

No. 23-1239

IN THE
Supreme Court of the United States

JANICE HUGHES BARNES, INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE OF ASHTIAN BARNES,
DECEASED,

Petitioner,

v.

ROBERTO FELIX, JR.; COUNTY OF HARRIS, TEXAS,

Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

JOINT APPENDIX

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TABLE OF CONTENTS

	<u>Page</u>
Exhibits to Defendants' Motion for Summary Judgment (Dkt. 15):	
Exhibit 6: Affidavit of Maria Mora	1
Exhibits to Defendants' Motion for Summary Judgment (Dkt. 42):	
Exhibit 1: Affidavit of Roberto Felix (w/o exhibits).....	4
Exhibits to Plaintiff's Response to Defendants' Motion for Summary Judgment (Dkt. 44):	
Exhibit A: Dashcam Video of the Incident [Placeholder page].....	13
Exhibit B: Deposition of Roberto Felix (w/o exhibits).....	14
Exhibit C: Grand Jury Testimony of Roberto Felix.....	162
Exhibit H: Felix Witness Statement.....	174
Exhibit J: Internal Affairs Report	178

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JANICE HUGHES BARNES, INDIVIDUALLY AND AS A
REPRESENTATIVE OF THE ESTATE OF ASHTIAN BARNES,
DECEASED; and TOMMY DUANE BARNES,
Plaintiffs,

vs.

ROBERTO FELIX, JR.,
AND THE COUNTY OF HARRIS, TEXAS,
Defendants.

C.A. No. 4:18-CV-00725

Filed: July 30, 2019

AFFIDAVIT OF MARIA MORA

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me on this day personally appeared Maria Mora, who being first duly sworn by me, deposed and said:

1. “My name is Maria Mora. I am over the age of eighteen and have never been convicted of a crime. Each of the following facts is based on my own personal knowledge and each fact is true and correct.
2. I am employed by Harris County. I presently serve as a deputy constable at the Harris County Constable Precinct 3 Office. On April 28, 2016, I served as a dispatch supervisor for the Harris County Toll Road Authority. At that time, I worked the evening shift, from 3:00 pm to 11:00 pm. On April 28, 2016, I came in early for a meeting, which I then learned was cancelled.
3. I was in the process of logging into my station in the center console of the Harris County Toll Road Authority dispatch center. As I did so, I immediately heard the dispatcher on Dispatch One, the emergency channel, ask a patrol unit if he were under control. I believed that something was amiss, and immediately asked the deputy’s location so that I could focus a camera at that location.
4. As soon as I focused the camera on the traffic stop being conducted by a deputy constable whom I later learned was Harris County Precinct 5 Deputy Constable Roberto Felix (“Deputy Felix”), I saw Deputy Felix standing on the driver’s side of a small sedan interacting with the driver of the vehicle. I could see on the video surveillance that the door of the driver’s seat of the small sedan was open, and Deputy

Felix was standing between the door and the sedan.

5. I watched as the driver's vehicle took off. I saw the door of the vehicle close and trap Deputy Felix between the car and the door. I saw that Deputy Felix was pinned between the door and the sedan. Deputy Felix was trying to hold on, and couldn't key up or ask for help on the radio.
6. I became very frightened, starting freaking out and told the other units that the car is taking off with Deputy Felix hanging onto the door. I believed that the driver of the sedan was going to kill Deputy Felix by running over him. As I tried to keep the camera focused on the incident unfolding before my eyes, I heard Deputy Felix's radio transmission of "Shots fired."

FURTHER AFFIANT SAYETH NOT.

/s/ Maria Mora

MARIA MORA

SUBSCRIBED AND SWORN TO before me this 2 day of July, 2019, to certify which witness my hand and seal of office.

NOTARY PUBLIC, STATE OF TEXAS

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JANICE HUGHES BARNES, INDIVIDUALLY AND AS A
REPRESENTATIVE OF THE ESTATE OF ASHTIAN BARNES,
DECEASED; and TOMMY DUANE BARNES,

Plaintiffs,

vs.

ROBERTO FELIX, JR.,
AND THE COUNTY OF HARRIS, TEXAS,

Defendants.

C.A. No. 4:18-CV-00725

Filed: July 31, 2020

**AFFIDAVIT OF HARRIS COUNTY DEPUTY
CONSTABLE ROBERTO FELIX**

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned authority, on this day personally appeared Roberto Felix, who, being first by me duly sworn, deposed and said:

1. “My name is Roberto Felix. I am over the age of eighteen and have never been convicted of a crime. Each of the following facts is based on my personal knowledge, and each fact is true and correct.
2. I am currently employed by the Harris County Precinct 5 Constable’s Office (“Precinct 5”) and have been so employed since October 2, 2004. I received my Peace Officer License from the Texas Commission on Law Enforcement (“TCOLE”) on September 29, 2004, after completing the Basic Peace Officer Academy at the University of Houston-Downtown Law Enforcement Academy in July, 2004. While I attended the Basic Peace Officer Academy, I served as a detention officer at the Harris County Sheriff’s Office. In connection with that employment I was trained in the Basic County Jail Course and held a Jailer license issued by TCOLE.
3. I hold the following TCOLE certificates: Basic Peace Officer; Intermediate Peace Officer; and Advanced Peace Officer, received on September 15, 2013. As of April 28, 2016, when this incident occurred, I had successfully completed approximately 1,676 hours of continuing law enforcement training. A true and correct copy of my personal status report from TCOLE, which identifies the classes that I took and the number of hours for each class, is attached hereto as Exhibit “1” and incorporated by reference for all purposes herein.

4. On April 28, 2016, I held the position of Precinct 5 traffic enforcement officer. That position included the full range of traffic enforcement duties, including stopping violators for speeding and other traffic violations and working both minor, major and fatality accidents and other traffic enforcement duties. On April 28, 2016, I was wearing a Harris County Constable Precinct 5 uniform and driving a marked Harris County Constable Precinct 5 vehicle. At approximately 2:40 pm on that day, I was working traffic enforcement on the Sam Houston Tollway when I heard a radio broadcast from the Harris County Toll Road Authority dispatcher with regard to a prohibited vehicle. I requested that the dispatcher send me the information about the prohibited vehicle, and I began looking for it. The dispatcher provided me with the license plate number for the vehicle a second time and I checked the color of the vehicle as being silver.
5. I continued driving southbound on the Tollway looking for the vehicle. I spotted the vehicle driving in the number one traffic lane. I confirmed the license plate with Dispatch, and advised them of my location. I caught up to the vehicle, and initiated the traffic stop by immediately activating the emergency lighting equipment on my vehicle. The driver, later identified as Ashtian Barnes (“Barnes”) pulled to the left shoulder of the tollway and stopped adjacent to the cement divider separating the north and southbound lanes of the tollway. I parked my vehicle at a safe distance behind the

Toyota Corolla and turned my front tires to the left as a safety measure in the event my vehicle were to be rear ended.

6. I exited my vehicle and approached the Toyota Corolla and talked to Barnes. A copy of the video from the dashcam on my patrol vehicle is attached to the Affidavit of Scott E. Forbes, Custodian of the Records for the Harris County Precinct 5 Constable's Office. I informed Mr. Barnes of the reason for the stop and requested that he provide me with his driver's license and proof of insurance. Barnes indicated that he did not have his driver's license and that this was a rental car. I initially learned from Barnes that he had rented the vehicle a week earlier. Then, Barnes indicated that the vehicle was rented in his girlfriend's name.
7. I leaned my head closer to the open driver's door window of the Toyota Corolla to better hear what Barnes was saying, due to the loud traffic noise on the Toll Road. I smelled the strong odor of marijuana coming from the vehicle and I requested that another unit check by with me to assist me in the traffic stop as I knew I would have to get Barnes out of the vehicle for further investigation. During this time, Barnes kept reaching around the vehicle, on the passenger's side and in the center console area. He grabbed a handful of papers and started to go through them, but only flipping through them and not actually looking at them. He then reached over toward the passenger floorboard toward a red plastic cup that appeared to have trash in it. I told him,

“Don’t dig around.” Mr. Barnes seemed very nervous. He continued to fumble through the paperwork, causing me to repeat my request to stop digging around several times because I was concerned that he might access a weapon. I watched Barnes intently as I talked with him to be alert to any potential threat. Barnes’ behavior caused me to move my right hand onto the grip of my firearm. Barnes then reached over and turned off the ignition and placed his keys in the gear shift area.

8. I then asked Barnes if he had anything in the vehicle I should know about because I smelled marijuana. Barnes indicated that there was not, but he reached toward the right front passenger’s floorboard and seat, fumbling through papers while making eye contact with me instead of focusing on what he was looking for and again I was concerned about his intentions.

Barnes then indicated that his driver’s license was in the trunk, and that I could get it if I wanted to.

9. I told Barnes to pop the trunk open to give him the impression that I intended to leave him seated in the vehicle while I checked the trunk to look for it. I opened the driver’s side door and told Barnes to step out. As I did so, he immediately grabbed his keys and turned on the vehicle. I drew my weapon and told him something to the effect of “Don’t do it” as he started to quickly put the car in drive.

10. It happened in a split second. Barnes' hand dropped down toward the gear shift and he put the car in drive as the left side of my body was in the vehicle. As he put the car in drive he started to drive off. As the Toyota accelerated from the scene, the driver's door immediately swung back into the left side of my body. In hindsight I believe that it was due to the forward inertia of the vehicle creating pressure against my torso. At that time I believed it had pinned me because my body was within the vehicle trying to keep him from putting the car in drive. At this point, I feared I was going to be seriously injured or possibly even killed. My initial reaction was that I was going to get run over or dragged by the car. I quickly jumped onto the door sill and held on so I wouldn't get run over or dragged.
11. My left arm and upper torso were out of the vehicle trying to keep a grip on the windshield, fearing I would be thrown off. My right hand was still inside the vehicle with my duty weapon drawn. As he drove off, I yelled "Don't fucking move." I yelled that twice, but Barnes kept driving.
12. I was unable to see anything inside the vehicle but I could feel my right hand, which was holding my weapon, being moved and pressure on my gun. I believe I yelled for him to stop, and at that point, fearing that I would get thrown from the vehicle or crushed by the retaining wall, I discharged my pistol once, evaluated and it appeared to have no effect. I sensed that the vehicle then sped up. Fearing that Barnes

could kill me by taking my weapon or crushing me, I fired a second time. Again these events were occurring very quickly. The vehicle then slowed down almost to a stop, and I jumped off and held Barnes at gunpoint. I immediately got on the radio and said, "Shots fired. Send HFD." I provided my location to Dispatch and then checked again to confirm that the Houston Fire Department was responding to provide Barnes with medical care. I continued to hold him at gunpoint and a secondary unit arrived to assist. We both maintained him at gunpoint until a third unit arrived. I then holstered my pistol and stood to the side because I was feeling leg pain. When additional units arrived, I went back to my patrol vehicle and sat down.

13. When Barnes refused my order to step out of the vehicle, put the key back in the ignition and began to leave the scene, I was faced with a situation which was dangerous, occurring very quickly and I believed that he presented me with a threat of serious bodily injury or death. The outcome was tense, uncertain and rapidly evolving. When the driver's door swung back into the left side of my body as I was on the door sill, it was at that point that I feared that I would be seriously injured or possibly even killed by being run over or dragged by Barnes' vehicle. I discharged my firearm twice in an attempt to stop the threat of death or serious bodily injury which Barnes' actions presented.
14. I understand that the Houston Police Department investigated this incident, as did the Harris County District Attorney's Office.

This matter was presented to a grand jury, before which I testified, and I was not billed. I understand that Precinct 5 conducted an investigation of this incident. I was determined to have followed Precinct 5 policy in connection with the handling of this incident, and was not disciplined in any manner.

15. At all times relevant to this incident, I was within the scope of my authority as a peace officer. I was performing a discretionary duty with regard to the actions I took in stopping the prohibited vehicle. At the time I deployed the reasonable force that I did, I reasonably believed that Barnes presented a danger to me and others; he committed the offense of Aggravated Assault or Attempted Capital Murder, and was resisting and evading arrest. Pursuant to my law enforcement training my actions were consistent with the actions of a reasonable and well trained law enforcement officer. In short, I acted at all times in good faith and guided my actions pursuant to my law enforcement training.”

FURTHER AFFIANT SAYETH NOT.

/s/ Roberto Felix

ROBERTO FELIX

12

SUBSCRIBED AND SWORN TO before me this 1
day of July, 2019, to certify which witness my hand
and seal of office.

/s/ Andrea Mintzer

NOTARY PUBLIC, STATE OF TEXAS

**[Exhibit placeholder page as filed on the
S.D. Tex. docket at Dkt. 44-1:]**

Exhibit A – Dash Cam Video of the Incident

File exceeds the size for electronic filing, and has
been directly delivered to the court. See the Video
Exhibits previously filed as indicated in Docket No.
19.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JANICE HUGHES BARNES, INDIVIDUALLY AND AS A
REPRESENTATIVE OF THE ESTATE OF ASHTIAN BARNES,
DECEASED; AND TOMMY DUANE BARNES,
Plaintiffs,

vs.

ROBERTO FELIX, JR.,
AND THE COUNTY OF HARRIS, TEXAS,
Defendants.

Cause No. 4:18-CV-00725

ORAL AND VIDEOTAPED DEPOSITION OF
ROBERTO FELIX
FEBRUARY 18, 2019

ORAL AND VIDEOTAPED DEPOSITION OF
ROBERTO FELIX, produced as a witness at the
instance of the PLAINTIFFS, and duly sworn, was
taken in the above-styled and numbered cause on
FEBRUARY 18, 2019, from 10:00 a.m. to 3:23 p.m.,
before Aubrea Hobbs, CSR, RPR, in and for the State
of Texas, reported by computerized machine
shorthand, at the Harris County Attorney's Office,
1019 Congress Avenue, 15th Floor, Houston, Texas,

pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

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-and-
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ALSO PRESENT:

Mr. Zach Sigler, Videographer

* * *

P R O C E E D I N G S

(Exhibits Nos. 1-27 premarked.)

THE VIDEOGRAPHER: Today's date is February 18th, 2019. The time is approximately 10:00 o'clock a.m. We're on the record. Will you please swear in the witness.

ROBERTO FELIX,

Having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. FOMBY:

Q. Officer Felix, is that the proper way to refer to you?

A. It's Deputy Felix.

Q. Deputy Felix, okay. I'm Howard Fomby. I'll be asking some questions today for the plaintiff in this case, Janice Barnes, the mother of Ashtian Barnes.

A. Yes, sir.

Q. One of the things that --

MR. FOMBY: Is this coming through okay?

Q. (BY MR. FOMBY) Before we get started, one of the things I wanted to say is that this process is really about getting to the truth, about finding out what happened on the 28th of April, 2016. And as such --

MS. BAKER: I'm going to object to the narrative of this deposition. Could you ask a question, please?

Q. (BY MR. FOMBY) I -- well, my narrative is that I -- because we're trying to get to that, I want to be fair to you. So I don't have any intention of badgering you or trying to cut you off or change the meaning of your words or any of that sort of thing. Okay?

A. Okay.

Q. And occasionally my wife tells me that I say things that I think I understand and she thinks it's all garbled. So with that being in mind, if I say something you don't understand at any point, or that you need more clarification, I want to ask you to just stop me

and – and let me know, okay? If I say something that you didn't hear completely, then stop me and let me know and I'll repeat it, okay?

A. Okay.

Q. Because this process doesn't work well unless we're fair with each other. And at the end of this whole process I'm going to give you an opportunity if you want, in my experience people –

MS. BAKER: Object to sidebar. Please ask a question, Mr. Fomby.

MR. FOMBY: I am going to ask a question but I want to set the predicate to let him know what the process is. That at the end of this I'm going to give you an opportunity to correct anything that you think needs to be corrected.

MS. BAKER: You can do that. I'm going to object to your continuing sidebar. You can do that when you ask him a question at the end.

Q. (BY MR. FOMBY) Now, Deputy Felix, could you – I know that you've already given the name – your name to the court reporter, but for – on the record could you please tell us your full name?

A. Full name is Roberto Felix, Jr.

Q. Okay. And Deputy, where do you reside currently?

MS. BAKER: I'm going to object to that on the basis of the law enforcement privilege and instruct the witness not to answer. That matter is privileged.

Q. (BY MR. FOMBY) Deputy, who do you currently work for?

A. I currently work for the Harris County

Constable's Office, Precinct 5.

Q. And what is your title or position with the –

A. My title is deputy with Harris County Precinct 5.

Q. Now, I want to talk a little bit about your training and preparation for the job that you're at.

A. Yes, sir.

Q. Did you have any opportunity to complete high school?

A. Yes.

Q. And did you go to college on any kind of a baccalaureate or junior baccalaureate program?

A. Yes.

Q. And what high school did you attend?

A. I attended Willowridge High School.

Q. And you graduated from that high school; is that right?

A. I did.

Q. And how about college? Which college did you attend, or colleges?

A. I attended Houston Community College and San Jacinto College.

Q. And did you receive a degree from either of those?

A. Not -- not as of now, no.

Q. Okay. So I have a -- sort of a resume that was provided by the Texas Commission on Law Enforcement and it says that you started work with the Harris County Sheriff's Office in July of 2003; is

that correct?

A. I believe it was June.

Q. Okay. And prior to working as a jailer, did you have any other kinds of employment?

A. Yes.

Q. And -- and what were those jobs?

A. I -- a job prior to that was at an advertising agency.

Q. And what did you do for them?

A. I did numerous different things including mail room, answering phones and assisting in advertisement approvals.

Q. And after you left the advertising agency, is that when you went to work for the Harris County Sheriff's Department?

A. Yes.

Q. And as -- it says here that you were a jailer. Is that the correct title?

A. Detention officer.

Q. Detention officer. And as a detention officer, what were your duties?

A. To maintain security of a facility and supervise the inmates.

Q. And from that point what -- what was your next position after you stopped being a jailer?

A. I was a deputy with Harris County Precinct 5.

Q. And approximately when did you start as a -- as a deputy?

A. I started with the Harris County Constable's Office on October 2nd, 2004.

Q. When you first started with Harris County Precinct 5, what was your title at that point?

A. It was a deputy.

Q. Okay. Are there levels of deputies?

A. Well, there's a deputy 5 I believe and then it goes down in numbers as your years of service with the department.

Q. Okay. When you say it goes down a number, that means --

A. So deputy 4, 3 --

Q. -- is a 5 the highest or lowest?

A. The lowest.

Q. So when you started you would start as a level 5?

A. Give me a second. Actually I'm not too sure about that at this time, but I believe that's how it -- how it descends.

Q. And what level are you currently?

A. I am a deputy 1, I believe.

Q. Okay. And have you earned -- at -- in the -- the Constable's Office, have you earned any particular certificates?

A. I've received numerous certificates.

Q. Okay. So what kind of certificates have you received in your career as a peace officer?

A. Too many to recall at this time, but I've been -- advanced peace officer certification, I received certifications in numerous other

aspects, like DWI investigation and -- just too many to -- to -- to name or recall. I've done, you know, animal investigation, K9 encounters is what's it's called.

I've done field training officer. I've done accident investigation, accident reconstruction along with, like I said, numerous, numerous that don't come to mind right now.

Q. Okay. So all of those, are those classes that you took and completed to get the certificate?

A. **That's correct.**

Q. Okay. Now, did you take any classes at the University of Houston downtown in training to be a peace officer?

A. **Yes. That was the police academy that I attended for my certification.**

Q. Okay. And how long is that particular course?

A. **The course that I attended ran from January through August.**

Q. So approximately seven to eight months long?

A. **That's correct.**

Q. And do they track that by way of hours, course hours that you took?

A. **They do.**

Q. Do you know how many course hours you took to become a peace officer?

A. **I cannot recall at this time.**

Q. What kind of coursework did you take at the University of Houston downtown to become a peace officer?

A. The standards set by TCOLE, which is, you know, Penal Code, you know, traffic, mechanics of arrest, you know, building searches. There's a CCP and anything else that's required by the TCOLE.

Q. Okay. And in taking those courses, did they teach you any courses -- any -- was there any coursework in that training on constitutional rights of citizens and defendants?

A. There is a segment of when we're doing case law per training to CCP and the Penal Code.

Q. Okay. And so in the course of that training, did you receive any training specifically in constitutional prohibition against illegal search and seizure?

A. Yes.

Q. And what is your understanding about what the constitution says about illegal searches?

MS. BAKER: Objection, vague, calls for a legal conclusion, but you may answer.

A. For illegal search and seizures? Is that your question?

Q. (BY MR. FOMBY) Yes.

A. Okay. We have the right to -- to -- give me a second, sorry. The Fourth Amendment to unreasonable searches and seizures.

Q. Okay. And in conducting a search, can you conduct a search without a warrant?

MS. BAKER: Objection, calls for a legal conclusion and vague and overly broad, but you may answer.

THE WITNESS: Okay.

A. There are situations where you can conduct a search without a warrant.

Q. (BY MR. FOMBY) As a police officer or deputy, were you trained in what those exceptions are?

A. Yes.

Q. Do you recall what the exceptions were that you were trained in?

A. Repeat your question.

Q. Do you recall what those exceptions are from your training?

A. Well, there's just numerous that were gone over, but it would be reasonable suspicion that, you know, something is -- could or would - - would happen.

Q. And when you say that something could or would happen --

A. A crime.

Q. -- do you mean a crime?

A. A crime.

Q. Okay. Deputy, have you ever taken a class on escalation of force?

A. Yes.

Q. And when was -- when did you first take that class?

A. I cannot recall at this time.

MS. BAKER: Was that escalation or de-escalation?

MR. FOMBY: De-escalation.

THE WITNESS: I'm sorry.

MS. BAKER: Okay. You said escalation.

MR. FOMBY: Well, escalation and de-escalation would be opposite sides the same point.

MS. BAKER: Yes, I understand that.

MR. FOMBY: So de-escalation.

MS. BAKER: So what was your question?

A. De-escalation.

Q. (BY MR. FOMBY) De-escalation?

A. Yes.

Q. Would the date that you first took a class in de-escalation techniques be somewhere around the end of August of 2018?

A. That was the last class that we -- we took.

Q. I'm going to show you, Deputy, the document that we were given by the Texas Commission on Law Enforcement. This is their listing.

MR. FOMBY: I -- I'll get it.

Q. (BY MR. FOMBY) This is their listing of the coursework that you've taken.

MR. FOMBY: I'll have to remember to unclip this next time.

THE VIDEOGRAPHER: No problem.

A. (Witness examines document.)

Q. (BY MR. FOMBY) Okay. Have you had an opportunity to review it?

MS. BAKER: Actually, for the record, this document has our Bates number on it, so -- so you may have gotten a separate document from the Texas Commission on Law Enforcement. This -- this one that you're showing the witness is Bates numbered with the Harris County Bates numbers.

MR. FOMBY: Absolutely.

Q. (BY MR. FOMBY) To be clear, this document comes from your attorneys.

MS. BAKER: Yes.

Q. (BY MR. FOMBY) And were provided as part of discovery --

MS. BAKER: Yes.

Q. (BY MR. FOMBY) -- pursuant to our request for information on your training.

MS. BAKER: Correct. I may have misunderstood you, but I thought you said we obtained it from the Texas Commission on Law Enforcement.

MR. FOMBY: Exactly.

Q. (BY MR. FOMBY) And I'm sorry for that, and my co-counsel reminded me to make that clear.

MS. BAKER: Are you going to mark that? Are you going to mark that?

MR. FOMBY: Yes, we will.

MS. BAKER: Okay.

A. (Witness examines document.) Okay.

Q. (BY MR. FOMBY) Okay, Deputy. Now I'm going to ask you to -- starting with page 1, is there anything on page 1 that talks about a class that you took in de-escalation techniques?

MS. BAKER: I just -- I apologize for objecting so much, but I just feel very uncomfortable with being asked about page 1 without it being marked. So could we mark this?

MR. FOMBY: Certainly. Can you have this marked as Exhibit --

THE REPORTER: It's going to be 30.

MS. BAKER: Thank you. And how does it get to be 30?

(Exhibit No. 30 marked.)

Q. (BY MR. FOMBY) On the page 1 of this where it's Bates HC/Barnes-1721 at the bottom, is there anything on that page that discusses classes in de-escalation techniques?

A. No, there's not.

Q. Okay. Turning to the next page Bates marked 1722, is there anything there that lists a class that you took in de-escalation techniques?

A. Yes.

Q. And is it -- does it list a particular date you took that?

A. Course date is August 23rd, 2018.

Q. Are there any other references to de-escalation techniques classes on that page?

A. Specific for de-escalation, no, but the class -- some classes that are taught, the de-escalation technique is taught in those classes as well.

Q. Okay. But in particular, de-escalation techniques, are there any other classes that you took specifically for de-escalation techniques listed on that page?

A. No.

Q. Let's look at the next page Bates marked 1723. Is -- are there -- is there any coursework on this page that is specific to de-escalation techniques?

A. That says a title or that corresponds with

the de-escalation techniques itself?

Q. What's that?

A. I said the title or the teaching of the de-escalation techniques?

Q. Any classes specifically oriented toward de-escalation techniques?

A. Yes.

Q. Which class is that?

A. It's going to be the less lethal electronic control device.

Q. And that, that would be taser training, is that an easier way?

A. Correct.

Q. Okay. So in less lethal electronic control device update, that is a -- is that a regular update course?

A. That's correct. That's the update after the original -- the original taser class was done.

Q. Okay. And that class would teach you on how appropriately -- properly to use a taser as an alternative to -- alternative to more lethal forms?

A. Correct.

Q. Correct, okay. Let's move to the next page, 1724. And again, the same question. Is there any class listed, any training class listed on this page that's specific to de-escalation techniques? And in this -- there is -- I know there are other classes on less lethal control, the taser reoccurring training.

A. Uh-huh (Affirmative.)

Q. But other than that --

A. Yes.

Q. -- any other classes? What classes would that be?

A. It's going to be the baton.

Q. Okay.

A. The firearms.

Q. And similar in those cases to the taser, you're being taught how to use alternative weapons as -- weapons as an alternative to using lethal force?

A. When appropriate.

Q. And what were the dates of your baton and firearms classes?

A. That was in June 7, 2013 and February 11th of 2013.

Q. Moving to the next page, 1725, again, the same question. Are there any classes that are specific to de-escalation techniques?

A. Yes.

Q. And what classes would those be?

A. It's going to be the use of force, intermediate core course.

THE REPORTER: What was that second part?

THE WITNESS: Intermediate core course.

A. I can say traffic as well, and. . .

Q. (BY MR. FOMBY) Okay. And those classes, what years were those classes taken in?

A. The year is going to be in -- also, I'm sorry, did I say use of force?

THE REPORTER: Could you speak up, please? I'm sorry.

A. Did I say use of force? There's use of force and then there's use of force intermediate, so there's two classes. One in 2011 and one in 2010.

Q. (BY MR. FOMBY) There's also -- there are actually three use of force classes on that page written on?

A. Okay. There is.

Q. Okay. Moving on to page 1726. Same question. Any classes there that are specific to de-escalation techniques?

A. There's the use of force intermediate core course, there is -- and the crisis intervention training.

Q. And what years were those courses?

A. In 2009 and 2007.

Q. And on page 17, Bates number 1727, same question. Any classes that are specifically dedicated to de-escalation techniques?

A. There's the crisis intervention training in 2005.

Q. Okay. Is that it?

A. I believe so, yes.

Q. So in looking at these, Deputy, you've mentioned a number of classes that involve particular types of weapons.

A. Uh-huh (Affirmative.)

Q. You've mentioned a number of classes that involve a variety of situations, but how many classes have you taken that are dedicated only to de-escalation techniques?

MS. BAKER: Objection, vague.

Q. (BY MR. FOMBY) You can answer.

MS. BAKER: Oh, I'm sorry. Yes.

THE WITNESS: Okay, I apologize.

MS. BAKER: I'm sorry. Unless I instruct you --

THE WITNESS: Okay.

MS. BAKER: I'm objecting for the record.

A. That would be the class that was done in August of 2018 as a mandated course by TCOLE.

Q. (BY MR. FOMBY) Let's turn back to page 1723 and move down to the lower -- about two thirds of the way down. This Ashtian Barnes, the shooting of Ashtian Barnes occurred on April the 28th, 2016. What was the next class that you took in terms of training after that shooting?

A. It was the Lidar radar training.

Q. All right. After that what was the next class that you took?

A. It was the less lethal electronic control device update.

Q. And that again would be a taser update?

A. Taser.

Q. Okay. What was the next class?

A. K9 encounters.

Q. How about the next class?

A. Field training officer.

Q. Okay. So other than the training classes, from the time of the shooting through the next year, are there any classes that involve de-escalation of force,

de-escalation techniques?

MS. BAKER: Objection, vague. You may answer if you understand the question.

A. Can you repeat the question?

Q. (BY MR. FOMBY) Sure. From 2010 [sic] 2016 to June the 1st of 2017, other than the taser updates, did you take any classes on de-escalation of force?

A. No.

Q. In that same time period, did you take any classes about the policies of the use of force?

MS. BAKER: Objection, vague. I don't know what you're talking about.

Q. (BY MR. FOMBY) Did you take any classes other than the class on the taser update? Did you take any classes during that period that involved the appropriate use of force?

A. Okay. Can you clarify that question again? I'm sorry.

Q. Sure. Okay. From 2010 -- 2000 -- sorry. 2-10-2016, which was before the shooting, to we'll take it all the way out to the end of this course block, August 7, 2017, other than your taser update class, did you take any classes that involved the appropriate use of force?

A. Patrol rifle could be considered, you know, a use of force class or --

Q. What did you learn in patrol rifle?

MS. BAKER: Objection, vague.

Q. (BY MR. FOMBY) What was the nature of the class -- of the coursework for patrol rifle?

A. Patrol rifle was techniques, accuracy and deploying a rifle in situations.

Q. Okay. Other than that and the taser class, in that period of time, did you take any classes that specifically dealt with appropriate use of lethal force?

A. No.

Q. Now, Deputy, this particular incident on April 28th, 2016 began with a traffic stop, right?

A. That's correct.

Q. Can you walk me through -- let's walk through the phases of a traffic stop.

A. Okay.

Q. Okay? Starting with you have some -- you're given some indication of a reason to pull someone over?

A. Yes.

Q. And that may be that you see them speeding, you may see them driving erratically, but for whatever reason, you observe or something is communicated with you that says you need to pull this person over. What's the next thing -- as soon as you do that and you know that you need to pull someone over, what's the next thing you do?

MS. BAKER: I'm going to object to that question as vague, but that being said, you may answer.

THE WITNESS: Okay.

A. It depends.

Q. (BY MR. FOMBY) Okay.

A. Now, once the indication is given there by, you know, myself or dispatch, then the next step

is to follow the vehicle, you know, run the license plate and, you know, put yourself on the computer for a traffic stop.

Q. So when you say that you run the license plate -- excuse me -- and you put yourself on the computer, do you -- do you have a computer in your squad car?

A. Yes.

Q. Okay. And when you say "run the license plate," what does that mean? What are you doing with the license?

A. That means you're checking the license plate.

Q. Okay.

A. Whenever it's feasible or possible to do so at that time.

Q. Okay. And when you run a license plate on your computer, what kind of information does it give you back?

A. It could be numerous types of information. Registration, whether it's a stolen vehicle, if there's any wanted hits or wanted persons depending on the type of information that's entered by either a police agency or -- or DPS.

Q. So you say it checks registration. Would that generally tell you who owned the car?

A. It tells you who the car is registered to.

Q. Okay. Then you say "put yourself on the computer for a traffic stop." What -- what is that about?

A. Okay. So whenever we conduct a traffic

stop, that's how we dispatch to see your location, which could include the license plate number of the vehicle, the vehicle description and your location of the traffic stop.

Q. So going back to this particular case, you were given the identification of the -- of the license plate; is that correct?

A. That's correct.

Q. And who gave that to you?

A. That was the Harris County Toll Road Authority dispatch.

Q. Okay. And you were told -- were -- were you given a description of the car as well to look for?

A. That's correct.

Q. Okay. So when you received that information about Ashtian Barnes' Toyota, what did you do next?

A. When I received the information from dispatch of the vehicle in question, I tried to look for the vehicle in traffic and spotted the vehicle.

Q. And did you, in fact, locate the vehicle in traffic?

A. Yes.

Q. And where was his car?

A. At the time of me locating the vehicle, the vehicle was traveling southbound right around Bellaire, I believe.

Q. Okay. What lane was he in?

A. I believe he was in lane one.

Q. And that would be the -- the lane closest to the middle of the road, the middle -- the left-hand side?

A. Lane one would be the left lane, and then any lanes to the right of that would be sequential number two, two to one.

Q. At what point in a traffic stop like this do you turn on your lights -- your turn on your lights?

A. When I'm trying to get behind the vehicle or when I'm directly behind the vehicle.

Q. Okay. And is it -- is it fair to say that the reason for turning on the lights is to signal that particular driver that you want -- that you're after that person?

A. It's -- it's to make them aware I'm behind them to either pull over or stop.

Q. Right. Okay. Now you also have a siren?

A. That's correct.

Q. So when would you -- did you use a siren in this case?

A. No, I did not.

Q. Okay. When would you use a siren?

A. When the driver fails to pull over or stop or to get their attention.

Q. Now in this particular case, you maneuvered behind, you located Ashtian Barnes in the Toyota in lane one on the tollway, and maneuvered behind him and turned on your lights; is that correct?

A. What I said was I believe he was in lane one, yes.

Q. And so when you turned on your lights, did Ashtian Barnes attempt to at that point speed up and drive away?

A. No, he did not.

Q. Did Ashtian Barnes exhibit any kind of movement within the lane that showed that he might not be in complete control of his vehicle?

A. No.

Q. And by that I mean you've seen drunk drivers. Did he drive like he was drunk or impaired at that point?

A. No.

Q. Okay. So you turned on your lights, how long did it take for Ashtian Barnes to respond to your lights coming on and start braking?

MS. BAKER: Objection, calls for speculation.

Q. (BY MR. FOMBY) Approximately.

A. Within seconds.

Q. Okay. So in your experience that's a normal response. You see a flash, you check it, you go oh no, I'm being pulled over and then you start pulling -- slowing down; is that --

MS. BAKER: Object to the form.

A. Yes.

Q. (BY MR. FOMBY) Okay. And some drivers don't do that; is that correct?

A. Correct.

Q. Okay. But in this case, Ashtian Barnes responded about as quickly as you're used to drivers responding; is that right?

A. Yes.

Q. And once he started pulling over, did he -- which lane did he pull into to stop?

A. He pulled into the left shoulder.

Q. Okay. And in fact, he came to a stop; is that correct?

A. That's correct.

Q. So the two of you were stopped on the shoulder of the road. He's in front of you; is that correct?

A. That's correct.

Q. Okay. About how far was his -- the rear of his car from the front of your car at that point?

A. I would say about a car's length.

Q. Okay. And that would be depending on the car, ten, 12 feet?

A. Approximately.

Q. Okay. It could be different if you have one of those little squish cars, right?

A. Correct.

Q. Okay. So at that point you've got a car stopped, you've entered into the computer that you have initiated a traffic stop. What's the next thing that you do before you would leave the car, the squad car?

A. I advise dispatch of my location.

Q. And at that point you would step out of the squad car?

A. Yes.

Q. Are there some procedures that you are taught to follow to protect you from traffic?

MS. BAKER: Objection, vague.

Q. (BY MR. FOMBY) In approaching a stopped vehicle on the side of the road with cars flying by at 65, 70 miles an hour, are there procedures that you're taught to follow, to keep your -- you and the individual

in front of you from being hit?

A. We approached the --

THE VIDEOGRAPHER: I'm sorry, it was just causing a lot of feedback. Sorry.

MR. FOMBY: Let me take this off. This might help you.

Q. (BY MR. FOMBY) I'm sorry, Deputy.

A. Okay. So we exit the vehicle, we approach the non traffic side when possible.

Q. Okay. And is that what you did in this case?

A. Yes.

Q. Normally when you approach a driver, do you try to get their attention?

MS. BAKER: Objection, vague.

A. No. When I approach a driver, I'm looking at them, not them trying to look at me.

Q. (BY MR. FOMBY) Okay. How do you get their attention to get them focused on you?

A. Well, once I approach the vehicle to the either driver or passenger door, whatever side I'm making contact with them, I look in the window or knock on the window to make contact with them.

Q. And when you look in the window, are you looking not just at the passenger but to get a sense of what's going on in the car?

A. That's correct.

Q. That's part of your training?

A. That's correct.

THE VIDEOGRAPHER: Mr. Fomby, could you just clip it on all the way. I'm sorry. That'll do it. Perfect. Thank you.

MR. FOMBY: Okay.

Q. (BY MR. FOMBY) So in this case, you walk up to the window and you get Ashtian Barnes' attention. Is his window up or down at this point?

A. His window was down.

Q. Okay. Was it down the entire time that you observed the vehicle or did he lower it?

A. It was down when I approached the vehicle. I'm going to correct myself. I believe it was down, not all the way, but it was down to where I could hear him, he could hear me.

Q. Okay. When you approached the vehicle at that point, did you happen to see any kind of smoke or anything else coming out of the window?

A. No.

Q. As you're approaching the vehicle from the rear of the vehicle, at that point did you happen to smell any strange odors?

MS. BAKER: Objection, vague.

A. Not from approaching the vehicle, once I was at the driver's side window.

Q. (BY MR. FOMBY) Okay. So you're standing beside Ashtian Barnes at the driver's side window and what's the first thing that you ask him for?

A. Well, the first thing I do is I introduce myself, let him know who I was and why he was being stopped. At that point I asked him -- he actually interrupted and said that it was a

rental car.

Q. Now, when you say that he interrupted you, were you telling him that he was being stopped for a toll tag violation?

A. That is correct.

Q. So when he responded then, it was not just a random response, it was informing you that this was a rental car so that might not -- that he might not be responsible for the toll tag problem?

MS. BAKER: Objection, calls for speculation.

Q. (BY MR. FOMBY) Is that fair to say?

MS. BAKER: Objection, calls for speculation.

A. Okay. Repeat your question.

Q. (BY MR. FOMBY) Did it -- did it appear to you that his interrupting you with oh, this is a rental car, was unrelated to the -- to the -- what you were telling him at the time?

A. No.

Q. Okay. Because if it was a rental car, that would be directly related to whether or not he was personally guilty of any outstanding tolls; is that correct?

A. Not necessarily. The person responds sometimes when you're getting the information, respond by either saying it's not my car, it's a rental, but until that fact is checked out, then we proceed with the -- the investigation or issuing of any citations at that point.

Q. Okay. Now you said that at the beginning of this traffic stop, you would check on the registration of the vehicle; is that correct?

A. When -- when possible.

Q. Okay. And did you, in fact, receive the information before you left the vehicle as to who the -- who the car was registered to?

A. No.

Q. Did you check on that before you left?

A. No.

Q. Would that normally be available to you or on your computer screen in your car?

A. Sometimes.

Q. Okay. I'm showing you what we have received in discovery. It's Bates stamped -- it's upside down. I think 198.

MR. FOMBY: Can we enter this as 31?

(Exhibit No. 31 marked.)

MS. BAKER: Can we -- could we go off the record for one second? I have a question for you. So can we go off the record?

THE VIDEOGRAPHER: Would you like to go off the record, Mr. Fomby?

MR. FOMBY: Yes. That's fine.

THE VIDEOGRAPHER: The time is approximately 10:45 a.m. We're off the record.

(Off the record.)

THE VIDEOGRAPHER: The time is approximately 10:53 a.m. We're on the record.

Q. (BY MR. FOMBY) Now -- okay. Now before we continue, some questions were raised -- a concern raised about the premarked exhibits here. These are simple screenshots taken off of a video that was provided under discovery by opposing counsel. They

have a copy of the video, we have a copy of the video. The video is very difficult to see from the standpoint of, you know, when things specifically happened, so we've printed these off. We are going to provide a copy of each of these that we're going to show today to opposing counsel.

They're being offered for the purposes of not necessarily evidentiary but for purposes of helping you understand what's going on and explaining what's going on at various points during the traffic stop and thereafter. Okay.

MS. BAKER: Thank you for that explanation, Mr. Fomby, and I appreciate that. And a question I have is, are these in sequential order? Do you have any representations about that? In other words, do they skip around, is there some reference by which we can understand like whether some parts were skipped or they're nonsequential or are they sequential?

MR. FOMBY: These photos will be offered in sequential order. There is a time stamp on the bottom of each photograph --

MS. BAKER: Okay. Perfect.

MR. FOMBY: -- that shows that. In addition, when any of the events happen within fractions of a second, but by looking at the automobiles on the opposite side of the road coming this way, you can actually see the same car moving in sequence.

I haven't printed every single one of these pictures that go through the entirety of the timeframe because that would be several thousand photos, but they are effectively for the times when the timeframes were very tight there. Every fraction of a second you'll see that.

Then later when several minutes go by you'll see that, but the time stamp will be there. So the fractions of a second at that point no longer matter and the time stamps are there.

MS. BAKER: So if I understand what you're saying, we'll be able to match it to the video by the time stamping?

MR. FOMBY: Exactly.

MS. BAKER: Okay. Perfect. Thank you.

MR. FOMBY: Certainly.

Q. (BY MR. FOMBY) Getting back to this document, we were talking about the -- who the -- the Toyota Corolla that Ashtian Barnes was driving was registered to.

A. Uh-huh (Affirmative.)

Q. And you said that you had an ability to pull that information in your car, but for whatever reason you did not do so in this case?

A. Yeah. It could be a reason where it doesn't come through in a timely manner. Even though we run it, it might take a few seconds or a few minutes sometimes to actually get the return.

Q. Okay. If you're doing a traffic stop on the side of the road, though, and you do not have a partner, would it not be more prudent to wait until you got that information so you understand who you're stopping?

A. Sometimes we cannot wait for -- for the return because we have to make contact immediate -- there's times that we've, you know -- that I don't get returned until the end of the day sometimes or 30 minutes later, depending

on the way the computer system is running.

So I'm not going to have you standing on the side of the road for 30 minutes, five minutes, making -- before making contact, you know, waiting on the return.

Q. Okay. In this case where you stopped someone for a toll violation, was there any particular reason why you needed to not wait, that you needed to take action and make contact before you got the information back?

A. There was no -- I'm sorry, repeat your question.

Q. In this case where you're stopping someone for a purported toll tag violation --

A. Uh-huh (Affirmative.)

Q. -- for unpaid toll, was there any particular reason why you needed to immediately make con -- contact with the driver?

A. The contact was made because when a vehicle is put over our dispatch that's a prohibitive vehicle, they have the information already, who the registered owner is on their end. So we don't wait for the return sometimes because the dispatch does have that information already.

Q. Okay. So you're talking to the dispatcher at this point, particular point, Deputy, and you say that you -- they already have the information. Wouldn't it be prudent at that point for you to simply ask them to tell you the information?

A. Well, before making contact with the

vehicle, you know, I don't know if the person on the registration is going to be the owner of the vehicle, the relative of a vehicle, a friend of the person who owns the vehicle, so it's not, you know, necessarily the information on the registration that's always accurate. The information that we go based on the registration is just the -- the month and day of the expiration of the -- of the registration.

Q. Okay. I understand that, Deputy. You are suggesting that you might have to wait 30 minutes or even till the end of the day to get the information on who the car was registered to, but that's not true, is it?

A. No. What I --

Q. Yes?

A. What I said was that sometimes the registration doesn't come back, not that we wait for it.

Q. Did you ask the dispatcher what -- if they had the information about who the car was registered to before you left your squad car?

A. At that time it wasn't necessary for me to do so.

Q. Okay. And according to the document that's Bates stamped I think 198 in front of you that was provided in discovery, who --

MR. ADAM FOMBY: That's our discovery.

MR. FOMBY: Excuse me?

MR. ADAM FOMBY: That's our discovery.

MR. FOMBY: Okay.

Q. (BY MR. FOMBY) And according to this document -- document that's been marked 31, who would that car be registered to?

A. The owner is The Mint Leasing, Inc.

Q. Okay. And who is the current registration?

A. That is the current registration owner.

Q. How about the name underneath it, the rental car agency?

A. Okay. It says "On Time Car Rental."

Q. Okay. So when you approached Ashtian Barnes and he informed you that this was a rental car, that would be consistent with what the Texas automobile registration records show; is that correct?

A. That's correct.

Q. Do you know how old the toll violation was?

A. I do not recall.

Q. Before we go further into this, I want to talk for a second about toll violations. There are -- when you drive on a -- on a tollway in Texas, EZ TAG on the Sam Houston Tollway.

A. Uh-huh (Affirmative.)

Q. How many different ways are there for the EZ TAG organization to identify a car?

A. There's several ways. By the license plate, by an actual EZ TAG, by a Texas tag, by another region EZ TAG that I do not recall the name right now. I think it's like north, northwest Dallas or something like that, and then that -- those would be the most I guess common.

Q. And if you don't have a Tex tag or EZ TAG or

one of those RFID chips in your car, you're saying that they can take a picture of your license plate?

A. It takes a picture of your license plate, yes.

Q. And once they have a picture of your license plate and they catch you driving on the tollway, what does the tollway authority do with that information?

A. Repeat your question.

Q. Once they have a picture of the license plate, what does -- you know, okay. If the -- if the -- I have an EZ TAG, it automatically reads my EZ TAG, then I imagine it goes against my EZ TAG account?

A. That's correct.

Q. And it's pulled. If I don't have one of those and it only reads my license plate, what does the toll authority do with that information?

A. To my knowledge what I understand happens is they -- it goes into the system for -- as a toll violation.

Q. Does it go into the system as a toll violation? Because the sign up there says that I can pay by -- by mail and it's -- it's taking a picture of my plate; isn't that correct?

A. I'm not sure what sign you're referring to.

Q. Well, there are -- there are lanes that are for EZ TAG?

A. Correct.

Q. And then there are other lines -- lanes where I -- where it takes a picture of my plate and can charge me because of my plate number; isn't that correct?

MS. BAKER: Objection, vague.

A. Each -- each lane, toll lane, whether it's EZ TAG or pay later, has cameras. Each vehicle that goes through those -- those lanes, it takes a picture of your license plate whether you have an EZ TAG or not. Now if you don't pay, then, you know, within ten days, then you're -- you're sent a bill for that violation.

Q. (BY MR. FOMBY) Okay. So if I don't have an EZ TAG and I go through it, they look at my plate information and they send me a bill for driving through that?

A. As I understand it, yes.

Q. Okay. And that's referred to up on the signs as paid by mail?

A. Once again, I don't know what sign you're talking about.

Q. So the -- so when someone drives through and they don't have an EZ TAG and they get sent a bill, is that a criminal violation or a civil violation?

MS. BAKER: Objection, calls for a legal conclusion, but you may answer if you know.

A. Okay. That's going to be a -- the fine itself is a civil issue.

Q. (BY MR. FOMBY) And because they know about the plate, wouldn't they then normally know who the owner of that vehicle is?

A. Yes.

Q. And when they send the bill, they send the bill to the owner?

A. To the registered owner.

Q. Okay. So a person who violates the tollway has

committed a civil offense; is that correct?

A. That is incorrect.

Q. But you said it was a civil, not a criminal offense?

A. The actual toll violation. But once you have tolls accumulated, then under Texas Transportation Code you're operating a motor vehicle on the tollway when prohibited because it becomes prohibited at that time.

Q. Okay. So in this case the owner and registered agents were not Ashtian Barnes?

A. That's correct.

Q. You have no information at all that Ashtian Barnes was responsible for any toll violations; is that correct?

A. Repeat your question, sir.

Q. You have no information -- at the time that you stopped Ashtian Barnes, you had nothing, no evidence whatsoever, no information that said Ashtian Barnes was personally responsible for the toll violation; is that correct?

A. The information that I had was that the vehicle was prohibited and the operator of the vehicle was operating the vehicle on the tollway while the vehicle was prohibited.

Q. Okay. Is there anything on the vehicle that -- that pops up and tells you that this vehicle has an existing -- is prohibited from using the tollway?

A. Will you repeat your question?

Q. Okay. I'm renting a car, I'm renting a car from Hertz or Avis or any other agency, and I drive on the

tollway and -- is there anything in that car that flashes a light and says you can't use the tollway, you're prohibited?

MS. BAKER: Objection, calls for speculation.

A. I don't -- I wouldn't know how to answer that question. I -- I don't know.

Q. (BY MR. FOMBY) Do you know of any devices that exist in normal cars that inform you whether or not your car is prohibited from using the tollway?

A. No.

Q. Okay. Is there any kind of flashing light that occurs as you're using the tollway that says your car is prohibited from using the tollway?

A. Yes.

Q. Where are those lights?

A. They're on the -- by the readers on the top, there will be a red light that will go off if once you passed the reader and you are a prohibited vehicle.

Q. Okay. So what you -- what you just said, Deputy, and correct me if I'm wrong, is that the light goes off after you pass the reader?

A. That's correct.

Q. Okay.

A. I'm gonna clarify that. Actually it depends. If it's an EZ TAG lane, yes. If it's a pay lane, no, the reader is in front of you. The light is in front of you. That would be the lanes with - - with the toll collectors in them. And that would be the lanes with -- with toll collectors.

Q. And these loans actually have arms that come down to stop you from --

A. No. Those are the automated coin machines. The collector ones actually are the people inside the booth that will provide change when paying a toll. Those do not have the arms.

Q. Do you have any personal knowledge of what lane Ashtian Barnes may have used to enter the tollway?

A. No.

Q. Okay. Now, you stopped the person for a traffic violation, you've walked up, you've made the initial contact. You said that you tell them -- you introduce yourself, tell them why you made the stop. What's the next step in the interaction?

A. The normal step is to ask him for a driver's license, insurance or proof of financial responsibility.

Q. Now, if a car is a rental car, does it normally come with proof of financial responsibility or an insurance card?

A. Yes.

Q. Where would that be located?

A. Most of the time it is located in the glove box.

Q. Are you sure about that?

A. In my experience when a vehicle, you rent a vehicle, normally the insurance is in the glove box.

Q. Have you been trained on that particular issue?

A. No, that's personal experience.

Q. Okay. Now, in the State of Texas, you are required to be licensed -- a licensed driver in order to drive on -- on public roads; is that correct?

A. That's correct.

Q. But in the State of Texas, you are not required to have a driver's license with you, are you?

A. You must provide identification.

Q. In the State of Texas, you're not required to have a driver's license with you, are you?

A. You're supposed to have identification, which if you have a driver's license, it would be your driver's license or a Texas ID.

Q. If a person -- if you stopped me on the side of the road and I rushed out of the house to make it to court, and I forgot my wallet, do you have any -- as -- as a police officer, do you have any ability to check on whether or not I am licensed by the State of Texas?

A. There is.

Q. And how is that?

A. Running your name, date of birth for a driver's license and comparing that driver's license return to a picture.

Q. And it actually shows you a picture of the person on -- that has that license?

A. Now it does.

Q. And on April 28th, 2016, did it show the driver's license in your car?

A. We never got to that point.

MS. BAKER: The picture? Did you mean the

picture? Did it show a picture?

Q. (BY MR. FOMBY) The picture?

A. **No.**

Q. Okay. Would it tell that there's a person with that name and date of birth was licensed?

A. **Yes.**

Q. Did you ever run -- go back and run the driver's license for Ashtian Barnes?

A. **No.**

Q. A lot of times my wife gets this these little insurance updates in the mail and she puts -- is supposed to put them in the cars but sometimes she forgets. If I pick up -- I'm stopped and I grabbed my insurance thing and it's out of date, do you have any way of checking to see whether or not I'm insured?

A. **Now there is.**

Q. Okay. Was there any way to check on whether or not someone had insurance on April 28th, 2016?

A. **I don't believe so.**

Q. Is that true globally or just for the Constable's Office?

MS. BAKER: Objection, calls -- vague.

A. **I'm -- I'm not sure if it's globally, sir.**

Q. (BY MR. FOMBY) Okay. From the standpoint of your squad car, you had no ability to access the Texas database for insurance, automotive insurance on that date?

A. **On that date, I don't believe so. I don't think that was an option or something that we could access.**

Q. Okay. Now, are you aware that under Texas law, you are not required to have that proof of insurance with you?

A. As of now, yes. Before, you must provide proof of financial responsibility.

Q. Okay. When did that law change?

A. I believe it was in 2017 or 2018.

Q. And are you aware of what happens if you do have -- if you're cited for not having a driver's license, are you aware of how that -- the courts manage that particular issue?

A. No, I do not.

Q. Are you aware that you go and demonstrate to the courts that you are licensed and/or have insurance in order to make the citation go away?

A. Most likely, yes.

Q. Okay. So when you approached Ashtian Barnes, what did -- did you ask him for his driver's license?

A. Right off the bat, no, because he interrupted me, saying that it was a rental car and the vehicle -- he was on his way to wash it and return it.

Q. After that did you ask him for his driver's license?

A. I asked him who the vehicle -- where he rented the vehicle from or who the vehicle -- who rented the vehicle, and he stated that it was his girlfriend, had rented the vehicle.

Q. Okay.

A. And had had it for approximately a week.

Q. Okay. At any point did you ask him for his driver's license?

A. Yes. After -- after that initial encounter with the -- about the rental agreement, I did ask for his driver's license.

Q. Okay. Was he able to locate it?

A. No. He said he didn't have it with him.

Q. Did he attempt to be looking for a driver's license or the rental agreement while you encountered -- during the encounter?

A. He grabbed a stack of papers and was fumbling through them but not actually looking at the papers.

Q. Okay. In other words, he was looking off and fumbling through them?

A. Yes.

Q. Okay. Where did he get that stack of papers?

A. From the floorboard of the vehicle.

Q. Which floorboard?

A. The passenger floorboard.

Q. And during that encounter, was he able to find the rental agreement for you?

A. He never was looking for it. He was just having the papers in his hand fumbling through it and looking towards my -- looking in my direction.

Q. I understand, Deputy. My question was: Did he ever locate that rental agreement for you?

A. He never attempted to look for it in the

first place.

Q. Did he ever suggest where his driver's license might be?

A. At one point he did say that his ID or driver's license was in the trunk.

Q. Did he say that it was in the trunk or it might be in the trunk?

A. He said it was in the trunk.

Q. Did he offer to allow you to look in the trunk to see if his license was back there? Did he offer to let you look in the trunk?

A. Yes.

Q. Did he open the trunk for you?

A. He maneuvered the switch inside the vehicle to open the trunk.

Q. Okay. He pushed the button and the trunk popped open?

A. Correct.

Q. Is that fair?

A. Correct.

Q. Now let's rotate back a little bit to driver's license and insurance. You say that you had no ability in your squad car to look up a driver's license. Was dispatch able --

A. That -- that's not what I said.

Q. Okay.

A. I said we never got to that point to be able to run the driver's license. I had no idea who I was encountering at that time.

Q. Okay. So at no point during the encounter did you go back to your car to run his driver's license?

A. No.

Q. And at no point during the encounter did you go back to confirm that it was a rental car?

A. No. That opportunity never -- was never given.

Q. When you say "that opportunity was never given," did Ashtian Barnes prevent you specifically in any way from going back to your squad car?

A. Yes. For officer safety when he was digging around the vehicle, it was a -- it's a red flag for us to maintain eyes on the individual for officer safety.

Q. So it was important for you to keep an eye on him during this period for your safety?

A. Correct.

Q. Did you -- at what point did you call for backup?

A. After I smelled the odor of marijuana in the vehicle, that's when I radioed for backup.

Q. So you were -- explain to me, Deputy, so I can understand. You're afraid for your safety so you will not go back to your car. This is a car that's been stopped for a toll tag violation. You're afraid for your safety so you won't go and confirm his information, but you don't call for backup until you think you need to search the car?

MS. BAKER: I'm going to object to that question on several grounds. Number one, it's very argumentative, and number two, I believe it misstates his testimony.

Q. (BY MR. FOMBY) So Deputy, let me understand.

THE REPORTER: Could you repeat that?

MR. FOMBY: Yes.

Q. (BY MR. FOMBY) You were afraid for your safety, and because of that reason you didn't go back to your car to check his driver's license?

A. No. I didn't go back to run his driver's license because I didn't have the information to do so.

Q. Did you ask Mr. Barnes what his name was?

A. When he -- he said that the ID was -- or driver's license was in the trunk and he popped the trunk, in my experience that's deceptive behavior on an individual to try to gain your focus away from what's actually going on inside the vehicle.

Q. Deputy, the question I asked you was specifically: Did you ask him what his name was?

A. We didn't get to that point.

Q. You had a long conversation with him, did you not?

MS. BAKER: Objection, mischaracterizes the evidence in this case.

A. The conversation we had, the encounter we had was rapidly evolving, so the incidents that were occurring, him fumbling on the floorboard, him digging around, I did, you know, tell him on four different occasions stop digging around. His hand, his left hand was going towards the floorboard of the vehicle

while his right hand was, you know, reaching on the passenger floorboard. So a rapidly evolving situation, my priority was for my safety and to maintain visual of the suspect.

Q. (BY MR. FOMBY) So you were afraid for your safety at that point. Is that fair, Deputy?

A. There was flags that were raised for me to be more concerned at that point.

Q. Is that a yes or a no, Deputy?

A. Yes.

Q. Okay. And you were so afraid for your safety that you did not even -- that you did not ask him what his name was?

MS. BAKER: Objection, argumentative, misstates his testimony.

A. Repeat the question.

Q. (BY MR. FOMBY) You were so afraid for your safety that you did not take the time to ask him what his name was?

A. No, the rapidly evolving events that occurred did not allow me to get to that point because the focus was shifting from being a traffic stop to something else being, you know, deceptive inside the vehicle.

Q. And at that point you were so afraid for your safety you didn't -- did not ask Ashtian Barnes what his date of birth was; is that correct?

A. I did not ask him for his information, correct.

Q. And at that point you were so afraid for your safety you did not return to your squad car to confirm

that it was, in fact, a rental car; is that correct?

A. At the point there was no time to, you know, leave the vehicle to go run information.

Q. And yet, at this time that you were so afraid for your safety that you would -- did not ask the basic questions for a traffic stop, you did not yet call for backup, did you?

A. Backup had already been called.

Q. It had been?

A. During the first initial conversation of me asking who the -- for who I was and why he was being stopped and him telling me that the -- it was a rental car, that's when I had called for backup.

Q. We're gonna see -- Deputy, is it -- in your experience, is it common for people who are looking for their driver's license to dig around their wallets for papers?

A. For their license?

Q. Yes.

A. It's uncommon.

Q. Is it common in your experience when people have a rental car, for them to dig around in the papers in the car to be able to show you the rental receipt?

A. That is common, but that's not what he was doing.

Q. And Officer Felix, Deputy Felix, you have -- when did you pick up this ability to read his mind?

MS. BAKER: Objection, argumentative.

Q. (BY MR. FOMBY) Officer Felix, you said that

you know what he was thinking.

MS. BAKER: Objection --

Q. (BY MR. FOMBY) And what gave you --

MS. BAKER: -- argumentative and misstates his testimony.

Q. (BY MR. FOMBY) What gave you the ability to know what he was thinking at that particular time?

MS. BAKER: Same objection, argumentative, misstates Deputy Felix's testimony. You may answer.

THE WITNESS: Okay.

A. I never said that I read his mind. What I said that his behavior wasn't common for someone who would be looking for a rental agreement. He was -- he had his hand, fumbling through it, but at the same time looking at me. If you're looking at something, looking for something you're going to be looking at that stack of papers, you know, trying to find it, not grabbing it, just moving it around and looking at me at the same time.

Q. (BY MR. FOMBY) At some point in this interaction, after the stop, you informed Ashtian Barnes that you smelled a strong odor of marijuana; is that correct?

A. That's correct.

Q. You asked him if there was anything in the car that he needed to tell you about; is that correct?

A. That I need to know about.

Q. Was -- was it -- was that the point that you called for backup?

A. No. Backup had already been called prior to that.

Q. How long does it take for a backup car to arrive normally?

A. It just depends. If there's a unit -- there's several units on the tollway, so it could be seconds or it could be a minute or two.

Q. At that point you opened the door and told Ashtian Barnes that he needed to leave the vehicle; is that correct?

A. When I told him to get out of the vehicle was his -- his actions kept indicating to me that he was up to something, either trying to hide something or reach for something.

Q. To your knowledge and training as a deputy constable, are you supposed to have a backup officer in place before you remove an individual from the vehicle?

MS. BAKER: Objection, overbroad. You may answer.

THE WITNESS: Okay.

A. Every situation's different. Sometimes there's not time to, you know, separate the individual from the vehicle, having to wait for backup.

Q. (BY MR. FOMBY) Other than shuffling papers, did it appear to you that Ashtian Barnes was going anywhere?

A. No.

Q. Okay. In fact, didn't you state that at one point Ashtian Barnes turned off his car?

A. That is correct.

Q. And that he removed the key from the ignition and placed it down near the gearshift?

A. Correct.

Q. Are those the actions in your experience, Deputy, of a person about to flee the scene?

A. Those aren't common actions. You know, usually when someone gets pulled over the vehicle stays running and in park. Rarely does someone turn off the vehicle and place the keys, you know, down or on the dash, so that's not a common action for someone to take.

Q. I understand that may not be common, and that makes it more interesting to me. Is that action consistent with a person who is imminently ready to flee the scene?

A. No.

Q. At any point in this interaction with Ashtian Barnes, did you ever see him -- did you ever get an indication of a weapon inside the car?

A. Yes.

Q. At what point was that?

A. When he was digging around in the vehicle.

Q. What did you see?

A. I saw his hand, his left hand towards the floorboard of the vehicle while his right hand was extended over to the passenger floorboard.

Q. His left hand was where?

A. Down by his leg in -- in the seat area as

he's reaching forward.

Q. So is the floorboard, the driver's side floorboard of the car, a weapon?

A. No, but it could potentially be a weapon any -- anywhere in that area.

Q. Okay. That's not the question I asked you, Deputy. First of all, I asked you, at any point did you see a weapon in his possession?

MS. BAKER: I'm going to object to that because I don't think that was your question. We could read it back but if that's your question now, you may answer.

THE WITNESS: Okay.

A. The original question you asked was did I believe or --

THE WITNESS: Actually, can we read that question back because I don't --

Q. (BY MR. FOMBY) Well, will you just answer this question --

A. Okay.

Q. -- make it easier on the court reporter. At any point at -- before the car got turned back on, did you see an actual weapon in the car?

A. I did not see a weapon in the car.

Q. Okay. So getting back to the moment, your statement was that Ashtian Barnes had been sitting in the car with the engine running for the first part of the inter -- of -- of your discussion, correct?

A. First part of?

Q. When you walked up and for the first part of your conversation with him while he was shuffling

through the papers, the engine was running?

A. At some point is when he turned it off. Exact point, I cannot recall. But I did observe him turn off the car and set the keys down.

Q. And the keys are sitting down here by the gearshift?

A. Down in the center console gearshift area.

Q. And you have opened -- did that happen before or after you opened the car door?

A. That happened as I was opening the car door.

Q. Okay. So you were opening the car door. He turns off his car and puts his key in there?

A. No, no, I'm sorry. Repeat that question again. At what point, what?

Q. Did he turn off the car and put his key near the gearshift?

A. Prior to opening the vehicle.

Q. Okay.

A. The vehicle door.

Q. So Deputy, you opened the door of the vehicle and was the door open wide or open just partially?

A. It was open enough for me to be in the doorway area.

Q. Okay. At that point did you see a weapon in the car?

A. No, but I couldn't see his -- his hand as he was leaning forward.

Q. So you're saying at this point as you opened the car door, he's leaning forward?

A. He's leaning forward. When I opened the car door, he's leaning forward towards the console area.

Q. Isn't it true in your statement that you said at this point he was digging around in the red Solo cup on the passenger side?

A. No, that was prior when he was -- he was reaching in that area when I kept telling him to stop digging around.

Q. Okay. Now at this point your backup officer has not yet arrived. You have the door open, and you tell Ashtian Barnes to step out of the vehicle?

A. Yes.

Q. What happens then?

A. When I opened the door and asked him to step out he reaches -- leans forward and as I'm trying to see what he's doing, I'm expecting him to step out, he's grabbing the keys to -- to the vehicle and as he turned the vehicle on, his left hand is down, like by the seat, like his lap, so I'm looking and he turned the car and quickly puts it in drive.

Q. Okay. Is this a con -- console mounted gearshift or is it on the --

A. I -- I don't recall. I don't recall. I know it just happened so quick that, you know, the car was put in drive.

Q. So he leans forward, Deputy, grabs the key. Is it a key on a key chain or just a solo -- individual key?

A. No, it's a key. I can't tell you at this point if it was one key or multiple keys but it was the

key to the ignition.

Q. And leaning forward toward the steering wheel, he reaches down, grabs a key, puts it into the ignition, turns it on, puts -- puts his foot on the brake, puts it in gear. Is that what you're saying?

A. That's -- that's correct.

Q. And approximately how long did it take for him to lean forward and then go through all of those motions to get --

A. Fraction of a second probably.

Q. So at that point, is it fair to say, Deputy, that you were aware that the car was in gear, it was probably going to go forward?

A. Well, at the same time that that was occurring I was aware and was attempting to have him stop or stop from leaving the scene.

Q. So let's -- Deputy, let's slow this down again. He's going through all these motions, leaning forward, picking up a key, locating the -- the place to insert the key, starting the car and then reaching down and grabbing the gear and putting it into gear. And that happened in a fraction of a second?

A. That happened in -- so rapidly that it must have been a fraction of a second to a second. I mean it was that quick.

Q. Okay. And so you perceived, Deputy, at this point, that he is preparing to leave the scene; is that fair?

A. Correct.

Q. And so what do you tell him -- do you tell him anything to try to stop him from leaving?

A. "Don't do it, don't do it."

Q. Did you say "don't do it"?

A. "Don't do it," as I'm drawing my weapon.

Q. Isn't it fair to say that what you told him instead was don't fucking move?

A. That's incorrect.

Q. Do you recall at any particular point in the next several seconds screaming don't fucking move at least twice?

A. I said "fucking stop, fucking stop" when I was on the vehicle, on the doorsill of the vehicle. I was moving.

Q. So at this point, if you had to list the infractions -- if you were going to arrest Ashtian Barnes before he picked up the key, if you were going to arrest him, what would he be charged with?

A. At that point he -- he wasn't going to be arrested. He was going to be detained.

Q. Okay. If you were going to detain him, what would be the reason for detaining him at that point?

A. The reason for detaining him was that his constant, you know, actions that he -- that he did while looking at the pieces of paper and trying to find the rental agreement but not looking at the stack at the same time. Him digging around in the vehicle asking -- and me asking him multiple times to stop digging in the vehicle. I had reasonable -- a suspicion that there was something in that vehicle that he was either going for or trying to conceal.

Q. Since he was playing with papers, are you

thinking, was it your reasonable suspicion that he had something in those papers he was trying to conceal?

A. No. My -- my belief was that as he was doing that, was to distract me or, you know, keep my focus on -- on that versus, you know, whatever else he -- was going on in that vehicle.

Q. So at that point, Deputy, would it be fair to say that you had no actual evidence of a crime that was being committed or -- or was going to be committed?

A. I have reasonable suspicion that there was marijuana in that vehicle.

Q. Okay. And that's because, Deputy, you smelled a strong odor of marijuana?

A. That's correct.

Q. And Deputy, we know that marijuana is legal in I don't know how many states now, but in Texas, possession of a small amount of marijuana is what kind of crime?

A. Repeat your question.

Q. In Texas, on the -- on April 28th, 2016, possession of less than two ounces of marijuana is what kind of crime?

A. It's a misdemeanor crime.

Q. Is it a misdemeanor A, B or C?

A. For two ounces of marijuana it's a misdemeanor B, I believe.

Q. So it's the -- the level just above a C which is a fine only offense; is that correct?

A. A citation.

Q. So you're saying that you had at this point,

Deputy, and correct me if I'm wrong, when I asked you why -- why you were thinking that you needed to prevent him from leaving, you did not say anything about the toll tag violation; is that correct?

A. At that point it was him fleeing the scene and possibly causing, you know, a crash or causing injury to someone else as well.

Q. Is there anything -- okay, going back earlier, we talked about his conduct in operating his car when you stopped him.

A. Correct.

Q. And you said that he reacted normally -- when you turned on your lights, his response time was -- was normal for -- for any individual you stopped; is that correct?

A. That's correct.

MS. BAKER: Objection, asked and answered.

Q. (BY MR. FOMBY) And then you told us that once your lights came on and he realized you were behind you [sic], he moved rapidly to -- to the side of the road and stopped safely; is that right?

MS. BAKER: Objection, asked and answered.

Q. (BY MR. FOMBY) Is that correct?

MS. BAKER: You can go ahead and answer.

A. Yes.

Q. (BY MR. FOMBY) And you told us that at the - all the -- the entire time that you observed him driving, that never once did you see him swerving or behaving in any way that would suggest that he was impaired or not in full control of the vehicle; is that true?

MS. BAKER: Objection, asked and answered.

A. That's correct.

Q. (BY MR. FOMBY) So now he puts the car in gear, and what is it specifically that makes you think that his driving habits are going to change if he leaves the scene?

A. At that point he's -- he's evading a lawful stop which in my experience always leads to a chase, someone driving erratically to get away.

Q. So what I'm hearing you say is that you had no evidence that he was going to drive in a reckless manner, but you presumed that he was going to drive in a reckless manner?

A. That is correct.

Q. And based upon that presumption that you had to stop this reckless behavior and dangerous behavior, you felt it was important at that point to stop him from leaving the scene?

A. That is correct.

Q. So your -- at this point your objective in -- in stopping him was to prevent him from endangering other people on the highway with his driving?

A. That would be a part of it, yes.

Q. And so as you saw Ashtian Barnes starting the car and putting it in gear, what was your next response?

A. My next response was to draw my weapon to gain compliance of him not leaving the scene and at the same time was to try to get him to not put the car in park --

Q. Okay.

A. I mean, excuse me, in drive.

Q. And at this point when he has the car in gear, did you order him to stop the car?

A. I said "don't do it." Or correction. When I said "don't do it" is when I actually saw him going to -- at the same time as he's turning the vehicle. Once the vehicle was in park --

Q. In gear?

A. In gear, I'm sorry, in gear, then at that point it's, you know, rapid events happened and, you know, you know, everything else transpired.

Q. Okay. And at that point after he started the car, do you recall what warnings you gave him at that point?

MS. BAKER: Objection, asked and answered.

A. When the vehicle was in gear?

Q. (BY MR. FOMBY) Yes.

A. As I was holding onto the vehicle, it was "fucking stop, fucking stop."

Q. The car is in gear and you draw your gun. Did you draw it with your left hand or your right hand?

A. I'm right-handed.

Q. So you pull up your gun with your right hand?

A. Correct.

Q. And do you continue to stand outside the vehicle and point the gun toward him to stop him?

A. As I drew my vehicle -- my -- my weapon, like I said, he was leaning forward towards the ignition so my view was obstructed. So when I

realized what he was doing, I drew my weapon and said "don't do it." And as I'm reaching to try to keep him from putting the vehicle in drive, that's with my left hand, so I'm trying to keep that from happening as he's putting the car in gear.

Q. Okay. Deputy, you just said, and stop me if I'm wrong and I heard it wrong, that he was leaning forward and so your view inside the car was -- was constricted, and so you did not actually have a view of him starting the car?

A. No, I saw him starting the car or putting the key in the ignition. Now what I couldn't see was -- was -- what was in the general floorboard area or right side of the -- of his area as he was doing that.

Q. Okay. And so as soon as you saw him lean forward and put the key in the ignition, could you see him start the car?

A. Yes.

Q. And that's when you drew your service weapon?

A. Correct, as he was doing it.

Q. Okay. Now again, we -- we started this with a question that you haven't answered yet, so let's skip back to that question.

At that point when you drew your service weapon, did you continue your stance outside the car and -- and point the gun inside the car?

A. No.

Q. Was one of the reasons why you felt he was behaving suspicious, that one of the reasons that

caused you to draw your weapon, the fact that he leaned forward suddenly?

A. Repeat the question.

Q. You -- you testified that he -- before starting the car he leaned forward suddenly. Was that something that caused you at that point to alert that -- that something bad might be going on?

A. My weapon was drawn because I believed that he -- there was an obstruction of what was on his right side and the ability to rapidly, you know, go for a weapon or -- or flee the scene. I mean there was multiple things that, you know, we think about as officers that could potentially happen.

Q. Okay. You realize that you have given a statement in this case, correct?

A. That's correct.

Q. And you gave that statement under oath?

A. Correct.

Q. And never previously have you talked about him leaning forward and fumbling for weapons. Do you recall that?

A. I never said he was fumbling for weapons.

Q. He was fumbling for something?

A. Correct.

Q. And never before have -- previously have you stated that he was behaving in such a manner?

MS. BAKER: Objection, vague.

Q. (BY MR. FOMBY) In -- in the statements that you gave --

MR. FOMBY: I'm going to ask you to mark this as Exhibit 32.

(Exhibit No. 32 marked.)

Q. (BY MR. FOMBY) Do you recall this statement?

A. Yes.

Q. Deputy? This is a statement that you gave under oath?

A. That's correct.

Q. In this statement, at any point did you state that you were alarmed because of his furtive movements?

THE REPORTER: What kind of movements?

MR. FOMBY: Furtive.

THE REPORTER: Thank you.

A. I'm sorry, repeat your question.

Q. (BY MR. FOMBY) In this statement, at any point did you say that -- that his movements in the car alerted you that something suspicious was going on?

A. There's several times here where his actions led me to believe that.

Q. Deputy, that's not the question I asked.

MS. BAKER: Excuse me, it may not be the question that you asked him but please let him finish his answer. And then if you don't like it you can ask -- object to it or ask another question. Please don't interrupt him. He's answering.

MR. FOMBY: Okay.

A. Okay. So there's several times here where his actions led me to believe that his actions

were I guess conducive of -- of something that could potentially be, you know, I guess evasive or, you know, an alarm to me.

Q. (BY MR. FOMBY) Officer -- but Deputy Felix, again, my question was: In your statement that you gave under oath, at any point did you make a statement, did you say that his furtive behaviors, his movements inside the car, alerted you that something suspicious was going on?

A. That statement is not directly in here, but the actions that he conducted is what alerted me to, you know, his behavior, him acting that way.

Q. So Deputy, again, my question is a yes or no. Is -- is that -- or did you make that statement, did you put that in your statement that his furtive behaviors alerted you that something suspicious was going on? Did you make -- put that in your statement?

A. That statement specifically, no. But his actions were.

Q. And Deputy, in your statement that you gave, did you say anywhere in the statement that his leaning forward and his motions with his hands caused you -- alerted you to try to stop him?

A. I don't believe so.

Q. In this statement that you gave under oath, at any point did you say that the reason why you felt that you needed to stop him was because his leaving the scene would present a danger to the general public?

A. That statement specifically, no, but his actions were what I believe would happen. I mean his actions that he took.

Q. So Deputy, I understand that when you were given an opportunity to provide a full statement, you believe it to be true and correct to the best of my knowledge, you did not say that his motions alerted you to -- to reasonable suspicion; is that correct?

MS. BAKER: Objection, asked and answered. Also it mixes up the legal -- the legal in my opinion. You may answer if you understand the question.

A. I -- I -- repeat the question.

Q. (BY MR. FOMBY) Well, you know what reasonable suspicion is?

A. Yes.

Q. And you can take certain kinds of actions based upon reasonable suspicion; is that correct?

A. Correct.

Q. Did you in your statement ever make -- state that -- that his movements inside the car gave you reasonable suspicion to think that -- that a crime might be occurring?

A. I'm not understanding you. I'm sorry. Repeat the question again.

Q. Did you anywhere in your statement say that his movements and moving the papers around gave you reasonable suspicion that a crime might be occurring?

A. Now his actions that led me to believe that are in here, but that statement specifically, no, it's not in this statement.

Q. Okay. In your statement did you say that you had reasonable suspicion that he was about to flee the scene, and in so doing, put the general public at risk?

A. In the statement, that specific statement, it's not in here, but that's what the -- my concern was due to the events that happened and he had posed.

Q. Now, you have drawn your service weapon, and you stated that you did not maintain your stance outside the car but you instead lunged towards Ashtian Barnes to get inside of the car; is that correct?

MS. BAKER: Objection, misstates his testimony.

A. No, I did not lunge in the car. What I did was try to prevent from him to putting the car in drive when I was made aware of what he -- his intention was.

Q. (BY MR. FOMBY) And you said that you -- your right hand was holding your gun?

A. Correct.

Q. And you were using your left hand to try to put the gear lever in park?

A. No, to try to keep him from putting the car in drive. Like I said before, it happened so fast that it -- it wasn't even an option as I was trying to do so.

Q. So with his hand on the gearshift, how would your left hand be able to stop him from putting the car into drive?

A. Well, originally what I was trying to do is keep him from getting the car on, it actually turning on. When I saw he was doing it is when I was reaching in. Like I said before, it happened so fast. By the time he turned it on, his hand was already going down towards --

towards the shifter.

Q. So let's go back up a little bit because the timeframe just shifted a little bit. Now you're saying that when he moved forward you thought he was about to turn the car on, you -- that's when you first moved -- pulled your gun and moved into the vehicle?

A. All this happened, I mean within a short period -- period of timeframe, which was, you know, so fast that my actions were to draw my weapon because I already had a perception of maybe something, a weapon or him trying to flee at the same -- same moment.

Q. Now, Deputy, pause there for a second and get back to that statement you just made. You had a perception that there was a weapon in the vehicle. Any place in your statement again, under oath, where you stated that you had a perception there was a weapon in the vehicle?

A. At the statement, not that -- that statement itself, but everything else that was done led me to believe that there could be possibly something in that vehicle.

Q. Again, Deputy, you had an opportunity to give your statement, your full and complete statement, and at any point did you ever state that you thought there might be a weapon in that vehicle?

MS. BAKER: Objection, argumentative, also asked and answered.

Q. (BY MR. FOMBY) You have not -- in -- in my opinion you have not answered it, you are -- so answer the question. In your statement did you ever indicate that there was a weapon in the vehicle?

A. Not that statement directly, but everything else that led to my belief is -- is in here.

Q. So that statement that there was a weapon in the vehicle was not -- you did not put that in your statement?

A. I'll have to reread it again. Give me a minute.

Q. Take your time.

A. (Witness examines document.) Repeat your question, sir.

Q. At any point in the official statement you gave under oath, did you say -- did you say that there -- that you perceived that there was a weapon in the vehicle?

A. Okay. In that statement, no.

Q. Okay. At any point in this same statement did you say that prior to Ashtian Barnes turning the car back on, that you feared for your safety?

A. His actions that were placed on here made me believe so, yes.

Q. Deputy, again, I'm asking you, you read the document. Can you point to where in this statement you said that you were afraid for your safety prior to Ashtian Barnes turning the car back on?

A. Prior to turning the car back on?

Q. Yes.

A. That statement directly, no, but the actions listed, yes.

Q. And if -- as you said, Deputy, the reason why you didn't ask him his name was because you were so

frightened for your safety?

A. No, it was a rapidly series of events that occurred that it didn't give the opportunity to be able to do so.

Q. And again, that particular statement that it was -- that you were faced with a rapidly evolving situation, that also is not in the statement, is it?

A. That statement, no.

MR. FOMBY: Can we go off?

THE VIDEOGRAPHER: The time is approximately 12:01 p.m., we're off the record.

(Lunch recess from 12:01 to 12:46 p.m.)

THE VIDEOGRAPHER: The time is approximately 12:46 p.m. We're on the record.

Q. (BY MR. FOMBY) Now Deputy, when we left we were at the point where the car door, Ashtian Barnes' car door was open and you were standing there. And you said that you leaned -- he leaned forward and started the car. You also mentioned at that point that he was reaching down with his left hand toward the floorboard of the driver's side floorboard?

A. His hand was by his lap towards the floorboard.

Q. Now, in the -- in the statements that you gave under oath, though, at no point here did you ever state that you -- you saw him reaching down and fumbling between his legs in the floorboard, did you?

MS. BAKER: Objection, misstates his testimony. You may answer.

THE WITNESS: Okay.

A. No, it's not in there, but the events leading to that point are stated in here.

Q. (BY MR. FOMBY) So the answer is at no point did you state that he was fumbling for something in the floorboard of his side of the car?

A. That's correct.

Q. Okay. Now -- now you mentioned that you were trying to stop him from leaving. And I'm sorry if I have to -- I'm mainly trying to get us back to the point where we were at. And you said that you had -- you pull -- had pulled your service weapon and you had stuck that forward; is that correct?

A. Well, I got it in a shooting stance, which is when you draw your weapon you, you know, present it to, if you need to fire it, then it's there, instead of firing from a hip position or a -- a extended position. It's total -- a different type of stance, so it was -- it was pulled out and extended out.

Q. Now, the weapon that -- your service weapon is a .40 caliber weapon, wasn't it?

A. That's correct.

Q. When you talk about a shooting stance, you were talking about where the arm position is?

A. Correct.

Q. And in a proper shooting stance, what is your foot position?

A. It depends on the situation.

Q. Is a proper shooting position, as you've been trained, leaning forward into a car?

A. There's -- I'm gonna say there's no such thing as a proper shooting position. When you're in a situation, the situation dictates the way you stand, the way you shoot, how you hold your weapon. I mean, if I'm at the range I'm, you know, that -- feet apart, hands, gun raised, you know, directly in front of me and, you know, slightly leaning forward.

Q. At the range do you ever practice lunging forward and shooting from that position?

A. Yes. Leaning forward.

Q. Leaning forward?

A. Leaning forward and shooting, yes, sir.

Q. So at this point the car is being placed in gear. The car has not yet started to leave. Where is your -- where is your body? Where is your head and where is your body, where are your arms? Can you explain that to me?

A. As the car is driving away or as it --

Q. No, as -- as the car is in gear but before it departs.

A. The car's in gear before it departs. Partially inside of the vehicle.

Q. Okay.

A. That I recall.

Q. When did you put -- which foot did you first put on the sill of the car?

A. I don't recall at this point which foot it was. I believe it was my left foot.

Q. When did you put that first foot on the sill of

the car?

A. As the car was driving away.

Q. And Deputy, are you sure that you put that first foot up as the car was driving away?

A. As I recall, yes.

Q. When did you put the second foot on the sill of the car?

A. As I felt the vehicle started moving forward.

Q. But you just said the first foot went up as it was driving away, now you're saying the second foot went up as it's starting to move forward. Which is that?

A. It's -- it was a simultaneous move -- simultaneously -- excuse me, simultaneous move. As the vehicle is starting to move, it's left foot, right foot, and I'm holding on.

Q. Okay. So now you're standing on the sill of the car. Where is your left arm?

A. My left arm is inside the vehicle.

Q. What are you holding onto to stay on the car?

A. My forearm against the roof of the car.

Q. So you're holding on -- into the car like this?

A. This part (Indicating.)

Q. Or this part?

A. As -- as -- just to keep a point of contact and trying to hold onto -- to the vehicle.

Q. Okay. Just to be clear, this -- this part of your arm is inside the car and pressed up against the roof of the car?

A. No. Only my -- this part of the forearm against the -- the entryway of the vehicle, the door of the vehicle.

Q. From inside?

A. Inside, correct.

Q. And where is your head?

A. My head's above the roof of the car.

Q. Where is your right arm?

A. My right hand is holding out to the outside of the vehicle.

Q. Your right hand is holding onto the outside of the vehicle?

A. No, left hand.

Q. Your left hand?

A. Left hand is holding --

Q. Let's back up because now you told me that you were -- this part of your left arm was -- right?

A. No, right hand.

Q. Okay. So your right hand is holding onto what?

A. My weapon.

Q. Okay. Where is your right hand?

A. It's inside the vehicle.

Q. And when you first start to move -- feel the car moving forward, was it like a Ferrari taking off or was it a gradual acceleration?

A. At that point I felt the vehicle take off, is what I felt. I just felt the motion and to me it seemed like it was, you know, accelerating very quickly.

Q. And what happened as -- as the car started to move forward and you're completely up on the sill with this arm inside the car, this hand with the gun inside the car, what -- what was the door doing behind you?

A. My left hand was never inside the car.

Q. Okay. Let's back up again. You said that you were holding on with this part of your left arm (Indicating) from inside the car?

A. Right hand, with my right hand, not my left hand.

Q. What was your -- and I asked you what your left hand was doing?

A. I was holding onto the outside of the car.

Q. Okay.

A. I'm sorry, I misunderstood you.

MS. BAKER: Yeah, he did ask you that.

A. Okay. It was my left hand was on the outside of the vehicle.

Q. (BY MR. FOMBY) Okay.

A. My right hand was in the inside of the vehicle holding my weapon.

Q. So you're standing, you've got your right -- your left arm holding onto the top of the car, your right hand is inside?

A. Correct.

Q. Your right forearm is being pressed up against the door frame?

A. The top part.

Q. Okay. From the inside?

A. From the inside.

Q. And at this point as the car is starting to move, where was the car door behind you?

A. The car door was to my -- to my side.

Q. Okay. Would you say that as the car started to move, you -- you -- the car door was pinning you in position?

A. The car door was placed against my side.

Q. So did -- would you say that the car door was pinning you in position at that point?

A. You said pinning?

Q. Yes.

A. It could be said that way.

Q. Okay. In your statement it says: As the vehicle sped away, I felt the driver door closing on me and started to feel that I was being pinned and going to be drug.

Is that a correct statement?

A. Yes.

Q. Okay. And you felt that you were going to be drug even though your feet were both on the -- on the sill of the car?

A. As I noticed that he -- as I saw that he was putting the vehicle in drive, I felt that if I did not do what I did, which is to step on the doorsill, that door could have pinned me, it could have like closed on me and potentially had me -- drug me -- drug -- the vehicle drug me.

Q. Okay. Then let's move back again because now you're talking about before the car started spinning --

started speeding away. At that point you were afraid of getting pinned and drug. Is that what you're saying?

A. That's correct.

Q. And yet, at that point instead of standing where you were and letting the car leave, you jumped up on the sill of the car and shoved your body partially inside the car?

A. That's correct.

Q. Even though you feared that you might get pinned and drug?

A. Well, there's -- there's situations where the -- other officers had occurred that I've seen videos in training where an officer was actually drug getting caught up on a seatbelt or the vehicle itself and drug and caused serious bodily -- bodily injury to themselves. So that was, you know, a fear that I had that I would have been pinned or drug by the vehicle.

Q. And in that split second as your -- all this is happening, that went through your mind and you -- you used your training to jump up onto the car?

A. Yes. Time slows down and it seems like the vehicle was in motion for a long period of time. So all the training and -- and -- that we go through, it -- it kind of kicks back in action and -- and you take action.

Q. Okay. So as you were afraid of getting pinned and drug, the action you took was to jump onto the car as it's starting to move away, and is that when the door started closing on you?

A. As the vehicle started to go forward, yes,

the door is -- it closed or started to close.

Q. So in fact, the -- your fear of being pinned, the door was starting to pin you because of the position you were in with the car?

A. Repeat your question.

Q. You said you were afraid of being pinned by the car door, in fact, because you jumped on the sill when the car -- when the door started closing, that did, in fact, pin you?

A. If -- if I had both feet on the ground, the door could have pinned me and then drug me. That's why I stepped onto the doorsill.

Q. If you had simply stepped back at the point before -- instead of jumping forward, what -- could you have been pinned by that door?

A. I could have been injured by the door, yes, I believe so.

Q. The door, you -- you believe the door would swing so violently that -- around as the car started to accelerate, that you would get shoved against the door and drug?

A. Everything happened so fast that that was a thought.

Q. Okay. So now the car is moving forward. You're up on top of it. You've got one arm out, one arm in with the gun. Where are you looking?

A. I'm looking over the car.

Q. Okay. You're -- are you looking forward to see where you're going?

A. I was just looking straight.

Q. Looking straight?

A. Just straight, yeah.

Q. Did you have any visibility of Ashtian Barnes at that point?

A. No.

Q. Did you have any idea where Ashtian Barnes was in the -- in the front seat of that car?

A. Yeah. He was right next to me inside the vehicle.

Q. And how --

A. In the driver's seat.

Q. How could you tell that?

A. Because I could feel him.

Q. Okay. What -- what could you feel him with?

A. Well, I could feel him with, you know, my knee, and I could feel when my gun went to the side, pressure against my gun and hand.

Q. Okay. So you could feel his body there with your knee, and you felt some kind of pressure against your gun and right hand?

A. Uh-huh (Affirmative.)

Q. But you can't see what's causing that pressure; is that correct?

A. That's correct.

Q. So you don't know what was happening inside the vehicle at that time?

A. I do not.

Q. Okay. And at that point is your gun roughly in the vicinity of where you imagined Ashtian Barnes' head to be?

A. Yes.

Q. So you felt the pressure and then, as I understand it, you pulled your gun hand out of the car?

A. That's correct.

Q. And then at some point in here you shouted instructions for Ashtian Barnes; is that correct?

A. That was as the vehicle was driving away.

Q. And what instructions did you shout to him?

A. "Fucking stop, fucking stop."

Q. Did you say stop or I'll shoot?

A. No.

Q. And -- and then you pushed your gun hand back inside the car, correct?

A. That's correct.

Q. And you fired?

A. When I felt the pressure on my hand and my gun, that's when my hand came out and as I was doing that, I was losing balance so my hand went back in there.

Q. Okay.

A. At that point, you know, if I would have discharged my weapon fully, it would have hit him in the head. So I made the conscious decision to point downward and shoot.

Q. But you don't really know where his head was at that point?

A. I can assume that his head was right parallel with me at that angle that I was holding my weapon at.

Q. And for all you know, he could have been leaning away from you and trying to get out of the vicinity of that gun that had been pointed at his head correctly, right?

A. Didn't know what he was doing.

Q. Okay. You didn't know?

A. Didn't know what he was doing.

Q. At that point with no visibility as to what you were shooting at, you pulled the trigger?

A. As I pointed downward, yes.

Q. Okay. And then the car did not immediately start slowing, continued and so you pulled the trigger again?

A. That's correct.

Q. And at the point that you pull the trigger again, what happened to the car?

A. The car came to an abrupt stop.

Q. Did you stop the car?

A. No.

Q. Who stopped the car?

A. Mr. Barnes did.

Q. Let's wind back up. The car's taking off, you jump on board. Approximately how long is it between when you're fully on top of the sill of the car and you fire the first shot? Do you know?

A. It must have been maybe two, three seconds, possibly. At that moment it felt like it was longer than that, though.

Q. And how long was it between the first shot you fired and the second shot you fired?

MS. BAKER: Objection, calls for speculation. You may go ahead and answer.

THE WITNESS: Okay.

A. After I shot the first -- shot once and didn't feel the vehicle was stopping, it's when I shot again. So if I had to guess, a second.

Q. (BY MR. FOMBY) Okay. A second. The car comes to a complete stop, as you said, and in your statement, Deputy, correct me if I'm wrong, didn't you say that the vehicle slowed almost to a stop before you jumped off?

A. I don't recall. (Witness examines document.) This is a misstatement, yes.

Q. And at that point, you stepped back out of the doorway and held your service weapon on Ashtian Barnes; is that correct?

A. That is correct.

Q. Was Ashtian Barnes alive at that point?

A. Yes, he was.

Q. Was Ashtian Barnes saying help me, I can't breathe at that point?

A. I don't know what he said.

Q. Is there a policy at the Constable's Office for rendering aid when an individual has been shot?

A. Yes, there is.

Q. Did you at any point, after you fired your service weapon, provide any kind of -- of assistance to Ashtian Barnes?

A. I called for HFD to arrive on the scene.

Q. Did you check on his wounds?

A. No, I did not. The scene was not clear.

Q. Approximately a minute and a half later when the first deputy or police officer arrives on scene, and at that point, according to a statement, he says Ashtian Barnes was still alive. Is that your recollection?

A. On his statement?

Q. Yes.

A. I've never seen his statement.

Q. Was -- a minute and a half to two minutes after the car stopped, was it your -- is it your recollection that Ashtian Barnes was still alive?

A. Yes.

Q. That he was unresponsive? Would that be fair to say?

A. We weren't asking him anything and he wasn't saying anything, so -- but he was still alive.

Q. Was he sitting up and talking?

A. No.

Q. Was he shuffling papers around?

A. No.

Q. Was he reaching for anything?

A. Not at that point, no.

Q. Was he lying on his side bleeding?

A. No.

Q. He was sitting up bleeding?

A. He was sitting up.

Q. So we see in the dash cam video, other police

cars arriving, one after another. How long was it before anybody stopped to render aid to Ashtian Barnes?

A. I'm not sure. After the third deputy arrived, then I stepped back and moved away from the scene.

Q. Okay. So why did you not immediately render aid to Ashtian Barnes when the car stopped?

A. Because the scene wasn't clear. I was -- he could have gone for a weapon. And still at that point, you know, he still, you know, you know, his eyes open and -- so for me the scene is not clear.

Q. There's a dash cam video in your car. You're aware of that?

A. Yes, sir.

Q. And it was operating the entire time?

A. Yes, sir.

Q. According to the dash cam video, you were -- you jumped out of the car, Ashtian Barnes' car at 14:45:52. Does that sound about right?

A. I wouldn't -- I wouldn't know to tell you on the exact time.

Q. That would be at least according to -- and we know that these clocks are not always GPS accurate?

A. Right.

MS. BAKER: Object to sidebar.

Q. (BY MR. FOMBY) So we -- we can't map the time on that necessarily completely accurately, but the -- the time on that is relatively accurate; is that

correct?

MS. BAKER: Object to -- calls for speculation, but you may answer.

A. I believe so.

Q. (BY MR. FOMBY) Okay. So at 14:45:52, which is 2:45, almost 2:46, you -- you're out of the car holding a gun on Ashtian Barnes. The first time anyone mentions in the video CPR, was at 14:50:31 which is approximately five minutes later. Does that sound about right?

A. I would have to look at the video to know what time it was, like I said, but if that's what you say, I mean. . .

Q. We will look at the video and that sort of thing. And --

A. Right. Now CPR started before I called it out on the radio. CPR already had a gun but I called in ready from my position to make sure dispatch knew that, you know, CPR was -- CPR was in progress.

Q. Okay. And approximately how many police officers were on the -- so you -- you were -- you were securing the scene. I'm looking at a photograph that depicts the moment when the first officer says we need to do CPR and I'm counting, not including you, at least one, two, three, four, four or five officers on the scene. Does it require five officers -- other than you, not including you, to secure the scene before you perform CPR?

A. Well, we're not trained medical professionals so what we do is we call for HFD and let the medical professionals -- I mean if we

could render aid to a certain point with where we know what we're doing, like CPR, then we would do CPR. But other than that, I'm not a trained, you know, medical provider and I don't know, you know, anything about, you know, doing first aid on -- on a subject and I was -- I had already taken myself out of that -- that spot.

Q. Right. Now Deputy, I -- I can understand that, but I'm not asking about whether or not at that point you performed CPR, but with a large number of officers on the scene, it took over -- it took well over five minutes for anybody to attempt CPR.

MS. BAKER: I'm going to object to that because it's argumentative and it doesn't seem to be a question.

Q. (BY MR. FOMBY) Is there -- leading to the question, is there a reason why all those officers would stand around and watch Ashtian bleeding to death instead of trying to render aid?

MS. BAKER: Objection, calls for speculation and also misstates the facts in evidence at this time.

A. I -- I wouldn't know how to answer that because, like I said, I took myself out of the -- the active scene and stepped back when the -- when the third officer arrived. So I can't, you know, say what time or how long it was before they started CPR. When I noticed they were doing CPR, is when I called it over the radio.

Q. (BY MR. FOMBY) Okay. Now before this officer stopped -- stepped up and said we need to do CPR, several other officers came up to you and asked you if you were okay. Do you recall that?

A. Yes.

Q. And you told them that you were -- you -- you had banged your knee?

A. My leg hurt.

Q. So they were concerned about your wellbeing, but they still had not tried to render any kind of aid to Ashtian Barnes at that point?

A. They were on that side of the -- the scene, so I -- I don't know.

Q. If that had been a colleague of yours in the Toyota, a peace officer, who Ashtian Barnes had shot, would you expect other police officers to come up and inquire and ask Ashtian if he's feeling okay rather than render aid to one of their fellow peace officers?

MS. BAKER: Objection, argumentative, hypothetical.

A. I don't know how to answer that. I know how I would do I guess what I thought was reasonable to -- to -- while I could while HFD arrived.

Q. (BY MR. FOMBY) And by the time the first EMS person showed up, you said that you had called that in?

A. Correct.

Q. You called in EMS. The first EMS person showed up at 14:56:12, which was a little less than approximately ten minutes after Ashtian had been shot. Are you aware of that?

A. No.

Q. And according to the EMS dispatch records, it took them approximately two minutes to arrive on the scene after they were notified. So when was EMS

notified, actually notified that there was a person -- person who had been shot who was bleeding out?

A. When -- after the incident the car came to a stop, I was able to get down, I called on the radio, "Shots fired, shots fired, get HFD en route now."

Q. Okay. And yet eight minutes went by before they got the message. And do you know -- have any understanding of why it might have taken them eight minutes to get around to showing up?

MS. BAKER: Object to that question as directed to this officer. It calls for speculation.

Q. (BY MR. FOMBY) You know that particular stretch of the road, Deputy. How -- and -- and the traffic that day was fairly light. How long would you expect knowing where the fire stations are before a fire -- a fire engine to get there once they got the notice?

A. I wouldn't know how to answer that question. I mean they -- they -- we don't deal with the HFD or the Houston Fire Department part of dispatch or their -- their call center, so I wouldn't know to tell you if they would be down the road, they would be done there within a minute or they were at the station, they would be there -- I -- I have no idea --

Q. Okay.

A. -- as far as, you know, the exact time that it would have taken them at that time of day. But within a minute of -- about a minute of me requesting HFD the first time, I keyed up again and said, you know, "Confirming you have HFD

in right -- en route” and our dispatch confirmed that they were en route.

(Exhibit No. 33 marked.)

Q. (BY MR. FOMBY) Okay. And that is 33. Deputy, I'm showing you what has been marked as Exhibit 33. It's Bates number 77. And the officer writing this was a B A Roberts. Do you know who B A Roberts is?

A. I do not.

Q. In his report, the -- according to his report, so if we look toward the end of this third paragraph in his statement he says that: The suspect attempted to flee in the vehicle and drug Deputy Felix approximately twenty yards.

Is that an accurate statement?

A. Using the word “drug,” no.

Q. In fact, at no point were you ever drug during this entire incident, did you?

A. No, sir.

Q. So you had mentioned earlier that the real reason why you decided to pull your duty weapon and try to stop Ashtian Barnes from leaving, is that you felt that he was a risk to the general public?

A. That is correct.

Q. Okay.

A. Along with leaving the scene, you know, in a motor vehicle is a felony charge. You know, it is evading, you know, so you know, not to, you know, go that route, you know, that's why I drew my weapon.

Q. Now, according to policies of the Constable's Office, when are you allowed to draw your duty weapon, your service weapon and under what circumstances are you allowed to draw it and point it at a person?

A. Anytime I think it's reasonable, I fear -- I'm in fear for my safety or the safety of others.

Q. Now you've been trained in the policies of your department, haven't you?

A. Yes, sir.

Q. And in fact, haven't you been trained that it is in -- inappropriate to draw -- to use any form of deadly force unless the individual that you're pointing the gun at -- unless it's to protect themselves or another person from imminent death and serious bodily injury?

A. That's correct.

Q. And you felt that with you standing beside the car, Ashtian Barnes driving away, would meet that definition of protecting another person from imminent death or serious bodily injury?

A. Myself or others.

Q. Okay. So you're standing there with a gun. Was the tollway empty at that time?

A. No.

Q. Were there, in fact, a number of cars going back and forth?

A. There was traffic, yes.

Q. And when you leaned forward with -- with your body, with the gun, and before the car had left, did you have any certainty that if you pulled the trigger, that

bullet would not have left the veh -- Ashtian's vehicle and struck another vehicle?

A. I wouldn't fire -- have fired at the vehicle at that time unless I had direct sight of my target.

Q. And is it, in fact, dangerous to fire in the direction of a target when there are innocent third parties that could be struck by the bullet?

A. Repeat your question.

Q. Isn't it, in fact, dangerous to fire a shot at a -- at a target when there are innocent third parties who could be struck by that bullet?

A. Well, anytime you fire a weapon it's dangerous, so whether there's an individual or not. . .

Q. That's not the question I'm asking you, Deputy. I'm saying that, isn't -- aren't you trained -- are you trained not to discharge a weapon when there are innocent third parties that could be struck by the bullet?

A. We're trained and we're responsible for every bullet that leaves that -- that weapon, so if your line of sight is not clear, you do not discharge your weapon.

Q. Okay. At all. Are you trained and is it the policy of the department to -- that you should not fire at a moving vehicle?

A. I wasn't firing at a moving vehicle. I fired while the vehicle was in motion with me on it.

Q. I'm sorry, Deputy.

A. There's a difference.

Q. You're in a car that is moving, and what are you -- what are the policy -- why do you think the policy guideline says you don't fire at a moving vehicle?

MS. BAKER: Objection, calls for speculation.

Q. (BY MR. FOMBY) You have been trained, you say you've been trained, that this department has trained you in the policy, then they should have trained you in the reason for that policy. What reasons were you given for not firing in a moving vehicle?

MS. BAKER: Object to sidebar.

A. When you shoot at a vehicle that's either coming towards you or moving away from you, you know, a -- depending on -- on the type of ammunition that you carry, depending on the position you're in, ricochets can happen, meaning it can bounce off the vehicle and go in the direction that wasn't intended, you know, because it is metal or, you know, some type of composite that will make a -- a bullet, you know, ricochet. So that's the reason why the policy says you don't discharge a weapon at moving vehicles.

Q. (BY MR. FOMBY) Is that the only reason?

A. I -- I can assume that that's what it is.

Q. Okay. How about -- is a car moving at reason -- reasonable speed considered a deadly weapon, a potential deadly weapon?

A. If it's moving towards a person, yes.

Q. Why is that?

**A. Because of the size of the vehicle and the -
- the injury that could cause to someone,**

severely injured, severely injure someone or kill them.

Q. Is a car that is moving obliquely to high speed traffic dangerous to the -- to that traffic?

A. Yes.

Q. And why is that?

A. Because that you could cause, you know, injury to someone else.

Q. So isn't it true that one of the reasons why you don't fire at a moving vehicle, is that if you disable the driver, you cannot guarantee what that car is going to do?

A. That could be a part of it.

Q. Because you shoot that person and that doesn't necessarily stop the car, does it?

A. That's correct.

Q. And the policy of not shooting from a moving vehicle, why is -- what is the reason for that policy?

A. From a moving vehicle?

Q. Correct.

A. Which -- do you mind showing me the policy you're referring to?

Q. I'll -- I'll dig it out, but there is a general -- generalized policy of never shooting from a moving vehicle. Why is that?

A. And this is a Precinct 5 policy?

Q. It's a Precinct 5 policy.

A. Can I see that, please?

Q. Okay. I am showing you -- okay. I'm going to

reassemble this and show you the general policies.

MR. FOMBY: Have you stamp it.

THE REPORTER: Exhibit 34.

(Exhibit No. 34 marked.)

Q. (BY MR. FOMBY) I want you to turn to page 48.

A. (Witness complies.)

Q. And there's -- paragraph 5.

A. Okay.

Q. So paragraph 5, does it say -- that you asked me where it says in the policy you shouldn't shoot from a moving vehicle.

A. Right.

Q. You see that?

A. Uh-huh (Affirmative.)

Q. Would you agree that that -- that is the policy of your force?

A. And this is referring to while you're operating a motor vehicle and moving in a vehicle.

Q. I'm sorry, Deputy, I don't read that. It says: Do not discharge it from a moving vehicle or at a fleeing vehicle.

It doesn't have any conditions?

MS. BAKER: Object to sidebar.

Q. (BY MR. FOMBY) So does it say do not fire from a moving vehicle?

A. That's correct. Do not discharge firearm from a moving vehicle.

Q. I want you to move to the page before, No. 47.

A. There's no 47.

Q. There should be a page before it.

A. Okay. It's out of order. Okay. 47.

Q. Okay. Paragraph one, what does that say?

A. Wait, I'm sorry, which section?

Q. Section B, Rules, paragraph 1.

A. Okay. The policy stated above is the basis of the following set of rules that have been designed to guide deputies in cases involving the use of firearms.

Q. I said paragraph number 1. They're numbered, Deputy.

A. Line number 1?

Q. Yes, Deputy.

A. Deputies shall not discharge a firearm except to protect themselves or another person from imminent death or serious bodily injury.

Q. What does paragraph numbered 2 say?

A. Deputies shall discharge their firearm only when doing so will not endanger innocent persons.

Q. How about the one numbered 3?

A. Deputies shall not discharge their firearms to threaten or subdue persons whose actions are destructive to property or injurious to themselves but which do not prevent -- represent an imminent threat of death or serious bodily injury to the deputy or others.

Q. How about paragraph numbered 4?

A. Deputies shall not discharge their firearms to subdue an escaping suspect who represents no imminent threat of death or serious bodily injury.

Q. And looking at all of those, what is the reasoning behind those rules?

A. It's a guideline for when to use your firearm.

Q. And isn't the -- the basic reasoning behind those, that the use of deadly force, discharging a firearm, is a last resort option?

MS. BAKER: I'm going to object to that question as directed to this witness because this witness, there's no evidence this witness prepared the policies, so if you want to ask a Precinct 5 witness about what the - the basis is for the policy --

MR. FOMBY: I understand your objection. He took a class on de-escalation of force. He's taken a number of classes, as he has already pointed out, on the proper use of firearms, tasers, batons and other uses of force. So I'm asking him if he took a class on de-escalation of force, part of that class material would have reasoning for why it is that using a -- firing a firearm is a last option.

Q. (BY MR. FOMBY) Why is that reasoning?

A. Firing a firearm is not the last option.

MS. BAKER: No.

A. It's an option.

MS. BAKER: It's an option.

Q. (BY MR. FOMBY) In this case, what is more dangerous -- what is a higher level of escalation of

force than firing a firearm?

A. The highest level is the firearm.

Q. Okay. So when Ashtian Barnes was putting the car in gear to leave, you -- you drew your firearm and pointed it at his head; is that correct?

A. That is incorrect.

Q. I think you have already said that you pointed it at his head?

A. When --

MS. BAKER: I'm going to object to that because it totally misstates his testimony.

A. When I first drew my weapon, my weapon was not pointed directly at his head. It was pointed at him.

Q. (BY MR. FOMBY) Okay. We have a video that shows the weapon entering the back window, visibility -- visible back window with Ashtian's head leaning away from it. Have you seen the video?

A. When I was on the -- on the doorsill?

Q. When you were on -- on the ground, as you were stepping onto the doorsill.

A. That would be incorrect.

Q. Where was your gun pointed at that particular point?

A. As I was reaching inside the vehicle my weapon was back like this, and as I was reaching it, I'm not going to leave my hand extended, you know, at that point. You -- you retract your gun, you retract your hand and you keep it at this position until the threat is -- is

gone or threat is, you know, assessed.

Q. So your testimony right now under oath is that as you were reaching into the vehicle, you had your firearm back in this position (Indicating)?

A. As I was going into the vehicle, that's what I recall, yes.

MR. FOMBY: Do you mind if we take a five-minute break?

MS. BAKER: No.

THE VIDEOGRAPHER: The time is 1:32 p.m., we're off the record.

(Off the record.)

THE VIDEOGRAPHER: The time is approximately 1:43 p.m., we're on the record.

Q. (BY MR. FOMBY) Deputy, previously we talked about the whole issue of escalation of force, or de-escalation of force, correct?

A. Okay.

Q. What -- and you took a class in 2018 on de-escalation of force; is that correct?

A. That's correct.

Q. And in that class, why were you told de-escalation of force was important?

A. In certain situations you can use different tactics to de-escalate the situation, either by, you know, talking to someone or by, you know, to make sure that they kind of -- to make sure that they, you know, can calm down and bring the situation back to a level where you can, you know, address the situation at hand.

Q. Okay. And in that class, were you taught that de-escalation of force is an important tool to prevent situations from going out of control?

A. That's correct.

Q. Okay. And as part of that, you -- I think the class was techniques. So you were taught different techniques for de-escalating a situation, correct?

A. Different techniques were taught, yes.

Q. In that -- all right. You were also taught the escalation levels of how and when it is appropriate to go from one level of force or -- or authority to another level of force or authority. Is that fair to say?

A. Well, ideally, you know, yeah, if you can follow the -- the levels, it would be, you know, a perfect world. You know, this is not a perfect world, so you can be speaking, you know, with someone one time at the moment and have to use deadly force in the next, or you could be talking to them and you go hands on.

So in a perfect world, you know, you could use, you know, these low levels of -- of force, but, you know, sometimes you can't. Sometimes you just have to, you know, transition to a higher level of force.

Q. Okay. A classic example where you might want to de-escalate would be, say, a boyfriend and girlfriend situation where they've got an argument going on. Would that be a good example?

A. Okay.

Q. And where you want to separate the two of them and calm them down, to calm down the situation. Is that one of the techniques they taught

you?

A. Correct.

Q. Or when we have someone who has mental illness and you need to deal with their mental illness and calm them down so that they don't spin out of control, would that be another good example?

A. Yes.

Q. Now, but as you said, sometimes you can't -- the situation doesn't merit or doesn't work with -- you can't de-escalate it. So certain circumstances you have to use escalating levels of force and authority; is that true?

A. That's correct.

Q. And one of the first levels would be simply your presence on the scene. Would that be fair?

A. Yes.

Q. That a police officer or deputy constable by the fact that they're there and have a uniform, that usually warns people and gets them calmed down; is that correct?

A. Correct.

Q. The second method might be using your authoritative voice in orders, right?

A. Uh-huh (Affirmative.) Yes.

Q. So in this case telling someone stop shuffling around, that would be a way of trying to control them without having to use further levels of force?

A. Correct.

Q. Now, we've also talked about other tools that you've been taught as part of that escalation, de-

escalation problem. You've been taught how to use a baton; is that right?

A. Correct.

Q. You've been taught how to use a taser?

A. Correct.

Q. I'm sure that there are other similar tools and skill sets that they've given you in these classes so that you don't have to get to the lethal weapon category. Is that -- is that fair?

MS. BAKER: Objection, vague.

A. It -- there's situations where, you know, like I said, ideally in a perfect world, you know, level of escalation, but you know, real world is from one second to another, it's, you know, it could be zero to a hundred. You know, where you having to transition from just presence to, you know, displaying a firearm or -- or. . .

Q. (BY MR. FOMBY) And displaying a firearm by itself is a level, is an escalation level to warn people of imminent danger; is that right?

A. That's correct.

Q. Okay. So -- and -- and I understand what you're saying, that you don't have to walk through the steps, right?

A. Correct.

Q. Is that what you're saying?

A. That's correct.

Q. That you can go from step three to step ten if you have to under the circumstances. Is that what you're saying?

A. That is correct.

Q. But in this situation, when your command arguments were not working, did you attempt to use your baton?

A. No.

Q. Did you attempt to use your taser?

A. If I recall I don't think tasers were issued yet.

Q. Okay.

A. I don't recall, but. . .

Q. But you've been trained on tasers for several years?

A. That's correct. The -- the -- just the way the situation escalated and rapidly evolved, there was no time -- there wasn't time to deploy those level of force.

Q. I noticed that your taser is mounted so that your right hand can naturally fall on it and pull it straight out; is that correct? Is that how it's intended?

A. No. No, there's a -- there's a locking mechanism and you have to rock back and then up in order to --

Q. Okay.

A. -- to deploy it.

Q. Is there a locking mechanism on your firearm to keep it from falling out?

A. Yes, there is.

Q. And your firearm is actually located where you have to actually bend your elbow back to reach to it?

A. Correct.

Q. And in this particular instance when you were concerned that Ashtian Barnes might leave, you did not pull your taser; is that correct?

A. I don't recall if we were issued tasers at that point yet.

Q. But no taser was pulled at that time?

A. That's correct.

Q. Let's return to the moment where you decided to fire your weapon. You said that you had no visibility as to what you were actually firing at; is that correct?

A. That's correct.

Q. You thought you might be firing it into his body, Ashtian Barnes' body?

A. I did.

Q. But you -- you had no way of being sure?

A. That's correct.

Q. What would have happened if you had missed Ashtian and the bullet ricocheted out into the tollway? Would that put other people at danger?

MS. BAKER: Objection, irrelevant, calls for speculation.

Q. (BY MR. FOMBY) Earlier you -- you said that one of the reasons -- the primary reason you don't fire at moving vehicles is a risk of ricochet. So in this case, if it had ricocheted, would -- would that have put people at risk?

A. The -- the way that I positioned the weapon, there wasn't a chance for ricochet because it was a straight downward motion, so anything that would have been fired in that vehicle would have stayed in that vehicle in a

downward motion.

Q. All right. When you -- when you shoot an individual who's operating a car at a reasonable rate of speed, what happens if you disable that person while they're driving the car?

A. At that point you would have to take, you know, different measures to make sure you get, you know, control of that vehicle, reaching for the emergency brake, pressing the emergency brake, steering the vehicle until the -- the -- you know, you can bring it to a safe stop.

Q. I see. So your training is that you can, sitting on the sill of the car with one arm out and the other hand holding a gun, you can somehow, as the car veers off into the tollway, jump down in there on top of his body and push a foot out and hopefully -- where is, by the way, the emergency brake on a Toyota Corolla?

MS. BAKER: Objection, argumentative. Was the question where is the emergency brake on -- on a Toyota Corolla?

MR. FOMBY: No, I would just -- just a pause.

Q. (BY MR. FOMBY) Where is the emergency brake on a Toyota Corolla?

A. Most brakes are located in the bottom left of the driver side area.

Q. Most --most brakes?

A. Most brakes.

Q. Do you know where -- where the brake was?

A. I do not.

Q. So what you're telling me is that if you had immobilized Ashtian Barnes in the car had swerved

under condition, you actually did not have a plan for how to stop the car from hitting everybody else?

A. At that moment that wasn't an issue. Once the vehicle came to a stop, I was able to -- to get off the vehicle and ordered him to put the car in park.

Q. As you said that you -- once you shoot someone, if that person is immobilized and can no longer -- is no longer driving the car, you said that your job then is to get into the car somehow and figure out a way to put the emergency brake on and -- and bring it to a stop?

A. Well, you said what would I do and that would be my next -- be my next form of action, is to try to get that car to stop.

Q. So that's your plan of action after you shot him, that if this thing veer -- his car veered into that tollway traffic, that you were going to somehow pull a Rambo move and get down into the car and bring it to a stop?

MS. BAKER: I'm going to object to the argumentative nature of that question, and also to vague because I'm not clear what a Rambo move is.

MR. FOMBY: A Rambo is a character from the movies.

MS. BAKER: You don't need to tell me. Yes, sir, I know.

MR. FOMBY: You were not clear on it, so I need -- you need --

MS. BAKER: Okay.

MR. FOMBY: -- you obviously need to be educated

about one of the most popular movies in the history of filmdom.

MS. BAKER: Oh, yeah, no, I know who Rambo is, I just don't know which specific scene or move you are referring to.

Q. (BY MR. FOMBY) So that -- that -- you formulated this plan that if you shot him and immobilized him, you were somehow going to get control of this vehicle?

A. My -- my actions were based on what was happening at that time. So I can speculate, I can, you know, say that I would have done this or I could have done that, but at that time when, you know, I discharged my weapon, the vehicle did come to a stop and I was able to at that point get out -- get off the vehicle.

Q. When you fired the second time into Ashtian Barnes, he brought the car to a stop?

A. That's correct.

Q. But what I'm saying is, what if he had been immobilized, because you're traveling at high speed next to a bunch of cars. Did you actually have a plan when you pulled that trigger to not put all of those people on that tollway at grave risk of death or injury?

MS. BAKER: Object to argumentative nature, also asked and answered.

A. That -- the vehicle at that point had began to take off and that's why the -- the shots were made there. If he would have gone to a higher speed, it would have been a different situation. I could have definitely been, you know, seriously injured or killed at that point, you

know, by any of, you know, his further actions that, you know, he -- he intended on by driving away from -- from the scene with me hanging onto a vehicle.

Q. (BY MR. FOMBY) You stated before that you felt that you were at risk because you were being pinned and you didn't know what was going to happen. If simply being pinned to the car is a dangerous situation, how does taking -- being in a car that's veering out of control into a tollway put you in a better condition for being able to get inside that car and change what's happening?

A. We can I guess sit here and assume all day long and sit on something that, you know, could have happened that didn't happen, you know. I could have, you know, stepped on the emergency brake or at that point when there was no, you know, pressure or force coming towards me from inside the vehicle, you know, to attempt to get in the vehicle to steer the vehicle or, you know, whatever needed to be done to get that vehicle to stop. But like I said, that didn't happen so we can -- I can just assume what could have or I would have done at that point.

Q. Isn't that, Deputy, why we have policies, so that people don't have to at that moment make crit -- split-second decisions about what they're going to do?

MS. BAKER: Object to the argumentative nature of that question, and also this is not a person who makes policy -- who makes policies. If you know, if you can answer it, you can.

A. I don't know. I mean the policies are set

for a reason, you know. At no time did I violate a Precinct 5 policy, you know, by attempting to -- fleeing -- you know, this fleeing person.

Q. (BY MR. FOMBY) There's a policy that says thou shalt not fire at a moving vehicle. Did you fire at a moving vehicle?

A. Okay. That -- that -- that question there is -- I fired while being on a vehicle and the vehicle was moving in a -- in a direction where it didn't put anyone else in harm 's way, you know, shooting the weapon in a direction where it would have struck someone else.

Q. You're saying that shooting the driver of the car while it's op -- operating at a high speed, does not put anyone in harm's way?

MS. BAKER: Objection, misstates his testimony.

A. I'm not sure what the speed was, but it was something that, you know, that shooting at Mr. Barnes for him to stop the vehicle is -- was the intended, you know, part was to stop the threat.

Q. (BY MR. FOMBY) One of the methods of -- one of the levels of escalation is to issue a verbal warning. I believe in the policies it suggests that one of the things you do before you fire is to give a warning before you fire. Did you warn him stop or I'll shoot?

A. There is no policy that says that you have to give a warning to an individual before you fire a weapon.

Q. Did -- did you warn him stop or I'll shoot?

A. I never warned him that I would shoot.

Q. Okay. Now, the reason -- we have these policies

and we have some policies that we've talked with handguns there are other policies that are out there.

MR. FOMBY: I'm going to hand this to you.

(Exhibit No. 35 marked.)

Q. (BY MR. FOMBY) This is Exhibit 35 and these are reprimand records from the Constable Precinct 5's Office. Who's being reprimanded in these records?

A. That's myself.

Q. Okay. And in this case, May 18, 2005, the -- the first page here, which is Bates numbered 1729, it said that -- what was it that you failed to do?

A. Complete time sheets.

Q. Okay. And what was the -- what was the penalty for your failure to complete your time sheets?

A. It says one-day suspension.

Q. And in that paragraph that says one-day suspension, what does that second paragraph say?

A. The investigation revealed that you were negligent in failing to complete several time sheets. You have had ample time to conform to the requirement in completing a time sheet.

Q. Actually I told you -- I referred to the -- to where you said there was a one-day suspension. What's the second sentence in that paragraph?

A. Any further such behavior will result in much more severe disciplinary action, up to and including termination.

Q. So as I understand this, the improper completion of time sheets led to a one-day suspension and the threat of possible termination in the future if -- if you're -- if you didn't correct your behavior; is that

correct?

A. That -- that's standard for any disciplinary actions.

Q. Is that a yes?

A. Yes.

Q. Okay. On the next page, Bates number 1730, dated August 8, 2006, who was this reprimand directed toward?

A. Myself.

Q. Okay. And what is it that the reprimand says that you failed to do?

A. I didn't utilize my microphone as required, according to policy and procedures for the mobile vision in car video system dated May 3rd, 2004.

Q. And in the third paragraph there, what was the reprimand? What was the punishment for failing to do so?

A. One-day suspension.

Q. Okay. And was there -- what's that second paragraph? Is there a further warning?

A. During the suspension you're not permitted to represent yourself as a peace officer. Furthermore, extra employment during suspension is disallowed.

Q. And again it says: Any further such behavior will result in more severe disciplinary action, up to and including termination.

Is that correct?

A. That's correct.

Q. Okay. Let's turn to the next page, Bates stamped 1731.

A. (Witness complies.)

Q. And who is this directed toward?

A. Myself.

Q. Okay. It's dated January 11th, 2008. And why were you being reprimanded here?

A. For loss of equipment.

Q. And what was the punishment for this mistake?

A. One-day suspension.

Q. And again, they warned you that any further such behavior could lead to termination?

A. Correct.

Q. Bates stamp 1732 references a violation of S.O.P. 100-2.09. What was this incident about?

A. It was showing myself out on a -- on a call before arriving.

Q. Okay.

A. As I was turning the corner.

Q. So what is that exactly? You didn't arrive but you -- you wrote up that you had arrived?

A. No. We have an arrive button on our -- on our computer.

Q. Uh-huh (Affirmative.)

A. On our old system. So as I was turning the corner to clear myself out, I hit the arrive button and then I cleared it but stayed on scene talking to the -- to the resident.

Q. And for this you received a temporary suspension for two days; is that correct?

A. That's correct.

Q. And you were advised that you could not take any kind of police action or carry or wear any departmental-issued equipment?

A. That's correct.

Q. During this period?

A. That's correct.

Q. And again: Any further such behavior will result in more severe disciplinary action, up to and including termination.

Is that correct?

A. That's correct.

Q. So we have here some situations where you filled out a time -- timecard wrong, you forgot to turn on the microphone, you misplaced your radar and you pushed a button too early. In each of these cases you got written up and you received at least a one-day suspension; is that correct?

A. That's correct.

Q. In this particular instance that we're talking about, the shooting of Ashtian Barnes, did anyone talk to you about your decision-making regarding pulling your hand -- your service weapon to keep him from leaving?

A. No.

MS. BAKER: Do you mean anyone at Precinct 5 or are you talking about during the investigation?

Q. (BY MR. FOMBY) Anyone at Precinct 5?

A. No.

Q. Did anyone in the DA's office specifically talk to you about your decision-making about why you did that?

A. During the investigation, you know, just the actions leading up to the incident.

Q. Did you have any further training regarding that particular -- how to handle that particular situation in the future?

A. No.

Q. Did -- were you at all reprimanded for pulling your -- your service revolver to keep someone from leaving the scene?

A. No.

Q. Same question with jumping on board a moving vehicle. Did anyone, Precinct 5 or Harris County in your chain of command, talk to you about whether that was appropriate?

A. No.

Q. And did you ever receive any training after the fact about how to handle that situation in the future?

A. We've -- the department has had training involving high-risk stops, but nothing specific to that incident.

Q. Okay. The decision to fire your bullet, fire your gun at the driver of a car on the tollway, did -- did anyone in your chain of command, anyone at the Constable's Office speak to you about that decision and -- and discuss whether that was a good idea?

A. No.

Q. And no -- no additional training on how to

handle that situation?

A. No.

Q. The decision to hold a gun on Ashtian Barnes as he was bleeding out and asking for help, without providing help, did anyone talk to you from the Constable's Office, your chain of command, talk to you about what your thinking was and whether that was appropriate?

MS. BAKER: Objection, mischaracterizes his testimony, but you may answer.

A. That was never discussed because I did ask for medical attention for Mr. Barnes right after the shooting occurred and again about a minute later confirmed that HFD was en route.

Q. (BY MR. FOMBY) So to summarize, after this incident did you receive any kind of specialized training regarding what happened during this event?

A. No.

Q. Did you receive any kind of counseling regarding this event?

A. Yes.

Q. Okay. Psychological counseling?

A. It was a counseling dealing with the incident itself.

Q. Okay. And what was the nature of that counseling? And you don't have to go into anything personal but --

MS. BAKER: Yeah, we're getting pretty close.

Q. (BY MR. FOMBY) Is it about your -- your feelings or about preparing you for future situations?

A. It's just -- we talked about the incident and just the way that things were I guess related to work and just personal stuff.

Q. Okay. After the shooting which occurred on the afternoon of April 28th, 2016, when were you released to return -- I -- I assume that there was a temporary - - you were put on temporary leave; is that correct?

A. No, that's incorrect. I was never on leave. I was offered a desk position for however amount of time -- amount of time that, you know, I needed.

Q. And did you take that offer?

A. I did.

Q. And how long were you on the desk position?

A. About two weeks.

Q. Okay. And was that a mandatory offer or was that an offer to help you with the situation?

A. Well, the initial -- it would be three days is mandatory from -- there's actually no policy, but three days that they tell you to, you know, kind of I guess for investigation purposes make sure that whatever they need to do on their end, but normally it's three days after a shooting.

Q. Okay. Three days to be on desk duty?

A. Right.

Q. Okay.

A. Desk duty or be off.

Q. At this point we received a video from Harris County that was the dash cam of your -- of your squad car.

A. Okay.

Q. And I have some close-ups of this but I first want to run through this. Have you seen this video at all before?

A. Yes.

Q. Have you seen it recently?

A. Yes.

Q. Okay. So I want to kind of walk through here and see this as -- without stopping it all the way through.

A. Right.

Q. Because I think it helps us to put this in context instead of chopping it up.

MS. BAKER: Let me ask you this before we get started with that. Are you intending on attaching it as an exhibit? I know you have the separate pictures, but he's viewing it, so it seems like we should also attach it.

MR. FOMBY: Well, we could do that. It's a demonstrative at this point because I want to focus in on this. I just wanted him to get the overview as demonstrative to get his -- and we're not going to focus in -- really on the video.

MS. BAKER: You know, I've done several cases like this, and normally we go ahead and attach the video because the witness is looking at it.

MR. FOMBY: Okay. Well, I don't have a physical copy of the video at the moment.

MS. BAKER: If we get you a physical copy, can we attach it?

THE REPORTER: Sure. If it's agreeable.

MS. BAKER: Okay.

MR. FOMBY: Okay. And why don't we call that physical copy, I can send that to you by --

THE REPORTER: E-mail.

MR. FOMBY: E-mail. And we'll call it Exhibit 36.

MS. BAKER: Perfect. Thank you.

(Exhibit No. 36 marked.)

Q. (BY MR. FOMBY) So at the moment --

A. I can't see that. There's too much glare.

Q. Okay. I don't want to move in on you too much, but let's see where it is. Okay. I'm just going to be -- okay. We can just see a little bit closer. Okay. Now, to set the scene, this is April 28, 2016. The time on the dash cam is 14:42:46, and I believe when this starts the audio is not on.

A. That's correct.

Q. What -- what causes the audio to come on in this situation?

A. The audio is -- or the video is recorded, I'm not sure if it's 30 seconds or a minute prior to the lights turning on, so it's a continuous recording as far as when I hit my lights it goes back 30 seconds or a minute and then it starts recording, and audio will come on as the lights are -- are turned on.

Q. Okay. And what -- what would turn the -- the video off at some point?

A. The videos can be turned off by either memory running out or me physically turning it off.

Q. Okay. How about the audio? Can the audio be turned off separately?

A. The inner -- the inner audio will run as the video's -- the camera's running. The external mic will run and can be turned off manually as well from a control box that we carry.

Q. Okay. And does everyone -- do the other deputies and police officers have a control box that could turn this particular mic off?

A. No.

Q. It's just you?

A. That's correct.

Q. Okay. As I said, I'm going to run this up until the point after the car stops because -- and then we can go back and take a look at some -- at some moments in time.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) And that would be Ashtian's car, correct?

A. That's correct.

MR. FOMBY: Is the audio on? There it is.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. And that's the same video that you watched before, right?

A. That's correct.

Q. And there's more that goes on here with officers showing up. I think at some point 26 officers, police officers or constables or deputy constables were on the

scene, but . . .

MS. BAKER: Object to sidebar.

Q. (BY MR. FOMBY) So we're not going to go all the way into that, but I -- I just want to come back here and look again at what was going on in those few seconds, okay?

Okay. So now we're at the 150 mark into the video, and I think everything starts happening at 2:57, but -

-

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. At this point I don't -- what he's -- what you guys are talking about is he tells you it's a rental car and you asked who rented the car, when did you rent it, he says about a week ago, right, and it's in his girlfriend's name, so you're having that conversation.

A. (Nods affirmatively.)

MS. BAKER: Object to sidebar.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. I wanted to know, at this point, up until this point, the blinker has been going. You notice that?

A. Okay.

MS. BAKER: I guess there's a question?

MR. FOMBY: Yes. That's the question.

Q. (BY MR. FOMBY) Did you notice the blinker has been moving?

A. Yes.

Q. Okay. So I don't drive that car but something just changed and the blinker is no longer blinking at this particular moment, correct?

A. Right.

Q. And this is at approximately the time that you said that you saw him turn the car off and put the key down, approximately the time?

A. Yeah.

Q. And all this happens in a few seconds. I'm just trying to get us into the context of what's happening.

MS. BAKER: I -- I'm not trying to tell you how to take a deposition, truly not. You're obviously very talented, but we generally proceed by question and answer, so I think he needs --

MR. FOMBY: I've asked a question. I said that this has happened, is that your perception.

MS. BAKER: Okay.

MR. FOMBY: I'm asking him a question whether he agrees with me.

MS. BAKER: As long as you ask a question he understands. We don't even need to be oriented because he was there.

MR. FOMBY: Actually I think he will need to be oriented and we will get to that very quickly here.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. So at this point the trunk has been popped, right?

A. That's correct.

Q. And it's opened up and we notice the distance

between the cars, so the cars are still the same distance apart, they haven't moved, correct?

A. Correct.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. Now something has happened. We see the blinkers, see -- did you notice the blinkers came back on?

A. Uh-huh (Affirmative.)

Q. Okay. Something going's on in the car that's changed, and you have moved toward the car; is that correct?

A. That's correct.

Q. Okay.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. What were -- what was it you said at that particular point?

MS. BAKER: Objection, vague.

Q. (BY MR. FOMBY) Do you want me to play it again for you?

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) Okay. Did you hear it that time?

A. I heard it.

Q. Okay. So it wasn't, you know, stop or I'll shoot, right?

A. Right.

Q. It wasn't stop, right?

A. Right.

Q. It was "don't fucking move, don't fucking move"; is that correct?

A. That's correct.

Q. And then you fired your weapon?

A. Correct.

Q. And then almost immediately afterwards you fired it again; is that fair?

A. Correct.

Q. Okay. And then the car stopped. And as we can see, and I have a photograph of that, that will show it, the light -- brake light remains on which means Ashtian's foot would be on the brake, correct?

A. Correct.

Q. You did not at this point make a move to get inside the car to put it out of gear, did you?

A. No, I did not.

Q. Do you know where -- whether the car was placed in park before the other officers arrived?

A. When I instructed him to do so.

Q. Okay. So the car at this point and until the next officers arrive, is in gear but Ashtian's holding down the brake pedal?

A. When I instructed him to put the car in park he put the car in park.

Q. Who was that, Ashtian?

A. Ashtian.

Q. So after he was shot and he was lying there, you

said put it in park and Ashtian put it in park?

A. Well, he wasn't -- I mean he was sitting there and he was still conscious and able to -- to move and do everything else and when I said put the car in park, that's when he put the car in park.

Q. So Ashtian at that point was conscious of the -- of the fact that he needed to make the situation safe?

A. He was -- he was --

Q. Put the car in park?

MS. BAKER: Objection, calls for speculation.

A. He was doing what he was instructed to -- or ordered to do.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) It's not easy to hear on this computer as -- the sound of Ashtian, but our recording showed him talking to you at that point. Do you remember him ever talking to you?

A. He mumbled something or said something.

Q. Okay.

A. I was concerned about getting him medical attention. That's, you know, me talking over the radio.

MR. FOMBY: And we will get you this video.

THE REPORTER: Yes.

MR. FOMBY: Actually, we can probably -- we can give to you right now, but okay.

THE VIDEOGRAPHER: Don't forget your mic.

Q. (BY MR. FOMBY) Now Deputy, let's go through this, I was able to use Microsoft's standard program to run the video and have it take the little snapshots of every frame, okay? And we just saw the video and we can go back to it if we need to, but before we get into this, I wanted to ask again, I don't know if it got it on the audio from me because I was standing over there, that these statements that you made to Ashtian Barnes was not don't do it or fucking stop, but in fact, was don't fucking move, you repeated twice.

MS. BAKER: Objection, asked and answered several times.

MR. FOMBY: Actually he never said that except when I was up here and I wanted to make sure that it's on the record because I don't have the -- the mic on me.

Q. (BY MR. FOMBY) But is that an accurate statement?

A. That would be.

Q. Okay. Now I have these -- these stills that are marked Exhibit 1 through 29. I'm going to walk through them slowly. I have a copy. They're all identical. And these we just saw, the first two of these are actually just the moment when you pulled in behind him at 14:43:32.

The second one is the moment where he finally stopped, and that would be doing the math, some 14 seconds later, correct?

A. Yes.

Q. Now, I'm going to jump forward to 14:45:47, which is approximately two minutes. And we saw that you had stepped up and you were asking him some

questions, and going back and forth and we saw you telling him not to shuffle around. By this point, you had opened the door. And the blinker was on on his car; is that correct?

A. That's correct.

Q. Also at this point you're standing away from the car, it's very hard to tell the distance but your body is -- the door is open almost fully and your body is halfway or more than halfway toward the outside of the car door; is that correct?

A. Correct.

Q. Okay. This one is only important because I wanted you to notice that the blinker is blinking. So you see the change, the blinker -- you can see the cars going on the other side of the road to notice the time is changing, but we're talking about seconds and fractions of seconds, correct?

MS. BAKER: Mr. Fomby, I understood you to say the blinker is blinking on the one 14:45:47 but it looks like it's off to me. Did you mean to say off?

MR. FOMBY: It is blinking because the -- it's going on off on off which is blinking. It's not on, it is blinking.

MS. BAKER: So you're asking the witness to assume that the -- I mean it's not evident to me that it's blinking. So you're asking the witness to assume that?

MR. FOMBY: I think that we can look at this and see that within a fraction of a second the light comes on and off and on and off only on the driver's side rear turn indicator.

MS. BAKER: Okay. So I'm going to object to that as assuming facts not in evidence. Please continue.

Q. (BY MR. FOMBY) And again, at this point I'm putting a little bit more out than necessary, but I just want to show that these fractions of a moment as these cars are coming by, okay?

You are still standing there talking to him in the same position you were in before; is that correct?

MS. BAKER: You're referring to Exhibit 6 for clarity of the record?

MR. FOMBY: On Exhibit 6.

A. That's correct.

Q. (BY MR. FOMBY) Okay. And between Exhibit 5 and Exhibit 6, the relative positions of cars have not changed; is that correct?

A. That's correct.

Q. We have Exhibit 7. And Exhibit 7, and I want you to compare that to Exhibit 6. The brake lights have come on on the car, and your foot position has changed from Exhibit 6, has it not?

A. Yes, or my stance from what I can see.

Q. So your right foot appears to be in the same position, but your left foot has changed, correct?

A. Correct.

Q. And when we look at your elbow position for your right arm, your right arm elbow appears to be coming up and your hand is reaching down in the direction of your service revolver; is that accurate?

A. My service weapon, yes.

Q. Yeah. This is Exhibit 8. At this point, your service revolver, service weapon is pulled, the car is still -- the brake lights are still on, the car has not moved, your -- now your right foot has changed

position; is that correct?

A. It's come off, yeah.

Q. And we can no longer see your left foot and left leg; is that correct?

A. That's correct.

Q. And your body has moved from the outer portion of the driver's side door more to the inner portion of that door, correct?

A. That's correct.

Q. This is exhibit -- Exhibit 9. Now, at Exhibit 9, the brake lights are off, correct?

A. Correct.

Q. And that means that if the car is in gear, at this point there's nothing stopping the car from moving forward, correct? So we do notice that the blinker's still on and the trunk, position of the trunk lid has not changed. Do you see that?

A. Okay.

Q. Okay. Your body, meanwhile, your -- we can't see your left foot. We can -- your right foot is disappearing in the direction of the car, and your body is moving further in to the interior of the car. You can see more of the driver's side door, right? There's exhibit --

MS. BAKER: Do you agree with that?

A. I -- it's about the same. I mean just my -- I'm turning towards the car.

Q. (BY MR. FOMBY) Okay.

MS. BAKER: Because he's trying to ask you a question but they don't always come out questions.

THE WITNESS: Okay.

MS. BAKER: So we -- we're looking for a question.

Q. (BY MR. FOMBY) So here is Exhibit 10. And at this point, looking down, the -- your right foot now has completely disappeared from the picture. The blinker has blinked off, so it appears to still be blinking, but it's now in the off position. There doesn't seem to be any real difference in separation between the vehicles, but at this point the trunk lid is starting to come up. And from what you understand of that sort of mechanics, as a car starts to lurch forward, that would possibly cause the trunk lid to rise, correct?

A. That's correct.

Q. Okay. So in this picture, Exhibit 10, we can't see your feet on the ground. Where are your feet?

A. I can't see my feet either, so I mean from this picture, I can't tell you for sure.

Q. Okay. Looking back at picture 9 and picture 10, look at the -- at Ashtian's head, which is this dark blob on -- in this rough center of the -- of the car back window. Do you see the change in head position relative to the rearview mirror?

A. Okay.

Q. It appears that Ashtian is pulling his head off toward the right side of the car. Is that what it looks like to you?

A. He's moving his body.

Q. Yeah. This is Exhibit 11. Now, again, we can't see your feet. The blinker has blinked back on. The trunk lid is starting to rise, and for the first time if you look carefully at the difference between the front

of the squad car and the wheels, for instance, of Ashtian's car, the car has apparently moved a foot or so. Hard to tell the actual distance?

MS. BAKER: You know I'm going to object to that because it's calling for speculation and I'm -- I'm going to ask you again, are you asking him to assume that, are you representing that to him? Have you done some sort of study that would permit you to represent that to him?

MR. FOMBY: Represent what specifically?

MS. BAKER: The -- the distance change.

MR. FOMBY: I said that it's hard -- I actually said it's hard to determine, but it appears to have moved slightly at this particular point.

MS. BAKER: And you're asking him if that is his opinion?

MR. FOMBY: And I'm asking him as the person who has taken classes in accident reconstruction and traffic reconstruction and all that, whether or not that distance from that position would be consistent with a foot or two.

MS. BAKER: So in that context, if you can answer.

THE WITNESS: Okay.

A. It's moved some.

Q. (BY MR. FOMBY) Okay. Now, in this picture, we can no longer see Ashtian's head, can we?

MS. BAKER: We're talking Exhibit 11?

MR. FOMBY: Exhibit 11.

Q. (BY MR. FOMBY) But we see some kind of dark straight object just before the lid of the trunk. Do you see that, Officer -- Deputy?

MS. BAKER: He's referring to 11 I think.

THE WITNESS: Yeah, this is 11.

A. You said dark object?

Q. (BY MR. FOMBY) Right in the very -- right underneath the large light pole.

A. Okay.

Q. And just to the left of the rearview mirror there is a straight dark object showing in the picture.

A. Like a shadow?

Q. Shadow of some sort, some object or whatever in that particular point.

A. Okay.

Q. Okay. At this point, which direction are you facing?

A. That direction is west.

Q. Okay. This is Exhibit 11. Going back to 9 and 10, looking at them in sequence, at 9 the door has not moved, or it's not visibly moved, and 10, the driver's side door has not visibly moved, but by 11, the door appears to be pulling closed. Is that accurate?

A. Closing on me, yes.

Q. And then we get to 12. And at this point, we actually start seeing some significant separation between the vehicles. The blinkers are still on, and the door has now kind of swung closed a little bit, correct?

A. In -- in --

THE REPORTER: I'm sorry?

A. Yes, in the -- in the car doorsill.

Q. (BY MR. FOMBY) Okay. And you're standing

at this point on the sill of the car?

A. I believe so.

Q. And I'm sorry that these are duplicates -- oh, I mean not duplicates but they're short timeframes, but I just wanted to be fair to not, as you said, leap ahead too fast because seconds are important.

This is Exhibit 13. And again, there's an increasing separation between the cars. The blinker is off. And I'm going to stop talking about the blinker because it blinks on and off, on and off all the way through here. Okay?

MS. BAKER: 13 is a dup of 12, is it not? It's 14:45:50.

MR. FOMBY: They are fractions of a second apart.

MR. ADAM FOMBY: Yeah, so you can't always tell based on the seconds if they're the same.

Q. (BY MR. FOMBY) I think the key to looking at the two of these, it to look at the relative positions of. This pickup truck which from this point moves to this position, this pickup truck, which has moved to this position, this car, which has moved to this position. So looking at the vehicle positions gives us a sense of what happened in what order.

MS. BAKER: I'm going to -- I -- I'm assuming that was intended to be helpful. Anyway, please continue.

Q. (BY MR. FOMBY) Since all this happened in -- in literally mere seconds, I'm trying to carve this down into the tiniest pieces. Okay. We're looking at 14 now.

MR. FOMBY: Did I hand out 14 to you yet?

MS. BAKER: Yes.

MR. FOMBY: Okay.

Q. (BY MR. FOMBY) And then 15. At 14, you -- it

appears that your arm is inside the -- your right arm is inside the vehicle, or at least partially, right?

A. Correct.

Q. By 15 it appears --

MS. BAKER: You can --

THE WITNESS: Yes.

Q. (BY MR. FOMBY) -- that's changing. By 16 we see that your arm has come completely out of the vehicle?

A. That's correct.

Q. Again, we're now -- you know, we were looking at 50, we've gone through 1, 2, 3 shots and it's still 51 seconds. So these are portions of a second.

This is 17. And it appears at this point that your arm is moving forward?

A. Correct.

Q. And by 18, your arm is now back into the car?

A. That's correct.

Q. So it is impossible at this point because we don't have sound attached to these to know at what point you fired, but you did -- we do know that you did not fire your weapon until your arm was back in the car; is that correct?

A. That's correct.

Q. Okay. Okay. Here's 19. And somewhere in this timeframe, because we'll get to 20, the second shot was fired?

MS. BAKER: I assume that was a question?

Q. (BY MR. FOMBY) Because we get to the next slide, and we are -- when you see a little further down

the road, 21, that the car by this time has come to a stop. So the time from Exhibit 8 where the brake lights are on and you are moving into the vehicle until the time of the first shot is roughly two seconds or so, and then roughly one second or less for the second shot, and then we have you in position by Exhibit 22 holding a gun on Ashtian inside the car.

MS. BAKER: And again, are you asking him if he agrees with this or are you representing to him?

MR. FOMBY: Yes, I'm asking if he agrees with it.

Q. (BY MR. FOMBY) But -- and you note that the -- in this one the brake light is on; is that correct?

MS. BAKER: And when you say this one, are you talking about Exhibit 22?

MR. FOMBY: Exhibit 22.

MS. BAKER: Okay. We just need to have the record clear.

A. Well, from the picture that you provided, Exhibit 20, you said that that was where the -- at that point the second shot was -- was made and then the next picture -- picture is about eight seconds later when the vehicle is stopped. And then 28 seconds after that is Exhibit 22 -- or actually, I'm sorry, a minute and 28 seconds later is when I'm waiting for -- for my backup.

Q. (BY MR. FOMBY) Right. And I -- I skipped forward to there because I had intermediate shots of you slowly getting out of the car which is unimportant. The point that I was trying to demonstrate is the timeframe, and you can see where the car wound up and where you are at 14:45:52, and Ashtian, the car moved only slightly before Ashtian brought it to a

halt. So somewhere in there around the 52 or 53 mark is when the second shot was fired?

MS. BAKER: So do you -- can you answer that? I believe that's a question.

A. I -- not -- well, not from just looking at the picture.

MS. BAKER: Okay.

Q. (BY MR. FOMBY) Okay. As I said, this doesn't have sound attached to it, but I'm just saying these -- these -- this is the timeframe we're talking about, so -
-

MS. BAKER: To be honest with you, Mr. Fomby, this sounds more like jury argument or questions to be directed to an expert. I think it's difficult for the deputy to be able to agree or disagree with you.

MR. FOMBY: And he has -- he can say that he can't tell from this.

MS. BAKER: Well, it's --

MR. FOMBY: That's -- and that's all right.

MS. BAKER: It's also very difficult because you don't appear to be asking -- you appear to be explaining and demonstrating, which is well and good, but here we're for a deposition, so, you know, we're not in a jury trial right now at this moment so we need to have a question and answer. Now I've asked him some of what I perceive to be your questions. So if they're not right, you're the one that needs to cover it.

Q. (BY MR. FOMBY) So in between -- and we can go back and pull up the video and show you where the shots fired. Would you like to do that? Let's do that. Again, we're talking fractions of a second. So what I

will need to do here is spend more time listening and watching the time, okay?

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) So in there between 51, we'll go back and watch that again.

(Video playing.)

(Video stops.)

Q. (BY MR. FOMBY) So in there between 51, we'll go back and watch that again. Bang, bang. Do you need to watch that again just to catch when that --

(Video playing.)

(Video stops.)

A. I believe it was 52 and 53.

Q. (BY MR. FOMBY) Okay. And as I said, and -- and correct me if I was wrong -- I told you that it's very difficult to know exactly by looking at the videos here, but somewhere around 52 and 53 is what you heard?

A. Correct.

Q. Okay. So looking back at the videos, at 49 is when the car -- the trunk of the car starts rising and the door starts closing and that's -- and at somewhere around 52, three seconds or so later is when the first shot was fired. Is that what you saw?

A. 49 to 52.

Q. Yes.

A. Yeah, about three seconds.

Q. And then another second and then the second shot was fired?

A. Correct.

Q. Here is Exhibit 23. And this is at 47:31, which is about a minute and a half after the car -- a minute and a half after the car came to a stop is when the first police officer, your first colleague shows up on the scene; is that correct?

A. Yes.

Q. And then in Exhibit 24, somewhere around 12 seconds later, someone else shows up. And by Exhibit 25, this would be another 45 seconds.

A. 24 actually shows the fourth deputy arriving, not the third.

Q. Okay. So by the next exhibit, 25, we have quite a number of deputies on the scene.

MS. BAKER: Object to relevance.

Q. (BY MR. FOMBY) So what I want you to look - - check and look down at the driver's side door, look down on the ground there. Do you see Ashtian's body laid out and CPR being performed at that point?

A. No.

Q. Okay. Now we can play the video, but 26 is now another minute 20 -- minute and 10 seconds, and still Ashtian is not receiving any kind of CPR at this point, correct? You -- you could look at the --

A. I mean there -- yeah, there's no one there but I'm not aware of his medical state at that time, whether he was still breathing or not. So, I mean, CPR wouldn't have been appropriate at that time.

Q. Right, but you -- by -- at this point he still had not been removed from -- from his car, correct?

A. That's correct. Waiting for Houston Fire

Department and ambulance to make the scene to provide adequate medical attention.

Q. Okay. And 27, this is some slightly less than six, five and a half minutes later or thereabouts is, at this point you see CPR being performed and the EMR -- EMS techs showing up on the scene; is that correct?

A. Yeah, I believe CPR was --

Q. Okay.

A. -- started prior to that time.

Q. And to your point, to be fair, their records show that by the time they arrived, Ashtian had been declared DOA. So --

A. Who -- who -- I'm sorry?

Q. EMS records show that he had been declared DOA which is --

MS. BAKER: So the Constable's Office doesn't make declarations like that. Are you telling him that someone at EMS --

Q. (BY MR. FOMBY) Someone -- someone at the scene before EMS showed up declared him DOA?

A. No.

Q. They said he's not responsive, not breathing, no pulse?

A. The only person that can declare is -- is a medical attendant.

MS. BAKER: Yeah.

A. HFD is the only one that can do that, so . . . We can give a status of his -- what we perceive to be his medical condition but we can't declare someone --

Q. Right.

A. -- DOA.

Q. And in fact, the only people who can really declare him DOA are actual doctors or justice of the peace?

MS. BAKER: I'm going to object to that as misstating the statutory authorities.

Q. (BY MR. FOMBY) So Deputy, going back to --

MS. BAKER: Oh, yes, if you're at a stopping point, could we take a quick restroom break, bathroom break?

MR. FOMBY: No problem.

THE WITNESS: Restroom break.

MR. FOMBY: No problem.

THE VIDEOGRAPHER: The time is approximately 2:56 p.m., we're off the record.

(Off the record.)

THE VIDEOGRAPHER: The time is approximately 3:01 p.m., we're on the record.

Q. (BY MR. FOMBY) Deputy, I want to go back and revisit these exhibits, particularly Exhibits 7 through 12. These particular exhibits are screenshots of the moment when the car -- Ashtian stepped on the brakes of the car, the car is on and everything starts to happen.

In your statement that you gave you said that he turned on the vehicle and you still have your statement, you said that I drew my weapon, told him something like don't do it as he started to put the car in drive.

MR. ADAM FOMBY: Wait for a second so he can --

MR. FOMBY: Yeah.

A. (Witness examines document.)

Q. (BY MR. FOMBY) Then you say that: At that point, my body was partially in the vehicle as he accelerated away. As the vehicle sped away I felt the driver door closing on me, started to feel I was being pinned and going to be drug. I quickly jumped onto the doorsill and held on so I wouldn't get run over.

But in these pictures we see you stepping onto the car with the brake on and the car not moving. So the car is not speeding away and accelerating away when you jumped on the car, the door is still wide open and your feet are off the ground?

MS. BAKER: I believe that is a question, and I believe he's asking you if you agree with that.

A. I can't agree from the picture. I mean I know my feet are closer to the vehicle, but I'm not sure from the picture if my feet were actually on the doorsill at that time.

MS. BAKER: And when you say that, Deputy, just for clarity of the record, what particular photograph are you looking at?

THE WITNESS: I'm looking at Exhibit 10, 10 and 11, I believe.

Q. (BY MR. FOMBY) I want you to look at Exhibit 8, 9, 10 and 11 and 12. And look at your head position. As you go through the sequence of those exhibits, your head and shoulders actually appear -- your head appears to rise above the roof line, and your shoulders appear to rise above the door line. At the same time your feet go from a standing position in Exhibit 7, to a

position that's moved very rapidly in a fraction of a second in the direction of the car.

Are you still comfortable with your statement that the vehicle was speeding away as -- oh, and the door by 7, 8, 9 and 10 is still wide open, has not changed, slowly starting to close at 11 and only starts to close at 12. Are you still comfortable with your statement under oath that it was only when the vehicle was speeding away and you felt the driver door closing on you that you jumped on the door sills and held on so you wouldn't get run over?

MS. BAKER: I'm going to object to that question as extremely argumentative. Also as multifarious and to the extent there is a question in that line of dialogue or monologue, actually, do you agree with Mr. Fomby's assessment?

A. At the time of the -- of my statement, that was the best recollection of the incident without having looked at the -- at the video.

Q. (BY MR. FOMBY) Now I can understand that, Deputy, but when you made your oath, at any point in your statements did you state that you are uncertain of the details but you thought that might have been what happened?

A. I don't believe that's in the statement. It's the --

Q. And so when we look at photograph Exhibit 10, and the car is still relatively -- positioned relatively the same position to your squad car, the doors open, your feet are nowhere to be seen, your head is now above the roof line. Are you stating that at that point you are not standing on top of the doorsill?

A. Well, from Exhibit 9 and 10, my head is relatively positioned in the same manner, just my feet are either out of the camera view. In Exhibit 11, at that point I can say that my head is elevated prior to Exhibit 9 and 10.

Q. So you would say that by 11, your feet are firmly positioned on the sill of the door?

A. I can say that at least one of them might have been in order for me to be elevated slightly.

Q. So in fact, this happened as the car was beginning to move and not as it sped away?

A. From -- from the video, watching the video and looking at the picture, as the vehicle was moving is when -- at one point in one and at I guess by Exhibit 12 both feet were on at that time.

Q. Deputy, did you place both of your feet on the doorsill after the car started moving or before it started moving?

A. I would say as it was moving, as it started to move.

Q. Okay. Now, in your statement you make a statement and on the video you make a statement that the -- that you detected a strong odor of marijuana coming from Ashtian Barnes' vehicle; is that correct?

A. That's correct.

Q. Isn't, in fact, Deputy, that merely a pretextual statement to allow you to illegally search his vehicle?

MS. BAKER: Objection, very argumentative, assumes facts totally not in evidence.

A. That's incorrect.

Q. (BY MR. FOMBY) You realize, Deputy, that no other -- of the 26 other officers on the scene, not a single one put in a statement that he detected the odor of marijuana on -- in the vehicle?

MS. BAKER: Objection, assumes facts not in evidence.

A. I've never seen any statements or heard any other statements from any other person.

Q. (BY MR. FOMBY) Are you aware that when the car was searched, no marijuana of any sort was found in the car?

A. I'm not sure what was found in the car completely as far as marijuana, but I guess it's my understanding that there wasn't any marijuana found in the vehicle.

Q. No drugs of any kind were found in the vehicle?

A. I -- I don't know.

Q. Okay. When you say you smelled marijuana, was it fresh marijuana, dried marijuana, burnt marijuana or edible marijuana that you smelled?

A. It was a odor of marijuana coming from the vehicle.

Q. Is there --

A. So --

Q. -- a difference in odor between those four types of apps?

A. Yeah, there could be, yes.

Q. And you -- you don't recall what particular -- which -- which particular odor you detected?

A. It was -- it was an odor of just marijuana coming from the vehicle. I can tell you that it wasn't freshly burnt marijuana, but there was an odor of marijuana coming from the vehicle.

Q. So Deputy, in your experience as a peace officer, what is -- what is a necessary condition -- or you say you smelled marijuana. How can you spell -- smell marijuana that is not in the vehicle?

A. It can be many reasons. It can be, you know, residue from previous use, it could be, you know, lingering odor, it was in the vehicle at one time or -- or early in the day. When I stopped the vehicle, he could have thrown it out. But there was an odor of marijuana in the vehicle.

Q. Did you detect anything being thrown from the driver's side of the vehicle while -- during the stop?

A. Not that it was significant motion that -- that he had done.

Q. I want to go back to the beginning of this. Well, I'm going to start with the end of it. The end of this, there was -- there were no drugs found in his car?

MS. BAKER: Are you asking him to assume that?

MR. FOMBY: And I'm setting a predicate.

Q. (BY MR. FOMBY) At the end of this, there -- the toll tag violation, even if it was a serious crime, was apparently not his fault. And yet at the end of this, Ashtian Barnes was killed. Is there anything looking back on this that you personally would have changed, that you personally would have done differently knowing how this all transpired?

MS. BAKER: I'm going to object to that question as

extremely argumentative and more a lecturing argument than an actual question, but that being said, please go ahead and answer.

THE WITNESS: Okay.

A. Anything that I could have changed in the entire incident?

Q. (BY MR. FOMBY) Any -- any one thing or any several things that you believe that you would today have done differently?

MS. BAKER: That he would have done?

A. That I would have done?

Q. (BY MR. FOMBY) Correct.

A. Okay. No. Everything that was done that day, it would probably be the same situation, rapidly involving events, you know, the threat to myself of serious bodily injury or even death, you know, being, you know, Mr. -- Mr. Barnes was driving away with me holding onto the vehicle. I think everything would have been the exact same way.

Q. So as a result of this incident you would say that your -- you have learned -- you would -- your behavior and your patterns and your training have not changed?

MS. BAKER: I'm going to object to that question as vague. I'm not clear what is meant by your behavior or your patterns. You asked him apparently a very specific question and he answered it, but that being said, for the record, purposes of the record, please go ahead and answer.

THE WITNESS: Okay.

A. My sense of awareness is -- I'm looking for -- for the same things and anything -- any situation like that is still handled in the same way. If I feel that, you know, there's, you know, a threat to myself or could possibly be a threat, then an individual is going to be asked to step out and that's going to be handled.

I can't say I'm going to have the exact same situation happen ever again because no traffic stop is the same. For -- you know, traffic stops are handled in the same manner depending -- or in a manner depending on the situation. So I can't, you know, answer for certain if, you know, anything else would change the way I'm doing it because that's how I'm trained to do it.

Q. (BY MR. FOMBY) Deputy, the toll roads are controlled access roads, are they not?

A. They're controlled access highways, yes.

Q. So that means that there are defined entrances and exits to the toll roads; is that correct?

A. That is correct.

Q. And the toll roads have -- are constantly being monitored by video cameras; isn't that true?

A. There is video access to the tollway but not constantly monitored.

Q. An in fact, as we know, there was a video monitoring of your traffic stop from the point that you started the stop until everything ended; is that correct?

A. It was monitored but not recorded from the -- from the beginning.

Q. Okay. And that was by the Toll Road Authority?

A. That is correct.

Q. So had you decided to stand where you were standing and let Ashtian drive off, would there have been other mechanisms for apprehending him without running the risk of firing a firearm?

A. We can assume and it could be a yes or no because -- except from my understanding, if let's say I was in a position where I wasn't caught between the door and --

THE REPORTER: You weren't what?

THE WITNESS: Caught between the door.

A. And the vehicle and he would have been able to just flee, he posed a threat to other motorists as well. And my understanding is that they -- they did find a gun in that vehicle and potentially could have used that to shoot at myself or other officers, you know, while trying to pursue and apprehend.

Q. (BY MR. FOMBY) You don't know where that gun came from, do you?

A. I do not.

Q. You don't know that that gun had any association really to do with that -- Ashtian Barnes, do you?

A. Sir?

Q. You don't know whether that gun had an association with Ashtian Barnes, do you?

A. I never saw the gun.

Q. Okay. And at that time you had -- that wasn't on your mind, was it?

A. It's always on our mind when we conduct a traffic stop or make contact with an individual that they could be armed and potentially hurt my -- myself, another deputy or others when their actions are a certain way where they're either trying to elude, evade or -- or conceal something.

Q. So did he try to evade you when you turned on your lights?

A. No.

Q. Did he try to evade you when he turned off the engine and put his keys down in -- in the -- next to the gearshift?

A. No, but that was one of the indicators to me that's not normal for a traffic stop that did raise a flag, you know, that he stopped the vehicle.

Q. Turning off the car and putting the key down is a -- is a flag that he is not normal?

MS. BAKER: I assume that's a question.

Q. (BY MR. FOMBY) Is that what you're saying?

MS. BAKER: And it misstates his testimony.

MR. FOMBY: I just asked the question now.

A. Can you repeat the question?

Q. (BY MR. FOMBY) Turning off the car and putting the key down next to the gearshift is a -- to you sends a red flag that he was up to something possibly nefarious?

A. With everything that had occurred, there were something that wasn't right about that -- that incident, yes.

Q. Okay. You said that you would not change anything because being trapped between the door and the car put you in a dangerous situation, but had you stood where you stood in Exhibit 7, where the door was away from you, where you were approximately a foot or so away from the car itself, had Ashtian moved forward at that point, are you saying that that car -- that door would have swung closed and trapped you at that spot?

A. It could have hit me on the side and got me off balance.

Q. As the car moves forward, and we're seeing it as you jump on, the car door still has not closed on you by the time we get to Exhibit 10, right? And in Exhibit 11, it still hasn't been closed on you. There's still a lot of space.

So you're saying that if you had simply stood your ground and let him drive away, if it had happened, would that -- are you saying that the policies and your training say that you are not allowed to do that, you're not supposed to do that, that you're supposed to stop him under those circumstances?

A. My attempt was to stopping -- stop him from fleeing, from causing injury to myself or others and that was my actions on that day.

Q. Okay. And so your training and experience taught you that the way to deal with a fleeing suspect for which you have no hard evidence that he's a criminal, much less a violent criminal, is to pull your

service weapon, shove it in his face and jump on the sill of his car. Is that what you're saying your training tells you?

MS. BAKER: Objection, argumentative, and assumes facts not in evidence.

A. I had nothing on Mr. Barnes, not even a name, so I didn't know who he was, what he was capable of or what he could -- could do. So for him trying to flee in -- in this situation definitely threw up a flag that there was something that, you know, obviously he's gonna run from or for and that needed to be stopped.

MR. FOMBY: Pass the witness.

MS. BAKER: I have only just a couple questions, Deputy Felix.

EXAMINATION

BY MS. BAKER:

Q. Can you tell us what TCOLE stands for?

A. TCOLE is the Texas Commission Law Enforcement -- of Law Enforcement Education.

Q. And what is TCOLE's role?

A. TCOLE is the authority to license officers and keeps track of training mandates for the State of Texas.

Q. And you've talked today about the DS -- with Mr. Fomby about the de-escalation course that you took in 19 -- in 2018; is that correct?

A. That's correct.

Q. Is that course mandated by TCOLE?

A. It is now.

Q. And when did it become mandated by TCOLE?

A. I believe it became mandated in 2017 or 2018.

Q. And what does it mean to be mandated by TCOLE?

A. That means it's required to -- to -- to be taken.

Q. Was there any type of a mandate for a de-escalation, specific de-escalation course before TCOLE mandated it?

A. No.

Q. Any problem with having a de-escalation course?

A. No, there was no problem.

Q. Okay.

MS. BAKER: I'm going to reserve the rest of my questions until time of trial.

THE WITNESS: Okay.

MR. FOMBY: Done.

THE VIDEOGRAPHER: The time is approximately 3:23 p.m. We're off the record.

(Proceedings concluded at 3:23 p.m.)

* * *

Grand Jury Testimony of ROBERTO FELIX
AUGUST 26, 2016

TESTIMONY TAKEN BEFORE THE
183RD HARRIS COUNTY GRAND JURY
AUGUST 26, 2016

TESTIMONY OF
ROBERTO FELIX

INVESTIGATION

APPEARANCES

For the State of Texas:

ALYCIA HARVEY
JULIAN RAMIREZ
Assistant District Attorney
Harris County, Texas

PROCEEDINGS

SERGEANT-AT-ARMS: Good morning. Are you ready?

THE REPORTER: Yes, sir.

SERGEANT-AT-ARMS: Do you solemnly swear that you will not reveal by your words or conduct, and you will keep secret any matter about which you may be interrogated or that you have observed during the

proceedings of the grand jury, and that you will answer truthfully the questions asked of you by the grand jury or under its direction so help you God?

THE WITNESS: I do.

SERGEANT-AT-ARMS: Okay.

ROBERTO FELIX,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS HARVEY:

Q. And you can sit right there, deputy.

A. Sure.

MS HARVEY: Ready?

THE REPORTER: (Nodding head.)

Q. (MS HARVEY) Uh, would you tell the grand jury what your name is.

A. My name is, uh, Roberto Felix.

Q. Uh, and how are you employed?

A. I'm employed as a deputy with the Harris County Constable's Office, Precinct 5.

Q. Uh, do you have an attorney here with you today?

A. Yes.

Q. And what's his name?

A. Richard Cobb.

Q. And is he out in the front waiting -- waiting room?

A. Yes, ma'am.

Q. Uh, and I have here what is titled the Grand Jury Appearance Witness Warning Form. Did you have an

opportunity to go over this with your attorney, Mr. Cobb?

A. I did.

Q. Okay. Uh, I'm going to read it just so that it's on the record and so we can all hear it.

A. (Nodding head.)

Q. Uh, this is the Grand Jury Appearance Witness Warning Form. You are appearing before the 183rd District Court Grand Jury for the July term 2016 on August 26, 2016. You have been suspected of a violation of the criminal laws of murder alleged to have been committed in Harris County, Texas on or about April 28th of 2016.

Pursuant to article 20.17 Texas Code of Criminal Procedure you are to be furnished with a written copy of the warnings hereinafter set out prior to any questioning of you by the grand jury. You are further to be given an opportunity to obtain an attorney and to consult with that counsel prior to your appearance before the grand jury.

Your testimony before this grand jury is under oath. Any material question that is answered falsely before this grand jury subjects you to being prosecuted for aggravated perjury. You have the right to refuse to make answers to any question the answer to which would incriminate you in any manner. You have the right to have a lawyer present outside this chamber to advise you before making answers to questions you feel might incriminate you.

Any testimony you give may be used against you at any subsequent proceeding. If you are unable to employ a lawyer you have the right to have a lawyer

appointed to advise you before making an answer to a question the answer to which you feel might incriminate you. And this is done on the 26th day of August 2016. Uh, you've signed the acknowledgment. You did that with your attorney out in the front.

A. I did.

Q. I'm going to attest to it underneath here. I'm Alicia Harvey, the assistant district attorney. And there's a place for the foreman to sign. So I'll hand it to him, and he's going to make his signature on that as well.

THE FOREPERSON: (Signing.)

MS HARVEY: Thank you.

Q. (MS HARVEY) All right. So, uh, back on April the 28th of 2016 where were you employed?

A. I was employed for the Harris County Constable's Office, Precinct 5.

Q. How long had you been working there?

A. Uh, a little bit -- a little bit over 11 years.

Q. Uh, had you previously been involved in a police involved shooting?

A. Yes.

Q. And what -- what were the -- just the very basic facts behind that?

A. Uh, it ended up turning out to be a suicide by cop. A guy came out with a -- pointing a weapon at officers and the officers discharged weapons as well as I did.

Q. Uh, were you charged in any manner in that case?

A. No, I was not.

Q. Did you continue to work for Precinct 5 after that case occurred?

A. I did.

Q. Uh, are you currently working for Precinct 5?

A. Yes, I am.

Q. Uh, and what are your current duties with Precinct 5?

A. Uh, my current duty is as a, uh, traffic enforcement officer.

Q. Uh, and is that what you were doing before April the 28th as well?

A. Yes.

Q. As a traffic enforcement officer what kind of things do you do?

A. Uh, our basic responsibility is to, uh --

Q. Just slow down just a little bit. I'm having a hard time understanding you.

A. Okay. Uh, our basic -- uh, our primary goal is, uh, traffic enforcement. You know, speeding and any other traffic violations including, uh, working uh, crashes. Uh, you know, minor, major and fatalities.

Q. Okay. And now just so that we're clear, you and I have never met before.

A. No, ma'am.

Q. Uh, but a representative from the District Attorney's Office was out at the scene on April the 28th of 2016. Do you remember that?

A. Yes, ma'am.

Q. Uh, and that was, uh, a woman named Allison Buess.

A. Correct.

Q. Okay. Uh, can you tell the grand jury a little bit about what happened on April the 28th, 2016 on the toll road near Beechnut.

A. Okay. Uh, I was, uh, in my normal patrol duties, uh, driving to our station. Uh, the toll reader, uh, for the Toll Road Authority, uh, alerted that there was a vehicle that had outstanding toll violations. Uh, at that point, uh, I advised dispatch that I would be looking for the vehicle. Uh, you know, they gave a description of the vehicle and the license plate. I was able to find the vehicle, catch up to it and initiate the traffic stop. Uh, at that point, uh, I let dispatch know my location and put it on the computer as well.

Uh, I exited my vehicle, approached the -- uh, the vehicle and talked to the driver, uh, at that point. Uh, then I asked for his driver's license, proof of his insurance, to which he replied that he did not have a drivers license. Uh, I smelled a odor of marijuana coming from the vehicle and, uh, I requested another unit to check by with me.

Uh, the, uh, individual of the vehicle kept reaching around the vehicle in the passenger's side, uh, and dash, and the center console area. Uh, I told him, you know, don't dig around. Don't look for anything. Uh, I said, you know, just -- and throughout the conversation, you know, I'm grabbing -- trying to get an idea of, you know, what -- uh, you know, how to proceed next, uh, waiting for a backup unit. He was very -- he seemed very nervous. Very -- I guess you would call it, uh, evasive. Uh, so, uh, another -- as I'm asking him questions, uh, he's continuing to dig around in the vehicle or reach for the floorboard. Uh,

and he had turned off the ignition of the car and sat the keys down on the center console.

Uh, when, uh, you know, I asked him for his information he was like, "oh. My driver's license is in the trunk." Uh, when he said that he said "I can open it for you." I said, "okay." And he reaches and, uh, hits the -- uh, the trunk release button. At that time I did not move. I continued to observe his behavior. Uh, when he opened the trunk I'm assuming he, uh, thought I had turned around to go to the trunk, and he starts to reach again. Uh, at that point I opened the door to go ahead and have him step out. When -- uh, when I did that and I said "go ahead and step on out," uh, he looked at me and automatically starts reaching again. Reaching downwards. I drew my duty weapon and told him, "let me see your hands." Something of that manner. And, uh --

Q. Why at that point do you reach for your weapon?

A. Because after, uh, I had told him to stop moving around and I opened the door there was a more open area where someone could do something to me, uh, easier. Uh, you know. So when he started reaching down is when I drew my weapon. Uh, at that point I observed that he was -- he grabbed his keys to the vehicle and tried to -- uh, went for the ignition. At that point I reached in with my left hand to try to keep him from putting the car in gear and driving off and possibly causing another situation.

Uh, it happened in a split second. His hand dropped down towards the gear shift that was in the bottom center console, and he put the car in drive as my body was -- my left side of my body was in the vehicle. As he put the car in drive he started to drive off. The door

closed and pinned me between the -- the opening and -- and him. Uh, my initial reaction was, I'm going to get run over. I grabbed the windshield part of the vehicle and hopped onto the ledge of the door. Uh, my right hand was still inside the vehicle with my duty weapon. And as he drove off I told him -- I said, "stop. Stop." And, uh, I felt his hand pulling my hand.

Uh, I felt a -- a tug, and that's when, uh, I discharged my weapon one time. At that point I felt the vehicle's speed increase and I discharged my weapon again. Uh, he braked hard and I was able to -- when the vehicle came to a stop I jumped off and I immediately got on the radio and said "shots fired. Send H.F.D.," which is the fire department, and just maintained, uh, him at gunpoint until backup arrived. At that point, uh, when I told him to put the car in park he put the car in park and, uh, I just waited until backup at gunpoint. Uh, I'm not sure how long it was but the officers arrived to assist.

Q. So when -- uh, in this case when the car began to take off you jump on the -- the running board. The threshold there of the car. Why jump on the car? Why not just step back?

A. Well, uh, in -- in -- my initial reaction was when that door -- when he drove off and that door pinned me between the -- the opening it shut on me. If -- I believed if I were to let go I would have got run over by the car.

Q. At what point during the confrontation did you feel like your life was in danger?

A. Uh, well initially when the vehicle took off and I was holding on, uh, that's when I first felt that, you know, my life was in danger.

Q. What choices did you have at that point? Now you're on the running board of the car. Uh, based on your training and experience what options did you have in terms of creating a resolution to the situation you were in?

A. No. Uh, the only option I had was to stop the threat.

Q. Okay. And what -- what does that mean to -- to the general public?

A. Uh, when -- when, uh, I felt the tug on my hand, uh, my initial thought or my thought was, you know, if he takes my gun he's going to shoot me with it. And that's why I had to discharge my weapon to stop that threat.

Q. Are there rules or do you have training in terms of, uh, standing in the open door of a vehicle where you can stand, where you can't stand? Are there procedures for such, uh, an incident or is that not something y'all are specifically trained on?

A. That's not something we're specifically trained on. No.

MS HARVEY: Okay. Uh, does anybody else have --

THE FOREPERSON: I do.

MS HARVEY: -- any additional questions?

THE FOREPERSON: Uh, I have a -- I guess a couple of questions. Uh, I'll go ahead. And hopefully you can answer them. Uh, you said the car door pinned you to the, uh, door or to the car itself, and that's why you jumped on?

THE WITNESS: Well, when the door closed on me my body still was within the vehicle trying to keep him from putting the car in drive. So as my body was in

the vehicle and that door closed behind me it pinned me. Uh, my belief was that if I let go I was going to get run over by the vehicle.

GRAND JUROR: Yet your body was halfway inside?

THE WITNESS: Right. Right.

GRAND JUROR: And at what point did the car door pin you closer?

THE WITNESS: When he put the car in drive and hit the accelerator to take off. The door just shut, pinned me, and I -- my -- my reaction was to --

GRAND JUROR: So when he did that you were able to pull your body out and grab -- grab hold?

THE WITNESS: Correct. Yeah. Once -- when he started doing that I felt that if I were to -- to let go the momentum of that vehicle would have drug me and that vehicle would have run me over. So my -- the only option that I had at that point was to grab a hold of something and my body reacted to hold on and jump on.

GRAND JUROR: Okay.

GRAND JUROR: Can you reach over with your left hand and stop somebody from putting the car in drive to --

THE WITNESS: That's what I was attempting to do because the, uh, gear shift was in the center console on the bottom. Not usually on the top where the steering wheel was. So that's what I was attempting to do.

THE FOREPERSON: Uh, when you were looking inside the car at any time did you see any -- any, uh, weapon or anything that would -- that he could use to threaten you?

THE WITNESS: No. I did not observe any -- any type of weapon at that point.

THE FOREPERSON: Okay. Anybody got anything else?

GRAND JUROR: When, uh, you asked him to step out of the car, uh, you opened the door for him?

THE WITNESS: That's correct.

GRAND JUROR: Okay.

THE WITNESS: When he starts -- when he started to reach again --

GRAND JUROR: Uh-huh.

THE WITNESS: -- I opened the door. Like I said, he expected -- I guess he expected me to go back to the trunk where he had just popped it to look for a driver's license that he had already had told me he did not have. And when I didn't move -- when he reached over, you know, my -- my thought was he's -- he's planning something. He's going to do something. So when I opened the door to go ahead and take him out of the vehicle -- it's when it just -- it happened.

GRAND JUROR: Okay. And you didn't think -- hey. Let this guy drive off. You know, I'm going to hop on the radio and we're going to catch him down the road.

THE WITNESS: No. At that point I mean it -- it -- uh, when -- when he went for the key and my thought was, something is that severe that he's going to put my life in danger, he could easily put somebody else's life in danger as well.

GRAND JUROR: Okay. And you've been an officer for how long?

THE WITNESS: Uh, a little over -- uh, it will be 12 years October 2nd.

GRAND JUROR: So was that the first time someone ever drove off on you?

THE WITNESS: Yes. Uh, not drove off on me but drove off with me in the vehicle.

GRAND JUROR: Like close to the vehicle. So -- so in -- in 12 years, uh, there's never been another situation where you're trying to, you know, give a command, they're failing the command and they say, forget it. I'm going to drive off.

THE WITNESS: No. No.

GRAND JUROR: Okay.

THE FOREPERSON: Anything else?

GRAND JUROR: (Shaking head.)

THE FOREPERSON: Well, thank goodness you're okay.

THE WITNESS: Thank you. Thank you.

THE FOREPERSON: We appreciate that. Thank you for your time.

THE WITNESS: Thank you, sir.

* * *

**HOUSTON POLICE DEPARTMENT
Homicide Division**

WITNESS STATEMENT

Incident Number: 54036616

County of Harris State of Texas
Date: 4/28/2016 Time: 7:10 PM

Before me, the undersigned authority, this day, personally appeared Roberto Felix, a DEPUTY/H C CONSTABLE believed by me to be a credible person, who after being sworn upon his oath, did depose and say:

My name is Roberto Felix. My payroll number is 906611 and I do not have a badge number. I am a DEPUTY/H C CONSTABLE and I am assigned to the Harris County Constables Pct 5 Toll Road Division on the Days shift. My office telephone number is 281-492-3600. My duty weapon is a Glock/ Mod 22C/ 40 cal, serial number HKD796. My duty weapon did discharge.

I, Deputy R .Felix Unit 85T14, while on patrol on 4/28/16 heard a call for a prohibited vehicle that HCTRA dispatched as traveling southbound from South Sam Plaza. I advised dispatch to send the call and began looking for the vehicle. I received the license plate for the vehicle a second time and checked it to obtain the color of the vehicle as silver. I

continued southbound looking for the vehicle and was able to find it. I confirm the license plate with dispatch and advised them of my location of stopping the vehicle. I approached the suspect's vehicle and advised the suspect why he was being stopped and requested his driver license and insurance. He stated that it was a rental car and that he did not have his driver license. I smelled a strong odor of marijuana coming from the vehicle and requested a unit to check by as I knew I would have to get the suspect out of vehicle for further investigation. He then grabbed a handful of papers and started to go through them but only flipping through them and not actually looking at them. He then reached over towards the passenger floor board towards a red plastic cup that had what appeared to have trash in it. I told him not to reach over in that area and he then went back to look through the papers. He then reached over and turned off the ignition and placed his keys in the gear shift area. I asked him if he had anything in the vehicle I should know about because I smelled marijuana. He stated that he did not and said that his driver license was in the trunk and I could get it and search if I wanted to. I told him to go ahead and open the trunk as if I was going to look for it. I opened the driver door and told the suspect to step out. As I did so he grabbed his keys and turned on the vehicle. I drew my weapon and told him something like don't do it, as he started to put the car in drive. At the same time I was trying to keep him from doing so my body was partially in the vehicle as he accelerated away. As the vehicle sped away I felt the driver door closing on me and starting to feel that I was being pinned and going to be drug. I quickly jumped onto the door seal and held on so I

wouldn't get run over. My left arm and upper torso was out of the vehicle with trying to keep a grip on the windshield fearing I would be thrown off. I was unable to see anything inside the vehicle but I could feel my right hand that was holding on to my duty weapon being moved and pressure on my gun. I believe I yelled for him to stop and at that point fearing that I would either get thrown from the vehicle or crushed by the retaining wall I fired my weapon once and it had no effect. The vehicle then sped up and fearing that the suspect could kill me by him taking my weapon or crushing me I fired a second time. The vehicle then slowed down almost to a stop and I jumped off and held the suspect at gun point. I advised dispatch that shots were fired and for them to send HFD. I held him at gun point and a secondary unit arrived to assist. We both maintained him at gun point until a third deputy showed up, which I then holstered my weapon and stood to the side because of leg pain I was feeling. When additional units arrived I went back to my patrol vehicle and sat down.

I understand that this statement is voluntary and not required by departmental policy. I have made this statement voluntarily and have read this, my statement, and find it to be true and correct to the best of my knowledge as typed by Roberto Felix.

/s/

Signature

177

Subscribed and sworn to before me, the undersigned authority, this the 28th day of April, 2016

/s/

Notary Public

End of statement of Roberto Felix.

I have read this portion of this, my statement, and find it to be true and correct to the best of my knowledge as typed by Roberto Felix.

/s/

Signature

/s/

Notary Public

178

**CONSTABLE PRECINCT 5
Harris County, Texas**

**Office of
Phil Camus
Constable Precinct 5
Harris County, Texas**

TO: Phil Camus
Constable

FROM: W.D. Steffenauer, Captain
Internal Affairs Division

VIA: T. Heap
Chief Deputy

C. Branson
Assistant Chief

DATE: September 15, 2016

Subject: IAD# 16-717 Roberto Felix
Toll Road Deputy

INTRODUCTION

Sirs,

On Thursday, April 28, 2016 at approximately 2:40 pm, Harris County Toll Road Authority Dispatch aired a general broadcast for a Toll Road violator that was prohibited to be on the Harris County Toll Road. This broadcast contained the description of the vehicle and license plate number.

Precinct Five Deputy Roberto Felix, received the broadcast information and proceeded to look for the vehicle. Deputy Felix located the vehicle and confirmed the license plate number with the dispatch office. Deputy Felix initiated a traffic stop and made contact with the driver, who was later identified as, Ashtian Duane Barnes.

During the Traffic Stop, Deputy Roberto Felix discharged his duty weapon and caused the demise of Ashtian Duane Barnes.

SYNOPSIS

On Thursday, April 28, 2016 at approximately 2:40 pm, Harris County Toll Road Authority Dispatch aired a general broadcast for a Toll Road violator that was prohibited to be on the Harris County Toll Road. This broadcast contained the description of the vehicle and license plate number. Deputy Felix located the vehicle and confirmed the license plate number with the dispatch office. Deputy Felix initiated a traffic stop and made contact with the driver, who was later identified as, Ashtian Duane Barnes.

Deputy Felix, identified himself to Mr. Barnes and explained the reason for the traffic stop. Deputy Felix asked Mr. Barnes for his proof of insurance and driver license. Mr. Barnes stated he didn't have his license and the car was a rental. Deputy Felix stated he smelled a strong odor of marijuana coming from the vehicle and requested a unit to check by with him. Deputy Felix stated he knew he would need assistance because he would have to get Mr. Barnes out of the vehicle for further investigation.

Deputy Felix observed Mr. Barnes grab a handful of papers and start to go through them but only flipping through them without actually looking at them. Mr. Barnes reached over towards the passenger floorboard and Deputy Felix told Mr. Barnes not to reach over in that area. Mr. Barnes went back to looking through the papers and reached over and turned the ignition off and placed the keys in the gear shift area.

Deputy Felix asked Mr. Barnes if he had anything in the vehicle that he should know about because Deputy Felix smelled marijuana. Mr. Barnes told Deputy Felix that he did not and that his driver license was in the trunk and Deputy Felix could get it and search, if he wanted to. Deputy Felix told Mr. Barnes to go ahead and open the trunk, as if he was going to look for it.

Deputy Felix then opened the driver door and told Mr. Barnes to step out. As Deputy Felix did this, Mr. Barnes grabbed his keys and turned on the vehicle. Deputy Felix drew his weapon and stated something like "Don't Do It", as Mr. Barnes started to put the vehicle in drive. Simultaneously Deputy Felix reached

into the vehicle, trying to keep Mr. Barnes from placing the transmission in drive. Deputy Felix's body was partially in the vehicle with his left foot on the door sill as Mr. Barnes accelerated away.

As the vehicle accelerated forward, Deputy Felix felt the driver door close on him and started feeling as if he was going to be pinned and going to be drug. Deputy Felix raised his right foot on the door sill of the vehicle and held on, so he wouldn't get run over. Deputy Felix's left arm and upper torso, were out of the vehicle, trying to keep a grip on the windshield, fearing he would be thrown off. Deputy Felix was unable to see inside the vehicle but felt his right hand, which was holding his duty weapon, being moved and pressure being applied on his gun.

Deputy Felix yelled for Mr. Barnes to stop and at that point, fearing that he was going to be thrown from the vehicle, or crushed by the retaining wall, Deputy Felix discharged his weapon. This had no effect. The vehicle sped up and Deputy Felix, fearing that Mr. Barnes could kill him by taking his weapon away or crushing him, Deputy Felix discharged his weapon a second time. The vehicle slowed down almost to a stop and Deputy Felix jumped off and held the scene.

INVESTIGATION SUMMARY

The Houston Police Department, Homicide Division, was contacted and handled the investigation of the incident. At the completion of their investigation, their report was forwarded to the Harris County District Attorney's Office for review.

On August 26th and 31st, 2016 the Harris County District Attorney's Office presented the report before a Harris County Grand Jury. The Harris County Grand Jury returned a "No Bill" in the case.

Precinct Five I.A.D., reviewed the H.P.D. investigation, In-Car Video and the Harris County Grand Jury's decision and conducted an investigation into the incident. There were no violations of Precinct Five Standard Operational Procedure's found.

ATTACHMENTS

1. Foreward
2. Administrative Rules
3. Law Enforcement Code of Ethics
4. S.O.P. 2.27 Carrying Firearms
5. S.O.P. 2.28 Registration of Firearms
6. S.O.P. 200/1.34 Officer Involved Shooting
7. S.O.P. 200/5.05 Unlawful Carrying a Weapon
8. S.O.P. 30.14 Reporting and Investigations of Firearms Discharges by Deputies
9. S.O.P. 50.4 Firearms Identification and Control
10. S.O.P. 100/107H Deputy (Toll Road)
11. S.O.P. 200/1.19 Traffic Enforcement
12. S.O.P. 200/1.37 Racial Profiling
13. S.O.P. 200/2.14 Use of Force

Having no further information or evidence to consider in this case, this report is forwarded to your office for review and consideration.

/s/ W.D. Steffenauer
W.D. Steffenauer, Captain
Internal Affairs Division