] Body-worn camera footage showed Officer Brett Hernandez prepared to pat search [REDACTED] ID [REDACTED] by putting his gloves on and announced his intention to pat search [REDACTED] ID [REDACTED] when [REDACTED] ID [REDACTED] questioned the police action against him; [REDACTED] ID [REDACTED] offered to move his car when the officers apprised him that he was unlawfully parked. Despite numerous protests, Officer Brett Hernandez attempted to pat search [REDACTED] ID [REDACTED] and went hands-on with him, ultimately taking him to the ground. From this incident, [REDACTED] ID [REDACTED] reported an injury. The pat search was unlawful, as Officer Brett Hernandez did not have specific, articulable facts that [REDACTED] ID [REDACTED] was armed and dangerous. [REDACTED] POBRA [REDACTED] Therefore, a preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated Department policy or procedure.

¹ DPA uses Officer Brett Hernandez’s full name, as to distinguish him from his partner, Jacqueline Hernandez.

SUMMARY OF ALLEGATIONS

SUSTAINED ALLEGATION

Officer Name	Badge #	Allegation Type	Allegation Subtype	Allegation Detail	Finding
Brett Hernandez	307	Unwarranted Action	Unwarranted Action	Search or Seizure Violation	Improper Conduct

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REPORT OF SUSTAINED ALLEGATION

I. STATEMENT OF FACTS

██████████ ID ██████████ pulled over and parked his car near a sandwich shop to run in and get a sandwich. Unfortunately for ██████████ ID ██████████ he parked illegally in a red zone, leaving his flashers on. Officer Brett Hernandez detained ██████████ ID ██████████ to discuss the parking infraction. However, as soon as ██████████ ID ██████████ disagreed with Officer Brett Hernandez about whether the officer could lawfully detain him, Officer Brett Hernandez put his gloves on and proceeded to attempt to unlawfully pat search ██████████ ID ██████████. ██████████ ID ██████████ objected, and the officers used force to take him to the ground. Despite ██████████ ID ██████████ clear complaint of pain later, Officer Brett Hernandez did not document his use of force ██████████ POBRA ██████████.

A. Summary of Interviews

1. DPA Interviewed the Complainant ██████████ ID ██████████ on January 24, 2019 (Ex. E) and January 30, 2019 (Ex. F).

Attempted Pat Search

██████████ ID ██████████ was driving down the street when he noticed a patrol vehicle following him. (Ex. E, ██████████ ID ██████████ Interview at 2:4-5.) He pulled his car in front of a sandwich shop and stopped in a red zone with a fire hydrant, to get lunch. (Ex. E, ██████████ ID ██████████ Interview at 2:7-8.) As he walked to the shop, the officers startled him by turning on their lights and siren and telling him not to move. (Ex. E, ██████████ ID ██████████ Interview at 2:10-15; Ex. F, ██████████ ID ██████████ Interview 1:21-22.) The officers approached quickly and surrounded him. (Ex. E, ██████████ ID ██████████ Interview at 2:16-17.)

██████████ ID ██████████ put his hands up and asked them what the problem was; they responded that he parked in the fire lane. (Ex. E, ██████████ ID ██████████ Interview at 2:19-21.) He started to walk back to his car so he could move it. (Ex. E, ██████████ ID ██████████ Interview at 2:23-24.) The male officer stopped him and said, “No, you’re not going nowhere.” ██████████ ID ██████████ responded, “Please don’t touch me or put your hands on me. You do not have the right to put your hands on me.” The male officer responded, “I most certainly do have the right and I’m going to put my hands on you, you’re going to be detained.” (Ex. E, ██████████ ID ██████████ Interview at 2:26-28; 3:1-2.) The officer told ██████████ ID ██████████ he was detained for parking in the fire zone. (Ex. E, ██████████ ID ██████████ Interview at 3:3-4.)

Once the officer told ██████████ ID ██████████ that he was detained, ██████████ ID ██████████ stopped and did not move after that. (Ex. F, ██████████ ID ██████████ Interview at 2:1-2.) DPA asked ██████████ ID ██████████ if he kept putting his hands in his pockets, making the officers concerned that he might have a weapon. ██████████ ID ██████████ stated he did not have his hands in his pockets (Ex. F, ██████████ ID ██████████ Interview at 2:12-18.) He handed the male officer his ID and again put his hands up in the air. (Ex. E, ██████████ ID ██████████ Interview at 3:5-6.) ██████████ ID ██████████ handed the officer his ID “with such swiftness” that the officer never saw him put his hand into his pocket. (Ex. F, ██████████ ID ██████████ Interview at 3:1-5.) The officer did not tell him to not go into his pockets except maybe after he handed the officer his ID. (Ex. F, ██████████ ID ██████████ Interview at 3:10-15.) When he put his hands up in the air, he had his keys and cellphone in his hands. (Ex. F, ██████████ ID ██████████ Interview at 2:21-25.)

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2. DPA Interviewed Officer Brett Hernandez #307 on June 20, 2019 (Ex. G).

On January 24, 2019, at 10:47 a.m., Officer Brett Hernandez was assigned to basic patrol. He was the driver and his partner, Jacqueline Hernandez, was the passenger. (Ex. G, B. Hernandez Interview at 7:17-26; 8:15-24.) Officer Brett Hernandez agreed that the area of the detention, which happened shortly before 11 a.m. in broad daylight, is not a high crime area for any violent crime. (Ex. G, B. Hernandez Interview at 38:24-39:6.) He noticed [REDACTED] ID while [REDACTED] ID was driving, as he stopped behind him at a red light. (Ex. G, B. Hernandez Interview at 10:14-18.) Before [REDACTED] ID parked his car, Officer Brett Hernandez did not have any intention of contacting him. (Ex. G, B. Hernandez Interview at 10:2-28; 11:1.) Officer Brett Hernandez activated his lights and siren because [REDACTED] ID parked his vehicle in a red zone and in front of a fire hydrant. (Ex. G, B. Hernandez Interview at 11:2-8.) He did not have any other reason to contact [REDACTED] ID (Ex. G, B. Hernandez Interview at 11:18-20.)

Officer Brett Hernandez chose to contact [REDACTED] ID, as opposed to leaving him a citation on his car, so he could inform him about the violation. (Ex. G, B. Hernandez Interview at 11:21-25.) He did not observe any other violation than parking illegally. (Ex. G, B. Hernandez Interview at 13:11-14.) He detained [REDACTED] ID for the parking violation. (Ex. G, B. Hernandez Interview at 15:6-10.) Upon contact, he stated he ordered [REDACTED] ID to stop walking and talk with him and his partner. (Ex. G, B. Hernandez Interview at 16:7-11.) He did not speak to nor contact [REDACTED] ID until after [REDACTED] ID was out of his car. (Ex. G, B. Hernandez Interview at 17:2-5.)

Attempted Pat Search and Take Down

Officer Brett Hernandez wanted to pat search [REDACTED] ID because upon contact, “[h]e immediately looked back, acknowledged us, walked away from us, failing to obey our commands to stop. Once he did stop, he was still verbally aggressive towards my partner and I. He was constantly – he reached in his pockets and also was wearing baggy clothing which could conceal weapons. Basically, due to the fact that he was walking away failing to comply to commands, being verbally aggressive towards us, it’s my training and experience that it often is an indicator that . . . somebody might have weapons on their person and for the safety of myself and my partner, fear of our safety, I conducted a pat search.” (Ex. G, B. Hernandez Interview at 19:9-22.) Officer Brett Hernandez acknowledged that [REDACTED] ID was “verbally aggressive” only by telling him he did not have the right to touch him. He acknowledged that [REDACTED] ID was not verbally threatening him nor challenging him to a fight. [REDACTED] ID was asserting his belief that the officer did not have the right to touch him. (Ex. G, B. Hernandez Interview at 27:4-17.)

After watching body-worn camera (BWC) footage from his partner's BWC (Ex. J-3, Jacqueline Hernandez BWC at 18:47:50) he confirmed that he did not see [REDACTED] ID put his hands in his pockets. Rather, he observed [REDACTED] ID move his hands towards his rear waistline, but agreed that he could see the majority of [REDACTED] ID hand. (Ex. G, B. Hernandez Interview at 28:10-26.) He changed his reasoning, first stating, "He was constantly – he reached in his pockets," but then asserted he reached *towards* his pockets and agreed that [REDACTED] ID may have been just pulling up his pants. (Ex. G, B. Hernandez Interview at 29:2-12.)

During the initial interaction, [REDACTED] ID had his hands just below ear level and out to either side of him. In one hand, [REDACTED] ID had his keys and in the other hand he had sunglasses or a wallet or phone. (Ex. G, B. Hernandez Interview at 21:27-28; 22:1-12.) Officer Brett Hernandez did not see a knife or gun or any other traditional weapon in [REDACTED] ID hands. (Ex. G, B. Hernandez Interview at 22:25.) Officer Brett Hernandez acknowledged that he did not see any specific indication that he had a weapon. (Ex. G, B. Hernandez Interview at 23:7-10.) At the point where the audio started on Officer Jaqueline Hernandez's BWC, Officer Brett Hernandez was already contemplating conducting a pat search. (Ex. G, B. Hernandez Interview at 24:20-24.) The fact that [REDACTED] ID kept walking and became "verbally aggressive" gave him cause to believe he was going to conduct a pat search. (Ex. G, B. Hernandez Interview at 26:21-28; 27:1-3.)

He did not observe — at any point — a bulge that could possibly be a weapon. (Ex. G, B. Hernandez Interview at 29:23-25.) When [REDACTED] ID responded to his commands and turned around with his hands up in the air, Officer Brett Hernandez was not fearful. (Ex. G, B. Hernandez Interview at 30:6-10.)

After he viewed his partner's BWC, (Ex. J-3, J. Hernandez BWC at 18:48:12) he stated that he pulled his gloves out "in case I did pat search him." (Ex. G, B. Hernandez Interview at 30:19-20.) Also, after viewing BWC footage, (Ex. J-3, J. Hernandez BWC at 18:47:50 to 18:48:12) he felt [REDACTED] ID was "aggressive" when [REDACTED] ID asked him why he was bothering him. He did not consider [REDACTED] ID to be aggressive when he had both hands toward his chest and spoke in a lower voice. (Ex. G, B. Hernandez Interview at 31:2-10; 32:5-9.) Officer Brett Hernandez maintained that when he pulled his gloves out, he still had not made up his mind to conduct a pat search. (Ex. G, B. Hernandez Interview at 33:10-12.) At 18:48:28 on his partner's BWC (Ex. J-3, J. Hernandez BWC) he decided to conduct a pat search. (Ex. G, B. Hernandez Interview at 34:6-11.)

Before he decided to conduct a pat search, Officer Brett Hernandez did not see [REDACTED] ID attempt to reach into his pockets more than one time. (Ex. G, B. Hernandez Interview at 41:22-28.) "It was a group of actions he made from the beginning of the encounter up until this . . . point when I decided to pat search him." (Ex. G, B. Hernandez Interview at 34:19-21.) After [REDACTED] ID walked toward his vehicle a second time, when he said he was going to move it, Officer Brett Hernandez said he did not know what was in the vehicle or what [REDACTED] ID was going to get, so that was also suspicious. (Ex. G, B. Hernandez Interview at 35:5-13.) Officer Brett Hernandez then took the large leap that [REDACTED] ID was attempting to *flee*, and he should pat search him because you just never know. (Ex. G, B. Hernandez Interview at 35:17-36:5.)

When [REDACTED] ID started walking towards his car, he didn't say anything that would lead Officer Brett Hernandez to believe [REDACTED] ID had a weapon. He did not make any verbal threats, but his

“demeanor starts to get more aggressive.” (Ex. G, B. Hernandez Interview at 37:1-18.) Officer Brett Hernandez claimed that he feared for his safety when [REDACTED] ID put his hand in his left pocket, and said he was going to get his ID (Ex. J-3, J. Hernandez BWC at 18:48:39) because he did not know what was in [REDACTED] ID pocket. (Ex. G, B. Hernandez Interview at 42:25-28; 43:1-6.) After [REDACTED] ID handed Officer Brett Hernandez his ID, (J. Hernandez BWC at 18:48:54) Officer Brett Hernandez said he still feared for his safety because of the “totality of everything.” (Ex. G, B. Hernandez Interview at 43:14-22.) In Officer Brett Hernandez’s view, [REDACTED] ID pulling his ID out of his pocket did not dispel any suspicion that [REDACTED] ID may have weapons. (Ex. G, B. Hernandez Interview at 45:14-19.)

He wanted to pat search [REDACTED] ID ; [REDACTED] ID objected. Upon attempting the pat search, Officer Brett Hernandez decided that because [REDACTED] ID became “resistant,” he needed to be in handcuffs. (Ex. G, B. Hernandez Interview at 46:26-47:4.) Officer Brett Hernandez and his partner tried to take [REDACTED] ID to the ground, but were not completely successful. Then by controlling his legs, they ended up on the pavement between cars. (Ex. G, B. Hernandez Interview at 47:15-48:25.)

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3. DPA Interviewed Officer Jacqueline Hernandez #4039 on May 13, 2019 (Ex. H).

On January 24, 2019, Jacqueline Hernandez #4039 was assigned, with her partner Brett Hernandez, to patrol. She was the passenger and it was her turn to write the Incident Report and citation. (Ex. H, J. Hernandez Interview at 3:20-28; 4:1-18.) She had run [REDACTED] ID license plates and they did not come back stolen. Then she saw [REDACTED] ID car parked in a red-zone and in front of a fire hydrant, so she and her partner decided they were going to “stop the person and advise him.” (Ex. H, J. Hernandez Interview at 5:3-10.)

Attempted Pat Search and Take Down

Officer Jacqueline Hernandez told [REDACTED] ID that he was being detained for parking in front of a red zone and he told her he was “not detained.” She told him, “So, you’re being detained. We just need to figure out who you are.” (Ex. H, J. Hernandez Interview at 5:16-24.) “He gives us his ID, and at that point, my partner advises him that we’re going to do a pat search on him. He’s like, ‘You’re not going to touch me. You have no right to touch me.’” (Ex. H, J. Hernandez Interview at 5:26-28; 6:1.) The officers were concerned with nothing else beyond the illegal parking of the car. (Ex. H, J. Hernandez Interview at 8:6-9.)

When they turned on their lights and siren, [REDACTED] ID was already walking out of the car. (Ex. H, J. Hernandez Interview at 8:13-16.) Officers detained him for a parking violation. (Ex. H, J. Hernandez Interview at 10:12-14.) Her partner did a pat search because “the complainant [REDACTED] ID was walking back and forth, he had really baggy clothing, like a really oversized sweater, oversized pants. We wanted to conduct a pat search and make sure if there’s any weapons. He was, kind of had his hands near his pockets . . .” (Ex. H, J. Hernandez Interview at 11:22-28.) “[E]ven though Taraval doesn’t have a whole lot of high crime, there is a lot of vehicle break-ins. So, we just don’t know if people have like any tools or weapons on them.” (Ex. H, J. Hernandez Interview at 12:12-15.)

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After viewing her own BWC footage from 18:48:28 to 18:48:42, (where [REDACTED] ID [REDACTED] reached into his pocket and handed it to Officer Brett Hernandez) she stated she was concerned for her safety but did not take immediate action. She reasoned that she did not know why and “I try to . . . make sure I can go home everyday . . . [b]ut sometimes . . . little things like that happen where I could have . . . like grabbed his arm, but I didn’t.” (Ex. H, J. Hernandez Interview at 19:18-26.)

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4. DPA Interviewed Sergeant John Pai #4169 on May 13, 2019 (Ex. I).

Attempted Pat Search

SFPD trained Sergeant Pai that whenever an officer had reasonable suspicion for a criminal offense — or even a traffic offense — that officer had the right to conduct a pat search for weapons. (Ex. I, Pai Interview at 6:16-25.) Upon watching Officer Jacqueline Hernandez’s BWC, Sergeant Pai believed Officer Brett Hernandez had reasonable suspicion to pat search [REDACTED] ID [REDACTED]. He based his conclusion on the facts that [REDACTED] ID [REDACTED] “was illegally parked; that was probable cause to stop and talk to him. And then the subject was uncooperative, and he was walking away. Normally sometimes when somebody is uncooperative and walks away, they may have a weapon . . . I would say that was the reason why they . . . were trying to conduct a pat search.” (Ex. I, Pai Interview at 6:2-10.)

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[REDACTED] POBRA [REDACTED] After viewing BWC, he confirmed that he did not see anything that looked like a weapon. (Ex. I, Pai Interview at 8:2-3.)

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B. Summary of Documents

1. Incident Report [REDACTED] ID [REDACTED] dated January 24, 2019 (Ex. C)

The incident report in this matter was authored by Officer Jacqueline Hernandez # 4039 on January 24, 2019. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 1.) Sergeant Pai reviewed the report, which documented that the incident occurred on January 24, 2019, at 10:47 a.m. and listed the incident as “Resisting, delaying, or obstructing a peace officer duties, Marijuana Offense, Traffic Violation Arrest” (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 1.) Officer Jacqueline Hernandez documented that [REDACTED] ID [REDACTED] is 5’8” and approximately 185 pounds. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 2.)

Officer Jacqueline Hernandez wrote that she saw [REDACTED] ID [REDACTED] park his vehicle in a red zone and in front of a fire hydrant, then he exited the vehicle and began walking. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.) Officer Brett Hernandez activated the lights and siren and ordered [REDACTED] ID [REDACTED] to stop. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.) [REDACTED] ID [REDACTED] turned around and placed both his arms up, and the officers explained that they were detaining him for parking violations. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.) [REDACTED] ID [REDACTED] started to walk away and refused to obey commands to stay still. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.)

Officer Jacqueline Hernandez then wrote, “Due to the fact that [REDACTED] ID [REDACTED] was wearing an oversized hoodie, oversized jeans, tried to reach into his pockets more than once, and was refusing to stop moving, Officer [B.] Hernandez attempted to conduct a pat search for weapons. Officer [B.] Hernandez ordered [REDACTED] ID [REDACTED] to turn around, [REDACTED] ID [REDACTED] refused and yelled, “Do not touch me. You do not have the right to touch me!” (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.) “Officer [B.] Hernandez grabbed his right arm in an attempt to search him. [REDACTED] ID [REDACTED] immediately tensed up and attempted to walk away pulling his right arm away. I grabbed his left arm in an attempt to place [REDACTED] ID [REDACTED] in handcuffs. I felt [REDACTED] ID [REDACTED] arm tense up as I grabbed it.” (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.)

The officers brought [REDACTED] ID [REDACTED] to the ground. He refused to release his arms from under his chest, but eventually both officers were able to pry his arms to his back and place him in handcuffs. (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.) The report concluded, [REDACTED] ID [REDACTED] did not have any visible injuries. Officer [B.] Hernandez offered [REDACTED] ID [REDACTED] an ambulance, however [REDACTED] ID [REDACTED] did not respond and got inside his vehicle.” (Ex. C, Incident Report [REDACTED] ID [REDACTED] at 4.)

2. CAD Printout [REDACTED] ID [REDACTED] (Ex. B)

The CAD printout in this matter shows that the officers called this incident in as a 916 (suspicious person in vehicle) and provided dispatch with [REDACTED] ID [REDACTED] license plate number. (Ex. B, CAD printout at 10:47:43) The officers call in a “148” approximately two minutes later. (Ex. B, CAD printout at 10:49:21) Next, the officers note that [REDACTED] ID [REDACTED] was handcuffed, “Unit 3I11A Comment: 1 IN CUFFS.” (Ex. B, CAD printout at 10:50:48.) For some reason, the officers commented that [REDACTED] ID [REDACTED] might be mentally disturbed, “Unit 3I11A Comment: GUY IS A BIT OF AN 800.” (Ex. B, CAD printout at 10:51:35) Unit 3I11A ran [REDACTED] ID [REDACTED] name a few minutes later. (Ex. B, CAD printout at 11:03:01.)

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C. Summary of Body Worn Camera Footage.

1. Officer Brett Hernandez's Body-Worn Camera (Ex. J-2)

Attempted Pat Search²

Officer Brett Hernandez's BWC footage began after he exchanged some words with [REDACTED] ID [REDACTED]. Officer Brett Hernandez was outside of the patrol vehicle on the corner within ten feet of [REDACTED] ID [REDACTED]. [REDACTED] ID [REDACTED] told Officer Brett Hernandez something inaudible and the officer told [REDACTED] ID [REDACTED] to "come here." [REDACTED] ID [REDACTED] told Officer Brett Hernandez, "No thank you." [REDACTED] ID [REDACTED] turned around and Officer Brett Hernandez told him he was being detained. (Ex. J-2, B. Hernandez BWC at 18:47:44 to 18:47:49.) [REDACTED] ID [REDACTED] responds, "for what," put both of his hands up, and said words to the effect of, "hold up, woah, woah, woah, why are you guys bothering me?" (Ex. J-2, B. Hernandez BWC at 18:47:49 to 18:47:54.) The remainder of this interaction is described below as it was simultaneously captured on Officer Jacqueline Hernandez's BWC.

POBRA

2. Officer Jacqueline Hernandez's Body Worn Camera (Ex. J-3)

Attempted Pat Search

Officer Jacqueline Hernandez's BWC was buffering, so her audio begins as [REDACTED] ID [REDACTED] said, "Woah, woah, woah, why are you guys bothering me?" The patrol vehicle pulled up to the corner, behind [REDACTED] ID [REDACTED] car, where [REDACTED] ID [REDACTED] had just exited his vehicle. Officer Jacqueline

² Officer Brett Hernandez's BWC footage of the pat search is briefly summarized, as Officer Jacqueline Hernandez's BWC captures the same key moments.

Hernandez, the passenger, opened her door when [REDACTED] ID crossed the front of the patrol vehicle and stopped approximately 10 feet away from her. As Officer Jacqueline Hernandez began to exit the vehicle, Officer Brett Hernandez crossed the front of the patrol vehicle and approached [REDACTED] ID who was approximately 10 feet away from him. [REDACTED] ID was standing on the corner and turned to look at Officer Brett Hernandez. (Ex. J-3, J. Hernandez BWC at 18:47:19 to 18:47:40.)

[REDACTED] ID pointed to his vehicle (which was parked directly in front of the patrol vehicle) and then turned and began walking away. He took three steps before he turned around again to look at Officers Brett Hernandez and Jacqueline Hernandez. (Ex. J-3, J. Hernandez BWC at 18:47:40 to 18:47:49.) [REDACTED] ID turned completely around and faced both officers with both of his hands in the air. He had keys in his right hand and sunglasses and a phone in the left hand. [REDACTED] ID stood approximately five feet from the officers. (Ex. J-3, J. Hernandez BWC at 18:47:49 to 18:47:51.)

[REDACTED] ID was within arms distance from Officer Brett Hernandez when he asked them, "Why are you guys bothering me?" Officer Brett Hernandez told him that he was parked illegally and to relax. (Ex. J-3, J. Hernandez BWC at 18:47:51 to 18:47:56.) [REDACTED] ID had his hands, still holding the items, on his chest, and asked them why they were detaining him. Officer Brett Hernandez told him he was parked in the red. (Ex. J-3, J. Hernandez BWC at 18:47:57 to 18:48:01.) [REDACTED] ID told the officers that he was "stopped," then said "Well, I'm going to go move my car." As he said this he pointed to his vehicle, which was approximately 25 feet away from where they were standing. (Ex. J-3, J. Hernandez BWC at 18:48:01 to 18:48:07.)

Officer Jacqueline Hernandez told [REDACTED] ID that he was detained and to "stay right here." She stated they needed to "ID you and make sure who you are and then you can go." As she said this, Officer Brett Hernandez began putting on his blue rubber gloves. (Ex. J-3, J. Hernandez BWC at 18:48:07 to 18:48:21.) [REDACTED] ID informed the officers that he was allowed to stop because he had his hazard lights on. The officers informed him that he was illegally parked, and [REDACTED] ID moved about one foot and turned his neck toward his car and said, "Where does it say that?" Immediately, Officer Brett Hernandez touched [REDACTED] ID chest with his gloved left hand and told [REDACTED] ID to "relax." [REDACTED] ID took a step back and said, "Don't touch me." [REDACTED] ID raised his left hand, still holding his sunglasses and phone. His right hand was on his waistline, but not hidden. He put both hands up in the air and told the officers that they "need to stop this." (Ex. J-3, J. Hernandez BWC at 18:48:21 to 18:48:29.)

Officer Brett Hernandez asked [REDACTED] ID "Do you have any weapons on you?" [REDACTED] ID had both arms in the air and told the officers, "You have to stop this." (Ex. J-3, J. Hernandez BWC at 18:48:29 to 18:48:33.) [REDACTED] ID asked the officers why they are doing this and Officer Brett Hernandez said, "Because I'm about to pat search you." [REDACTED] ID said, "Look, I have nothing on me." [REDACTED] ID moved the contents from his left hand to his right hand and said, "Would you like my ID, I will hand you my ID." Upon saying those words, [REDACTED] ID placed his left hand in his front left pants pocket. While his hand was in his pocket, Officer Brett Hernandez told [REDACTED] ID that he wanted to pat search him, "Let me pat search you real quick." [REDACTED] ID stated, "You do not have my permission to search me." Officer Brett Hernandez responded, "I don't need your permission." [REDACTED] ID pulled out his ID from his pocket and told Officer Brett Hernandez, "Here's my ID and that is all I am giving you . . . You have no right to touch me." During this time, Officer Jacqueline Hernandez put on her gloves. (Ex. J-3, J. Hernandez BWC at 18:48:33 to 18:48:51.)

██████████ ID handed Officer Brett Hernandez his ID. Officer Brett Hernandez accepted the ID and put it in his shirt pocket. (Ex. J-3, J. Hernandez BWC at 18:48:53 to 18:48:56.) ██████████ ID told Officer Brett Hernandez multiple times that he did not have the right to touch him. Officer Brett Hernandez asked ██████████ ID if he had any weapons on him and ██████████ ID replied that he had nothing on him. Officer Brett Hernandez told ██████████ ID to turn around. ██████████ ID hands, which were in plain view and both holding his personal items, were raised to his chest. ██████████ ID continued to tell Officer Brett Hernandez that he did not have the right to touch him. Officer Brett Hernandez told ██████████ ID to turn around again while he grabbed ██████████ ID right shoulder with both hands. Officer Jacqueline Hernandez grabbed ██████████ ID, then a scuffle ensued. As the scuffle ensued, ██████████ ID repeatedly told the officers that they did not have the right to touch him. (Ex. J-3, J. Hernandez BWC at 18:48:56 to 18:49:15.) The officers placed ██████████ ID in handcuffs while he was on the ground and searched his pockets. (Ex. J-3, J. Hernandez BWC at 18:50:10 to 18:51:33.)

II. ANALYSIS

██████████ ID upon being detained for parking in a red zone, objected, asked why the police were bothering him, and asserted that he had the right to “stop” where he had. He then began to walk toward his car, saying he would move it. Officer Jacqueline Hernandez told him that he was going to stay right there while they identified him. Officer Brett Hernandez told ██████████ ID he was “about to pat search him” after ██████████ ID asked why the officers were doing this. ██████████ ID told Officer Brett Hernandez that the officer did not have the right to touch him. Officer Brett Hernandez responded that he did not need ██████████ ID permission to pat search him. The officers then went hands-on with ██████████ ID forcing him to the ground.

Officer Brett Hernandez was required to have specific and articulable facts that ██████████ ID was armed and dangerous before he could lawfully conduct a pat search. This stop occurred in broad daylight in the late morning in Taraval – a district acknowledged *not* to have a high violent crime rate. The officers outnumbered ██████████ ID who is not a big man (5’8”, 185 pounds). Despite ██████████ ID providing the officers with his identification — Officer Jacqueline Hernandez’s stated the reason for detaining ██████████ ID keeping him there, and not allowing him to simply move his car as he offered to — Officer Brett Hernandez decided to pat search him anyway. ██████████ ID objections to the police activity, as well as his assertion of his Fourth Amendment rights did not justify an otherwise unlawful pat search. The illegality of the attempted pat search tainted the ██████████ POBRA that followed – one cannot violate Penal Code section 148 unless the officers are acting lawfully. POBRA

A. Applicable Rules

DGO 5.16 Obtaining Search Warrants

Though DGO 5.16 is directed toward search warrants specifically, it sets forth the relevant policy that San Francisco Police Officers must comply with the Fourth Amendment:

- I.A. Under the Fourth Amendment of the United States Constitution, the only legal means of obtaining evidence, excluding specific exceptions, is by a search warrant. Search warrants are the most reliable means of preserving the admissibility in court of evidence seized during a criminal investigation. **The San Francisco Police Department requires its members to conform themselves to the law in all aspects of their duties and particularly in obtaining evidence by means of searches and seizures.**

San Francisco Police Department Peace Officer Training Manual (July 2014)

- IV.B. Stop and Frisk. Important Factors. This section states, “. . . If the original stop of the subject is lawful and the officer has reasonable belief that the person stopped may possess a weapon: 1) The officer has a right to make a pat-down or limited weapons search (*Terry* (1968) 392 U.S.1) . . .” (Ex. K, San Francisco Field Training Manual (July 2014), Week 4 p. 241.)



B. Officer Brett Hernandez violated the Fourth Amendment to the United States Constitution by attempting to pat search [REDACTED] ID [REDACTED]

It is well-settled that a pat search may only be conducted upon reasonable suspicion that a lawfully detained person is armed and dangerous: “A police officer may temporarily detain and patsearch an individual if he believes that criminal activity is afoot, that the individual is connected with it, and that the person is presently armed.” (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1395, citing *Terry v. Ohio* (1968) 392 U.S. 1, 30. See also *People v. Adam* (1969) 1 Cal.App.3d 486, 491 [“Before [an officer] places a hand on the person of a citizen in search of anything, he must have constitutionally adequate reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous.”].)

An ordinary traffic stop is an investigatory detention, i.e., a “*Terry* stop.” (*In re H.M.* (2008) 167 Cal.App.4th 136, 142, citing *People v. Durazo* (2004) 124 Cal.App.4th 728, 734.) A *Terry* stop is justified if it is based on at least reasonable suspicion that the individual has violated the Vehicle Code

or some other law. (*Ibid*, citing *Durazo*, *supra*, 124 Cal.App.4th at 734–735 [*H.M.* and *Durazo* both involved pedestrians who violated the Vehicle Code.]) Therefore, in order to pat down [REDACTED] ID the officers needed objectively reasonable, specific facts that he was armed and dangerous.

H.M. reiterated what *Terry* held so long ago, “When an officer reasonably suspects that an individual whose suspicious behavior he or she is investigating is armed and dangerous to the officer or others, he or she may perform a pat search for weapons. The sole justification for the search is the protection of the officer and others nearby, and the search must therefore be confined in scope to an intrusion reasonably designed to discover weapons. (*In re H.M.* (2008) 167 Cal.App.4th 136, 143, citing *Terry v. Ohio*, *supra*, 392 U.S. at 24, 29, 30; *Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 320; *People v. Dickey* (1994) 21 Cal.App.4th 952, 955–956 [traffic detainee may not be patted down without more]; *People v. Garcia* (2006) 145 Cal.App.4th 782, 786.)

Terry recognized, “it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person’s clothing all over his or her body in an attempt to find weapons is not a ‘search.’ Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.” (*Terry v. Ohio*, *supra*, 392 U.S. at 16–17.)

A person’s refusal to agree or consent to a search does not provide reasonable suspicion that he or she is armed and dangerous. (*In re H.H.* (2009) 174 Cal.App.4th 653, 657–658.) *H.H.* held, “The minor contends the assertion of his Fourth Amendment rights, without more, did not create reasonable suspicion he was armed and dangerous. We agree. “A refusal to consent to a search cannot itself form the basis for reasonable suspicion: ‘it should go without saying that consideration of such a refusal would violate the Fourth Amendment.’ [Citations.] If refusal of consent were a basis for reasonable suspicion, nothing would be left of Fourth Amendment protections. A motorist who consented to a search could be searched; and a motorist who refused consent could be searched, as well.” (*U.S. v. Santos* (10th Cir.2005) 403 F.3d 1120, 1125–1126, quoting *United States v. Wood* (10th Cir.1997) 106 F.3d 942, 946.)” (*In re H.H.* (2009) 174 Cal.App.4th 653, 657–658.) Thus, [REDACTED] ID verbal objections that Officer Brett Hernandez had no right to touch him were not only correct, they also did not give rise to a reasonable suspicion that he was armed and dangerous.

Officers do not have the right to pat search detainees based upon the class of offense, or other generalities not specific to the case at hand. A recent Court of Appeal case reiterated that there is no right to pat search anyone as a matter of course. *In re Jeremiah S.* involved officers who pat searched a robbery detainee *because* officers detained him for a robbery. (*In re Jeremiah S.* (2019) 41 Cal.App.5th 299.)

In *Jeremiah S.*, four officers responded to a report of the robbery of a purse and an iPhone, simultaneously converging on and detaining Jeremiah S. and his companion “just before midnight, in a lighted area with no foot traffic. None of the testifying officers, however, cited the late hour, location, or lack of foot traffic as grounds for officer safety concerns. The two suspects appeared young and were smaller than the four officers, and there was no testimony that Jeremiah’s physical size (5 feet, 5 inches tall, 130 pounds) presented a safety threat.” (*Ibid.*) Jeremiah S. and his companion followed instructions

and did not make sudden, unusual, or “furtive” movements “suggesting they might be concealing weapons.” (*Ibid.*) One officer, “specifically admitted that no weapons were mentioned in the radio dispatch, that Jeremiah had no bulges in his clothing and was cooperative during the stop, and that there was nothing about Jeremiah’s appearance, behavior, or actions to suggest he was armed and dangerous. Nonetheless, [the officer] testified he frisked Jeremiah for weapons ‘due to the fact that robberies are committed with use of force or violence and often have weapons involved.’ When asked whether he had ‘any specific facts that led [him] to believe that Jeremiah was armed and dangerous,’ [the officer] responded, ‘The facts that a robbery occurred, knowing that most robberies involve a weapon or most robbers tend to have weapons on their persons.’” (*Ibid.*)

Jeremiah S. held that the pat search was unlawful as relying on the fact that the call was for a robbery and robbers “tend to have weapons”:

A per se type of rule that automatically permits a patsearch for every lawfully detained robbery suspect would be at odds with established Fourth Amendment jurisprudence. First and foremost, such a rule would contravene the “fact driven” and “individualized” nature of the high court’s test for evaluating these “severe, though brief” intrusions. Not only would a per se rule undermine the requirement that an officer provide specific and articulable facts supporting a reasonable apprehension of an armed suspect, but it would also seem to set up a rebuttable presumption that impermissibly shifts the burden to the defendant to prove the unreasonableness of a challenged search.

Second, a per se rule would conflate the different standards and justifications for *Terry* stops and frisks. A lawful frisk does not inevitably follow from a lawful stop, and each intrusion—the stop and the frisk—requires a separate analysis with its reasonableness independently determined. As a more “severe” intrusion upon personal security than a stop, a frisk must “be strictly circumscribed by the exigencies which justify its initiation”—namely, the search for weapons. A per se rule that allows a frisk automatically after a stop for suspected robbery would threaten to “destroy the necessary distinction between the stop and frisk.”

(*In re Jeremiah S.* (2019) 41 Cal.App.5th 299 [internal citations omitted]; See also *Ramirez v. City of Buena Park* (9th Cir. 2009) 560 F.3d 1012, 1022 [detained individual’s testy behavior and suspected drug use did not justify *Terry* frisk]; see *Santos v. Superior Court, supra*, 154 Cal.App.3d at pp. 1184–1186 [pat search invalidated despite lawful detention for suspected loitering, a crime that indicates lingering in a particular place for the purpose of committing a crime as opportunity may be discovered].)

As in *Jeremiah S.*, Officer Brett Hernandez did not suggest that the time of day was a factor that led to his decision to pat search [REDACTED] ID [REDACTED]. The detention did not occur in a high crime area (except for auto burglaries for which [REDACTED] ID [REDACTED] was not a suspect) and the detention was for a fine-only *parking* infraction – not a violent offense. Additionally, the officers outnumbered [REDACTED] ID [REDACTED] the detention occurred on a main and busy street, and [REDACTED] ID [REDACTED] was approximately 5’8” and weighed 185 pounds – he was not a large man. BWC footage reveals that Officer Brett Hernandez was taller than [REDACTED] ID [REDACTED].

Additionally, as in *Jeremiah S.* [REDACTED] ID did not do anything, say anything, or have any suspicious bulges in his clothing that would provide specific and articulable facts that he was armed and dangerous. Officer Brett Hernandez used buzzwords in place of facts — “totality of circumstances,” “aggressive,” and “officer safety” are words often used in place of hard facts. [REDACTED] ID failed the attitude test. He deigned to argue with police officers and assert his Fourth Amendment rights. This verbal sparring is not grounds for a pat search. The BWC footage overall captures a man who cannot believe (and is upset) that police officers stopped him, gloved up, said they were detaining him for a parking violation, that they just needed to identify him, then announced they were going to pat search him while he provided valid identification. “The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers. ‘Speech is often provocative and challenging... [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.’” (*City of Houston, Tex. v. Hill* (1987) 482 U.S. 451, 461 [internal citations omitted].) The buzzwords totality, officer safety, and fear are conclusions, not facts. The totality of the interaction here does not support reasonable suspicion that [REDACTED] ID was armed and dangerous.

Officer Brett Hernandez claimed that he decided to pat search [REDACTED] ID because he was not following instructions and attempted to “flee.” This is simply not true – once it was clear that the police were detaining [REDACTED] ID he made no attempt to “flee.” [REDACTED] ID asked whether there were no parking signs and craned his head to look while stepping in the direction of his car. When the officer told him he was illegally parked, he started to walk toward the car and said he would move his car. When Officer Jacqueline Hernandez told him that he was detained and he had to stay and be identified, he stopped walking toward the car, told Officer Brett Hernandez not to touch him, and produced his identification from his front pocket. The movement was not sudden or furtive, and [REDACTED] ID announced precisely what he was doing. Indeed, neither officer moved toward [REDACTED] ID nor reacted when he did this. Instead, Officer Brett Hernandez, rather than identifying [REDACTED] ID running him, and issuing a parking citation, announced that he was going to pat search [REDACTED] ID and argued with him over whether he had the right to touch him, then grabbed [REDACTED] ID and took him down.

[REDACTED] ID delay in complying with the initial order to stop, and his verbal challenges to police authority do not constitute a violation of Penal Code section 148. (*People v. Quiroga* (1993) 16 Cal.App.4th 961.) *Quiroga* held, “We find nothing in appellant’s conduct before his arrest that might justify a charge of violating Penal Code section 148. It is true that he complied slowly with Officer Stefani’s orders, but it surely cannot be supposed that Penal Code section 148 criminalizes a person’s failure to respond with alacrity to police orders. Moreover, appellant possessed the right under the First Amendment to dispute Officer Stefani’s actions... Indeed, ‘[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.’ (*Hill, supra*, 482 U.S. at 462–463.) While the police may resent having abusive language ‘directed at them, they may not exercise the awesome power at their disposal to punish individuals for conduct that is not merely lawful, but protected by the First Amendment.’ (*Duran v. City of Douglas, Ariz.* (9th Cir.1990) 904 F.2d 1372, 1378.)” (*Quiroga, supra*, 16 Cal.App.4th at 966. Thus, [REDACTED] ID verbal challenges to the detention and attempted pat search did not constitute a violation of Penal Code section 148 and did not provide a proper basis for a pat search.

The officers were clearly not in fear of [REDACTED ID]. Officer Brett Hernandez's words, actions and demeanor on the BWC footage belies later claims that he had reasonable suspicion that [REDACTED ID] had a weapon. Thus, the pat search was unlawful. It follows that [REDACTED ID] refusal to submit to it did not constitute a violation of Penal Code section 148, which has as an element that the officer was acting lawfully in the performance of his or her duties.

Therefore, a preponderance of the evidence establishes that the allegations of Unwarranted Action for conducting a pat search without cause, in violation of the Fourth Amendment to the United States Constitution, San Francisco Police Department Peace Officer Training Manual (July 2014) and *Terry v. Ohio* (1968) 392 U.S. 1, and [REDACTED ID] POBRA against Officer Brett Hernandez #307 are **Sustained as improper conduct.**

III. CONCLUSION

Time and again, Officer Brett Hernandez affirmed that to conduct a pat search, he was required to have specific, articulable facts that [REDACTED ID] was armed and dangerous. He did not have those facts and acknowledged that [REDACTED ID] statements asking why the officers were bothering him and stating that Officer Brett Hernandez did not have the right to touch him did not provide reasonable suspicion that [REDACTED ID] was armed and dangerous. Officer Brett Hernandez escalated a *parking violation* to an intrusive detention, pat search, and take down that caused [REDACTED ID] pain. [REDACTED ID] POBRA. He could have just as easily left a ticket on the car. There was no real point in discussing the parking violation with [REDACTED ID], as the officers refused to let him remedy the situation by moving his car. Finally, though the officers were permitted to identify [REDACTED ID] and issue the ticket directly to him, [REDACTED ID] had legitimate objections to the police intrusion. He voiced those opinions, which was his right, and did not then provide a basis for the pat search. The allegations of Unwarranted Action for conducting a pat search without cause, in violation of the Fourth Amendment to the United States Constitution, DGO 5.16, San Francisco Police Department Peace Officer Training Manual (July 2014) and *Terry v. Ohio* (1968) 392 U.S. 1, [REDACTED ID] POBRA, against Officer Brett Hernandez #307 are **Sustained as improper conduct.**

Investigated by:
[REDACTED PII]
Teri Torgeson
Investigator

Reviewed by:
[REDACTED PII]
Nicole Armstrong
Acting Senior Investigator

Reviewed by:
[REDACTED PII]
Erick Baltazar
Chief of Investigations

Reviewed by:
Paul D. Henderson
Executive Director
[REDACTED PII]
Sarah Hawkins
Chief of Staff

Assigned Attorney: Stephanie Wargo-Wilson

DEPARTMENT OF POLICE ACCOUNTABILITY COMPLAINT SUMMARY (293)

Complaint Received Date	Preferred Language	Case No. (DPA Use Only)
2019-01-24	English	0045-19
Last Name	First Name	Middle Name
█ ID █	█ ID █	
Co-Complainant Name:		

Occurrence Date & Time	Occurrence Location	Case No. (DPA Use Only)
01/24/2019 10:30 AM	6th Ave and Irving Street	0045-19

Narrative of Incident:

The complainant stated he was detained, searched and cited without cause. In addition he stated unnecessary force was used, his vehicle was illegally searched and an officer made inappropriate comments.	
Taken by (Name /Star # / Unit / Date):	

Department of Police Accountability Allegation Form

DPA Case No.	Complainant First Name	Complainant Last Name	Incident, Citation, or CAD
0045-19	ID	ID	ID

#	Complaint Received	Allegation Source	Occurrence Location	District
1	In Person	Complainant	Street	I - Taraval
2	In Person	Complainant	Street	I - Taraval
3	In Person	Complainant	Street	I - Taraval
4	In Person	Complainant	Street	I - Taraval
5	In Person	Complainant	Street	I - Taraval
6	In Person	Added Allegation	Street	I - Taraval
7	In Person	Complainant	Street	I - Taraval
8	In Person	Complainant	Street	I - Taraval
9	In Person	Complainant	Street	I - Taraval
10	In Person	Complainant	Street	I - Taraval

#	Type	Subtype	Detail	Finding	In Uniform POBRA	Rank	Name	Badge#	Hire Date	Gender	Ethnicity
[Redacted]											

POBRA

POBRA

4	Unwarranted Action	Unwarranted Action	Search or Seizure Violation	Proper Conduct	Yes	Police Officer	Brett S Hernandez	307	2016-04	POBRA	Male	White
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Allegation Summary:

The officer searched a vehicle without cause.

POBRA

POBRA

POBRA

7	Unwarranted Action	Unwarranted Action	Search or Seizure Violation	Improper Conduct	Yes	Police Officer	Brett S Hernandez	307	2016-04	POB RA	Male	White
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Allegation Summary:

The officer conducted a pat search without cause.

POBRA




POBRA

POBRA

Assigned
Investigator:

Teri Torgeson

ID	A	148	RESISTING ARREST	IRVING ST/6TH AV, SF
[01/24/2019]				
10:47:43	DT09	[REDACTED]	CREATE	Location:IRVING ST/6TH AV, SF Type:916 DAREA:3F Area:670 TypeDesc:SUSPICIOUS VEHICLE LocDesc:<500/ 1300> Priority:C Class:F:3PAT Agency:SP Map:A2 Plate:[REDACTED]
10:47:43	DT09	[REDACTED]	ENTRY	Sector/Stn:F1 Map:A2 Plate:[REDACTED] Comment:W/1 SH
10:47:43	DT09	[REDACTED]	DISPOS	3111A Location:IRVING ST/6TH AV, SF Plate:[REDACTED] Operator:[REDACTED] OperNames:HERNANDEZ, JACQUELINE #4039; HERNANDEZ,BRETT S. #307
10:47:43	DT09	[REDACTED]	PRIU	3111A
10:47:44	CADAPP	TIB	PREMIS	Comment:PPR
10:47:57	DT09	[REDACTED]	MISCN	3111A Comment:2014 BUICK
10:49:21	DT09	[REDACTED]	MISCN	3111A Comment:148
10:49:24	DT13	[REDACTED]	MISCN	3111A Comment:148
10:49:31	DT09	[REDACTED]	BACKER	3144 Operator:[REDACTED] OperNames:SCHNEIDER,DANIEL L. #574
10:49:47	DT09	[REDACTED]	MISCN	3144 Comment:C3 FROM TAR/19TH
10:50:04	DT13	[REDACTED]	MISCN	3111A Comment:3141 C33
10:50:06	DT09	[REDACTED]	MISCN	3144 Comment:31202 ACK
10:50:10	DT09	[REDACTED]	BACKER	3141 Operator:[REDACTED] OperNames:DUN,DESMOND #4267
10:50:13	DT13	[REDACTED]	MISCN	3141 Comment:RESPONDING C3
10:50:22	DT13	[REDACTED]	MISCN	3111A Comment:31202 ACK C3
10:50:24	K325	[REDACTED]	PRIOR	PremType:PPR 3141
10:50:48	DT13	[REDACTED]	OK	3111A Comment:1 IN CUFFS
10:50:51	K138	[REDACTED]	BACKER	3F43A Operator:[REDACTED] OperNames:ENG,MATHEW L #298; HEPPENSTALL,RICHARD #514
10:50:54	DT09	[REDACTED]	MISCN	3144 Comment:SHUTTING DOWN 19TH/PACHECO
10:51:02	DT13	[REDACTED]	BACKER	31111 Operator:[REDACTED] OperNames:PAI JR,JOHN #4169
10:51:12	DT13	[REDACTED]	MISCN	3141 Comment:SHUTTING DOWN 16TH/JUDAH
10:51:14	DT09	[REDACTED]	MISCN	3141 Comment:SHUTTING DOWN C3 16TH/JUDAH
10:51:23	DT09	[REDACTED]	CHANGE	Type:916->148 TypeDesc:SUSPICIOUS VEHICLE->RESISTING ARREST Priority:C->A
10:51:35	DT13	[REDACTED]	MISCN	3111A Comment:GUY IS A BIT OF AN 800
10:51:36	K190	[REDACTED]	BACKER	3116A Operator:[REDACTED] OperNames:WONG,DARREN #1917; MANALANG,NATHANIEL #1956
10:52:34	K138	[REDACTED]	RI	3F43A
10:53:01	K138	[REDACTED]	CLEAR	3F43A Dispo:ND
10:53:47	K299	[REDACTED]	RI	31111
10:54:14	K252	[REDACTED]	MISCN	3111A Comment:MONSTR mask: Query 1: CSD
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10:54:42	DT09	[REDACTED]	ONSCN	3141
10:56:27	DT13	[REDACTED]	ONSCN	31111
10:57:17	DT09	[REDACTED]	ONSCN	3144
10:57:20	DT09	[REDACTED]	BACKOS	3146 Operator:[REDACTED] OperNames:SCHNEIDER,DANIEL L. #574; OWENS,DANIEL #1053
10:57:56	DT13	[REDACTED]	CASE	Case#:PD [REDACTED] 3111A Dispo:ND LocDesc:<500/ 1300>->at IRVING ST/6TH AV, SF
10:58:18	K252	[REDACTED]	RI	3111A
10:59:04	K357	[REDACTED]	BACKER	3113A Operator:[REDACTED] OperNames:RASHIDIAN,MILAD R. #564; LARA, KEVIN
10:59:09	K357	[REDACTED]	RI	3113A

10:59:25	K357	[REDACTED] PII	RI	3113A	
10:59:53	K357	[REDACTED]	MISCN	3113A	Comment:SFPDMDCCMDLINE mask: Query 1: CSD
					
11:00:25	K190	[REDACTED] PII	ONSCN	3116A	
11:01:15	K252	[REDACTED]	MISCN	3111A	Comment:SFPDMDCCMDLINE mask: Query 1: CSD
					
11:01:41	DT13	[REDACTED] PII	ONSCN	3116A	
11:02:41	DT13	[REDACTED]	MISCN	3116A	Plate [REDACTED] PII Comment:VEH INVOLVED TAN GOLDISH BUICK LACROSS, BC ON AN ALL IF INVOLVED IN ANY 216 OR 217'S ... SHOWS TRAJECTORY FROM FRONT WINDSHIELD
11:03:01	DT13	[REDACTED]	BACKOS	4T7C	Operator:[REDACTED] PII OperNames:OLSON,JOSHUA #4051
11:03:04	DT13	[REDACTED]	CLEAR	4T7C	Dispo:HAN
11:03:57	K190	[REDACTED]	CLEAR	3116A	Dispo:ND
11:05:01	K252	[REDACTED]	MISCN	3111A	Comment:SFPDMDCCMDLINE mask: Query 1: CSD
					
11:06:10	K325	[REDACTED] PII	CLEAR	3141	Dispo:HAN
11:17:44	K177	[REDACTED]	RI	3146	
11:17:47	K177	[REDACTED]	RI	3146	
11:17:57	K252	[REDACTED]	CLEAR	3111A	Dispo:ARR
11:19:07	K299	[REDACTED]	RI	31111	
11:19:32	K357	[REDACTED]	CLEAR	3113A	Dispo:ND
11:19:51	K177	[REDACTED]	CLEAR	3146	Dispo:ND
11:20:20	K299	[REDACTED]	CLEAR	31111	Dispo:HAN
11:20:53	DT09	[REDACTED]	CLEAR	3144	
11:20:53	DT09	[REDACTED]	CLEAR		
11:20:53	DT09	[REDACTED]	CLOSE		

CALL RECAP:

INITIATE: 10:47:43 01/24/2019
ENTRY: 10:47:43 01/24/2019
DISPATCH: 10:47:43 01/24/2019
ON SCENE: 10:47:43 01/24/2019
CLOSE: 11:20:53 01/24/2019
ADDRESS: IRVING ST/6TH AV, SF
DAREA: 3F
SECTOR: F1
RA: 670
FIRE:

CALL NUMBER: [REDACTED] ID
CURRENT STATUS: CLOSE
PRIMARY UNIT: 3I11A
JURISDICTION: SP
DISPOSITION: ARR

REPORT NUMBER: PD [REDACTED] ID
TYPE: 916 --> 148 RESISTING ARREST
PRIORITY: A
PRIOR HISTORY: Yes

CP:
ADDRESS:
PHONE:

CAD TIMESTAMP: CADT [REDACTED] ID

OPERATOR ASSIGNMENTS:

DT09 [REDACTED] PII
CADAPP TIB
DT13 [REDACTED] PII
K325
K138
K190
K299
K252
K357
K177

San Francisco Police Department
SFPD Records 7415 575-7232

Report Type: Initial

ID

INCIDENT	Incident Number ID	Occurrence From Date / Time 01/24/2019 10:47	Occurrence To Date / Time	Reported Date / Time 01/24/2019 10:47	CAD Number ID	ID		
	Type of Incident RESISTING, DELAYING, OR OBSTRUCTING PEACE OFFICER DUTIES 27170 MARIJUANA OFFENSE 16010 TRAFFIC VIOLATION ARREST 65010							
	Location of Occurrence: IRVING ST		At Intersection with/Premise Type 6TH AVE / SIDEWALK		District PARK			
	Confidential Report? <input type="checkbox"/>	Arrest Made? <input checked="" type="checkbox"/>	Suspect Known? <input type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>		Domestic Violence? <input type="checkbox"/>	Use of Force? <input type="checkbox"/> Reporting Unit 3111A
	Location Sent / On View: IRVING ST		At Intersection with 6TH AV		Reporting District TARAVAL			
Crime and Clearance Status 6	Reported to Bureau Name	Star	Date/ Time	Elder Victim <input type="checkbox"/>	Gang Related? <input type="checkbox"/>	Juvenile Subject? <input type="checkbox"/> Prejudice Based? <input type="checkbox"/>		
Have you reviewed the attached list of procedures required by Department General Order (DGO) 7.04? N/A								

OFFICER	I declare under penalty of perjury, this report of <u>5</u> pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved. PROP 116 CERTIFIED Post Training					
	Reporting Officer HERNANDEZ, JACQUELINE	Star 4039	Station Taraval Station	Watch 0600-1600	Date 01/24/19 13:24	
	Reviewing Officer PAI, JOHN J	Star 4169	Station Taraval Station	Watch 0600-1600	Date 01/24/19 13:36	
	OIC PAI, JOHN J	Star 4169	Station Taraval Station	Watch 0600-1600	Date 01/24/19 13:38	
	Related Case -	Related Case -	Re-assigned to Copies to 3*300 5N200 4B300	Assigned to 3*300 Add'l Copies	Assigned by JH 4039	

REPORT	Code R 1	Name (Last, First Middle) SFPD, #4039, #307	Alias	Email								
	Day Phone (415) 759-3100	Type Work	Home Address	City	State	Zip Code						
	Night Phone (415) 759-3100	Type Work	Work Address 2345 24TH AVE	City SAN FRANCISCO	State CA	Zip Code 94116-						
	DOB / Age	DOB Unk. <input type="checkbox"/>	or age between and	Race	Sex	Height	Weight	Hair Color	Eye Color	ID Type	Jurisd.	ID No.
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star	Follow-up Form YES <input type="checkbox"/>	Statement YES <input type="checkbox"/>	Relationship to Subject					
	School (If Juvenile)	Injury/Treatment NONE.	Other Information/If Interpreter Needed Specify Language									
	Interpreter Needed <input type="checkbox"/>	Language	Language Description (If Other)	Language Line Service/Interpreter ID#	Bilingual Ofc Star#							

Retrieved by a00961 on 1/25/19 at 7:14:32 PM
San Francisco Police Department
SF PD Incident# 415-075-7232

Report Type: Initial

ID

C I T I E D	Code C 1	Name (Last, First Middle) ID	Alias				Email UNKNOWN				
	Day Phone PII	Type Cell	Home Address PII		City PII		State PII		Zip Code PII		
	Night Phone PII	Type Cell	Work Address		City		State		Zip Code		
	DOB Unknown <input type="checkbox"/>	Date of Birth PII	Age 30	or age between and		Race W	Sex M	Height 6'8	Weight 185	Hair Color BRO	Eye Color BRO
	SFNO	J/D# (If Juvl)	ID Type/Jurisdiction/Number CII			ID Type/Jurisdiction/Number FBI			ID Type/Jurisdiction/Number DL		
	Booking Charge(s)						Booking Location				
	Warrant #	Court#	Action#	Dept#		Enroute to					
Warrant Violation(s)								Bail (\$)			
Citation# CSD	Violation(s) 22514 CVC, 7.2.25 TRC				Appear Date/time		Location of Appearance				
Citation# CSD	Violation(s) 148 (a)(1) Pc, 23222(b)(1) PC				Appear Date/time CI		Location of Appearance 850 BRYANT ST, ROOM 475, SAN FRANCISCO CA 94103				
<input type="checkbox"/> CA Form Booked Copy Attached		Mirandized: Star <input type="checkbox"/>		Date Time		CWB Check NATALIE		Star 78			
Book/Cite Approval SGT PAI	Star 4169	Mass Arrest Code		M X-Rays <input type="checkbox"/>		School (If Juvenile)			Statement <input type="checkbox"/>		
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos LSW: BLACK HOODIE, JEANS, AND RED BEANIE											
Interpreter Needed <input type="checkbox"/>	Language		Language Description(if Other)			Language Line Service/Interpreter ID#			Bilingual Ofc Star#		

P R O P E R T Y	Code/No EVD 1	Item Description PHOTOGRAPH				Brand		Model			
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.		Quantity 1	Value Total			
	Seized by (Star) 4039		From Where TARAVAL STATION								
	Additional Description/Identifying Numbers (1) PHOTOGRAPH OF (C1) ID										

P R O P E R T Y	Code/No BWC 1	Item Description BODY WORN CAMERA VIDEO				Brand TASER		Model AXON BODY 2			
	Serial No.	Gun Make	Caliber	Color	Narcotics Lab No.		Quantity	Value Total			
	Seized by (Star) 4039		From Where EVIDENCE.COM								
	Additional Description/Identifying Numbers #307,#4039,#574,#1053,#1917,#1956,#4267,#4169,#564,#367,#4051. ALL BODY WORN CAMERA VIDEO WAS UPLOADED TO EVIDENCE.COM.										

Incident# ID

SFDPA - 0045-19 - 000032

Page 2 of 5

01/25/2019 10:22PM (GMT-05:00)

Retrieved by a00961 on 1/25/19 at 7:14:32 PM
 San Francisco Police Department
 SFPD Records 7435-75-7232

Report Type: Initial

ID [REDACTED]

VEHICLE INFORMATION	VEHICLE CODES: B - BOOSTED; D - DAMAGED; F - USED FELONY; R - RECOVERED; S - STOLEN; S/R - STOLEN/RECOVERED; T - TOWED; U - USED OTHER; V - VANDALIZED; X - STRIPPED					
	Code U 1	Plate No. PII	State CA	Reg Yr 2018	Plate Type PC	VIN No. PII
	Veh Year 2014	Make Buick	Model LACROSSE			
	Style Sedan, 4 Door		Color Gold	Plates/VIN Match? <input checked="" type="checkbox"/>	Plates Missing? FRONT <input type="checkbox"/> REAR <input type="checkbox"/>	
	Condition (Check all that apply) APPARENTLY DRIVABLE? <input checked="" type="checkbox"/> BURNED? <input type="checkbox"/> DAMAGE? <input type="checkbox"/> STRIPPED? <input type="checkbox"/>			Damage NONE.	Point of Entry	
	Crime Scene Tech. Notified? <input type="checkbox"/>	387 Form Given to Owner? <input type="checkbox"/>	Tow Approved By (Name) Star		Towed to (Name/Address)	Tow Check (Name) Star
	Hold For			Other Information		
OWNER	Registered Owner Business Name/Last Name (R/O) ID		First Name ID		Residence Phone	
	Residence Address PII		City PII	State PII	Zip PII	Business Phone

Report Type: Initial

ID [REDACTED]

NARRATIVE

On January 24, 2019 at approximately 1047 hours, Officer Hernandez #307 and I were on patrol in full police uniform in a marked patrol vehicle driving eastbound Irving towards 6th Ave.

I observed a (U1) gold Buick Lacrosse with CA LP# [REDACTED] PII directly in front of us. The Buick was in the number one lane travelling eastbound Irving. The Buick came to a stop at the red light at the intersection at 6th Ave. The Buick proceeded into the intersection, made a right turn onto 6th Ave, and parked on the southwest corner of 6th Ave. The Buick parked directly in front of a fire hydrant in violation of 22514 CVC and in a red zone in violation of 7.2.25 TRC.

The driver of the Buick, later identified as (C1) [REDACTED] ID through his CA DL [REDACTED] exited the front seat and walked over to the south sidewalk on Irving. Officer Hernandez activated the patrol vehicle's lights and sirens and ordered [REDACTED] ID to stop.

[REDACTED] ID turned around and placed both his arms up. Officer Hernandez and I both explained to [REDACTED] ID that he was detained for the parking violations. [REDACTED] ID started to walk away and refused to obey commands to stay still. [REDACTED] ID stated he had his vehicle's hazard lights on, allowing him to illegally park.

Due to the fact that [REDACTED] ID was wearing an oversized black hoodie, oversized jeans, tried to reach into his pockets more than once, and was refusing to stop moving, Officer Hernandez attempted to conduct a pat search for weapons. Officer Hernandez ordered [REDACTED] ID to turn around, [REDACTED] ID refused and yelled, "Do not touch me. You do not have the right to touch me!"

Officer Hernandez grabbed his right arm in an attempt to search him. [REDACTED] ID immediately tensed up and attempted to walk away pulling his right arm away. I grabbed his left arm in an attempt to place [REDACTED] ID in handcuffs. I felt [REDACTED] ID arm tense up as I grabbed it.

Officer Hernandez and I guided [REDACTED] ID to the ground to maintain control of [REDACTED] ID. I gave [REDACTED] ID multiple orders to put his hands behind his back with negative results. [REDACTED] ID resisted and actively tried to get up. [REDACTED] ID placed both his arms under his chest, Officer Hernandez was able to pry his left arm from underneath him and I pried his right arm to [REDACTED] ID back. I placed [REDACTED] ID in department issued handcuffs.

Officer Hernandez placed [REDACTED] ID inside the patrol vehicle.

I walked over to [REDACTED] ID Buick and immediately noticed the smell of burnt cannabis emitting from inside the Buick. The two front windows of the Buick were rolled down as well as the sunroof. Due to the fact that the smell of burnt cannabis was strong and clearly coming from inside the vehicle, I had probable cause to believe the vehicle contained cannabis or other drug paraphernalia. I searched the Buick. I found an open and unsealed container with cannabis in the center console in violation of 23222(b)(1)PC.

[REDACTED] CI

With the approval of Sgt. Pal #4169, [REDACTED] ID was cited for 148(a)(1)PC resisting or delaying a peace officer and 23222(b)(1)PC illegal storage of cannabis in a vehicle. [REDACTED] ID signed the citation in my presence, provided his right thumbprint. Officer Hernandez issued [REDACTED] ID a parking citation for 22514 CVC fire hydrant and 7.2.25 TRC red zone. [REDACTED] ID was released at the scene.

[REDACTED] ID did not have any visible injuries. Officer Hernandez offered [REDACTED] ID an ambulance, however, [REDACTED] ID did not respond and got inside his vehicle.

Using my department issued phone, I took an (E1) photo of my body worn camera footage depicting [REDACTED] ID after he was released on scene. The photo was booked into evidence.

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San Francisco Police Department
SFPD Incident 7435-7232

Report Type: Initial

All officers on scene activated their (BWC1) Body Worn Cameras and later uploaded the footage to evidence.com.

ID [REDACTED]

1 DEPARTMENT OF POLICE ACCOUNTABILITY

2 DPA CASE NO.: 0045-19

3

4 INTERVIEW OF: [REDACTED] ID

5 DATE OF INTERVIEW: 01/24/2019

6

7

8 INV. TERI TORGESON: This interview is regarding DPA Case
9 number 0045-19. This is Investigator Torgeson, with the
10 Department of Police Accountability. I am at the DPA office with
11 [REDACTED] ID, how do you say your last name again?

12 [REDACTED] ID

13 INV. TORGESON: [REDACTED] ID Can you please spell your
14 first and last name for the record?

15 [REDACTED] ID First name [REDACTED] ID last name

16 [REDACTED] ID

17 INV. TORGESON: Thank you. Do you understand that I'm
18 recording our conversation and do I have your permission?

19 [REDACTED] ID: Yes.

20 INV. TORGESON: This interview is taking place on
21 Thursday, January 24th at...

22 [REDACTED] ID: 2:53.

23 INV. TORGESON: 2:53 p.m. and it's about an incident
24 that took place at 7th Avenue and Irving Street this morning,
25 around 10:30 a.m. And as best a chronological order as you can,
26 can you tell me what happened?

27 [REDACTED] ID: I was on my way to get lunch from the Yellow
28 Sub on 7th and Irving.

1 INV. TORGESON: Driving?

2 [REDACTED] ID Yes, I driving in my 2014 Buick.

3 INV. TORGESON: Okay.

4 [REDACTED] ID As I was going down one of the main streets, I
5 seen the police officers following me. I thought nothing of it,
6 because we were on a main street. I turned onto Irving and I
7 pulled over, in front of the sandwich shop. I happened to pull
8 over into a fire zone or a red zone with a fire hydrant, but
9 it's right in front of the place, and it's made for parking for
10 the customers. But anyways, as I got out the car, I was walking
11 to the, into the stop, and the officers then pulled up, flashed
12 their lights, very..

13 INV. TORGESON: The lights of the car?

14 [REDACTED] ID Flashed the lights of their car, their siren
15 lights, startling me, telling me to freeze. They then both
16 jumped out of their car very hastily, approached me quick,
17 surrounding me, scaring me.

18 INV. TORGESON: And how many officers were there?

19 [REDACTED] ID : Two officers, one male and one female. I put
20 my hands up, asked them what the problem was, they told me that
21 I'm in the fire lane-hydrant. I knew that they had been
22 following me and that mostly likely wasn't the reason, but I
23 said okay. I started to walk back towards my car, wanting to
24 move it for them, because I have no problem moving it up a
25 little bit or whatever, getting out of the red zone. He then
26 stopped me, said, "No, you're not going nowhere." Right? And I
27 said, "Please don't touch me or put your hands on me. You do not
28 have the right to put your hands on me." He says, "I most

1 definitely do have the right," right, "And I'm going to put my
2 hands on you, you're going to be detained." I said, "What am I
3 going to be detained for?" He says, "For parking in the fire
4 hydrant." "That's not a detainable offense, that's a ticket."

5 He didn't like that I was making sense. I handed him my
6 driver's license. Again, I put my hands up in the air. I was
7 being loud, but only to cause the attention of those around me
8 because I feel safer with more eyes on me. I don't want to be in
9 the situation just us alone, and take me away and nobody knows
10 about it or something. But anyways, the officer tackles me with
11 my hands still up.

12 INV. TORGESON: Which officer?

13 [REDACTED ID]: The male officer tackles me. He then, he more
14 body wrapped me.

15 INV. TORGESON: What, so let me go back. So, you gave
16 him your driver's license.

17 [REDACTED ID] Gave them the driver's license.

18 INV. TORGESON: You said you put your hands up.

19 [REDACTED ID] Right. And I'm asking them what's going on.

20 INV. TORGESON: You said you're being loud, what were
21 you saying?

22 [REDACTED ID] I was asking them why are you detaining me.
23 You don't have the right to do this, those types of things.

24 INV. TORGESON: Okay. And so, why did he tackle you?

25 [REDACTED ID]: He said, because he said I do have the right.
26 Me telling him that he doesn't have the right to touch me and
27 that he's not allowed to touch me is what enticed him more,
28 antagonized him to want to engage with me. I was being a smart-

1 | ass, if you want me to be real with you.

2 | INV. TORGESON: Okay.

3 | ID Yeah.

4 | INV. TORGESON: That's all I want is honesty.

5 | ID I'm telling him the truth though, he was
6 | harassing me. I don't feel I should be harassed, I'm allowed to
7 | walk down the street.

8 | INV. TORGESON: Can you describe, when you say he
9 | tackled you, describe what you mean?

10 | ID: So, it was two different instances. First, he
11 | came up from behind me and tried to like maybe half-nelson me
12 | from behind, like because he went to the front, but then like
13 | turned, and I had both of my hands up. Then he tried to put one
14 | hand behind my back and he really yanked at it, and I swerved my
15 | arm out, because I don't want to be touched, and I still have my
16 | hands in the air the whole time.

17 | INV. TORGESON: Okay.

18 | ID And he's trying to grab me and tackle me and
19 | I'm asking though, "Why are you doing this to me? Why are you
20 | doing this to me?" I haven't done anything, I haven't hurt
21 | anybody. There's no victim, there's no crime, nothing's been
22 | stolen. Why are you touching me? Even if I ran ten red lights,
23 | that's a ticket, that's not a punishable offense of assault. But
24 | anyways, you're supposed to use force in a hostage situation or
25 | you know, if somebody's being hurt. Do you know what I'm saying?

26 | INV. TORGESON: Uh-huh.

27 | ID: There's no other reason for these guys to use
28 | it, but anyways, I was then, we were then on the floor.

1 INV. TORGESON: Okay. So, when he tackled you...

2 [REDACTED] ID It wasn't quite a tackle yet.

3 INV. TORGESON: So, first, he comes behind you with a

4 half-nelson.

5 [REDACTED] ID First, it's kind of to me, right, but then he

6 like swerves behind me, tries to get...you know how they do the

7 whole arm thing?

8 INV. TORGESON: Okay. So, he was in front of you when

9 you're talking.

10 [REDACTED] ID Right.

11 INV. TORGESON: And then he goes to your side, around

12 your back?

13 [REDACTED] ID He kind of tries to grab my arms. I can't

14 exactly, he wrapped...something.

15 INV. TORGESON: Okay. To put your arm behind you, yeah.

16 [REDACTED] ID : He tried to wrap me.

17 INV. TORGESON: Okay.

18 [REDACTED] ID : And as he's wrapping me and turning, the other

19 officer kind of comes to like get on my left shoulder.

20 INV. TORGESON: Okay.

21 [REDACTED] ID And I'm still like going like this to try to

22 keep my hands up, because I don't want to...

23 INV. TORGESON: Were you not letting him put your hand

24 behind your back?

25 [REDACTED] ID I had my hands up. As he puts, grabs them,

26 right, he's trying to now trip me, because he realized the

27 second I, you know, [swam] his thing, because he's trying to

28 touch me. Again, I don't know why I'm being touched.

1 INV. TORGESON: Okay. Let me just, I'm just, I want to
2 get all the facts. So, when you, so he grabbed your arm, were
3 you not letting him put your hand behind your back?

4 [REDACTED] ID He never grabbed me. He probably never really
5 went up here to pull.

6 INV. TORGESON: Okay.

7 [REDACTED] ID You see? Because my hands are up here.

8 INV. TORGESON: Okay.

9 [REDACTED] ID Because I know they want to grab me and yank
10 me here, that's why I'm keeping my hands here. Like I'm not
11 reaching for anything.

12 INV. TORGESON: Okay.

13 [REDACTED] ID Stay right there, I'm going to stay right
14 here. We've done nothing to entice each other in physical
15 contact.

16 INV. TORGESON: Right.

17 [REDACTED] ID: There's nothing that I've done to warrant you
18 to come towards me.

19 INV. TORGESON: I understand that, but when you said he
20 was trying to put your hand behind your back?

21 [REDACTED] ID: That's was as we were going to the floor-kind
22 of deal.

23 INV. TORGESON: Did you try and remove your hand from
24 him?

25 [REDACTED] ID: No. So, so as, like I said, so that makes
26 sense. As he like turns behind me, right, because he's in the
27 front of me, he turns behind me, then goes here, and then I feel
28 the other lady try and grab this one. As they're grabbing, I

1 | feel the dude trying to trip me with his leg to like take me to
2 | the floor.

3 | INV. TORGESON: Okay.

4 | ID And as I'm going to the floor, falling, I have
5 | no choice but to put my hands back down to stop myself.

6 | INV. TORGESON: Okay.

7 | ID Right? Or I'm going to face plant.

8 | INV. TORGESON: Okay.

9 | ID And now, they're both on top of my back, but
10 | my hands are on my knees, and I'm telling them, "Please, you
11 | know, you could..."

12 | INV. TORGESON: So, how did you get to the ground?

13 | ID So, want me to stand up and show you?

14 | INV. TORGESON: Sure. And I'll have to describe it for
15 | the recording.

16 | ID Okay. So they're...my back's against the wall
17 | here, and the lady's here, and the dude's here.

18 | INV. TORGESON: Uh-huh.

19 | ID And I'm like this, and he, I guess he tries to
20 | grab me and like do like this. Right?

21 | INV. TORGESON: Right. Put your hand behind your back.

22 | ID Right. And as he does, the other one doesn't
23 | go up, and then the lady, she kind of like rotates and grabs me.
24 | Now, I'm falling forward as I go like this, but as I'm going
25 | here, I always could get out of it, but it's a matter of I don't
26 | want them to say I'm resisting. Like, look, I'm getting
27 | assaulted.

28 | INV. TORGESON: Right. Why are you falling forward?

1 ID Because as you come from here, if your hands
2 go here to here, what is your natural motion of your body?

3 INV. TORGESON: Okay.

4 ID You feel that, right?

5 INV. TORGESON: Okay, uh-huh.

6 ID It makes sense, right? So, as they pull that
7 forward, I'm falling now, and there's a bench too, and I'm not
8 trying to [dink] my face on this bench. So, I kind of stop
9 myself with a knee and a hand, and then I bang-bang
10 [TRANSCRIBER'S NOTE: Referring to his knee banging something,
11 not gunshots]; I think that's how I hurt my right knee over
12 here. I'm not making any of this up; these things were done. So,
13 I hit my knee.

14 INV. TORGESON: Okay.

15 ID I couldn't have done that from the cement,
16 because it's the side of my knee, do you know what I'm saying?

17 INV. TORGESON: Okay.

18 ID So, I banged on the thing, and then, I guess,
19 left foot landed, and then my left knee hit the floor, and now,
20 they're both on top of me, but again, I had stopped myself from
21 my face hitting the ground by grabbing, using both of my hands
22 to bring me back forward.

23 INV. TORGESON: Okay.

24 ID And using them to protect myself from hitting
25 the floor. And now, they're both trying to grab my hands, and I
26 know what he wants to do now. He wants to yank my arm, and bring
27 it, and go [makes a sound to indicate fast motion], pulling my
28 face down. I'm like, and I don't want this to happen, all right,

1 it's not...and eventually, it does happen, but I don't want this.
2 I know their protocol and how they do it. They want to put your
3 face, slam it against something, with your arms behind your
4 back. That's just how it was going to happen, but anyways, I
5 somehow, as I'm on the floor, the guy moves and she moves, and
6 I'm able to get like this. As I go like this, he kind of runs
7 me.

8 INV. TORGESON: Can you describe what this, for the
9 recording?

10 [REDACTED] ID Okay, okay. I'm going to show you.

11 INV. TORGESON: Okay.

12 [REDACTED] ID My shoulder hurts here. So, I'm like this.

13 INV. TORGESON: So, you're on your knee.

14 [REDACTED] ID Right.

15 INV. TORGESON: With your hands in front of you.

16 [REDACTED] ID This is like, this is how I had to stop myself
17 from hitting my face, do you know what I mean?

18 INV. TORGESON: Okay.

19 [REDACTED] ID And now, he goes like this, and I think they
20 both got tired at this point. The lady kind of eases up, right,
21 and as they do, I feel like a chance to go like this kind of.

22 INV. TORGESON: So, you were trying to get back on your
23 knees to go upright.

24 [REDACTED] ID I wanted to stand up. I'm asking them, "Why
25 are we on the floor? You can cuff me." I'm telling them this.
26 Right? And as we do, somehow, I get like this.

27 INV. TORGESON: Which is putting a foot on the ground.

28 [REDACTED] ID A foot and to get down to something. I'm not

1 exactly sure, but somehow, I got back up in the air, turned.

2 INV. TORGESON: Okay. So, you stood back up, turned.

3 [REDACTED] ID I didn't stand though, that's the thing about
4 it. He used my momentum of the second of the release of the
5 pressure.

6 INV. TORGESON: Okay.

7 [REDACTED] ID Do you know what I mean?

8 INV. TORGESON: So, you ended up standing up.

9 [REDACTED] ID I ended up standing up in the momentum of it.

10 INV. TORGESON: All right.

11 [REDACTED] ID And as I'm on, now I'm one leg, and the dude
12 has this leg, and he yanks me up, and I'm going like this.
13 Right? Then I could feel it, and as he's tackling me, I know
14 again, I'm going to fall. I feel like I'm going backwards now,
15 because I fell onto my face here, but I remember when he
16 tackled... No, so, he did. He tackled me like this, but, so yeah.
17 Okay. So, he's here and I was able to face him like this.

18 INV. TORGESON: So, you spun back around?

19 [REDACTED] ID I spun and was able to face him afterwards,
20 and as I'm facing him, he looked like he wanted to swing on me.
21 And again, I know I could win, but I'm not fighting back, like I
22 have not swung. I could, I could, and I could win, like I could
23 see my openings. I wrestled for a long time; I don't mean to get
24 into this. I can see the opening, but I'm not. Then I go like
25 this, and he tackles me.

26 INV. TORGESON: So, you put your hands up in the air.

27 [REDACTED] ID Back up again.

28 INV. TORGESON: Were you facing him?

1 [REDACTED] ID Yes. Back up again, back...the whole time, my
2 arms are in the air. I'm purposely showing that I'm not fighting
3 with my hands in the air. I might not have wanted them behind my
4 back, but they were always up in the air.

5 INV. TORGESON: Okay.

6 [REDACTED] ID And he's facing me now, and as he tackles me
7 like this, because he really gets me up..

8 INV. TORGESON: So, how does he tackle you?

9 [REDACTED] ID: From underneath me. He really comes from here.

10 INV. TORGESON: He comes low?

11 [REDACTED] ID Right and he gets me, and I feel myself in the
12 air. So, now I have no choice but to spin, because I don't want
13 to land on my back.

14 INV. TORGESON: Okay.

15 [REDACTED] ID And as I'm kind of like this, and then boom,
16 elbow, face, shoulder.

17 INV. TORGESON: And where is the officer at this time?

18 [REDACTED] ID The female?

19 INV. TORGESON: The male who's tackling you?

20 [REDACTED] ID He's on me, but as he's holding me, I'm able
21 to like, you know what I mean?

22 INV. TORGESON: So, when you spin, where is he?

23 [REDACTED] ID Still, he's...so first, he's here.

24 INV. TORGESON: Right.

25 [REDACTED] ID So, his head's low, so I'm able to push, and
26 over, and then I was, "He's on my back."

27 INV. TORGESON: Okay.

28 [REDACTED] ID And he drives me into the ground.

1 INV. TORGESON: Okay.

2 [REDACTED] ID Does it make sense what I'm saying?

3 INV. TORGESON: Yes. No, I understand.

4 [REDACTED] ID I thought that was actually pretty good, the
5 re-enactment. Yeah, that's what happened though.

6 INV. TORGESON: And when you went to the ground, what
7 hit?

8 [REDACTED] ID I landed and then the store owner...because as
9 I...

10 INV. TORGESON: How did you land?

11 [REDACTED] ID I landed, spun, hands boom, elbow, shoulder,
12 and then face. And my back, really my shoulder took the brunt of
13 the impact. You can see my hands got the scuffs from...

14 INV. TORGESON: Yeah.

15 [REDACTED] ID: Like I'm not...

16 INV. TORGESON: Okay.

17 [REDACTED] ID And then the store owner, because as I'm in
18 the air, I kind of like I'm pausing, because I'm looking around
19 for somebody to help me-type deal. You know what I mean? I'm
20 kind of scared now, to be real with you.

21 INV. TORGESON: Yeah.

22 [REDACTED] ID At first, I might have been antagonizing them,
23 because I was being harassed, but at this point, I'm truly,
24 truly scared, and I'm looking at the store owner like, "Bro,
25 please don't let them do this to me right now. Don't walk away
26 on me right now," you know, as I'm in the air. Then he walks
27 around the car.

28 INV. TORGESON: Who's that, who's he?

1 [REDACTED] ID The store owner.

2 INV. TORGESON: Okay.

3 [REDACTED] ID One of the brothers. Right? So, like here's a
4 car in the street, right, and then the store, and here's,
5 there's a bench.

6 INV. TORGESON: Okay.

7 [REDACTED] ID Right here.

8 INV. TORGESON: Yeah.

9 [REDACTED] ID So, we fought on this bench. There's a little
10 pole right here, we're like wrestling all around, because I hit
11 the bench, I hit the pole.

12 INV. TORGESON: Okay.

13 [REDACTED] ID All on the way down the first time. Then I got
14 back up and he drags me from around the car, you know what I
15 mean, that's where the lifting kind of thing happened. Right?

16 INV. TORGESON: Uh-huh.

17 [REDACTED] ID And as I'm being lifted and backing up, I'm
18 seeing him like, "Bro, don't leave me right now." Right?

19 INV. TORGESON: Okay. Was he inside the store?

20 [REDACTED] ID No, they had come out by this time.

21 INV. TORGESON: Both the brothers?

22 [REDACTED] ID I seen both of them. I didn't know which one
23 at the moment.

24 INV. TORGESON: All right.

25 [REDACTED] ID It was, I think, the older of the two brothers
26 that was, that came and helped. I know which one helped me.

27 INV. TORGESON: About how old are these brothers?

28 [REDACTED] ID I would say in their fifties or forties.

1 INV. TORGESON: Okay.

2 [REDACTED] ID : Something like that, like my dad's age, 50-
3 ish, 40-ish.

4 INV. TORGESON: Okay.

5 [REDACTED] ID I don't know, I don't know. Anyways, but yeah,
6 because the cop is like, he's aggressive now, on my back. He's
7 like, you know, when they get you down, that's their chance to
8 get their licks in, and I'm knowing that's just about to come to
9 me. He's yanking on my arms...

10 INV. TORGESON: So, this is when you're on the ground?

11 [REDACTED] ID This is when I'm on the ground and my face is
12 like this.

13 INV. TORGESON: Okay.

14 [REDACTED] ID And I'm looking up at dude, the store owner.

15 INV. TORGESON: Okay.

16 [REDACTED] ID Like, "Brother, please don't go away."

17 INV. TORGESON: Okay.

18 [REDACTED] ID He's like, "Just calm down. Just calm down,"
19 he's telling the cop, and everything's... "Just relax, relax."

20 INV. TORGESON: And did they handcuff you at that point?

21 [REDACTED] ID At that point, then yeah. After, not until the
22 dude calmed me down and dude, then he finally put the handcuffs
23 on me.

24 INV. TORGESON: The store owner calmed you down, then
25 they put the handcuffs?

26 [REDACTED] ID And he calmed me and the police officer down,
27 I'm not going to lie. The store owner saved me; I'm not going to
28 lie.

1 INV. TORGESON: Okay. So, after they handcuff you, what
2 happens next?

3 [REDACTED] ID They take me to the car, I guess. Actually,
4 no. I'm on the ground handcuffed for another maybe five minutes,
5 and I'm telling them, "You have no right to do this. You're
6 supposed to be giving me a parking ticket for being in the red
7 zone. This doesn't qualify for you to hit me." I'm talking to
8 them, I'm doing, I'm saying, stating my rights is what I'm doing
9 and I'm telling them I'm being violated and you're hurting me.

10 INV. TORGESON: Did they tell you why they were putting
11 you in cuffs or anything?

12 [REDACTED] ID Because I was parked in the red zone.

13 INV. TORGESON: Is that what they told you?

14 [REDACTED] ID That was the only thing I was given. There was
15 no other reason for me to be pulled over. I didn't run a light
16 on the way there. I didn't roll nothing. You know, roll stops.
17 You know the Sunset, you roll stop signs, everybody does it. I
18 didn't. I saw the dude was on my tail, I stopped. One, two,
19 three, s-t-o-p.

20 INV. TORGESON: Uh-huh.

21 [REDACTED] ID And I kept [pushing]; kept moving.

22 INV. TORGESON: Okay. So, then you're on the ground, in
23 cuffs for about five minutes, and then what?

24 [REDACTED] ID Yeah. And then they picked me up, set me, took
25 me to the front of the car. I'm calm at this point, right.

26 INV. TORGESON: By the hood?

27 [REDACTED] ID No, by the back door.

28 INV. TORGESON: Okay.

1 ID They're [unintelligible] sit me into it, and
2 the door's already open, waiting for me to sit in the car.

3 INV. TORGESON: So, you're sitting in the car.

4 ID I'm going to jail is what's about to happen.

5 INV. TORGESON: Okay.

6 ID You know in my head, like all right, I'm going
7 to jail. And then the officers, and I told them when I'm laying
8 on the floor, I told them, "You fucked up right now. You fucked
9 up. Everybody, I have a whole block full of people that just
10 seen you body slam me." Right?

11 INV. TORGESON: Uh-huh.

12 ID And I think that did click in his mind,
13 because then, when we got to the car, he was trying to be cool
14 with me and, "You know, I don't want this." I'm like, "Brother,
15 I know you're about to tow my car and take me to jail. It's a
16 great way to start the day. Let's go," you know, type deal. What
17 am I going to do? You know, I'm going to argue with them more
18 and more? I'm already in handcuffs. Anyway, he says just sit in
19 the car. I said, "Please don't close the door." Like I say, I'm
20 very claustrophobic, and by this point, that officer had calmed
21 down, right, but all the other officers had showed up by this
22 point now.

23 INV. TORGESON: How many other officers were there?

24 ID While I was on the floor, all the other
25 officers showed up, I believe.

26 INV. TORGESON: Do you know how many?

27 ID There was at least seven standing by my car at
28 one point and another three around the police car that I was in.

1 INV. TORGESON: So, there's at least seven other
2 officers?

3 [REDACTED] ID I would say seven to ten. There was two big
4 trucks came, there was a motorcycle cop, two big trucks, another
5 squad car, a motorcycle car; that's correct.

6 INV. TORGESON: So, two big trucks, a motorcycle?

7 [REDACTED] ID Two regular...

8 INV. TORGESON: Squad?

9 [REDACTED] ID The regular squad car that was already there
10 and then another one that I seen.

11 INV. TORGESON: Okay.

12 [REDACTED] ID While I was in the car, you know, I can't see
13 everything from the back of a cop car.

14 INV. TORGESON: Okay.

15 [REDACTED] ID Do you know what I mean?

16 INV. TORGESON: Okay.

17 [REDACTED] ID I can't see behind me.

18 INV. TORGESON: So, they eventually shut the door, put
19 you in the back of the car with the door shut?

20 [REDACTED] ID Yeah. They shut...the dude went from the
21 opposite door from behind, from the driver's side door; I'm on
22 the passenger side.

23 INV. TORGESON: Okay.

24 [REDACTED] ID He went from the driver's side and yanks the
25 cuffs from between my wrists and pulls me in.

26 INV. TORGESON: And which officer was that?

27 [REDACTED] ID This was a different officer. This was a bald-
28 headed, white, older man--the motorcycle officer.

1 INV. TORGESON: The motorcycle officer.

2 ██████████ ID ██████████ The motorcycle officer. He was wearing a

3 helmet, that's why I know he was the motorcycle officer.

4 INV. TORGESON: Okay. And did he shut the door? Did they

5 shut the door?

6 ██████████ ID ██████████ Yeah, yeah. He shut the door after he yanked

7 me down.

8 INV. TORGESON: What about the other door?

9 ██████████ ID ██████████ The other officer? Yeah, he switched the, uh,

10 I'm nice act. I got you in the car. Shut it. He seen how the

11 other officer did me, and he said fuck it, that's how we doing

12 it.

13 INV. TORGESON: Okay.

14 ██████████ ID ██████████ You know how they take their cues off of one

15 another.

16 INV. TORGESON: Okay. So, then what happened when you

17 were in the car?

18 ██████████ ID ██████████ Then they searched my car. They didn't at

19 first, but after about 20 minutes or 10 minutes, I don't know,

20 when you're sitting in there cuffed, the time takes forever it

21 seems like.

22 INV. TORGESON: And did you give them permission to

23 search your car?

24 ██████████ ID ██████████ No, absolutely not. And I'm saying this,

25 "Y'all don't have permission to search my car. I wasn't even in

26 my car."

27 INV. TORGESON: You told them that?

28 ██████████ ID ██████████ Yes, of course. I'm saying it out loud; they

1 ignored me, of course. So, they turned the radio up, so they
2 couldn't hear me. The other officer came in and congratulated
3 the female officer on...

4 INV. TORGESON: Which officer congratulated?

5 [REDACTED] ID He was an Asian officer I would want to say, a
6 man.

7 INV. TORGESON: How did he congratulate [him]?

8 [REDACTED] ID Told her, "Good job. That's how you're
9 supposed to do it," type stuff.

10 INV. TORGESON: You heard him say that from inside the
11 car?

12 [REDACTED] ID They were inside the car. He sat in the car to
13 tell her. Like he leaned in the car.

14 INV. TORGESON: They were both sitting in the car?

15 [REDACTED] ID The female was in the driver's seat, the
16 passenger door was open. He leaned in, had a knee on the seat,
17 and told her, "Uh, you dipped him? How'd you do it?" Or I don't
18 know what jargon they used.

19 INV. TORGESON: Okay.

20 [REDACTED] ID But basically congratulated her, like that's
21 typical whatcha call it?

22 INV. TORGESON: He said congratulations?

23 [REDACTED] ID Yeah. "Way to go, that's how you're supposed
24 to do it." Maybe he didn't say congratulations, but way to go,
25 good job, something to that extent.

26 INV. TORGESON: Okay.

27 [REDACTED] ID "That's how you get 'em." And the he asked
28 like, "Is she okay?" and then he walked down, and she goes,

1 "Yeah, yeah, I'm fine." But during the scuffle, I knew the woman
2 officer was on me, do you know what I mean? The man, me worried
3 about not fighting him is one thing, and me not getting in
4 trouble for hitting him. But the woman, I'm not going to hit
5 this woman or fight against you or do anything at all in that
6 regard, because she's a female; forgive me.

7 POBRA

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9 ID : They both, again, why did they pull me over?

10 INV. TORGESON: Okay. So, that's a separate issue. Okay?

11 ID You know, why did they get out of the car?

12 INV. TORGESON: Right, but that's a separate issue, like
13 the search is a separate issue.

14 POBRA

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1 [REDACTED] ID I could tell she was. She didn't want that,
2 but they got into it. Do you know what I mean?

3 INV. TORGESON: Okay. Okay. So, then you're in the car,
4 they have the doors shut. You see them searching your car. Did
5 they pull anything out of your car?

6 [REDACTED] ID No, they didn't take nothing out of it.

7 INV. TORGESON: After that what happened?

8 [REDACTED] ID He tried to say something about weed.

9 INV. TORGESON: To you?

10 [REDACTED] ID Yeah, yeah. They're telling me I'm about to
11 go, by now. He's already told me a few times. Before he even put
12 me in the car, he told me, "I'm going to let you go, you know,
13 I'm not arresting you."

14 INV. TORGESON: Which, the aggressor officer?

15 [REDACTED] ID The aggressive officer.

16 INV. TORGESON: Hernandez, you said his name is?

17 [REDACTED] ID Right.

18 INV. TORGESON: It's Hernandez?

19 [REDACTED] ID The second we got to the car, his tune
20 changed. While he's on top of me, his tune changed. He had his
21 hand on me and I'm yelling, and I think some of the things I
22 said actually sunk into him. Do you know what I mean?

23 INV. TORGESON: Uh-huh.

24 [REDACTED] ID I don't think these people are bad people. I
25 think they got a stressful job and sometimes going is part of it
26 or something, do you know what I mean?

27 INV. TORGESON: Uh-huh.

28 [REDACTED] ID I don't know, but you don't have the right to

1 do that though. I understand getting worked up and stuff, but I
2 didn't do nothing.

3 INV. TORGESON: Okay. So, after they searched your car,
4 what happened?

5 [REDACTED] ID Nothing.

6 INV. TORGESON: Did they let you go?

7 [REDACTED] ID They let me, he let me go.

8 INV. TORGESON: Right after the search of the car?

9 [REDACTED] ID Not right after, they kept me in the car. They
10 [unintelligible] still a little bit and everything, you know,
11 just let me hang in there.

12 INV. TORGESON: Okay.

13 [REDACTED] ID And I think they also called in to see about
14 something else in my car. I live in [REDACTED] PII, and like five days
15 ago, I want to say, there was a shooting in front of my house
16 and I have two bullet holes in the front of my... I have a nice
17 car and that's why you can really like see there's a bullet hole
18 in the hood and in the light.

19 INV. TORGESON: Wow.

20 [REDACTED] ID And they like asked me what about it. I think
21 they like tried to see if I was involved in some shit. I
22 understand that, I understand you've got to do your work, but
23 that's all that happened; I'm being honest with you.

24 INV. TORGESON: Okay.

25 [REDACTED] ID I'm just telling you everything.

26 INV. TORGESON: So, in thinking chronologically, so what
27 happened next?

28 [REDACTED] ID They pretty much, they let me go after that.

1 He took my handcuffs off and they let me out the car. All the
2 officers had pretty much driven away by now.

3 INV. TORGESON: Okay.

4 [REDACTED] ID The commotion had died down.

5 INV. TORGESON: So, it's just you and the original two
6 officers?

7 [REDACTED] ID No. I'd say there's probably about five of
8 them still there. There's one, two, plus there's, one, two,
9 three, so at least there's five at least.

10 INV. TORGESON: Okay.

11 [REDACTED] ID The first two and at least three more.

12 INV. TORGESON: Okay.

13 [REDACTED] ID Right? And then I say, "Okay. I'm going to
14 move my car now. Can I walk, [to get in the front]?" So, [they]
15 go in the thing and they tell me something about, you know,
16 following the rules and cooperating. I'm like, I said, "I don't
17 have to cooperate with nothing." I told them, "The problem is,
18 sir, they say that power corrupts and absolute power corrupts
19 absolutely. You know? So, you're taking advantage of your
20 position; power trips."

21 INV. TORGESON: And so, they gave you a ticket?

22 [REDACTED] ID My tickets.

23 INV. TORGESON: And they gave you a parking ticket and a
24 citation.

25 [REDACTED] ID A citation, right.

26 INV. TORGESON: Okay. So, one of the charges is, it says
27 cannabis.

28 [REDACTED] ID Yes.

1 INV. TORGESON: So, tell me a little bit about that.

2 [REDACTED] ID I had some marijuana in my car. I got in a
3 major car accident when I was about 19 and marijuana helps me.

4 INV. TORGESON: Was it in a baggie or was it rolled up?

5 [REDACTED] ID No, it was just in a jar.

6 INV. TORGESON: Okay.

7 [REDACTED] ID It's all in one space, there's no baggies or
8 nothing like that.

9 INV. TORGESON: Okay. Does your car smell like
10 marijuana?

11 [REDACTED] ID I'm sure, if you have...I'm sure it did.

12 INV. TORGESON: Okay.

13 [REDACTED] ID I'm sure it did.

14 INV. TORGESON: And they're charging you...

15 [REDACTED] ID But again, you can't smell marijuana from me
16 driving by you, and I didn't get pulled over.

17 INV. TORGESON: Right.

18 [REDACTED] ID I never got pulled over.

19 INV. TORGESON: Have you ever had interaction with these
20 officers before?

21 [REDACTED] ID These ones in particular, no, [REDACTED] CI

22 [REDACTED] CI

23 INV. TORGESON: Okay.

24 [REDACTED] CI

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27 INV. TORGESON: Okay.

28 [REDACTED] ID And I want to do something about it. There has

1 to be some type of repercussions for their actions of some sort.

2 INV. TORGESON: Okay. Were there any other witnesses
3 besides the shop owner?

4 [REDACTED] ID Yeah. Well, it was, you know where it is. So,
5 it was a busy place and it was in the morning still, so people
6 are still walking.

7 INV. TORGESON: Right, but just passer-byers? Did you
8 get any of their names?

9 [REDACTED] ID I didn't.

10 INV. TORGESON: Okay.

11 [REDACTED] ID But I got at least them two brothers in there.

12 INV. TORGESON: Okay.

13 [REDACTED] ID They're the business owners there. They're
14 there every day-type thing.

15 INV. TORGESON: Okay.

16 [REDACTED] ID But there were other people, but I didn't...they
17 stopped. I think they stopped watching, once I got put in the
18 car. You know people, they just want to see the [unintelligible]
19 part.

20 INV. TORGESON: Right. Do you know if there are any
21 cameras on the stores?

22 [REDACTED] ID It's an old store. I don't think they got
23 cameras like that.

24 INV. TORGESON: Okay. I'll take a look.

25 [REDACTED] ID Maybe from across the streets they probably
26 do.

27 INV. TORGESON: Okay.

28 [REDACTED] ID The body cam.

1 INV. TORGESON: Okay. Let me look at your, see if I
2 covered everything. I'm going to get pictures of your injuries
3 in a minute. I want pictures that you took, and I'm going to
4 make copies of the citations. All right. Is there anything else
5 you think I should know about this?

6 [REDACTED] ID When I went to the District Attorney's Office.

7 INV. TORGESON: Uh-huh.

8 [REDACTED] ID Right? I went and told them. As I'm walking
9 away, she tells me, "Uh, you should probably pull up your pants
10 too. That might help," right, "kind of thing." I said, "Well,
11 you think that was the reason I was assaulted?" She said, "It
12 might be, type deal." They were very rude to me.

13 INV. TORGESON: At the DA's Office?

14 [REDACTED] ID Right.

15 INV. TORGESON: Okay.

16 [REDACTED] ID She [unintelligible] if I was a criminal
17 coming in there, you know. And then she tells me, "Uh, you look
18 like you're under the influence of drugs." Like this is even
19 right after it happened, my head was even spinning more. You
20 seen when I came in here.

21 INV. TORGESON: Yeah.

22 [REDACTED] ID The only reason, I'm just going and it's like
23 the adrenaline that keeps me [going], but every time I stop, I
24 could like feel my head.

25 INV. TORGESON: Okay. All right.

26 [REDACTED] ID We're done.

27 INV. TORGESON: I'm going to end the recording.

28 [REDACTED] ID Yeah, I know.

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INV. TORGESON: At 3:18.

END OF DOCUMENT

1 DEPARTMENT OF POLICE ACCOUNTABILITY

2 DPA CASE NO.: 0045-19

3

4 INTERVIEW OF: [REDACTED] ID [REDACTED] FOLLOW-UP INTERVIEW

5 DATE OF INTERVIEW: 01/30/2019

6

7

8 INV. TERI TORGESON: I'm going to be interviewing [REDACTED] ID [REDACTED]
9 [REDACTED] ID [REDACTED]. This is a follow-up interview and the time is now
10 eight a.m. It's January 30th, 2019, and I'm here with
11 Investigator Deutsch and Investigator...

12 INV. ALEXANDRA SCHULTHEIS: Schultheis.

13 INV. TORGESON: Schultheis. And do I have your
14 permission to record this interview?

15 [REDACTED] ID [REDACTED] Of course, yes, ma'am.

16 INV. TORGESON: Okay. Thank you. So, I have some follow-
17 up questions from our previous interview. When you were
18 initially stopped by the officers, you told me that they told
19 you to freeze. Is that correct?

20 [REDACTED] ID [REDACTED] They [reaped] their sirens first, and then
21 they told me like don't move. I don't think they used the word
22 freeze. I think they said don't move.

23 INV. TORGESON: Okay.

24 [REDACTED] ID [REDACTED] And then they got out the car and they told me
25 about the...I asked them what the problem is. They said you're in
26 the fire hydrant lane or the red zone. I said no problem, and I
27 walked, started walking back. [Unintelligible], comes to
28 surround me by that point, and the officer says, "Don't move,

1 you're being detained." Actually, once he said detained, I
2 stopped my feet right there and I didn't move after that point.

3 INV. TORGESON: Okay.

4 [REDACTED] ID And then I said, "What am I being detained
5 for?" And he didn't, they didn't really answer. And then, or he
6 might have said because you're in the red zone, and I said,
7 "That's not a detainable offense," or whatever. I was standing
8 there and then it ensued from there, I guess.

9 INV. TORGESON: Okay. So, when you were standing there,
10 before they went hands-on with you.

11 [REDACTED] ID Yeah?

12 INV. TORGESON: Did you keep putting your hands in your
13 pocket to make them concerned you might have a weapon?

14 [REDACTED] ID Not at all, Miss. I handed him my photographic
15 identification.

16 INV. TORGESON: Okay.

17 [REDACTED] ID And again, why are they stopping me anyways?
18 But no, I did not have my hands in my pockets.

19 INV. TORGESON: Okay.

20 [REDACTED] ID My hands were above my head the entire time.

21 INV. TORGESON: And did you have anything in your hands?

22 [REDACTED] ID No, ma'am. Maybe, perhaps my keys to my car.

23 INV. TORGESON: Okay.

24 [REDACTED] ID Then I just got [unintelligible], and my
25 cellular phone.

26 INV. TORGESON: Did you have your sunglasses in your
27 hand?

28 [REDACTED] ID My sunglasses were on my head, I believe.

1 INV. TORGESON: Okay. So, the only time you put your
2 hands in your pocket, was when you pulled your ID out. Is that
3 correct?

4 [REDACTED] ID He did not even see me do that, because I did
5 it with such swiftness, that I handed him the credit card
6 without him even telling me not to go into my pockets or
7 whatever, you know.

8 INV. TORGESON: Okay.

9 [REDACTED] ID I handed it to him right away.

10 INV. TORGESON: Did he ever give you any commands to not
11 put your hands in your pocket?

12 [REDACTED] ID Not really, no.

13 INV. TORGESON: Okay.

14 [REDACTED] ID He might have said that, he might have said
15 that after I already handed him the credit card, but like I
16 said, I gave him the credit card right...or excuse me, my
17 identification card right away.

18 INV. TORGESON: Okay. So, I know he took pictures of
19 your injuries.

20 [REDACTED] ID Right.

21 INV. TORGESON: Did you show the officers your injuries?

22 [REDACTED] ID He said, "Do you have any injuries? Should I
23 call an ambulance? Are you okay?" I told him, "You slammed me on
24 my face, you know." That's what was hurting the most at the
25 moment, was my head that was already...I wasn't worried, I wasn't,
26 at the moment, concerned with scratches and things, no.

27 INV. TORGESON: Okay. So, you did not, at that point,
28 when you're in the custody of the officers, you did not show

1 them your scratches. Is that correct?

2 [REDACTED] ID I told them that my hand was going numb and
3 that my shoulder was hurt.

4 INV. TORGESON: Okay.

5 [REDACTED] ID And I told them to look at my face. I wasn't
6 aware of scratches on my body. I wasn't able to lift up my shirt
7 or take my sweater off to identify all the cuts on myself.

8 INV. TORGESON: Okay.

9 [REDACTED] ID My hands were behind my back.

10 INV. TORGESON: Okay.

11 [REDACTED] ID He didn't ask me the question if whether I was
12 hurt or not, so the only thing I knew about was my face that was
13 red and cut at the moment, you know?

14 INV. TORGESON: Okay. So, when you told them that your
15 hands were going numb, was that when you were in handcuffs?

16 [REDACTED] ID [Unintelligible] two flying fucks. I was in
17 the car—before I'd even gotten in the car. As he put it on, I
18 was begging him to take it off, that it was cutting off
19 circulation from the moment he put it on.

20 INV. TORGESON: Okay. So, the handcuffs were too tight?

21 [REDACTED] ID The right cuff...on my left wrist, not on my
22 right wrist, because the left wrist was the one that he grabbed
23 first and he put the cuffs on as tight as he could, because he
24 was still very, very upset. The officer didn't calm down until
25 after I told him he fucked up and that I had a block full of
26 witnesses, and I felt the pressure of him being on my back. He's
27 off and he [unintelligible] and looks around to see the block
28 full of people, and instantaneously, his attitude had changed

1 | instantaneously.

2 | INV. TORGESON: Instantaneously, he did what?

3 | [REDACTED] ID His attitude completely changed. He became my
4 | best friend.

5 | INV. TORGESON: Okay.

6 | [REDACTED] ID The moment I told him, "You fucked up, I got a
7 | block full of witnesses," and this is when his knee is in my
8 | back and my hands are behind my back. He looks around and he
9 | realizes that I got 15-20 people on these corners watching him,
10 | do you know what I mean? He sees that I've got friends. So, now,
11 | he wants to play best friends with me after that.

12 | INV. TORGESON: Okay.

13 | [REDACTED] ID And I go along. I go with that, because I
14 | don't want [inaudible].

15 | INV. TORGESON: So, you said the handcuffs were too
16 | tight on your left wrist.

17 | [REDACTED] ID Yes.

18 | INV. TORGESON: Is your left wrist the one that had the
19 | marks on it from the handcuffs?

20 | [REDACTED] ID Yes. That was the one I showed you.

21 | INV. TORGESON: Okay. Did you tell them that it was too
22 | tight?

23 | [REDACTED] ID Yes.

24 | INV. TORGESON: Okay.

25 | [REDACTED] ID Yes, I begged them. For the entire half hour
26 | or so that I was in the back seat of the car, I'm begging them,
27 | "Please, please loosen up the wrists." He said, "Just two more
28 | minutes." At 15 minutes, I asked the lady, and she says, "Uh,

1 just two more minutes and you'll be out of here." Again, ten
2 minutes later, "Two more minutes, [unintelligible], we're going
3 to get you out of here right now." I said, "Brother, you can't
4 just loosen up this wrist, this cuff for me?" And they ignored
5 me, they ignored me.

6 INV. TORGESON: Okay.

7 [REDACTED] ID Then I told them that my wrist is too tight,
8 and then the officer yanked me in from behind me, like I told
9 you, from the opposite side of the car.

10 INV. TORGESON: Right. The motorcycle officer?

11 [REDACTED] ID Yes, ma'am.

12 INV. TORGESON: Okay. So, when you told them, at any
13 point when you told them that your handcuff was too tight, did
14 they ever loosen it for you?

15 [REDACTED] ID No, they did not, not until they took the
16 handcuffs off.

17 INV. TORGESON: Okay.

18 [REDACTED] ID And I begged them to please take the left one
19 off first.

20 INV. TORGESON: Okay.

21 [REDACTED] ID And he took the left one off first.

22 INV. TORGESON: Okay.

23 [REDACTED] ID When I was undetained or whatever.

24 INV. TORGESON: Okay. I'm going to ask this, were you
25 smoking marijuana in the car?

26 [REDACTED] ID Absolutely not, Miss.

27 INV. TORGESON: Okay.

28 [REDACTED] ID And, and I was not pulled over.

1 INV. TORGESON: Right, I understand that.
2 [REDACTED] ID I was not pulled over.
3 INV. TORGESON: They stated they smelled burnt marijuana
4 in your car. Was there any burnt marijuana in your car?
5 [REDACTED] ID No, there was not.
6 INV. TORGESON: No?
7 [REDACTED] ID No, there was not.
8 INV. TORGESON: Okay.
9 [REDACTED] ID I had a can of marijuana in my car. And again,
10 they could smell burnt marijuana as much as they want, it is not
11 illegal, and I was not smoking and driving. It was 10:30 in the
12 morning, I just wanted to go get breakfast.
13 INV. TORGESON: Okay.
14 [REDACTED] ID It's not smoking time.
15 INV. TORGESON: Did they confiscate your marijuana?
16 [REDACTED] ID No, they did not, because marijuana is not
17 illegal. They left my marijuana right in the center console
18 where it was.
19 INV. TORGESON: Okay.
20 [REDACTED] ID Because again, they had no warrant to go into
21 my vehicle. So, anything that they may have gotten out of it,
22 would have been [proved] from the [unintelligible] street, you
23 know?
24 INV. TORGESON: Okay. So, I want to clear this up too.
25 So, when they asked you if you needed an ambulance, did they say
26 that in response to you telling them you were injured?
27 [REDACTED] ID No, he said that to cover his ass before he
28 released me, as a protocol.

1 INV. TORGESON: Okay. Okay.

2 [REDACTED] ID As if he was Mirandarizing me. Like I said,
3 the second he slammed me and then started looking around, he was
4 still physical with me. He tried to grab my hands, and breathing
5 heavy, and mad, and huffing and puffing, and then the store
6 owner, like I said, he told me to calm down. I told him I am
7 calm, and the store owner really saved me. He calmed the officer
8 down, and the officer, realizing what he had done, calmed
9 himself down because he knew that there was a block full of
10 witnesses that just witnessed him body slam me onto my side of
11 my face. You know?

12 INV. TORGESON: Okay.

13 [REDACTED] ID With no cause. With no cause. I'd done
14 absolutely nothing wrong. I was walking into a store to buy
15 lunch.

16 INV. TORGESON: Okay. Give me one second and let me make
17 sure I've asked you everything.

18 [REDACTED] ID No problem. Also, my shoulder's in an extreme
19 amount of pain, and I am trying to schedule a doctor's
20 appointment, but I can't find my [REDACTED] CI I'm working on
21 it. I know that's not your guy's [inaudible].

22 INV. TORGESON: Okay, good. I think it would be great if
23 you did go to a doctor to document your injuries.

24 [REDACTED] ID For my shoulder, yeah, that's the only thing
25 that I can't...and my hand. I haven't really slept like for the
26 last, however long it's been. What was it Thursday?

27 INV. TORGESON: Uh-huh.

28 [REDACTED] ID I sleep kind of, they're highly irregular, I

1 haven't slept really. But the first night I tried not to try to
2 sleep, because you know, I'm groggy and you're not supposed to
3 sleep with a concussion. So, my [REDACTED] PII told me to stay
4 awake-type of deal, and just, I've been really groggy ever
5 since.

6 INV. TORGESON: Okay. I really think you should go see a
7 doctor if you're...

8 [REDACTED] ID Again, I've been looking for [REDACTED] CI

9 INV. TORGESON: With your head injury, because a head
10 injury could be serious.

11 [REDACTED] ID Yeah.

12 INV. TORGESON: So, I would make that a priority.

13 [REDACTED] ID Yeah. I've had two concussions in my life. I
14 kind of know what they feel like.

15 INV. TORGESON: Okay.

16 [REDACTED] ID Playing football and stuff like that.

17 INV. TORGESON: So, everything that I've asked you today
18 and the other day when I interviewed you, is there anything else
19 that you think I should know, or do I have it all covered?

20 [REDACTED] ID Uh, so, my phone broke.

21 INV. TORGESON: That's right.

22 [REDACTED] ID My shoulder really hurts, my sunglasses were
23 also broken. I don't know, just no, I don't really, I think we
24 were pretty detailed last time, to be honest with you.

25 INV. TORGESON: Yeah. Did you tell the officers your
26 phone was broken?

27 [REDACTED] ID I didn't see that until later on, [in] the day
28 when I got home. Like I was going from one place to the other. I

1 didn't call nobody after that and tell them what happened. I
2 just went straight to 850 Bryant and tried to file the police
3 report, and then I went to the second place after 850 told me
4 that they no longer have, that you can file charges there,
5 because I had done that before, in the past.

6 INV. TORGESON: Okay.

7 [REDACTED ID]: And they brought me to the other place. The
8 lady, [unintelligible], like, "You can't file charges against
9 the police," pretty much. She laughed at me like, "They're on
10 our team," type of deal. And so did the DA, was basically the
11 same exact thing when I went there. They pretty much laughed at
12 me like, "We're not here to help you, we're on their side. Who
13 are you? You look like a criminal anyway," is basically what she
14 told me. You know, "Pull up your pants," and that type of thing,
15 and I'm like, "You think that's why I was beat up and assaulted,
16 because of my pants, Miss?"

17 INV. TORGESON: Okay.

18 [REDACTED ID] "Do you think that might have something to do
19 with it?" And she didn't like that too much, continued to talk
20 smack to me as I walked out of the place, but it is what it is.

21 INV. TORGESON: Okay. Who referred you to us?

22 [REDACTED ID]: Actually, I think when I went to the District
23 Attorney's office. So, first, an African American woman, she
24 helped me at first, and then she let this older, white lady come
25 and kind of take over. I'm asking the lady like, you know, she's
26 like do you want me [unintelligible]? This is like right after
27 it happened, and my head was even more spinning than when I came
28 to see you. She's like, "You look like you're on drugs." Like,

1 "I just got slammed on my head," do you know what I mean?
2 INV. TORGESON: Is she the one that referred you to us?
3 [REDACTED] ID No, no, she didn't. She was the one that was
4 very rude to me and pretty much insulted me and demeaned me. The
5 other woman, she came up—there's now a third woman that came up,
6 and she was listening to me, and she just wrote it down and
7 goes, "Go here."
8 INV. TORGESON: Okay.
9 [REDACTED] ID And I tell her, thank you. Yeah.
10 INV. TORGESON: Okay. And when you say your phone is
11 broke, is it unusable or did it crack?
12 [REDACTED] ID No, I'm on it right now. My screen is cracked.
13 INV. TORGESON: Okay.
14 [REDACTED] ID [Unintelligible] how phones are in 2020; the
15 screen is completely, the screen's cracked though.
16 INV. TORGESON: Was it cracked before?
17 [REDACTED] ID: No, not really. No, it wasn't. You know how
18 they have the plastic cover on the top of the screen?
19 INV. TORGESON: Yes.
20 [REDACTED] ID That was cracked, which is what it's supposed
21 to do, it's supposed to protect your phone, but the phone was
22 not cracked, and the phone is now cracked.
23 INV. TORGESON: So, your phone is [crashed], not just
24 the plastic?
25 [REDACTED] ID No, not just the plastic. Yeah,
26 [unintelligible] was cracked prior to that.
27 INV. TORGESON: Okay.
28 [REDACTED] ID Just so you know, I'm being honest with you.

1 INV. TORGESON: Yeah and you have been honest. I
2 appreciate that. Okay. Investigator Deutsch and Investigator
3 Schultheis, do you have any questions?

4 INV. SCHULTHEIS: I just had a quick question, [REDACTED] ID
5 [REDACTED] ID

6 [REDACTED] ID Yes, ma'am.

7 INV. SCHULTHEIS: Thanks for telling us about the hand,
8 the wrist complaints that you made to the officer. Did you make
9 any, did you tell the officers about the issues that you're
10 talking about now with either your shoulder or your head?

11 [REDACTED] ID Yes, definitely my head. Like I said, I had
12 multiple contusions on me. I didn't know, without taking my
13 clothes off, where my cuts and bruises were, and at that moment,
14 the only thing that I was feeling was the effects of my head.
15 So, I told them that I landed on my shoulder and my head,
16 probably yes. My shoulder definitely, because it hurt right
17 away. The scratches and cuts, they don't necessarily hurt. They
18 kind of stung the next day when I took a shower and everything,
19 but at that moment, while my hands are behind my back, all I
20 could feel is my left shoulder that's now being more fried
21 because of the handcuffs and everything. And the side of my face
22 that's completely red, and had dirt on it, and Teri could tell
23 you that; she's seen me.

24 INV. TORGESON: Yeah.

25 [REDACTED] ID Yeah. I had dirt all over my face. So, all I
26 can talk about was my head you know. I think it's a little bit
27 more important than my elbow, so that's what I really concerned
28 with and felt the pain in, at the moment.

1 INV. SCHULTHEIS: So, you told the officers.
2 ID Yes.
3 INV. SCHULTHEIS: About your head?
4 ID Yes, I did. They asked me, he said, "Do you
5 need an ambulance?" I said, "What's an ambulance going to do?"
6 He said, "Well, do you have any injuries?" I go, "Yeah. You
7 landed me on my head," and then he closed the door and ignored
8 what I said, pretty much. Like he don't to hear that.
9 INV. SCHULTHEIS: I see.
10 ID Do you know what I mean?
11 INV. SCHULTHEIS: Yes.
12 ID So, the last thing he wants to do is
13 acknowledge that he slammed me on my face, you know.
14 INV. SCHULTHEIS: Okay.
15 INV. TORGESON: Did you experience pain after they took
16 your handcuffs off?
17 ID Yeah, my shoulder was still, like in my
18 shoulder, yeah. My head was still..
19 INV. TORGESON: Okay. When did you tell them, or let me
20 rephrase that. Did you tell them after your handcuffs were off
21 that you were in pain?
22 ID No. I told them as he was going to let me out
23 the car. Like he was going over his last little things-type of
24 deal. It's like, "Uh, do I need to call an ambulance for you
25 before I release you," type of deal? So, no. When I was
26 unhandcuffed, they never asked, were not concerned with my well-
27 being at all.
28 INV. TORGESON: Okay.

1 ID Not at all, no.

2 INV. TORGESON: Okay.

3 ID While I was in the handcuffs, he asked me, and
4 I asked him what's that going to do, and he asked me do you have
5 any injuries, and I told him my head and my shoulder. But other
6 than that, no.

7 INV. TORGESON: Okay.

8 ID After that they didn't say anything. All of
9 them kept quiet. They knew that they messed up, they knew what
10 happened. I think when the other officers tried to ask him like,
11 "What did he do?" he didn't know what to say. Like what was the
12 crime that you tackled this dude, [full] body slammed him? Like
13 was he robbing somebody, was he running from you? I wasn't
14 running, I was standing still, but as soon as the officer said,
15 "You're detained," I stopped moving. Detained doesn't mean we're
16 putting handcuffs on you, it means you don't move for a moment.
17 And when a police officer pulls you over in your car, you're
18 being detained for that moment. It doesn't have anything to do
19 with handcuffs, you know.

20 INV. TORGESON: Yeah.

21 ID So, the second he said detained, I didn't move
22 from there.

23 INV. TORGESON: Okay.

24 ID I put my hands up. I put my hands up because I
25 felt threatened by the police officers, and they stayed in the
26 air for the entirety of the physical contact; my hands were
27 above my head.

28 INV. TORGESON: Okay. Do you have any more questions?

1 INV. ROBERT DEUTSCH: I just had a couple. Thanks,
2 [REDACTED] ID, I appreciate it.
3 [REDACTED] ID No problem, sir.
4 INV. DEUTSCH: Do you remember specifically, in as much
5 detail as possible, what you were doing right before the officer
6 grabbed you?
7 [REDACTED] ID My hands was directly in the air is what was
8 going on.
9 INV. DEUTSCH: Okay.
10 [REDACTED] ID Directly in the air. I was trying to get the
11 attention of the people around me, because I could tell that the
12 male officer was trying to engage in physical contact and be
13 combative with me and wanting to fight at the moment. It's 10:30
14 in the morning, I don't wake up, and get out of the bed, and get
15 kicked. I'm fighting and wrestling around on the cement with
16 people. Obviously, this officer did.
17 INV. DEUTSCH: Right.
18 [REDACTED] ID When they got out of the car, instantaneously
19 put on their gloves and encircled me. I don't understand why. I
20 hadn't committed a crime. See, that's the whole thing. The
21 physicality part is one portion of this, but why was I stopped?
22 We do not live in New York City where they are in a frisk, stop
23 and frisk state. We live in California, that's not a law here.
24 You're not allowed to stop and frisk [people], and I want to
25 know why they did, more than anything. So, me telling them
26 they're not allowed to do this and touch me, it's completely
27 within my rights. I do not have to allow somebody to
28 [inaudible].

1 INV. DEUTSCH: We're going to try and get those answers
2 for you, but could you tell me what told you, what indicated to
3 you that the officer wanted to physically engage with you?

4 [REDACTED] ID Because as I went to go towards my car, the
5 moment that, you know, you're in the red zone. I mean this is
6 the Avenues, you've got to understand that people double-park
7 all the time. The officer [unintelligible], they'll honk their
8 horn, they might even flash their little lights, and say move
9 your car out of the intersection or whatever, do you know what I
10 mean?

11 INV. DEUTSCH: Okay. So, the officer flashed his lights
12 and got out of the car. Correct?

13 [REDACTED] ID They both got out of the car very aggressively
14 too. And also, as I'm walking behind the back of my car, is when
15 the officers first pulled up and they damn near squashed me
16 between my car and their own car. I looked at them like what are
17 you guys doing driving so erratically-type deal, you know what I
18 mean? You almost just killed me right now. But anyways, I get to
19 the front of the thing, and they blinked their lights. He, they
20 say stop, all right, but as soon as they blink their lights, I
21 stop. I'm not stupid, I know don't mess with these people
22 because they're looking for an excuse to hurt you or whatever.

23 So, I stopped completely, right, and then now they're both
24 surrounding me. They say, "Well, you can go," and they tell me
25 you're parked in the red zone. I say, "Well, no problem, I can
26 move it," and I take a step towards my car, and this is like,
27 I'm probably, I'm at the door, so it's like—I don't know, maybe
28 15-20 feet from my car, you know, and I'm not moving fast or

1 anything. I take one small step and then the officer says,
2 "Don't move, you're being detained." I said, "Being detained for
3 what? I'm parked in a red zone type thing. Like what are you
4 doing?" And then the officer grabbed, takes another step and
5 opens his arms up-type deal, like he's trying to stop me in my
6 movement from going anywhere, and already, I'm not moving, I
7 stopped.

8 INV. TORGESON: Okay. [REDACTED] ID, I think we, yeah, we
9 already covered this.

10 [REDACTED] ID Okay, sorry.

11 INV. TORGESON: I just want to make sure we...no, no, no,
12 it's okay. I just want to make sure that we've covered
13 everything between this interview and the last interview. Do you
14 think we've covered everything?

15 [REDACTED] ID Yes, I believe so. I guess I didn't tell you
16 the last time about them coming up real fast on me as I'm
17 walking around, behind [inaudible].

18 INV. TORGESON: Okay.

19 [REDACTED] ID I forgot to tell you that time.

20 INV. TORGESON: Okay. No, it's great that you can
21 remember other details. Okay. So, I'm going to end the
22 recording. It's now 9:20.

23 **END OF DOCUMENT**

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1 DEPARTMENT OF POLICE ACCOUNTABILITY

2 DPA CASE NO.: 0045-19

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4 INTERVIEW OF: OFFICER BRETT HERNANDEZ, #307

5 DATE OF INTERVIEW: 06/20/2019

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8 INV. TERI TORGESON: This interview regarding DPA Case
9 Number 0045-19 is taking place at the Department of Police
10 Accountability on June 20, 2019, at 2:15 p.m. Conducting this
11 interview Teri Torgeson. I work for the Department of Police
12 Accountability. I've been designated by the Police Commission
13 to conduct this investigation. Also present is DPA Attorney
14 Stephanie Wargo-Wilson. The member being interviewed is Brett
15 Hernandez- I'm sorry- Officer Brett Hernandez, star number 307,
16 who is a named officer in this matter. Can you please spell
17 your first and last name for the record?

18 OFFICER BRETT HERNANDEZ: Yeah. B-R-E-T-T, last name, H-E-
19 R-N-A-N-D-E-Z.

20 TORGESON: Thank you. Representing Officer Hernandez is
21 Sergeant Khmarskiy, star number 1382. Have you read the DPA
22 form 3293, an Allegation form regarding the allegations of
23 misconduct?

24 HERNANDEZ: This form I just signed or the- yes.

25 TORGESON: The ones we had sent you.

26 HERNANDEZ: Okay, got you, got you.

27 TORGESON: Okay. Officer Hernandez, I've provided you a
28 DPA Administrative Interview Advisements form. For the record,

1 I note that Officer Hernandez has handed me the form which bears
2 his signature and star number and today's date. I will store
3 this form in the DPA file for this case. With all these
4 Advisements in mind, is there any reason you cannot go forward
5 with this interview right now?

6 HERNANDEZ: No.

7 TORGESON: How long have you been employed by SFPS?

8 HERNANDEZ: Two and a half years.

9 KHMARSKIY: Do you mind, can we Lybarger Officer Hernandez
10 prior to asking questions?

11 TORGESON: Sure.

12 KHMARSKIY: Thank you.

13 TORGESON: Sure. I think let's start with, Officer
14 Hernandez, are you asserting your Fifth Amendment Right to
15 remain silent?

16 HERNANDEZ: Yes.

17 TORGESON: Okay. Do you want to give that to him?

18 STEPHANIE WARGO-WILSON: Sure. Okay. Officer Hernandez
19 because there may be criminal culpability on your part and you
20 have asserted your right to remain silent, we want to be certain
21 that you understand the following Rights: You have the right to
22 remain silent. Anything you say may be used against you in
23 court. You have the right to an attorney before and after
24 questioning. Do you understand each of these Rights as I have
25 explained them to you?

26 HERNANDEZ: Yes.

27 WARGO-WILSON: And with these Rights in mind, would you
28 like to answer my questions now?

1 HERNANDEZ: No.

2 WARGO-WILSON: While you have the right to remain silent,
3 criminally it is a condition of your employment that you answer
4 my questions in this administrative investigation. I work for
5 the Department of Police Accountability of the San Francisco
6 Police Commission. I have been designated by the Police
7 Commission to conduct this investigation. I am therefore
8 ordering you on behalf of the Commission to answer my questions
9 in this administrative investigation. If you refuse to answer
10 my questions, your silence can be deemed insubordination and
11 result in administrative discipline, including and up to
12 termination of your employment. Any statement you make under
13 the threat of such discipline will be used for administrative
14 purposes only and cannot be used against you criminally unless
15 you choose to testify in such a criminal case. Do you
16 understand this order?

17 HERNANDEZ: Yes.

18 WARGO-WILSON: And Officer Hernandez, will you answer our
19 questions as ordered at this time?

20 HERNANDEZ: Yes.

21 TORGESON: Thank you. So, how long have you been employed
22 by SFPD?

23 HERNANDEZ: I've been employed by SFPD about two and a half
24 years.

25 TORGESON: Okay. Do you have any prior law enforcement
26 experience?

27 HERNANDEZ: No.

28 WARGO-WILSON: Does that include your time in the Academy?

1 HERNANDEZ: No. I graduated the Academy December, 2016.

2 TORGESON: When was the last time you attended Advanced
3 Officer Training?

4 HERNANDEZ: I don't recall the exact time. I believe it
5 was at the beginning of year.

6 TORGESON: Okay. Have you been trained in Fourth Amendment
7 issues at the Academy?

8 HERNANDEZ: Can you clarify Fourth Amendment issues?

9 TORGESON: Search and Seizure.

10 HERNANDEZ: Oh, just the general? Yes.

11 TORGESON: Where did you get that training?

12 HERNANDEZ: Police Academy, San Francisco Police Academy.

13 TORGESON: Okay. Did they also train you in the Advanced
14 Officer Training on those issues?

15 HERNANDEZ: Yes.

16 TORGESON: Okay. Can you tell me what you learned about
17 when you conduct a pat search? What the requirements are in
18 order for you to have a right to pat search in individual?

19 HERNANDEZ: Subject needs to be lawfully detained and
20 reasonable suspicion he has or may have a weapon on them.

21 TORGESON: Do you have any follow up to that?

22 WARGO-WILSON: So, let's just talk a little bit about the
23 Academy training.

24 HERNANDEZ: Um hmm.

25 WARGO-WILSON: Can you give us an estimate of how much
26 time, either hours, days or weeks were spent specifically on
27 search and seizure issues? And this would include detentions,
28 pat searches, warrants, house searches, car searches, all of

1 those.

2 HERNANDEZ: Um hmm. I do not recall how many specific
3 hours or days.

4 WARGO-WILSON: Do you recall if you felt like it was
5 something that was emphasized or not emphasized in the Academy?

6 HERNANDEZ: I don't recall.

7 WARGO-WILSON: Okay. And you stated one of the
8 prerequisites to a pat search in your understanding or what you
9 were taught is a lawful detention?

10 HERNANDEZ: Um hmm.

11 WARGO-WILSON: Is that correct?

12 TORGESON: Oh, can you answer for the recording?

13 HERNANDEZ: Oh, yes.

14 TORGESON: Thank you.

15 WARGO-WILSON: Sorry. Eventually somebody will probably
16 transcribe this recording so it's super important that we both
17 answer audibly and that we - the four of us, especially the four
18 people in the room, do not talk over each other, okay? Next,
19 you stated that there must be reasonable suspicion and then I'm
20 not sure I was really clear on your understanding after that.
21 Do you understand or were you trained that there has to be
22 reasonable suspicion that a person has a weapon or were you
23 trained some other standard apply?

24 HERNANDEZ: That they may have. Not that- that they may
25 have a weapon.

26 WARGO-WILSON: Okay. Reasonable suspicion that they may
27 have a weapon. Have you ever been trained or told by any
28 superior officer that you may pat search any detainee?

1 HERNANDEZ: I don't recall. I'm not sure over the course
2 of -yeah, not sure.

3 WARGO-WILSON: Okay. Is it your practice to pat search
4 each person that you detain?

5 HERNANDEZ: No. Not always.

6 WARGO-WILSON: Okay. What if they're getting in your car?
7 If you're taking them in your police car?

8 HERNANDEZ: Um hmm.

9 WARGO-WILSON: Then are they all subject to a pat search at
10 that point?

11 HERNANDEZ: Well they're subject to a search, yes, but my
12 partner might do it or I might do it. Not always me per se.

13 WARGO-WILSON: Right. Good point. I mean general police
14 procedure if you're with a partner and somebody is going in your
15 car with you then they're subject to a full search. Is that
16 fair?

17 HERNANDEZ: If they're being transported, yes.

18 WARGO-WILSON: Okay.

19 TORGESON: How many times have you testified in court for a
20 Motion to Suppress when you were the detaining officer?

21 HERNANDEZ: None.

22 TORGESON: Okay. Do you have any more questions about the
23 initial training?

24 WARGO-WILSON: No. I think we're good.

25 TORGESON: Okay. Did you speak with anyone besides your
26 POA rep about this incident you're here to discuss today before
27 coming here?

28 HERNANDEZ: No.

1 TORGESON: Did you review any materials before coming here
2 today?
3 HERNANDEZ: Yes.
4 TORGESON: Can you tell me what you reviewed?
5 HERNANDEZ: The report- initial report, Body Worn Camera,
6 the initial CAD incident and- yeah.
7 TORGESON: Okay. Whose Body Worn Camera?
8 HERNANDEZ: My Body Worn Camera.
9 TORGESON: Anybody else's?
10 HERNANDEZ: No.
11 TORGESON: And you mentioned the initial report and initial
12 CAD. Were there any supplemental reports to your knowledge?
13 HERNANDEZ: Not to my knowledge.
14 TORGESON: Okay. And with respect to the incident report,
15 is it accurate to the best of your recollection?
16 HERNANDEZ: Yes.
17 TORGESON: What was your assignment on January 24, 2019?
18 HERNANDEZ: Basic patrol.
19 TORGESON: And did you have a partner?
20 HERNANDEZ: I did.
21 TORGESON: And who was that?
22 HERNANDEZ: Officer Hernandez.
23 TORGESON: Okay. Is that Jacqueline Hernandez?
24 HERNANDEZ: Jacqueline- yes.
25 TORGESON: Okay. And who was driving?
26 HERNANDEZ: I was.
27 TORGESON: Okay. What was your responsibility during your
28 shift that day with respect to your partner? Were you

1 responsible for writing incident reports that day? Were you
2 responsible to be the primary officer? Like do you trade off?
3 So, with respect to this call, what was your responsibility?

4 HERNANDEZ: We do trade off and at this particular call or
5 incident it was my partner, Jacqueline Hernandez's turn to write
6 the report.

7 TORGESON: Okay. And when I'm referring to the incident
8 report, I am referring to [REDACTED] ID . Is that correct- I'll
9 let you see a copy of it so you can confirm the number.

10 HERNANDEZ: Yes. [REDACTED] ID

11 TORGESON: Okay, great. And just also for the CAD that we
12 referenced, can you confirm that [REDACTED] ID is the correct
13 number for the CAD?

14 HERNANDEZ: Yes.

15 TORGESON: Okay. Thank you. So, the following questions
16 pertain to an incident that took place on January 24, 2019, at
17 approximately 10:47 a.m. in front of a Submarine Sandwich Store
18 in Irving Street, cross street Sixth Avenue. So, for the
19 purposes of this interview, [REDACTED] ID who was the
20 subject of your police action, will be referred to as the
21 Complainant.

22 HERNANDEZ: Okay.

23 TORGESON: Do you remember that incident?

24 HERNANDEZ: Yes.

25 TORGESON: Can you please tell me what you remember about
26 that incident from beginning to end with as much detail as
27 possible.

28 HERNANDEZ: Okay. I have to go in the specific-?

1 TORGESON: You have to answer- yeah, you have to answer.

2 HERNANDEZ: Any specific questions? We observed the
3 Complainant's vehicle- the Complainant parked his vehicle in a
4 red curb occupied by a fire hydrant and then immediately exited
5 the vehicle, walking towards the said Submarine on Irving. We
6 activated lights and sirens in an attempt to contact the subject
7 or, excuse me, defendant or Complainant. Um, we - we attempted
8 to detain him. He began- continued to walk away from us. We
9 requested that he stop. And I requested a pat search. He did
10 obey and stop when we asked him to after multiple times. He
11 stopped. Subject refused lawful commands turning around so I
12 could perform a pat search. Upon attempting to do a pat search,
13 the subject became - appeared to be agitated, moving-tensing up
14 and then tried to walk away from my partner and I. We attempted
15 to control his upper body then attempted to get him to the
16 ground safely. He was able to continue walking through both of
17 us- both me and my officer -partner officer, controlling arms
18 and legs at which point it was me and the Complainant. I was
19 able to get the Complainant to the ground and in handcuffs
20 without further incident. I guess my partner came and then we
21 placed him in the back of our patrol car to further investigate.
22 Upon doing that, we examined his vehicle and there was a strong
23 odor of marijuana coming from his vehicle. I conducted a search
24 of the vehicle. And then the Complainant was issued a citation-
25 two citations and released on the scene.

26 TORGESON: Okay. Were you dispatched to that call
27 regarding this complaint?

28 HERNANDEZ: No.

1 TORGESON: Where did you first notice the Complainant?
2 HERNANDEZ: I don't recall where we first noticed the
3 Complainant.
4 TORGESON: Okay. Was the Complainant out of his vehicle
5 when you noticed him or, was he driving his vehicle when you
6 noticed him?
7 HERNANDEZ: Driving his vehicle.
8 TORGESON: Okay. Have you had prior contacts with the
9 Complainant?
10 HERNANDEZ: No.
11 TORGESON: So, what drew your attention to the Complainant?
12 HERNANDEZ: Parking his vehicle in the red curbside as well
13 as the fire hydrant- in front of the fire hydrant.
14 TORGESON: Did you notice the Complainant before that while
15 he was driving?
16 HERNANDEZ: Yes.
17 TORGESON: And was there a particular reason for that?
18 HERNANDEZ: We were behind him at a stop light.
19 TORGESON: Okay. When you were behind him did you have any
20 inkling that you would have had contact with him, or was he just
21 simply in front of you?
22 HERNANDEZ: Can you -
23 TORGESON: Were you planning on activating your lights and
24 siren before he got out of his car?
25 HERNANDEZ: Is that before the violations or after?
26 TORGESON: Yeah. Before- before he parked his car in the
27 red zone, and you were behind him, did you have any intention of
28 pulling him over or contacting him?

1 HERNANDEZ: No.

2 TORGESON: Okay. And why did you activate your lights and
3 siren? Or let me- sorry. Let me ask who activated the lights
4 and siren?

5 HERNANDEZ: I did.

6 TORGESON: Okay. And why did you do that?

7 HERNANDEZ: Because he parked his vehicle in the red and in
8 front of a fire hydrant.

9 TORGESON: Okay. Is that a normal procedure that you do
10 when somebody parks illegally to activate your lights and siren?

11 HERNANDEZ: Yes.

12 TORGESON: Okay. And where was the Complainant when you
13 activated your lights and siren?

14 HERNANDEZ: I believe he was inside the vehicle.

15 TORGESON: Okay. And you stated you made contact with the
16 Complainant because he had parked illegally. Is that correct?

17 HERNANDEZ: Correct.

18 TORGESON: Is there any other reason why you made contact
19 with him?

20 HERNANDEZ: At that moment, no.

21 WARGO-WILSON: Is there any reason that you contacted him
22 directly rather than leaving him a parking ticket on his car?

23 HERNANDEZ: We saw him driving and parking the vehicle so
24 we wanted to stop him particularly to inform him about the
25 infraction because we saw him exit the vehicle.

26 WARGO-WILSON: Okay. Are there any General Orders or
27 Department Bulletins that you're aware of that govern how you
28 give parking tickets? For example, whether or not you contact

1 the driver?

2 HERNANDEZ: Can you rephrase that one more time?

3 WARGO-WILSON: Sure. So, for example, if a car is
4 unoccupied-

5 HERNANDEZ: Um hmm.

6 WARGO-WILSON: Is it fair to say that you would simply
7 leave a ticket and go on about your business?

8 HERNANDEZ: Yes.

9 WARGO-WILSON: If the driver is sitting in the car-

10 HERNANDEZ: Um hmm.

11 WARGO-WILSON: And you're issuing a parking citation.
12 Would you then contact the driver, ask for identification and do
13 all of that?

14 HERNANDEZ: Yes. I could, yeah. I have, yeah.

15 WARGO-WILSON: Okay. Now is there any training- have you
16 had any training- are you aware of any rules or orders that
17 relate to a situation like this where you've seen the person
18 park, you want to issue a parking citation but the person then
19 leaves their vehicle?

20 HERNANDEZ: Can you say that one more time?

21 WARGO-WILSON: Sure. So, if I understand you correctly-

22 HERNANDEZ: Um hmm.

23 WARGO-WILSON: In a parking violation situation, if the
24 person's in the car, you'll talk to the person.

25 HERNANDEZ: Correct.

26 WARGO-WILSON: And if the person's not in the car and not
27 around the car, you won't talk to the person. Right?

28 HERNANDEZ: Not present at all, yes. Obviously, then-

1 | yeah.

2 | WARGO-WILSON: Right. So, here is what I consider sort of
3 | a hybrid situation, right? You see the car parked. You see the
4 | person park the car.

5 | HERNANDEZ: Um hmm.

6 | WARGO-WILSON: You want to issue a parking citation.
7 | Right?

8 | HERNANDEZ: Not necessarily. I just want to-

9 | WARGO-WILSON: Or at least give a warning, right?

10 | HERNANDEZ: Correct.

11 | WARGO-WILSON: Okay. And was there any other violation
12 | that you observed at that point other than the person parked in
13 | a red zone, which you're not allowed to do?

14 | HERNANDEZ: Ah, and in the fire hydrant. But, no.

15 | WARGO-WILSON: Okay. Now, by the time you get out of your
16 | car, the Complainant is already on the sidewalk in front of the
17 | Subway shop. Is that correct?

18 | HERNANDEZ: I would say heading towards the Subway shop.
19 | Not directly in front of it so I'd say he's closer to his car.

20 | WARGO-WILSON: So, you can see him.

21 | HERNANDEZ: Um hmm.

22 | WARGO-WILSON: But he's not in the car anymore. Right?

23 | HERNANDEZ: Correct.

24 | WARGO-WILSON: Okay. Now are there any rules, any training
25 | you've had that tell you whether it's in your discretion to
26 | contact him versus leaving him a citation? Is there a procedure
27 | you're supposed to follow? What's your understanding of how you
28 | proceed in that situation?

1 HERNANDEZ: I'm not sure if there is. I believe there
2 would be for the difference to separate the difference between a
3 parking violation and a moving violation. But- yeah.

4 WARGO-WILSON: Would you agree or would it be fair to say
5 that in this particular situation you could have proceeded
6 either way? Either by speaking with the Complainant or by
7 leaving a ticket on the illegally parked car?

8 HERNANDEZ: I would say yes; I could use my discretion
9 either way.

10 WARGO-WILSON: What made you or did you decide to contact
11 the Complainant or did your partner, Jacqueline Hernandez decide
12 to contact the Complainant?

13 HERNANDEZ: I made my decision to -for myself obviously, to
14 contact the Complainant.

15 WARGO-WILSON: Okay. And what was the reason for that?

16 HERNANDEZ: To inform him about the violations.

17 WARGO-WILSON: And is that so he doesn't do it again? So,
18 he understands why it's important not to block fire hydrants?

19 HERNANDEZ: Could- yeah. Could be for -yes, for that.
20 Could be to check on him. Maybe there's an emergency. There
21 could be multiple - multiple reasons why, but yes.

22 WARGO-WILSON: Okay. And when you first decided to contact
23 the Complainant, was it your intention to talk to him and issue
24 a ticket? Talk to him and issue a warning? Or had you not yet
25 decided?

26 HERNANDEZ: I had not yet decided my- just to talk to him
27 is all I wanted to inform him about the infractions.

28 WARGO-WILSON: Okay.

1 TORGESON: At the time of the incident, it was daylight
2 hours. Correct?

3 HERNANDEZ: Correct.

4 TORGESON: And did you detain the Complainant?

5 HERNANDEZ: Yes.

6 TORGESON: And why did you detain the Complainant? Can you
7 articulate your legal justification to detain the Complainant?

8 HERNANDEZ: Yeah. As I mentioned before, I saw the
9 Complainant drive his vehicle, park his vehicle in the red zone
10 and the fire hydrant- and in front of the fire hydrant.

11 TORGESON: Is the issuance of a parking ticket a reason to
12 detain somebody?

13 HERNANDEZ: Yes.

14 TORGESON: I think we're going to watch the video of the
15 pat search and we're gonna watch Officer Jacqueline Hernandez's
16 Body Worn Camera and we're going to start- we're just gonna
17 start from the beginning of the video. What's your badge
18 number?

19 HERNANDEZ: 307.

20 TORGESON: All right.

21 HERNANDEZ: 4039 is her badge.

22 TORGESON: Right here, okay. [PLAYING VIDEO]. I'm going to
23 stop it right here.

24 HERNANDEZ: Um hmm.

25 TORGESON: When the sound is off, it's because the camera
26 was buffering. Is that correct?

27 HERNANDEZ: Correct.

28 TORGESON: So, for the first 30 seconds of this video,

1 | there is no sound. What were you saying to the Complainant
2 | before the sound turned on and what was he saying to you? So,
3 | we'll start with what were you saying? Did you - and if you
4 | want me to rewind it that's fine. But do you remember what you
5 | were saying to him before this point in the video which is at 31
6 | seconds?

7 | HERNANDEZ: Basically, essentially when I made contact with
8 | him?

9 | TORGESON: Um hmm.

10 | HERNANDEZ: I was asking him to stop walking. To basically
11 | stop and talk with us.

12 | TORGESON: Okay. And -

13 | HERNANDEZ: I was ordering him, yeah.

14 | TORGESON: Okay.

15 | WARGO-WILSON: Do you remember exactly what words you used?

16 | HERNANDEZ: I do not.

17 | WARGO-WILSON: Do you remember if it was more or a, hey,
18 | stop. Can we talk to you?

19 | HERNANDEZ: I don't recall.

20 | WARGO-WILSON: When you first spoke to the Complainant, did
21 | he have his back to you?

22 | HERNANDEZ: I believe he had his back towards me walking
23 | away while looking. Yes, he- yes, he had his back to me.

24 | WARGO-WILSON: You said while looking.

25 | HERNANDEZ: Yes.

26 | WARGO-WILSON: What do you mean by that?

27 | HERNANDEZ: So, when I called him- called towards him, you
28 | can see him turn towards me. His head while his back was still

1 towards me.

2 WARGO-WILSON: Okay. So, if I understand the chronology,
3 when he got out of his own car, you were not speaking to him
4 immediately. Is that fair?

5 HERNANDEZ: Yeah.

6 WARGO-WILSON: So, he got out of his car and began to walk
7 toward the sandwich shop?

8 HERNANDEZ: Yes. Briefly say, just roughly on the other
9 side of his car ah, just onto the curbside actually is when I
10 initiated contact with him verbally.

11 WARGO-WILSON: Okay. Just so that I understand the
12 timeline correctly. He has taken some steps toward the Subway
13 shop with his back toward you and so when you first speak, is
14 that when he turns around toward you?

15 HERNANDEZ: I don't believe he turned around immediately.
16 He turned his head towards me -turned back towards me while his
17 back was towards me and he was walking away from me.

18 WARGO-WILSON: Okay. But he didn't look your way with his
19 head or eyes or anything until you spoke? Is that correct?

20 HERNANDEZ: I believe so.

21 WARGO-WILSON: Okay.

22 TORGESON: Okay, I'm going to -

23 WARGO-WILSON: Do you -hold on. Just before we start.

24 Before the sounds begins here-

25 HERNANDEZ: Um hmm.

26 WARGO-WILSON: Has he said anything to you at this point?

27 HERNANDEZ: Um, I don't recall.

28 TORGESON: Okay. So, I'm going begin the video again.

1 It's at 31 seconds. Actually, I'm going to rewind it just a
2 little bit. I'm going to rewind it to 17 seconds while the
3 sound is off. [PLAYING VIDEO].

4 KHMARSKIY: I think it clearly shows like he's told you
5 before, he continued to walk away. Is there any way to make it
6 louder?

7 TORGESON: Yeah. I'm sorry. Let's see. I always have
8 problems with this.

9 KHMARSKIY: [Unintelligible].

10 TORGESON: I'll rewind it. Let me- I'm just going to hit
11 Play right now so I can hear the volume go up.

12 KHMARSKIY: That's okay. Thanks. [PLAYING VIDEO].

13 TORGESON: Is that better?

14 KHMARSKIY: Perfect.

15 TORGESON: Okay. Let me go back.

16 HERNANDEZ: Back to 17.

17 TORGESON: Sure, back to 17. We'll go to 13.

18 KHMARSKIY: Where he walked away. [PLAYING VIDEO].

19 TORGESON: Okay, I'm gonna stop it right there. Is that
20 far enough?

21 WARGO-WILSON: Yeah.

22 TORGESON: Okay. So, we're stopping at 01:43.

23 WARGO-WILSON: And can we - for the record, because we tend
24 to use the universal timestamp, it's at T18:49:07.

25 TORGESON: And, just for the record too, we played it up to
26 the point where Officer Brett Hernandez touches the Complainant.
27 Is that what your understanding is where we left off?

28 HERNANDEZ: Yes.

1 TORGESON: Okay.

2 WARGO-WILSON: And I can't see that far. Is that a minute,
3 49 seconds into the video?

4 TORGESON: Yes.

5 KHMARSKIY: I think it might say eight.

6 TORGESON: Oh, 8. Okay. I won't pass the vision test.
7 Okay.

8 WARGO-WILSON: Even with my glasses, I can't see that.

9 TORGESON: Yeah. Now, why did you pat search the
10 Complainant?

11 HERNANDEZ: As you can see in the video, we made- activated
12 our lights and siren to make contact with the subject. He
13 immediately looked back, acknowledged us, walked away from us,
14 failing to obey our commands to stop. Once he did stop, he was
15 still verbally aggressive towards my partner and I. He was
16 constantly- he reached in his pockets and also was wearing baggy
17 clothing which can conceal weapons. Basically, due to the fact
18 that he was walking away failing to comply to commands, being
19 verbally aggressive towards, us, it's my training and experience
20 that it often is an indicator that something -somebody might
21 have weapons on their person and for the safety of myself and my
22 partner, fear of our safety, I conducted a pat search.

23 WARGO-WILSON: I want to break that down-

24 HERNANDEZ: Okay.

25 WARGO-WILSON: One at a time.

26 HERNANDEZ: Okay.

27 WARGO-WILSON: Okay? I'm super linear. Don't mind me.
28 So, before the sound goes on in this video, you have, in some

1 way, conveyed to the Complainant that you want him to stop. Is
2 that right?

3 HERNANDEZ: Yes.

4 WARGO-WILSON: And the Complainant looked at you and then
5 did not stop. Right?

6 HERNANDEZ: Correct.

7 WARGO-WILSON: Okay. But you don't remember what words you
8 said to him. Is that fair- to let him know that you wanted him
9 to stop?

10 HERNANDEZ: I don't really remember verbatim, no.

11 WARGO-WILSON: Okay. Do you remember if he verbally
12 responded or just kept walking towards the sandwich shop?

13 HERNANDEZ: He verbally responded and kept walking.

14 WARGO-WILSON: Do you recall what he said?

15 HERNANDEZ: Well according to the video here, he told us to
16 stop bothering him or what we're bothering him for.

17 WARGO-WILSON: I'm sorry. Let me be clear. Before the
18 sound is on.

19 HERNANDEZ: Um hmm.

20 WARGO-WILSON: Because we see before there's sound that he
21 looks toward yourself and your partner and continues to walk.
22 So, before we hear sound, do you recall whether he responded
23 verbally to you?

24 HERNANDEZ: I do not.

25 WARGO-WILSON: Okay. And then once the sound comes on, he
26 says to you, he believes there is essentially a sandwich
27 exception. Right? He can stop and turn on his hazards to go
28 get a sandwich, right?

1 HERNANDEZ: Um hmm. He says he can stop with his hazards
2 on, yes.

3 WARGO-WILSON: Right.

4 TORGESON: And just for the record, stop in a red zone with
5 a hydrant.

6 HERNANDEZ: Yes.

7 TORGESON: Okay.

8 WARGO-WILSON: And your partner indicates, we're not gonna
9 debate the law but you can't park there, right? You're
10 illegally parked. Correct?

11 HERNANDEZ: Yes.

12 WARGO-WILSON: Okay. Now at this point- and actually from
13 when the sound goes on until you hear - until we hear that part
14 of the conversation, the Complainant for the most part, has both
15 hands out to either side of him at approximately shoulder
16 height. Is that fair? Do you want us to back it up?

17 HERNANDEZ: Sure.

18 TORGESON: Okay. Let's go back to about 19, 20.

19 WARGO-WILSON: Oh no, that's too far. I'm sorry.

20 TORGESON: Okay. We'll go to the time on the right side,
21 upper right side is T18:47:47.

22 WARGO-WILSON: Yeah.

23 TORGESON: And we're at 27 seconds on the timing. [PLAYING
24 VIDEO]. Is that where you were going to?

25 WARGO-WILSON: Yes. So, starting at roughly 30 seconds
26 into our recording that we're watching at T18:47:51, I guess
27 it's fair to say the Complainant has his hands at about neck/ear
28 level? Is that fair?

1 HERNANDEZ: Just below ear level I'd say.

2 WARGO-WILSON: Okay. And out to either side of him.

3 Correct?

4 HERNANDEZ: Correct.

5 WARGO-WILSON: And we see- I assume- let me know if I'm

6 wrong, that you observed at this point in time, that in one hand

7 he has his keys? Is that correct?

8 HERNANDEZ: Correct.

9 WARGO-WILSON: And then the other hand sunglasses and I

10 don't know- a wallet, a phone? Something like that?

11 HERNANDEZ: It appears to be, so, yeah, sunglasses or a

12 wallet or phone.

13 WARGO-WILSON: Okay. And when you're looking at the

14 Complainant at this point, do you see anything in his hands that

15 appears to be a weapon?

16 HERNANDEZ: Yes. Well, could potentially be a weapon, yes.

17 WARGO-WILSON: Anything could potentially be a weapon. Is

18 that true?

19 HERNANDEZ: Yes.

20 WARGO-WILSON: So, we talking about his keys?

21 HERNANDEZ: Yes.

22 WARGO-WILSON: Okay. But traditional weapons that justify

23 a pat search, do you see anything like that in his hands? A

24 knife, a gun, anything like that?

25 HERNANDEZ: I do not see a knife or a gun in his hands.

26 WARGO-WILSON: Okay. Was there anything that you could see

27 an outline of in any of his pockets that suggested to you the

28 presence of a weapon?

1 HERNANDEZ: This moment in the video, no.

2 WARGO-WILSON: Okay. So, I understand that you are trained
3 that baggy clothes have the capability of concealing a weapon.
4 Right?

5 HERNANDEZ: Yes.

6 WARGO-WILSON: But at least right now, when you're looking
7 at the Complainant with his arms out you do not see any specific
8 indication that this particular person has a weapon? Is that
9 correct?

10 HERNANDEZ: Yeah. In the still shot of the Body Worn
11 Camera, it appears that way.

12 WARGO-WILSON: And up until this point, is that true?

13 HERNANDEZ: Yes.

14 WARGO-WILSON: And this is why we're gonna go step-by-step,
15 okay?

16 HERNANDEZ: Um hmm.

17 WARGO-WILSON: Because you are going to have an opportunity
18 to let us know your analysis at each point during this, okay?

19 HERNANDEZ: Okay.

20 WARGO-WILSON: So, the Complainant then suggests that he
21 has every right to stop in the red zone and get his sandwich as
22 long as he has his blinkers on. Your partner explains to him
23 she won't debate the law but that's not true. At what point do
24 you pull out your gloves?

25 HERNANDEZ: I would say fairly early on during the verbal-
26 during the ah, verbal I guess ah- excuse my term-

27 KHMARSKIY: Discussion.

28 HERNANDEZ: Discussion, yeah, with the subject.

1 WARGO-WILSON: Okay. So, where we are right now-

2 HERNANDEZ: Um hmm.

3 WARGO-WILSON: Have you already pulled out your gloves?

4 HERNANDEZ: I'm not sure. I don't believe so.

5 WARGO-WILSON: Okay. We're gonna continue to play it at

6 the point at which you believe you pulled out your gloves which

7 I read as you are going to pat search him, let us know if you

8 can identify that point in time in the video. Okay?

9 HERNANDEZ: Okay.

10 TORGESON: And actually, let me ask you a question.

11 HERNANDEZ: Yeah.

12 TORGESON: At this point in time, did you plan on pat

13 searching the Complainant?

14 HERNANDEZ: At this point in time, it's definitely rising

15 to pat search. I don't recall exactly the moment I decided to

16 but at this -from just the short clip, you've shown me the video

17 as well, you can see him walking away, disobeying commands.

18 Immediately, once he turns around, you can see his right hand go

19 down towards his pocket as well before this still shot. And

20 then obviously, once the audio starts, you can hear the verbal

21 conversation.

22 WARGO-WILSON: Okay. So, already you're thinking you may

23 be pat searching him.

24 HERNANDEZ: Yes. It's something that'd be in- that was in

25 my mind and is constantly during any sort of ah, situation with

26 a subject.

27 WARGO-WILSON: Okay. How many times do you detain somebody

28 who's happy about being detained?

1 HERNANDEZ: I don't know how- um, I'm not sure.

2 WARGO-WILSON: Almost never? Is that fair?

3 HERNANDEZ: I don't know about almost never but it's a low
4 number I'd say.

5 WARGO-WILSON: Okay. And some people simply do whatever
6 you tell them. Is that fair?

7 HERNANDEZ: I don't know about whatever. That's kinda
8 vague but some people listen to orders, yes.

9 WARGO-WILSON: Well some people follow your commands,
10 right?

11 HERNANDEZ: Correct.

12 WARGO-WILSON: And they don't verbally challenge your
13 authority. Is that correct?

14 HERNANDEZ: Correct.

15 WARGO-WILSON: Okay. Do you have any training about how
16 much verbal challenge a detainee is permitted to give you?

17 HERNANDEZ: I'm sorry.

18 KHMARSKIY: I'm sorry. I don't understand the question.

19 HERNANDEZ: I don't understand- yeah, can you rephrase that
20 one more time?

21 WARGO-WILSON: Sure. Do you have any training about what a
22 detainee can say that doesn't lead to reasonable suspicion that
23 they're armed or dangerous?

24 KHMARSKIY: That question is so general, I don't think he
25 can answer that question. I mean that's - that's a what-if
26 scenario based on -that would be synonymous with each specific
27 scenario. I think if you're saying that set aside the fact that
28 defendant can say, I have a gun. I'm gonna fight. I'm gonna

1 run, yes, the defendant is allowed to speak but it is the
2 connotation of their speech and the circumstances under which
3 the defendant is detained in the first place that would lead an
4 officer to conduct a search.

5 WARGO-WILSON: Officer Hernandez, did you understand my
6 question?

7 HERNANDEZ: No.

8 WARGO-WILSON: Okay. Do you have any training about First
9 Amendment Rights and detainees?

10 HERNANDEZ: Yes.

11 WARGO-WILSON: Okay. Are you trained that a detainee for
12 example can call you a name?

13 HERNANDEZ: Yes.

14 WARGO-WILSON: If they- if a detainee calls you names and
15 cusses at you, is that a basis to pat search them?

16 HERNANDEZ: No. Depending on what they say obviously.

17 WARGO-WILSON: I'm just talking about name-calling,
18 challenging, you don't have the right to do this, I disagree
19 with you Officer Hernandez. You're wrong.

20 HERNANDEZ: Not in and of itself, no.

21 WARGO-WILSON: Okay. So, at this point, is it the fact
22 that the Complainant kept walking or is it the fact that the
23 Complainant says, you can't touch me? Don't touch me. Why are
24 you touching me?

25 HERNANDEZ: The fact for what? I'm sorry.

26 WARGO-WILSON: That's leading you to say, this is going
27 towards a pat search.

28 HERNANDEZ: I'd say a little bit of both. It'd be the fact

1 that he's walking away. Not obeying, you know, our commands.
2 Then his verbal- him being verbally aggressive towards us in
3 that sense as well as his demeanor.

4 WARGO-WILSON: Okay. So, you're using the word aggressive.

5 HERNANDEZ: Um hmm.

6 WARGO-WILSON: What he's saying is he doesn't think you
7 have the right to touch him. Right?

8 HERNANDEZ: Um hmm. Yes.

9 WARGO-WILSON: He's not threatening you. Right?

10 HERNANDEZ: Verbally, no.

11 WARGO-WILSON: And he's not challenging you to a fight,
12 right?

13 HERNANDEZ: No, not verbally.

14 WARGO-WILSON: He's asserting his belief that you do not
15 have the right to touch him. Is that an accurate statement of
16 what he's saying to you?

17 HERNANDEZ: Yes.

18 WARGO-WILSON: Okay. Let's go to the next-

19 TORGESON: Actually, I wanted to - um, you did mention that
20 you saw him put his hand near his pocket when you first had
21 contact with him?

22 HERNANDEZ: Yes.

23 TORGESON: I want to go back and if you could point- stop
24 me- stop the video or tell me when to stop the video when you
25 see that. I'm gonna bring it back to -

26 HERNANDEZ: You're good.

27 TORGESON: Okay. We'll note what time it is when you see
28 it.

1 HERNANDEZ: Okay.

2 TORGESON: So, we're at 24 seconds, also, at 18:47:43.

3 Okay. All right. And just tell me when to stop so we can look

4 at that.

5 HERNANDEZ: There.

6 TORGESON: Right there? His right hand?

7 HERNANDEZ: Correct.

8 TORGESON: Okay. Can you describe what he's doing right

9 there?

10 HERNANDEZ: In the still picture of the Body Worn Camera,

11 it appears that he's- he moved his hands towards his waistline-

12 the rear I guess would you say buttocks pocket, waistline area.

13 TORGESON: Okay. And is it fair to say that you can see

14 his hand at this point in the video, which actually is at 28

15 seconds, 18:47:47. Can you see his hand in this portion of the

16 video?

17 HERNANDEZ: The majority of it, yes.

18 TORGESON: Okay. Is there any point when you say he's

19 reaching for a pocket that you could not see his hand?

20 HERNANDEZ: I mean this is a still shot but if you want to

21 run, play it.

22 TORGESON: Yeah.

23 WARGO-WILSON: We'll play it. Let us know if you ever see

24 his hand actually go inside a pocket. [PLAYING VIDEO].

25 TORGESON: Did you see his hand go inside a pocket? And we

26 stopped at 30 seconds, 18:47:50.

27 HERNANDEZ: At that specific moment, no.

28 TORGESON: Okay.

1 HERNANDEZ: This specifically video, no.

2 TORGESON: Okay. So, at this point when you observed him

3 you said -you mentioned that one of the reasons that you were

4 thinking of doing a pat search is because he reached this hand

5 into a pocket. Is that correct?

6 HERNANDEZ: Towards his pockets, yeah.

7 TORGESON: Towards his pockets? Okay. You have anything?

8 Okay.

9 WARGO-WILSON: Just one. My perception of that is it

10 looked to me like he was trying to pull up his super-baggy

11 pants. Is that a possibility of what he was doing?

12 HERNANDEZ: Could be a possibility, yeah.

13 WARGO-WILSON: Okay.

14 HERNANDEZ: Yes, it could be a possibility.

15 WARGO-WILSON: Okay.

16 TORGESON: Okay. Before you said that, in the very

17 beginning, you did not see any bulges or anything that would

18 possibly represent a weapon. Is that correct?

19 HERNANDEZ: In the still shot when she asked me, I said

20 that, yeah.

21 TORGESON: Okay. So, I just want to make sure that -

22 because you're referring to early on- I just want to make sure

23 at any point did you see anything in his pockets that would be a

24 bulge that would -you think could possibly be a weapon?

25 HERNANDEZ: No. I don't believe so, no.

26 TORGESON: Okay. So, up until this point, were you fearing

27 for your safety at all?

28 HERNANDEZ: Um hmm. Again, the suspicion started to rise

1 and the fear I would say would be growing but not quite then.

2 TORGESON: Okay.

3 HERNANDEZ: Well it's actually, you know, it's- it's
4 difficult to pinpoint where in the video- so, where in
5 altercation my fear grew.

6 TORGESON: But up to this point where he just turns around
7 and his hands are up in the air.

8 HERNANDEZ: Yeah. That's safe to say, yeah.

9 TORGESON: That you were fearful-

10 HERNANDEZ: No, I was not at this point.

11 TORGESON: Okay.

12 WARGO-WILSON: And so, we're clear, we are still at T18-
13 47:50 when we say up until this point.

14 TORGESON: Okay. I'm going to continue to play. [PLAYING
15 VIDEO]. Okay, at this point in the video which is 52 seconds,
16 also at 18:48:12, at this point, were you going to- made the
17 decision to pat search him?

18 HERNANDEZ: Not necessarily.

19 TORGESON: Okay. Why were you pulling your gloves out?

20 HERNANDEZ: In case I did pat search him.

21 TORGESON: Okay. You have any-

22 WARGO-WILSON: Actually, that looks to me like you're
23 putting one on. Yes?

24 HERNANDEZ: No. Not at this particular moment. They're
25 just rolled up.

26 WARGO-WILSON: You're pulling them out.

27 HERNANDEZ: Yeah.

28 WARGO-WILSON: Okay. No, hold on just a second.

1 TORGESON: Yeah.

2 WARGO-WILSON: So, between the point we stopped before and
3 where we're stopped now, T18:48:12.

4 HERNANDEZ: Um hmm.

5 WARGO-WILSON: Would you characterize the Complainant here
6 during that portion as aggressive?

7 HERNANDEZ: Yeah.

8 WARGO-WILSON: Okay. So, he says to you, why are you
9 bothering me? Right?

10 HERNANDEZ: Yes.

11 WARGO-WILSON: And he actually lowers his voice and then
12 says- puts both hands towards his chest and says, what's wrong
13 with you guys? And let me know if you want to see it again.

14 HERNANDEZ: Yeah. We can watch it. I don't recall the
15 voice.

16 WARGO-WILSON: Okay.

17 TORGESON: So, we will go back-

18 WARGO-WILSON: Yeah.

19 TORGESON: From like 30 to -

20 WARGO-WILSON: Yeah.

21 TORGESON: Right here? Yeah. How about right there? So,
22 we're at 18:47:50, also at 31 seconds. [PLAYING VIDEO].

23 WARGO-WILSON: Stop there.

24 TORGESON: Okay. I stopped at 40 seconds, also 18:48:00.

25 WARGO-WILSON: So, my question was from when he was first a
26 little bit -had a little bit higher volume- why are you guys
27 detaining me? Says, I'm just going to get a sandwich or words
28 to that effect. But then, I hear his voice drop and he says

1 words to the effect of, why are you detaining me? What's wrong
2 with you guys? Or maybe vice-versa. Is that an accurate
3 characterization?

4 HERNANDEZ: Yes.

5 WARGO-WILSON: So, right now, where he has both hands
6 toward his chest, he doesn't have his voice raised but he's
7 saying, why are you guys detaining me? What's wrong with you?
8 Do you consider that to be aggressive?

9 HERNANDEZ: No.

10 WARGO-WILSON: Okay. He disagrees with your authority. Is
11 that fair?

12 HERNANDEZ: Yes.

13 WARGO-WILSON: Okay.

14 HERNANDEZ: And just for the recording, at this time I
15 don't have my gloves out as we kinda stopped initially. So, we
16 haven't reached that point yet.

17 WARGO-WILSON: Right. So, right at T18:48:00, where we
18 have the hands on the chest and the voice is lowered and you
19 haven't reached for your gloves yet. So, let's go ahead and-

20 TORGESON: Okay, so, we're go ahead and play.

21 WARGO-WILSON: Yes. [PLAYING VIDEO]. Okay, stop right
22 there. So, now at T18:48:10, you have pulled out your gloves.
23 Now, what has happened between when we stopped and now is that
24 he began to walk toward his car and verbally indicated, okay,
25 I'm gonna go move my car, right?

26 TORGESON: Correct.

27 WARGO-WILSON: Anything else that happened in there that I
28 missed?

1 HERNANDEZ: Not that I saw.

2 WARGO-WILSON: And now your gloves are out.

3 HERNANDEZ: Correct.

4 WARGO-WILSON: So, what about him saying, okay, I'll go
5 move my car, prompted you to pull the gloves out?

6 HERNANDEZ: I would say more him walking towards the
7 vehicle but it's not uncommon for me to pull my gloves out on -I
8 mean various [unintelligible] and things, it's not- it doesn't
9 mean- yeah, just as a precaution I pulled my gloves out.

10 WARGO-WILSON: Okay. So, at T18:48:10, have you made the
11 decision to pat search the Complainant at this point?

12 HERNANDEZ: I don't believe so, no.

13 WARGO-WILSON: Okay. Let's continue.

14 TORGESON: Okay. And I just want to note for the record
15 we're talking about him starting to move towards his car. It
16 appears from the video he really didn't move that far. More
17 than like a couple of feet. Is that correct? Is that your-

18 HERNANDEZ: Um, because-

19 TORGESON: It's not like he walked to his car.

20 HERNANDEZ: Correct. He moved a couple feet towards his
21 car where I stepped in front of him.

22 TORGESON: Okay. [PLAYING VIDEO]. Tell me when to stop.
23 I'm going to stop it there.

24 WARGO-WILSON: Yeah. Okay. So, at this point, T18:48:28,
25 I cannot see how far we are into the video.

26 TORGESON: One minute-

27 HERNANDEZ: 08.

28 TORGESON: 08, thank you.

1 WARGO-WILSON: Now at this point, the Complainant has said,
2 wait a minute. I'm allowed to stop. I can put my hazards on,
3 but you have already put your gloves on at this point. So, is
4 somewhere between our last point and this point when you decided
5 to pat search him?

6 HERNANDEZ: I would say this - this would be the point.

7 WARGO-WILSON: So, T18:48:28 is when you decided you were
8 going to pat search him?

9 HERNANDEZ: I would say roughly, yeah. I mean it's hard to
10 pinpoint it to an exact second obviously actually but this- this
11 point, I would- yeah.

12 WARGO-WILSON: Right. And I'm not trying to pin you to
13 which second. I'm trying to pin you to which action or
14 statement or fact caused you to decide to do the pat search.
15 Was it his statement that he was allowed to park there?

16 HERNANDEZ: No.

17 WARGO-WILSON: Okay. What was it?

18 HERNANDEZ: Again, it was the not one specific statement or
19 action. It was the group of actions he made from the beginning
20 of the encounter up until about this- I'll say this point when I
21 decided to pat search him.

22 WARGO-WILSON: Okay. But part of the reason we've gone
23 step-by-step is you weren't- you hadn't made the decision to pat
24 search him when he walked away. You hadn't made the decision to
25 pat search him when he said, what's wrong with you guys? Why
26 are you detaining me? But by this point you have. So, what
27 additional fact or what additional thing made you decide I need
28 to pat search this particular person?

1 HERNANDEZ: Well, in this specific moment in the video, he
2 attempts to walk towards his vehicle a second time. So, I
3 should say adding that on top of the initial reasons I told you
4 at the beginning of the incident to that point, I decided.

5 WARGO-WILSON: Okay. Was there something about him walking
6 toward his car, after he had said, okay, I'll move it, that made
7 you think he was armed?

8 HERNANDEZ: It made me- well one, you never know what's in
9 his vehicle, right, so I don't know what he's going to do in the
10 vehicle or what he's gonna get so for my -it's a yes, exactly.
11 So, for my safety and my partner's safety, since the vehicle has
12 been unattended the whole time, we don't know what's in it, that
13 raised some suspicion and concern.

14 WARGO-WILSON: Okay. But a pat search is of his body and
15 his person. Correct?

16 HERNANDEZ: Correct.

17 WARGO-WILSON: Okay. So, can we agree that to pat search
18 somebody you have to have specific articulable facts that person
19 is armed and dangerous? Do we agree that that's the standard?

20 HERNANDEZ: Yes.

21 WARGO-WILSON: Okay. As a police officer, you really never
22 know what you're going into and we get that. In this particular
23 situation at this particular time, was there something about him
24 walking toward his car coupled with his statement, okay, I'll
25 move it, that made you think right now he's armed?

26 HERNANDEZ: Yes. I would say again the totality of it from
27 the very beginning- from the beginning of the incident to now,
28 multiple times he didn't obey our commands, he was walking

1 towards the vehicle which is obviously walking away from us,
2 attempting to leave, so I mean my training and experience,
3 anybody who's attempting to flee or get away from us, disobeying
4 lawful commands, can be attempting to basically flee due to any
5 weapons or items on their person that they have. So, yes.

6 TORGESON: Can I ask one?

7 WARGO-WILSON: Um hmm.

8 TORGESON: How far away from the car would you say he is at
9 this point in time on the video? Is he right next to the car?

10 HERNANDEZ: No.

11 TORGESON: Okay. Can you estimate about how far he is?

12 HERNANDEZ: Ah, I guess about ten feet or so.

13 Approximately. Tough to tell. I'm kind of blocking the whole
14 car for the most part.

15 TORGESON: Okay. Here's his car right here.

16 HERNANDEZ: Um hmm. I'd say he's near the corner of the
17 Submarine Center so I guess about ten feet.

18 TORGESON: Okay. To me it looks like it could possibly be
19 about three to four car lengths. Is that a fair assessment on
20 my part?

21 HERNANDEZ: That's your assessment.

22 TORGESON: Right. I'm just asking you. Do you agree with
23 my assessment?

24 HERNANDEZ: No.

25 TORGESON: Okay. You think that's ten feet away between
26 him and the car over there?

27 HERNANDEZ: Yes.

28 TORGESON: Okay.

1 HERNANDEZ: Approximately.

2 TORGESON: Okay.

3 WARGO-WILSON: Now, let me just ask you. At this point, as
4 he's walking toward his car, he specifically indicates he's
5 gonna move it. Right?

6 HERNANDEZ: Yes.

7 WARGO-WILSON: Do either you or your partner say or tell
8 him at some point, that's not how this works? You're not
9 allowed to do that?

10 HERNANDEZ: I don't recall.

11 WARGO-WILSON: Okay. And he doesn't say anything that
12 leads you to believe he has a weapon, right?

13 HERNANDEZ: Not specifically, no.

14 WARGO-WILSON: Doesn't make any threats. Right?

15 HERNANDEZ: Not verbally, no.

16 WARGO-WILSON: Did he make any physical threat toward you?

17 HERNANDEZ: I would say his demeanor starts to get more
18 aggressive, his body language but not a specific threat, no.

19 WARGO-WILSON: Okay. He doesn't want to interact with you.
20 Is that fair?

21 HERNANDEZ: Yes.

22 WARGO-WILSON: Now that could be because he doesn't like
23 police interaction. Right?

24 HERNANDEZ: Yes.

25 WARGO-WILSON: Could be because he has a warrant, right?

26 HERNANDEZ: Yes.

27 WARGO-WILSON: Could be he's afraid of police officers?

28 HERNANDEZ: Yes.

1 WARGO-WILSON: So, what I'm trying to get at is what about
2 that is a specific fact that says to you he is armed? Not maybe
3 possibly because anybody you encounter could possibly be armed,
4 right?

5 HERNANDEZ: Yeah.

6 WARGO-WILSON: And we agree that you can't just pat search
7 everybody, right?

8 HERNANDEZ: Yes.

9 WARGO-WILSON: So, what about this specifically says to you
10 these facts tell me I have a reasonable suspicion he's armed and
11 dangerous?

12 HERNANDEZ: I think I've answered this, three times
13 already. Not just any one specific action he made. It's again,
14 the totality of all of them. His demeanor is failure to comply
15 with our commands. Walking - attempting to flee, walked away
16 from us multiple times along with the area.

17 WARGO-WILSON: What do you mean-

18 HERNANDEZ: His baggy clothing.

19 WARGO-WILSON: I'm sorry. I didn't mean to interrupt you.

20 HERNANDEZ: Yeah, go ahead.

21 WARGO-WILSON: Were you done?

22 HERNANDEZ: Ah, yes.

23 WARGO-WILSON: Ah, what did you mean by area?

24 HERNANDEZ: The area- that specific area on Irving is that
25 it's a pretty high crime area for vehicle break-ins and near the
26 park. Yeah.

27 WARGO-WILSON: So, there's a lot of auto burglaries there?

28 HERNANDEZ: Correct.

1 WARGO-WILSON: Okay. Did you have any reason to suspect he
2 was involved in any kind of auto burglary?

3 HERNANDEZ: No.

4 WARGO-WILSON: Is that a high crime area for any violent
5 offense?

6 HERNANDEZ: Not particularly, no.

7 WARGO-WILSON: Okay.

8 TORGESON: So, at this point you said you decided to pat
9 search him. In your narrative in the incident report, [REDACTED ID]
10 [REDACTED ID] you justified pat searching him. You state, "due to the
11 fact that [REDACTED ID] was wearing an oversized black hoodie,
12 oversized jeans, tried to reach into his pockets more than once,
13 and was refusing to stop moving." Can you tell me when the
14 other times that he tried to reach into his pocket or before you
15 decided to make the pat search?

16 HERNANDEZ: So, my partner wrote that. I'm not sure if she
17 observed more times what he reached towards her in his pockets
18 so I can't really speak on her observations.

19 TORGESON: So, is it fair to say that the only pocket
20 concern you had at this point was when you're talking about when
21 you saw him reaching into his rear pocket?

22 HERNANDEZ: Well, then another time he reached in his
23 pocket was to retrieve his identification.

24 TORGESON: Correct. But just at this point, you said you
25 already made a determination that you're gonna do a pat search.

26 So, up to this point, was there any other occasion to state
27 that he was trying to reach into a pocket?

28 WARGO-WILSON: That you personally observed.

1 HERNANDEZ: Besides to initial- when we rewind it, ah, I
2 think it was early on and then with the ID. Those are the two I
3 recall.

4 TORGESON: But is it fair to say at this point when you
5 decided to make the pat search, he has not yet reached into his
6 pocket for his ID?

7 HERNANDEZ: I think he-

8 TORGESON: We can watch the video.

9 HERNANDEZ: Yes, can you- I'm sorry. We're going back and
10 forth.

11 TORGESON: Okay.

12 TORGESON: Okay. My understanding of watching the video,
13 it happens after this.

14 HERNANDEZ: After this?

15 TORGESON: After this. So, do you want to play it from
16 this point on or go back?

17 WARGO-WILSON: Go back a bit. Whatever will help your
18 memory-

19 HERNANDEZ: Uh huh.

20 WARGO-WILSON: Is-

21 TORGESON: We'll start right here. Is that okay?

22 KHMARSKIY: Brett, you got to remember your justification
23 for what you're doing is from the beginning of this incident.

24 HERNANDEZ: Um hmm.

25 KHMARSKIY: You're not here to answer why you're doing what
26 you're doing on two seconds out of a 29-minute video. Right?
27 So, if you want to explain how you felt and why you did what you
28 did, you start from the initial interaction from how he's acting

1 to the end of where you put on your gloves.

2 HERNANDEZ: Um hmm.

3 KHMARSKIY: Because it's not like he said, hello officer,
4 how are you, to all of a sudden, why are you detaining me.
5 Correct?

6 HERNANDEZ: Correct.

7 KHMARSKIY: So, if we keep going back to the same two
8 seconds, they've already asked this a hundred times.

9 TORGESON: I don't believe the question I just asked was
10 even asked once.

11 KHMARSKIY: Yeah. The question of why he was detained and
12 how he felt about why detaining him has been asked and answered
13 multiple times.

14 TORGESON: That's not my question.

15 WARGO-WILSON: Your objection is noted. The question we're
16 currently trying to answer is the point at which we previously
17 stopped, has the Complainant already told you he was going to
18 get ID and gotten it out or had that not happened yet. So,
19 we're gonna watch it together and let's figure out when that
20 happened.

21 TORGESON: Okay, so, we're starting at 26 seconds and
22 18:47:45. [PLAYING VIDEO]. Okay, so, we stopped at 18:48:28 and
23 that's the point where you said that you've made the decision to
24 conduct a pat search. Is that correct?

25 HERNANDEZ: Yes.

26 TORGESON: Okay. So, prior to this time, did you see him
27 attempt to reach into his pocket more than one time?

28 HERNANDEZ: No.

1 TORGESON: Okay. Thank you. Do you have any questions?

2 WARGO-WILSON: Now I just noticed, um, when he starts to
3 walk toward his car the second time, and says, where does it say
4 that, it appeared to me that he was looking as if is there a
5 sign there. Do you agree with that characterization of that
6 moment when he sort of looks around the corner and says, where
7 does it say that? Did it appear to you he was looking for a
8 sign or did it appear to you he was doing something else? And
9 let us know if you want to see that portion again.

10 HERNANDEZ: Ah, we can see that portion again.

11 TORGESON: Okay.

12 WARGO-WILSON: It's just a few seconds back, maybe five,
13 ten seconds.

14 TORGESON: Yeah, so-

15 WARGO-WILSON: Right before that. Perfect.

16 TORGESON: Okay, so right here, we're at 104 and 18:48.23.
17 [PLAYING VIDEO]. And then we stopped it 18:48:27.

18 HERNANDEZ: Maybe but not specifically, no.

19 WARGO-WILSON: Okay. So, he could have been looking for a
20 sign but what mattered to you was that he was walking towards
21 his car? Is that fair?

22 HERNANDEZ: Yes.

23 WARGO-WILSON: Okay.

24 TORGESON: Okay, we're gonna continue watching. [PLAYING
25 VIDEO]. Okay, at 18:48:39, it appears that the Complainant has
26 his hand in his left pocket and he was saying, you want my ID?
27 Something to the effect of like, you want my ID, I'll give you
28 my ID. Is that correct?

1 HERNANDEZ: Yes.

2 TORGESON: Okay. At this point, were you fearing for your
3 safety?

4 HERNANDEZ: Yes.

5 TORGESON: Why?

6 HERNANDEZ: I don't know what's in his pocket.

7 TORGESON: Okay. I'm going to continue playing. [PLAYING
8 VIDEO]. Okay, I'm gonna stop at this point: 18:48:43. He now
9 has his hand out of his pocket. He's got his ID in his hand.
10 And you are standing there in front of him. Is that correct?

11 HERNANDEZ: Off to the side.

12 TORGESON: Okay. So- and let me- I'm gonna play this just
13 a little bit further. [PLAYING VIDEO]. Okay, so we're at 18:48,
14 at one thirty-four. Sorry. 18:48:54. He's pulled his ID out.
15 He's handed it to you. You've taken it. Are you still fearing
16 for your safety at that point that he might have a weapon in his
17 pocket?

18 HERNANDEZ: On his person, yes.

19 TORGESON: Okay. Why do you think that he might have a
20 weapon in his pocket at this time?

21 HERNANDEZ: I feel like I've answered again like four or
22 five times. The totality of everything. From the beginning-
23 the moment we made contact with him, he was walking away from
24 us, not following our commands verbally. He started to raise
25 his voice. Demeanor, attempted to walk away multiple times
26 towards the car to leave and again, his clothing description,
27 his baggy clothing- excuse me.

28 WARGO-WILSON: So, if it's helpful to you, Officer

1 Hernandez, maybe it'll be easier if we'll phrase it this way.

2 HERNANDEZ: Okay.

3 WARGO-WILSON: At this point, is there anything new or
4 different that caused you to believe he was armed and dangerous?
5 We understand what you're saying. What we're trying to ask you
6 is with each development, is there something new in your
7 reasonable suspicion equation that you have not already told us
8 about?

9 HERNANDEZ: No.

10 TORGESON: My question at this point is, it's been several
11 seconds between the point where he reached into his pocket,
12 pulled his ID out, said a few things to you and handed you the
13 ID and now you're putting the ID in your front pocket on your
14 shirt. If you were worried that he may have had a weapon in his
15 left pocket that he reached into, would you say- would you have
16 done any action other than just standing there next to him?

17 HERNANDEZ: Ah, I never specifically said his left pocket.
18 And also- I mean, yeah, I never specifically said his left
19 pocket.

20 TORGESON: Okay. But you previously said that you were
21 fearing for your safety when he was reaching into that pocket.
22 So, is it fair to say that you thought he may have had a weapon
23 in that pocket?

24 HERNANDEZ: Yes, part of his person-

25 TORGESON: Okay, so -

26 HERNANDEZ: Could be his left pocket.

27 TORGESON: If you see him reaching into the pocket where
28 you may suspect he has a weapon, do you think you would have -

1 when you suspect somebody has a weapon and they're reaching into
2 a pocket, would you have just stood there and you're not even
3 looking at him at this point and we're at 18:48:54, where you're
4 putting the ID in your pocket- do you think you would have done
5 any other different action if you thought he had a weapon in his
6 pocket he was reaching for?

7 HERNANDEZ: Ah-

8 TORGESON: For instance, would you have taken him to the
9 wall and taken his hands?

10 WARGO-WILSON: Let's try this another way. I think I know
11 what you're getting at.

12 KHMARSKIY: You're not answering hypotheticals.

13 HERNANDEZ: Yeah.

14 WARGO-WILSON: Is the fact that he says, I'm going to get
15 my ID. Puts the hand in the pocket. When he actually comes out
16 with the ID, does that dispel any suspicion you have about what
17 he might have in that particular pocket?

18 HERNANDEZ: Not necessarily, no, because multiple things
19 can fit in a pocket.

20 WARGO-WILSON: Sure. Is it fair to say when he pulled that
21 out, part of the top of the pocket came out with his hand?

22 HERNANDEZ: I don't -

23 WARGO-WILSON: Did you see it?

24 HERNANDEZ: I don't recall.

25 WARGO-WILSON: Did you see it?

26 HERNANDEZ: I don't recall.

27 WARGO-WILSON: Can we- okay. Back it up just a little.

28 TORGESON: Okay, we're at 18:48:34. [PLAYING VIDEO].

1 WARGO-WILSON: And stop it when he comes out with his ID.
2 Right there. So, is it fair to say like part of the pocket
3 lining is showing at this point on that side, the left side?

4 HERNANDEZ: Yes. A small portion of the pocket lining is.

5 WARGO-WILSON: Okay. And I don't see -let me know if you
6 observed- did you observe any bulges in either of the front
7 pockets at this point in time that appear to you to be a weapon?

8 HERNANDEZ: Not in this camera, I can't see anything.

9 WARGO-WILSON: And do you recall seeing anything like that?

10 HERNANDEZ: I don't recall.

11 WARGO-WILSON: And certainly, you would have told your
12 partner and made sure that it was included in the police report
13 if you had seen something like that. Is that fair?

14 HERNANDEZ: Yes.

15 WARGO-WILSON: Okay.

16 TORGESON: And just ah, also, when he- before he puts his
17 hand in his pocket, he does tell you that he's gonna pull his ID
18 out for you. Is that correct?

19 HERNANDEZ: I believe so, yes.

20 TORGESON: Okay. Do you have any more pat search
21 questions?

22 WARGO-WILSON: I don't.

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TORGESON: So, after the Complainant was handcuffed, he was taken to the patrol vehicle. Is that correct?

HERNANDEZ: Correct.

TORGESON: Was he placed in the backseat?

HERNANDEZ: Yes.

TORGESON: Okay. Do you remember a motorcycle officer being on-scene? That'd be Officer Olson.

HERNANDEZ: I'm not sure of his name but I recall another officer arriving.

TORGESON: A motorcycle officer? Okay. When you put the Complainant in the backseat of the patrol vehicle, did you observe Officer Olson who was the motorcycle officer, go to the other side of the car, to the back door, and pull the Complainant into the backseat?

HERNANDEZ: I don't -not specifically, no, I don't recall.

WARG-WILSON: Okay. Do you recall anybody assisting with getting the Complainant into the backseat, like fully into the car?

HERNANDEZ: No. Think I was with the Complainant.

WARGO-WILSON: I'm sorry? I didn't hear you.

HERNANDEZ: No, I don't believe so. I don't recall anybody else assisting.

TORGESON: Okay. So, after the Complainant was in the car,

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1 TORGESON: Okay.

2 HERNANDEZ: So, I believed that it was more- oh yeah.

3 TORGESON: Okay. I'm going to play the video again. I
4 need to- I'm going to play your Body Worn Camera footage this
5 time. [PLAYING VIDEO]. Is there a reason why your volume starts
6 right at the beginning of your video and you didn't have a 30-
7 second buffer?

8 HERNANDEZ: Not sure. Might not have had it buffering.

9 TORGESON: Are you supposed to have it in buffering mode?

10 HERNANDEZ: Ah, now, yes.

11 TORGESON: Okay. What do you mean by now?

12 HERNANDEZ: Um- oh yes, you're supposed to have it in
13 buffering mode.

14 TORGESON: Okay. I'm going to take us to 19 minutes and 6
15 seconds. Okay. All right. We are at 19 minutes, 2 seconds,
16 which is 19:06:46. [PLAYING VIDEO]. Time again. Think I have
17 the wrong time written down.

18 HERNANDEZ: Yeah.

19 TORGESON: I'm going to pause it. I know when you go in-
20 hold on. Let me - okay, I'm gonna start it at- it's right here.
21 24 minutes, 41 seconds and 19:12:25. [PLAYING VIDEO]. Okay,
22 just for the record at 19:13:29, POBRA

23 POBRA

24 POBRA

25 TORGESON: Okay. And I apologize if I'm at the wrong part
26 where I want to be. I must have written the number down wrong.
27 [PLAYING VIDEO]. So, I think it's before this. I'm sorry. I
28 think it's probably here. And I apologize if it's not. We're

1 at 19:04:27. [PLAYING VIDEO]. Okay, I apologize. I wrote the
2 number down wrong. Can we take a little break while I find out
3 where the part in the video?

4 KHMARSKIY: Sure.

5 TORGESON: Okay. You guys are-

6 KHMARSKIY: Do you know approximately how far we are from
7 the end? He's come in [unintelligible].

8 TORGESON: Okay. Let's see. We're actually very close to
9 the end.

10 KHMARSKIY: Okay.

11 TORGESON: Yeah, we're very close to the end.

12 WARGO-WILSON: You're off shift by four?

13 HERNANDEZ: Yeah.

14 WARGO-WILSON: Okay. We'll try and get you out of here
15 then.

16 TORGESON: You guys can either go outside, stay in here.

17 KHMARSKIY: Do you want to pause the recorder or-

18 TORGESON: Oh yeah, sorry. I will pause the recording at
19 3:48 p.m.

20 TORGESON: So, we're going back on the record. It is now
21 3:55 p.m. and we will try and wrap this up as quickly as we can.

22 So, I made it 18:59:34, which is 11 minutes, 50 seconds. I'm
23 going to play this and this is your Body Worn Camera. [PLAYING

24 VIDEO]. Okay. Did you -

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TORGESON: Okay. Is there any other statement relevant to
this incident you wish to make at this time?

1 HERNANDEZ: No.

2 TORGESON: Okay. Are there any witnesses or other evidence
3 relevant to this case that you intend to submit on your behalf?

4 HERNANDEZ: No.

5 TORGESON: You may submit material to DPA, IAD and the
6 Chief of Police before an initial decision is made about whether
7 or not to sustain any allegations in this case and what
8 discipline to impose, if any. DPA requests that you submit any
9 further material within two weeks of the interview if possible.
10 Is there anything else you would like the Chief to consider in
11 that regard?

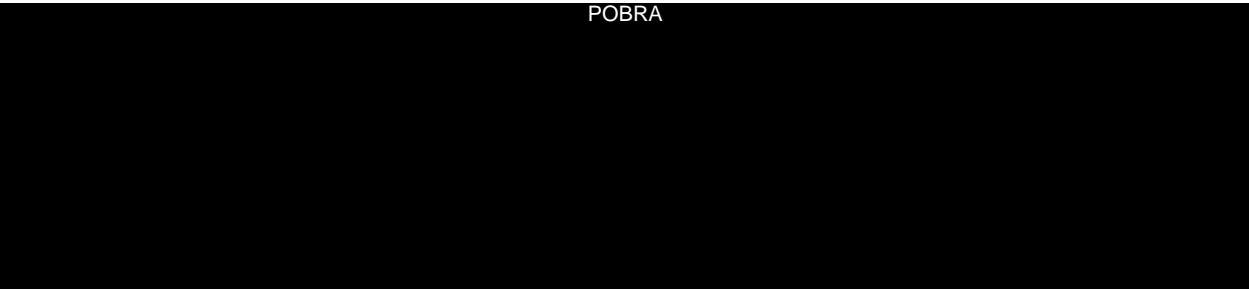
12 HERNANDEZ: No.

13 TORGESON: Okay. Sergeant, do you have -

14 KHMARSKIY: Yes. Thank you. I'll just go back since we
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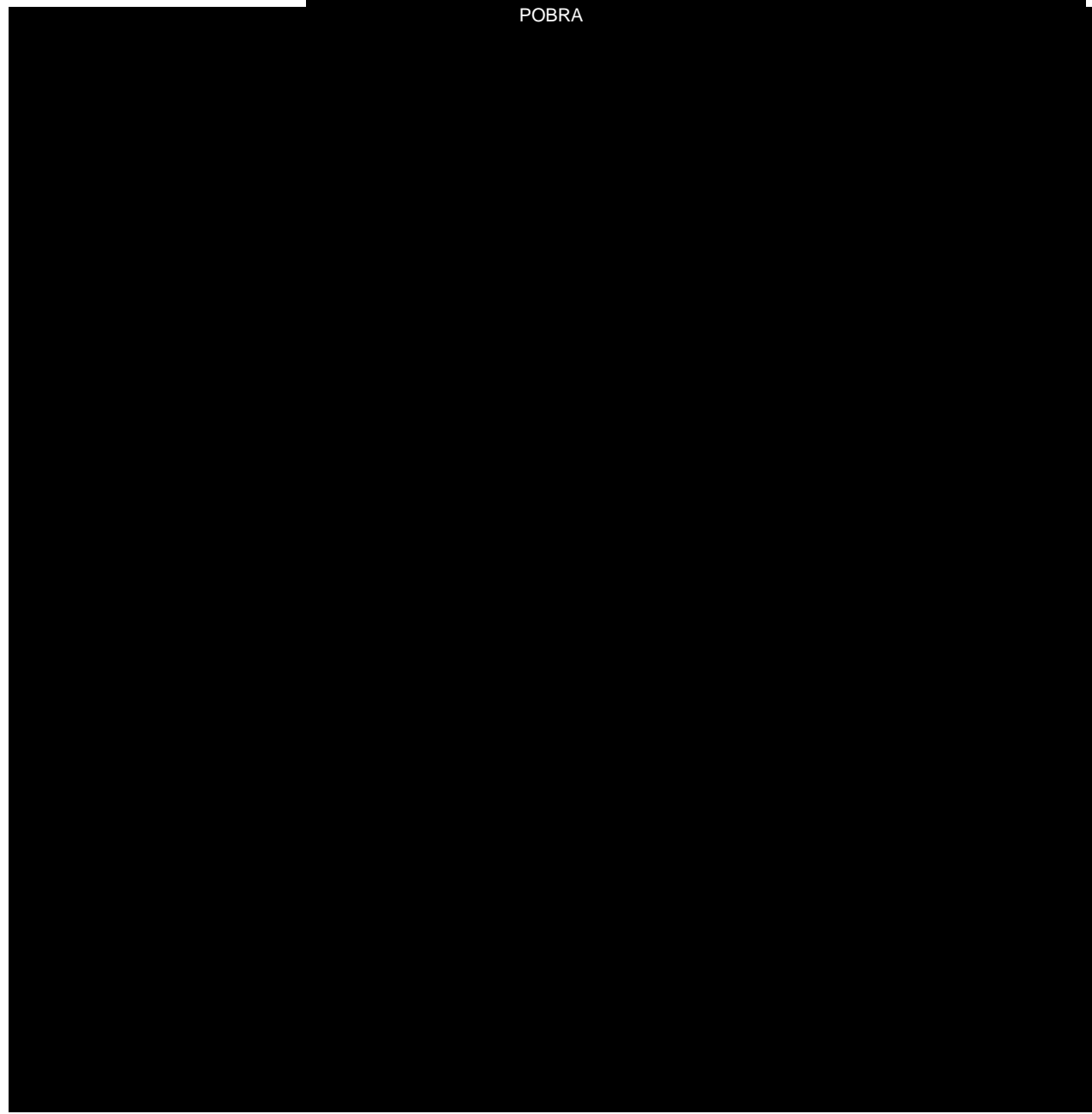


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HERNANDEZ: Yes.

KHMARSKIY: Okay. Now we'll go back to the start. Give me two seconds here.

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KHMARSKIY: Yeah. It's gone now, yeah. So, you're stopping him because he parked in the red. He's blocking a fire hydrant. You're choosing to speak to him about that and the there is such a thing as the -kind of the right of law and you want to talk to him about it. Correct?

HERNANDEZ: Correct.

KHMARSKIY: There's nothing wrong with that. Is it fair to say that you could detain him simply because you want to talk to

1 | him about that violation?

2 | HERNANDEZ: Yes.

3 | KHMARSKIY: He doesn't have to do anything else. You saw
4 | him park, committed a parking violation. He could be detained.

5 | HERNANDEZ: Yes.

6 | KHMARSKIY: Okay. So, if he does anything that -if he does
7 | any act that goes against your legal right, he is violating the
8 | law which is resisting, delaying and obstructing a peace
9 | officer. HERNANDEZ: Yes.

10 | KHMARSKIY: Correct? Okay. So, we talked for awhile about
11 | what is armed and dangerous or what - what actions he's doing in
12 | clips that we were watching that made you think that you should
13 | search someone. Right? And is it fair to say that it is not
14 | one singular action that leads an officer in generality to make
15 | a decision. Set aside the fact that if the only action if he
16 | takes out a gun and starts shooting at you, that's the only
17 | action; but it's primarily the totality of circumstances.

18 | HERNANDEZ: Yes.

19 | KHMARSKIY: Right? So, it's the fact that you stop him.
20 | He sees you wearing a uniform so he knows you're a police
21 | officer 'cause he's talking to you as if he's fully aware that
22 | you're a police officer. You tell him to stop. He turns around
23 | and begins to walk away. Now, are you aware of a Superior Court
24 | ruling of Adams versus Williams?

25 | HERNANDEZ: No.

26 | KHMARSKIY: No. So, the Superior Court ruling stated that
27 | nearly halfway complying with a law enforcement order is not
28 | complying. So, if you tell someone to stop and they kind of

1 stop, and continue to do their action, is good enough to be pat
2 down for weapons. It's a Superior Court decision. I mean if
3 you tell someone to stop and they say no, not really and they
4 continue to kind of, sort of walk away, that is not good enough
5 as complying. And if it's not complying, that alone, right
6 there, as the Supreme Court sees it, is good enough to search
7 someone. He doesn't have to put his hands in his pockets. He
8 doesn't have to take out a weapon. That alone. Have you heard
9 about People versus Michael [unintelligible] Supreme Court
10 decision?

11 HERNANDEZ: No.

12 KHMARSKIY: That decision talks about someone being
13 detained, being hostile or agitated in the course of their
14 detention. Well, that Supreme Court decision [unintelligible]
15 is that while speaking with someone, merely their action, their
16 hostility as portrayed and as perceived by you as an officer,
17 can that alone give you the ability to pat search that person?
18 Merely talking is not what we're talking about but being hostile
19 and - correct me if I'm wrong- you stated earlier, maybe in a
20 different summary of words, that he was hostile and aggressive
21 at some point or in the course of this interview- detention.

22 HERNANDEZ: Yes.

23 KHMARSKIY: Okay. It's not [unintelligible]. There's not
24 one but two Supreme Court decisions that justify your action to
25 detain him. There was some discussion about - and correct me if
26 I'm wrong - that is putting on your gloves synonymous with
27 assuming you were going to search someone. But isn't it fair to
28 say that a lot of officers - and they're reasonable officers

1 with time and experience- say that sometimes you put on your
2 gloves just in case?

3 HERNANDEZ: Yes.

4 KHMARSKIY: You know we deal with a lot of individuals who
5 have a lot of different things and for safety, you want to put
6 on your gloves. Nothing precludes you and nothing in law says
7 that putting on gloves somehow is an immediate step before
8 searching or acting. Correct?

9 HERNANDEZ: Yes.

10 KHMARSKIY: Okay. Give me a second. For awhile we went
11 back and forth about the distance from a car and how far he was
12 from the vehicle. Is it fair to say that it's not relevant that
13 he was going to his car? But what's relevant is that he was
14 making movement towards a particular direction meaning that he's
15 told that he's detained and when you're detained, you need to
16 remain still as he was told. And merely moving is the issue.
17 Would you have cared if he moved the other way?

18 HERNANDEZ: No.

19 KHMARSKIY: It's the [unintelligible] movement.

20 HERNANDEZ: Yes.

21 KHMARSKIY: Right? So, just because he's moving towards
22 the car, that's not the issue. If he decided to walk the other
23 way, would you have reacted exactly the same way?

24 HERNANDEZ: Yes.

25 KHMARSKIY: Okay. So, then we go into- I think we were
26 talking for awhile about specific times in the video about we're
27 walking away. And we were talking about that at 44-seconds- and
28 I'm using the actual time that's on the bottom left corner of

1 the video, the 44-second mark and the 1-minute, 5-second mark,
2 he's kind of walking away or we're perceiving it to be walking
3 away and we meaning we're in the room right now looking at this
4 video which is a completely different view which is not the view
5 that you had, perceived to- that he was perceived to be doing
6 something. Isn't it fair to say that it's not what you're gonna
7 do on the street? You're not here to perceive what he's gonna
8 do. You're there to do what- you- you're there to perceive what
9 you think he's doing. Correct?

10 HERNANDEZ: Yes.

11 KHMARSKIY: And is it fair to say the court has upheld that
12 it is how you perceive a situation is what matters without
13 malice? Isn't it true?

14 HERNANDEZ: Yes.

15 KHMARSKIY: Okay. Then at minute 20, we were talking about
16 the fact that he took out his ID and somehow the fact that he
17 took out his ID out of his pocket, mitigates the fact that he's
18 no longer a danger. We completely disregarded the fact that in
19 the video again we're looking at your partner's camera and it is
20 the left pocket. And you're standing on his right side. So,
21 whatever he took out, there's no way -and we can re-watch your
22 camera, you could have seen his left side. More importantly,
23 just because he took out his ID without being prompted to do so,
24 him essentially, reached into his pockets and doing free
25 movement after being already told again he's detained, creates
26 even a higher threshold to being searched. Isn't it true?

27 HERNANDEZ: Yes.

28 KHMARSKIY: Isn't it true that across United States,

1 officers have been assaulted in various scenarios?

2 HERNANDEZ: Yes.

3 KHMARSKIY: And at any point, somebody could tell you that,
4 oh, let me get you this or let me get you that, and it ends up
5 being an assault on an officer.

6 HERNANDEZ: Yes.

7 KHMARSKIY: So, we cannot rely on someone's quote/unquote
8 "good intentions". We have to base ourselves on the minimal
9 officer's safety level meaning the citizens, whether like it or
10 not, have to comply with a lawful order and that once we're
11 done, we have feasible ability to explain why we do what we do.

12 Correct?

13 HERNANDEZ: Yes.

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KHMARSKIY: Okay. And I think that's it. Thank you. That will be all for me. I appreciate it.

WARGO-WILSON: Thank you. Anything else officer, before we turn off the recording?

HERNANDEZ: That's all.

WARGO-WILSON: Okay.

TORGESON: All right. The time is 4:17 p.m. Sorry to keep you past your shift.

END OF DOCUMENT

1 DEPARTMENT OF POLICE ACCOUNTABILITY

2 DPA CASE NO.: 0045-19

3

4 INTERVIEW OF: OFFICER JACQUELINE HERNANDEZ, #4039

5 DATE OF INTERVIEW: 05/13/2019

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7

8 INV. TERI TORGESON: This interview regarding DPA Case
9 number 0045-19 is taking place at the Department of Police
10 Accountability on Monday, May 13th, 2019, at 2:57 p.m.
11 Conducting this interview is Teri Torgeson. I work for the
12 Department of Police Accountability. I've been designated by the
13 Police Commission to conduct this investigation. Also present is
14 Senior Investigator Candace Carpenter. The member being
15 interviewed is Jacqueline Hernandez, Star number 4039, who is a
16 POBRA officer in this matter. Can you please spell your first
17 and last name for the record?

18 OFFICER JACQUELINE HERNANDEZ: First name Jacqueline,
19 J-a-c-q-u-e-l-i-n-e, last name Hernandez, H-e-r-n-a-n-d-e-z.

20 POBRA

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23 INV. TORGESON: Officer Hernandez, I have provided you a
24 DPA Administrative Interview Advisements form. For the record, I
25 note that Officer Hernandez has signed the form, which bears her
26 signature and Star number, and today's date. I also note the
27 form has been signed by her POBRA Sergeant Chan. I
28 will store this form in the DPA file for this case. Did I

1 mention this? [REDACTED] POBRA Officer Hernandez is Sergeant Chan.
2 With all these advisements in mind, is there any reason you
3 cannot go forward with this interview right now?
4 OFC. HERNANDEZ: No.
5 INV. TORGESON: How long have you been employed by SFPD?
6 OFC. HERNANDEZ: Since November 2016.
7 INV. TORGESON: Do you have any prior law enforcement
8 experience?
9 OFC. HERNANDEZ: No.
10 INV. TORGESON: When was the last time you attended
11 Advanced Officer training?
12 OFC. HERNANDEZ: It was this year. I believe it was
13 February.
14 INV. TORGESON: 2019?
15 OFC. HERNANDEZ: Yes.
16 INV. TORGESON: Okay. Did you speak to anyone besides
17 your [REDACTED] POBRA Sergeant Chan, about the incident you're here to
18 discuss, before coming here today?
19 OFC. HERNANDEZ: No.
20 INV. TORGESON: Okay. Did you review any materials
21 before coming here today? For instance, the incident report,
22 body worn camera, CAD?
23 OFC. HERNANDEZ: Yes.
24 INV. TORGESON: Okay. Can you tell me what you did
25 review?
26 OFC. HERNANDEZ: I reviewed my police report, my BWC, the
27 CAD.
28 INV. TORGESON: Okay. And just for the record, I want to

1 make sure we have the same incident report. So, I'm looking at
2 Incident Report number [REDACTED] ID [REDACTED]. Is that correct?
3 OFC. HERNANDEZ: Yes.
4 INV. TORGESON: And then for the CAD, I have CAD number
5 [REDACTED] ID [REDACTED].
6 OFC. HERNANDEZ: Yes.
7 INV. TORGESON: And did you review just your body worn
8 camera footage or did you review anybody else's body worn camera
9 footage.
10 OFC. HERNANDEZ: I reviewed my partner's.
11 INV. TORGESON: Okay. That would be Officer Brett
12 Hernandez?
13 OFC. HERNANDEZ: Yes.
14 INV. TORGESON: Okay. And reviewing, I don't know if
15 you...you said you reviewed the incident report.
16 OFC. HERNANDEZ: Yes.
17 INV. TORGESON: Is that incident report accurate to the
18 best of your recollection?
19 OFC. HERNANDEZ: Yes.
20 INV. TORGESON: What was your assignment on January
21 24th, 2019?
22 OFC. HERNANDEZ: I was at Taraval Station as a patrol
23 officer.
24 INV. TORGESON: Okay. And did you have a partner?
25 OFC. HERNANDEZ: Yes.
26 INV. TORGESON: Who was your partner?
27 OFC. HERNANDEZ: Brett Hernandez.
28 INV. TORGESON: Who was driving?

1 OFC. HERNANDEZ: Brett Hernandez; my partner, Brett.

2 INV. TORGESON: Okay. What was your responsibility
3 during your shift on that day?

4 OFC. HERNANDEZ: So, we were a sector car, so we were
5 just patrolling, answering calls, or on patrol, just responding
6 to the calls.

7 INV. TORGESON: When you have a partner, do you discuss
8 who's going to be taking the lead that day or do you share the
9 responsibilities? How does that normally go?

10 OFC. HERNANDEZ: Well, it depends on what. Sometimes we
11 talk about the passenger will take the report. Usually, if
12 that's the case, the passenger would take the lead, but it's
13 fluid.

14 INV. TORGESON: Okay. So, what about that day of the
15 incident we're talking about, whose responsibility was it to do
16 what?

17 OFC. HERNANDEZ: During the incident, I was going to
18 write the report. So, it was my responsibility to the citation
19 and getting the information for the report.

20 INV. TORGESON: Okay. And the incident reports states
21 that you did write the report. Is that correct?

22 OFC. HERNANDEZ: Yes.

23 INV. TORGESON: Okay. The following questions pertain to
24 an incident that took place on January 24th, 2019, at
25 approximately 10:47 a.m. in front of a submarine sandwich store
26 on Irving Street, cross-street 6th Avenue. For purposes of this
27 interview, [REDACTED] ID [REDACTED] will be referred to as the
28 complainant. Do you remember this incident?

1 OFC. HERNANDEZ: Yes.

2 INV. TORGESON: And can you tell me what you remember?

3 OFC. HERNANDEZ: Well, I guess from the beginning, I just
4 remember the initial stop. Since I was the passenger, I was
5 running vehicles, which I do often, just to see if they're
6 stolen or anything; vehicle plates. I remember running his
7 vehicle plate, it wasn't stolen, but then I saw that the vehicle
8 parked in front of a fire hydrant in a red zone. So, we both
9 decided, me and my partner, we were going to stop the person and
10 advise him. So, as we're...I'm the passenger, I point out the
11 traffic on the stop, and as I'm doing that and we stop and put
12 our lights and sirens on, the complainant, I guess, he got out
13 the car. So, I guess he didn't realize we were stopping him.

14 So, then we got out and we were like, "Hey, you're being
15 detained." We made contact with him and explained to him, both
16 me and my partner explained to him, "You're being detained
17 because of the parking in front of a red zone." He explained
18 that he wasn't, he said, "I'm not being detained. My emergency
19 lights are on. It's not illegal," like that. "We're just trying
20 to advise you, we're trying to ID you," and he kind of started
21 shuffling back and forth, walking away.

22 At that point, we basically told him like, "Hey, this is
23 basically happening. So, you're being detained. We just need to
24 figure out who you are. We may not even give you a citation, we
25 just have to...you're basically, we have a reason why we stopped
26 you, so now we have to talk to you." He does give us his ID, and
27 at that point, my partner advises him that we're going to do a
28 pat search on him. He's like, "You're not going to touch me. You

1 have no right to touch me."

2 So, my partner orders him to put his hands behind his back,
3 to turn around. He doesn't, he keeps saying you're not going to
4 touch me. I believe he ordered him a second time, and at that
5 point, my partner tries to grab his, one of his arms, to
6 basically put them behind his back as we do the search. He
7 starts to pull away. I grab one arm, the other arm, his left
8 arm. He tenses up, so he starts to kind of like try to move
9 forward, tensing up. So, we just grabbed his arms and just take
10 him to the ground to try to put handcuffs on him. We aren't able
11 to initially, because he's resisting and moving around, so we
12 loose grip on him. I put out on the air that we're going to have
13 a 148, for help to come.

14 So, we loose grip on him and then he gets up and like, I'm
15 struggling to get up. My partner is able to get him because he
16 runs, kind of gets up and starts running towards the street. So,
17 my partner is able to take him to the ground between two cars,
18 and then that's when I'm able to get up and help him try to
19 handcuff him. So, he's bracing himself underneath; both hands
20 are underneath him. Finally, we're able to get his arms behind
21 him, cuff him. And then at that point, more units come, help
22 out. We take him and put him in the back of the patrol car and,
23 you know, the adrenaline's kind of tapered, we're good.

24 Then we have to figure out what we're going to cite him
25 with or what do we have. So, we had two violations. So, it's
26 fire hydrant and red zone, parking in the red zone. So, we're
27 going to give him two cites for that, give a parking citation.
28 We also had the 148, which is resisting arrest, just because we

1 gave orders, he wasn't following them; he started tensing up, he
2 tried to run away.

3 And then we also, at that point, someone mentioned
4 something to me, there's like a bullet hole in his car. So, I go
5 up and see it, and that's when I can smell the strong odor of
6 marijuana coming from the car; the windows are down. I see some
7 like little, like debris of marijuana in the center console. So,
8 at that point, I had probable cause to believe there's other
9 narcotics or other paraphernalia in the car, so I searched the
10 car. I do find some marijuana in some container, but it's not a
11 sealed container, which is against the new law that it has to be
12 in a sealed container, [it's being] in the vehicle. So, we cite
13 him for that too, for illegal transport or having marijuana in
14 an illegal container.

15 So, then working on the citation. Eventually get him out
16 the car. I give him the cites for that and then he's released
17 from the scene.

18 INV. TORGESON: Okay, thank you. And were you dispatched
19 to the call, regarding the complainant?

20 OFC. HERNANDEZ: No.

21 INV. TORGESON: You were saying that you were just
22 running plates and you happened to be behind him?

23 OFC. HERNANDEZ: Yes.

24 INV. TORGESON: Do you know how long, how far you were
25 following him for?

26 OFC. HERNANDEZ: It might have been like two blocks. You
27 try to get the results, and then hopefully catch up to them
28 enough to see like if, before your results come on the computer.

1 INV. TORGESON: And you said his car was not stolen.
2 OFC. HERNANDEZ: No.
3 INV. TORGESON: Okay. And did he have valid registration
4 tags?
5 OFC. HERNANDEZ: Yes.
6 INV. TORGESON: Okay. Was there anything else that you
7 were concerned about, other than his double...other than his
8 parking in front of a hydrant in the red zone?
9 OFC. HERNANDEZ: No.
10 INV. TORGESON: Okay. Have you had prior contacts with
11 the complainant?
12 OFC. HERNANDEZ: No.
13 INV. TORGESON: You said you put your lights and sirens
14 on, was he still in your car when you did that?
15 OFC. HERNANDEZ: From what I remember, he was like
16 walking out the car.
17 INV. TORGESON: Okay.
18 SR. INV. CANDACE CARPENTER: I have a question. Were you
19 guys following behind him or was he already parked when you ran
20 his plates?
21 OFC. HERNANDEZ: He was driving.
22 SR. INV. CARPENTER: He was driving?
23 OFC. HERNANDEZ: Yeah. So, I was following behind him in
24 the car.
25 SR. INV. CARPENTER: Okay.
26 OFC. HERNANDEZ: So, he had parked in front of a, like as
27 we were driving behind him.
28 SR. INV. CARPENTER: How many cars ahead of him, how many

1 cars ahead was he, from you guys or was he right in front of
2 you?

3 OFC. HERNANDEZ: He was right in front of us. There was
4 no cars between us.

5 SR. INV. CARPENTER: Okay.

6 INV. TORGESON: So, you said when you activated your
7 emergency lights and siren, you said he was already out of his
8 car. Is that correct?

9 OFC. HERNANDEZ: I think. I just remember looking up and
10 he was already walking on the sidewalk.

11 INV. TORGESON: Were you conducting a traffic stop or a
12 pedestrian stop?

13 OFC. HERNANDEZ: Well, it was going to be a traffic stop,
14 but he was already out the car, so we didn't have the time to
15 order him to not get out the car. So, at that point, it became a
16 pedestrian stop, but I put it out, I think initially, a traffic
17 stop, because it was, we [unintelligible] the car.

18 INV. TORGESON: Are you, when somebody's illegally
19 parked, is it considered a traffic stop?

20 OFC. HERNANDEZ: Yes.

21 INV. TORGESON: Can you consider that a traffic stop?

22 OFC. HERNANDEZ: Yes.

23 INV. TORGESON: Okay. Why did you want to make contact
24 with the complainant?

25 OFC. HERNANDEZ: Well, ideally, we were just going to
26 tell him, "Hey, you can't park there." And then, we run
27 everybody, just, we're running, I mean, like I guess we look at
28 the record...run the information through the computer to see if

1 they have any wants or warrants. I just, it's kind of like we
2 have to ID them before we let them go and make sure they're all
3 clear. So, initially, we just wanted to contact him. We even
4 told him like, "Hey, relax. We're just, you can't park there,"
5 and then it just escalated from there.

6 INV. TORGESON: You were saying that you had to run an
7 ID check on him?

8 OFC. HERNANDEZ: Well, yes. I mean, every time we contact
9 somebody, when they're detained, we have to make sure that we
10 have a proper ID and that they, who they say they are is who
11 they actually are, there's no wants and warrants for them.

12 INV. TORGESON: Why did you decide to detain him?

13 OFC. HERNANDEZ: Well, just for the traffic parking
14 violation.

15 INV. TORGESON: Okay. Do you normally detain people who
16 have a parking infraction, if they're present?

17 OFC. HERNANDEZ: Yeah. Yes, because I advised him. I
18 figure out what's going on and why they're parked there.
19 Sometimes they have valid reasons, sometimes...I mean, it's a
20 detention because they have a violation, so yes, I do.

21 INV. TORGESON: Could you have just cited his car and
22 left?

23 OFC. HERNANDEZ: I could have, but he was there. So, a
24 lot of times, we don't have the opportunity, because we see the
25 violation and they're not in the car, so we can just give the
26 parking ticket. But this time, he was there.

27 INV. TORGESON: Okay. When you approached the
28 complainant, did you speak to your partner why you wanted to

1 approach the complainant?

2 OFC. HERNANDEZ: I don't remember exactly, I just know it
3 happened like really fast, because he was coming out the car or
4 something. So, we just, I think we both agreed that we were
5 going to talk to him.

6 INV. TORGESON: Okay.

7 OFC. HERNANDEZ: And then, that's when we got out the
8 car.

9 INV. TORGESON: Okay.

10 SR. INV. CARPENTER: Go ahead.

11 INV. TORGESON: Okay, I'm sorry. The time that the
12 incident occurred, it was daylight. Correct?

13 OFC. HERNANDEZ: Yes.

14 INV. TORGESON: Okay. What observation did you make that
15 prompted you to approach the complainant?

16 OFC. HERNANDEZ: Well, I mean, his car was parked in the
17 red, so, in the fire hydrant, he was the driver of the vehicle
18 who exited, so that's when we decided to approach him.

19 INV. TORGESON: Was there any other reason why you
20 decided to approach him?

21 OFC. HERNANDEZ: No.

22 INV. TORGESON: Okay. Do you know why your partner did a
23 pat search?

24 OFC. HERNANDEZ: Well, I mean, yes. He, the complainant
25 was walking back and forth, he had really baggy clothing, like a
26 really oversized sweater, oversized pants. We wanted to conduct
27 a pat search and make sure if there's any weapons. He was, kind
28 of had his hands near his pockets and wasn't staying still, so

1 we told him, "Hey, we're going to make sure that you,"...well, my
2 partner told him, "We're going to make sure you don't have any
3 weapons on you. We're going to do a quick pat search." And we
4 weren't able to because it escalated from there or it, something
5 else happened.

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17 INV. TORGESON: Did you see any weapons or tools of car
18 burglary on his person?

19 OFC. HERNANDEZ: Well, I couldn't because...

20 INV. TORGESON: Well, that was obvious for you to see?

21 OFC. HERNANDEZ: No.

22 INV. TORGESON: Okay. I'm going to play body worn camera
23 footage, and this is your body worn camera footage.

24 OFC. HERNANDEZ: Okay.

25 INV. TORGESON: Let's see. And this is from the
26 beginning of the body worn camera footage, and I'll play it
27 right after, right before you take him into custody.

28 OFC. HERNANDEZ: Okay.

1 (Plays BWC.)

2 COMPLAINANT: Hold on. Why are you guys just bothering me?

3 OFC. B. HERNANDEZ: You're parked in front of a fire

4 hydrant. Okay?

5 COMPLAINANT: I know I'm parked there. Okay?

6 OFC. B. HERNANDEZ: [Unintelligible.] Relax.

7 COMPLAINANT: [Unintelligible], what's wrong with you guys?

8 OFC. B. HERNANDEZ: You're parked in the red, in front of

9 a fire hydrant.

10 COMPLAINANT: I stopped.

11 OFC. J. HERNANDEZ: Yeah, but you're parked right now.

12 Okay. So, we're not arguing the law of it, [inaudible].

13 COMPLAINANT: Okay. I'm going to go move my car.

14 OFC. J. HERNANDEZ: No, no, you're going to stay right

15 here.

16 COMPLAINANT: For what?

17 OFC. J. HERNANDEZ: You're staying right here. I've got to

18 ID and make sure who you are and then...

19 INV. TORGESON: Actually, I'm going to stop the

20 recording. It's at 18:48 and I'm just going to rewind it just a

21 few seconds. And let me ask you a question. When you're taking

22 out your gloves to put on the gloves, does that mean you have an

23 intention to touch somebody, like the subject?

24 OFC. HERNANDEZ: Well, we try to put them on as soon as

25 we can. In any, when I'm in contact with any person, because I

26 don't know if it's going to go sideways or not, and I just don't

27 want to touch them with my bare hands.

28 INV. TORGESON: So, you always, when you arrive to a

1 scene, you always put gloves on right away?

2 OFC. HERNANDEZ: When there's like a subject that we
3 might be detaining, yes.

4 INV. TORGESON: Okay.

5 OFC. HERNANDEZ: You can see it in all my videos, I'm
6 always gloving up.

7 INV. TORGESON: Okay. So, this is at 18:48:04, and I'm
8 reading the timestamp that's on the upper right-hand corner. And
9 I just want to note that in the very initial contact that
10 Officer Brett Hernandez starts to glove up before there's any
11 pacing back and forth, putting his hands in his pocket.

12 (BWC is resumed.)

13 OFC. J. HERNANDEZ: Okay. So, we're not arguing the law of
14 it, but [inaudible].

15 COMPLAINANT: Okay. I'm going to go move my car.

16 OFC. J. HERNANDEZ: No, no. You're going to stay right
17 here.

18 COMPLAINANT: For what?

19 OFC. J. HERNANDEZ: You're staying right here. I've got to
20 ID you and make sure who you are, and then you can go.

21 COMPLAINANT: Uh, God. You guys [unintelligible], for what?
22 [Unintelligible.]

23 OFC. J. HERNANDEZ: I just [inaudible].

24 COMPLAINANT: Look, I'm not detained. No, but that's not
25 against the law. I'm allowed to stop.

26 OFC. J. HERNANDEZ: You're not allowed to...

27 COMPLAINANT: My hazards, my, my hazards are on. I'm
28 allowed to stop.

1 OFC. J. HERNANDEZ: You're not.
2 [Unintelligible conversation.]
3 OFC. B. HERNANDEZ: Relax.
4 COMPLAINANT: Don't.
5 INV. TORGESON: Okay. I'm going to pause it at 18:48:28.
6 Now, I notice that you didn't put your gloves on.
7 OFC. HERNANDEZ: Well, yeah, I did. If you played it, I
8 do.
9 INV. TORGESON: I didn't see you put your gloves on.
10 (Rewinds through BWC.)
11 INV. TORGESON: Okay. I'm going back to 18:48:12.
12 COMPLAINANT: For what? I'm not detained.
13 OFC. J. HERNANDEZ: I just want, I just want..
14 COMPLAINANT: No, but that's not against the law. I'm
15 allowed to stop.
16 OFC. J. HERNANDEZ: You're not allowed to stop.
17 COMPLAINANT: My, my hazards are on, I'm allowed to stop.
18 OFC. J. HERNANDEZ: You're not.
19 OFC. B. HERNANDEZ: [Inaudible.]
20 COMPLAINANT: Say where, say, where does it say that?
21 INV. TORGESON: Okay. I'm going to pause it at 18:48:28.
22 So, I think it's pretty clear you didn't have your gloves on at
23 that point. You can see your right hand and it's bare, on the
24 bottom right-hand corner of the video.
25 OFC. HERNANDEZ: But I don't at all, because I'm pretty,
26 I thought I did.
27 INV. TORGESON: No. Do you want to see it again?
28 OFC. HERNANDEZ: No. I mean like after this part.

1 INV. TORGESON: I think you do afterwards, but I'm
2 saying right at the initial contact. Unlike your partner, you
3 didn't glove up immediately. Do you know why you didn't glove up
4 immediately?

5 OFC. HERNANDEZ: I mean, I didn't...sometimes,
6 [unintelligible], like the, he might have been like kind of
7 moving a little bit. I don't to lose the ability to use my hands
8 by trying to put gloves on.

9 INV. TORGESON: Okay.

10 OFC. HERNANDEZ: So, it might be a little bit delayed.

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INV. TORGESON: Okay. I noticed your partner has a jacket on. So, do you remember what the temperature was like out that day?

OFC. HERNANDEZ: I don't. I mean...

INV. TORGESON: Was it appropriate to wear a jacket at that time of day, given that your partner is wearing a jacket?

OFC. HERNANDEZ: I can't say.

INV. TORGESON: Was it 90 degrees outside?

OFC. HERNANDEZ: It wasn't 90.

INV. TORGESON: Okay. Was it 80 degrees?

OFC. HERNANDEZ: It's January, so I don't remember exactly how warm it was.

1 INV. TORGESON: Okay. The complainant is wearing a big
2 jacket or sweatshirt, I can't tell what it is. Is his attire
3 appropriate for the weather that's outside?
4 OFC. HERNANDEZ: It could be, I don't...
5 INV. TORGESON: Okay. For instance, it's not 90 degrees
6 outside and he's wearing a jacket?
7 OFC. HERNANDEZ: Yes, it's not.
8 INV. TORGESON: Do you think that would be suspicious?
9 OFC. HERNANDEZ: If it was 90 and a jacket?
10 INV. TORGESON: Yes.
11 OFC. HERNANDEZ: Yes.
12 INV. TORGESON: Okay. So, let's watch, we're going to
13 watch the rest of this pat search again. I'm starting at
14 18:48:28.
15 (BWC is resumed.)
16 OFC. B. HERNANDEZ: Please lift your jacket. Do you have
17 any weapons on you?
18 COMPLAINANT: Please don't. You asked me to stop.
19 OFC. B. HERNANDEZ: Relax.
20 COMPLAINANT: Why are you guys, so why are you guys doing
21 this thing?
22 OFC. B. HERNANDEZ: Because I'm not [unintelligible].
23 COMPLAINANT: But what, look. I have nothing on me. Would
24 you like my ID?
25 OFC. B. HERNANDEZ: Let me pat search you real quick.
26 COMPLAINANT: No, you're not going to do that. You don't
27 have my permission.
28 OFC. B. HERNANDEZ: I don't need your permission.

1 COMPLAINANT: Yes, you do.

2 INV. TORGESON: Okay. I'm going to stop it right there,
3 at 18:48:42. So, were you saying that when he reached into his
4 pocket, you were concerned for your safety?

5 OFC. HERNANDEZ: Yes.

6 INV. TORGESON: Okay. If you were concerned for your
7 safety at that point, why didn't you immediately take action?

8 OFC. HERNANDEZ: Well, he was saying like, let me give
9 you my ID real quick. I was keeping a visual on it to see what
10 came out, but you try to react and try to make sure that you get
11 ahead of things, but anything can happen.

12 INV. TORGESON: Okay. And did he pull out an ID from his
13 pocket?

14 OFC. HERNANDEZ: He did.

15 INV. TORGESON: And did he tell you he was going to pull
16 an ID out of his pocket?

17 OFC. HERNANDEZ: As he was doing it, yes.

18 INV. TORGESON: Okay. So, if he was reaching into his
19 pocket and you were scared for your safety, do you think you
20 would have immediately taken action to prevent him from possibly
21 pulling a weapon out at that point?

22 OFC. HERNANDEZ: I mean, I don't know. I try to, like I
23 try to make sure I can go home every day, so I try to get ahead
24 of things. But sometimes, it's just, little things like that
25 happen where I could have, I could have like grabbed his arm,
26 but I didn't.

27 INV. TORGESON: Okay. And I noticed your partner is
28 standing next to him, not looking, not concerned at all about

1 the complainant pulling his ID out of his pocket. In fact, we
2 can watch a little more. He continues to have a conversation
3 with the complainant, while he's putting his hand in his pocket
4 and holding it out. So, I'm going to play it from 18:48:42.

5 (BWC is played.)

6 [Unintelligible conversation.]

7 COMPLAINANT: Here's my, here's my ID. Here's my ID and
8 I'm giving, this is all that I'm giving you. You have no right
9 to touch me.

10 OFC. J. HERNANDEZ: Yes, I do.

11 COMPLAINANT: No, you cannot. Where does, where does that
12 [unintelligible]?

13 INV. TORGESON: And just for the record, at 18:48:56,
14 you are now putting your gloves on.

15 (BWC is resumed.)

16 [Unintelligible.]

17 OFC. B. HERNANDEZ: Do you have any weapons on you?

18 COMPLAINANT: I have nothing on me. I have nothing on me.

19 OFC. B. HERNANDEZ: [Unintelligible.] Put your hands up.

20 COMPLAINANT: No. You don't have the right to touch me.

21 OFC. B. HERNANDEZ: Turn around.

22 INV. TORGESON: Okay. I'm going to pause is at 18:49:05.

23 You notice, in the body worn camera, that the complainant has
24 something in each of his hands. Is that correct?

25 OFC. HERNANDEZ: Yes.

26 INV. TORGESON: Did that give you any cause for concern?

27 POA REP SGT. CHAN: Objection. This is all speculation
28 questions you're asking.

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INV. TORGESON: Okay.

SR. INV. CARPENTER: Can I ask a question?

INV. TORGESON: Yeah.

SR. INV. CARPENTER: When you initially detained him, and the complainant stated that you couldn't touch him and that he was parked legally, what were you thinking?

OFC. HERNANDEZ: Well, that he doesn't know that he's parked illegally. That he doesn't understand that he's not supposed to park there, and a hazard light doesn't mean that you can park there. He said he was going to go to the sandwich shop, which is not even an emergency. So, at that point, I'm like, "No, you are detained."

SR. INV. CARPENTER: Okay.

INV. TORGESON: Okay.

SR. INV. CARPENTER: And once he decided to give your partner his identification, your partner puts it in his, I guess, the officer puts it in his jacket. What were you thinking then?

OFC. HERNANDEZ: Well, he already had told, my partner and I told him, "We're going to search you." And he's like, "No, you can't," and then he's like, "But I'll you my ID." So, at that point, I'm like, "Well, we're going to search," he's going to search him, so he's putting, has his hands free. And then my

1 partner tells him like turn around, or put your hands behind
2 your back, or something, and he doesn't. So, yeah.

3 SR. INV. CARPENTER: At any time, did you believe the
4 complainant was going to be compliant with these orders?

5 OFC. HERNANDEZ: I mean I wish he would have been simple.
6 That's when his ID, let's run you and make sure everything's
7 okay. So, at any point, we told him multiple times, we weren't
8 like do it and then we went hands-on, we told him multiple
9 times. Because I first, I like to make sure that we try to do
10 everything we can before going hands-on, because just being a
11 female officer, I would rather use my verbal judo, I guess,
12 instead of grabbing people and I might be in a fight and I might
13 get hurt. So, we try to do everything, but it just didn't work
14 out in this case.

15 INV. TORGESON: Okay. I'm going to play the video. It's
16 18:49:05.

17 (BWC is played.)

18 [Unintelligible.]

19 COMPLAINANT: Why are you doing this? Stop. Stop. I'll put
20 my hands behind my back. Stop hurting me. Stop hurting me.

21 OFC. J. HERNANDEZ: [Unintelligible.]

22 COMPLAINANT: [Unintelligible.] Stop hurting me. Stop
23 hurting me. Stop hurting me.

24 [Unintelligible.]

25 COMPLAINANT: You're hurting me. You're hurting me. You're
26 hurting me. You are hurting me. You are hurting me.

27 OFC. J. HERNANDEZ: Stop, right now.

28 COMPLAINANT: I'm a customer, I come here all the time.

1 Tell them. Please, [unintelligible].

2 OFC. B. HERNANDEZ: Just don't resist.

3 COMPLAINANT: I'm not resisting.

4 [Unintelligible.]

5 OFC. J. HERNANDEZ: Put your hands behind your back.

6 COMPLAINANT: [Unintelligible.] I'm not.

7 OFC. B. HERNANDEZ: Don't resist.

8 COMPLAINANT: I'm not.

9 OFC. B. HERNANDEZ: Don't resist.

10 COMPLAINANT: Stop hurting me.

11 OFC. B. HERNANDEZ: Settle down.

12 COMPLAINANT: Stop hurting me.

13 OFC. B. HERNANDEZ: Settle down.

14 COMPLAINANT: Stop hurting me, man.

15 OFC. B. HERNANDEZ: Settle down.

16 COMPLAINANT: I'm in fear for what you're doing.

17 OFC. B. HERNANDEZ: Settle down.

18 COMPLAINANT: [Unintelligible] is illegal.

19 OFC. B. HERNANDEZ: Settle down, all right?

20 COMPLAINANT: It's illegal.

21 OFC. B. HERNANDEZ: Just answer the question.

22 [Unintelligible.]

23 OFC. J. HERNANDEZ: Just settle down, settle down.

24 COMPLAINANT: I didn't resist at any point.

25 [Unintelligible.]

26 OFC. B. HERNANDEZ: Just put your hands behind your back.

27 COMPLAINANT: You're hurting me, bro.

28 [Unintelligible.]

1 OFC. J. HERNANDEZ: You're doing a good job, man.

2 COMPLAINANT: I know my rights. [Unintelligible.] I'm not
3 trying to resist you, bro. Stop. I did nothing wrong. You
4 literally just slammed me to the ground, to my face to the
5 floor. I did nothing wrong. What makes you think I'm a criminal?
6 Why are you doing this to me? It's not fair, sir. It's so
7 unfair. You have no...

8 INV. TORGESON: Okay. Is that, what you just saw,
9 accurate to what you just told us?

10 OFC. HERNANDEZ: Yes.

11 INV. TORGESON: Okay. Do you have any questions about
12 that?

13 OFC. HERNANDEZ: No, not about that, just before.

14 INV. TORGESON: Okay. All right.

15 SR. INV. CARPENTER: How did he get on the ground though?
16 It wasn't clear from the video. Were you still on the ground
17 when he was still, when the complainant was, when your partner
18 was still chasing the complainant [unintelligible]?

19 OFC. HERNANDEZ: Still on the ground, because I hurt my,
20 I fell on my knees and I was trying to get up.

21 SR. INV. CARPENTER: Okay.

22 POBRA

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1 INV. TORGESON: Okay. Did you remove the complainant's
2 handcuffs?

3 OFC. HERNANDEZ: Did I remove them?

4 INV. TORGESON: Yes.

5 OFC. HERNANDEZ: I don't think it was me.

6 INV. TORGESON: Okay.

7 OFC. HERNANDEZ: Yeah, I don't think it was me who,
8 [unintelligible].

9 POBRA

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INV. TORGESON: Okay. I'm going to show you actually,
Officer Brett Hernandez' body worn camera.

INV. TORGESON: And we're going to go to, I want to say
that I had it written down. I want to say it's 1800 or 1900. I
think it's 1900, if I remember. Let's see. Okay. I'm going to
start this at 18:59:58, and this is Brett Hernandez, Officer
Brett Hernandez' body worn camera.

(Plays Officer B. Hernandez' BWC.)

OFC. B. HERNANDEZ: I understand that. We're going to be

1 done in two minutes, it's like almost done. All right?

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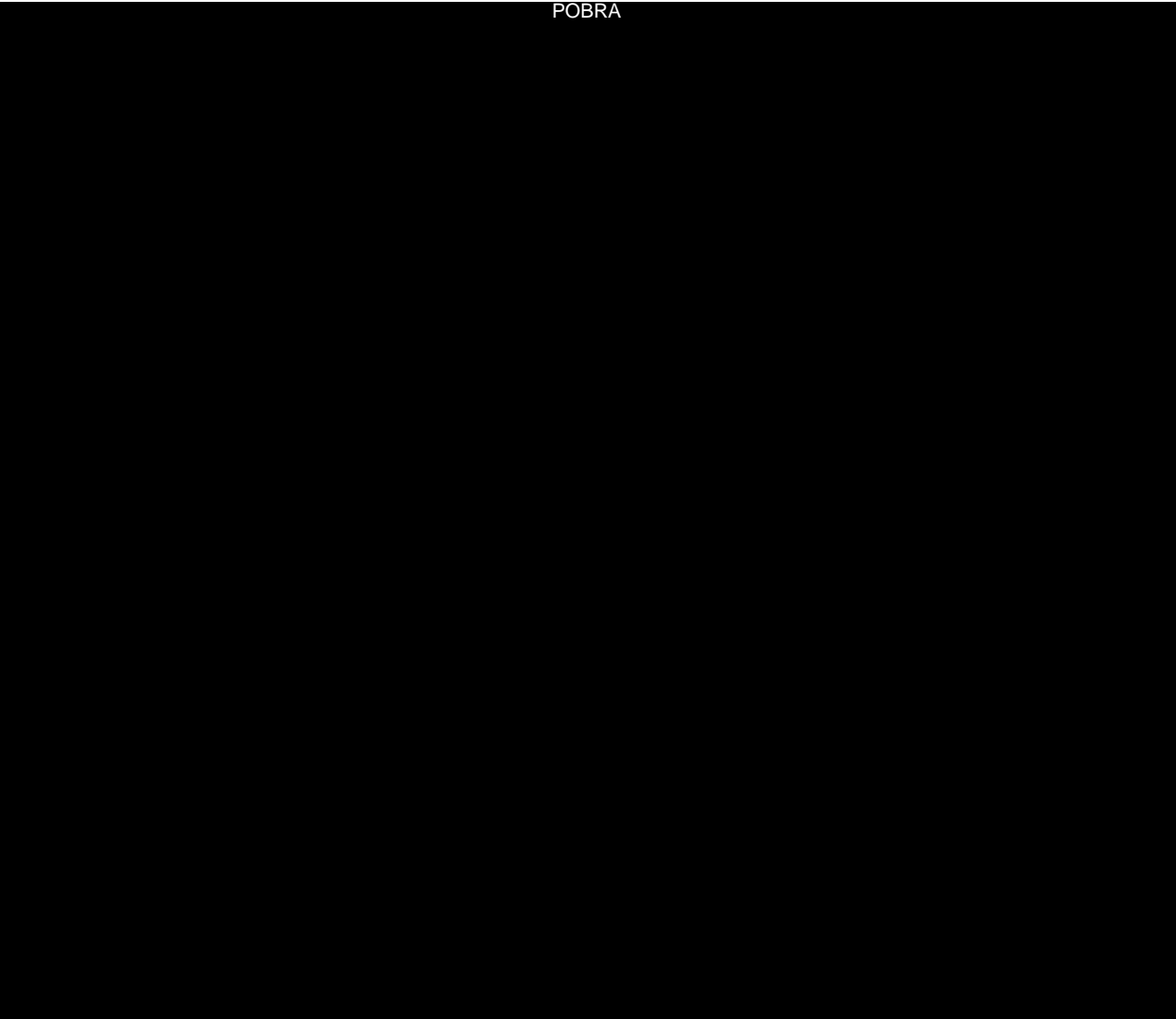
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24 INV. TORGESON: Okay. Do you have any questions?
25 SR. INV. CARPENTER: Yeah. It's in regards to you citing
26 the complainant for multiple violations. When you are enforcing
27 traffic, are you able to use discretion?
28 OFC. HERNANDEZ: Yes.

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SR. INV. CARPENTER: And who's the senior officer?

OFC. HERNANDEZ: He is.

SR. INV. CARPENTER: He is.

INV. TORGESON: Anything else? Okay. Is there any other statement relevant to this incident you wish to make at this time?

OFC. HERNANDEZ: I mean there's a couple of things. Like I read his complaint and he said that the shop owner was telling us to calm down. He was, the shop owner was like telling him to stop resisting.

INV. TORGESON: I think, if I'm not mistaken, I think he

1 | said the shop owner was telling him to calm down.

2 | OFC. HERNANDEZ: Uh.

3 | INV. TORGESON: Yeah.

4 | OFC. HERNANDEZ: Okay.

5 | INV. TORGESON: You can check, but I believe that was

6 | his statement to me.

7 | OFC. HERNANDEZ: Because, I mean, we spoke with like the

8 | shop owner later on. We're just like, "Hey," because we grab

9 | food there too. We're just like, "Sorry this happened." He's

10 | like, "Yeah, I know him, and I don't know what happened that

11 | day." That he kind of went more aggressive than he's ever seen

12 | him. So, I mean, I don't know what else to say.

13 | INV. TORGESON: Okay. It's your forum right now, so if

14 | you have anything to say.

15 | OFC. HERNANDEZ: No, I think that's all.

16 | INV. TORGESON: Okay. Are there any witnesses or other

17 | evidence relevant to this case that you intend to submit on your

18 | behalf?

19 | OFC. HERNANDEZ: No.

20 | INV. TORGESON: Okay. You may submit material to DPA,

21 | IAD, and the Chief of Police before an initial decision is made

22 | about whether or not to sustain any of the allegations in this

23 | case, and what discipline to impose if any. DPA requests that

24 | you submit any further material within two weeks of this

25 | interview if possible. Is there anything else you would like the

26 | Chief to consider in this regard?

27 | OFC. HERNANDEZ: No.

28 | INV. TORGESON: Okay. Sergeant Chan?

1 POA ^{POBR}_A SGT. CHAN: Officer Hernandez, so when you
2 search, when you look at subjects on the street and they're
3 wearing baggy clothing, where do you usually find weapons on
4 them, are they in their front pockets? The complainant has his
5 wallet and DL and everything else. Are they usually in the small
6 of the back? What are you trained to search for, for zones?

7 OFC. HERNANDEZ: Well, yeah. You're trained anywhere near
8 the body, so it can be the back, where they might keep a firearm
9 or some other weapon. You can't really hide a gun or any other
10 weapon in your front pockets or something is visible. So, if
11 somebody's concealing, you just bunch of the clothes and search,
12 and see if there's any.

13 POA ^{POBR}_A SGT. CHAN: So, if someone wants to hide
14 something from you, they usually produce stuff to show you that
15 they have empty pockets by nothing in their pocket, by giving
16 you everything in their pocket, but they could be concealing
17 something else that's not visible. Correct?

18 OFC. HERNANDEZ: Yeah. I've seen that a lot.

19 POA ^{POBR}_A SGT. CHAN: Okay. And in regards to your
20 partner's video, anything that's verbally heard over the body
21 worn camera, which someone can Monday morning quarterback all
22 day, if he said he killed John F. Kennedy, would it be your
23 obligation to notify the Secret Service and investigate that?

24 OFC. HERNANDEZ: No.

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POA **POBR** SGT. CHAN: So, he can say anything in the world. Most people, don't they say a lot of things to get out of going to jail that isn't true? So, just someone from the outside looking in, looking at a video, can pick apart this whole video second-by-second, just like a cop can go and get anybody on a vehicle code, vehicle code by vehicle code, and everything's up to discretion and investigation, and based on who's telling the truth and who is not. Correct?

OFC. HERNANDEZ: Yes.

POA **POBR** SGT. CHAN: Okay. So, did you, when you cursory search someone, what were you trained to do in the Academy for anybody you take on? If they're under a legal detention, do you search for your own safety? Correct?

OFC. HERNANDEZ: Yes.

POA **POB** SGT. CHAN: Now, do you put your gloves on all the time?

OFC. HERNANDEZ: Not all the time.

POA **POBR** SGT. CHAN: Yeah. I mean some people are just taught that way, because they don't want to get dirty anymore. Some people put them on, that's the first thing they do. Right? How many people have you graduated the Academy with glove up right away, because they just don't want to touch anybody or don't want to wash their hands? I have never, I wash my hands a million times at work, but that seems to be the norm. So, it seems to be that everybody just puts their gloves on if they're touching anybody or not. Gloves are in the garbage all the time.

1 You may not even touch anybody, but you have gloves on. Correct?

2 OFC. HERNANDEZ: Yes.

3 POA POBR
A SGT. CHAN: Okay. I have nothing further.

POBRA

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1 INV. TORGESON: Okay, thank you.

2 SR. INV. CARPENTER: In this incident, did you fear for
3 your safety?

4 OFC. HERNANDEZ: Yes.

5 SR. INV. CARPENTER: Why?

6 OFC. HERNANDEZ: Just him and his size. I mean it's just
7 the motions he was doing, the walking back and forth, and you
8 kind of just want to keep your officer safety up. You never know
9 if it's going to be a fist fight or if it's going to be anything
10 else. So, I'm always, I'm not saying that I feared I was going
11 to die, but I did fear that I could be harmed.

12 SR. INV. CARPENTER: In what way?

13 OFC. HERNANDEZ: I mean, any way you contact anybody,
14 they can hit you or do anything, so you just want to make sure.
15 That's why we were trying to say like calm down, just stay in a
16 spot, so that way, you're not doing any movements. Ideally, we
17 were going to sit him down or just have him stay still as we did
18 anything. I don't know what goes through people's minds at
19 times, but I don't want him to just...I want to have him in a
20 position where he's not going to get up or do something or try
21 to like tackle me or do anything. So, him kind of doing this
22 little walk back and forth and saying I'm going to go back to my
23 car, I'm like well, he can pull up any weapon on him, or he can
24 come and try to hit us or anything. So, we just want to have
25 control of a subject, it doesn't have to be physical control,
26 but just compliance or listening to what we ask of him. But him
27 doing what we ask of him would be enough to make us feel like
28 okay, he's not going to come and do anything to us.

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SR. INV. CARPENTER: You believe the complainant may have had a weapon?

OFC. HERNANDEZ: Yes.

SR. INV. CARPENTER: And I'm still not clear as to why you believe the complainant would have had a weapon. You stated based on his baggy clothes, but what other articulable facts or reasonable suspicion did you believe that the complainant may have had like a weapon on him? You said the movement and the baggy clothes.

OFC. HERNANDEZ: Well, yeah, because I think you see it more on my partner's camera because I'm in the car for a little bit. We're like, hey, or I don't know what he tells him, but he just told him, "Come here," and he just kind of like turns around and looks, starts walking away. It's very common for people to kind of, who are armed or have done something or have something else or drugs or something on them, to kind of try to keep their distance and start walking back and forth. Of course, the clothing and I mean in general, like I said, kind of Taraval Station, we don't get a lot of crime out there, at least we usually don't, but there are a lot of home invasions and vehicle break-ins and those are always with weapons. So, having that also in the back of my mind, and they do occur like on Irving and those residential areas, all of that.

1 I was like, "He may have something on him." He didn't, but
2 there was no way to know, and it was going to be a simple
3 search; like most simple. Put your hands either on his back or
4 his head, and just a quick search, and then ID, here's your cite
5 or advisement, either one. It was going to be so simple, but it
6 didn't work out that way.

7 INV. TORGESON: All right. I'm going to end the
8 recording. Did you have anything?

9 POA POB
RA SGT. CHAN: No.

10 INV. TORGESON: Okay. I'm going to end the recording at
11 3:54.

12 **END OF DOCUMENT**

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1 DEPARTMENT OF POLICE ACCOUNTABILITY

2 DPA CASE NO.: 0045-19

3

4 INTERVIEW OF: SERGEANT JOHN PAI, #4169

5 DATE OF INTERVIEW: 05/13/2019

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8 INV. TERI TORGESON: This interview regarding DPA Case
9 number 0045-19 is taking place at the Department of Police
10 Accountability on Monday, May 13th, 2019, at twelve p.m.
11 Conducting this interview is Teri Torgeson. I work for the
12 Department of Police Accountability. I've been designated by the
13 Police Commission to conduct this investigation. Also present is
14 Stephanie Wargo-Wilson, Attorney for DPA. The member being
15 interviewed is Sergeant John Pai, Star number 4169, who is a
16 POBRA officer in this matter. Sergeant Pai, I have provided
17 you

18 a DPA Administrative Interview Advisements form. For the record,
19 I note that Sergeant Pai has handed me the DPA Administrative
20 Interview Advisements form, which bears his signature, and Star
21 number, and today's date. I will store this form in the DPA file
22 for this case. With all these advisements in mind, is there any
23 reason you cannot go forward with this interview right now?

24 SERGEANT JOHN PAI: No.

25 INV. TORGESON: Okay. How long have you been employed by
26 SFPD?

27 SGT. PAI: Seventeen years.

28 INV. TORGESON: How long have you been a sergeant?

1 SGT. PAI: Six years.

2 INV. TORGESON: Did you speak with anyone about this
3 incident you're here to discuss, before coming here today?

4 SGT. PAI: No.

5 INV. TORGESON: Did you review any materials before
6 coming here today? For instance, incident report, body worn
7 camera, CAD?

8 SGT. PAI: Yes.

9 INV. TORGESON: Okay. Can you tell me what you reviewed?

10 SGT. PAI: I reviewed my body worn camera video and the
11 incident report and the CAD.

12 INV. TORGESON: And just for the record, did you review
13 Incident Report number [REDACTED] ID

14 SGT. PAI: Yes.

15 INV. TORGESON: And the CAD, CAD number [REDACTED] ID ?

16 SGT. PAI: Yes, that's it.

17 INV. TORGESON: Okay. Thank you. Can you tell me what
18 your assignment was on January 24th, 2019?

19 SGT. PAI: I was a patrol sergeant at Taraval Station working
20 day shifts.

21 INV. TORGESON: Okay, thank you. The following questions
22 pertain to an incident that took place on January 24th, 2019, at
23 approximately 10:47 a.m. in front of a submarine sandwich store
24 on Irving Street, cross-street 6th Avenue. For the purposes of
25 this interview, the complainant [REDACTED] ID will be
26 referred to as the complainant. Do you remember that incident?

27 SGT. PAI: Yes, I do.

28 INV. TORGESON: Can you please tell me what you

1 remember?

2 SGT. PAI: I remember there was a call for backup,
3 because there was a unit at that location who had a subject who
4 was resisting arrest. So, they called for backup, so officers
5 were responding to back up that unit, Officer Hernandez—Jackie
6 Hernandez, and Officer Brett Hernandez, and I also responded to
7 the scene.

8 INV. TORGESON: Okay. Is there anything else you can
9 remember about that incident?

10 SGT. PAI: No.

11 INV. TORGESON: Okay. I'd first like to talk to you
12 about the pat search, and we're going to just play the video for
13 you to refresh your memory.

14 SGT. PAI: All right.

15 INV. TORGESON: Okay. And just for the record, I'm
16 playing Officer Jacqueline Hernandez, Star number 4309, her body
17 worn camera.

18 SGT. PAI: Okay.

19 (BWC is played.)

20 COMPLAINANT: Hold on. Why are you guys just bothering me?

21 OFC. B. HERNANDEZ: You're parked in front [of a fire
22 hydrant]. Okay?

23 COMPLAINANT: I know I'm parked there. Okay?

24 OFC. B. HERNANDEZ: [Unintelligible.] Relax.

25 COMPLAINANT: [Unintelligible], what's wrong with you guys?

26 OFC. B. HERNANDEZ: You're parked in the red, in front of
27 a fire hydrant.

28 COMPLAINANT: I stopped.

1 OFC. J. HERNANDEZ: Yeah, but you're parked right now.
2 Okay. So, we're not arguing the law of it, [inaudible].
3 COMPLAINANT: Okay. I'm going to go move my car.
4 OFC. J. HERNANDEZ: No, no, you're going to stay right
5 here.
6 COMPLAINANT: For what?
7 OFC. J. HERNANDEZ: You're staying right here. I've got to
8 ID and make sure who you are and then...
9 COMPLAINANT: Uh, my God. You guys are something else
10 right now. For what? I'm not detained [Unintelligible.]
11 OFC. J. HERNANDEZ: [Unintelligible.]
12 COMPLAINANT: No, but that's not against the law. I'm
13 allowed to stop.
14 OFC. J. HERNANDEZ: You're not allowed to...
15 COMPLAINANT: My hazards, my, my hazards are on. I'm
16 allowed to stop.
17 OFC. J. HERNANDEZ: You're not.
18 COMPLAINANT: Where, where does it say that?
19 [Unintelligible conversation.]
20 OFC. B. HERNANDEZ: Relax. I'm going to touch you. Do you
21 have any weapons on you?
22 COMPLAINANT: Please don't. You guys need to stop this.
23 OFC. B. HERNANDEZ: Relax.
24 COMPLAINANT: Why are you guys, so why are you guys doing
25 this thing?
26 OFC. B. HERNANDEZ: Because I'm allowed to pat search you.
27 COMPLAINANT: But what, look. I have nothing on me. It
28 looks like my ID [unintelligible].

1 OFC. B. HERNANDEZ: Let me pat search you real quick.
2 COMPLAINANT: No, you're not going to do that. You don't
3 have my permission.
4 OFC. B. HERNANDEZ: I don't need your permission.
5 COMPLAINANT: Yes, you do.
6 [Unintelligible.]
7 COMPLAINANT: Here's my, here's my ID. Here's my ID and I'm
8 giving, this is all that I'm giving you. You have no right to
9 touch me.
10 OFC. J. HERNANDEZ: Yes, I do.
11 COMPLAINANT: No, you cannot. Where does, where is that
12 written down? Here's my ID, sir. [Unintelligible.]
13 OFC. B. HERNANDEZ: [Unintelligible.]
14 COMPLAINANT: Do not touch me. You do not have the right
15 to touch me.
16 OFC. B. HERNANDEZ: [Unintelligible.]
17 COMPLAINANT: No. You do not have the right to touch me.
18 OFC. B. HERNANDEZ: Do you have any weapons on you?
19 COMPLAINANT: I have nothing on me. I have nothing on me.
20 OFC. B. HERNANDEZ: [Unintelligible.] Put your hands up.
21 COMPLAINANT: No. You don't have the right to touch me.
22 OFC. B. HERNANDEZ: Turn around.
23 COMPLAINANT: You do not have the right to touch me.
24 INV. TORGESON: Okay. I'm going to stop it right there.
25 For the record, it was played from the beginning of Jacqueline
26 Hernandez' body worn camera, and we're stopping at 18:49:09. Can
27 you please give me your opinion as a sergeant, whether or not
28 Brett Hernandez had reasonable suspicion to conduct a pat search

1 on the complainant?

2 SGT. PAI: I believe he had reasonable suspicion to pat
3 search.

4 INV. TORGESON: Okay. Can you articulate that?

5 SGT. PAI: Well, the subject was, he was illegally
6 parked, that was probable cause to stop to talk to him. And then
7 the subject was uncooperative, he was walking away. Normally,
8 sometimes when somebody is uncooperative and walks away, they
9 may have a weapon, so I would say that was the reason why they
10 pat, they were trying to conduct a pat search.

11 INV. TORGESON: Okay.

12 DPA ATTY STEPHANIE WARGO-WILSON: Can you break that down
13 just a little bit, Sergeant? Were you trained that a pat search
14 has specific requirements separate from a detention?

15 SGT. PAI: What do you mean?

16 DPA ATTY WARGO-WILSON: So, for example, if you have
17 reasonable suspicion to detain me for a criminal offense or even
18 a traffic offense, do you automatically then, have reasonable
19 suspicion to pat search me?

20 SGT. PAI: When I was trained, I would say yes. Anytime
21 we detained somebody, then we would conduct a pat search for
22 weapons.

23 DPA ATTY WARGO-WILSON: Okay. And that's for any
24 detention, for any offense?

25 SGT. PAI: When I was trained, yes.

26 DPA ATTY WARGO-WILSON: And that was in, if I can do
27 math, which lawyers are notoriously terrible at, 2002?

28 SGT. PAI: Yes.

1 DPA ATTY WARGO-WILSON: Okay. And do you recall any
2 training at all about Terry v. Ohio, the Supreme Court's
3 discussion of pat searches?

4 SGT. PAI: Yes.

5 DPA ATTY WARGO-WILSON: Okay. And do you know, in your
6 own experience, whether you also have to have some fact that the
7 person is armed and dangerous, beyond just whatever the offense
8 is?

9 SGT. PAI: Yes.

10 DPA ATTY WARGO-WILSON: Okay. So, from what you saw,
11 right, the complainant is clearly not happy about being stopped
12 for being double-parked. Would you agree with that
13 characterization?

14 SGT. PAI: Yes, uh-huh.

15 DPA ATTY WARGO-WILSON: Okay. But is there anything
16 specific that you saw, besides his general like, "Why are you
17 guys doing this? And no, I'm not agreeing to this," anything to
18 lead you to believe he was armed?

19 SGT. PAI: Well, I mean, I couldn't see what he had in
20 his pockets. The way his demeanor was that he wasn't being
21 cooperative, and he put his hand in his pocket to get his ID,
22 that would be suspicious to me enough to conduct a pat search.

23 DPA ATTY WARGO-WILSON: Okay. Even though he said I'm
24 going to get my ID, and then what he pulled out was an ID.
25 Right? Is that a fair characterization of what we saw?

26 SGT. PAI: Yes.

27 DPA ATTY WARGO-WILSON: Okay. And could you tell from the
28 video what he was holding in his hands?

1 SGT. PAI: No, I couldn't.

2 DPA ATTY WARGO-WILSON: Okay. Did you see anything that
3 looked like a weapon?

4 SGT. PAI: No.

5 DPA ATTY WARGO-WILSON: Okay. Have you, in your 17 years
6 on patrol, encountered folks that you were detaining, who
7 weren't real happy about being detained?

8 SGT. PAI: Yes.

9 DPA ATTY WARGO-WILSON: Okay. Was there ever an occasion
10 where somebody said I'm not agreeing to the pat search, and you
11 then had to make a decision to go ahead or not go ahead?

12 SGT. PAI: Yes.

13 DPA ATTY WARGO-WILSON: And did you ever decide, "You
14 know, what, I'm not going to pat search that person?"

15 SGT. PAI: No.

16 DPA ATTY WARGO-WILSON: Okay. And you are the normal
17 sergeant for Officers Brent Hernandez and Jacqueline Hernandez,
18 is that correct?

19 SGT. PAI: Yes.

20 DPA ATTY WARGO-WILSON: So, all of you are normally on
21 the same shift?

22 SGT. PAI: Yes.

23 DPA ATTY WARGO-WILSON: Okay. Did you have any part in
24 training them or in ongoing training with those particular
25 officers?

26 SGT. PAI: I'm the training sergeant. I mean, I conduct
27 roll call training, as far as policies and procedures, or
28 anything that's from the Academy, yeah, for everybody on our

1 watch.

2 DPA ATTY WARGO-WILSON: And would that be like as new
3 things are rolled out, those kinds of issues?

4 SGT. PAI: Both new and old.

5 DPA ATTY WARGO-WILSON: How often, if at all, do you,
6 during roll call trainings, ever touch on search and seizure
7 issues?

8 SGT. PAI: I would say not very often. I don't remember
9 anything specific, as far as pat search training. Is that what
10 you're asking?

11 DPA ATTY WARGO-WILSON: Sort of any search and seizure
12 issues. Like do they come up once a year, once every two years,
13 or if you have any idea?

14 SGT. PAI: I would say once a year, there's something
15 pertaining to search and seizure.

16 DPA ATTY WARGO-WILSON: That you would discuss at a roll
17 call?

18 SGT. PAI: Yes.

19 DPA ATTY WARGO-WILSON: Okay, great. Thank you very much.

20 SGT. PAI: You're welcome.

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INV. TORGESON: Okay. I'm just going to play, I'm going to play Brett Hernandez' body worn camera, starting at 18:56:52.

DPA ATTY WARGO-WILSON: And just so we're clear, all of the times we're referring to are the timestamp actually on the body worn camera in the upper right-hand corner.

SGT. PAI: Okay.

(BWC is played.)

[Unintelligible.]

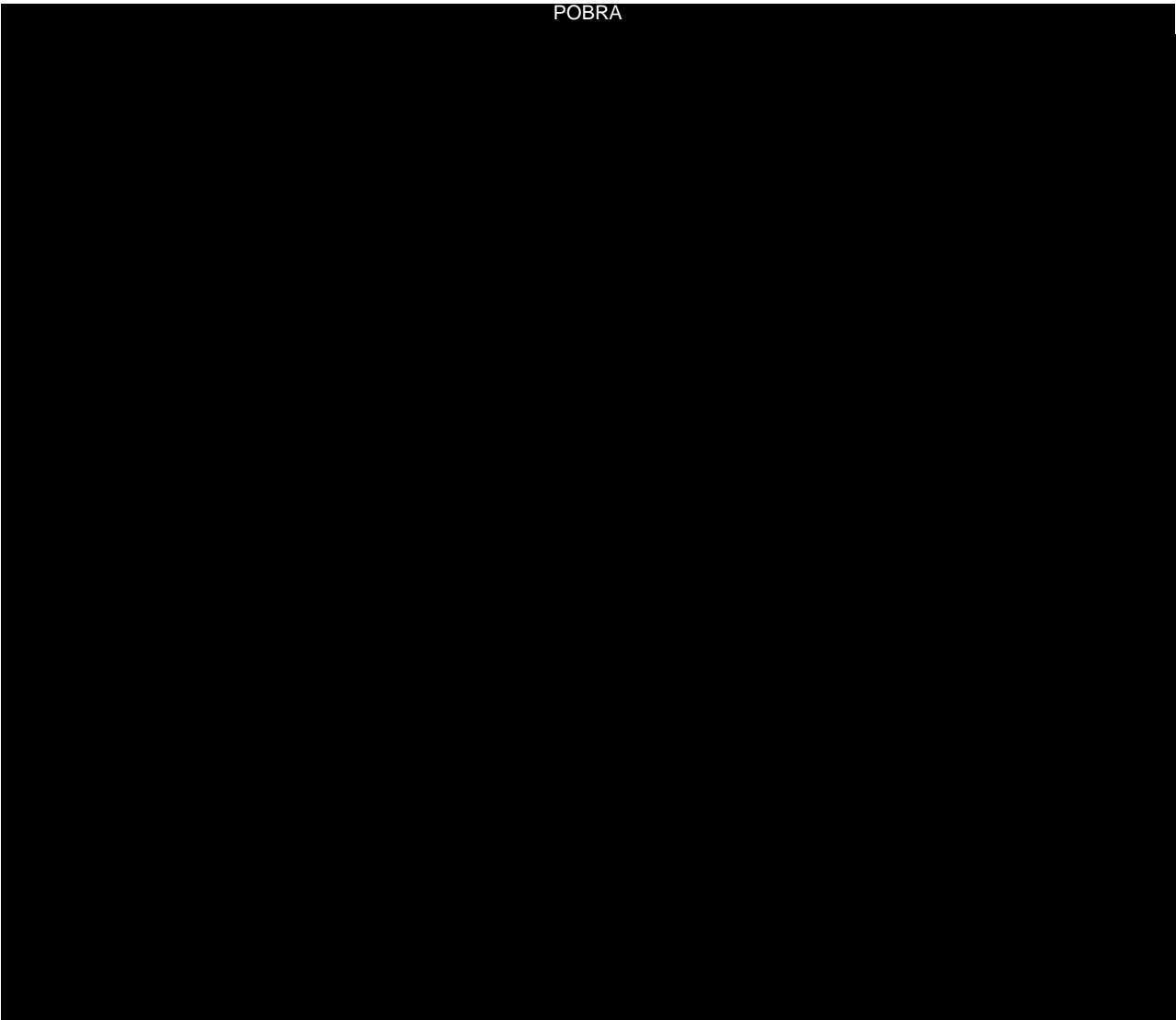
OFC. B. HERNANDEZ: We're good.

OFC. J. HERNANDEZ: Can I talk to you. [Unintelligible.]

OFC. B. HERNANDEZ: We're good. Yeah, double-parked, I talked to him about it.

SERGEANT: [Unintelligible.]

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INV. TORGESON: Okay. I'm going to play a part of the video. This is Brett Hernandez'; let's see. Hold on. I'm going to play Brett Hernandez' body worn camera at 19:00:06.

(BWC is played.)

OFC. B. HERNANDEZ: Hey, we're almost finished with the cite right here; you'll be out of here. All right? Your car is not getting towed, that's not what we want to do. We want to get everyone on their way, get, get past this. All right?

COMPLAINANT: [Inaudible.]

OFC. B. HERNANDEZ: I understand, man. We're going to be done in two minutes. The cite's almost done. All right?

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INV. TORGESON: Okay. Do you have anything?

DPA ATTY WARGO-WILSON: I don't.

INV. TORGESON: Okay. Is there any other statement relevant to this incident you wish to make at this time?

SGT. PAI: No.

INV. TORGESON: Okay. Is there any other evidence or witnesses you think would be helpful in this matter?

SGT. PAI: No.

INV. TORGESON: Okay, all right. I'm going to conclude the interview at 12:22 p.m.

END OF DOCUMENT

Miranda Rights, Stop and Frisk

I. Criteria

Persons suspected of having committed a crime must be advised of the Miranda rights when ***both*** of the following conditions exist:

- Suspect is being questioned about the specific crime, *and*
- Is deprived of freedom in any significant way

II. Temporary Detention-

for questioning under suspicious circumstances does not amount to custody and does not require a Miranda Admonition.

Note: In the absence of questioning, no Miranda Admonition is necessary. If you do not intend to interrogate an adult, do not Mirandize.

III. Miranda Admonition and Waiver Card

- Admonishments and questions regarding waivers should be read from the dept-issued Miranda Card
- Use of this card should be stated in the incident report for later reference in court.
- Juveniles have the same Miranda Rights as do adults.
- Juveniles must be advised of their rights whether or not they are questioned when they are detained per Section 60I or 602 W&I.
- After being advised of the Miranda Admonition, the suspect must waive rights voluntarily, knowingly, and intelligently.
- Miranda warnings apply only to oral communications.

IV. Stop and Frisk

A. Detain

Officers have a right and a duty to temporarily detain a citizen:

- Where it appears some activity on the part of the citizen is out of the ordinary
- There is some indication that the activity relates to a criminal act *and*
- Specific facts indicate that some criminal activity has, is, or will take place

B. Important Factors

- A mere hunch or suspicion is not itself sufficient cause to stop and question.
- The circumstances must be such that the activity of the detained person can be distinguished from the activity of the ordinary person.

If original stop of the subject is lawful and the officer has reasonable belief that the person stopped may possess a weapon:

- The officer has a right to make a pat-down or limited weapons search (*Terry (1968) 392 U.S.1*)
- The search is the "pat-down" type search

- The search does not extend inside the person's pocket or package, unless the "pat-down" indicates that the person has something in their pocket which could be used as a weapon, or is, in fact, a weapon.

Terry v. Ohio

392 U.S. 1 (1968) · 88 S. Ct. 1868
Decided Jun 10, 1968

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

This case presents serious questions concerning the role of the Fourth Amendment in the confrontation on the street between the citizen and the policeman investigating suspicious circumstances.

Petitioner Terry was convicted of carrying a concealed weapon and sentenced to the statutorily prescribed term of one to three years in the penitentiary.¹ Following⁵ the denial of a pretrial motion to suppress, the prosecution introduced in evidence two revolvers and a number of bullets seized from Terry and a codefendant, Richard Chilton,² by Cleveland Police Detective Martin McFadden. At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would "stand and watch people or walk and watch people at many intervals of the day." He added: "Now, in this case when I looked over they didn't look right to me at the time."

¹ Ohio Rev. Code § 2923.01 (1953) provides in part that "[n]o person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person." An exception is made for properly authorized law enforcement officers.

² Terry and Chilton were arrested, indicated, tried, and convicted together. They were represented by the same attorney, and they made a joint motion to suppress the guns. After the motion was denied, evidence was taken in the case against Chilton. This evidence consisted of the testimony of the arresting officer and of Chilton. It was then stipulated that this testimony would be applied to the case against Terry, and no further evidence was introduced in that case. The trial judge considered the two cases together, rendered the decisions at the same time and sentenced the two men at the same time. They prosecuted their state court appeals together through the same attorney, and they petitioned this Court for certiorari together. Following the grant of the writ upon this joint petition, Chilton died. Thus, only Terry's conviction is here for review.

His interest aroused, Officer McFadden took up a post of observation in the entrance to a store 300 to 400 feet⁶ away from the two men. "I get more purpose to watch them when I seen their movements," he testified. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and

walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece — in all, roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering, and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

By this time Officer McFadden had become thoroughly suspicious. He testified that after observing their elaborately casual and oft-repeated reconnaissance of the store window on Huron Road, he suspected the two men of "casing a job, a stick-up," and that he considered it his duty as a police officer to investigate further. He added that he feared "they may have a gun." Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action. Officer McFadden approached the three men, identified *7 himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information concerning them from any other source. When the men "mumbled something" in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him around so that they were facing the other two, with

Terry between McFadden and the others, and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket, but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38-caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized Chilton's gun, asked the proprietor of the store to call a police wagon, and took all three men to the station, where Chilton and Terry were formally charged with carrying concealed weapons.

On the motion to suppress the guns the prosecution took the position that they had been seized following a search incident to a lawful arrest. The trial court rejected this theory, stating that it "would be stretching the facts beyond reasonable comprehension" to find that Officer *8 McFadden had had probable cause to arrest the men before he patted them down for weapons. However, the court denied the defendants' motion on the ground that Officer McFadden, on the basis of his experience, "had reasonable cause to believe . . . that the defendants were conducting themselves suspiciously, and some interrogation should be made of their action." Purely for his own protection, the court held, the officer had the right to pat down the outer clothing of these men, who he had reasonable cause to believe might be armed. The court distinguished between an

investigatory "stop" and an arrest, and between a "frisk" of the outer clothing for weapons and a full-blown search for evidence of crime. The frisk, it held, was essential to the proper performance of the officer's investigatory duties, for without it "the answer to the police officer may be a bullet, and a loaded pistol discovered during the frisk is admissible."

After the court denied their motion to suppress, Chilton and Terry waived jury trial and pleaded not guilty. The court adjudged them guilty, and the Court of Appeals for the Eighth Judicial District, Cuyahoga County, affirmed. *State v. Terry*, 5 Ohio App.2d 122, 214 N.E.2d 114 (1966). The Supreme Court of Ohio dismissed their appeal on the ground that no "substantial constitutional question" was involved. We granted certiorari, 387 U.S. 929 (1967), to determine whether the admission of the revolvers in evidence violated petitioner's rights under the Fourth Amendment, made applicable to the States by the Fourteenth. *Mapp v. Ohio*, 367 U.S. 643 (1961). We affirm the conviction.

I.

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." This 9 inestimable right of *9 personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

We have recently held that "the Fourth Amendment protects people, not places," *Katz v. United States*, 389 U.S. 347, 351 (1967), and wherever an individual may harbor a reasonable "expectation of privacy," *id.*, at 361 (MR. JUSTICE HARLAN, concurring), he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." *Elkins v. United States*, 364 U.S. 206, 222 (1960). Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. *Beck v. Ohio*, 379 U.S. 89 (1964); *Rios v. United States*, 364 U.S. 253 (1960); *Henry v. United States*, 361 U.S. 98 (1959); *United States v. Di Re*, 332 U.S. 581 (1948); *Carroll v. United States*, 267 U.S. 132 (1925). The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure.

We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity — issues which 10 have never before been squarely *10 presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to "stop and frisk" — as it is sometimes euphemistically termed — suspicious persons.

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a "stop" and an "arrest" (or a "seizure" of a person), and between a "frisk" and a "search."³ Thus, it is argued, the police should be allowed to "stop" a

person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to "frisk" him for weapons. If the "stop" and the "frisk" give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest," and a full incident "search" of the person. This scheme is justified in part upon the notion that a "stop" and a "frisk" amount to a mere "minor inconvenience and petty indignity,"⁴ which can properly be imposed upon the citizen in the interest of effective law enforcement on the basis of a police officer's suspicion.⁵

³ Both the trial court and the Ohio Court of Appeals in this case relied upon such a distinction. *State v. Terry*, 5 Ohio App.2d 122, 125-130, 214 N.E.2d 114, 117-120 (1966). See also, e. g., *People v. Rivera*, 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.S.2d 458 (1964), cert. denied, 379 U.S. 978 (1965); Aspen, Arrest and Arrest Alternatives: Recent Trends, 1966 U. Ill. L. F. 241, 249-254; Warner, The Uniform Arrest Act, 28 Va. L. Rev. 315 (1942); Note, Stop and Frisk in California, 18 Hastings L. J. 623, 629-632 (1967).

⁴ *People v. Rivera*, *supra*, n. 3, at 447, 201 N.E.2d, at 36, 252 N.Y. So.2d, at 464.

⁵ The theory is well laid out in the *Rivera* opinion:

"[T]he evidence needed to make the inquiry is not of the same degree of conclusiveness as that required for an arrest. The stopping of the individual to inquire is not an arrest and the ground upon which the police may make the inquiry may be less incriminating than the ground for an arrest for a crime known to have been committed. . . .

. . . .

"And as the right to stop and inquire is to be justified for a cause less conclusive than that which would sustain an arrest, so the

right to frisk may be justified as an incident to inquiry upon grounds of elemental safety and precaution which might not initially sustain a search. Ultimately the validity of the frisk narrows down to whether there is or is not a right by the police to touch the person questioned. The sense of exterior touch here involved is not very far different from the sense of sight or hearing — senses upon which police customarily act." *People v. Rivera*, 14 N.Y.2d 441, 445, 447, 201 N.E.2d 32, 34, 35, 252 N.Y.S.2d 458, 461, 463 (1964), cert. denied, 379 U.S. 978 (1965).

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment.⁶ It is contended with some force that there is not — and cannot be — a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. Acquiescence by the courts in the compulsion inherent in the field interrogation practices at issue here, it is urged, would constitute an abdication of judicial control over, and indeed an encouragement of, substantial interference with liberty and personal security by police officers whose judgment is necessarily colored by their primary involvement in "the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948). This, it is argued, can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.⁷

⁶ See, e. g., Foote, *The Fourth Amendment: Obstacle or Necessity in the Law of Arrest?*, 51 J. Crim. L. C. P. S. 402 (1960).

⁷ See n. 11, *infra*.

In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. The State has characterized the issue here as "the right of a police officer . . . to make an on-the-street stop, interrogate and pat down for weapons (known in street vernacular as 'stop and frisk')." ⁸ But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct. See *Weeks v. United States*, 232 U.S. 383, 391-393 (1914). Thus its major thrust is a deterrent one, see *Linkletter v. Walker*, 381 U.S. 618, 629-635 (1965), and experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizures would be a mere "form of words." *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The rule also serves another vital function — "the imperative of judicial integrity." *Elkins v. United States*, 364 U.S. 206, 222 (1960). Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions. Thus in our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing

the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

⁸ Brief for Respondent 2.

The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime. ⁹ Doubtless some ¹⁴ police "field interrogation" conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police, ¹⁰ it is powerless to deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal.

⁹ See L. Tiffany, D. McIntyre D. Rotenberg, *Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment* 18-56 (1967). This sort of police conduct may, for example, be designed simply to help an intoxicated person find his way home, with no intention of arresting him unless he

becomes obstreperous. Or the police may be seeking to mediate a domestic Page 14 quarrel which threatens to erupt into violence. They may accost a woman in an area known for prostitution as part of a harassment campaign designed to drive prostitutes away without the considerable difficulty involved in prosecuting them. Or they may be conducting a dragnet search of all teenagers in a particular section of the city for weapons because they have heard rumors of an impending gang fight.

¹⁰ See Tiffany, McIntyre Rotenberg, *supra*, n. 9, at 100-101; Comment, 47 Nw. U. L. Rev. 493, 497-499 (1952).

Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly
¹⁵ Negroes, frequently complain,¹¹ will not be *15 stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. Nothing we say today is to be taken as indicating approval of police conduct outside the legitimate investigative sphere. Under our decision, courts still retain their traditional responsibility to guard against police conduct which is overbearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials. And, of course, our approval of legitimate and restrained investigative conduct undertaken on the basis of ample factual justification should in no way

discourage the employment of other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate.

¹¹ The President's Commission on Law Enforcement and Administration of Justice found that "[i]n many communities, field interrogations are a major source of friction between the police and minority groups." President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 183 (1967). It was reported that the friction caused by "[m]isuse of field interrogations" increases "as more police departments adopt 'aggressive patrol' in which officers are encouraged routinely to stop and question persons on the street who are unknown to them, who are suspicious, or whose purpose for being abroad is not readily evident." *Id.*, at 184. While the frequency with which "frisking" forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer, see Tiffany, McIntyre Rotenberg, *supra*, n. 9, at 47-48, it cannot help but be a severely exacerbating factor in police-community tensions. Page 15 This is particularly true in situations where the "stop and frisk" of youths or minority group members is "motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets." *Ibid.*

Having thus roughly sketched the perimeters of the constitutional debate over the limits on police investigative conduct in general and the background against which this case presents itself, we turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless
¹⁶ there is probable cause for an arrest. *16 Given the narrowness of this question, we have no occasion

to canvass in detail the constitutional limitations upon the scope of a policeman's power when he confronts a citizen without probable cause to arrest him.

II.

Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when Officer McFadden "seized" Terry and whether and when he conducted a "search." There is some suggestion in the use of such terms as "stop" and "frisk" that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a "search" or "seizure" within the meaning of the Constitution.¹² We emphatically reject this notion.

It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime — "arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is

17 simply fantastic to urge that such a procedure *17 performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity."¹³ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.¹⁴

¹² In this case, for example, the Ohio Court of Appeals stated that "we must be careful to distinguish that the 'frisk' authorized herein includes only a 'frisk' for a dangerous weapon. It by no means authorizes a search for contraband, evidentiary material, or anything else in the absence of reasonable grounds to arrest. Such a search is

controlled by the requirements of the Fourth Amendment, and probable cause is essential." *State v. Terry*, 5 Ohio App.2d 122, 130, 214 N.E.2d 114, 120 (1966). See also, e. g., *Ellis v. United States*, 105 U.S.App.D.C. 86, 88, 264 F.2d 372, 374 (1959); Comment, 65 Col. L. Rev. 848, 860, and n. 81 (1965).

¹³ Consider the following apt description:

"[T]he officer must feel with sensitive fingers every portion of the prisoner's body. A thorough search must be made of the prisoner's arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet." Priar Martin, *Searching and Disarming Criminals*, 45 J. Crim. L. C. P. S. 481 (1954).

¹⁴ See n. 11, *supra*, and accompanying text.

We have noted that the abusive practices which play a major, though by no means exclusive, role in creating this friction are not susceptible of control by means of the exclusionary rule, and cannot properly dictate our decision with respect to the powers of the police in genuine investigative and preventive situations. However, the degree of community resentment aroused by particular practices is clearly relevant to an assessment of the quality of the intrusion upon reasonable expectations of personal security caused by those practices.

The danger in the logic which proceeds upon distinctions between a "stop" and an "arrest," or "seizure" of the person, and between a "frisk" and a "search" is two-fold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation.¹⁵ This Court

¹⁸ has held in *18 the past that a search which is

reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. *Kremen v. United States*, 353 U.S. 346 (1957); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 356-358 (1931); see *United States v. Di Re*, 332 U.S. 581, 586-587 (1948). The scope of the search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible. *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring); see, e. g., *Preston v. United States*, 376 U.S. 364, 367-368 (1964); *Agnello v. United States*, 269 U.S. 20, 30-31 (1925).

¹⁵ These dangers are illustrated in part by the course of adjudication in the Court of Appeals of New York. Although its first decision in this area, *People v. Rivera*, 14 N.Y.2d 441, 201 N.E.2d 32, 252 N.Y.S.2d 458 (1964), cert. denied, 379 U.S. 978 (1965), rested squarely on the notion that a "frisk" was not a "search," see nn. 3-5, *supra*, it was compelled to recognize in *People v. Taggart*, Page 18 20 N.Y.2d 335, 342, 229 N.E.2d 581, 586, 283 N.Y.S.2d 1, 8 (1967), that what it had actually authorized in *Rivera* and subsequent decisions, see, e. g., *People v. Pugach*, 15 N.Y.2d 65, 204 N.E.2d 176, 255 N.Y.S.2d 833 (1964), cert. denied, 380 U.S. 936 (1965), was a "search" upon less than probable cause. However, in acknowledging that no valid distinction could be maintained on the basis of its cases, the Court of Appeals continued to distinguish between the two in theory. It still defined "search" as it had in *Rivera* — as an essentially unlimited examination of the person for any and all seizable items — and merely noted that the cases had upheld police intrusions which went far beyond the original limited conception of a "frisk." Thus, principally because it failed to consider limitations upon the scope of searches in individual cases as a potential mode of regulation, the Court of Appeals in three short years arrived at the position that the Constitution must, in the name of

necessity, be held to permit unrestrained rummaging about a person and his effects upon mere suspicion. It did apparently limit its holding to "cases involving serious personal injury or grave irreparable property damage," thus excluding those involving "the enforcement of sumptuary laws, such as gambling, and laws of limited public consequence, such as narcotics violations, prostitution, larcenies of the ordinary kind, and the like." *People v. Taggart*, *supra*, at 340, 214 N.E.2d, at 584, 283 N.Y. So.2d, at 6.

In our view the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness. Cf. *Brinegar v. United States*, 338 U.S. 160, 183 (1949) (Mr. Justice Jackson, dissenting). Compare *Camara v. Municipal Court*, 387 U.S. 523, 537 (1967). This seems preferable to an approach which attributes too much significance to an overly technical definition of "search," and which turns in part upon a judge-made hierarchy of legislative enactments in the criminal sphere. Focusing the inquiry squarely on the dangers and demands of the particular situation also seems more likely to produce rules which are intelligible to the police and the public alike than requiring the officer in the heat of an unfolding encounter on the street to make a judgment as to which laws are "of limited public consequence."

The distinctions of classical "stop-and-frisk" theory thus serve to divert attention from the central inquiry under the Fourth Amendment — the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. "Search" and "seizure" are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all

as a limitation upon police conduct if the officers stop short of something called a "technical arrest" or a "full-blown search."

In this case there can be no question, then, that Officer McFadden "seized" petitioner and subjected him to a "search" when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did.¹⁶ And in determining whether the seizure and

20 search were "unreasonable" our inquiry *20 is a dual one — whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

¹⁶ We thus decide nothing today concerning the constitutional propriety of an investigative "seizure" upon less than probable cause for purposes of "detention" and/or interrogation. Obviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred. We cannot tell with any certainty upon this record whether any such "seizure" took place here prior to Officer McFadden's initiation of physical contact for purposes of searching Terry for weapons, and we thus may assume that up to that point no intrusion upon constitutionally protected rights had occurred.

III.

If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether "probable cause" existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial

approval of searches and seizures through the warrant procedure, see, e. g., *Katz v. United States*, 389 U.S. 347 (1967); *Beck v. Ohio*, 379 U.S. 89, 96 (1964); *Chapman v. United States*, 365 U.S. 610 (1961), or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, see, e. g., *Warden v. Hayden*, 387 U.S. 294 (1967) (hot pursuit); cf. *Preston v. United States*, 376 U.S. 364, 367-368 (1964). But we deal here with an entire rubric of police conduct — necessarily swift action predicated upon the on-the-spot observations of the officer on the beat — which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.¹⁷

¹⁷ See generally Leagre, *The Fourth Amendment and the Law of Arrest*, 54 J. Crim. L. C. P. S. 393, 396-403 (1963).

21 Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary "first to focus upon *21 the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." *Camara v. Municipal Court*, 387 U.S. 523, 534-535, 536-537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.¹⁸ The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected

to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.¹⁹ And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts *22 available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate? Cf. *Carroll v. United States*, 267 U.S. 132 (1925); *Beck v. Ohio*, 379 U.S. 89, 96-97 (1964).²⁰ Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. See, e. g., *Beck v. Ohio*, *supra*; *Rios v. United States*, 364 U.S. 253 (1960); *Henry v. United States*, 361 U.S. 98 (1959). And simple "'good faith on the part of the arresting officer is not enough.' . . . If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." *Beck v. Ohio*, *supra*, at 97.

¹⁸ This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence. See *Beck v. Ohio*, 379 U.S. 89, 96-97 (1964); *Ker v. California*, 374 U.S. 23, 34-37 (1963); *Wong Sun v. United States*, 371 U.S. 471, 479-484 (1963); *Rios v. United States*, 364 U.S. 253, 261-262 (1960); *Henry v. United States*, 361 U.S. 98, 100-102 (1959); *Draper v. United States*, 358 U.S. 307, 312-314 (1959); *Brinegar v. United States*, 338 U.S. 160, 175-178 (1949); *Johnson v. United States*, 333 U.S. 10, 15-17 (1948); *United States v. Di Re*, 332 U.S. 581, 593-595 (1948); *Husty v. United States*, 282 U.S. 694, 700-701 (1931); *Dumbra v. United States*, 268 U.S. 435, 441 (1925); *Carroll v. United States*, 267 U.S. 132, 159-162 (1925); *Stacey v. Emery*, 97 U.S. 642, 645 (1878).

¹⁹ See, e. g., *Katz v. United States*, 389 U.S. 347, 354-357 (1967); *Berger v. New York*, 388 U.S. 41, 54-60 (1967); *Johnson v. United States*, 333 U.S. 10, 13-15 (1948); cf. *Wong Sun v. United States*, 371 U.S. 471, 479-480 (1963). See also *Aguilar v. Texas*, 378 U.S. 108, 110-115 (1964).

²⁰ See also cases cited in n. 18, *supra*.

Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people *23 in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed

for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. *24 Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.²¹

²¹ Fifty-seven law enforcement officers were killed in the line of duty in this country in 1966, bringing the total to 335 for the seven-year period beginning with 1960. Also in 1966, there were 23,851 assaults on police officers, 9,113 of which resulted in injuries to the policemen. Fifty-five of the 57 officers killed in 1966 died from gunshot wounds, 41 of them inflicted by handguns easily secreted about the person. The remaining two murders were perpetrated by knives. See Federal Bureau of Investigation, Uniform Crime Reports for the United States — 1966, at 45-48, 152 and Table 51.

The easy availability of firearms to potential criminals in this country is well known and has provoked much debate. See, e. g., President's Commission on Law

Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 239-243 (1967). Whatever the merits of gun-control proposals, this fact is relevant to an assessment of the need for some form of self-protective search power.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

We must still consider, however, the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. Even a limited search of the outer clothing for weapons constitutes a severe, *25 though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience. Petitioner contends that such an intrusion is permissible only incident to a lawful arrest, either for a crime involving the possession of weapons or for a crime the commission of which led the officer to investigate in the first place. However, this argument must be closely examined.

Petitioner does not argue that a police officer should refrain from making any investigation of suspicious circumstances until such time as he has probable cause to make an arrest; nor does he deny that police officers in properly discharging their investigative function may find themselves confronting persons who might well be armed and dangerous. Moreover, he does not say that an officer is always unjustified in searching a suspect

to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. When that point has been reached, petitioner would concede the officer's right to conduct a search of the suspect for weapons, fruits or instrumentalities of the crime, or "mere" evidence, incident to the arrest.

There are two weaknesses in this line of reasoning, however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, *Preston v. United States*, 376 U.S. 364, 367 (1964), is also justified on other grounds, *ibid.*, and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to ²⁶ arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring). Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a "full" search, even though it remains a serious intrusion.

A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance between the particular interests involved here — the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a

criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows.²² The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for ²⁷ the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to "seizures" constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment. See *Camara v. Municipal Court*, *supra*.

²² See generally W. LaFave, Arrest — The Decision to Take a Suspect into Custody 1-13 (1965).

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or

that of others was in danger. Cf. *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Brinegar v. United States*, 338 U.S. 160, 174-176 (1949); *Stacey v. Emery*, 97 U.S. 642, 645 (1878).²³ And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. Cf. *Brinegar v. United States supra*.

²³ See also cases cited in n. 18, *supra*.

IV.

We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception^{*28} and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a "stick-up." We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery — which, it is reasonable to assume, would be likely to involve the use of weapons — and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his

decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the^{*29} scope of governmental action as by imposing preconditions upon its initiation. Compare *Katz v. United States*, 389 U.S. 347, 354-356 (1967). The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that "limitations upon the fruit to be gathered tend to limit the quest itself." *United States v. Poller*, 43 F.2d 911, 914 (C.A. 2d Cir. 1930); see, e. g., *Linkletter v. Walker*, 381 U.S. 618, 629-635 (1965); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Elkins v. United States*, 364 U.S. 206, 216-221 (1960). Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation. *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring).

We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. See *Sibron v. New York*, *post*, p. 40, decided today. Suffice it to note that such a search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. See *Preston v. United States*, 376 U.S. 364, 367 (1964). The sole justification of the search in the present situation is the protection

of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had ^{*30} felt weapons, and then he merely reached for and removed the guns. He never did invade Katz' person beyond the outer surfaces of his clothes, since he discovered nothing in his pat-down which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

V.

We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the

initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. ^{*31} Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.

MR. JUSTICE BLACK concurs in the judgment and the opinion except where the opinion quotes from and relies upon this Court's opinion in *Katz v. United States* and the concurring opinion in *Warden v. Hayden*.

MR. JUSTICE HARLAN, concurring.

While I unreservedly agree with the Court's ultimate holding in this case, I am constrained to fill in a few gaps, as I see them, in its opinion. I do this because what is said by this Court today will serve as initial guidelines for law enforcement authorities and courts throughout the land as this important new field of law develops.

A police officer's right to make an on-the-street "stop" and an accompanying "frisk" for weapons is of course bounded by the protections afforded by the Fourth and Fourteenth Amendments. The Court holds, and I agree, that while the right does not depend upon possession by the officer of a valid warrant, nor upon the existence of probable cause, such activities must be reasonable under the circumstances as the officer credibly relates them in court. Since the question in this and most cases is whether evidence produced by a frisk is admissible, the problem is to determine what makes a frisk reasonable.

If the State of Ohio were to provide that police officers could, on articulable suspicion less than probable cause, forcibly frisk and disarm persons thought to be carrying concealed weapons, I

would have little doubt that action taken pursuant to such authority could be constitutionally reasonable. Concealed weapons create an
 32 immediate ^{*32} and severe danger to the public, and though that danger might not warrant routine general weapons checks, it could well warrant action on less than a "probability." I mention this line of analysis because I think it vital to point out that it cannot be applied in this case. On the record before us Ohio has not clothed its policemen with routine authority to frisk and disarm on suspicion; in the absence of state authority, policemen have no more right to "pat down" the outer clothing of passers-by, or of persons to whom they address casual questions, than does any other citizen. Consequently, the Ohio courts did not rest the constitutionality of this frisk upon any general authority in Officer McFadden to take reasonable steps to protect the citizenry, including himself, from dangerous weapons.

The state courts held, instead, that when an officer is lawfully confronting a possibly hostile person in the line of duty he has a right, springing only from the necessity of the situation and not from any broader right to disarm, to frisk for his own protection. This holding, with which I agree and with which I think the Court agrees, offers the only satisfactory basis I can think of for affirming this conviction. The holding has, however, two logical corollaries that I do not think the Court has fully expressed.

In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, the officer must first have constitutional grounds to insist on an encounter, to make a *forcible* stop. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a policeman has a right instead to disarm such a person for his own protection, he must first have a right not to avoid him but to be in his presence. That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for
 33 ordinarily the person ^{*33} addressed has an equal

right to ignore his interrogator and walk away; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime.

Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet.

The facts of this case are illustrative of a proper stop and an incident frisk. Officer McFadden had no probable cause to arrest Terry for anything, but he had observed circumstances that would reasonably lead an experienced, prudent policeman to suspect that Terry was about to engage in burglary or robbery. His justifiable suspicion afforded a proper constitutional basis for accosting Terry, restraining his liberty of movement briefly, and addressing questions to him, and Officer McFadden did so. When he did, he had no reason whatever to suppose that Terry might be armed, apart from the fact that he suspected him of planning a violent crime. McFadden asked Terry his name, to which Terry "mumbled something." Whereupon McFadden, without asking Terry to speak louder and without giving him any chance to explain his presence or his actions, forcibly frisked him.

I would affirm this conviction for what I believe to be the same reasons the Court relies on. I would, however, make explicit what I think is implicit in
 34 affirmance on ^{*34} the present facts. Officer McFadden's right to interrupt Terry's freedom of movement and invade his privacy arose only because circumstances warranted forcing an

encounter with Terry in an effort to prevent or investigate a crime. Once that forced encounter was justified, however, the officer's right to take suitable measures for his own safety followed automatically.

Upon the foregoing premises, I join the opinion of the Court.

MR. JUSTICE WHITE, concurring.

I join the opinion of the Court, reserving judgment, however, on some of the Court's general remarks about the scope and purpose of the exclusionary rule which the Court has fashioned in the process of enforcing the Fourth Amendment.

Also, although the Court puts the matter aside in the context of this case, I think an additional word is in order concerning the matter of interrogation during an investigative stop. There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case, it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation. In my view, it is temporary detention, warranted by the circumstances, which chiefly justifies the protective frisk for weapons. Perhaps the frisk itself, where proper, will have beneficial results whether questions are asked or not. If weapons are found, an arrest will follow. *35 If none are found, the frisk may nevertheless serve preventive ends because of its unmistakable message that suspicion has been aroused. But if the investigative stop is sustainable at all,

constitutional rights are not necessarily violated if pertinent questions are asked and the person is restrained briefly in the process.

MR. JUSTICE DOUGLAS, dissenting.

I agree that petitioner was "seized" within the meaning of the Fourth Amendment. I also agree that frisking petitioner and his companions for guns was a "search." But it is a mystery how that "search" and that "seizure" can be constitutional by Fourth Amendment standards, unless there was "probable cause"¹ to believe that (1) a crime had been committed or (2) a crime was in the process of being committed or (3) a crime was about to be committed.

¹ The meaning of "probable cause" has been developed in cases where an officer has reasonable grounds to believe that a crime has been or is being committed. See, e. g., *The Thompson*, 3 Wall. 155; *Stacey v. Emery*, 97 U.S. 642; *Director General v. Kastenbaum*, 263 U.S. 25; *Carroll v. United States*, 267 U.S. 132; *United States v. Di Re*, 332 U.S. 581; *Brinegar v. United States*, 338 U.S. 160; *Draper v. United States*, 358 U.S. 307; *Henry v. United States*, 361 U.S. 98. In such cases, of course, the officer may make an "arrest" which results in charging the individual with commission of a crime. But while arresting persons who have already committed crimes is an important task of law enforcement, an equally if not more important function is crime prevention and deterrence of would-be criminals. "[T]here is no war between the Constitution and common sense," *Mapp v. Ohio*, 367 U.S. 643, 657. Police officers need not wait until they see a person actually commit a crime before they are able to "seize" that person. Respect for our constitutional system and personal liberty demands in return, however, that such a "seizure" be made only upon "probable cause."

36 The opinion of the Court disclaims the existence of "probable cause." If loitering were in issue and that *36 was the offense charged, there would be "probable cause" shown. But the crime here is carrying concealed weapons;² and there is no basis for concluding that the officer had "probable cause" for believing that that crime was being committed. Had a warrant been sought, a magistrate would, therefore, have been unauthorized to issue one, for he can act only if there is a showing of "probable cause." We hold today that the police have greater authority to make a "seizure" and conduct a "search" than a judge has to authorize such action. We have said
37 precisely the opposite over and over again.³ *37

² Ohio Rev. Code § 2923.01.

³ This Court has always used the language of "probable cause" in determining the constitutionality of an arrest without a warrant. See, e. g., *Carroll v. United States*, 267 U.S. 132, 156, 161-162; *Johnson v. United States*, 333 U.S. 10, 13-15; *McDonald v. United States*, 335 U.S. 451, 455-456; *Henry v. United States*, 361 U.S. 98; *Wong Sun v. United States*, 371 U.S. 471, 479-484. To give power to the police to seize a person on some grounds different from or less than "probable cause" would be handing them *more* authority than could be exercised by a magistrate in issuing a warrant to seize a person. As we stated in *Wong Sun v. United States*, 371 U.S. 471, with respect to requirements for arrests without warrants: "Whether or not the requirements of reliability and particularity of the information on which an officer may act are more stringent where an arrest warrant is absent, they surely cannot be less stringent than where an arrest warrant is obtained." *Id.*, at 479. And we said in *Brinegar v. United States*, 338 U.S. 160, 176:

"These long-prevailing standards [for probable cause] seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges

of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring Page 37 more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice."

And see *Johnson v. United States*, 333 U.S. 10, 14-15; *Wrightson v. United States*, 95 U.S.App.D.C. 390, 393-394, 222 F.2d 556, 559-560 (1955).

In other words, police officers up to today have been permitted to effect arrests or searches without warrants only when the facts within their personal knowledge would satisfy the constitutional standard of *probable cause*. At the time of their "seizure" without a warrant they must possess facts concerning the person arrested that would have satisfied a magistrate that "probable cause" was indeed present. The term "probable cause" rings a bell of certainty that is not sounded by phrases such as "reasonable suspicion." Moreover, the meaning of "probable cause" is deeply imbedded in our constitutional history. As we stated in *Henry v. United States*, 361 U.S. 98, 100-102:

"The requirement of probable cause has roots that are deep in our history. The general warrant, in which the name of the person to be arrested was left blank, and the writs of assistance, against which James Otis inveighed, both perpetuated the oppressive practice of allowing the police to arrest and search on suspicion. Police control took the place of judicial control, since no showing of 'probable cause' before a magistrate was required.

.....

"That philosophy [rebellious against these practices] later was reflected in the Fourth Amendment. And as the early American decisions both before and immediately after its adoption show, common rumor or report, suspicion, or even 'strong reason to suspect' was not adequate to support a warrant *38 for arrest. And that principle has survived to this day. . . .

38

". . . It is important, we think, that this requirement [of probable cause] be strictly enforced, for the standard set by the Constitution protects both the officer and the citizen. If the officer acts with probable cause, he is protected even though it turns out that the citizen is innocent. . . . And while a search without a warrant is, within limits, permissible if incident to a lawful arrest, if an arrest without a warrant is to support an incidental search, it must be made with probable cause. . . . This immunity of officers cannot fairly be enlarged without jeopardizing the privacy or security of the citizen."

The infringement on personal liberty of any "seizure" of a person can only be "reasonable" under the Fourth Amendment if we require the police to possess "probable cause" before they seize him. Only that line draws a meaningful distinction between an officer's mere inkling and the presence of facts within the officer's personal

knowledge which would convince a reasonable man that the person seized has committed, is committing, or is about to commit a particular crime. "In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175.

To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment. *39 Until the Fourth Amendment, which is closely allied with the Fifth,⁴ is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched.

39

⁴ See *Boyd v. United States*, 116 U.S. 616, 633:

"For the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the Fifth Amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the meaning of the Fourth Amendment."

There have been powerful hydraulic pressures throughout our history that bear heavily on the Court to water down constitutional guarantees and give the police the upper hand. That hydraulic pressure has probably never been greater than it is today.

Yet if the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can "seize" and "search" him in their discretion, we enter a new

regime. The decision to enter it should be made only after a full debate by the people of this country.

40 *40



KeyCite Yellow Flag - Negative Treatment
Declined to Extend by In re Jose O., Cal.App. 6 Dist., October 29, 2014

21 Cal.App.4th 952

Court of Appeal, Second District, Division 6,
California.

The PEOPLE, Plaintiff and Respondent,

v.

Warren Douglas DICKEY, Defendant and
Appellant.

Crim. B071852.

|
Jan. 12, 1994.

Synopsis

Defendant was convicted by plea of possessing cocaine in the Superior Court, County of San Luis Obispo, No. CR17617, Barry Hammer, J., and defendant appealed. The Court of Appeal, Yegan, J., held that: (1) police officer was not justified in conducting pat-down search of defendant during Terry stop because circumstances would not have led to reasonable belief that defendant was armed, and (2) even if pat down were justified, officer had no basis for retrieving soft object from defendant's pocket.

Reversed with directions.

West Headnotes (4)

[1] **Arrest**

🔑 Justification for pat-down search

To justify pat-down search during *Terry* stop where police officer lacks probable cause to make arrest, officer must be able to point to specific and articulable facts together with rational inferences therefrom which reasonably support suspicion that suspect is armed and dangerous. U.S.C.A. Const.Amend. 4.

98 Cases that cite this headnote

[2] **Arrest**

🔑 Justification for pat-down search

Pat-down search of defendant during *Terry* stop was not justified on basis that defendant had no identification, refused to allow deputy to search his vehicle, was nervous and sweating, and baking powder was found in a film canister, because such facts would not lead officer to reasonably believe in possibility that defendant was armed. U.S.C.A. Const.Amend. 4.

54 Cases that cite this headnote

[3] **Arrest**

🔑 Duration of detention and extent or conduct of investigation or frisk

Possession of small amount of baking soda or powder should not lead police officer to believe that suspect detained in *Terry* stop is armed and dangerous, for purpose of conducting further search, even if baking powder is sometimes used as cutting agent for narcotics. U.S.C.A. Const.Amend. 4.

29 Cases that cite this headnote

[4] **Arrest**

🔑 Duration of detention and extent or conduct of investigation or frisk

Police officer was not justified in reaching into suspect's pocket to retrieve soft object during pat-down search which officer conducted during *Terry* stop; incriminating nature of object was not immediately apparent since officer manipulated soft object before retrieving it. U.S.C.A. Const.Amend. 4.

39 Cases that cite this headnote

Attorneys and Law Firms

*954 **44 J. Barry Schiavo, San Luis Obispo, under appointment by the Court of Appeal, for defendant and appellant.

Daniel E. Lungren, Atty. Gen., George Williamson, Chief Asst. Atty. Gen., Robert R. Anderson, Sr. Asst. Atty. Gen., Roger E. Venturi, Supervising Deputy Atty. Gen., Anthony L. Dicce, Deputy Atty. Gen., for plaintiff and respondent.

Opinion

YEGAN, Associate Justice.

Warren Douglas Dickey was convicted by plea of possessing cocaine. (Health & Saf.Code, § 11350, subd. (b).) Proceedings were suspended and probation was granted upon certain terms and conditions, inter alia, the service of 68 days in county jail. Prior thereto, he unsuccessfully brought a motion pursuant to Penal Code section 1538.5. He appeals meritoriously contending that "... appellant's pat down and search were not justified under the circumstances described by Deputy Conway."

At approximately 3:40 p.m. on June 28, 1992, Deputy Sheriff Kenneth Conway of the San Luis Obispo County Sheriff's Department (the deputy) was on routine patrol with his partner. He was driving his black and white patrol vehicle on a one-lane dirt road extension of Illinois Avenue in rural Nipomo. He saw a 1977 El Camino which was stopped in the roadway with its engine running. The driver appeared to make "... furtive movements, moving around in the driver's seat."

The deputy approached the driver, appellant herein, and asked him what he was doing parked in the middle of the road. Appellant **45 replied that he was just admiring the view of the valley and sand dunes below.

When asked for identification, appellant truthfully identified himself as Warren Dickey but could not produce written identification or a driver's license. Neither could the passenger. Both were ordered to alight from the El Camino and did so. The deputy ascertained via the police radio that the car was registered to appellant. Appellant, however, was unable to produce the registration certificate for the vehicle. He said that the registration papers might be in a backpack located in the car but the backpack was not his.

The deputy twice requested permission to search the car. Appellant twice refused. The deputy admitted that he was "angry" with appellant and told appellant so. He testified that appellant "... was just wasting time or trying to put things off." He told appellant he would just look for items in plain view in the car to justify the search. He was unable to find anything in plain *955 view. Appellant and the passenger denied ownership of the backpack but appellant gave the deputy permission to search it.

The deputy retrieved the backpack, opened it, and saw a toothbrush and a film canister. The film canister contained powder which he believed to be baking soda, a cutting agent for narcotics. Appellant said that he used the powder to brush his teeth. The deputy testified that after he found the "cut," he wanted to search the car.¹

The deputy asked appellant and the passenger to accompany him to the rear of the vehicle. Appellant was nervous and sweating despite the fact that it was a cool day. The deputy conducted a pat-down search of appellant for weapons. He testified that even though appellant was not "aggressive" he "... potentially may have been armed." He explained his rationale for the "pat-down" as follows: "At that time I was conducting a further investigation and so I patted him down for my safety and if I found something like contraband or something, I could possibly search the vehicle and I wasn't going to turn my back on two guys even with a partner."

The deputy felt no hard objects but did feel a soft object. He testified: "The consistency and feel of the bulge led me to believe that it might be a controlled substance." He amplified his testimony as follows: "I felt the bulge, and it felt not round, but elongated and it had a texture or just a good feeling to it, and I just squeezed from the outside of it and felt it was a plastic—felt like plastic or felt like a plastic baggie with something in it."

The deputy reached into appellant's pocket and retrieved a baggie containing less than one-half ounce of marijuana and a baggie containing 3.19 grams of cocaine. The cocaine formed the evidentiary basis for the Health and Safety Code section 11350(b) charge.

¹ In *Terry v. Ohio* (1968) 392 U.S. 1, 27, 88 S.Ct. 1868, 1883, 20 L.Ed.2d 889, 909, the United States Supreme Court held that a police officer who lacks probable cause to arrest could undertake a pat-down search only "... where he has reason to believe that he is dealing with an armed and *956 dangerous individual..." "The sole justification of the search ... is the protection of the police officer and others nearby, and it must therefore be

confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.” (*Id.*, at p. 29, 88 S.Ct. at p. 1884, 20 L.Ed.2d at p. 911.) The officer must be able to point to specific and articulable facts together with rational inferences therefrom which reasonably support a suspicion that the suspect is ****46** armed and dangerous. (*Id.*, at p. 20, 88 S.Ct. at p. 1879, 20 L.Ed.2d at p. 906; see also *Sibron v. New York* (1968) 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917; *Cunha v. Superior court* (1970) 2 Cal.3d 352, 356, 85 Cal.Rptr. 160, 466 P.2d 704; *People v. Collins* (1970) 1 Cal.3d 658, 663, 83 Cal.Rptr. 179, 463 P.2d 403.) Where, as here, there are no such specific and articulable facts presented, the pat down search cannot be upheld.

¹²¹ The deputy testified that he performed the pat-down search for “officer safety” and because appellant “potentially may have been armed.” Without “specific and articulable” facts which show that the suspect may be armed and dangerous, these conclusions add nothing. In every encounter with a citizen by the police, the citizen may potentially be armed.

The pat-down search could not be justified based on the fact that appellant (1) had no identification, (2) exercised his Fourth Amendment right and refused to allow the deputy to search the vehicle, (3) was nervous and sweating, (4) or because baking powder was found in a film canister. None of these considerations, considered singly or in combination, would lead an officer to “... reasonably believe in the possibility that a weapon may be used against him...” (*People v. Lawler* (1973) 9 Cal.3d 156, 161, 107 Cal.Rptr. 13, 507 P.2d 621 quoting *People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 204, 101 Cal.Rptr. 837, 496 P.2d 1205)

¹³¹ In denying the suppression motion, the magistrate ruled that “... once he [the deputy] found the baking soda or powder, which under the circumstances as I have found, I think the officer was well within his rights to pat down Mr. Dickey.” We do not follow this logic. Possession of a small amount of baking soda or powder should not lead an officer to believe that appellant was armed and dangerous. (*Santos v. Superior Court* (1984) 154 Cal.App.3d 1178, 1185, 202 Cal.Rptr. 6.) The film canister contained baking powder, not gun powder.²

The magistrate’s reliance upon *People v. Lee* (1987) 194 Cal.App.3d 975, 240 Cal.Rptr. 32 was also misplaced. There the officer “... believed ***957** defendant was reaching for a weapon...” (*Id.*, at p. 980, 240 Cal.Rptr. 32.) Here, no evidence was presented that the deputy believed appellant was reaching for or had a weapon.

¹⁴¹ “[E]ven if the pat-down before us was justified at its inception, the search became impermissible in its scope when ... [the deputy] reached into defendant’s pocket.” (*People v. Collins* (1970) 1 Cal.3d 658, 664, 83 Cal.Rptr. 179, 463 P.2d 403.) “Feeling a soft object in a suspect’s pocket during a pat-down, absent unusual circumstances, does not warrant an officer’s intrusion into a suspect’s pocket to retrieve the object.” (*Id.*, at p. 662, 83 Cal.Rptr. 179, 463 P.2d 403.) The United States Supreme Court has recently held that a soft object may not be retrieved by a police officer performing a pat-down search unless its incriminating character is “immediately apparent.” (*Minnesota v. Dickerson* (1993) 508 U.S. 366, —, 113 S.Ct. 2130, 2137, 124 L.Ed.2d 334, 345.) Just as in *Minnesota v. Dickerson*, here the deputy manipulated the soft object before retrieving it. In his words, “... I just squeezed from the outside.” Its incriminating character was not “immediately apparent.” On this record, the retrieval of the soft object was unlawful.

Were we to uphold the instant pat-down and the seizure of subject contraband, we would, in essence, eviscerate the authorities here cited as well as the rule requiring the People to justify, on the record, a warrantless search. (E.g. *Badillo v. Superior Court* (1956) 46 Cal.2d 269, 272, 294 P.2d 23.)

The judiciary should not lightly second guess a police officer’s decision to perform a pat-down search for officer safety. The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations. ****47** (*People v. Koelzer* (1963) 222 Cal.App.2d 20, 27, 34 Cal.Rptr. 718; *People v. Cove* (1964) 228 Cal.App.2d 466, 470, fn. 1, 39 Cal.Rptr. 535.) However, the *Terry* rule has been extant for over a quarter of a century and is well known to the police. (*Terry v. Ohio, supra*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889.) It is alive and well. (*Minnesota v. Dickerson, supra*, 508 U.S. 366, —, 113 S.Ct. 2130, 2136, 124 L.Ed.2d 334, 344.) The suppression motion was erroneously denied.

The judgment is reversed with directions to dismiss.

STONE, P.J., and GILBERT, J., concur.

All Citations

21 Cal.App.4th 952, 27 Cal.Rptr.2d 44

Footnotes

- 1 It is readily apparent, however, that the deputy wanted to search the car long before he found the “cut.” He was twice previously refused permission to search the car. In addition, he attempted to find justification for the search of the El Camino by the “plain view” doctrine. It also appears that one of the reasons for the “pat down” was the deputy’s desire to search the car. (See, *post*, p. 45.)
Just why the deputy was so adamant in his quest to “go fishing” in the El Camino is not shown in the record. The notion that he was prompted by “general curiosity” thus violating the letter and spirit of the Fourth Amendment comes to mind. (See e.g., *Barber v. Superior Court* (1973) 30 Cal.App.3d 326, 330, 106 Cal.Rptr. 304; *People v. Williams* (1971) 20 Cal.App.3d 590, 592, 97 Cal.Rptr. 815.)
- 2 As to the “furtive gesture” (see, *ante*, p. 44), we question the “moving around in the driver’s seat” as the equivalent of a “furtive gesture.” Just how this activity is invested with a “guilty meaning” is not explained in the record. (*People v. McGaughran* (1979) 25 Cal.3d 577, 590, 159 Cal.Rptr. 191, 601 P.2d 207.) Indeed, this is so weak that neither the prosecutor below or the Attorney General on appeal even offered it as a justification for the pat-down.

OBTAINING SEARCH WARRANTS

The purpose of this order is to describe the procedures for obtaining non-telephonic search warrants by members.

I. POLICY

- A. Under the Fourth Amendment of the United States Constitution, the only legal means of obtaining evidence, excluding specific exceptions, is by search warrant. Search warrants are the most reliable means of preserving the admissibility in court of evidence seized during a criminal investigation. The San Francisco Police Department requires its members to conform themselves to the law in all aspects of their duties and particularly in obtaining evidence by means of searches and seizures.
- B. Absent a clear exception to the requirement for a warrant, searches shall be conducted under the authority of a duly issued search warrant. Where doubt is present about whether an exception to the requirement of a warrant exists, members should secure the person, place or thing to be searched and seek a search warrant.

II. PROCEDURES FOR OBTAINING SEARCH WARRANTS

- A. Members seeking search warrants may, and are encouraged to, draft their own affidavits and applications.
- B. All applications for search warrants shall be reviewed and approved by a supervisor.
- C. Search warrant applications initiated by members of the Bureau of Inspectors shall be done in accord with Bureau policy and through the appropriate prosecution section of the Office of the District Attorney.
- D. After supervisory review, all search warrant applications made by members outside the Bureau of Inspectors shall be submitted to:
 - 1. The Officer-in-Charge of the appropriate investigative section during normal business hours; or,
 - 2. The Officer-in-Charge of Night Investigations outside business hours; or,

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3. The assigned Inspector, if the search is in furtherance of a case previously assigned to a member of the Bureau of Inspectors, or if that Inspector is unavailable, the on-call members of the investigative section or the Officer-in-charge of that section if there is no on-call crew.
- E. After review and approval by the appropriate Investigative Section member, the search warrant application shall be submitted to the Office of the District Attorney through:
1. The prosecution section appropriate to the crime under investigation during business hours; or,
 2. The on-call Deputy District Attorney for search warrants during all other times by contacting that person through the Operations Center.
- F. Fax transmittal of search warrant applications to each level of review, including review and issuance by a judge, is the preferred method.
- G. Upon obtaining a search warrant, the affiant-officer shall be personally responsible for:
1. Registration of the search warrant with the clerk of the court on the next court business day after service, but never more than ten days (excluding weekends and holidays) after issuance of the search warrant. Only unusual circumstances would justify delay in registration;
 2. Delivery of certified copies of the affidavit and application to the assigned Inspector and the appropriate section of the District Attorney's Office by the next business day;
 3. Delivery of the return and inventory of the warrant to the issuing magistrate on the next court business day after service and to the assigned Inspector and D.A. prosecution section on the next business day after service.
- H. The affiant-officer is personally responsible for the proper booking into the Property Control Section, or deposit at the Narcotics drop, of all evidence seized under the authority of a search warrant.

III. OUTSIDE AGENCY ASSISTANCE

Members contacted by outside law enforcement agencies to assist in the preparation and service of a search warrant for service in San Francisco shall comply with the provisions of this order.