



**CITY OF ELK GROVE
POLICE DEPARTMENT**

Interoffice Correspondence



Date: December 30, 2019

To: **INVESTIGATIVE FILE**
Elk Grove Police Department

From: **SERGEANT DAN TEMPLETON**
Bureau of Professional Standards

SUBJECT: INTERVIEW WITH LT. MICHAEL PRESS - IA19-024

On December 30, 2019, Lt. Jeffrey Scott and I interviewed Lt. Michael Press at the Professional Standards Bureau. The interview was digitally recorded. The following is a transcript of that interview.

- I N T E R V I E W -

DT: Today's date is Monday, December 30, 2019, is it approximately 10:48 am. I am Sergeant Dan Templeton assigned to the Bureau of Professional Standards. Present with me in the interview room is Elk Grove Police Lieutenant Jeffrey Scott assigned to the Bureau of Professional Standards. Lieutenant Scott, would you please state and spell your full name?

JS: Uh, first name is, uh, Jeffrey -- J-E-F-F-R-E-Y -- last name Scott -- S-C-O-T-T.

DT: Also present with us in the interview room is Elk Grove Police Lieutenant Michael Press. Lieutenant Press, would you please state and spell your full name?

MP: M-I-C-H-A-E-L, P-R-E-S-S.

DT: Lieutenant Press, you are being interviewed as a use of force expert in this case and you are not accused of any wrong doing. Do you understand that?

MP: Yes, I do.

DT: This interview is being recorded with everyone's knowledge and it's regarding personnel complaint IA number 19-024. Lieutenant Press, on December 16, 2019, you were given notice of this administrative investigation. Included in that document is a summary of the incident in question, is that correct?

MP: Correct.

DT: And do you have any questions up to this point?

MP: No.

ADMINISTRATIVE INTERVIEW LT. PRESS

IA 19-024

DT: At this time I'll be askin' questions related to this investigation only. It is important that he answer them truthfully, honestly, and to the best of recollection, do you understand?

MP: Yes.

DT: What is your current title and assignment?

MP: Uh, lieutenant and I'm assigned to, uh, the Patrol Division as a watch commander.

DT: And do you have any other assignments beyond besides, uh, patrol watch commander?

MP: Yes, I also oversee the Crisis Response Unit. Um, most pertinent to - and for Incident Command, a new Incident Command Vehicle Team. Um, think that's it for right now, that I can think of.

DT: How long have you been a sworn peace officer with Elk Grove PD?

MP: Uh, almost 20 years, it'll be 20 years in April.

DT: And how long with Elk Grove?

MP: Uh, Elk Grove, since August of 2006.

DT: And where else have you worked as a peace officer?

MP: Uh, prior to here I was with the [REDACTED] for about 5-1/2 years.

DT: And anywhere else besides...

MP: And then before that I was with the [REDACTED] for one year.

DT: As a part of your assignment are you a member of the department's Use of Force Review Board?

MP: Yes.

DT: And what does that entail?

MP: Um, I review, uh, every use of force investigation, uh, that's generated through the Blue Team, uh, software, uh, and then I make a determination on whether or not the force that was used by our officers was within policy or out of policy.

DT: Um, do you have any other - do you have any training and experience in evaluating use of force cases?

MP: Yes, I have attended, uh, several classes, courses. Uh, been to, uh, Force Encounters Analysis class. Um, uh, I was - I'm also a Force Science, uh, graduate, uh, as an analyst, uh, from their course. Um, been to dozens of, uh, SWAT classes, uh, been with the s- been associated with SWAT for over 15 years, uh, in pretty much every capacity. Um, I've listened to dozens of incident debriefs, uh, where, uh, force was used or not used, lessons learned, uh, things that coulda - uh, things that went wrong, things that should have, uh, should have happened and didn't happen, uh, been keeping up on that, uh, ever since for 15-plus years.

DT: And what were specific roles you had, uh, with the SWAT team?

MP: Uh, I've been, uh, started and just a - a basic operator, uh, early on when I first started, uh, with [REDACTED] Uh, I came here, uh, was transitioned to a team leader, team sergeant role, uh, and now I'm the, uh, team commander.

DT: And please describe your training and experience regarding field tactics.

MP: Uh, obviously through basic post academy, um, all of the, uh, CPT training I've had over my entire career. Um, I've taught field tactics during CPT sessions, uh, on occasion. Not anything recent but, uh, 'cause promoted out of that but, um, use of, uh - uh, firearms instructor, actually, uh, been doin' that for probably about 12 - 12 years probably, 12, 13 years. Um, I developed, created all the curriculum, uh, ran the trainings for the SWAT team for - since we started in August of '06. Um, implemented the - I recognized organizationally we had some deficiencies in some of the, uh, less than lethal equipment that we had to be able to de-escalate situations to avoid, uh - uh, deadly force scenarios, uh, so I, uh, was able to get, uh, less than lethal bean bag shotguns, uh, for the entire department, uh, which we now, uh, use. Um, I've mo- a less lethal, uh, ins- uh, certified instructor. Um, that's about all I can think of right now offhand.

DT: Any other relevant training and experience you can think of in regards to use of force or tactics?

MP: Uh, n- nothin' offhand that...

DT: Okay.

MP: ...that I just said, I'm sorry.

DT: All right. Have you had a chance to review Officer Schmidt's supplemental report 19-4020?

MP: I have.

DT: And were you provided with Officer Schmidt's interview transcripts and interview audio from his interview with me on December 10, 2019?

MP: Yes.

DT: And, uh, have you had a chance to review all the transcripts and audio?

MP: Yes.

DT: Additionally were you provided with video from this incident which included Officer Coleman's body-worn camera, Officer Trudeau and Coleman's in-car camera, Officer Trudeau's body-worn camera and Officer Schmidt's body-worn and in-car camera as well as Officer Smith's body-worn and in-car camera?

MP: Yes.

DT: And did you review all the videos I just listed?

MP: Yes.

DT: A- are you familiar with Elk Grove Police Department's use of force Policy Section 300?

MP: Yes.

DT: In your review of all the related material for this incident, do you - did you observe any use of force as defined by department policy by any officer?

MP: In this incident, yes, I did.

DT: And can you tell me who and describe that force?

MP: Um, I saw Officer Schmidt use force, uh, four times during this incident. Um, you said the type of force?

DT: You could describe the force, the four incidents.

MP: Um, the first was the, uh, the kick to the head or stomp or, uh, however you would, uh, best describe it, uh, and then he also, uh, kicked each arm. Um, he kicked his left arm, uh, once and I believe he kicked his right arm twice, so a total of four from what I saw.

DT: And did you observe or note any other force used by any other officer?

MP: No, I did not.

DT: As defined in our policy would these, uh, kicks by Officer Schmidt require a supervisor's use of force Blue Team entry?

MP: Yes, it would.

DT: In the narrative of Officer Schmidt's report and during his interview with me,

Officer Schmidt describes why he kicked the subject Mendoza in the head. In your opinion as a use of force expert, do you have any concerns about the force used by Officer Schmidt in regard to this?

MP: Yes, I do.

DT: Can you explain?

MP: Uh, Officer Schmidt's, uh, first kick that he used when he kicked Mendoza in the head, um, in my opinion was, uh, excessive and outside of policy. Um, there's a number of reasons why - he's - his - his reasoning, his rationale from his statement, uh, was that he believed that Mendoza, uh, was, uh, trying to grab a firearm from the bottom of his waistband with his right hand, uh, and he was in fear that he was gonna shoot Officer Coleman in the back. Uh, unfortunately there are no f- there's no factual information in the entire call that would indicate that Mendoza or, uh, Maka - uh, we'll just stick with Mendoza 'cause I know that's a focus of - of what Schmidt's, uh, use of force was, uh, were armed. Uh, there was no mention at any time during the call that anybody had any weapons. In fact, the, uh, CAD report, um, states, um, that at 6 - on 6-5-19 at 2043 and 07 seconds in the CAD entry there was no weapons. Um, throughout the whole, uh, rest of the CAD report there was no mention of, uh, any weapons whatsoever, uh, by witnesses, by victims, by reporting parties, or even the officers on scene. So, um, one of the issues - or a- well, the - the most significant issue is that in order to, uh, justify, um, the force that Officer Schmidt used he has to have, uh, articulable, factual information based upon the circumstances that were provided to him durin' the call for service, uh, of the event. Uh, so basically there was nothing to indicate to Officer Schmidt nor the other officers that, uh, Mendoza was actually armed, or there was a possibility, uh, out- uh, above just, um, a hunch or "I think," uh, "he may be armed." Um, that is outside, uh, the, um, the - the justification under Graham versus Connor of justifying his use of force, the type of force that he used. Um - keep goin'?

DT: Yeah.

MP: Um, uh, for the - some of the other issues that he - he had, uh, just s- specifically to the kick, uh, to his head, to Mendoza's head, um, if he - if his - Officer S- uh, Schmidt states that he was trying to, uh, "displace," I think was the word that he used, uh, Mendoza, um, to, uh, see what - to get his arm out from under- underneath him, that his right arm, because he did say he saw the left arm and to some degree, and it didn't look like it was bothering him, he saw it was fa- there was nothin' there but it was his right hand that concerned him because of the angle of his approach, of Officer Schmidt's approach to Mendoza. Um, the - sorry, I lost my train of thought. Um, or I'm sorry, where - where was I goin' with this? Um...

JS: From the hand displacement.

MP: Yes, he - oh yes, the kick. So one of the issues with him using that type of, um, use of force, the - a kick to someone's head, uh, any kick to someone's head is likely to cause great bodily injury, uh, or possibly leading up to death. Um, I think it's absolutely reasonable that you can accept - you could expect someone to be knocked unconscious temporarily, even for a few seconds, which it looks like, from what I could tell in - in the video that that may have actually occurred to Mendoza after the - the leg strike from, uh, Schmidt. Um, so tryin' to, um, to expect that someone after a leg strike to the head is going to - you're going to gain compliance, further compliance after that type of use of force, uh, is - i- is completely - it's - it's irrational and it - and it's illogical and it's - and it's - it's completely misplaced. Um, because of the leg strike to the head, Mendoza appeared to me to be - he was kinda mumbling, i- what it sounded like in the video, he wasn't makin' a lotta sense for that, mmm, probably two to three seconds, um, as Schmidt is then kicking out his arms. Um, it was evident that Mendoza was not, um - he was not - his - his frontal lobe wasn't functioning, essentially. He - he - he - he had been knocked kinda silly, uh, it looked like his head, uh, definitely hit the concrete after the leg strike because when he did get hit in the head or kicked in the head his head was elevated off the concrete and it was then, uh, shoved, um, pushed, and it struck the c- the - the concrete pavement right underneath him, um, and it looked like it hit around the temple area and I know that the kick appeared to hit somewhere near the back of Mendoza's head, uh, which, um, is, uh, extremely susceptible to causing, uh, concussions. Uh, and I know that just from, uh, my own personal knowledge. Uh, any time, you know, playin' football or whatnot, and if you get, um, hit in the back of the head you're gonna - you're - you're - you're - you're gonna be seein' Tweety Birds. So, uh, I could imagine the force that Schmidt used on Mendoza as he was laying down on the concrete face down, uh, and then getting the - the - the - I mean, essentially it caused two - two, uh, two, uh, you know, two injuries. Uh, one was the kick to the back of the head, which would be obviously - uh, cause some probably, uh, highly likely of, uh, you know, knock him kinda senseless and then his head hitting the concrete, uh, also in the temple area, uh, is also gonna cause some - some issues, uh, with his, uh, his brain function, uh, at least temporarily, which it appeared to do so. Anything else, uh, any other questions to follow up on so far? Uh, I can think...

DT: No follow-up but it just - finishin' off if there's, uh, any other concerns you mentioned already, several, um - about the use of force.

MP: Yeah, so, um, some of the other concerns, uh, that I saw that, um, when Schmidt arrived on scene, Mendoza has - he had already walked - he was - he was in the process of walking out of the store, walking toward Officer Coleman and Trudeau, walking westbound. He was shirtless, uh, he - all he had were - it looked like lightweight basketball shorts on and shoes and socks. He, um, he was carrying his black, or a black, t-shirt, um, in his hand, uh, it was - to me it

looked like it was pretty obvious he didn't have any other weapons in his hands. Um, I think the officers on scene it was obvious to as well because they never mentioned that he was armed. Um, uh, Mendoza's obviously a little overweight, um, his belly is probably hangin' over his waistband do- to a little - to - to - to some degree. Um, they never saw tha- thought that they saw somethin' that might have resembled a weapon in his waistband or, uh, it was clear that they didn't have any concern that he was armed because none of that ever got communicated to Schmidt or amongst each other, uh, i- durin' the call for service. Um, so when Mendoza exits the - the - the - the store, it's clear he's - uh, he starts to walk, he, uh, doesn't initially comply with, uh, Coleman's, uh, few verbal commands he gives. Uh, I think Mendoza stated somethin' about, um, his hands hurting or he wasn't able to go down to his belly, he made, like, a - like, an excuse that he had a medical condition or somethin', I - I - I w- I didn't quite make it out but then that's why it sounded like he balled his fists and he went down on the ground and he laid there. Um, so i- at that point he was compliant. Um, he was, uh, passively layin' on the ground, uh, his hands were, uh, down to his sides, uh, parallel with his body, um, and he - for the most part he was doing - was - w- with - uh, he - he was doing is what he was instructed to do. The only thing that he didn't do, uh, which, uh, Coleman gave him commands was to put his arms out to his sides perpendicular to his side, to his body. Uh, he said - I know he said, uh, you know, like an airplane, "Put your arms out so you look like an airplane," and I know that, uh, Mendoza failed to do that. Um, but other than that he was - he was compliant and he was, uh, typically in a position of disadvantage, uh, and an advantage for the officers to be able to then, uh, slow the pace down and, uh, communicate in terms of who was gonna cover who, who was going to handcuff, 'cause you had, uh - Maka was much closer in - in f- in front of Mendoza. Um, he was, uh - uh, much closer to Coleman and Trudeau and then Mendoza was kinda split in the middle between Schmidt and - and Coleman's vehicles as they were facing each other. Um...

JS: I- I'm...

MP: Sure.

JS: ...just gonna...

MP: Yup.

JS: Can you elaborate a little bit further on - you said that, um, Mendoza was in a position of a disadvantage.

MP: Mm-hm.

JS: And then our - and the officers were in a position of advantage. Can you, um, elaborate a little bit on that?

MP: Yeah, so, um, when Mendoza was laying on the ground, um, we had - uh, we didn't have physical control over him but we had, um, what you - you could maybe refer to as - you - you had a - a - a verbal - verbal control as in the f- a- as in, he was - he was complying, uh, with all commands with the exception of not putting his hands out to his sides, uh, perpendicular to his body. Um, he wasn't standing, he didn't take an aggressive stance, all indications were that he was complying with what we wanted him to do and there was nothing there to indicate that he was gonna resist, he was going to, uh, attempt to flee, um, or he was gonna be combative. Uh, those would all - those would all be, uh, things that could then o- would obviously change, uh, the tactics that the officer would use, the officers would have used on scene had that been the case, but that was not the case. Um, Officer Schmidt, uh, approached, uh, he approached, uh, Mendoza from the rear where after he parked his patrol vehicle and then he was, uh, facing, um, Mendoza from Mendoza's left, uh, so he was perpendicular to Mendoza off his left side, um, where Coleman and Trudeau were facing Mendoza head on, uh, was still deal- dealing with, uh, Ma- uh, Maka, is - Maka was, uh, facing - facing him as well. So they had two subjects, uh, cl- it was clear Maka was completely cooperative, he had f- he - he was - for all intents and purposes he w- he had submitted and he was ready to submit to arrest and detention based on his body posture. Mendoza, uh, I would say was in the - i- was in, uh, the same circumstance, same - same body position only with the exception that his arms aren't out to his side. Um, at that point the officers, uh, should have slowed things down and communicated more effectively in terms of, like I said before, who's gonna cover and who's goin' to handcuff, uh, the whole - the whole - I know we talked about in the interview as well that his interview, the whole contact and cover, um, concept. Uh, he - the way Schmidt explained it, uh, as he knew contact and cover was not consistent with how we train it, um, I know he talked about the contact and cover was, uh, he said, "Well, um, I was covering, uh, Mendoza while Coleman was contacting Maka," and that's not how we train it. It's - it's - it's essentially a pair of officers per subject or suspect. Um, and had that been the case, which at that time they did have the amount of officers to do that, uh, they had - at the time Trudeau and Coleman were on scene, uh, along with Schmidt. Schmidt could have, uh - and at this - i- i- in my opinion, he should have just held on, um, Mendoza, uh, he had lethal coverage on him which was, uh, totally reasonable, uh, I don't have an issue with, uh, their guns bein' out given the circumstances, uh, there are some unknowns so, um, Mendoza was - was down, um, he was, uh, for all intents and purposes he was being, uh, co- uh, cooperative. Um, Maka was, uh, same thing. Uh, Coleman and Trudeau, uh, should have - which they did, they started to cuff Maka - um, actually, I'm not sure if Tr- Trudeau helped, I think she was - I think Coleman cu- uh, cuffed Maka, Trudeau kinda covered, uh, but at the same time that was occurring Schmidt then, uh, advanced on Mendoza and, uh, kicked him in the head and - and - and - and, you know, under his, uh - by his statement s- s- with the justification sayin', "Well, I couldn't see his right hand, I thought he was gonna

pull a gun out and shoot Dan Coleman in the back." Again, there was no indication that Mendoza was armed. Um, I know that he was basing his, uh, belief, his assumption, off of the fact that, uh, there was one mention of, um, gang signs, potential gang signs, uh, in the CAD call, um, at 2043 hours, uh, 57 seconds in the CAD call. There's one mention of gang signs, um, by the RP's or witnesses inside Burlington. Schmidt associates gang members with being armed. That's not an unreasonable assumption but the problem is is that yo- in - in all circumstances we can't just assume and think a- and believe just because someone is a potential gangster, uh, that they are all armed, and - and therefore it justifies a, uh, a - a use of force against them without any other articulable facts and circumstances to justify that. So the - the problem with what Schmidt did in this case, in my opinion, is that he - he inserted, um, a fact that was not true, meaning he believed that just because they threw some gang size - gang signs, one, that these were gangsters, two, that they were armed, um, and therefore he believed that they had an intent to shoot Officer Coleman or himself or Officer Trudeau or whoever else in that parking lot. All other indications would conflict with that assumption and that belief by Officer Schmidt. Uh, again, we get back to what were the facts that he - what were the circumstances that he faced outside of that - his own personal belief, um, that they were armed? Again, you have Mendoza who came out, he was, uh, he was being, uh, cooperative, he laid down in a - in a position of, um, disadvantage and a s- you know, more or less a submission to our authority. Uh, again, yes, he wasn't complying with putting his arms out to his side, um, but that still doesn't in and of itself justify the force that he used to, um, force the hands out from his side so he can ensure that he didn't have a weapon. There were other tactics he should have used and could have used other than a kick to the head, which as I talked about, is completely, um, illogical and il- unreasonable to think that a kick to the head is actually - you're going to actually gain further compliance, uh, from that subject knowing that a strike to the head of any magnitude, really, is going to, you know, cause some type of GBI, which under the - under, you know, the definition of GBI, it's a state of unconsciousness, would - would, uh, would fit that. Um, let's see, what else do I have here? Uh...

JS: Before you go on, Mike...

MP: Sure, go ahead.

JS: ...you - you had talked about, um - so what other tactics were available to Officer Schmidt at that time?

MP: So the best thing that, uh, Officer Schmidt - I think w- I think I - I kind of touched on it, wha- what should have happened is Officer Schmidt should have held his - held his position at that tree where he was perpendicular to, uh, Mendoza, essentially looking at the left side of his whole body. Uh, and he had him at gunpoint, um, he couldn't see his - his right hand, um, but you had Coleman and

Trudeau who were to the front of him, uh, who could see straight down, uh, Mendoza and were able to see, uh, both hands. Uh, maybe not to great detail but they would be able to see if there was any - if he was really reaching, possibly reaching for, uh, you know, a weapon and had he presented it, uh, they had enough distance as well where, uh, their reaction time would have probably, uh - uh, allowed them to, uh, acquire cover and return fire had that even happened. Schmidt should have stayed at cover, he should have, uh, kept, uh, Mendoza at gunpoint, kept giving him verbal commands to put his hands out to his side. Uh, he could have warned him that he was going to, uh, use his Taser, uh, even a bean bag, um, uh, strike to, uh, to - to gain compliance if he did not, you know, give him the opportunity to comply with, uh, fa- wi- you know, with, uh, the caveat of, "Hey, if you don't comply this is what could happen to you." Um, and then Coleman and Trudeau should have cuffed up Maka, and then once that was done then they could then focus on Mendoza. Unfortunately that didn't happen and Schmidt committed, he put himself in a - in a - in a position to commit to taking action on Mendoza for, uh, really a - a - a reason that there was no, uh, factual basis for. Does that answer your question, Jeff?

JS: Yes, mm-hm.

MP: Okay.

JS: All right.

DT: And then, uh, any other concerns regarding the use of force that you haven't covered yet? And we're talking specifically to the head, to his head?

MP: Um, yeah, no, um, you know, prior to Officer Schmidt, um, as he made his approach to Mendoza, um, he made the statement, "This ain't gonna be a good day for you, son," quote. Um, and then right within a second or two after that, um, he strikes the, uh, the, uh, he strikes Mendoza in the head with his f- with his - with his - with his foot. Um, I don't know, I wasn't there to read his mind but that does maybe, um, uh, imply some maybe possible intent with the intent - I don't know what he meant by that statement. Uh, I know in his - his, uh, statement, uh, during his interview, IA interview, he regrets the statement and he understands, uh, it was unprofessional, uh, but he made it and I think it probably, uh, infers a mental state where he was - uh, Schmidt was at a level that was beyond what was necessary, uh, or reasonable given the circumstances they were dealing with at the time. Um, so, uh, i- there's that. Um, like, he - talk about the - immediately after searching, uh, he didn't do that, is - I could talk...

DT: We- we'll get to that in a sec.

MP: Okay, okay. Um...

DT: And then anything else to finish off regardin' the...

MP: The - the strike?

DT: Yeah.

MP: Uh, not at this - um, no. No, nothin', nothin'.

DT: And you mentioned you saw three uses of force in regards to kickin' away Mendoza's hands or arms. Did you have any concern with any of those strikes?

MP: No, I - I - I - I found the - him, um - I would - those - the strikes to the - to Mendoza's arms, um, although, uh, would constitute a use of force I - I - I thought they were fairly minor in nature. Um, he was more - he didn't stomp on the arms like he did - appeared to me he didn't stomp on the arm or actually kick the arm, um, like he did with, uh, Mendoza's head, which was clearly a kick or strike or stomp in my - in my opinion, from what I saw, uh, versus the arms which more look like he was tryin' to, um, sweep the arms out from underneath Mendoza to get them out to be perpendicular to his body. So I didn't have any issues with the, uh, the - his - the - the use of force to Mendoza's arms. In fact, I would - I would argue that that's probably what he shoulda done if anything, if he did approach he shoulda never kicked him in the head and he probably coulda mitigated the entire thing just by doing what he did at the end, if he had just skipped the - the strike to the head and went right to sweeping the arms out, we probably wouldn't be sittin' here right now.

DT: The movement of him sweepin' the arms out versus kickin' the head, um, is there - tell me the difference between how would one cause GBI and what sweepin' the arms - possibly cause any injury or not, as likely to cause injury? Can you touch on that?

MP: Yeah, so - so again, we talked to the - again, just to- mentioned it, so the - the - the - the - go back to the head. The head was, from - from what I saw in the video, to me it was clear it was a - and - and even Schmidt even says he - he, uh, he - he shoved - he, like, he wanted to use the word "shove," he tried to shove, uh, the - the suspect's, uh, Mendoza's head, uh, to displace it. Uh, sh- still not clear on what he - what he means by the word "displace" but, um, he, um, he used the - uh, it appeared to - the - no, the bottom of his boot, um, to strike Mendoza's - and o- it - it appeared, it looked like it might have just barely glanced off Mendoza's, uh, you know, left shoulder area and then, uh, when into, uh, his head, it wasn't clear. It - it - it might have occurred, if it did it was - wasn't clear in the video to me. Uh, either way, um, he - the boot clearly struck Mendoza's head, um, and again, as I talked about, any strike to the head by a leg is gonna cause - likely to cause GBI. Um, uh, and - and more - mostly, at least probably, uh, to the state of un- unconscious, uh, or a d- a very dazed, confused, uh, state. Um, the legs appeared to me, he didn't come down on a s- uh, as a s- in a stomping manner, uh, like, ele...

JS: You mean the arms or legs?

MP: I'm sorry, the - I'm sorry, the - I'm sorry, the arms, I'm sorry.

JS: 'Kay.

MP: Um, the arms didn't appear to me that his motion that he used with his - with - with Officer Schmidt's own legs, it didn't look like he was stomping on Mendoza's arms. It - it appeared to me he was, uh, tryin' to, uh, push them out by using his feet 'cause he had his handgun in his hand. Um, he was using his feet to, uh, sweep them out from underneath, uh, Mendoza's side or from the sides of Mendoza as he was laying there to get them out to - in the d- in the position that he wanted them. So I didn't see any type of stomping to Mendoza's legs, I didn't see a kick like you would, uh, kick a ball or a soccer ball or somethin' of that nature. Uh, to me it looked more like he used his feet as a - as a tool to create a wedge to pry the - the - the arms open from the sides, uh, to get them in the position that he wanted them.

DT: You already mentioned, uh, your concern, right, about Officer Schmidt's tactic of not maintaining cover a- at the tree, and that - do you believe that he engaged in any other tactics which created an exigency resultin' in less time to decide on the proper level of force or tactics that necessitated a use of increased level of force?

MP: Um, yeah, obviously I think had he stayed at the tree, uh, we - again, we probably wouldn't be sittin' here right now. Uh, however, the mistake he made was, uh, approaching and engaging Mendoza, uh, because what he did is he then - he essentially, he put - Schmidt put himself in a position where, um, he was going to have to use some type of physical force to get control of Mendoza, uh, be- uh, you know, and again, based upon what Schmidt n- thought he had a handgun, um, he used force, uh, to try and f- uh, determine whether or not he was armed or in his - like Schmidt said, he thought that he was gonna shoot Coleman in the back so he believed that, uh, a leg strike to the head would, um, get Mendoza to further comply so he could see his, uh, what was in his right hand, 'cause I know that was what - he wanted to see what was in that right hand to make sure it was clear of a handgun. Um, yeah.

DT: In, uh, Officer Schmidt's statement to me he stated, uh, it wasn't realistic in this situation for him to warn Officers Coleman and Trudeau about Mendoza's perceived hand movement near or around his waistband or pocket area. Um, and if you need to, we'll refer to Schmidt's transcript on pages 98 through 100 if that would help, but I was gonna ask you, did you have any concerns about, uh, this, uh, Officer Schmidt not warning Coleman or Trudeau?

MP: Yeah, I - I - I - I - I re- I do recall that, uh, specifically, uh, what he - what he stated about, um, he didn't believe, um, he had the time to, uh, to warn, uh, Trudeau or Coleman, um, which, uh, I find, uh, a lot of, uh - uh, well, that

statement, I think, uh, illustrates a lot of the issue with this case and - and why it got to the point that it did, uh, because Schmidt, um, decided to move at such a rapid pace and not slow down, which is what needs to happen on, uh, incidents similar to this. Communication is always key. Uh, we talked about earlier about all the incident debriefs that I attend, uh - uh, for, uh, uses of force and - and SWAT tactics and incidents, uh, that involve, uh, you know, deadly force, um, or less lethal force. The breakdown is always communication, always, always, always. Somewhere along the line, had better communication been used so people are informed about what actual factual information is occurring they can process that much, uh - they can process that and come up with a better decision and use better judgment. The fact that Schmidt decided not to tell them, I think, played a huge role in this issue, um, escalating much faster and Schmidt's decision-making to take care of it on his own. Uh, had he told Coleman and Trudeau that it looked like he was reachin' for something then I believe, hopefully what would have happened is they would have slowed down, they would have, uh, used much better contact and cover tactics. Um, they - they could have even - I - I know that, you know, Maka was close to Trudeau but he was - appeared to be, you know, very compliant, uh, they had plenty of time for what they had to wait for additional units which were on the way. Uh, there was no reason to, uh - uh, rush to cuffing both individuals, as they were prone out, uh, on the pavement face down. Um, so for all intents and purposes they were - they were being - they were submitting to arrest and/or detention. Um, by not communicating what Schmidt saw and then it just escalated and, um, it s- it sped up the entire event, uh, much faster than it needed to, and I think it resulted in what - what occurred.

DT: You mentioned Schmidt's concern about, uh, Mendoza's right hand and you mentioned a proper tactic as trained would be to stand by the tree. Um, was there an option for him to move to where Officer Coleman and Trudeau was at that time?

MP: Yeah, a- absolutely. I mean, th- he didn't have to stand there, and this all goes back to the communication phase. They could have, uh - one, probably the best thing they coulda done was probably wait for another unit, um, before they - they did anything, um, so they had additional officers, so you could at least had contact/cover, a pair of officers on each, uh, of - of the subjects, on Maka - two on Maka and two on Mendoza. Um, but even if they didn't decide to do that then that's fine, Schmidt could have, uh, moved to where Coleman and Trudeau were and helped them - and he could have covered down, uh, Mendoza from behind the two patrol cars that which were Trudeau's and Coleman's. Um, was there - right, were there - there were - yeah, there was two patrol cars. They we- ye...

DT: And on this call Officer Coleman and Trudeau were doubled up.

MP: They were doubled up.

DT: Yes.

MP: Oaky, I'm sorry, that's right. So they coulda - he could have used their patrol car, their single patrol car as cover to cover down long on Mendoza. This would have, one, slowed things down, two, it would have given, uh - uh - it would increase the distance, uh, from Mendoza to the officers, um, so, uh, it woulda been much more difficult for Mendoza to, uh, to track the officers if he were actually to - want to engage them a- and shoot them, uh, which Schmidt thought that that's what his - his plan was. If that truly was what he thought was gonna happen, um, he was much better off getting to a place of hard cover, uh, behind patrol cars and holding him from gunpoint there, uh, and then coordinate with incoming units in terms of how they were going to address that possible threat. If they really thought that he was armed, um, you know, a bean bag shotgun woulda been appropriate, um, uh, because again, they didn't - he didn't - he thought he had a gun but he was - you know, what he was - whatever he was doing making some, uh, some movements in his waistband area, uh, a bean bag shotgun, uh, woulda been appropriate to - to get Mendoza to comply further with pa- "Put your arms out to your sides." Um, even a Taser, uh, yo- yo- may have been justified, um, to some degree. But, um, yes, moving to the front of the patrol vehicles was definitely an option that they should have thought about and employed.

DT: In your - in your opinion do you have any concerns about Officer Schmidt leaving Mendoza unsearched, who Officer Schmidt stated he believed to be armed and instead enter Burlington to search for possible victims and/or the outstanding third suspect?

MP: Yeah, I do. I, um, I - the - I- during the body-worn cameras, uh, or durin' the cameras I reviewed, it - it - it turned out to be - so once, um, Schmidt, uh, used force against Mendoza he then, uh, handcuffed him and he, uh - Mendoza was cuffed at, uh, one minute and 45 on Schmidt's - accordin' to Schmidt's body-worn cameras, uh, one minute and 45 seconds into the video. Um, Schmidt leaves, tells one of the officers to watch Mendoza at 1:53. Schmidt comes back out and from Burlington, confirming no one else was inside, and then kinda stands around a little bit and then s- uh, actually finally then does search Mendoza. So from my calculation it was a minute and 21 seconds that went by, that transpired, uh, from the time that, um, Mendoza was cuffed and the time that he was finally searched. And at that time Mendoza essentially was unsecured, he was handcuffed but he was - there was not an officer, uh, solely focused on him. Um, Coleman was kinda running back and forth dealing with Maka, putting out radio calls 'cause they thought there mighta been a third - or he- they believed that there was a third that had left in a vehicle, um, so he was puttin' out information for that, he was, uh, telling other units, you know, guiding them and giving them, uh, information and guidance, uh, as they came on scene. Um, when Schmidt left Mendoza, I didn't see any even attempt to confirm that Mendoza had any

weapon in his waistband, which I thought was odd. Um, typically you see, and given my own experience being in situations similar to this, and, um, thinking that someone's armed, usually the first thing that you do after you think that they're armed, uh, and you get them detained, whether or not you use force against them or not is you go to their waistband or where you thought that they were, uh, trying to, uh, you know, acquire a weapon, whether it be a handgun or knife or whatever it was, um, even after they're cuffs, just typically generally, from my experiences, all the use of force visi- videos I've ever watched, uh, officers will, uh, unconsciously, I think, go to that area of concern. Schmidt never did that, yet it was so important for him to use this force because he so adamantly believed that Mendoza was going to shoot Officer Coleman in the back or anybody else, the first thing he does after he handcuffs him is he stands up, Schmidt, or he - he - he was already standing up but he, you know, he stands erect, he looks around, and then he runs into Burlington Coat Factory to make sure nothin' else is goin' on. Um, I found that completely, uh - uh, out of place and not consistent with other officers' behavior that I've seen on the dozens of use of force videos, my own experience, my own training. Uh, I know the - the - the first thing we teach officers once they do detain somebody in handcuffs is, do a quick Terry search, a pat search. If you're not gonna do a - a - a complete, full search of someone because there are some rapidly evolving events occurring but you need to make sure you - you at least do that pat search. Officers - or I'm sorry, uh, just because we put someone in handcuffs doesn't mean they - they can't acquire weapons. Uh, there's been just numerous instances across the nation where people who are handcuffs have slipped cuffs, uh, they're, uh, very nimble and they're very, um - um, uh, um, uh, bendable flexible where they're able to maneuver their hands across into their waistband, uh, to the front, they can put the - put their cuffs i- in - uh, move their cuffs from underneath their - their back to their front. So searching someone immediately after detention in handcuffs, uh, is key, and I thought it was interesting, uh, and out of character, uh, and inconsistent is probably the best word that I could say, uh, with everything that I've seen where if Schmidt was so de- uh, f- um, concerned about Mendoza having a weapon, in this case a handgun, why didn't he immediately do a quick waistband search of Mendoza? 'Cause he didn't have a shirt on and he had some f- uh, floppy basketball shorts on, it was clear, it was a hot - it was June so it was - it was a hot day out. Um, I think a really quick - he probably could have, um, swept that waistband area and determined if there was a weapon in less than five seconds if he actually had a handgun, that he woulda - he would have found it immediately if he actually was armed. But he didn't and he ran inside the store, uh, you know, the- and the other thing with that too is that while all this was goin' on there was no evidence that I found that the people from inside the store were saying, "Hey, there's someone else inside, we're be- the fight is still occurring, we need help inside," that never happened. Uh, there was no - Dispatch never notified, uh, 'cause I know the officers, you know, when you're focused and you're tryin' to give commands to people sometimes, you know, we could - we - we - we're very

dif- it's very difficult to multitask and he- and hear, if you're tryin' to give commands yo- you - your brain automatically will shut off, uh, the input that's comin' in from - from Dispatch, so it's hard to hear those things. So if you give him the benefit of the doubt that they didn't hear those things and he runs into the store, confirms no one's in there, he still comes out and Schmidt stands around, kinda looks around, there was no sense of purpose from his body actions that I saw that would reaffirm his a- his - his concern that Mendoza was armed.

DT: And based on the facts as you know them, do you believe the level of force utilized by Officer Schmidt was within the department's use of force policy?

MP: No, I do not.

DT: And I know you touched upon it but can you explain?

MP: Yeah, again, um, the - I think probably the - the kick to the head, I - I would go back and reiterate that if Schmidt's intent was to see what was in - see what Mendoza was doing with that right hand, um, the last thing he should have done was kick him in the head. Uh, and I base that on the fact, as I stated before, that, um, it's, uh, completely reasonable to expect that a le- a leg strike, a leg stomp, a leg kick to someone's head is going to cause - is - is very likely to cause GBI, or possibly even death depending on the - you know, the - the - the impact of the strike, uh, and then of course any preconditions that we're unaware of of the - of the subject as well. Um, you can't expect someone to comply if they don't have the mental capacity any longer because they're so dazed, confused, they're unconscious, um, they're dizzy, they're still tryin' to get their bearings or whatnot after a leg strike, to be able to cognizantly understand and hear and process verbal commands by anybody. Um, so if his intent was to, uh, grab or was to get the, uh, the, um, his right hand visible so he could confirm he didn't have a weapon, a leg strike was, um, absolutely, uh, unreasonable. Further, his - that leg strike - well, back up, Mendoza was, like we talked about before, being passively compliant, the only thing - again, he just was not putting his hands out to the side. Although that is a form of non-compliance, it did not reach - it does not justify the level of force that Schmidt used, a kick to the head. If Schmidt woulda - I - I would - I would have been perfectly fine if Schmidt would have went up and probably kicked Mendoza in the lower leg, I - I - I wo- I woulda said that would be reasonable, um, not bein' able to see that - and I - I don't mean f- goin' up like a soccer kick where you just tee off on the - on the guy but, you know, a - a - a - you know, a kick to - to get the - the suspect's, uh, attention, uh, to let him know that, hey, you know, do as I'm tellin' you. Um, that woulda been more reasonable than a kick to the head. The - the kick to the head was completely, uh - uh, unreasonable given the circumstances. Uh, there was no factual information in the call to justify what Schmidt's belief was that Mendoza was armed.

DT: Lieutenant Scott, do you have any further questions?

ADMINISTRATIVE INTERVIEW LT. PRESS

IA 19-024

JS: No, just in addition to what you just, um, ex- explained, you provide a lotta other detail, um, and the detail that you provided in this interview is also, um, your reasoning why the use of force was not within policy?

MP: Correct.

JS: Okay.

DT: All right, do you have any questions for us?

MP: No.

DT: You have any comments you wanna add for clarification?

MP: Uh, no, I don't think so.

JS: Um, Officer Coleman's...

DT: Tha- that was covered earlier.

JS: (Unintelligible).

DT: I just wanna clarify, I asked you if, uh, if you observed any use of force and you stated only Officer Schmidt's. You didn't see any other officers such as Officer Coleman use force?

MP: No, I - I know - I know the - what you're referring to, the, um - when Officer Coleman, and I believe that was - actually occurred when Schmidt was in Burlington Coat Factory after he had cuffed him...

DT: Mm-hm.

MP: ...uh, Coleman then ran over to Mendoza, um, and was kinda hovering over him and - and Mendoza had sat up in a - in - in an erect position, um, and Coleman, um, kind of, um, you know, nudged him with his knee and co- and Mendoza just kinda fell back over onto his side. That was not a use of force.

DT: Okay.

JS: Okay.

DT: And is there anything I did not cover that you would like to address regarding this investigation?

MP: Um, I don't think so. Let me just review my notes real quick. Yeah, no, that's all I have.

JS: All right, uh, Lieutenant Press, as a representative of the chief of police I'm giving you a direct order not to discuss this interview or this ongoing investigation with

anyone else except legal representatives of your choice until final departmental resolution. Do you understand?

MP: I do.

DT: This interview is concluded at 11:40 am.

- INTERVIEW CONCLUDED -